

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. **Hearing held on 28 December, 2001:**

These appeals came up for hearing on Friday 28th December, 2001 at 11:00 a.m. The Respondent submitted replies to the applications filed on the last date of hearing by the Appellants. Copies of the same were provided to all the Appellants. Persons present: -

For the Appellants:

Appeal No. 19 of 2001:

1. Mian Nisar Elahi, appeared in person

Appeal No. 27 of 2001:

2. Mr. Tanveer Malik, appeared in person.

Appeal No. 28 of 2001:

3. Mr. Iftikhar Shaff, appeared in person.
4. Mian Mumtaz Abdullah, an authorized representative of the Appellant.
5. Mr. Asad Hameed, an authorized representative of the Appellant.

For the Respondent:

Appeal Nos. 19, 27 & 28 of 2001:

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

2. **Applications for condonation of delay:**

(Nos. B-19 of 2001, B-27 of 2001 and B-28 of 2001)

In view of the fact that Supreme Court order dated 25.9.2001 in Civil Petitions Nos. 2502, 2503 & 2504/2001 requires the parties to exhaust the due process available as provided in law by preferring appeals

before an Appellate Bench of the Commission and has advised to take a lenient view with respect to condonation of delay. It appears appropriate and in the interest of justice to condone the delay in the Appellants' filing of their respective appeals which entails adjudication on serious and complex issues. Accordingly, the delay is condoned and appeals are admitted for hearing.

3. **Applications for suspension of the impugned order:**

(Nos. 1-27 of 2001 and 1-28 of 2001)

Mian Mumtaz Abdullah, objecting to the reply filed by the Respondent, contested that the Appellant, Mian Iftikhar Shafi, satisfies the three ingredients for grant of an interim relief, viz. (i) a good arguable case as prima-facie reasonable opportunity has not been provided at the initial stage, (ii) balance of convenience in favour of the Appellant as he has suffered monetary loss as well as mental agony (iii) an irreparable loss would occur if he would not be allowed to exercise his fundamental constitutional right to vote in the Lahore Stock Exchange's (LSE) elections to be held on next day. Furthermore, he submitted that his membership was restored after High Court suspended the impugned order. Therefore, he urged that suspension of the impugned order may be granted pending the adjudication of the main appeal. The Respondent submitted that allowing the Appellant to vote would amount to restoring LSE's membership, thereby granting main relief and creating a new situation and defeating the objective of an interlocutory relief rather than maintaining the situation on the date when the party concerned approached the Honourable Appellate Bench. Reliance was placed on Islamic Republic of Pakistan through Secretary, Establishment Division, Islamabad and others Vs Muhammad Zaman Khan and others (1997 SCMR 1508). The Respondent further urged that the suspension of the impugned order would revert the status of the Appellant, Mian Iftikhar Shafi, as it stood prior to passing of the impugned order on 9 April, 2001 i.e. that of a suspended LSE member vide LSE's order dated 5th June, 2000. Further, the order passed by the High Court in writ petition no. 1220/2001 has been set aside by the Supreme Court, the status of the Appellant, therefore, has reverted to that established by the impugned order, viz. the Appellant's removal from LSE membership. Therefore, even if the Honourable Bench suspends the impugned order, the Appellant, Mian Iftikhar Shafi, would be a suspended LSE member, who in any case cannot exercise his right to vote in the annual LSE election scheduled for the next day, and it would be futile for the Appellate Bench to suspend the impugned order to enable the Appellant to participate in LSE election. The Appellant, Mr. Tanveer Malik adopted the arguments of Mian Iftikhar Shafi, however, he also submitted that this application may be taken up on the next date. After considering the arguments of the parties, it appears that no urgency is made out for deciding this application. Since the matter involves determination of complex issues, it is essential that any such decision is taken after having heard the parties exhaustively on merit, it would be in the interest of justice to speed up the disposal of the main appeal by holding hearings at short intervals instead of granting interim relief

4. **Applications for impleading necessary parties:**

(Nos.5-28 of 2001, 3-19 of 2001, 6-28 of 2001, 4-19 of 2001, 7-28 of 2001, 5-19 of 2001 and 4-27 of 2001)

Three applications for being impleaded as necessary parties in these appeals have been placed before the Appellate Bench by (i) Lahore Stock Exchange, (ii) Mr. Naeem Anwar, and (iii) Khawaja Muhammad Iqbal. Mr. Omar Khawaja appeared for and on behalf of Khawaja Muhamamd Iqbal and argued that any decision by the Appellant Bench without impleading him as a party will be prejudicial to his interest. Attention was drawn to the impugned order where all three Applicants were parties to the proceedings. Mian Mumtaz Abdullah opposed the application but fell short of indicating as to how it would be prejudicial to interest of the Appellant if these parties are impleaded as necessary or proper parties. The Respondent and the other Appellants, Mian Nisar Elahi and Mr. Tanveer Malik, did not raise any objections against these applications. The Bench is of the view that it would be in the interests of justice to implead these parties especially since the determination on this matter shall directly affect their rights. Accordingly, the aforesaid three applicants are hereby impleaded as necessary parties. Mr. Naeem Anwar and Khawaja Muhammad Iqbal in Appeal Nos. 19 & 28 of 2001 and the LSE in Appeal Nos. 19, 27 & 28 of 2001.

5. **Applications for day-to-day hearing:**
(No.8-28 of 2001)

The application of Mian Iftikhar Shafi for holding day-to-day hearing does not merit consideration since the Appellate Bench has already taken the view to hold hearing at short intervals.

6. **Applications to file para-wise comments, for discovery of documents and cross-examination of witnesses:**

(Nos.1-19 of 2001, 2-27 of 2001, 2-28 of 2001, 2-19 of 2001, 3-27 of 2001, 3-28 of 2001 and 4-28 of 2001)

These applications were part heard and the matter shall resume on the next date of hearing.

(M. ZAFAR-UL-HAQ HIJAZI)

Commissioner
(Company Law)

(N.K.SHAHANI)

Commissioner
(Insurance)