

Appellate Bench Orders
Before Reconstituted Appellate Bench No.3

July 30, 2002

Before Reconstituted Appellate Bench No. 3

In the Matter of

Appeal No. 20 of 2002

Mr. Mashkooor Ahmed Khan Sherwani ----- Appellant

Versus

Mr. Abdul Aziz Khan Niazi ----- Respondent

Date of

Hearing.....

.....July 23, 2002

Present:

For the Appellant:

Mr. Tariq Aziz, Advocate

For the Respondent:

Mr. Abdul Rehman

For the Commissioner (Enf):

Mr. Syed Aamir Masood, Director (Securities' Market)

Mr. Aly Osman, Joint Director (Securities' Market)

Order

The matter before us arises from an appeal filed by Mr. Mashkooor Ahmed Khan Sherwani ("Appellant") under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 ("1997 Act") against the order of the single Commissioner dated 11 April, 2002 ("impugned order").

2. Mr. Tariq Aziz appeared before us on behalf of the Appellant, Mr. Aamir Masood appeared on behalf of the single Commissioner and Mr. Abdul Rehman, brother of Mr. Abdul Aziz Khan Niazi ("Respondent"), appeared, though without power of attorney, for the sole purpose of informing us the reason for the Respondent's absence. As there appears to be no valuable right having accrued to the Respondent through the impugned order, in that, the relief sought was never granted by the single Commissioner and, as the Appellant has nowhere in his Appeal challenged the impugned order on its merits, we find that the matters before us could proceed without any prejudice being caused to the Respondent. Further, the Appellant is aggrieved by the single Commissioner and officers of the SEC's conduct of the proceedings.

3. The facts leading up to the filing of this Appeal begin with certain share purchases being instructed by the Respondent in the Appellant's brokerage house. However, as the shares were allegedly never purchased, the Respondent sent a complaint dated 3 January, 2001 to the Chief Executive's Secretariat which forwarded the same to the Securities and Exchange Commission of Pakistan ("SEC"). Subsequently, the Appellant filed civil suits against the Respondent concerning the performance of a settlement agreement executed between the Appellant and Respondent. However, the Respondent once again re-agitated his initial complaint in mid-July, 2000 before the SEC pursuant to which a hearing in the matter took place in August, 2000 before the then Commissioner (Securities' Market). On 4 January, 2001 a letter requesting information from the Appellant was issued by the SEC. A second hearing in the matter was held on 8 January, 2001 which was adjourned after preliminary arguments to 10 January, 2001. However, the Appellant, on 8 January, 2001 filed Writ Petition 39/2001 against the SEC wherein he prayed for the proceedings to be quashed. On 10 January, 2001, the Hon'ble High Court granted a stay of the proceedings by way of interim relief. On 27 April, 2001, the Hon'ble Justice Chowhan disposed off the said Writ Petition and investigations by the SEC proceeded. The Appellant, subsequently, filed Review Petition 8/2001 and a Criminal Contempt application against the then Deputy Director (Securities Market). However, as the Appellant did not press his arguments, therefore, the Review Petition as well as the contempt application were accordingly disposed off on 11 June, 2001. In September, 2001, the Appellant finally replied to the letter dated 4 January, 2001. On 8 October, 2001 the single Commissioner requested further information from the Appellant in his letter of the same date. The Appellant replied to the 8 October, 2001 letter on 22 November, 2001 after having been granted an extension in time to reply. On 25 January, 2002, a show cause notice was issued by the Commissioner to the Appellant ("show cause notice") and pursuant to the hearing on 15 February, 2002, the impugned order was passed on 11 April, 2002.

4. Mr. Tariq Aziz, Advocate, appearing on behalf of the Appellant, put forward the following arguments:

(a) His client's case was built around the allegation of bias against each and every officer of the SEC. The Appellant has no faith in receiving any justice from the SEC and the Appeal before us had been filed out of statutory compulsion alone.

(b) A settlement agreement was executed between the Appellant and Respondent on 12 January, 2000 ("Settlement Agreement") that resolved a dispute between the Appellant and Respondent which had begun on 27 December, 1999. However, subsequently, a problem did arise concerning the performance of the

terms and conditions of the Settlement Agreement due to which the Appellant filed a civil suit against the Respondent on 29 June, 2000.

