



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 146 of 2020

Crescent Star Insurance Limited

Versus

Executive Director/HOD Adjudication-I, SECP

Dates of hearing:

May 30, 2024 & June 3, 2024

Present:

For the Appellant:

Mr. Saadat Ali Saeed, Advocate

For the Respondent:

1. Mr. Mahboob Ahmad, Additional Director, Adjudication-I, SECP
2. Mr. Shafiq -ur- Rehman, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 146 of 2020 filed by Crescent Star Insurance Limited (the Appellant) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated November 10, 2020 (the Impugned Order) passed by the Executive Director/Head of Department Adjudication-I (the Respondent) under Sections 130, 156 and 158 of the Insurance Ordinance 2000 (the Ordinance).
2. The brief facts of the case are that the Appellant has failed to implement the Order dated October 27, 2016 (FIO Order) passed by the Federal Insurance Ombudsman (the FIO) in the matter of a complaint



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filed by M/s. Jinnah Sindh Medical University (the Complainant). The Securities and Exchange Commission of Pakistan (the Commission), on the written request of the FIO through a letter dated May 14, 2018, took cognizance of the matter and issued a Show-Cause notice (the 'SCN') dated June 4, 2018 to the Appellant for non-implementation of the FIO Order. The Appellant responded to the SCN vide letter dated August 20, 2020. Hearing in the matter was held on October 20, 2020. The Respondent concluded the SCN proceedings and directed the Appellant under Section 130(3) of the Ordinance to ensure compliance with the FIO's Order. The Respondent also imposed a penalty of Rs. 745,000/- on the Appellant under Section 156 of the Ordinance for its failure to implement the FIO's Order.

3. The Appellant has preferred this Appeal, *inter alia*, on the grounds that the Respondent has overlooked the fact that the Commission no longer has the authority to execute the FIO's orders under Section 130(3) of the Ordinance because such power is now vested with the FIO by virtue of Sections 10, 11, and 12 of the Federal Ombudsman Reforms Act 2013 (the Act). The Appellant stated that under the Act all Ombudsmen are vested with the powers of an executing court in accordance with the provisions of the Civil Procedure Code 1908, including the authority to hold individuals in contempt of Court. The Appellant further argued that Section 24 of the Act explicitly states that the Act has an overriding effect and in the event of a conflict between the provisions of the Act and any other law, the Act's provisions shall prevail. It was also mentioned by the Appellant that it is a well-established principle of law that the provisions of the most recent statute take precedence in case of a conflict between two statutes. Hence, the Act, being the latest legislation passed, supersedes the provisions of the Ordinance. The Appellant further argued that the Respondent also overlooked the fact that, following the enactment of the Act, Section 130(2) of the Ordinance became defunct and now the appeals against FIO orders are to be directed to the President of Pakistan, and the execution powers that previously resided with the Commission now rest with the FIO itself. The Appellant further stated that the Respondent ignored the fact that Section 130(3) of the Ordinance can only be invoked if the FIO's order has become final and operative. Since the Appellant has appealed the order of the President of Pakistan by filing a petition before the Honourable Sindh High Court, the FIO's order is not yet final and operative, therefore, the provisions of Section 130(3) cannot be invoked by the Commission.
4. The Appellant further stated that the Respondent disregarded Article 13 of the Constitution of the Islamic Republic of Pakistan 1973 (the Constitution) which guarantees protection against double



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jeopardy, implying that two forums cannot have the authority to execute the same order. The Appellant stated that the Respondent failed to recognize that the FIO had already exercised its execution powers by issuing a show-cause notice dated June 23, 2017 (FIO SCN) after the rejection of representation by the President of Pakistan vide order dated March 16, 2017 (Representation Order), therefore, the Commission lacks the authority to execute the FIO's orders. The Appellant pointed out that under Section 133 of the Ordinance, the FIO is required to submit a report or make recommendations to the Commission, however, neither such report nor recommendations were ever submitted by the FIO to the Commission, nor shared with the Appellant. The Appellant stated that the reliance on Section 133 of the Ordinance is misplaced as it was not invoked at the time of issuing the show-cause notice, and the Appellant was not given an opportunity to respond accordingly. The Appellant also argued that the provision of Section 158 of the Ordinance was wrongly invoked in the show cause notice and that Section 158 can only be applied when a false statement is made wilfully. In light of these arguments, the Appellant requested the Appellate Bench (the Bench) to adopt a more lenient perspective, duly considering the aforementioned contextual factors.

