

## **IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

Mr. Justice Mushir Alam

Mr. Justice Mazhar Alam Khan Miankhel

**Civil Petitions No.1191, 1192 and 1193 of 2017**

Against the judgment dated 16.1.2017 passed by  
Lahore High Court, Lahore in Writ Petitions  
No.23034, 15864 and 21910 of 2009

**Securities & Exchange**

**Commission of Pakistan, Karachi**

(in all cases)

*Petitioner(s)*

*versus*

***M/s East West Insurance Company thr:***

***its GM & others***

*(in CP 1191/17)*

***Adamjee Insurance Company Limited,***

***Karachi***

*(in CP 1192/17)*

***M/s United Insurance Company Pakistan Ltd. (in CP 1193/17)***

***& others***

*Respondent(s)*

For the Petitioner(s):

Syed Hamid Ali Shah, ASC

For the Respondent(s):

N.R

Date of Hearing:

12.02.2018

### **ORDER**

**Mushir Alam, J.-** Securities & Exchange Commission of Pakistan, (SECP) petitioner herein has impugned the judgment dated 16.01.2017 passed by the Lahore High Court in writ petitions No.1191, 1192 and 1193 of 2017 filed by different Insurance Companies, whereby setting aside the orders all dated 28.10.2009 passed by the Petitioner SECP, as an adjudicatory and appellate authority whereby it directed the Respondent No.1 insurance Companies to pay the claims arising out of policy of Insurance of the insured. Fact in brief in each case appears to be:

2. In CPLA No.1191 of 2017 respondent No.3-M/s Y & U International Model Town, Sialkot, raised claim under Marine Cargo Policy for the consignments, which was later found damaged

by water. Claim was repudiated by respondent No.1-M/s East West Insurance Company, on the ground of limitation and on the ground that consignments were disposed of prior to the survey, knowledge and approval of the Insurance Company. Complaint was filed before the Insurance Ombudsman, which after due notice and hearing the parties was dismissed. On the ground *inter-alia* that the jurisdiction vests in the Insurance Tribunal constituted under Section 122 of the Insurance Ordinance, 2000. However, on appeal under section 130(2) of the Insurance Ordinance, 2000 (Ordinance, 2000), Petitioner being appellate authority formed an opinion that *"mal-administration on part of the Respondent is evident, the respondent is ordered to pay the amount of loss as assessed by the surveyors and also a reasonable allowance for damaged goods"* together with liquidated damages for late settlement in terms of section 118 of the Insurance Ordinance, 2000.

3. In CPLA No.1192 of 2017, *Insurance Ombudsman* directed the Insurance company to pay Rupees one million to the insured with liquidated damages vide order dated 9.8.2007 petitioner Commission dismissed the appeal and maintained the order of the Insurance Ombudsman.

4. In CPLA 1193 of 2017, the *Insurance Ombudsman* vide order dated 16.12.2008 directed the insurance company to settle the claim amicably within thirty days. After survey report, the Insurance Company offered Rs.500,000/- towards the settlement of the claim, which was not accepted and ultimately matter went up before the petitioner Commission and order was maintained.

5. All the three Insurance Companies challenged the order passed by the Federal Insurance Ombudsman, through three different Writ Petitions, which through impugned Judgements all dated 16.01.2017, were allowed essentially on the ground, *inter alia*, that the Insurance Ombudsman had no jurisdiction to adjudicate the claim arising out of Insurance Policy, as such were not the cases of maladministration; and conclusion drawn by the Securities & Exchange Commission of Pakistan, to the contrary,

was also set-aside. It was further held that the claim of the insured falls within the jurisdiction of the Insurance Tribunal.

6. When learned counsel was confronted as to how the Petitioner, being appellate adjudicatory authority could impugn the judgment of the High Court; it was contended that office of the Federal Insurance Ombudsman, has been created to remedy the complaints and protect the interest of insured at the hands of the Insurance Companies that indulges in maladministration and, cause undue delay in settlement of or, avoidance in payment of the insurance claim. Learned Counsel concedes that insurance cover in all the three cases is not disputed, survey has been carried out and loss in each case has already been assessed. Learned Counsel for the Petitioner concedes that to his knowledge the insured have not assailed the order of the Lahore High Court.

