

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

Ahmed Ali M. Shaikh, CJ  
and Yousuf Ali Sayeed, J

**C.P No. D-3821 of 2016**

Petitioners : KSE Stockbrokers Association and others, through Yousuf Ali, Advocate.

Respondents Nos. 1, 3 & 4 : Securities & Exchange Commission of Pakistan, through Furqan Ali, Advocate.

Respondent No.5 : Managing Director, Pakistan Stock Exchange Limited (PSX), through Masood Anwar Osaf, Advocate.

Mr. Khaleeq Ahmed, D.A.G.

Date of hearing : 25.03.2022

**JUDGMENT**

**YOUSUF ALI SAYEED, J.** - The Petitioners, being an Association of stockbrokers of the Pakistan Stock Exchange Limited and certain licensed brokerage houses who are its constituent members, have invoked the jurisdiction of this Court under Article 199 of the Constitution impugning Circular Nos. 09/2015 dated 08.04.2015 and 47/2015 dated 30.12.2015 (hereinafter referred to individually as “**Circular 9**” and “**Circular 47**” respectively, and collectively as the “**Impugned Circulars**”) issued by the Respondent No.3, the Securities and Exchange Commission of Pakistan (the “**Commission**”) in purported exercise of powers under Section 40-B of the Securities and Exchange Commission of Pakistan Act, 1997 (the “**1997 Act**”), whereby certain training requirements and certifications were imposed in respect of particular employees/personnel of the brokerage houses acting as ‘intermediaries’.

2. Succinctly stated, the case of the Petitioners is that notwithstanding the reference to Section 40-B as to source of the power underpinning the Impugned Circulars, the same are *ultra vires*, lacking the backing of that Section or any other substantive provisions of the Act, whether Section 20 or 22 or otherwise, and that the mandatory certifications envisaged in terms thereof violate their fundamental rights guaranteed under Articles 4, 8 and 18 of the Constitution. Hence declarations have been elicited to that effect along with a permanent injunction to restrain the Respondent from taking any action to give implement or otherwise give effect to the Impugned Circulars as against them or their officers and employees.
  
3. Proceeding with his submissions, learned counsel for the Petitioners argued that the Impugned Circulars were beyond the competence of the Commission as there was no substantive provision of the 1997 Act that authorised and empowered it to impose the envisaged training and certification requirements. Alternatively, it was argued that the subjects addressed through the Impugned Circulars constituted a policy decision, which fell within the domain of the Securities and Exchange Policy Board (the “**Board**”), with attention being invited to Section 21(2) of the 1997 Act, which reads as follows:

“(2) All policy decisions, including any change in previously established policy, in respect of all and any matters within the jurisdiction of the Commission shall be made only by the Board. The Board may make policy decisions *suo motu* or adopt such policy recommendations of the Commission, with or without modification, as the Board may deem fit in its sole discretion.”

4. Opposing the Petition, learned counsel for the Respondents Nos. 1, 3 and 4 argued that the Commission had been established vide the 1997 Act inter alia “..for the beneficial regulation of the capital markets, superintendence and control of corporate entitles and for matters connected therewith...” and mandated with the responsibility of protecting investors interests and ensuring fair practices, hence was merely fulfilling its statutory duties through the Impugned Circulars, was to inculcate good governance and safeguard the public interest. It was argued that as per Section 20 of the 1997 Act, the Commission had all powers as were necessary to perform its functions, whereas Section 40B thereof empowered it to issue directives and guidelines for carrying out the purposes of the statute and rules and regulations framed thereunder. More specifically, Section 20(4) empowered the Commission to regulate the working of stock brokers, investment advisers, portfolio managers, promote investors' education and training of intermediaries of securities markets, and regulate professionals within the financial services market. It was pointed out that Section 20(6) provides that the Commission shall strive to improve the performance of companies and the securities markets as well as provide adequate protection for investors. It was submitted that the Impugned Circulars were thus within its competence. Moreover, it was emphasized that the Impugned Circulars did not prohibit a person from engaging in broking, but only required them to undergo basic training for compliance of the applicable rules and regulations associated with the requirements of their profession. It was also pointed out that Circular 9 had been preceded by Circular 34 of 2009, imposing similar requirements, which had not been challenged. For his part, counsel for the Respondent No.5 adopted the arguments.

5. We have heard the arguments advanced and examined the Impugned Circulars from that standpoint in light of the provisions of the 1997 Act.
6. For purpose of reference, the Impugned Circulars are reproduced herein below:

**“Securities and Exchange Commission of Pakistan  
Securities Market Division  
Licensing, and Capital Issue Department**

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No.4(2/33)SE/SMD/2015

April 8, 2015

**CIRCULAR No. 09 OF 2015**

Attention:

1. Karachi Stock Exchange Limited,
2. Lahore Stock Exchange Limited,
3. Islamabad Stock Exchange Limited,
4. Pakistan Mercantile Exchange Limited,
5. National Clearing Company of Pakistan Limited,
6. Central Depository Company of Pakistan Limited,

TREC Holder/Brokers of:

- i. Karachi Stock Exchange Limited,
- ii. Lahore Stock Exchange Limited,
- iii. Islamabad Stock Exchange Limited,
- iv. Pakistan Mercantile Exchange Limited

**SUBJECT: MANDATORY CERTIFICATION FOR THE PROFESSIONS OF CAPITAL MARKET**

In order to develop human capital in the financial markets and building investor confidence by enhancing professional competence of individuals working in these markets, the Securities and Exchange Commission of Pakistan, in exercise of its powers conferred under Section 40(B) of the Securities and Exchange Commission of Pakistan Act, 1997, directs the following to ensure compliance with the below mentioned requirements:-