(c) Subsequent to the civil suit having been filed, the Respondent once again sent complaints against the Appellant to the SEC pursuant to which a hearing was called by the then Commissioner (Securities' Market). At the hearing that took place in August, 2000, the Appellant had plead that the points of contention raised by the Respondent were sub judice before a court of law. The then Commissioner (Securities' Market), at the said hearing, requested the Islamabad Stock Exchange ("ISE") to provide a legal opinion on whether the SEC could, under law, proceed onto the merits of the Respondent's complaint in light of the pending litigation. A legal opinion was obtained by the ISE which supported the Appellant's plea. Pursuant to the said legal opinion, the SEC wrote to the ISE on 23 October, 2000 wherein it was expressly provided that the issues raised by the Respondent in his complaint were sub judice and, therefore, the SEC was incapable of proceeding any further in the matter. However, preceeding the 23 October, 2000 letter and in complete contradiction to its contents, the then Executive Director (Securities' Market), Mr. Shahid Ghaffar wrote to the ISE on 19 October, 2000 wherein the ISE was instructed to take action, if necessary, on inter alia the complaint of the Respondent.

(d) Notwithstanding the arguments herein above, the SEC had already closed the matter in February, 2000. Going further back in time, the Respondent's initial complaint was dated 3 January, 2000 and it was addressed to the Chief Executive's Secretariat. On receipt of the same by the SEC from the Chief Executive's Secretariat, the complaint was forwarded to the ISE with the request that it inform the SEC of the status of the dispute. As the Settlement Agreement had been executed by that time, the ISE confirmed that the dispute had been resolved. Consequently, the SEC deemed the matter resolved and stated the same in a letter to the Chief Executive's Secretariat in February, 2000. This was stressed as the single Commissioner based the proceedings against the Appellant on the complaint of the Respondent dated 3 January, 2000. Furthermore, Mr. Tariq Aziz also alleged that the SEC has, to this day, not provided the Appellant with a copy of the letter to the Chief Executive's Secretariat.

(e) Under the powers delegated to the then Executive Director (Securities' Market), Mr. Shahid Ghaffar, *vide* SRO 862, the SEC proceeded with the matter and in so doing, sent a letter dated 4 January, 2001 wherein the Appellant was requested to provide certain information concerning his business dealings with the Respondent. A hearing also took place before the Executive Director (Securities' Market) on 8 January, 2001. At the said hearing, Mr. Tariq Aziz had requested the SEC to provide certified copies of the case (which request was not acceded).

(f) The Respondent was a front man for his brother-in-law Mr. Sehwani, ex-Chairman of the Capital Development Authority and the funds the Respondent used in his trading were obtained through corrupt means. In this regard, several National Accountability references were pending against both the Respondent and Mr. Sehwani. Furthermore, the Respondent had sent complaints to various departments in the government which, in turn, have applied a great deal of pressure on the SEC to prosecute the Appellant. The SEC's prosecution has been tainted by malice and bias in favour of the Respondent. This was particularly so as the SEC had already closed its proceedings twice against the Appellant on the grounds, as stated above, that the matter was a civil dispute between the Appellant and Respondent which had

been resolved by the Settlement Agreement and the same was currently the subject matter of litigation.

(g) Fearing an unjust and malicious prosecution by the SEC, the Appellant instituted Writ Petition 39/2001 on 8 January, 2001 pursuant to which a stay was granted on 10 January, 2001. The Hon'ble Justice Chowhan, in his order dated 27 April, 2001 in Writ Petition 39/2001, found Mr. Shahid Ghaffar to be biased and directed the Chairman, SEC to appoint a Commissioner in his place to conduct proceedings. However, in derogation of the said order, the SEC neither appointed a Commissioner nor allowed inspection of the SEC's file, but instead, proceeded with the matter by issuing a letter from its then Deputy Director (Securities' Market) Ms. Ayesha Sheikh in which the Appellant was directed to provide an answer to the letter dated 4 January, 2001. Due to the foregoing reasons, the Appellant filed a contempt application in the Lahore High Court, Rawalpindi Bench.

(h) subsequent to the orders in Writ Petition 39/2001 and Criminal Contempt Application and Review Petition, the Appellant time and again requested the SEC to provide him with certified copies of the record. Instead of acceding to such requests, the single Commissioner asked the Appellant to justify such provisioning. Furthermore, certain pages were missing from the files of the SEC. It was, therefore, clear that the SEC had conducted its proceedings against the Appellant in a malicious and bias manner.

