

Appellate Bench Orders

Order in case of Mian Muhammad Aslam Farid in respect of order passed by Executive Director (SM).

April 19, 2001

BEFORE

THE APPELLATE BENCH NO.2

APPEAL NO. 11 OF 2001

under Section 33 of the

Securities and Exchange Commission of Pakistan Act, 1997

MIAN MUHAMMAD ASLAM FARID

.....Appellant

VERSUS

Mr. Shahid Ghaffar, Executive Director, Securities and

Exchange Commission of Pakistan, NIC Building,

Jinnah Avenue, Blue Area, Islamabad.....

Respondent No. 1

Major (Retired) Muhammad Jahangir, resident of

House No. 411, Street 35, I-8/2,

Islamabad.....Respondent No. 2

Islamabad Stock Exchange (Guarantee) Ltd, Islamabad

Stock Exchange Building, Blue Area,

Islamabad.....Respondent No. 3

Date of Hearing: 19 March, 2001

Present:

Mian Muhammad Aslam Farid, Appellant,

alongwith Mr. Tariq Aziz, Advocate, and Mr. M. Tahir.

Syed Aamir Masood, Director (SM), on behalf of Respondent No.1:

Maj. (R) M. Jahangir, Respondent No.2:

Mr. Ahmed Noman, Deputy Secretary, Islamabad Stock Exchange, Islamabad, on behalf of Respondent No.3.

ORDER

1. This is an appeal filed against an order dated 13th March, 2001 passed by the Executive Director (Securities Market) of the Commission.
2. Mr. Tariq Aziz, Advocate while arguing the case briefly stated that Respondent No.2, a retired Army officer had filed a complaint with the Commission raising a claim against the Appellant amounting to Rs.250,000. He alleged that the said amount was given to an agent of the Appellant namely Mr. Qamarul Bari in cash on 1st June, 1996 for investment purpose. According to the Complainant he had been receiving profit on his investment till 12th January, 1997. A copy of the receipt purported to be issued by the agent acknowledging the amount was provided with the complaint. The Appellant in his written comments filed with the Respondent No.1 and 3 respectively categorically denied the allegations and stated that the said Mr. Qamarul Bari had no authority to accept money for deposits on profit. He unequivocally asserted that Mr. Qamarul Bari was his agent only for Exchange transactions and lawful business and that, if at all, he had committed any illegal acts, the Appellant was not liable for the same. The Appellant has, therefore, lodged an FIR against the said Mr. Qamarul Bari for indulging in unauthorized activities. The Appellant further took the plea that the receipt attached with the complaint was forged, as according to record of the Appellant the signatures of Mr. Qamarul Bari do not tally with those appearing on the receipt. On 20th February, 2001 the Respondent No.2 filed a rejoinder to the reply of the Appellant and the case came up for hearing before the Respondent No.1 on 13th March, 2001. A verbal order was announced on the date of hearing and thereafter on 14th March, 2001, the impugned order was issued whereby the membership of the Appellant was removed and Respondent No.3 was directed to sell the membership card of the Appellant within fourteen days and to satisfy the claim of the complainant.
3. After explaining brief facts of the case, the Counsel for the Appellant, raised the issue of jurisdiction of Respondent No. 1 to pass the impugned order under Section 7 of the Securities and Exchange Ordinance, 1969 (Ordinance). He submitted that the powers of the Commission delegated under SRO. No. 862(I)/2000 dated 6 November, 2000 excluded the Respondent No. 1 from taking any final decision under section 7 of the Ordinance. He was of the view that the impugned order has been passed without lawful authority.
4. The representative of Respondent No. 1 submitted that the Respondent No. 1 by virtue of powers delegated by the Commission through S.R.O. 862(1) 2000 has been vested with the wide and all embracing provisions of Section 20(4) of the Act which allow the Commission, inter alia, to perform such functions and exercise such powers, including any powers of the Federal Government delegated to the Commission, under the provisions of any law for the time being in force being administered by the Commission which encompasses the Ordinance, section 7 thereof having been invoked by the Executive Director (Securities Market).
5. The counsel for the Appellant did not agree with this argument and submitted that the powers delegated to the Executive Director under section 7 of the Ordinance were of restricted nature and he was authorized

only "to process and recommend action." He insisted that a finding be made by the Appellate Bench on this pivotal question of jurisdiction.

