



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 53 of 2022

The United Insurance Company of Pakistan Limited

...Appellant

Versus

The HOD, Adjudication-I, Adjudication Division, SECP, Islamabad.

...Respondent

Date of hearing:

August 22, 2024

Present:

For the Appellant:

Mr. Ali Ibrahim, Advocate

For the Respondent:

Mr. Shafiq -ur- Rehman, Additional Joint Director, Adjudication-I, SECP

ORDER

1. The United Insurance Company of Pakistan Limited (the Appellant) filed this Appeal against the Order dated June 7, 2022 (the Impugned Order) passed by the HOD, Adjudication-I, Adjudication Division, SECP (the Respondent) under Section 166(3) and (6) of the Insurance Ordinance, 2000 (the Ordinance) read with Section 156 of the Ordinance.



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2. The brief facts of the case are that the Appellant is registered under the Ordinance to undertake non-life insurance business in Pakistan. The National Insurance Company Limited (NICL) lodged a complaint vide letter dated April 16, 2021 against the Appellant for underwriting insurance policies of vehicles of Pakistan Agriculture Storage and Services, Corporation (PASSCO (a public sector entity)) which is in contravention of Section 166(3) of the Ordinance. The Appellant was asked vide email dated April 29, 2021 followed by a reminder vide email dated May 4, 2021, to furnish its comments on the alleged contravention of Section 166 of the Ordinance. The Appellant vide email dated May 5, 2021 submitted its response. The Appellant's response was unsatisfactory, therefore, the Respondent issued a show-cause notice dated December 24, 2021 (the SCN). The Appellate submitted a written reply to the SCN vide letter dated January 11, 2022. The Appellant's counsel also gave further submissions vide email dated February 18, 2022 and the hearing was held on the same day. The Respondent concluded the SCN proceedings and imposed a fine of Rs. 200,000/- under Section 156 of the Ordinance for the contravention of Section 166 of the Ordinance.
3. The Appellant has preferred this Appeal *inter alia* on the grounds that the SCN is controversial because powers under Section 156 of the Ordinance have been delegated to different persons. The Appellant argued that delegation of powers under the S.R.O. No. 1545(1)/2019 dated December 6, 2019 (the SRO) constitutes a sub-delegation of power that is not within the ambit of Section 10 of the SECP Act, 1997. The Appellant further submitted that it had filed a complaint bearing Inquiry No. 157799 on February 18, 2022 regarding the SRO, however, as of today it has not been responded to by the Securities and Exchange Commission of Pakistan (the Commission).
4. The Appellant argued that, during proceedings, various correspondence took place between the Commission and the Appellant, including the SCN and its reply furnished by the Appellant, however, the Respondent did not discuss sufficient details on what grounds the Impugned Order had been passed. The Appellant stated that in terms of Section 24-A of the General Clauses Act, 1897 (the GC Act), every authority and officer, who is empowered to pass any order is required to give reasons for passing such order, however, a bare reading of the Impugned Order makes it clear that the Respondent, in violation of the mandatory requirements of the GC Act, passed a 'non-speaking' and unreasoned Order.

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5. The Appellant stated that it is imperative to highlight that the complaint has been filed by NICL after an inordinate delay of almost three years from the date of the acceptance of the bid which is entirely inexplicable. The Appellant submitted that a delay of even a single day in approaching the relevant forum for registration of a complaint is fatal and the complaint is liable to be rejected on this score alone. The Appellant argued that there is no cavil to the proposition that the law and courts support the diligent and not the indolent. In this regard, the Appellant relied on the judgment cited as *PLJ 2008 SC 269* and another seminal judgment cited as *PLD 2019 SC 64*, the august Court of the country, where the delay was only 5 days, observed that “... *the Supreme Court had always considered the delay in lodging of FIR to be fatal and it casted a suspicion on the prosecution story, extending the benefit of doubt to the accused.*”
6. The Appellant stated that the violation under Section 166(6) of the Ordinance is not a strict liability offense because the word “knowing” used in the Section indicates that there should be ‘*actus rea*’ (the criminal act) and ‘*mens rea*’ (guilty mind) to be guilty of an offense under section 166(6) of the Ordinance. The Appellant relied upon a case cited as 2011 SCMR 1966 wherein the Honorable Supreme Court of Pakistan held that “... in view requirement of proof of two essential elements of an offence to warrant a finding of guilt i.e. *mens rea* and *actus reus*. The age-old Latin phrase epitomizes this concept, “*actus non facit reum nisi mens sit rea*”, which means that the act does not make a person guilty unless the mind be also guilty.”
7. The Appellant stated that since the tender was invited by PASSCO, it was reasonable for the Appellant to assume that partaking in the procurement process shall not *ipso facto* make it liable under the law. The Appellant stated that the bid under question was open to the public and subject to the Public Procurement Regulatory Authority Rules, 2004 (the PPRA Rules), which naturally led to an irrefutable inference that the requisite declaration in writing from NICL has been obtained by PASSCO in this regard. The Appellant stated that the complete knowledge as to the nature of the transaction was only available with PASSCO and not with the Appellant, therefore, the Appellant cannot be held liable for the violation of Section 166(6) of the Ordinance. The Appellant further submitted that the bid/tender was open to the public and was widely advertised through newspapers, therefore, it constituted sufficient notice to the public at large including NICL regarding the bidding process, however, NICL neither