(i) The files of the case against the Appellant were never shifted to the Single Commissioner but were always maintained by Mr. Syed Aamir Masood, Director (Securities' Market) who is under the direct control of Mr. Shahid Ghaffar, Commissioner (Securities' Market). This strengthened the allegation of bias.

(j) The letter dated 8 October, 2001 completely changed the scope of the proceedings and, in this respect, the SEC has attempted to build a case against the Appellant where none ever existed.

(k) In the impugned order, a great deal of emphasis has been placed on the Appellant's purported failure to provide information to the SEC. However, the single Commissioner has not, at the same time, considered the manner in which the SEC has precluded the Appellant's ability to reply. In this respect, the non-provisioning of certified copies of the SEC's record along with the allegation that certain documents were missing from the files was pointed out once again.

(l) Paragraph 61 of the impugned order, wherein the single Commissioner directed the removal of the Appellant from the ISE, does not state anywhere the reasons for doing so nor provides the statutory provision under which the SEC can remove the Appellant. Furthermore, in paragraph 60 of the impugned order, the single Commissioner finds the Appellant to have been in contravention of the Brokers and Agents Registration Rules, 2001 ("2001 Rules") which were notified in May, 2001, whereas the subject matter of the proceedings concern issues in 1999 and 2000. The 2001 Rules did not have retrospective effect.

(m) The impugned order was sent to the Appellant late in the afternoon of 12 April, 2002 which was a Friday. The delivery at such a time, showed the malice of the SEC as the Appellant was prevented from filing anything in court for two days afterwards. Furthermore, the Appellant's immediate removal from the ISE has

rendered an appeal under Section 33 of the 1997 Act infructuous as it does not contemplate the thirty days period afforded an aggrieved party.

5. Mr. Syed Aamir Masood, Director, SEC, representing single Commissioner, made the preliminary submission that the majority of arguments put forward by the Appellant, particularly the issues of malice, *sub judice* and jurisdiction, had already been agitated before the Hon'ble High Court in Writ Petition 39/2001 which, after having heard all the arguments, were decided in favour of the SEC. The relevant portion of paragraph 12 of the order dated 27 April, 2001 is reproduced hereunder:

12-...

However, this court is of the view that SECP prima facie has jurisdiction in this matter and the writing of the letter dated 4th January, 2001 was in exercise of jurisdiction.

In light of the above finding, it was argued that the Appellant could not be allowed to re-agitate the same points before this Appellate Bench which were the subject of prior adjudication by the Hon'ble High Court. He went on to further argue as follows:

a) Notwithstanding the preliminary submissions, it was argued that the SEC had jurisdiction to investigate and prosecute the Appellant. In this respect, the Appellant was misleading this Appellate Bench into believing that the SEC's investigation and prosecution had something to do with the Appellant's fulfillment of the terms and conditions of the Settlement Agreement which is the subject matter of pending litigation. In support of his arguments, Mr. Aamir Masood highlighted the fact that no relief had been provided to the Respondent by the single Commissioner in the impugned order. Furthermore, the show cause notice and the impugned order remain focused on the violations of Sections 17, 18 and 21 of the Securities and Exchange Ordinance, 1969 as well as Rule 3 of the Securities and Exchange Rules, 1971 and Section 24 of the Central Depositories Act, 1997. All such violations, it was argued, are within the scope of the SEC's powers upon which cognizance must be taken;

b) On the issue of bias, the Appellant's contentions against the SEC as a whole was untenable as the same was extremely ambiguous and vague. Furthermore, the impugned order displayed an application of independent mind and detailed deliberation on the facts and law pursuant to which a correct finding was made. As such, the allegation of bias was negated.

c) The allegation that Mr. Shahid Ghaffar, Commissioner (Securities' Market) was ever declared bias by the Hon'ble Justice Chowhan in his order dated 27 April, 2001. In this respect, the Hon'ble Justice Chowhan had first asked the SEC whether it would have any objection to another "presiding officer" conducting the proceedings so as to prevent the Appellant from "nourishing any doubt". As such, the appointment of a new "presiding officer" was only done to provide the Appellant comfort rather than on any evidence of bias and, that too, after seeking the SEC's consent. Furthermore, our attention was drawn towards to paragraphs 5 of the Appellant's Review Petition 8/2001 which is reproduced hereunder:

5. *That it is most respectfully submitted that the Petitioner raised allegation of bias against the SEC as a whole. The counsel for petitioner also made written submissions which clearly show that bias was alleged against SEC as a whole and not against any particular individual.*

With utmost respect it is submitted that this is an error apparent on the face of the record.