5. The Respondent countered the grounds of the Appeal by asserting that the right of appeal available to an aggrieved party before the Commission under Section 130(2) of the Ordinance is an additional remedy, distinct from the representation before the President provided under Section 14 of the Act. Citing the judgment of the Honourable Lahore High Court dated April 30, 2018, in the case of Writ Petition No. 166036 of 2018 (Premier Insurance vs. FOP), the Respondent emphasized that the right of appeal under Section 130(2) of the Ordinance remains valid despite the provision of representation to the President under the Act. The Respondent stated that Sections 10, 11, 12, 13, and 24 of the Act, do not bar the Commission from exercising its powers to implement orders issued by the FIO. Regarding the finality of the FIO's order, the Respondent asserted that since the Appellant's representation has been rejected by the President, therefore, the FIO's order has achieved finality and the Commission is fully authorized to enforce it under Section 130(3) of the Ordinance. The Respondent denied the Appellant's argument that Section 133 of the Ordinance has been invoked in the SCN proceedings. The Respondent stated that Section 133 was merely a reference towards the powers and duties of FIO, however, the said Section has no bearing on the facts of this case. The Respondent also pointed out that the FIO had requested the Commission to initiate proceedings against the Appellant for failing to comply with its order dated October 27, 2016, therefore, the Impugned Order was passed. Addressing the issue of double jeopardy, the Respondent argued that it does not apply in this case because the



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Appellant did not comply with the FIO's order and the Commission has passed the Impugned Order only to the extent of implementation of the Impugned Order. The Respondent further contended that the Commission's powers under the Ordinance, a special law, to implement FIO orders are not negated by the Act, a general law. Finally, the Respondent defended the Impugned Order, stating that it was made after careful consideration of the Appellant's submissions and arguments, therefore, prayed for the dismissal of the appeal.

6. The Bench has heard the arguments of both parties and perused the record. The Bench considers that the primary purpose of the law is to protect the interests of policyholders. In this case, the Bench finds the Appellant's argument, regarding the bar on exercising of Commission's powers under Section 130(3) of the Ordinance, as flawed because the Act is a general law which provides the additional remedy of representation, therefore, it cannot be construed that due to the Act, the Commission has no authority to proceed against the Appellant under Section 130(3) of the Ordinance. The Bench is aware of the legal principle that resorting to general law is only permissible, if special law is silent on a particular matter. The Bench believes that although under the Act, power to execute FIO's orders is also vested with the FIO itself, however, this power is in addition to the procedure provided under Section 130 of the Ordinance. The Bench has observed that the above-referred interpretation is duly supported and upheld by the Lahore High Court through a judgment dated April 30, 2018 passed in Writ Petition No. 166036 of 2018, titled Premier Insurance versus Federation of Pakistan and others. It has been held in the judgment that *"the remedy of appeal provided for in section 130(2) of the Ordinance was not rendered nugatory by the provisions of Federal Ombudsman Institutional Reforms Act, 2013 which provided the remedy of representation to the president against the order of the Ombudsman. This right of representation is in addition to and not in substitution of the right of appeal granted by section 130(2) of the Ordinance."*
7. In the Bench's view, the FIO can exercise both options provided under the Ordinance and the Act for execution of its orders. In order to regulate the insurance business and ancillary matters, the Ordinance is a special law whereas, the Act for the insurance sector is a general law, hence, the exercise of powers by FIO and the Commission in pursuance of Section 130 of the Act may not be disputed. As per the reported case law cited as 2024 SCMR 298 it has been held by the Supreme Court of Pakistan that *"In the absence of special law, the ordinary/general law comes forward to fill in the vacuum"*. As stated earlier, the Ordinance has an adequate mechanism to deal with the matter referred by the FIO, therefore,



