



GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF TRADE ORGANISATIONS
(Office of Regulator of Trade Organisations)
MINISTRY OF COMMERCE
State Life Building No. 7, 2nd Floor,
Blue Area, Islamabad



F. No. 7(10)/2013-TO

Islamabad, the October 4, 2013

ORDER-IN-ORIGINAL NO. 17/2013

Passed by Mr. Rizwan-ul-Haq, Deputy Director (TO-III) under Clause (e) of Sub-section (3) of Section 14 of Trade Organization Act, 2013 and Sub-rule (13) of Rule 18 of Trade Organization Rules, 2013

Mr. Naseem Akhter Mehmood Chaudhary

Versus

Election Commission, Pakistan Overseas Employment Promoters Association, Islamabad

Present in the hearing on 24-09-2013:

Mr. Naseem Akhtar Mehmood Chaudhary,
of M/s PEARLTEC Pakistan Ltd.,
Islamabad.

.....Appellant

Election Commission POPEA through Mr. Fida Ahmad,
Secretary General,
Pakistan Overseas Employment Promoters Association,
Islamabad.

.....Respondent

Date of Hearing: **24-09-2013**

Place of Hearing: **OFFICE OF REGULATOR OF TRADE ORGANIZATIONS
DIRECTORATE GENERAL OF TRADE ORGANIZATIONS,
STATE LIFE BUILDING NO. 7, 2ND FLOOR, BLUE AREA,
ISLAMABAD.**

Date of issuance of Order: **04-10-2013**

By this Order, as authorized by the Regulator of Trade Organisations under sub-section (2) of Section 22 of Trade Organization Act, 2013, I intend to dispose of the appeal filed by Mr. Naseem Akhtar Mehmood Chaudhary of M/s PEARLTEC Pakistan Ltd., Islamabad against Pakistan Overseas Employment Promoters Association, Islamabad, [hereinafter referred to as "the Association"].

Brief Facts:

2. Mr. Naseem Akhter Mehmood Chaudhry, a corporate member of Pakistan Overseas Employment Promoters Association (POEPA) approached DGTO Office in July, 2013 with a request to direct POEPA to adhere to sub-rules (9) & (10) of Rule 21 of Trade Organizations Rules, 2013. The same are reproduced below:-

“Organizational structure of chambers, chamber of small traders, associations, association of small traders, women’s chambers and town associations “

(9) *“In any trade organization where the general body comprises at least fifty per cent members from associate class, there shall be rotation of office of president and, as the case may be, the chairman between the associate and corporate members:*

Provided that in case of a chamber of small traders and an association of small traders there shall be no such restriction”.

(10) *“Where there is rotation of office of president under sub-rule (9), the president and senior vice-president or chairman and, as the case may be, the senior vice-chairman shall not be from the same class of members provided in sub-rule (7) of rule 11”.*

3. DGTO Office vide its letter No. 7(10)/2013-TO dated 22-07-2013 advised POEPA to observe the said rules while conducting election for the office of Central Chairman.

4. On 16-09-2013, Mr. Naseem Akhter Mehmood Chaudhry filed a complaint before Regulator of Trade Organizations alleging that this year it is turn of Corporate Members to become Central Chairman as per provisions of Trade Organization Rules, 2013. But the Election Commission, POEPA is favouring Associate Memebbers of the Association and is going to announce decision in favor of Mr. Muhammad Aqeel Awan, an Associate Member, and requested for intervention of DGTO Office. He further stated that Election Commission POEPA was supposed to scrutinize nomination papers on 15th September but they have not done so.

5. It was deemed necessary to stop electoral process for the seat of Central Chairman POEPA till the complaint filed by Mr. Naseem Akhter Mehmood Choudhry/Appellant is decided. POEPA was directed not to conduct polling for Office Bearers and furnish comments on complaint of Mr. Naseem Akhter Mehmood Chaudhry. Meanwhile, Election Commission POEPA rejected nomination papers of Mr. Naseem Akhter

Mehmood Chaudhry on the grounds that his nomination papers were seconded by Mr. Sarfaraz Zahoor Cheema who is a retiring Member of Central Executive Committee of the election year 2012-13. He is not a part of Central Executive Committee for the year 2013-14 and not a voter in Electoral College of Central Executive Committee for the year 2013-14. Therefore, he is not eligible to propose or second any candidate for the slots of Office Bearers of Central Executive Committee for the year 2013-14.