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- participated in the process nor raised any objection, and therefore, failure to participate in the bidding process amounts to acquiescence and forbearance on part of NICL hence they have lost the *locus standi*, if any, to file the complaint at this point of time.
8. The Appellant stated that the principles of estoppel will have also come into operation aiding the Appellant because it has been unfairly prejudiced in the instant matter. The Appellant has relied on the representation of a public body that invited tenders from everyone interested and after winning the said tender provided incessant services to their detriment for a period of three years during which NICL kept silent about the same and then in a trice decided to challenge the same at the point when the insurance agreement between PASSCO and the Appellant was close to its expiry date. The Appellate submitted that the agreement has since long concluded, and cannot be made the basis of any argument at this belated stage. The Appellant relied upon a case law cited as PLD 2021 SC 320 involving government functionaries laid down that *"Where Government controlled functionaries made a promise which ensued a right to anyone who believed in it and acted under the same, then such functionaries were precluded from acting detrimental to the rights of such person/ citizen."*
9. The Appellant argued that as per the case titled *Commissioner of Income Tax/Wealth Tax versus Messrs Papers and Board Mills [2006 PTD 386]*, any ambiguity must be decided in favor of the subject. The Appellant stated that without prejudice to the foregoing, it is also pertinent to mention here that during the hearing before the Respondent, the Appellant provided an undertaking to the effect that it will not underwrite any public property as per the dictates of the law unless there is a no-objection certificate of NICL. This undertaking has unfortunately also been completely disregarded by the Respondent. The Appellant stated that in similar matters, the Commission condoned the default of Habib Insurance Company Limited vide Order dated 05.05.2014 and in the case of Alpha Insurance Company Limited vide Order dated 18.07.2014 cited as 2016 CLD 353).
10. The Respondent rebutted the grounds of Appeal and stated that the SCN had been issued in exercise of the powers vested under Section 156 of the Ordinance vide the SRO, hence, there is no question of sub-delegation of powers.



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11. The Respondent stated that the Impugned Order is well-reasoned and self-explanatory and was passed after providing the Appellant/Representative an ample opportunity of being heard. The Respondent stated that the submissions of the Appellant/Representative were not found to be satisfactory, therefore, a penalty was imposed through the Impugned Order.
12. The Respondent submitted that delay, if any, in filing a complaint by NICL has no bearing on non-compliance committed by the Appellant. The Respondent stated that cognizance of non-compliance of the law may be taken as and when it is reported to the Commission, therefore, the Appellant's argument for the filing of a delayed complaint is baseless.
13. The Respondent stated that it is incorrect that Section 166(6) of the Ordinance is not a strict liability offense, and that, in this case, it is also established that the default was committed knowingly and willfully. The Respondent relied upon a case law titled *City Equitable Fire Insurance Co. Ltd Re, 1925 Ch. 407, referred to in 2005 CLD 333 in case titled Shaikh Jalaluddin, FCA vs Commissioner (Enforcement & Monitoring), SECP* wherein it was held that a default, in case of breach of duty, will be considered 'wilful' even if it arises out of being recklessly careless, even though there may not be knowledge or intent.
14. The Respondent stated that the Appellant's contention that the tender was floated by PASSCO in terms of the PPRA Rules and is not liable for violating the requirements of Section 166 of the Ordinance, is incorrect. The Respondent stated that it may be noted that PPRA Rules provide for alternate remedies in case of the exclusive right of a supplier, which were required to be considered by PASSCO. The Respondent further stated that it was the responsibility of the Appellant to seek confirmation whether PASSCO had obtained an NOC from NICL, while it was intending to offer insurance cover for public property that falls under the purview of Section 166 of the Ordinance. The Respondent stated that in the instant matter, PASSCO ignored the requirements of Section 166(3) of the Ordinance, which mandates an exclusive right to NICL to provide insurance cover to public property.
15. The Respondent stated that the participation of NICL in the bidding might have been considered as its endorsement of the entire open bidding process for the provision of insurance coverage of public