6. The counsel for the Appellant further submitted that, as no show cause notice was sent to the Appellant, a major procedural defect had occurred and, therefore, the impugned order merits to be set aside. In response, the representative of Respondent No. 1 elaborated that the procedure adopted by Respondent No.1 includes supply of a copy of the complaint to the accused and he is provided a reasonable time for submission of a written reply. Subsequently, a formal hearing is fixed and the concerned parties are further provided an opportunity of being heard. As such, the procedure adopted by the Respondent No.1 adhered to the principles of natural justice and suffered from no infirmity. In this way, the requirements of section 7 of the Ordinance, pertaining to provision of "an opportunity of being heard" were sufficiently met.

7. The counsel for the Appellant also stated that Respondent No. 1 did not record the verbal submissions of Respondent No. 2 in writing in violation of Section 32 of the Act and any evidence of Respondent No. 2 could not be used against the Appellant at this stage. In response, the representative of Respondent No. 1 stated that the provisions of Section 32 are normally invoked in the cases where investigating officers are appointed under Section 29 of the Act. The complaint procedure that is employed by Respondent No. 1, he stated, does not fall within the strict and formal procedure laid down in Section 29 of the Act. The representative of Respondent No. 1 further stated that an order passed under Section 7 of the Ordinance requires "an opportunity of being heard" which was duly adhered to and that Sections 29 and 32 of the Act are limited to formalized enquiries.

8. The counsel for the Appellant also stated that even though Mr. Qamar-ul-Bari was an agent of the Appellant during the relevant time, he was an agent authorized for the purposes of acting for the lawful trade of the securities markets. As such, the scope of Mr. Bari's agency cannot be extended to acceptance of deposits from the general public. Thus, the Appellant could not be held liable as principal. In this connection, Respondent No. 2 provided us with the original copy of the Appellant's own brokerage house receipt given by Mr. Bari. Respondent No. 2 also produced copies of payment slips evidencing the payment of profit from the Appellant's brokerage house. The counsel to the Appellant responded that Mr. Bari and any other employee in his brokerage house without the Appellant's knowledge could easily use such forms of the Appellant's brokerage house. The representative of Respondent No. 1 interjected at this point and stated that the use of the Appellant's own letter head is the responsibility of the Appellant alone and the argument that anyone could fraudulently use the same is no defense. The counsel to the Appellant also alleged that the signatures on the receipt in possession of the Respondent No. 2 are not those of Mr. Bari. In support of this contention, the counsel to the Appellant produced a form allegedly bearing Mr. Bari's genuine signature. The representative of Respondent No. 1 objected to the production of such evidence which were not produced before the Respondent No.1.

9. The counsel for the Appellant also submitted that since there is a limitation period of three years prescribed for civil liabilities under Section 23 of the Ordinance, Respondent No. 1 should have not entertained Respondent No. 2's complaint at such a belated stage. On this point, respondent No. 2 pointed out that in February 1997 he had approached Mr. Jameel Ahmed Bhutto, former Member of the Corporate Law Authority and had also approached the Islamabad Stock Exchange (ISE). He further went on to state that a written application had been filed but he does not possess a copy of the same.

10. After preliminary arguments, the representative for the Respondent No. 1 requested for some time for the preparation of comprehensive reply to the Appeal. He was of the view that a detailed research of case law is required to be undertaken. Moreover, the Respondent No.1 has been directed by the Honourable Lahore High Court to reach a final decision on the last year's stock market crises enquiry till 6th April, 2001 and presently all resources of the Securities Markets Division of the Commission are being utilized for the purpose.

11. Mr. Ahmed Noman, Deputy Secretary, ISE informed that the order of the Executive Director (SM) insofar as removal from membership of Respondent No. 3 is concerned has been duly complied with but no action has been taken for sale of his seat so far to satisfy the claims of Respondent No. 2.

12. Having heard both the parties, we are inclined to grant the requisite adjournment to Respondent No.1 for preparation and submission of his written comments. While we attach considerable weight to the submissions made by the representative for Respondent No. 1 on the jurisdiction issue, the representative for Respondent No. 1 is directed to make fuller and more comprehensively researched arguments to assist the Appellate Bench in taking a decision on this crucial question on the next date of hearing. The counsel for the Appellant agrees to the desired extension subject to the suspension of the impugned order insofar as it relates to action to be taken by the Respondent No. 3 for the sale of the Appellant's seat.

13. The impugned order is thus suspended insofar as it relates to the sale of the Appellant's seat by the Islamabad Stock Exchange and the Respondent No. 1 is directed to submit a reply to the Appeal by the next date of hearing which, with the consent of all parties, is fixed on 11th April, 2001 at 3:00 pm.

Announced : April 19, 2001

(N.K. SHAHANI)
Commissioner
(Securities Markets & Insurance)

(M. Zafar-ul-Haq Hijazi)
Commissioner