

Appellate Bench Orders

Order in the matter of Appeal No. 19, 27 & 28 of 2001 before Appellate Bench No. 1

Before Appellate Bench No. 1

In the Matter of

Appeal No. 19, 27 & 28 of 2001

Order Sheet

1. Fourth hearing held on 24 January, 2002:

These appeals came up for hearing for the fourth time on Thursday 24th January, 2002, at 11:00 a.m. whereat the following persons attended

For the Appellants

Appeal No. 19 of 2001:

1. Faisal Hussain Naqvi, Advocate, counsel for the Appellant, Mian Nisar Elahi

Appeal No. 27 of 2001:

1. Mr. Tanveer Malik, Appellant, appeared in person.
2. Mr. Faisal Hussain Naqvi, Advocate, counsel for the Appellant

Appeal No. 28 of 2001:

1. Mr. Iftikhar Shaffi, Appellant, appeared in person
2. Mian Mumtaz Abdullah, an authorized representative of the Appellant.
3. Mr. Asad Hameed, an authorized representative of the Appellant.

For Respondent Nos. 1 & 2:

1. Mr. Aamir Masood, Director (S-III), Securities Market Division, SEC
2. Mr. Aly Osman, Joint Director (S-III), Securities Market Division, SEC

For Respondent No. 3:

1. Mr. Arif Saeed, of Hassan & Hassan Advocates, counsel of Lahore Stock Exchange (LSE)

For Respondent No. 4:

1. Mr. Asad Ullah Javed, Advocate, counsel for Mr. Muhammad Iqbal Khawaja
2. Mr. Omer Iqbal, authorized representative of Mr. Muhammad Iqbal Khawaja
3. Mr. M. Pervaiz Awan, authorized representative of Mr. Muhammad Iqbal Khawaja

For Respondent No. 5:

1. Mr. Waseem Majid Malik, Advocate, counsel for Mr. Naeem Anwar (Misc. Application No. 4-19 of 2001 & 6-28 of 2001)

2. **Applications for grant of an interim relief**
Misc App C-19/01, C-27/01 and C-28/01

2.1 Respondent Nos. 2 & 3 made preliminary objections to the hearing of these applications. Their contention was that since the Bench has decided similar applications as reflected in order sheet dated 28 December, 2001, which were purported to be of an immediate and urgent nature i.e. for the Appellant, Mr. Iftikhar Shafi, to be allowed the exercise of his voting rights as member of LSE in the annual election due the next day, re-hearing by the Bench would be rendered futile.

2.2 The Appellants vigorously contended that the aforesaid orders do not dispose of the present application, which does not relate to the LSE elections. After the Bench overruled the preliminary objections of Respondent Nos. 2 & 3, having indicated an inclination to hear the parties exhaustively on merit and allow an opportunity of hearing in the dispensation of substantive justice, the Appellants were allowed to proceed.

2.3 The Appellant, Mr. Iftikhar Shafi, in addition to reasserting the grounds taken in similar applications heard on 28 December, 2001, pleaded that since the impugned order was passed by Mr. Abdul Rehman Qureshi, the Commissioner who had directed the Interior Division to place his name on the Exit Control List (ECL), he was biased and it was not appropriate for him to hear and decide on matters pursuant to show cause notice dated 29 March, 2001.

2.4 Further, Mian Mumtaz Abdullah, the counsel for Appellant, alleged that the Commissioner was barred from taking any action against the Appellant as the matter was pending before a civil court at the relevant time. He reiterated that he was denied fair opportunity of hearing and that even his constitutional right of voting has been deprived by virtue of the impugned order. He contended that his client's membership should be restored, as was done by Lahore High Court. He has argued that in the event the impugned order is not suspended, the LSE is required to sell the seat of his client thereby depriving him of his assets, which at present vest with LSE. He has further asserted that under the impugned order he has not only been removed from membership but also barred to participate in trading as an investor. His request to the Bench is that since he is suffering from a heart problem and may at any time be required to visit his Physician abroad, the Bench should allow the suspension of the impugned order on this humanitarian ground alone.

