

Judgment Sheet

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

Present:

Mr Justice Muhammad Shafi Siddiqui, CJ

Mr Justice Jawad Akbar Sarwana

**Constitution Petition No. D – 5732 of 2024**

**Trade Smart Securities (Private) Limited**

**v.**

**Securities & Exchange Commission of Pakistan and Six Others**

Petitioner : Trade Smart Securities (Private) Limited,  
through its Chief Executive, through  
Mr. Haider Waheed, Advocate.

Respondent No.1 : Nemo (Securities & Exchange  
Commission of Pakistan)

Respondent No.2 : Nemo (Pakistan Stock Exchange Limited  
through its Chief Executive Officer)

Respondent No.3 : Nemo (Ali Hasnain Zaidi)

Respondent No.4 : Nemo (Syed Shahid Hasnain Zaidi)

Respondent No.5 : Nemo (Safia Begum Zaidi)

Respondent No.6 : Nemo (M. Asif)

Respondent No.7 : Nemo (Sub-Panel of Arbitrators, (i) Mr.  
Murtaza Abbas Mooman, (ii) Mr. M. Amin  
Qazi and (iii) Mr. Shahid Ali Habib)

Date of Hearing : 13.11.2024

Date of Short Order: 13.11.2024

Date of Reasoning : 13.12.2024

J U D G M E N T

**Jawad Akbar Sarwana, J.**: The petitioner, Trade Smart Securities (Pvt.) Ltd. (hereinafter referred to as “TSSPL”) has invoked the writ jurisdiction of the Constitutional High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the “1973 Constitution”), seeking a declaration that the respondent No.2/Pakistan Stock Exchange Ltd. (hereinafter referred to as “PSX”), administrative notices (transmitted by letter dated 04.11.2024<sup>1</sup> and by email dated 11.11.2024<sup>2</sup>) addressed to TSSPL scheduling an impending hearing of the parties before the arbitral tribunal; and related arbitral proceedings, “are illegal, wholly without jurisdiction, malafide in law, null, and void and of no legal effect”,<sup>3</sup> and consequently, the same are liable to be set aside.

2. While TSSPL’s grievance is, in fact, against PSX alone, it has invoked writ jurisdiction of this Constitutional High Court against two respondents, namely, Respondent No.2/PSX and Respondent No.1/the Securities & Exchange Commission of Pakistan (“SECP”). The principle relief/remedy sought by TSSPL as against PSX (Respondent No.2), is to declare PSX’s administrative order(s) to the parties of the arbitration, i.e TSSPL (Petitioner), Ali Hasnain Zaidi (Respondent No.3), Syed Shahid Hasnain Zaidi (Respondent No.4) and Safia Begum Zaidi (Respondent No.5) and members of the Arbitral Tribunal (Respondent Nos.7(i) to (iii)) are “without lawful authority” or “is of no legal effect”. Under Article 199 of the 1973 Constitution and as a judicial review, this bench must determine whether the act done or proceeding taken by PSX falls within the contours of “a person performing functions in connection with the affairs of the Federation, a Province or a local authority.” In case this determination is in the negative then this petition is not amenable to the extraordinary jurisdiction of Article 199 of the 1973 Constitution. Alternatively, if the determination is affirmative, this bench will have to decide the petition on merits.

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<sup>1</sup> Page 523 of the Petition

<sup>2</sup> Page 529 of the Petition

<sup>3</sup> Prayer Clause #1, page 33 of the Petition

3. It is now a well-understood principle that judicial review is a public function concept that concerns causes of action against public agency/authorities. As discussed by this bench in the unreported Order dated 02.12.2024 passed in C.P. No.D-1590/2023, Attock Cement Pakistan Ltd. and others v. Federation of Pakistan and others, judicial review under Article 199, among other things, includes cases of excess of jurisdiction, whether or not a “person” is a court, a judicial or quasi-judicial body or a purely executive or administrative tribunal or officer and may in certain cases, also include, the Parliament and the Provincial Assemblies. It may be added here that it is not enough that the respondent functionary is a “person” within the meaning of Article 199(1)(a)(ii) read with Article 199(5) alone. Article 7 may also aid in the better understanding of Article 199(5) of the 1973 Constitution. We do not have any doubt that PSX is a “person” under Article 199 of the 1973 Constitution. Still, the petitioner seeking the remedy/relief must show that the act, which is the subject matter of judicial review, was done by a person in the performance of “functions” in connection with the “affairs” of the Federation.

