

Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

WP No.3419-P/2023 with IR

Jubilee Life Insurance Company Ltd
Versus
Federal Investigation Agency (FIA) through the Director
General, FIA Headquarters, Islamabad, and 3 others

JUDGMENT

Date of hearing **22.8.2024**

Petitioner by Syed Hamid Ali Shah, Advocate

FIA by Barrister Rahat Ali Khan Nahaqi,
Assistant Attorney General, alongwith
Ms. Laila Manan, Sub Inspector,
FIA/ACC, Peshawar

Respondents 3-4 by Mr. Younas Ali Shah, Advocate

IJAZ ANWAR, J.- The dispute between the parties arose when respondents Nos.3 & 4, hereinafter to be referred to as “*(insured persons)*” submitted a complaint to the Prime Minister’s Performance Delivery Unit (PMDU) Pakistan Citizen’s Portal (PCP).

2. When the above complaint was referred to FIA, the respondent FIA registered an enquiry, numbered it as 59/2023, and issued a process in the matter, which has now been questioned in this Constitutional petition. In order to see as to whether the contents of the complaint

has any nexus with the criminal liability of the petitioner,
the same is reproduced in original;

"I am Muhammad Intekhab Ahmed CNIC# 11101-6549543-1 bear 5 jubilee life insurance policies under my and my wives names. I am writing to you regarding unethical and unprofessional behavior of Mr. Imtiaz Group Manager of Jubilee Life Insurance Peshawar Office and the concerned insurance officer Mst. Mehreen. 1- The concerned Peshawar office has been failed to deliver my policies details. They have not given me details of principal amount, cash values and deductions and penalties of my policies upon frequent enquiries. Rather they misguide and mislead us. 2- Mst. Mehreen has surrendered my policies and imposed undue penalties without my knowledge and consent. 3- Mst. Mehreen has repeatedly misguided me of my policies. 4- Mr. Imtiaz has not given any ear to my complaints and reservation instead have wasted my time by playing delaying tactics. The details of policies under my and my wives names are attached. Pls provide details of principal amount, cash value and deduction details of all."

3. The respondents were put on notice, the learned Assistant Attorney General who was present in the Court accepted notice on behalf of the official respondents Nos.1 & 2 and subsequently filed Para-wise comments on their behalf wherein the issuance of the desired writ was strongly resisted by raising legal and factual objections.

3. Extensive arguments of both parties were heard and case law referred has been thoroughly gone through but, for the purpose of brevity, we are not reproducing the respective arguments of counsel for the parties; however, would refer it at an appropriate place. From the arguments and pleading of the parties, the following two contentious issues between the parties require resolution:-

- i) *Exercise of jurisdiction by FIA in the matter between the insurance company and its insured persons;*
- ii) *Whether criminal liability can be attributed to the petitioners and instead resort can be made to the forums available to respondents Nos.3 & 4 for redressal of their grievance;*

4. The relevant facts necessary for the decision of the instant matter are that respondent No.3 purchased four (04) life insurance policies from the petitioner at different points in time after complying with necessary requirements. Similarly, respondent No.4 also purchased a life insurance policy. It is alleged in the writ petition that the insured person surrendered two policies, the relevant details pertaining to these policies are reproduced;

POLICY Nos.	Policy Plan Option	Insurance Date	Sum Assured	Policy Status	Annual Premium	Ad-hoc Premium	Total Premium Paid
UL20140000454718007	WedSmart Plus Plan	31-5-2023	2,000,000	Surrendered	101,250		506,250
TU20170008036234007	WedSmart Plus Plan	02-10-2017	979,640	Non Forfeiture Period	200,000		999,999
TU20180008082564007	Eight Pay Takaful saving Plain	30-9-2018	1,250,000	surrendered	250,000		1,000,000
TU20160008001414007	WedSmart Plus Plan	21-5-2016	967,125	Paid up with sum assured	200,000		400,000
TU20210008238610007	Eight Pay Takaful saving Plan	31-5-2021	1,250,000	Non forfeiture period	250,000		250,000

5. The petitioner company is registered with the Security and Exchange Commission of Pakistan is a life insurance company and is also a public company limited by shares and is dealing with insurance business.

Jurisdiction:

6. The Federal Investigation Agency has been established under The Federal Investigation Agency Act, 1974 "*(the Act)*". The preamble of it being relevant is reproduced as under;

Preamble: "Whereas it is expedient to provide for the constitution of a Federation Investigation Agency for the investigation of certain offences committed in connection with matters concerning the Federal Government, and for matter connected therewith."