2.5 Mr. Faisal Hussain Naqvi, counsel for the Appellant, Mian Nisar Elahi asserted that the three essentials for grant of a interim relief are very much present. His client has prima-facie a good arguable case as no proper opportunity was given and that he is suffering an irreparable loss as his shares worth Rs 4 million are frozen out of which some have even been wrongfully sold by LSE. Since his clients trading rights are also suspended, the balance of convenience clearly lies in his favour.

2.6 Mr. Arif Saeed, of Hassan & Hassan Advocates, counsel for LSE clarified that the sale of shares frozen by the then Commissioner (Securities Market) on 17 August, 2001 was to the extent of the proceeds of the shares pledged with LSE, presently lying in an interest-bearing escrow account. He expressed LSE's willingness to extend an undertaking not to sell or dispose of the frozen shares during the pendency of the appeal or proceed with the sale of membership and rooms of the Appellants. Mr. Arif Saeed also clarified

that the reference by Mian Mumtaz Abdullah, counsel for the Appellant, Iftikhar Shafi, to the pending suit was in fact reference to RFA 306/2000, which is an appeal filed in the Lahore High Court against the original order in a suit filed against LSE. According to him, the said suit was dismissed on some technical ground. He submits that this RFA only restrains LSE to take any further punitive action against the Appellant, thereby effectively barring LSE from declaring the Appellant as defaulter. However, the factual position stated by him is that the RFA has neither any restraining order against SEC nor SEC is a party to it.

2.7 It was pleaded by Mian Iftikhar Shafi for and on behalf of Mian Nisar Elahi which was also adopted by Mian Nisar Elahi's counsel that the arrangement as per the Order dated 17 August, 2001 should be allowed to continue whereunder inter alia Mian Nisar Elahi could dispose off his shares subject to the approval of the Commission and the proceeds were to be kept in profit bearing escrow account.

2.8 Respondent No. 1, Mr. Aamir Masood, representing the Securities Market Division, submitted that Mr. Abdul Rahman Qureshi, the Commissioner recommending the placement of Appellant's name on ECL to the Interior Division was enjoined to do so in pursuance of the working arrangements within the Commission; in any event neither can such recommendation be equated to an order passed against the Appellant nor indicative of a bias on the part of the Commissioner. He further stressed that the issue of placement on ECL does not relate to the subject matter of the Appeal before the Appellate Bench, the name of the Appellant having been placed on ECL much before the passing of the impugned order.

2.9 Respondent No. 1, Mr. Aamir Masood disputed the value of frozen shares and said that the same can be verified from the record. He stated that there is a misrepresentation by the counsel of Mian Nisar Elahi as to the value of the shares. He also submitted that the Order dated 17 August, 2001 is no more in field as the same was an interim arrangement made pursuant to the Orders of the High Court dated 7 August, 2001 in Writ Petition Nos. 1220, 1221 & 1222/2001 which was set aside by the Supreme Court Order.

2.10 Mr. Tanveer Malik urged that although he has been running his business since 17 years and has not made any default, he has unfortunately been removed from membership of the LSE. He further submitted that in the whole process he is suffering huge monetary loss as he has no other source of income and, therefore, his LSE membership should be restored. Mr. Aamir Masood objected to these submissions stating that the Appellant, Mr. Tanveer Malik, is a wealthy man and owns a huge business.

2.11 In response to a query from the Bench as to why no further action after the removal of memberships has so far been taken since the passing of the Supreme Court Order in this matter, the counsel for LSE stated it refrained from taking any action in haste since it expected the matter to be placed before the Appellate Bench.

2.12 In response to a query made by the Bench as to whether or not the impugned order bars the Appellant, Mr. Iftikhar Shafi, from participating in trading as an investor, nothing concrete was forthcoming by the parties present.