4. In Al-Jehad Trust v. Federation of Pakistan, PLD 1997 SC 84, 192, it was held that the expression “functions” has a very wide connotation. Additionally, the word “affair(s)”, according to its ordinary dictionary meaning, means a thing to be done, concern, business, matter,<sup>4</sup> or important facts or activities that are connected with a particular subject.<sup>5</sup> So, any matter or business that concerns the Federation is an affair of the Federation. In the above context, we have to see if PSX was/is performing “functions” in connection with the “affairs” of the Federation such that its acts may be subject to judicial review.

5. In Pakistan Stock Exchange Limited through Duly Authorized Officer v. Province of Sindh through Secretary, Ministry of Finance and Three (3) Others, 2024 CLD 580 (hereinafter referred as the “PSEL Sindh Services Tax case”), the

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<sup>4</sup> [Affairs Definition & Meaning - Merriam-Webster](#)

<sup>5</sup> [AFFAIR definition and meaning | Collins English Dictionary](#)

division bench of this Court (one of the members of that bench is also a member of this bench) examined the genesis of PSX, dilating on the performance of its “functions” in connection with the “affairs” of the Federation, viz., the incidence of Sindh Sales Tax on Services. In this regard, the learned division bench also made certain observations in deciding whether PSX was/is performing functions in connection with the affairs of the Federation that are also of assistance and relevance to this lis.

Observation #1

“3. The petitioners [PSX] claimed to have been engaged in conducting, regulating and controlling the trade of buying, selling and dealing with securities. The present enactment of Stock Exchanges (Corporatization, Demutualization and Integration) Act, 2012 (hereafter referred to as "Act, 2012") was introduced by Federal Legislature to develop a uniform capital market in the country and to facilitate the integration of existing stock exchanges and to sum up such uniformity, in pursuance of Entry 30 of Part-I of the Federal Legislative List that concerns with stock exchange and future markets with the object of business not confined to just one province. . .

4. Learned counsel for petitioner [PSX] further submitted that the petitioner was fully controlled by a federal body i.e. Securities and Exchange Commission of Pakistan earlier when it was Karachi Stock Exchange Limited through its Article 22(a)(ii) of Articles of Association of Karachi Stock Exchange Limited. At the relevant time SECP was controlling the Karachi Stock Exchange by nominating and appointing directors to its Board, apart from filling of any casual vacancy on the Board of Directors through Article 24 which include appointment, removal and termination of managing director. . . .”

Observation #2

“13. Had petitioner or its predecessor in interest been a creation of statute, it is argued that, the statute itself would have supported it as is in case of National Bank of Pakistan Ordinance 1949, SECP Act, 1997, Civil Aviation Authority Ordinance 1982, Hyderabad Development Authority Act, 1976. This matrix is missing in the instant Act 2012 which was promulgated on account of a global necessity, as felt by the federation, that led to promulgation of the Act 2012 which concerns its corporatization, amalgamation only.

14. On merits, learned counsel for respondent has opposed the applicability of Civil Aviation Authority's judgment of Hon'ble Supreme Court (Supra) as none of the three elements of the control of stock exchange i.e. administrative, financial and power to winding up the business of petitioner could be exercised by the federation. It is contended that the Government of Pakistan through SECP exercised its control over all issues of stock exchange business including appointment of directors. In response to issue of a regulatory authority and/or Regulations in terms of Sections 6 and 7 of the Securities Act, 2015 (hereinafter referred to as "Act of 2015"), Mr. Tariq Masood, by making references of some of the relevant definitions and the necessities of the Act itself, submitted that the ibid Act of 2015 recognizes only one kind of Regulation and that is those by SECP and that alone does not frame petitioner as a regulator within Entry 6 of Part-II of Federal Legislative List.