It has repeatedly been held by the Superior Courts that the preamble is not an operative part of a Statute

nevertheless it does provide a useful guide for finding out the intention of the legislature and therefore, cannot be ignored while interpreting the law. Reference can be made to *"The Murree Brewery Co. Ltd vs. Pakistan through the Secretary to Government of Pakistan, Works Division and 2 others"* (PLD 1972 SC 279).

8. Section 2(e) of the Act provides for the definition of public servant and as such being relevant is reproduced as under;

"Public servant" means a public servant as defined in section 21 of the Pakistan Penal Code (Act XLV of 1860), and includes an employee of any corporation or other body or organization set up, controlled or administered by the Federal Government.

While the Federal Investigation Agency can Investigate only those offences which are given in the Schedule attached to the Act either it should have been committed by a public servant as defined in S. 21 PPC, or were allegedly committed in matters pertaining to the Federal Government or by employees of the Corporations set up, controlled and administered by the Federal Government.

S. 3 of the Act being relevant is reproduced as under;

"Constitution of the Agency. (1) Notwithstanding anything contained in any other law for the time

being in force, the Federal Government may constitute an Agency to be called the Federal Investigation Agency for inquiry into, and investigation of the offences specified in the schedule, including an attempt or conspiracy to commit, and abetment of any such offence.

(2) The Agency shall consist of a Director-General to be appointed by the Federal Government and such number of other officers as the Federal Government may, from time to time, appoint to be members of the Agency.

8. Section 9 of the Act empowers the Federal Government to make rules for carrying out the purpose of this Act or relating to the functions of FIA including the powers to conduct inquiries and investigations. Thus, while exercising its powers, the Federal Government through SRO No.567/(1)2002 dated 23.8.2002 gazette notified on 27.8.2002 framed the Federal Investigation Agency (Inquiries and investigations) Rules, 2002 "*(the Rules)*". Rule 3 empowers the Agency to initiate an inquiry or investigation either on its own or on receipt of a complaint or oral or written information. Sub-rule 2 provides that; while inquiring into the matter, no undue publicity shall be given to it; besides, special care shall be taken to ensure that no unnecessary damage is caused to the prestige, reputation and dignity of any public servant involved in the case. Similarly, under rule 4 extra

care is required for verification of the complaint, and no action shall be taken against the public servant on any anonymous or pseudonymous complaint. Rules 5 and 6 being relevant in the present controversy are reproduced as under;

“5. Initiation of inquiry and registration of criminal case. –(1) An inquiry shall be initiated against an accused public servant specified in column (2) of table below with prior permission of the authority, specific column (3) of that table.

TABLE

S. No.	Basic Pay Scale of Public Servant	Authority
(1)	(2)	(3)
1.	BPS 1-12 and Equivalent	Deputy Director
2.	BPS 13-17 and Equivalent	Director
3.	BPS 18-19 and Equivalent	Director-General
4.	BPS 20-21 and Equivalent	Secretary
5.	BPS 22 and Equivalent	FACC

(2) Subject to sub-rule (3), a criminal case shall be registered against an accused public servant specified in column (2) of table below with prior permission of the authority specified in column (3) of that table.

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(3) No prior permission under sub-rule (2) shall be required for registration of a case against a public servant caught as a result of trap arranged by the Agency under the supervision of a Magistrate of the first class. In such case, a report within twenty-four

hours shall be made to the Secretary of the Ministry or Division concerned or the Head of the Department concerned and immediate superior of the public servant concerned.

(4) If on receipt of a complaint, the competent authority decides not to initiate an inquiry or register a case, it shall record reason thereof."

6. Report regarding registration of case and arrest. – The Registration of a case and consequential arrest of a public servant shall be reported to the Head of the Department of the accused within twenty-four hours.

While rule 10 provides for obtaining sanction for prosecution of public servant. It being also relevant is reproduced for reference as well;

"10. Obtaining Sanction for prosecution.--(1)

On completion of an investigation, a case found fit for prosecution for which sanction for prosecution is required under section 197 of the Code of Criminal Procedure, 1898 (Act V of 1898), or under subsection (5) of section 6 of the Pakistan Criminal Law Amendment Act, 1958 (XL of 1958), or the rules made thereunder, shall be submitted by the Agency to the Federal Government to accord sanction of prosecution alongwith full facts of the case, the opinion of the Legal Officer and statement of allegations.

(2) In cases registered against officers working in BPS-20 and above, explanation of the accused officer, giving him fifteen days time shall be obtained by the Director-General. Questions asked and replies furnished by the concerned officer shall invariably be incorporated in the Confidential Final

Report and shall be submitted to the Federal Anti-Corruption Council alongwith relevant documents.