2.13 Mr. M. Pervaiz Awan, counsel for Mr. Muhammad Iqbal Khawaja, submitted that the Appellant, Mr. Iftikhar Shafi, is making self-contradictory statements: on one hand the Appellant is asking for suspension of the impugned order, the impact of which would be restoration of his LSE membership and, on the other hand, he is blaming LSE for not declaring him a defaulter and squaring up his position in his appeal. He further submitted that all pleas and arguments raised in support of the suspension of the impugned order by the Appellants in fact relate to the main, subject matter of the Appeal that requires a fuller adjudication on merits before the Bench.

2.14 We have heard these applications at length and are of the considered view that the parties have essentially made the same arguments as in the earlier applications for suspension of the impugned order heard by us on 28 December, 2001. However, the Appellant have expressed the possibility of LSE proceeding to sell the assets and settle the claims of the Appellant in pursuance of the impugned order,

thereby further prejudicing the rights of the Appellants. Since LSE has expressed its willingness to furnish an undertaking before this Bench that it shall not take any action in furtherance of the impugned order, this may put their apprehensions at rest.

2.15 The Appellate Bench has been hearing all issues being raised by the parties exhaustively at frequent intervals and are fully poised to facilitate the disposal of these appeals.

2.16 While the Appellants have not been able to convince us of the necessity to grant an interim relief by way of suspension of the impugned orders, and for reasons elaborated in our order dated 28th December, 2001 we are not allowing the same. However, we are inclined to favour the maintenance of status quo. Pending disposal of these Appeals.

2.17 In light of the above, we direct LSE to furnish us a present status report in respect of these three Appellants and hereby grant status quo pending disposal of these Appeals. Status quo is granted to the extent that no further action shall be taken pursuant to the paragraphs 51, 52 & 59 of the impugned order in the Appeals No.19 & 28/2001 and paragraph 35 of the impugned order in Appeal No.27/2001 as of this date.

3. Applications for extension of time to file para wise comments by Respondent- Nos. 1 & 3

3.1 Mr. Arif Saeed, of Hassan & Hassan Advocates, counsel for LSE, has requested the Bench to grant extension of time in order to prepare and file para wise replies to the Appeals. He submitted that, firstly, because the pleadings are voluminous and, despite working diligently to prepare para wise comments, LSE requires further time; secondly, since the Bench has ordered the Securities Market Division to provide all documents on which reliance has been placed in the impugned orders in the said Appeals, it is likely that the Appellants would amend the appeal. He, therefore, urged that, in order to avoid the duplication of effort, it would be appropriate to first allow the Appellants an opportunity to amend their respective appeals prior to filing of the replies by the Respondents.

3.2 Respondent No. 1, Mr. Amir Masood, of the Securities Market Division, had also pressed his application requesting for extension of time by fifteen more days by emphasising that since the para wise comments are to be filed at the request of the Appellants, the Respondents are not legally bound to submit the same and, therefore, it is fair that the Respondents be granted sufficient time to file replies to these voluminous appeals.

3.3 Mian Mumtaz Abdullah, counsel for the Appellant, Mr. Iftikhar Shafi, opposed grant of extension on the ground that time for filing para wise comments has already been given with the consent of all parties on the last date of hearing and no further time should be allowed. Since the other Respondents have furnished their replies within the time allowed, this application is a mere attempt to abuse the process of law and waste time of this Honourable Bench.

3.4 After hearing the arguments made by the parties, we find some merit in the suggestion made by LSE that the Appellants be allowed to exercise an option to amend their appeals once the documents provided have been reviewed by the Appellants. Although the Respondents Mr. Muhammad Iqbal Khawaja and Mr. Naeem Anwar have stated that the written replies are ready, we note that the same are not placed before this Bench.

3.5 In order to avoid duplication of work, it would be appropriate for the Appellants to review the documents provided by the Respondents and, once they inform the Bench as to whether they intend to amend their appeals or not, the Bench then may accordingly decide these Applications.

(M. ZAFAR-UL-HAQ HIJAZI)
Commissioner

(N. K. SHAHANI)
Commissioner