It was argued that the Appellant admitted to having never made any allegations of bias against Mr. Shahid Ghaffar, Commissioner (Securities' Market) and, as such, was to be estopped from raising any such allegations now.

d) Further, the Appellant himself, subsequently, did not press his contention that the SEC was bias as is recorded in the order dated 11 June, 2001 of the Hon'ble Justice Chowhan in Review Petition 8/2001. The relevant portion of the said order reads as follows:

Learned counsel for the petitioner after addressing some arguments, contended himself by stating that in case the respondent side followed the observations which were made by this Court vide its judgment dated 27.4.2001 passed in W.P. No. 39/2001, he would not press the present review application, W.P. No. 1580/2001 and Cr. Original No. 112-W/2001.

The Appellant, by his very conduct, has withdrawn his plea of bias against the SEC as well as against Mr. Shahid Ghaffar. Therefore, as before, the Appellant is estopped from taking up such arguments.

(e) The Hon'ble Justice Chowhan's order dated 27 April, 2001 in Writ Petition 39/2001 had only directed the SEC to allow for inspection of the records. However, in a show of *bona fide* the SEC also provided copies of the record to the Appellant as requested by him. In this respect, the Appellant's contention of being precluded from furnishing a comprehensive reply on the grounds that the copies were not certified is misconceived. Notwithstanding the foregoing, it was emphasized that all the information requested of the Appellant in the letters dated 4 January, 2001 and 8 October, 2001 constituted records that the Appellant was required to maintain under Rule 8 of the Securities and Exchange Rules, 1971. Furthermore, as there were very serious allegations of fraud being made against the Appellant, the issuance of the letters dated 4 January, 2001 and 8 October, 2001 were for the purpose of fact finding. As such, the inspection of record and subsequent acquisition of copies in no way assisted the Appellant in answering the questions posed and, therefore, the Appellant's contentions were wholly unjustified. Furthermore, the Appellant's request to obtain copies of the file after having inspected the same was misconceived. In this respect, it was argued that the powers of the SEC to obtain information from its regulatees and other persons concerned were that of a court. The basic function of a regulator, it was argued, is to accumulate information. It was also contended that, an investigation is merely a fact finding exercise pursuant to and upon which prosecution may or may not be initiated by way of a show cause notice. Therefore, there is absolutely no requirement at the investigation stage for the SEC to allow any inspection or provide any copies of the record. In support of his arguments, the decision of Mr. Rasheed-ud-Din Member, Corporate Law Authority in *Re: Hyesons Sugar Mills Limited., Karachi*, reported in 1986 MLD 2555. The relevant portions of the said decision are reproduced hereunder:

15. In order to explain the functions of an Enquiry Officer the following legal dictums have been cited. In *Raja Narayanlal v. Phiroz Mistry* reported as AIR 1961 SC 29 Mr. B. R. Sinha, C.J. observed:

"Thus, the scope of the enquiry contemplated by the Company Law is clear: wherever the Registrar has reason to believe that the affairs of the company are not properly carried on he is empowered to make an enquiry into the said affairs. Similarly inspectors are appointed to investigate the affairs of any company and report thereon. The investigation carried on by the Inspectors is no more than the work of a fact-finding commission."

16. It has further been stated that in the well-known book on the subject known as "Datta on Company Law" at page 476 of 1982 edition the learned author writes about the 'Nature of Investigation' as under:

"Under this section inspectors are appointed to investigate the affairs of a company and report thereon. The investigation carried on by the inspectors is no more than the work of a fact-finding commission. It is investigatory and not judicial."