(3) In cases of officers working in BPS-19 and below, the prosecution sanctioning authority shall communicate full facts of the case and statement of allegations to the Ministry or Department under whom the public servant concerned is employed. The Ministry or Department shall supply these documents to the public servant concerned and give him an opportunity to submit his reply within thirty days of its receipt.

(4) The Ministry or Department concerned to whom a case has been sent under sub-rule (3) shall convey its recommendations alongwith the statement of the public servant concerned to the prosecution sanctioning authority within sixty days of its receipt.

(5) The prosecution sanctioning authority shall take into consideration the explanation of the accused public servant while making a decision regarding disposal of the case.

(6) If the prosecution sanctioning authority decides to prosecute the accused public servant, sanction for prosecution under section 197 of the Code of Criminal Procedure, 1898 (Act V of 1898), or, as the case may be subsection (5) of section 6 of the Pakistan Criminal Law Amendment Act, 1958 (XL of 1958), shall be given forthwith.

(7) If it is decided to hold departmental proceedings against the public servant, it shall be held by the authority under whom the public servant is serving. The Ministry of Interior, Government of Pakistan or, as the case may be the Agency, shall supply all material required for the

departmental proceedings to the concerned Ministry, Division or Department under which the public servant concerned is employed.”

Similarly, rule 11 of the Rules provides that where more than one public servant is involved in a case, the competent authority for the public servant in the highest rank shall also be the competent authority for the junior public servant involved in the case. Thus, the very powers of the FIA regarding investigation are duly structured in the rules of 2002, which amply suggest that it can only inquire and investigate certain offences either committed in connection with the matter concerning the Federal Government or for matters connected therewith.

10. The arguments that in the schedule of FIA different offences are provided including S. 406 to 409 PPC, and it suggests that even matters between private individuals can be inquired and investigated by the FIA, however, the august Supreme Court of Pakistan in the case of ***“Director General, FIA and others vs. Kamran Iqbal and others (2016 SCMR 447)”*** has not accepted such arguments and held as under;

“8. In the present case, as noted earlier, the dispute is between two private individuals. It is in

respect purely of a business transaction, and there is not the remotest involvement of the Federal or for that matter any Government or any governmental entity and thus in view of the foregoing circumstances, the FIA has had no jurisdiction in the matter. It is now well settled that an investigation launched beyond jurisdiction is mala fide and without lawful authority and is liable to be struck down.”

A division bench of the Hon’ble Lahore High Court in the case of *“Mian Hamza Shahbaz Sharif vs. Federation of Pakistan and other (1999 P Cr. L J 1584)”* has held that;

“Federal Investigation Agency could Investigate only those cases which were given in the Schedule attached to the Act and same were alleged to have been committed either by a public servant as defined in S. 21 PPC, or were allegedly committed in connected with matters pertaining to Federal Government or by employees of the Corporations set up, controller and administered by the Federal Government.”

In the case of *Pakistan Engineering Company Ltd through Managing Director and 2 others vs. Director General, FIA Islamabad, and 3 others (2011 YLR 337)*, the Hon’ble Lahore High Court has held

“(a) Penal Code (XLV of 1860)---

----S. 406---Federal Investigation Agency Act (VIII of 1974), Preamble & S.2(e)--- Constitution of Pakistan, Art.199---

Constitutional petition---Maintainability---
 Criminal breach of trust---Notice for inquiry---
 Petitioner Company had called in question the
 legality of a notice for enquiry issued by the
 Assistant Director, Federal Investigation
 Agency; as well as the proceedings being
 conducted thereon---Maintainability of
 constitutional petition had been challenged by
 respondent contending that Federal Government
 having complete administrative control over the
 affairs of the petitioner company, FIA had
 jurisdiction to register and investigate the case
 and that offence of criminal breach of trust was
 made out against the petitioner company and
 same was included in the Schedule of Federal
 Investigation Agency Act, 1974---Validity---
 Held, there being business dealings of sale and
 purchase between the parties, dispute between
 the parties was purely of civil nature and F.I.A.
 had got no jurisdiction to conduct an
 inquiry/investigation in the matter---Impugned
 notice and the proceedings conducted thereon,
 were declared to be without jurisdiction and
 lawful authority."