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the application of the Act's provisions to fill the vacuum of special law was neither required nor necessary. The Bench has noted that Section 10 of the Act is very explicit and clear that powers provided under the Act are in addition to the powers available under the relevant legislation, and the relevant law in this case is the Ordinance, hence, the Appellants argument that after issuance of FIO SCN, the Respondent was not empowered to pass the Impugned Order is without substance, therefore, lack legal backing. The Bench is of the view that provisions of both laws i.e. the Ordinance and the Act should be interpreted and applied to regulate the insurance sector smoothly. It has also been held in numerous other judgments of the Supreme Court and High Courts that "*according to the principle of harmonious interpretation, special law would take precedence over the general law*".

8. The Bench also rejects the Appellant's arguments that the matter has not been conclusively decided because a Writ Petition is pending before the Sindh High Court whereby it has challenged the order passed by the President of Pakistan under Section 14 of the Act. The Appellant's argument regarding the pendency of the case before the Sindh High Court is deemed unconvincing to the Bench, as no injunctive order has been issued to halt either the FIO or the Commission from proceeding in accordance with the law. Furthermore, the Bench is of the view that as the President has rejected the Appellant's representation, therefore, the matter has attained finality because the Act does not provide further right of appeal to the Appellant.
9. The Bench has also noted that the Appellant's claim of double jeopardy is also a misconceived notion and ignorance of law, because the Respondent has passed the Impugned Order due to non-compliance with the FIO's order and after rejection of representation by the President of Pakistan, therefore, the mere issuance of the show-cause notice dated June 23, 2017 by the FIO after the rejection of the Appellant's representations by the President of Pakistan is not a case of double jeopardy. The Bench has perused the letter dated September 12, 2024 by Mr. Abdul Malik Soomro, Deputy Director, Federal Insurance Ombudsman wherein it has been stated that the FIO has not proceeded in the matter of show-cause notice dated June 23, 2017 due to pending Constitutional Petition No. D-4337/2017 before the Sindh High Court. The Bench is of the view that the mere issuance of a show cause notice without concluding the proceedings does not bar the Commission from proceeding under the provision of the Ordinance by issuing the SCN. The Bench is of the view that when FIO issued the show cause notice, it initiated a formal proceeding, however, since no further action or proceedings were taken, the legal consequence of FIO SCN becomes uncertain and it may be considered either abandoned or no longer



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legally effective. In the circumstances, the Bench believes that the SCN issued by the Respondent was legally correct as the Commission has jurisdiction under Section 130 of the Ordinance to proceed for the implementation of the FIO's order.

10. The Appellant's argument regarding Section 24 of the Act and its overriding effect on the Ordinance is misconceived, therefore, in view of Honourable Lahore High Court's judgment dated April 30, 2018 in Writ Petition No. 166036 of 2018 (Premier Insurance vs. FOP) we reject it. It has been held in the judgment that provisions of the Act are in addition to provisions of the Ordinance, therefore, the question of the overriding effect of the Act on the Ordinance is not plausible. Furthermore, the overriding effect of Section 24(1) of the Act is to the extent of "any other law", therefore, it does not apply to the Ordinance which is recognized as "relevant legislation" under the Act. The Bench has noted that a limited right of overriding effect of the Act on the Ordinance is provided under Section 24(2) of the Act, however, this is specific to the circumstances where there is conflict between the Act and the Ordinance. As this is not a case of conflict of laws, therefore, the Appellant's arguments regarding the overriding effect of Section 24 of the Act are not sustainable.
11. The Bench has perused the SCN wherein Section 158 was also invoked, however, while passing the Impugned Order, the Respondent had not imposed a penalty under Section 158 of the Ordinance, therefore, the Appellant's argument regarding the misapplication of Section 158 of the Ordinance is no more relevant to this case.
12. In view of the foregoing, the Bench, finds no reason to interfere in the Impugned Order. Therefore, the instant Appeal is dismissed without any order as to costs.

(Abdul Rehman Warraich)

Commissioner

(Akif Saeed)
Chairman/Commissioner

Announced on: 31 OCT 2024