17. It has also been stated that Mr. Jagadish Swarup in his book 'Commentaries on Companies Act, 1956, at page 631 of 1982 edition writes about the Nature of Investigation on by Inspector as under:

"The provisions of the Act are modeled on the corresponding provisions of the English Companies Act. Describing the character of the enquiry, Lord Macmillan observed that 'the object of the enquiry manifestly is that the Commission may either by himself directly or through the medium of a delegation obtain the information necessary to enable him to decide what action, if any, he should take. In the same case Lord Thankerton said: "The object of the examination is merely to recover information as to the Company's affairs and it is in no sense a judicial proceeding for the purpose of trial of an officer. There are no parties before the Inspector: he alone conducts the enquiry and the power to examine on oath is confined to the officers, members, agents and servants of the company."

(f) As for the issue of whether certain documents were, in fact, missing from the SEC's file, attention was drawn to the letter of the Appellant dated 30 July, 2001 wherein he alleges that pages 146 to 180 are missing from the record. However, Mr. Aamir Masood informed us that a reply was sent on 20 August, 2001 in which a full explanation was given. The relevant portion of the said letter dated 20 August, 2001 is reproduced hereunder:

"With respect to your statement that documents paginated 146 to 180 of File A are missing from the file, you are well aware that these pages consist of legal advice rendered by the SEC's external counsel, Mr. Khaliq-uz-Zaman relating to the case. During your inspection of the record on July 21st, 2001, the said pages were taken out before you by me and I also informed you then of the contents of the said pages. It would be unreasonable and clearly outside the obligation imposed upon the SEC by the Order of the Hon'ble Lahore High Court dated April 27, 2001 for the SEC to be expected to provide you copies of the said legal opinion, disclosure of which in the normal course would be protected by Counsel-Client privilege."

(g) In so far as the incorporation of the Code of Conduct of the 2001 Rules are concerned, the same were relevant in the present case as the conduct of the broker with respect to his failure to provide information to the SEC as required under law occurred well after the notification of the 2001 Rules. Furthermore, it was argued that, even assuming the 2001 Rules were notified after the violations committed, no prejudice had been caused to the Appellant as the high integrity spoken of by the single Commissioner in the impugned order when referring to the 2001 Rules was the same as that required of the Appellant under the Memorandum of Association of the ISE.

(h) The deliberations and the various violations found to be committed by the Appellant as set out in the impugned order were highlighted. In this respect, it is clear from the impugned order that the single Commissioner applied his mind to all the facts of the case as well as the arguments of the Appellant and correctly found the Appellant to have committed various violations of the applicable laws.

6. We have heard the arguments of the parties at length. With respect to the preliminary submissions made by Mr. Aamir Masood representing single Commissioner, we are of the considered view that the Bench is empowered to look into the questions of jurisdiction, bias and *sub-judice* issues with a view to ensuring that the single Commissioner and his subordinate officers have at all times during the investigation and subsequent prosecution adhered to the principles of fairness and impartiality and have at no time after the Hon'ble High Court's decision dated 27 April, 2001, overstepped jurisdiction. It is clear from the Hon'ble Justice's order dated 27 April, 2001 that the SEC issued the letter dated 4 January, 2001 in exercise of jurisdiction and, therefore, its investigations were based on the possible violations of law committed and not the matters under dispute in the civil suits. We observe the appearance of a discrepancy in the arguments made by the Appellant in so far as his allegation that Mr. Shahid Ghaffar was found to have been biased by the Hon'ble Justice Chowhan which, subsequently, in the Appellant's Review Petition, the Appellant had denied arguing.

7. The Appellant has argued that in respect of the issues under investigation and prosecution form civil dispute matters over which the SEC does not enjoy jurisdiction. We have closely looked over the civil court proceedings, show cause notice and the impugned order. The show cause notice refers to the possibility of actions being taken by the single Commissioner for violations of Section 20(7) of the 1997 Act, Sections 21(4)(b), 17(a) and (d) and 18 of the Securities and Exchange Ordinance, 1969, Rule 3(c)(iv) of the Securities and Exchange Rules, 1971 and Section 24(2) of the Central Depositories Act, 1997. These clearly fall within the ambit of the SEC's powers to regulate and enforce. Notwithstanding the foregoing, the show cause notice does also threaten a possible direction to the Appellant requiring him to pay compensation to the Respondent. However, the single Commissioner, in the impugned order, has not provided any such relief to the Respondent. Even though the SEC is provided a great deal of powers in this respect, it is our view that, in the present circumstances, the single Commissioner's decision to deny such a relief in the presence of civil litigation concerning the terms and conditions of the Settlement Agreement alone was correct. We also concur with the single Commissioner's view as to the resolution of civil liabilities (whether one has occurred or not in the present case) not exonerating a person from prosecution for having committed violations of law. In fact, the letter dated 23 October, 2000 wherein the SEC refers to the issues before it being *sub judice*, further on, clearly

indicates that what is being spoken of is exclusively the compliance of the parties to the terms and conditions of the Settlement Agreement. This in no way ousts the jurisdiction of the SEC to protect investors and punish brokers for violations committed. We, therefore, find that the SEC did at all times have exclusive jurisdiction to investigate and prosecute the Appellant.

