

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

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

C.P No. D-1688 of 2017

M/s. Adamjee Insurance Company Ltd.....Petitioner

Versus

President of Pakistan and others.....Respondents

Mr. Abdul Rasheed Rajar, Advocate for the Petitioner.
Mr. Khaleeq Ahmed, D.A.G
Respondent No.3, in person.

Date of hearing : 01.06.2023

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner, an insurance company, has invoked the jurisdiction of this Court under Article 199 of the Constitution so as to impugn the Order dated 03.10.2016 made by the Respondent No.2, being the Federal Insurance Ombudsman, in Complaint No.21/2015 (the "**Complaint**"), directing the Petitioner to settle a claim made by the Respondent No.3 in the sum of Rs.500,000/-, as well as the Order subsequently emanating from the President's Secretariat on 05.01.2017, rejecting the representation made to the President of Pakistan under Section 14 of the Federal Ombudsmen Institutional Reforms Act, 2013.

2. The backdrop to the matter is that the Respondent No. 3 had availed the facility of an agricultural loan of Rs 500,000/- from Muslim Commercial Bank (MCB), Grain Market Branch, Mirpurkhas (the “**Bank**”) against the hypothecation of the cotton and sugarcane crop cultivated by him on his land measuring 12.09 acres situated in the area of Taluka Kot Ghulam Muhammad, District Mirpurkhas (the “**Subject Land**”), with the crop being insured under Policy No. PL-0411-301006-S39-000750 dated 12.04.2011, effective from that date to 11.04.2012 (the “**Policy**”), issued by the Petitioner under the framework of an Agreement dated 09.10.2008 (the “**Agreement**”) executed between it and the Bank.
3. Per the Respondent No.3, the Subject Land was inundated due to heavy rains in the month of August, 2011, with the crop thus being destroyed; prompting him to lodge a claim under the Policy. On denial of the claim, the Respondent No.3 firstly approached the Banking Mohtasib, but was unsuccessful in being able to obtain any substantial relief as against the Bank. He then subsequently approached the Insurance Tribunal while simultaneously filing the Complaint, but withdrew from the Tribunal so as to maintain the Complaint before the Respondent No.2, which then culminated in the Order dated 03.10.2016.
4. Learned counsel for the Petitioner submitted that it was the Bank which had entered into the Agreement with the Petitioner to cover its exposure in respect of the agricultural loans extended by it from time to time in the event that its security interest in the crop(s) hypothecated in its favour by its customer(s) were compromised by the vagaries of weather. Hence the Policy showed the Bank as the Petitioner’s customer and as the party that was insured, whereas the Respondent No.3 was merely

mentioned as a "Hypothecation Client". He submitted that the Agreement and Policy were thus intended to benefit the Bank and not the Respondent No.3. He submitted that it was for the Bank to make a claim under any policy issued under the framework of the Agreement, and adjust/offset proceeds against the liability of its customer, but whether or not it shared or passed on the benefit of the insurance claim was not a matter falling within the purview of the Petitioner.

5. He submitted that when the claim of the Respondent No.3 had been forwarded, the area where the Subject Land was situated was not included in the Notification dated 07.09.2011 issued by the Government of Sindh whereby various rain affected areas, including certain Dehs of District Mirpurkhas, had been declared as "calamity hit areas" with reference to the names of particular towns and villages, and only came to subsequently be so notified on 06.05.2014, by when the maximum limit of liability set in terms of the Agreement had already been exhausted. As such, the claim was rightly repudiated on both occasions. He argued that the Complaint could not have been entertained by the Respondent No.2, and that the Orders dated 03.10.2016 and 05.01.2017 (collectively, the "**Impugned Orders**") suffered from error and were liable to be set aside.
6. Conversely, the learned DAG and the Respondent No.3, who appeared in person, supported the Impugned Orders while submitting that the Subject Land had been flooded by rains within the validity of the Policy, resulting on destruction of the insured crop. However, on query posed, they conceded that the Policy was tied to the Agreement and governed by the terms and conditions set out therein.

7. We have considered the arguments advanced and examined the Impugned Orders in light of the material on record, particularly the Agreement and Policy on which the fate of the claim underpinning the Complaint hinges.

8. The jurisdiction of the Respondent No.2 is circumscribed by Section 127 of the Ordinance, which *inter alia* reads as follows:

“127. Jurisdiction, functions and powers of Insurance Ombudsman.- (1) The Insurance Ombudsman may on a complaint by any aggrieved person undertake any investigation into any allegation of mal-administration on the part of any insurance company

Provided that the Insurance Ombudsman shall not have any jurisdiction to investigate or inquire into any matters which –

(a) are within the jurisdiction of the Office of the Wafaqi Mohtasib under the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O. 1 of 1983) ; or

(b) are sub-judice before a court of competent jurisdiction or tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him.

(2) For the purposes of this section “mal-administration” includes

(a) a decision, process, recommendation, act of omission or commission which:

(i) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons; or

(ii) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or

(iii) is based on irrelevant grounds; or

(iv) involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and

(b)corruption, nepotism, neglect, inattention, inordinate delay, incompetence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities.

(3) ...

(4) ...

(5) ...”

