

# IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Mohammad Ali Mazhar** and **Agha Faisal, JJ.**

C P D 5884 of 2017 : East West Insurance Co. Ltd. vs.  
The President of Pakistan & Others

For the Petitioner : Saiyed Younus Sayed, Advocate

For the Respondent 3 : Mr. Mazhar Imtiaz Lari, Advocate

Date of Hearing : 22.08.2019

Date of Announcement : 22.08.2019

## JUDGMENT

**Agha Faisal, J:** This matter pertains to an insurance claim denied by the petitioner insurance company to the respondent No.3, being its policy holder. The matter was escalated before the Federal Insurance Ombudsman vide Complaint 298 of 2016, and by order dated 4<sup>th</sup> January, 2017 (“Ombudsman Order”) it was maintained that in view of an amicable settlement having been reached between the parties, the agreed amount was to be paid to the respondent No.3. The petitioner filed a recall application seeking recall of the Ombudsman Order upon the premise that no amicable settlement had ever been agreed. The Federal Insurance Ombudsman recalled its earlier order, vide order dated 02.05.2017 (“Recall Order”), and directed that the complaint shall be heard afresh upon its merit after giving due opportunity to both the sides. Notwithstanding the fact that the Recall Order had been rendered upon the petitioner’s application, the petitioner proceeded to assail the same order before the President. The order passed by the President dated 7<sup>th</sup> August, 2017 (“President’s Order”) recorded that the parties had once again reached a settlement, the quantification whereof was lower than that reflected to have been agreed earlier, and directed the petitioner to settle the claim within one month of the receipt of the order. The petitioner filed the present Constitutional petition *inter alia* assailing the President’s Order.

2. Learned counsel for the petitioner challenged the President’s Order claiming that no jurisdiction was vested in him to decide the

matter and further that he acted capriciously, arbitrarily, whimsically and in colorable exercise of powers.

3. Learned counsel for the respondent No.3 on the other hand submitted that the initial order of the Ombudsman was passed with the consent of the parties, however, the same was recalled at upon the resiling of the petitioner from its earlier position. It was submitted that the President's Order once again reflected the consent of the petitioner, however, the petitioner is seeking to resile from the said position in a continued attempt to subvert the due process of law. Learned counsel submitted that the present petition was devoid of merit, therefore, it was imperative that the same be dismissed forthwith.

4. We have considered the arguments arrayed before us and have also examined the respective orders to which our attention was drawn. Prior to initiating a discussion upon the present controversy it may be appropriate to reproduce the pertinent constituents of the successive orders under scrutiny.

#### Ombudsman Order

“12. In the light of above facts, and in recognition of the process of amicable settlement continued between the parties after intervention of this office, which brought both the parties to an agreeable settlement at Rs.4.00 million, I hereby direct the Respondent Insurance Company to settle the claim by paying Rs.4.00 million to the Complainant within one month of the receipt of this order.”

#### Recall Order

“11. After going through the written and oral submissions of both the parties, I am of the opinion that agreement of amicable settlement between the parties made before this forum becomes binding on them and the law does not provide its retrieval by any of the parties but considering the stance of Applicant company that they had never agreed on such amicable settlement, it is imperative that the mater may be decided on its merit after in-depth inquiry, therefore, without going into the details of other grounds taken by the Applicant Company, I hereby order to recall the order dated 04.01.2017. The complaint will be heard fresh after giving due opportunity to both the parties for decision on merit of the complaint.”

### President's Order

“The decision of learned Federal Insurance Ombudsman is justified up to the claim of Rs.3 million only (which was also accepted by the Insurance Company before the FIO and now before the appellant forum).”

(Underline added for emphasis.)

5. The record arrayed before us demonstrates that the petitioner has continually reneged from its own representations. We have noted from the Recall Order that it was the petitioner itself that sought to renege on its earlier stance and that the same had been allowed by the Ombudsman while directing that the matter be proceeded with on its merits. Even though the said outcome was arrived at upon the application of the petitioner, it chose to assail the said order in any event. A bare perusal of the President's Order records that once again the liability of the petitioner was accepted before the said forum, however, it appears that the petitioner is again seeking to resile from the same by resort to the writ jurisdiction of this Court.

6. The objections with regard to the jurisdiction of the President are without foundation in view of Section 14 of the Federal Ombudsman Institutional Reforms Act, 2013 (“Act”) which stipulates as follows:

“14. Representation (1) Any person or party aggrieved by a decision, order, findings or recommendations of an Ombudsman may file representation to the President within thirty days of the decision, order, findings or recommendations.”

(Underline added for emphasis.)

7. Section 24 of the Act gives the said enactment primacy over any competing provisions of the law and the overriding effect is enunciated as follows:

“24. Overriding effect.---(1) The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

(2) In case there is a conflict between the provisions of this Act and the relevant legislation, the provisions of this Act to the extent of the inconsistency, shall prevail.”

The term “relevant legislation”, employed in the verbiage of section 24(2) supra, is defined in section 2(c) of the Act, as follows:

“relevant legislation” means, the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O. No.1 of 1983), the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (XXXV of 2000), the Insurance Ordinance, 2000 (Ordinance No.XXXIX of 2000), the Banking Companies Ordinance, 1962 (LVII of 1962), and the Protection against Harassment of Women at the Workplace act, 2010 (IV of 2010).”

(Underline added for emphasis.)

It is apparent that the forum delineated vide the Act for maintaining a challenge to an ombudsman’s order was the President of Pakistan, therefore, the objection to jurisdiction is without merit.

8. Learned counsel for the petitioner has been unable to point out any constituent of the President’ Order which could be construed as capricious, arbitrary, whimsical and / or a colorable exercise of power.

9. In view of the reasoning and rational contained herein, we are of the considered view that no case has been made out for interference with respect to the President’s Order and/or the Ombudsman Order, hence, this petition is determined to be devoid of merit and dismissed with no orders as to costs.

J U D G E

J U D G E

Karachi.

*Farooq PS/\**