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property, however, NICL had not participated therein. The Respondent stated that it would be incorrect to infer that the non-participation of NICL in the bidding process amounts to its acquiescence, therefore, NICL cannot be considered to be previously in agreement over the bidding process initiated by PASSCO, therefore, the principle of estoppel does not apply in the matter.

16. The Respondent stated that there is no ambiguity in the requirements of Section 166 of the Ordinance, which requires that insurance of any public property shall be placed with NICL only. The Respondent stated that an already lenient view has been taken in this case because instead of imposing a maximum penalty of one million rupees, a penalty of Rs. 200,000/- had been imposed under Section 156 of the Ordinance. The Respondent stated that it would not be a correct approach to compare the outcome of cited cases with the instant one given the varying set of facts and severity of default.
17. The Appellate Bench (the Bench) has heard the parties and perused the record. The Bench is of the view that filing of a complaint to seek clarification regarding the SRO has no bearing on the merits of the case and it appears that while relying on such ground, the Appellant is trying to evade the due process of law, therefore, we find no substance thereof. The Bench has also pursued the SRO whereby powers under the different administered legislations of the Commission have been delegated to the Commissioners, Heads of Department and Wing Heads. The Bench is of the view that the Appellant's objection that the delegation of powers under Section 156 of the Ordinance to Commissioner Insurance, HOD, Adjudication-I and Wing Head Adjudication-I tantamount to sub-delegation of the Commission's powers is a misconceived notion, therefore, we reject it. The Bench believes that Section 156 of the Ordinance is a penal clause that is delegated to different persons to adjudicate the matters involving violations of the substantive provisions of the Ordinance. The Bench clarifies that sub-delegation is the process whereby a delegate further delegates powers delegated to him, to any third person, which is not the case here, as the Commission has directly delegated its powers to different persons including the Respondent. The Bench also finds it appropriate to mention here that the preamble of the SRO is self-explanatory, that the Commission has delegated its powers through the SRO to different officers, thus, the question of sub-delegation does not arise.



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18. The Appellants' argument that the Impugned Order is a non-speaking order and violative of the requirements of Section 24-A of the GC Act is not tenable, therefore, the Bench is not inclined to endorse it. The Bench is of the view that the Respondent adequately explained in the Impugned Order how the law was violated and provided reasons to implicate the Appellant.
19. The Bench has reviewed the Appellant's argument regarding the delay in filing of the complaint by NICL, however, the Appellant has failed to corroborate this argument with the any relevant legal provision that states NICL's case is barred by the statute of limitations. The Bench opines that the Ordinance and secondary legislation made under the Ordinance do not prescribe a limitation period for filing a complaint, therefore, the Bench is not inclined to accept the Appellant's assertion that the complaint filed by NICL was time-barred. Furthermore, the case law (*PLD 2019 SC 64*) is about registration of First Information Report (FIR) under Section 154 of the Criminal Procedure Code therefore, principles envisaged under the legal framework of the criminal justice system are not applicable in the present case. The Bench endorses the Respondent's argument that this is not a case of a delayed complaint rather, it is about the fact that as to when, how and by whom the law has been violated. The Bench is of the view that the Respondent had not taken action against the Appellant to undo the effect of the transaction whereby insurance policies were issued by the Appellant for PASSCO vehicles, but to proceed against the violation of Section 166 of the Ordinance. The Bench considers that filing a delayed complaint does not bar the Commission from taking action against the violation that came on record through a complainant. In view thereof, the violation committed by the Appellant has been duly dealt with by the Respondent.
20. The Bench is not inclined to accept that the Respondent was required to establish *mens rea* (guilty mind) before proceeding against the Appellant under Section 166(6) of the Ordinance because the Appellant being a regulatee under the Ordinance was required to have complete knowledge and information regarding the ambit of operations and restrictions imposed under the law. The Bench deems that the legal principle of law, "*ignorantia juris non excusat*" (ignorance of the law excuses not), or "*ignorantia legis neminem excusat*" (ignorance of law excuses no one), is explicit and holds that a person who is unaware of a law may not escape liability for violating that law merely by being unaware of its content. Furthermore, the Bench believes that ignorance of the law may be considered as a valid argument in

