



**BEFORE APPELLATE BENCH NO.I**

**In the matter of**

**Appeal No. 1 of 2005**

Pakistan Industrial Credit & Investment Corporation Ltd  
State Life Building No.1  
I.I Chundrigar Road  
Karachi ..... Appellant

Versus

Commissioner (Securities Market Division)  
SEC Islamabad .....Respondent

Date of Impugned Order 31-12-2004

Date of Hearing 30-03-2005

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**Present:**

Iqbal L. Bawaney, Advocate & M. Farid Alam for the Appellant

Imran Inayat Butt, Director SEC for Respondent



## ORDER

1. This appeal has been filed by Pakistan Industrial Credit & Investment Corporation Ltd ('PICIC') under section 33 of the Securities & Exchange Commission of Pakistan Act, 1997 ('SECP Act') against an order dated 31-12-2004 (the 'Impugned Order') passed by Commissioner (Securities Market Division).

2. Brief facts of the case are that on 25-06-2004, the trading activities in PICIC Investment Fund ('PIF') and PICIC Growth Fund ('PGF') were observed to be unusual in terms of price movement and turnover. The price of PIF was in the range of Rs.17.35 and Rs.17.70 during most part of the day. However, abnormal turnover of 73% of the total turnover of the day was observed in the last three minutes of the closing of the market which increased the certificate price from Rs.17.50 to Rs.18.95 and the PIF closed at its day high. Similarly, the price of PGF was in the range of Rs.45.40 and Rs.46.40 during most part of the day. However, unusual turnover of 21% of the total turnover of the day was observed in last three minutes of the closing of the market which caused the price of PGF to rise by Rs.1.50 to Rs.47.50.

3. The Commission obtained the details of trading which took place in the certificates of PIF and PGF from the Karachi Stock Exchange ('KSE') in order to determine the causes for such abrupt increase in their prices and turnover. Based on the information received from KSE and subsequent information received from the members of KSE, it was revealed that PICIC actively traded in the certificates of PIF and PGF on 25-06-2004. Moreover, it was also observed that PICIC was the major buyer in the last three minutes of the trading session. PICIC bought 1,480,500 certificates (76% of total turnover) of PIF on 25-06-2004 including 1,387,500 certificates in the last three minutes before the closing of market. Similarly PICIC also bought 1,303,500 certificates of PGF including 1,032,000 certificates in the last three minutes before the closing of the market through First Equity Modaraba. The above mentioned conduct by PICIC, prima facie, appeared to be violation of Section 17 of the Securities and Exchange Ordinance, 1969



(the 'Ordinance') as it gave the appearance of active trading by pushing the prices up with a view to induce others. Consequently, a show cause notice dated 12-10-2004 was served on PICIC calling upon to show cause as to why action may not be taken against it under section 17 of the Ordinance. An opportunity of personal hearing was provided to PICIC by Commissioner (SM). However, not being satisfied with the arguments presented before him, Commissioner (SM) found that the trading done by PICIC on 25-06-2005 constituted as fraud, deceit and manipulation on innocent investors in terms of section 17 of the Ordinance. Commissioner (SM) consequently imposed a maximum fine of Rs.500,000/- on PICIC under section 24 of the Ordinance.

4. PICIC consequently filed the present appeal under section 33 of the SECP Act before the Appellate Bench. The appeal was heard on 30-03-2005 when Mr. Iqbal L. Bawaney, Advocate and M. Farid Alam appeared for PICIC and Mr. Imran Inayat Butt, Director SEC appeared for Commissioner (SM).

5. Mr. Bawaney argued at length on the merits of the case. However, as a preliminary objection he contended that the Impugned Order was unlawful and without jurisdiction, as section 24 of the Ordinance does not empower the Commission to impose a penalty for violation of section 17. He stated that the cognizance of offence under section 24 read with section 25 could only be taken by the court of Session upon a complaint in writing made by an officer authorized in this behalf by the Commission. He argued that the Commission only had the power to impose penalty under section 22, as section 22 expressly confers this power on the Commission. However, for violation of section 17, penalty cannot be imposed under section 22 by the Commission as section 24 specifically provides for punishment for a violation of section 17. He contended that the Impugned Order deserves to be set aside on this account alone. Mr. Imran Inayat Butt conceded that the Commission did not have the power to impose the punishment of imprisonment under section 24, however he argued that the Commission could impose the fine specified in section 24.



6. We have examined the above contentions presented by both the parties. Section 24 and 25 of the Ordinance provide as follows.

24. **Penalty.** (1) *Whoever contravenes the provisions of section 17 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five hundred thousand rupees, or with both.*

(2) *Where the person guilty of an offence referred to in sub-section (1) is a company or other body corporate, every director, manager or other officer responsible for the conduct of its affairs shall, unless he proves that the offence was committed without his knowledge or that he exercised all diligence to prevent its commission, be deemed to be guilty of the offence.*

25. **Cognizance of offence.-** *No court shall take cognizance of any offence punishable under this ordinance except on a report in writing of the facts constituting the offence by an officer authorised in this behalf by the Commission; and no court inferior to that of a court of Session shall try any such offence.*

7. A penalty for contravention of section 17 has been provided in section 24 which includes imprisonment for a term which may extend to three years, or a fine which may extend to rupees five hundred thousand or both. Section 25 specifies that the cognizance of all offences punishable under the Ordinance is to be taken by a court not inferior to court of Session. The issue which arises is whether the court of Session has been granted the exclusive jurisdiction to take cognizance of the offence punishable under section 24 of the Ordinance. Similarly, what needs to be seen is whether the court of Session has been granted the exclusive jurisdiction to take cognizance of contravention of section 17. From the wording of section 25, it seems that the court of Session has been provided the jurisdiction to take cognizance of any and all offences punishable under the Ordinance. However, this inference is obviously in contradiction to the provisions of section 22 of the Ordinance which specifically provides the power to the Commission to impose penalty for *inter alia*, any contravention of the provisions of the Ordinance. These two provisions therefore seem to be in conflict with each other.



