

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.2439-2020
Crescent Star Insurance Limited

Vs.

**Securities and Exchange Commission of Pakistan, Islamabad &
Another**

Petitioner by : Mr. Adam Hassan Malik, Advocate
Respondents by : Mr. Ibrar Saeed, Advocate
Date of decision : 24.09.2020

AAMER FAROOQ J. The petitioner is a Registered Company under the laws of Pakistan carrying insurance business in Pakistan. In this behalf, requisite licenses were granted to the petitioner company by Securities and Exchange Commission of Pakistan (SECP), which is the regulator of, *inter alia*, business of insurance in Pakistan.

2. The petitioner is aggrieved of notice dated 26.08.2020 issued by respondent No.1 under section 63(1) of Insurance Ordinance, 2000, whereby the petitioner has been directed to cease entering into new contracts of insurance till such time that the solvency requirements are met with as prescribed under the Insurance Ordinance, 2000 (the Ordinance) and Insurance Rules, 2017 (the Rules).

3. Learned counsel for the petitioner *inter alia* contended that requirement before issuance of show cause notice i.e. opportunity of hearing as prescribed under section 63 (1) (d) of the Ordinance has not been met with. It was further contended that it has not been mentioned in the impugned notice, as to what reasonable information or grounds exist, which call for issuance of directions

under section 63 of the Ordinance. Learned counsel pointed out that petitioner company fulfills the requirement of solvency and there is nothing on record to show that it is unable to meet its financial obligations. In support of his contentions, learned counsel placed reliance on cases reported as 'Crescent Star Insurance Company Limited Vs. Securities and Exchange Commission of Pakistan' (2011 CLD 173), 'Collector, Sahiwal and 2-others Vs. Mohammad Akhtar' (1971 SCMR 681), 'Messrs Faridsons Limited, Karachi and Another Vs. Government of Pakistan through its Secretary, Ministry of Commerce, Karachi and Another' (PLD 1961 Supreme Court 537) and 'Federation of Pakistan Vs. Asad Javed and others' (PLD 2016 Islamabad 53).

4. Learned counsel for the respondents *inter alia* contended that no opportunity of hearing is required to issue notice under section 63(1) of the Ordinance. It was contended that in the past as well, various directives and notices were issued to the petitioner company for the same reason that it failed to meet its solvency requirement, however, the petitioner failed to do the needful. It was submitted that as and when the petitioner fulfills the solvency requirements, the directions issued, vide the impugned notice, shall stand withdrawn. It was further submitted that the basis, which led to issuance of notice, is the audited reports of the petitioner company, which clearly stipulate that it is not solvent.

5. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

6. The background, leading to filing of instant petition, has been mentioned hereinabove therefore need not be recapitulated.

7. As noted above, the petitioner is aggrieved of notice dated 26.08.2020 allegedly issued under section 63 of the Ordinance.

8. Since the controversy revolves around section 63 of the Ordinance and its interpretation, hence for the sake of brevity, said provision of law is reproduced below: -

"63. Power of Commission to issue direction to cease entering into new contracts of insurance.- (1) The Commission may issue a direction to cease entering into new contracts of insurance if it believes on reasonable grounds that an insurer registered under this Ordinance has failed, or is about to fail, to comply with the conditions of registration set out in section 11.

(2) The Commission shall issue a direction to cease entering into new contracts of insurance if:

(a) a petition is presented for the winding up of the insurer and has not been withdrawn or vacated within a period of sixty days;

(b) the whole of the business of an insurer has been transferred to any person;

(c) the Tribunal has made an order that a direction be given to that insurer to cease entering into new contracts of insurance; or

(d) the insurer has failed to comply with a directive issued under this Ordinance concerning a contravention of the Ordinance or the rules made thereunder, within the time specified in the Ordinance or, if not so specified, within the time specified in the directive or three months, whichever is longer, and the directive had stated that the failure to comply would lead to a direction to cease entering into new contracts of insurance:

Provided that a direction shall not be issued under clause (d) without giving the insurer an opportunity to be heard.

(3) A direction to cease entering into new contracts of insurance shall have effect one month from the date of the direction unless a later date is specified in the direction.

(4) A direction to cease entering into new contracts of insurance shall be accompanied by a statement of the reasons for the direction.

(5) A direction to cease entering into new contracts of insurance shall only be revoked if the reasons for the direction as given in the statement required to be given by the preceding sub-section shall have ceased to exist.

(6) An insurer shall not be in contravention of a direction to cease entering into new contracts of insurance by reason only that the insurer continues to carry out its obligations under contracts of insurance entered into before the direction came into effect".