8. We find no merit in the Appellant's argument that the case was changed over time and, in this respect, a new case was built for the purpose of unjustly prosecuting the Appellant. Clearly, the investigation into the possible violations committed by the Appellant first began with the issuance of the letter dated 4 January, 2001. Subsequently, the letter dated 8 October, 2001 requests information on the same set of business dealings (constituting the possible violations) between the Appellant and Respondent. It is apparent from the face of the record that the SEC was alerted by the Respondent of the possibility of very serious violations of law having been committed pursuant to which the SEC began its investigations. Furthermore, certain violations of law were prima facie found to have been committed and, therefore, a show cause notice was issued. This, in our view, can in no way tantamount to an unjust prosecution. In fact, the omission to prosecute on evidence in the possession of the SEC which showed the commission of violations would have been in derogation of statutory duty.

9. As for the Appellant's arguments that nowhere in the impugned order does the single Commissioner state the provision under which the Appellant has been removed from his membership, we find the same to be untenable. Firstly, the SEC does have powers under Section 7 of the Securities and Exchange Ordinance, 1969 to remove members of a stock exchange for violations of provisions of the Securities and Exchange Ordinance, 1969. This being the case, the single Commissioner was empowered to take such action and an exact reference to Section 7 was not specifically required. Furthermore, it is also our considered view that such an extremely technical objection cannot vitiate the proceedings. However, what is of greater importance is the fact that the single Commissioner did state the possibility of action being taken against the Appellant under Section 7 of the Securities and Exchange Ordinance, 1969 in the show cause notice and, in so doing, fulfilled (in part) the requirements flowing from the principles of natural justice.

10. The Appellant has also argued that the SEC has provided only a limited inspection of the record and has failed to provide certified copies of the same. In so far as the first contention is concerned, we have seen on the record (and which has been admitted by the Appellant) that two opportunities of inspection were given and both were availed by the Appellant. Furthermore, it has now become clear that the full record was presented the Appellant minus only the legal opinion removed in the presence of the Appellant and his legal counsel. We, therefore, are of the considered view that two full inspections of the record were granted. With respect to the Appellant's argument that the non-provisioning of certified copies effectively restrained the Appellant from providing full replies to the SEC's requests for information, we believe that the same is not tenable. In his letter dated 27 November, 2001, Mr. Tariq Aziz argued, in paragraph 3.3 thereof, that uncertified copies are no copies at all and that it was his client's right, for the purposes of a fair and judicious hearing before the single Commissioner, Appellate Bench and Hon'ble High Court, to be provided such certified copies. We, however, find these arguments to lack legal force. The Appellant has acknowledged and admitted that copies of the record were provided to him. However, the Appellant has at no point in time, either

before the single Commissioner or us, refuted the genuine nature of the copies he has obtained. The Appellant has also been unable to support the argument that he was prevented from providing a full reply to the letters dated 4 January, 2001 and 8 October, 2001. We observe that the information sought should, in fact, constitute knowledge and documents within the exclusive possession and control of the Appellant as required under Rule 8 of the Securities and Exchange Rules, 1971. We are, therefore, in no doubt that the Appellant's plea is not substantiated either in law or fact.

11. As for the argument put forward by the Appellant that Mr. Shahid Ghaffar was found by the Hon'ble Justice Chowhan to have been biased, we see nowhere in the order dated 27 April, 2001 any finding to this effect. In fact, no evidence appears in the said order to have even been adduced before the Hon'ble Justice to support such a contention. This interpretation is further supported by the Appellant's own admission found in paragraph 5 of his Review Petition No. 8/2001. Instead, the Hon'ble Justice does show good judgment in ensuring the Appellant does not "nourish any doubt" as to the impartiality of the regulator, a viewpoint shared by the SEC when accepting the Hon'ble Justice's viewpoint. Pursuant to the foregoing, we see no substance to the Appellant's allegations that Mr. Aamir Masood, being directly under the control of Mr. Shahid Ghaffar, caused any bias whatsoever. In fact, it is abundantly clear that Mr. Shahid Ghaffar played no role in the investigation of the Appellant after the order dated 27 April, 2001 and that Mr. Aamir Masood was directly under the control of the single Commissioner for the purposes of the investigation and prosecution. Furthermore, the single Commissioner himself heard the Appellant and passed the impugned order.

