



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

Review Application No. 04 of 2017

In the matter of

Appeal No. 94 of 2016

M/s. State Life Insurance Corporation of Pakistan

Versus

Commissioner Insurance and others

Date of hearing:

June 22, 2023

Present:

For the Applicant:

Mr. Waqas Asad Sheikh, Advocate

For the Respondents:

1. Mr. Hammad Javed, Additional Director, Adjudication 1, SECP
2. Mr. Shafique Ur Rehman, Additional Joint Director, Adjudication 1, SECP
3. Mr. Athar Ali Shah (legal heir of Mr. Syed Aijaz Ali Shah)

ORDER

1. This Order shall dispose of the Review Application No. 04 of 2017 filed by M/s. State Life Insurance Corporation of Pakistan (the "Applicant") against the order dated April 4, 2017 (the "Impugned Order") passed by the Appellate Bench (the "Bench") in Appeal No. 94 of 2016 (the "Appeal").
2. The brief facts of the case are that while disposing of the Appeal, the Bench vide Impugned Order issued direction to the Applicant to compensate the loss suffered by the policyholder, and imposed a penalty under sections 76(4), 76(5), and 156 of the Insurance Ordinance, 2000 (the "Ordinance") on the Applicant.
3. The instant Review Application has been filed *inter alia* on the ground that the Bench did not consider the fact that the Ordinance explicitly bars the Securities and Exchange Commission of



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Pakistan (the "Commission") to take cognizance of disputes between the insurer and policyholder. In support of the said argument, the Applicant relied on the stance of the Commission taken in civil suit No. 272/2006 decided by learned Senior Civil Judge, Karachi. Moreover, the Applicant has cited the Commission's written reply in R.A. No. 143 of 2013 in the Hon'ble High Court of Sindh, Karachi, where the Commission in its statement submitted that 147 complaints received against the Applicant in the last five years have been forwarded to the Applicant for their resolution, whereas 05 complaints have been forwarded to the learned Insurance Ombudsman, and notices were also issued to the Applicant with the direction to improve its existing complaints handling system in order to provide expeditious relief to the aggrieved policyholders/claimants. The Applicant argued that the said stance of the Commission operates as an estoppel and thus the Impugned Order is liable to be set-aside same being *coram non judice* to adjudicate the disputes between an insurer and policyholders.

4. The Respondent controverted the contentions of the Applicant by asserting that the Preamble of the Ordinance clearly mandates the Commission to safeguard the interest of policyholders. Moreover, the Respondent contends that in this particular case, the Applicant also committed violation of section 76 of the Ordinance and further emphasized that the Commission is empowered under section 60 of the *ibid* to issue directions to insurance companies, hence, prayed that the instant Review Applicant is liable to be dismissed for not being able to highlight any illegality in the Impugned Order.
5. The Bench has heard the parties and perused the record. The record transpires that the Respondent vide Order in Original dated October 24, 2016 did not impose any penalty on the Applicant on account of the failure to pay the admitted/agreed profit rather issued a direction under section 60 of the Ordinance. Whereas, the Bench vide Impugned Order modified the Order in Original and issued a direction to compensate the loss suffered by the policyholder and also imposed a penalty on the Applicant under sections 76 and 156 of the Ordinance. In this context, an extract of the Impugned Order is reproduced hereinunder,

"...the Appellant never informed the Respondent No.3 that the provided cash surrender value in the illustration was caused due to computer software error. Furthermore, the Appellant has also not communicated the new cash surrender value to the Respondent No.3, which is sufficient to prove the malafide intention of the Appellant and willful default. In result, thereof, the Respondent No.3 continued to pay the annual premium of the



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policy for ten years, which eventually led the Respondent No.3 to suffer the loss on maturity. Moreover, it is sufficient for the Respondents 1 and 2 to show that the Appellant had engaged in conduct which was likely to mislead the Respondent No.3 as a policyholder. The Appellant had also not informed the Respondent No.3 about the cash surrender value because there was apprehension that he may take a decision to discontinue/withdraw the policy...”

6. It is pertinent to mention here that the Applicant, at any stage of the proceedings in the Appeal or the instant Review Application, did not contest the aforementioned fact and has only raised question with respect to jurisdiction of the Commission to pass the Order in Original. The Bench is of the view that the Ordinance as a whole empowers the Commission as a regulator *inter alia* to take all necessary steps to ensure the interest of policyholders.
7. The contention of the Applicant that in terms of the section 122(3) of the Ordinance the Commission lacks jurisdiction to entertain the complaints of policyholders is misconstrued, as the said provision bars the jurisdiction of a ‘Court’ (as defined in clause (xvi) of section 2 of the Ordinance), and not the Commission which is empowered to entertain the complaints of policyholders under the provisions of the Ordinance and the Securities and Exchange Commission of Pakistan Act, 1997. Moreover, it is pertinent to mention here that sections 125 and 127 of the Ordinance, deal with appointment, and jurisdiction, functions and powers of the Insurance Ombudsman, respectively, which does not in any manner intervene with the powers of the Commission as envisaged under the law. Furthermore, reliance of the Applicant on Circular 14 of 2006 dated September 25, 2006, that too for the first time at review stage, is misplaced for the reason that the show-cause notice in the matter was issued on June 06, 2016 and at that point in time Circular No. 05 of 2016 was already in field as the same was issued on January 26, 2016, and later its annexure was amended vide Circular No. 27 of 2020 (dated September 04, 2020). In this regard, the Bench has adequately dealt with the applicability of Circular No. 05 of 2016 in para 11 of the Impugned Order. In the instant matter the Applicant admitted that higher cash surrender value was shown to the policyholder due to a malfunction of a software program and *inter alia* for the said reason direction to compensate the loss suffered by the policyholder was issued and penalty under sections 76 and 156 of the Ordinance were imposed vide Impugned Order. As the Bench vide Impugned Order has already determined the question of jurisdiction in view of facts of the instant matter, thus the Bench is of view that the Applicant failed to highlight any anomaly or



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illegality in the Impugned Order, hence, the same does not require any interference in review jurisdiction of the Bench.

8. In view of the above, the instant Review Application is dismissed with no order as to costs.

Abdul Rehman Warraich
Commissioner

Akif Saeed
Chairman/ Commissioner

Announced on: **15 SEP 2023**