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particular cases where violations are committed by a third person, having no direct or indirect concern with the relevant law, however, a regulatee or any other stakeholder under the relevant law cannot take a defense that they were not aware of such law.

21. The Bench has noted that the Appellant cannot absolve itself on the grounds that tender to procure insurance policies was issued by the PASSCO, who had complete knowledge of the transaction, and that the Appellant is not liable under the law. The Bench is of the view that two wrongs do not make one right, therefore, if PASSCO, while inviting insurance policies for its vehicles, has not proceeded as per the requirements of Section 166 of the Ordinance then this illegality does not make it permissible for the Appellant to either participate or secure such a tender. The Bench has noted that PASSCO also failed to obtain an NOC from NICL while initiating the procurement process under the PPRA Rules. The Bench is of the view that the law has been violated by both parties i.e. the Appellant as well as PASSCO, therefore, legal proceedings should have been initiated against both parties. The Bench has noted that the matter at hand is against the Appellant, however, the record is silent on whether any proceedings against PASSCO were ever instituted or not. In the event that no proceedings were ever instituted against PASSCO, then the Bench through this order directs the relevant department of the Commission to proceed against PASSCO as per law for evading the requirements of Section 166 of the Ordinance.
22. The Bench has noted that estoppel is a legal principle that prevents someone from arguing something or asserting a right that contradicts what they previously agreed to or said, therefore, this principle is not applicable in this case because the Appellant has failed to establish acquiescence of NICL with respect to the transaction in question. The Bench is of the view that the principle of estoppel by acquiescence is a legal concept that applies when one party acts on an assumption that the other party acquiesces in, therefore, non-issuance of NOC by NICL is sufficient to establish that neither the NICL agreed with the tender/bid process initiated by PASSCO nor it had knowledge that PASSCO had issued a tender/bid. Furthermore, the Bench is of the view that failure on the part of public or government functionaries to proceed as per the requirements of law does not allow the Appellant to ignore its responsibility under the Ordinance. The Bench has no doubt that the Appellant being a regulatee under the Ordinance was

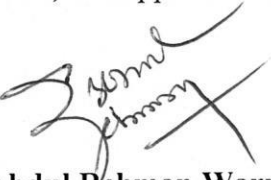


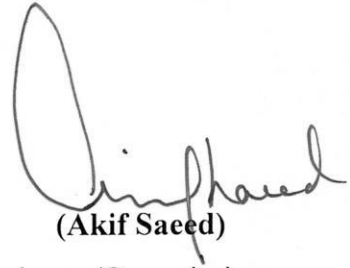
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required to ensure that the requirements of 166 are duly met, however, it failed to proceed diligently as per law.

23. The Bench is not inclined to endorse the Appellant's contention that there is some ambiguity in Section 166 of the Ordinance. In our view, the Appellant was not entitled to secure the tender/bid issued by PASSCO for insurance of its vehicles except as otherwise provided under sub-sections 4, 5 and 6 of Section 166 of the Ordinance. The Bench is of the view that the Appellant failed to demonstrate that it is entitled to get the benefit of the exceptions provided in above mentioned subsections of Section 166 of the Ordinance. Furthermore, the case laws referred by the Appellant are not binding on the Bench, because the said orders are passed by the subordinate adjudicating authorities. Moreover, the Bench is of the view that every case has its own merits and circumstances, therefore, the decision in one case is not *ipso facto* applicable in other cases. The Bench has strictly reviewed the facts and applicable law and found the Appellant non-compliant.

24. In view of the above, the Bench finds no reason to interfere in the merits of the Impugned Order, therefore, the Appeal is dismissed without any order as to costs.


(Abdul Rehman Warraich)
Commissioner


(Akif Saeed)
Chairman/Commissioner

Announced on: 01 JAN 2025