12. We are also satisfied with the reply provided in the letter dated 20 August, 2001 concerning the removal of the legal opinion from the records as the same constituted documents covered by counsel-client privilege. Indeed, even the Appellant has not refuted the fact that the said opinion was removed in his presence.

13. The single Commissioner has, in paragraph 60(v) of the impugned order, found, over and above the various violations of law enunciated in paragraph 60(i) to (iv), the Appellant to have failed in observing the Code of Conduct of the Brokers and Agents Registration Rules, 2001. In this respect, we do not agree with the Appellant's argument that the same could not be invoked as the said violations occurred before the notification of the Rules. The Appellant was to provide complete, accurate and timely replies to the letters dated 4 January, 2001 and 8 October, 2001. With respect to the former, an incomplete reply was found to have been provided in September and a further incomplete reply in November to the said second letter of the single Commissioner. Both these omissions to provide information and false statements made by the Appellant to the SEC came well after the notification of the Brokers and Agents Registration Rules, 2001. This, in our view, does constitute a failure on the part of the Appellant to maintain high standards of integrity, promptitude and fairness as also provides in the Memorandum of Association of the ISE. Further elaboration on the Appellant's conduct is deliberated upon hereunder.

14. We are in agreement with the decision of Mr. Rasheed-ud-Din, the then Member, CLA, reported in 1986 MLD 2555. In this respect, we would like to say that a great deal of powers have been given those entrusted with an enquiry. The intention of the law makers is evident in the Securities and Exchange Ordinance,

1969, in that, having empowered the regulator with quasi-judicial authority, a commensurate degree of investigatory powers were also bestowed without which quasi-judicial empowerment would surely become a nullity. As such, it is the statutory duty of every person upon whom regulatory control is exercised to provide information and evidence comprehensively and in a correct, proper and timely fashion. Furthermore, the role of a regulator in an investigation is to delve into the facts of a particular case with vision and an analytical mind. However, it is only after such an investigation is finalized that a regulator must come to the decision on whether or not to prosecute. As such, the principles of natural justice and fair play do not fall within the domain of investigations and appear at the moment where a prosecution is initiated. We, therefore, fail to appreciate the Appellant's need for inspection or copies of records before prosecution as the mere fact of an investigation does not threaten any right or property of the investigated and, as such, inspection and the provisioning of records was done prematurely.

15. In view of what is stated in the preceding paragraph, it is highlighted that there is a statutory duty of the regulated to provide information and evidence in a comprehensive, timely and accurate manner. The SEC is duty bound under the preamble of the Securities and Exchange Commission of Pakistan Act, 1997 to beneficially regulate the capital markets and, to do so, its primary function is that of an acquirer of information. It is only upon such acquisition that a regulator can effectively protect investors and, indeed, the capital markets as a whole. It is in this light, that we are particularly dismayed by the conduct of the Appellant. The findings of the single Commissioner in the impugned order as to the Appellant having provided incomplete replies (noted in the portions dealing with "Allegation 1" and "Allegation 2") and a false statement (noted in the portions dealing with "Allegation 3") clearly exhibit, in our view, the Appellant's *mala fide* towards the enquiry. This view is supported by the Appellant's production of further evidence directly relevant to the matters before the single Commissioner at the time of the final hearing rather than when first required under law. Furthermore, we have also noticed that the single Commissioner has, at paragraphs 47 to 52, found the Appellant to have taken contradictory stands before a court of law and the SEC.

16. In view of the foregoing, we see no reason to interfere with the impugned order, which is hereby maintained. Accordingly the Appeal stands dismissed.

Announced : 30 July, 2002

(N.K. SHAHANI)
Commissioner
(Insurance & Information Technology)

(M. ZAFAR-UL-HAQ HIJAZI)
Commissioner
(Company Law)