8. As far as the question whether the Commission can impose penalty under section 24 of the Ordinance, we are of the opinion that it cannot. Mr. Butt has tried to argue that the provision of section 24 can be bifurcated to read that the punishment of imprisonment provided under section 24 can only be imposed by the court of Session, whereas, the fine provided under section 24 may be imposed by the Commission. We cannot agree to this argument. When cognizance is granted to a court or tribunal under a statute, it is for the offence and not in terms of types of punishments prescribed in the same provision. There is no disagreement that the power to impose the punishment of imprisonment can only be exercised by the court of Session. That being the case, there is weight in the argument that the Commissioner (SM) could not have imposed the punishment of fine prescribed in section 24 on PICIC as the same provision cannot be split in two to give jurisdiction to different forums.

9. However, in our opinion this does not mean that jurisdiction cannot be granted to two forums at all. What needs to be seen, as already stated above, is whether the court of Session has been granted the exclusive jurisdiction to try the contravention of section 17. We believe that that is not the case. Section 22 of the Ordinance empowers the Commission to impose penalty for contraventions of the whole of the Ordinance, which also includes section 17. Also, the term 'contravention or contravenes' has been used in both the sections 22 and 24. Therefore there is no reason why Commission could not have taken cognizance of the contravention committed by PICIC under section 22. We understand that the two important contentions that there may be against granting of dual jurisdiction are (a) the apprehension of multiplicity of proceedings and (b) the issue of double jeopardy. However, as cognizance of any offence under the Ordinance cannot be taken by the court of Session unless a complaint in writing is made to it by the Commission, there remains no fear of multiplicity of proceedings. Similarly, sub-section (3) of section 22 takes care of any possibility of multiplicity of proceedings as well as double jeopardy when it provides,



(3) *No prosecution for an offence against this Ordinance shall be instituted in respect of the same facts on which a penalty has been imposed under this section.*

10. More importantly, to our minds this provision clearly implies that in fact cognizance can be taken by the Commission under section 22 for any offence under the Ordinance, including section 17. The only limitation being that where a penalty has been imposed under section 22, the Commission cannot then prosecute the same person on the same facts under section 24. According to the principles of statutory construction if there is any conflict between two provisions of a statute, endeavor should be made to harmonize and reconcile every part so that each shall be effective. Therefore in order to make both the provisions contained in section 22 and section 24 effective, this is the best interpretation which can be given. More importantly, we must look at the objects of the Ordinance, which provide for “*the protection of investors, regulation of markets and dealings in securities*”. Similarly, the objects of establishment of the Securities and Exchange Commission of Pakistan, is the beneficial regulation of capital market and the protection of investors. We feel it would amount to defeating the entire purpose and objects of two primary legislations if it were to be said that the Commission, whose primary function is the protection of innocent investors, did not have the power to take cognizance of such a serious offence of market manipulation. In fact, in our view, keeping in mind the significance and gravity of the said offence, the legislature has left the discretion with the Commission to decide whether the offence is severe enough to prosecute the offenders in the court of Session or impose penalty itself. Our view is obviously fortified by the recent happenings on the country’s stock exchanges. We therefore are of the opinion that the Commission does have the jurisdiction to take cognizance of the contravention of section 17. However, it can either impose the penalty under section 22 of the Ordinance or file a criminal complaint with the court of Session. In the present case, the Commissioner (SM) wrongly imposed the penalty provided in section 24 on PICIC.



11. Another discrepancy we found in the Impugned Order was that whereas the Commissioner (SM) went ahead to find PICIC guilty of the offence under section 17 and imposed fine under sub-section (1) of section 24, he did not take into consideration sub-section (2) of section 24 which provides:

*(2) Where the person guilty of an offence referred to in sub-section (1) is a company or other body corporate, every director, manager or other officer responsible for the conduct of its affairs shall, unless he proves that the offence was committed without his knowledge or that he exercised all diligence to prevent its commission, be deemed to be guilty of the offence.*

Apparently, if he had come to the conclusion that PICIC being a body corporate was guilty under sub-section (1) of section 24, then, unless the directors and other responsible officers of PICIC proved their innocence, they should have been punished. Of course this deeming provision would not apply if PICIC had been penalized under section 22 of the Ordinance.

12. For reasons stated above, and without going into merits of the case, we set aside the Impugned Order passed by the Commissioner (SM). He may decide to adjudicate on this issue afresh. The appeal is disposed off.

**(ETRAT H. RIZVI)**  
Commissioner

**(SALMAN ALI SHAIKH)**  
Commissioner

Announced in Islamabad on April 7, 2005