The learned DAG while arguing the case has placed
 reliance on the judgment reported as "***Muhammad
 Hammad ur Rehman Zafar vs. Director, FIA Lahore
 and another (PLD 2022 Lahore 177)***" and contented that
 mere notices have been issued to the petitioners and that
 so far mere inquiry is to be conducted and that objecting
 on such notice is premature at this stage. Such arguments
 of learned DAG are vague. We are of the view that the

Federal Investigation Agency shall inquire and investigate only those matters which the law has entrusted to it and should utilize its energy in genuine numerous matters which are pending with them and require early disposal. Thus, for the reasons stated above, we are of the view that the matter primarily relates between the insured person and its insurer (petitioner). It is pertinent to mention here that recently the august Supreme Court of Pakistan in *Oxford University Press, Peshawar vs. Inayat-ur-Rehman and others (2021 SCMR 321)* has given a somewhat different view in the matter, however, even if we restrain ourselves from conclusively giving any finding on the matter regarding the extent of jurisdiction of FIA still we can safely conclude that the complaint filed by respondents Nos.3 & 4 does not constitute a criminal offence to be investigated/ inquired by the FIA.

11. There is yet another very important aspect of the case; in the instant case, respondent No.3 has submitted a complaint to the Prime Minister Delivery Unit through Pakistan Citizen's Portal and it was pursuant to the said complaint that the matter was referred to the FIA for inquiry into the matter. A division bench of this Court in

the case of *Ziaullah Khan and 5 others vs. Government of Pakistan through Secretary Interior and others (PLD 2022 Peshawar 122)* quashed such proceedings and held such referral to the FIA as unconstitutional and beyond the executive authority of the Federation. Relevant Para is reproduced as under;

(c) Constitution of Pakistan---

----Art. 199---Constitutional petition---Grievance Redressal Mechanism---Good governance---Prime Minister's Performance Delivery Unit (PMDU) and Pakistan Citizen's Portal (PCP)---Direction to Provincial Government---Petitioner was aggrieved of inquiry by provincial police into complaint received on PCP and forwarded by Federal Government---Validity---Constitutional scheme of distribution of powers and adherence to the same was more important than redressal of grievance through instrumentality of PMDU and PCP---Such mechanism could only be made effective if institutions made for the purpose were made accountable, effective and responsive to such complaints by none else than respective Provincial Governments, in whose domain such departments or organizations lied---Outside interventions in such departments and those also in contravention of Constitutional schemes and laws of the land would not produce any good but would rather cause more harm---Proceedings initiated and conducted on the authority of Pakistan Citizen Portal including entertaining of such complaint and referring the same to police authorities for taking necessary action, were unconstitutional and beyond the Executive authority of Federation, illegal, without lawful authority and were null and

void---High Court quashed the proceedings initiated by Pakistan Citizen Portal as the same were within the exclusive domain of Provincial authorities and those conducted by local police against petitioner on the direction of PCP were also initiated without lawful authority, in an unlawful manner---High Court declined to initiate criminal proceedings against complainant or furnishing information about identity and whereabouts of complainant---Constitutional petition was allowed accordingly.

Whether criminal liability can be attributed to the petitioners and instead resort can be made to the forums available to respondents Nos.3 & 4 for redressal of their grievance;

12. We have already reproduced the complaint submitted by respondents Nos.3 & 4 which only refers to some alleged unethical and unprofessional behavior of the Group Manager and it was further alleged that undue penalties were imposed upon them without their knowledge and consent, such grievances of respondents Nos.3 & 4 do not constitute a cognizable offence in any manner and is purely a matter between the insurer and the insured person. Their rights and liabilities can be conveniently determined under the provision of the Insurance Ordinance, 2000 *“(the Ordinance)”*, which was promulgated to regulate the business of the insurance industry to ensure the protection of the interests of insurance policy-holders and to promote sound

developments of the insurance industry and for matters connected therewith and incidental thereto. The Insurance Ordinance provides a complete mechanism for the redressal of the grievance of the insured person. Under S. 121 of the Ordinance, the Federal Government has constituted a Tribunal. S. 122 of the Ordinance ibid provides for the powers of the Tribunal to exercise its civil jurisdiction in respect of the claim filed by policyholders, in response to or arising out of a policy insurance and thus the Tribunal has all the powers of the civil court under the CPC; besides, it has also a criminal jurisdiction to try offences punishable under the Ordinance. Thus, respondents Nos.3 & 4 if are of the view that the petitioners have violated any of the terms of policy of insurance granted to them, they can conveniently approach the Tribunal established under S. 121 of the Ordinance. It is pertinent to mention that appeal against the order of the Tribunal is provided to an aggrieved person before the High Court under S. 124 (2) of the Ordinance.