(A) For Brokerage Houses (Brokers/TREC holders)

- i. All existing professionals employed by the brokerage houses who are engaged in the following activities related to securities shall obtain Pakistan Markets and Regulation Program (PMR) and Fundamentals of Capital Market (FCM) certifications currently being offered by Institute of Capital Market (ICM) within 18 months of issuance of this circular:-
  - a. Sale and marketing - those interfacing and advising clients to buy, sell or hold listed and traded instruments:
  - b. Customer relations - those interacting with the clients for account opening including completion of KYC formalities, etc.;
  - c. Research Analysts carrying out fundamental and technical analysis, whether it is made public or not;
  - d. Trading - traders receiving and / or executing client's or proprietary orders:

- e. Risk Management - those managing both the company and client risks;
- f. Settlements working in the back office including those interacting with depository and clearing company, and managing client accounts; and
- g. Compliance - those engaged in ensuring compliance with the all applicable capital market regulatory framework.

ii. In addition to above certifications, all existing professionals engaged or employed by brokerage house for sales function i.e. advising the clients about investments shall obtain Stock Broker Certification (SBC) currently being offered by ICM by December 31, 2016.

iii. All new professionals joining brokerage house after the date of the issuance of this circular and engaged in the activities as stated above shall obtain PMR and FCM certification within 12 months of their joining. However, if a new professional is engaged in sales function of brokerage house i.e. advising the clients about investments, he/she shall obtain SBC in addition to PMR and FCM certification within 12 months of their joining.

(B) For Registered Exchange, Depository. Clearing company

i. All existing professionals employed by Exchanges, Depository or Clearing company for the following activities shall obtain Pakistan Markets and Regulation Program (PMR) and Fundamentals of Capital Market (FCM) certifications of ICM within 18 months of the issuance of this circular:-

- a. Customer relations those interacting with the clients for account opening including completion of KYC formalities, etc.;
- b. Risk Management - those managing both the business and client risks;
- c. Clearing & Settlements - those responsible for clearing and settlement;
- d. Compliance those engaged in ensuring compliance with the all applicable capital market regulatory framework;
- e. Trustee & Custodian Services - those engaged in providing trustee and custodian services.

ii. All new professionals joining Exchanges, Depository or Clearing company after the date of the issuance of this circular, and performing activities referred in para 2 (B)(i) above, shall obtain PMR and FCM certifications within 12 months of their joining.

3. Professionals desirous of availing certification through grandfathering provision should approach ICM for details and this provision will lapse after December 31, 2015.

4. All above referred shall ensure that their employees who obtain certification through exam or grandfathering shall comply with all certification requirements.

5. All the professionals working with or working for the aforesaid entities in respect of above defined activities shall comply with the applicable mandatory certification requirement. It shall be responsibility of entities to ensure compliance of above requirements by any third party to whom any of the above mentioned function or activity has been delegated.



7. A perusal of the Impugned Circulars reflects that the same essentially seek to implement a regime for enhancing the quality and competence of personnel operating in the financial markets by educating them and furthering their understanding of the applicable rules and regulations laying down the statutory regulatory framework governing the relevant sector so as to thereby augment their performance as well as advance the cause of protecting the interests of investors. No case was made out during the course of arguments as to how such measures were violative of fundamental rights.
8. When the 1997 Act is examined, it merits consideration that Section 40B thereof empowers the Commission to issue directives, circulars and guidelines for giving effect to the statute, stipulating as follows:

**40B. Power of the Commission to issue directives, circulars, guidelines, etc.** The Commission shall have the power to issue such directives, Codes, guidelines, circulars or notifications as are necessary to carry out the purposes of this Act, the rules and regulations made thereunder and any administered legislation.

9. Furthermore, when the Impugned Circulars are considered for determining whether the subjects addressed therein fall within the scope of the 1997 Act and the competence of the Commission, it transpires that Section 20(1) thereof confers broad powers upon the Commission co-extensive to its functions, providing that :

**“20. Powers and functions of the Commission.** — (1) The Commission shall have all such powers as may be necessary to perform its duties and functions under this Act or any administered legislation.

10. The Commission's functions are in turn prescribed through Section 20(4), of which sub-sections 4(b), (d), (fa), (h), and (ja) are relevant for present purposes, stipulating that:

“(4) The Commission shall be responsible for the performance of the following functions:

...

(b) regulating the business in Stock Exchange (Commodity Exchange) and any other securities markets:

...

(d) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with the financial services markets in any manner;

...

(fa) establishing and regulating entities for the protection of investors;

(fb) promoting, encouraging and enforcing the proper conduct, competence and integrity of regulated persons;

...

(h) promoting investors' education and training of intermediaries operating in the financial services market;

...

(ja) regulating professionals who provide services within the financial services market;”

11. As such, in view of the specified functions of the Commission, as aforementioned, the subjects addressed through the Impugned Circulars appear to be well within its domain and competence.



12. As to the argument that the Impugned Circulars deal with matters of 'policy', hence fall within the domain of the "Board", it falls to be considered that as per Section 20(3), matters of policy are those as are identified by the Commission for consideration, in as much as that provision states that:

"(3) The Commission may, from time to time, identify the matters requiring the Board to make policy decisions and may also make recommendations regarding policy to the Board for its consideration."

13. Noting has been pointed out to show that the subject of the Impugned Circulars has been so identified by the Commission as a matter of policy for consideration by the Board, and the argument advanced on behalf of the Petitioner even otherwise does not serve to denude the Commission of its competence in view of the wording of Section 21(2).

14. In view of the foregoing it is manifest that the Petition is misconceived and devoid of force, thus stands dismissed accordingly.

Judge

Chief Justice

TariqAli/PA