

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3049/2019

Pak Qatar Family Takaful Ltd.

versus

President of Pakistan & 02 others

and

W.P. No.3050/2019

Pak Qatar Family Takaful Ltd.

versus

President of Pakistan & another

Petitioner by: Mr. Adam Hassan Malik, Advocate.

Respondents By: Ms. Kashifa Niaz Awan, Advocate along
with Respondents No.2 & 3 in W.P.
No.3049/2019 and for respondent No.2 in
W.P. No.3050/2019.

Barrister Muhammad Mumtaz Ali, AAG

Date of Hearing: 03.03.2021

JUDGMENT

MOHSIN AKHTAR KAYANI, J:- By way of this single judgment,

I intend to decide the above mentioned writ petitions having similar questions of law and facts.

2. In W.P. No.3049/2019, Pak Qatar Family Takaful Ltd. (petitioner) is aggrieved with the order, dated 09.08.2019, passed by President's Secretariat (Public), Islamabad, whereby representation filed by the petitioner against the order of Federal Insurance Ombudsman, dated 21.12.2018, has been rejected. Shaoib Ahmad (Respondent No.2) had filed a complaint before the Federal Insurance Ombudsman against the petitioner

Company stating that agent of petitioner Company visited him in the year 2017 and convinced him to make investment in the company, whereupon he had issued a cheque of Rs.3,000,000/- for the purpose of investment. A policy was issued against an amount of Rs.1,000,000/- while outstanding amount of Rs.2,000,000/- was deposited as top-up. The petitioner Company has also received administrative charges of Rs.13,000/-. The agent of the petitioner company also convinced Respondent No.2 to ask his brother Yasir Islam (Respondent No.3) to make investment towards the saving plans, whereby assurance of profit to the tune of Rs.17,000/- per months was given, per se, Yasir Islam / Respondent No.3 had also invested an amount of Rs.1,000,000/-. When Respondent No.2 contacted the petitioner company for his monthly profit, he was informed that his deposited amount has now been reduced to Rs.2,300,000/- due to fall in stock market. Accordingly, the said respondents approached the Federal Insurance Ombudsman, whereby the petitioner company was directed to pay the full deposited amount, as such, the said order has been maintained by the President's Secretariat (Public), Islamabad.

3. Similarly, in W.P. No.3050/2019, Hamid Saeed (respondent No.2) has filed a complaint to the Federal Insurance Ombudsman that he purchased Educational Takaful Plan from the petitioner company in the year 2010 for 10 years on annual contribution of Rs.20,110/- and when he approached the petitioner company in the year 2013 to surrender the policy, he was directed to wait as the cash value of the policy at that time was about 50%. He again approached the petitioner Company in the year

2015 and he was paid an amount of Rs.117,302/- against the total deposited amount of Rs.140,416/- i.e. short of Rs.22,698/-. The complaint was allowed by the Federal Insurance Ombudsman and the order has been maintained by the President's Secretariat (Public), Islamabad through the impugned order dated 22.07.2019. Hence, the captioned writ petitions.

4. Learned counsel for respective petitioners contended that in both these writ petitions the Federal Insurance Ombudsman has not attended to the matter in accordance with law and, as such, the Federal Insurance Ombudsman has no jurisdiction to adjudicate upon the matter involving factual questions, per se, it is the mandate of Insurance Tribunal to give a ruling on all matters involving factual questions, which are related to the amount of investment, time frame, nature of profit and loss but, all these questions have been overlooked by the Federal Insurance Ombudsman; that the Federal Insurance Ombudsman as well as the President's Secretariat (Public), Islamabad have not taken into account the reasons for withdrawal of investment, which in-fact discloses factual dispute; that Section 129 of Insurance Ordinance, 2000 lays down procedure for making complaint to Federal Insurance Ombudsman, which requires that any such complaint has to be made on solemn affirmation or oath in writing and prior to making complaint the complainant is obliged to give notice of intention to the insurance company but, all these aspects have been ignored; that a table has been provided by the petitioner company to the private respondents for the first year till maturity of investment towards the allocated units for investment and the ratio provided in the column

clearly spells out that 23% of the amount would be deducted in first year and in second year 80% would be invested from remaining amount, whereas 20% overhead administrative expenses should be deducted by the petitioner company under their policy but, all these aspects have not been considered by the forums below.

5. Conversely, learned counsel for respondents No.2 & 3 in W.P. No.3049/2019 contended that the said respondents have been deprived of their hard earned money of Rs.4.0 Million and not a single penny has been paid as profit, however during the course of arguments the petitioner company expressed their intention for release of their payment to the extent of Rs.2,457,954.96 and Rs.740,206.68, respectively, to the respondents excluding the amount of approximately Rs.800,000/- on account of expenditures and other allied charges, per se, on direction of this Court passed vide order dated 12.02.2021, pay orders to the extent of admitted amount by the petitioner company have been issued in favour of respondents No.2 & 3, whereas rest of the claim of Rs.800,000/- has to be decided in this case.

6. Similarly, in W.P. No.3050/2019, learned counsel for respondent No.2 contended that the petitioner company has secured maximum profit by themselves against the interest of policy holders, which amounts to the principle of unjust enrichment at the cost of investors; that the amount so deducted by the petitioner Company is not permissible as the investment policy has been regulated by the petitioner Company through their experts

and any of their lapse in the investment concept has to be contributed to petitioner only, as such, the customer should not be suffered.

7. Arguments heard, record perused.

8. Perusal of record reveals that the Pak Qatar Family Takaful Ltd. (petitioner) is mainly aggrieved with the concurrent orders of Federal Insurance Ombudsman and President's Secretariat (Public), Islamabad, passed on the complaint filed by the private respondents, who had invested their amount with the petitioner company through different policies on the assurance given by the petitioner Company that respondents will get reasonable profit, as such, the petitioner company has allegedly displayed a rosy picture to the respondents qua their investment and margins of profits but, the petitioner company has initially deducted a huge sum of money under the head of administrative cost.