9. That being said, a perusal of the Policy shows the Bank to be named as the customer as well as the party insured, and the Respondent No.3 being identified by name as what is termed a “Hypothecation Client” and the cotton and sugarcane cultivated on the Subject Land being described as the risk covered, with the sum insured being stated as Rs.500,000/- subject to payment of a premium of Rs.8750/-. The Policy goes on to narrate that:

“Cover provided under this policy is against unavoidable loss of crop or part thereof resulting directly from the perils such as excessive rains, drought hail storm insects/pest attach, cyclone and fire by lightening.

Period of insurance will commence from the date of sowing of crop(s) or date of this policy whichever is later. Use of two or more crops, sum insured shall be equally divided in all crops if not proportionate by the insured. Coverage terms & conditions, exclusions & provisions stated as per agreement dated 09.10.2008.”

[underlining added for emphasis]

10. In turn, the Agreement reflects the Petitioner and the Bank to be the parties, and records that the Bank is in the business of banking, and provides credit facilities to the farmers under its various Credit Schemes and that the parties intend to make an arrangement through the

Agreement for providing insurance cover for those credit schemes so as to define the arrangements of insurance, payment of premium, scope of coverage, responsibilities of both parties and settlement of claims. Towards that end, the Agreement records the rates of premium for the different agricultural schemes, including that of Crop Loan Insurance, with Clause 10 thereof specifying that:

“10. **Maximum Extent of Indemnity:** Maximum limit of liability of the scheme will be limited to 300% of the total premium collected in a year.”

11. From a plain reading of the Agreement and Policy, it is apparent that the Petitioner is correct in its contention that the purpose thereof was to safeguard the security interests of the Bank. Indeed, the essence of the arrangement is manifest from the claim tendered by the Respondent No.3 to the Petitioner, which reads thus:

“Mr. Tanveer Ahmed
Adamjee Insurance Company
Lahore.

Dear Sir,

CLAIM OF MY INSURANCE POLICY No.PL-0411-301006-S39-000750.

The undersigned availed agriculture loan from MCB Bank Grain Market Mirpurkhas branch in the year 2011. To secure the loan the aforementioned bank branch insured crop of cotton/sugarcane cultivated on my agriculture land situated in village Mima deh 218 U/C Kot Ghulam Mohammad.

In this context your insurance company issued subject policy of sum insured Rs.0.500m on 12.04.2011 which was valid up to 11.04.2012. Suddenly in the month of August September of year 2011 my entire crops were ruined out due to heavy rains and flood. The government of Sindh relief department declared district and taluka wise names of calamity affected dehs of district Mirpurkhas through notification on 07.09.2011 (copy enclosed). My deh was also included in these affected areas.

In this respect I referred the matter to my said branch and requested to lodge claim with your company regarding loss of crops which I sustained therefore is unable to clear my bank dues. In support I submitted the aforesaid copies of declaration.

I regret to note that considerable time has been passed away but sorry to say that neither bank branch nor your company has pay no heed to inform me about the settlement of my claim. I request you to please refer my subject policy and inform me the status of my claim within shortest possible time otherwise I reserve a right to submit my case before competent Court of law for justice.

Regards
Abdul Aziz Bhurgari
Dated 04.07.2013”

12. The wording of the claim itself demonstrates that there was no privity of contract inter se the Petitioner and Respondent No.3. Indeed, the record reflects that even the premium amount was paid by the Bank and then debited to the account of the Respondent No.3 as per their internal arrangement in respect of the loan availed.

13. Furthermore, the Respondent No.3 had himself stated in the Complaint that “The honorable Banking Mohtasib Pakistan in his letter bearing No.2014-340-3921 dated 1.7.2014 which was addressed to Mr. Najeeb Malik, divisional head MCB Bank, Lahore informed him that it is bank which had entered into agreement with insurance company at the time of obtaining policy to protect bank's interest against such loan exposures” and that “I availed agriculture finance Rs.0.500M from MCB bank branch Grain Market Mirpurkhas in the month of April, 2011 against security of my agriculture land situated at deh 218 union Council Daghan taluka Kot Ghulam Muhammad district Mirpurkhas, also hypothecated crops of Sugarcane and Cotton cultivated over the land.

Further to secure the finance amount, the bank branch insured whole crops on land with Adamjee Insurance Company with sum insured Rs.0.500M under policy No.PL-0411-301006-S39-000 for the period 12.04.2011 to 11.04.2012. The amount of insurance premium Rs.8750/-was paid to said insurance company through demand draft bearing No.03002992 dated 11.04.2011 by debiting my account No.69051 by the said bank branch itself”.

14. However, this fundamental aspect has been completely overlooked by the statutory fora while adjudicating upon the Complaint.

15. Under the given circumstances, it is apparent that the Petitioner’s denial of the Respondent No.3’s claim does not conceivably fall within the ambit and purview of ‘maladministration’ within the meaning ascribed to that term as per Section 127(2) of the Ordinance so as to attract the jurisdiction of the Respondent No.2, and the findings recorded by the statutory fora in respect of the Claim are wholly unreasonable and cannot sustain.

16. That being so, the Petition stands allowed, with the Impugned Orders being set aside.

JUDGE

CHIEF JUSTICE

Karachi
Dated