7. Heard the arguments and perused the record. It may be observed that Office of Insurance Ombudsman was established under *section 125* of the Insurance Ordinance, 2000, jurisdiction. Function and powers of Federal Insurance Ombudsman are enumerated in *section 127 ibid* and it is only on the complaint of "*any aggrieved person*" Insurance Ombudsman may under take investigation against "*any insurance company*" on the allegation of "*maladministration*" as defined under *sub-section (2) of section 127 ibid*; In case complaint is found to be justified the *Insurance Ombudsman* may make recommendation of the nature provided for under *section 130* thereof. In terms of *sub-section (2) of section 130 ibid*; only "*insurance company*" or "*official of a Insurance company*" or a "*complainant*" aggrieved by an order passed by the *Insurance Ombudsman* may file an appeal with the *Securities and Exchange Commission of Pakistan (SECP)*. It may be noted that the *SECP*, under the Insurance Ordinance, 2000, is the final adjudicatory and appellate authority provided under the Insurance Ordinance, 2000 against the recommendatory order of the Insurance Ombudsman.

8. Insurance Ombudsman being *investigatory* and recommendatory authority and the *SECP*, being final appellate authority against the recommendatory order of Insurance

Ombudsman and performs judicial function within the parameters laid down under the Ordinance, 2000. Insurance Ombudsman, after passing an order, on a complaint made by '*any aggrieved person*' against '*maladministration*' of insurer, becomes *functus-officio*; likewise, SECP being final adjudicatory and appellate authority against the order of Insurance Ombudsman after passing an order on appeal becomes *functus-officio*. Any order passed by the Insurance Ombudsman, which has not been appealed against, or any order passed by the SECP in appeal, as the case may be, becomes final and enforceable against the insurer, unless the complaint is dismissed or in cases where *any party aggrieved* (as defined under *subsection (2) of section 130 ibid:*), by order of appellate authority, may invoke jurisdiction of judicial review of the High Court under Article 199 of the Constitution of Pakistan. Since original *investigatory* or appellate authority are independent and impartial forms have no adversarial interest against either of the contesting party (i.e. insurer or insured) before it. While performing such functions the Ombudsman and the SECP in fact are discharging their respective duty to probe into complaint of maladministration and settle rights and obligations against the parties in conflict before such forum. The statutory authority, may it be exercising its original or appellate functions under an enactment cannot challenge the order passed by the higher judicial forum either created under the law or constitutional dispensation under Article 199 of the Constitution, 1973 whereby and whereunder its judgment and or order is reversed or modified.

9. Role of SECP as an appellate authority under the Insurance Ordinance, 2000 is independent and non-partisan, in a dispute between insurers and insured. Any order passed by the Insurance Ombudsman, which has not been appealed against, or an order passed by the SECP in appeal as the case may be, is final and operative. In case insurance company, or the official of an insurance company or complainant is aggrieved by the decision of SECP, only course available to an aggrieved party is to invoke jurisdiction of judicial review of High Court under Article 199 of the Constitution. Neither the Insurance Ombudsman nor, SECP is required to come forward to justify and or defend its order before

the High Court or Supreme Court as the case may be, it is for the person aggrieved to pursue the remedy any further. One may see case of Syed Yakooob v. K.S.Radhakrishnan and Others, (AIR 1964 Supreme Court 477), in which case it was held that the Tribunals are not supposed to defend its own orders unless allegations are made against them, one may also see Mohtesham Mohd. Ismail v. Spl. Director Enforcement [(2007)8 Supreme Court Cases 257], and M.S. Kazi v. Muslim Education Society and others [(2016)9 Supreme Court Cases 263].

10. Besides on the merits, we are extremely doubtful whether the petitioner being appellate adjudicatory authority could challenge the order passed by the learned Bench of the High Court in purely adversarial proceeding by and between the policy holders and the insurance companies. The policy holders so far have not challenged the findings recorded by the learned Bench of the High Court, Impugned order, if at all challenged by the policy holder may be examined. Accordingly, finding no merits leave is declined and these petitions are dismissed.

**Judge**

**Judge**

ISLAMABAD, THE  
12<sup>th</sup> February, 2018  
arshed

**Approved for Reporting**