9. In W.P. No.3049/2019, respondents No.2 & 3 had invested an amount of Rs.4.0 million with the petitioner Company against the assurance of getting Rs.7,000/- profit per month but, same was not paid and when said respondents have approached the petitioner company, they have been informed that their invested amount has been shrunk because of fall in unit price, which was on lower side due to stock market with passage of time. All these reasons are related to technical aspect of the matter, which were in the hands of petitioner company to regulate in the best interest of the customer. The said respondents when contacted the petitioner company and requested to return the amount of the savings plan, the petitioner Company informed them the amount of Rs.3,200,000/-

is the current cash value of the total deposited amount of Rs.4.0 Million, which was not acceptable to said respondents, as a result whereof, they approached the Federal Insurance Ombudsman, who directed the petitioner company to pay the full deposited amount of Rs.4.0 Million vide order dated 21.12.2018. The petitioner company feeling aggrieved thereof filed representation to the President's Secretariat (Public), Islamabad, whereby the order of Federal Insurance Ombudsman has been maintained.

10. I have gone through the orders of the President's Secretariat (Public), Islamabad, whereby it has been observed that a news item published in Daily Jang, dated 24.04.2018, was given valuable consideration by the President's Secretariat (Public), Islamabad during the course of hearing, which reveals that the petitioner company had earned profit of Rs.133 Billion in the year 2017. Similarly, shareholder company of Takaful Group "Takaful Fund" also posted record net surplus of Rs.116 Million in the year 2017. On the basis of such public information, the ground raised by the petitioner Company that cash value of policy at the time of surrender was lower than the investment due to dip in stock market is not appreciated and is considered to be contrary to record. All these aspects demonstrates that the petitioner company was given due right of hearing qua their stance and the role played by the Federal Insurance Ombudsman is within its power to regulate the affairs of maladministration by the insurance company and even the President's Secretariat (Public), Islamabad under the Federal Ombudsmen Institutional Reforms Act, 2013 has complied with minimum standards envisaged in the law.

11. In W.P. No.3050/2019, Respondent No.2 has been deprived of amount of Rs.22,698/- without any justifiable reason at the time of withdrawal on similar ground referred in earlier case.

12. The learned counsel for respondents has mainly argued the case on the point of unjust enrichment, whereby the petitioner company has retained the benefit of a person through an inequitable manner, which creates economic exploitation, especially when the petitioner company has failed to explain their standards of deduction of any amount through any principle of equity or fairness. The concept of unjust enrichment has duly been explained by the Hon'ble Lahore High Court in case reported as 2014 PTD 1939 Lahore (SNGPL v. Deputy Commissioner Inland Revenue) as well as by the Supreme Court of UK in case reported as 2017 SCMR 907 (Lowick Rose LLP v. Swynson Ltd.), whereby it was held that any benefit claimed by the company at the expense of claimant by transferring the loss to the claimant on his own amount is violation of the rights of the claimant. This Court is of the view that petitioner Company has indirectly applied the principle of unjust enrichment in this case.

13. This Court is also mindful of the fact that constitutional jurisdiction under Article 199 is not designed for regular appeal or to be equated with regular appeal, hence this Court cannot interfere in the findings of fact merely on the ground that reasons, which found favour with the authority whose order is under scrutiny, were not such which would have been accepted by the High Court. The constitutional jurisdiction can be invoked to rectify jurisdictional defect or it would be press into serve against the

order which is without jurisdiction or tainted with malice or violation of constitution / law and not to correct the findings of the fact or even can interference with the findings of fact where it was observed that there is no evidence or is contrary to the evidence. Reliance is placed upon 1994 SCMR 859 (Export Promotion Bureau v. Qaiser Shafiullah), 2018 PLC Note 29 Karachi (Independent Media Corporation (Pvt.) Ltd. v. Raja Tariq Mehmood), PLD 2018 Islamabad 300 (Dr. Farooq Sattar v. Election Commission of Pakistan), 2015 MLD 1760 Azad Kashmir (Muhammad Iqbal v. Custodian Evacuee Property (AJ&K), 2003 MLD 772 Lahore (Siraj Din v. Member (Judicial-I) Board of Revenue, Lahore), 2006 YLR 697 Lahore (Malik Saeed Ahmad v. Additional District Judge) and 2015 PLC (CS) 225 Lahore (Mrs. Zaib-un-Nisa v. Secretary Health, Government of Punjab, Lahore).

14. In view of above principles appreciated in different case laws, the fact finding arrived at by the forums below could not be interfered with in constitutional jurisdiction as there is no apparent illegality in the orders. The petitioner company has been given fair chance to take all kinds of defence before the Federal Insurance Ombudsman as well as before the President's Secretariat (Public), Islamabad, per se, it is not the case of petitioner company that it has been condemned unheard in any manner, although certain expenses / expenditures have not been considered in a proper manner but, this Court cannot interfere being in judicial review qua the factual aspects, especially when there is no jurisdictional error apparent on record.

15. It is pertinent to mention that in W.P. No.3049/2019, the petitioner Company has issued Pay Order No.07768559, dated 16.02.2021, amounting to Rs.740,224/- in favour of Yasir Islam and Pay Order No.07768648, dated 19.02.2021, amounting to Rs.2,457,955/- in favour of Shoaib Ahmad, which were handed over to said respondents, however the remaining amount which has been settled by the forums below has been maintained.

16. In view of above position, both the captioned writ petitions are not maintainable and same are hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 10th March, 2021.

JUDGE

Khalid Z.