



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of
Appeal No. 17 of 2020

Mr. Ghulam Rasool

Versus

...Appellants

Commissioner (Securities Market Division)

...Respondent

Date of hearing:

January 29, 2025

Present:

For the Appellant:

Mr. Ali Lakhany (Authorized Representative)

For the Respondent:

1. Mr. Kashif Ali, Joint Director, SECP

ORDER

1. This Order shall dispose of Appeal No. 17 of 2020 filed by Mr. Ghulam Rasool (the "Appellant") against the Order dated February 3, 2020 (the "Impugned Order") passed by the Commissioner, SMD (the "Respondent") under Section 143 of the Securities Act, 2015 (the "Act, 2015")

2. The brief facts of the case are that the Appellant is a client of Multiline Securities Private Limited. The Securities and Exchange Commission of Pakistan (the "Commission") conducted an Investigation under the Act, 2015 (the "Investigation") into price manipulation of certain securities



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of companies namely; Exide Pakistan Limited, Quice Food Industries Limited, Chashma Sugar Mills Limited, Ruby Textile Mills Limited, and Ghani Global Holdings. The Investigation revealed that the Appellant traded in the aforementioned securities, using his own account, in a manner that created artificial volumes in the market and artificially inflated their prices resulting in illegal gains totalling Rs. 1,767,158, which was in violation of the Act, 2015. Subsequently, the Respondent imposed a trading restriction on the Appellant's activities under section 143 of the Act.

3. The Appellant filed this Appeal on several grounds, asserting that the Impugned Order is based on erroneous facts and law. The Appellant contended that the Impugned Order is flawed both in law and fact, and should be recalled and set aside. The Appellant asserted that the Respondent imposed an unjustly harsh penalty of imposing a lifetime ban, which he argued, violates Article 8(1) of the Constitution of the Islamic Republic of Pakistan citing Supreme Court judgement in Civil Appeal no. 982 of 2018. The Appellant further submitted that prohibiting an individual from earning a livelihood is excessively punitive and, in this case, unjustifiable.

4. Furthermore, the Appellant argued that the principle of Audi Alteram Partem (the right to a fair hearing) was violated, as the Respondent did not provide the Appellant with a reasonable opportunity to present their case. Specifically, the Appellant stated that no show-cause notice was issued, which rendered the Impugned Order invalid from the outset, as it was passed without affording the Appellant due process rights. The Appellant cited the Supreme Court decision in civil petition no.1345-L of 2021 in support of this argument, emphasizing that "the issuance of a show-cause notice is critical in the context of a fair trial and due process. The Appellant also claimed that the Investigation findings were never shared with them, deeming the entire proceedings, including the Impugned Order, questionable, as the basis for the market manipulation charges remained unclear.

5. Additionally, the Appellant contended that the Impugned Order is a non-speaking order, which fails to explain the reasoning behind the penalty imposed. The Appellant argued that under Article 4 of the Constitution of Pakistan and Section 24A of the General Clauses Act, a speaking order is mandatory. The Appellant insisted that the Respondent failed to provide adequate reasoning, rendering the Impugned Order unconstitutional. The Appellant further argued that the Impugned



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Order, which is a Prohibition Order imposed by the Respondent, is an interim order rather than a final order, therefore, the lifetime ban was not only unwarranted but also could not be upheld as a permanent penalty. In support of this argument, the Appellant cited the Supreme Court judgment in 1970.PLD 173, which held that *"a judicial order must be a speaking order, manifesting by itself that the Court has applied its mind to the resolution of the issues involved for their proper adjudication."*

6. Finally, the Appellant maintained that the lifetime ban was not in line with the Constitution, Islamic principles, or any legal precedent, and asserted that the Civil Procedure Code had not been adhered to in this matter. In light of the above, the Appellant requested the annulment of the Impugned Order and a reconsideration of the penalty to ensure it is more proportionate.

7. The Respondent denied the Appellant's claims and asserted that the Impugned Order was issued after thorough consideration of all relevant facts, including the findings of the Investigation, and the broader interest of the general public. The Respondent maintained that the penalty imposed was both appropriate and justified given the circumstances. The Respondent further highlighted that the Appellant was an accused in Criminal Complaint No. 24 of 2018, filed by the Commission in relation to market manipulation under the Act and since the record of this complaint is public, therefore, the Appellant's argument regarding a lack of transparency in terms of market manipulation charges were unfounded.

8. Moreover, the Respondent argued that section 143 of the Act does not mandate the issuance of a show cause notice, and thus, the Respondent was not bound to do so in this case. The Respondent iterated that the imposition of a lifetime ban was well within the discretion of the Respondent, as there is no legal provision or restriction preventing the Respondent from imposing such a direction, particularly in cases involving market manipulation, in the interest of protecting the integrity of the capital markets. Given these considerations, the Respondent maintained that the Impugned Order was legally sound, properly issued, and should not be set aside. The Respondent urges the Bench to uphold the Impugned Order as well as the restriction imposed.

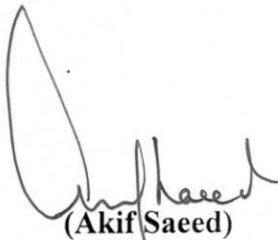


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9. After careful consideration of the arguments presented by both the Appellant and the Respondent, the Bench finds that certain procedural issues must be addressed before a final decision can be made on the merits of the case. Specifically, the Bench agrees with the Appellant that the lack of a show-cause notice before or along with imposing trading restrictions raises serious concerns regarding the procedural fairness of the proceedings. Additionally, the Bench recognizes the importance of providing the Appellant with an opportunity to fully respond to the Investigation's findings and the specific allegations made against him. The Bench also notes that the imposition of a lifetime ban requires careful scrutiny, particularly in light of the Appellant's claims regarding constitutional violations and the severity of the restriction imposed.

10. In light of the above, the Bench remands the matter to the Respondent, directing that all procedural safeguards be strictly adhered to in accordance with the principles of natural justice, ensuring the Appellant is given a fair opportunity to present his case. The Respondent is directed to consider all relevant facts, including the Appellant's past conduct, as well as any mitigating factors that may be presented by the Appellant during the remand proceedings. The Respondent may, if appropriate, issue a new order after conducting a fresh examination of the case, considering the Appellant's arguments and the principles of fairness and justice.

11. Accordingly, the Bench remands the case back to the Respondent for further proceedings in accordance with the directions above. The Appeal is disposed of in the above terms, with no order as to costs



(Akif Saeed)
Chairman/Commissioner



(Abdul Rehman Warraich)
Commissioner

Announced on:

08 APR 2025