The bare reading of section 63 (1) of the Ordinance shows that where there are 'reasonable grounds' that the company, which is carrying on the business of insurance, has failed to or about to fail to comply with the conditions of registration set out in section 11 of the Ordinance, it may issue directions to cease entering into new contracts of insurance. The word 'may' clearly stipulates that it is the discretion of SECP and it is not mandatory or obligatory. Moreover, the concept of 'reasonable grounds', as such, is not defined or explained in the Ordinance, however, to substantiate his plea that there are no 'reasonable grounds', in the facts and circumstances, learned counsel for the petitioner placed reliance on case reported as 'Zaigham Ashraf Vs. The State and others' (2016 SCMR 18), wherein it was observed that 'reasonable grounds' to believe are of high importance and meaning requiring prosecution to show the court of law that there is sufficient evidence and material constituting reasonable grounds. It was argued, on the said basis, that in the facts and circumstances, there are no 'reasonable grounds'. The examination of subsection (2) of Section 63 *ibid* shows that SECP is duty bound to issue a direction to cease entering into a new contract provided one of the conditions, mentioned in subparagraphs (a) to (d), is met with. The word used in subsection (1) of section 63 of the Ordinance is 'shall', meaning thereby that it is mandatory for the SECP to issue a direction, where one of the conditions, provided in subparagraphs (a) to (d), is attracted.

9. It is the case of the petitioner that the relevant provision, under which SECP has purportedly issued the impugned notice, is sub-clause (d) of subsection (2) of Section 63, under which where the insurance company fails to comply with the direction issued

under the Ordinance concerning contravention of the Ordinance or Rules made therein within the time specified, SECP shall issue a direction to cease entering into new contracts, however, before doing that under the proviso to section 63(2)(d), the company is required to be heard. When subsection (1) & (2) of section 63 *ibid* are read in juxta position, it is clear that both are independent of each other inasmuch as under subsection (1), obligation to issue direction is not mandatory but 'discretionary' or 'directory' and depends upon existence of 'reasonable grounds' for violation of terms of registration as set out in section 11 *ibid*, however under subsection (2), since the word 'shall' has been used, it is mandatory upon SECP to issue a direction, where the earlier directives for violation of the terms of Ordinance or Rules have not been met out within the time provided. Under subsection (4) of section 63 of the Ordinance, a direction is to be accompanied by statement of reasons for the same. The examination of the impugned notice shows that no such statement, as such, has been appended with the impugned notice.

10. Learned counsel relied upon the judgment of Hon'ble Sindh High Court reported as 'Crescent Star Insurance Company Limited Vs. Securities and Exchange Commission of Pakistan' (2011 CLD 173), wherein it was observed that subsection (1) of Section 63 cannot be read in isolation but it has to be read along with subsection (2). The Hon'ble Sindh High Court, in the said judgment, while reconciling section 63(1) and 63(2) of the Ordinance, observed as follows: -

"Though, under subsection (1) of section 63, the Commission may issue a direction to cease entering into new contract of insurance if it believes on reasonable ground that an insurer

registered under this Ordinance has failed, or is about to fail, to comply with the condition of registration set out in section 11 but simultaneously, subsection (2) of section 63 provides the conditions in which the commission may issue directions. Clause (d) of subsection (2) clearly stipulates reasons for issuing directives, if the insurer has failed to comply with directive issued under the Ordinance concerning a contravention of the Ordinance or, the rules made there-under, within the time specified in the Ordinance or, if not so specified, within the time specified the directives or three months whichever is longer and directive had stated that failure comply would lead to a direction to cease entering new contracts of insurance. The proviso attached to this clause clearly provides that the direction shall not be issued under clause (d) without giving the insurer an opportunity to be heard. So in my view, subsection (1) of section 63, cannot be read in isolation but it has to read along with subsection (2), particularly clause (d) in which the legislature has provided a procedure and mechanism to deal with the situation when the commission deems it fit and proper to issue directives and non compliance of the directives may result further repercussions which may include the direction to cease entering into new contracts of insurance but this can only be done after giving insurer an opportunity to be heard".

In view of above judgment and also the plain reading of section 63(1) & 63(2) *ibid*, though on the fact of it, shows that both are independent of each other yet in a way they are not inasmuch as under section 63(1), direction is to be issued where there are reasonable grounds where insurance company is violating or about to violate conditions set out in section 11 of the Ordinance, whereas under section 63(2)(d) of the Ordinance, where there is violation of the provisions of the Ordinance or Rules made there-under, issuance of direction is mandatory but opportunity of hearing is to be granted. Naturally, section 11, referred to in subsection (1), is part of the Ordinance hence reconciling the two provisions, it would be seen that where even there seems to be violation of terms of conditions of license as provided in section 11, an opportunity of hearing be granted under section 63(2)(d) of the Ordinance.

11. In view of above, instant petition is allowed and the impugned notice is set aside; consequently, respondents shall afford

W.P. No.2439-2020

opportunity of hearing to the petitioner before issuance of directions under section 63 of the Ordinance.

(AAMER FAROOQ)
JUDGE

Zawar