13. Similarly, under S. 125 of the Ordinance, 2000 Insurance Ombudsman is appointed, whose main powers and functions are provided in S. 127 of the Ordinance to

undertake and investigate into any allegation of mal-administration on the part of any insurance company while the mal-administration has been further elaborated in S. 127(2) of the Ordinance.

14. Moreover, the Federal Government has established Security and Exchange Commission of Pakistan through (Act No.XLII of 1997) the Security and Exchange Commission Act, 1997, for the beneficial regulation of the capital markets, superintendence and control of corporate entities and for matters connected therewith and incidental thereto. S. 20 of this Act provides for the powers and functions of the Commission. Sub-section 4 sub-clause (s) of S. 20 provides for *"ensuring and monitoring compliance by insurer, insurance surveyor and insurance intermediaries of all laws, rules and regulations pertaining to insurance for the time being in force."*

Similarly, sub-section 6 (fa) and (g) provides for;

²[(fa) to maintain the confidence of holders of insurance policies by protecting the interests of policy holders and beneficiaries of insurance policies in all matters, including assignment of insurance policies, nomination by policy holders, insurable interest, surrender value of policies of life

insurance, and other terms and conditions of contracts of insurance;"

(g) to take whatever action it can take, and is necessary, in order to enforce and give effect to ¹[this Act, any administered legislation] or any other law."

Thus, besides having numerous other functions, the Commission is also the regulator of the business of insurance companies. The record transpires that the Security and Exchange Commission of Pakistan had taken up the case of the respondents Nos.3 & 4 with the petitioners and the proceedings for the settlement between the parties were in progress; however, at the same time, the respondents were not agreeing to the amount which were released to them; thus, as stated above, if there is any genuine dispute between the parties that could be resolved before the forums as provided under the provisions of Insurance Ordinance, 2000 but, under no circumstances that can be made a base for proceedings under the penal criminal laws.

15. In order to further elaborate this issue, we may refer to S. 156 of the Insurance Ordinance, 2000, which provides penalties for default in complying with or acting in contravention of this Ordinance. Under the above provision, Securities and Exchange Commission of

Pakistan is competent to entertain a complaint of policy holder regarding violation of the express terms of the insurance policy or the contravention of the provision of the Insurance Ordinance, 2000 as provided in S. 156 of the Ordinance *ibid*. In the case of “*State Life Insurance Corporation of Pakistan vs. Commissioner Insurance, SECP and another [2017 CLD 1515]*” it has been held that;

“Jurisdiction of Securities and Exchange Commission. The Securities and Exchange Commission is competent to entertain the complaints of the policy holders and corporation’s arguments with respect to lack of Commission’s jurisdiction to take cognizance of a dispute between the insurer and the policy holder is not tenable by virtue of section 20 (6) (fa) & (g) of Securities and Exchange Commission of Pakistan Act, 1997, which empowers the Commission to monitor the conduct of insurers towards the Insurance Policy holders. Insurance Ordinance, 2000, also empowers the Commission to address the grievance of shareholder as per section 76 (4) (5) and section 156 of Insurance Ordinance, 2000. Commission by virtue of the said provisions, can also award compensation to the aggrieved party and can impose a fine on the party at default, respectively. Commission is competent to entertain and decide the complaint of the policy holder.


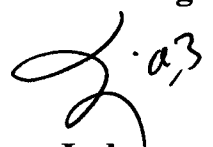
Moreover, the Insurance Ordinance, 2000 being a special law has to prevail over the general law. The Insurance Ordinance has a special mechanism for dealing with

offences for contravention of the Insurance Ordinance, as such, in view of the recent pronouncement of the Hon'ble Supreme Court of Pakistan in the case of "*Saeed Muhammad Shah vs. Federal Investigation Agency and others [2017 SCMR 1218]*" "*where there was a conflict between a special law and a general law, the former would prevail over the latter.*" Thus, we are of the view that inquiry in this matter by FIA is uncalled for and is liable to be quashed.

16. For the reasons stated above, the petitioner has made out a case for indulgence of this Court under its Constitutional Jurisdiction, as such, the letter dated 26.5.2023 of the respondent FIA is without lawful authority and of no legal effect; and the impugned inquiry proceedings are hereby quashed.

17. The instant writ petition is allowed in the above terms.

Announced:
22.8.2024


1
**Senior
Puisne Judge**

Judge

Nazir

(DB)

Hon'ble Mr. Justice Ijaz Anwar, J.

Hon'ble Mr. Justice Muhammad Ijaz Khan, J.