6. On the other hand, Election Commission accepted nomination papers of Mr. Muhammad Aqeel Awan, Associate Member POEPA. The subject complaint and appeal of Mr. Naseem Akhter Mehmood Chaudhry were dealt with by Office of the Regulator of Trade Organizations under clause (e) of sub-section (3) of Section 14 of Trade Organization Act, 2013 and sub-rule (13) of Rule 18 of Trade Organization Rules, 2013 which stipulate that office of Regulator of Trade Organization is the final forum of appeal against the decisions of any person, committee or office-bearers of a trade organization in matters relating to electoral process before the conduct of election. Mr. Muhammad Aqeel Awan also submitted an application on 18-09-2013 for rejecting the appeal of Mr. Mr. Naseem Akhter Mehmood Chaudhry which was given due weightage in the subject case.

7. To meet the ends of justice, a personal hearing was conducted on 24-09-2013 as had been authorized by the Regulator of Trade Organizations under sub-section (2) of Section 22 of Trade Organization Act, 2013. Personal hearing proceedings were attended by Mr. Naseem Akhter Mehmood Chaudhry/Appellant and Mr. Fida Ahmed, Secretary General, POEPA who represented the Association and its Election Commission. Mr. Fida Ahmed argued to support the decision of Election Commission but he admitted that as far as interpretation of law is concerned, it is domain of the Government and any decision of DGTO Office will be a guideline for them to decide such matters in future as well.

ORDER

8. After hearing parties to the dispute at length and examining the documentary evidence and relevant provision of law, it is held that:

- i. Sub-rule 9 of Rule 21 of Trade Organization Rules, 2013 clearly stipulates that there will be rotation between Associate & Corporate members to occupy the seat of Central Chairman POEPA.
- ii. Record of last 5 years shows that seat of Central Chairman has been occupied as follows:-

- a) Mr. Sardar Zulfiqar Ali Khan (Associate Member) 2012-13.
- b) Ch. Ellahi Baksh (Associate Member) 2011-12.
- c) Mr. Habib Wali Khan (Associate Member) 2010-11.
- d) Mr. Muhammad Siddique Khan (**Corporate Member**) 2009-10.
- e) Mr. Mohammad (Associate Member) 2008-09

Thus, corporate Members had their turn only once for the year 2009-10 and last 03 consecutive terms were availed by Associate members. It tantamounts to violation of Trade Organisations Rules, 2013.

- iii. Associate members were not entitled to submit nomination papers this year. Allowance in favour of Mr. Muhammad Aqeel Awan, an associate member and subsequent acceptance of his nomination papers was an unlawful act and malafide on part of Election Commission POEPA.
- iv. Rejection of nomination papers of Mr. Naseem Akhter Mehmood Chudhry on the ground that his nomination papers have been seconded by a member who is retiring on 30-09-2013 is not supported by any legal provision. Sub-rule 16 of Rule 18 of Trade Organization Rules, 2013 mentions proposing and seconding by an elected Executive Committee member but doesn't specify that proposer and seconder must be a 'newly' elected member. Nomination papers of Mr. Naseem Akhter Mehmood Chudhry were seconded by Mr. Sarfaraz Zahoor Cheema, who was a bona-fide Executive Committee Member when he proposed / seconded Mr. Naseem Akhter Mehmood Chudhry for contesting election as Central Chairman POEPA.
- v. Election Commission has rejected nomination papers of Mr. Naseem Akhter Mehmood Chudhry on grounds that are void and illegal. Prima facie, Election Commission has interpreted law arbitrarily. They have been found guilty of violating Clause (e) of Rule 16 of Trade Organization Rule, 2013.
- vi. Mr. Muhammad Aqeel Awan was not entitled to file objections on nomination papers of Mr. Naseem Akhter Mehmood Chudhry and his objections must have not been entertained by the Election Commission.

9. On the basis of facts and reasons discussed above, decision of Election Commission, POEPA to reject nomination papers of Mr. Naseem Akhter Mehmood Chudhry is hereby declared as void and illegal *ab initio*. Election Commission is hereby directed to accept nomination papers of Mr. Naseem Akhter Mehmood Chudhry for Central Chairman and continue the electoral process accordingly.

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Deputy Director (TO-III)

Announced: Dated, 04-10-2013

Copy for information and necessary action is forwarded to:-

1. Executive Director General (DC&TP), Ministry of Commerce, A-Block, Pak Secretariat, Islamabad.
2. President FPCC&I, Federation House, Main Clifton, Karachi, Pakistan
3. Election Commission POEPA through Secretary General, House No. 374, Street No. 103, Near Pakeeza Plaza Market I-8/4, Islamabad.
4. Mr. Naseem Akhter Mehmood Chaudhry, Chief Executive, PEARLTEC Pakistan (Pvt) Ltd. Block14, Super Market, F-6, Islamabad.

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Deputy Director