15. The next limb of arguments of the learned counsel in response to rebut the arguments of statutory regulations is that there is no express provision in the entire [Securities] Act of 2015 which specifically empowers Karachi Stock Exchange to impose any penalty and there is nothing in the Act of 2015 which can even impliedly suggest such statutory actions to be performed by petitioner. Section 11 of the Act of 2015 deals with review of disciplinary action taken by Securities and Exchange and requires that the exchange shall immediately inform SECP in writing the name of securities and brokers and reasons for disciplinary actions and the amount of penalty imposed so that the Secretary Exchange Commission of Pakistan can review the disciplinary action. It is thus not a statutory penalty since no statutory regulation could be issued by petitioner. . . .”

### Observation #3

“24. The history of formation of stock exchanges as traced by him and to which no factual denial was made by Mr. Hyder is that Karachi Stock Exchange was formed by some individuals associating themselves as members and then by fulfilling the requirements of the then existing corporate law, for the purposes of their association, as disclosed in their Memorandum of Association, forming a company under the then existing corporate structure which is perhaps Companies Act, 1913. The said company was registered by the Registrar of Companies and it commenced its operation. It is thus a voluntary corporate creation by some of the associate members. Corporate creation and creation of an entity by statute (per force) itself is a subject addressed in this judgment.

25. The statutory creation, for the purposes of explaining above voluntary creation, are the creation of National Bank of Pakistan out of National Bank of Pakistan Ordinance, 1949, Security Exchange Commission of Pakistan Act, 1947 for the creation of Securities and Exchange Commission of Pakistan and Civil Aviation Authority Ordinance 1982 that establishes the Civil Aviation Authority etc.

26. An attempt was made to consider the Act 2012 at par with those of National Bank of Pakistan Ordinance, 1949, SECP Act, 1947 and Civil Aviation Authority Ordinance, 1982. In the Act, 2012 there is nothing to subscribe that it is this Act which created the stock exchange, which was originally formed as a voluntary act of some of the members who got themselves into an association forming Karachi Stock Exchange. This Act (Act, 2012) only provides for corporatization, demutualization and integration of stock exchanges in Pakistan. It enabled the conversion of a company limited by guarantee to company limited by shares and further caters for the amalgamation or integration of different companies of like nature which otherwise could have been done through an extended and complexed process provided by the Companies Ordinance, 1984, as it then prevailed. This was done under a uniform policy of the country since it was felt that there was no level playing field for the investors who were at disadvantageous position and the proper way out as found, was to demutualize the companies as followed internationally. Thus, Act 2012 has no provision for a fresh creation or registration of a new stock exchange or new corporate entity which could be other than designated role as disclosed in their earlier Memorandum of Association. No statutory/regulatory role/function or role of federation subscribed in the formation of demutualized company under Act, 2012.

27. Act, 2012 and its subsequent corporatization also did not affect the nature and legal status of the company. Act, 2012 "Effect of Corporatization"<sup>5</sup> also identifies the above facts which have not been repeated for the sake of brevity. It was in fact promulgated to overcome the difficulties, shortcomings and cumbersome procedure for corporatization, demutualization and amalgamation.

28. An attempt has been made that SECP plays a pivotal role in the appointment of directors as considered in the case of Civil Aviation Authority *ibid*.

29. The role of SECP to appoint directors to fill casual vacancies on the Board of Directors and to appoint MD of Karachi Stock Exchange would turn nothing. It would not change the corporate structure of stock exchange. In a ten-member Board of Stock Exchange, five were appointed from amongst the members of the Company without any interference of SECP whereas five independent directors of the Board were appointed from amongst professionals in consultation with different professional organizations and none of them could be an employee of SECP or could have any interest based connection therewith. It is in fact to secure the independence of the Board of Directors rather than having control over it. The Board of Directors approves the proposal of Managing Director of the Board which is only approved by SECP and this was perhaps to monitor as to the whether MD fulfills the criteria for such appointment provided in the Memorandum. Such appointment of Managing Director is not to change the corporate entity of the stock exchange.

30. The emphasis of the petitioner's counsel for the enforcement of Regulations in pursuance of Sections 6 and 7 of the Act of 2015 and in consequence whereof the stock exchange said to have been performing regulatory functions of the government, we may take some assistance from the Act itself.

31. Section 2 of the Act of 2015 contains definitions and same are material for the purposes of present issue in hand. The same are as follows:-

**2. Definitions.-** (1) In this Act, unless there is anything repugnant in the context or subject,

(i) . . .

(x) "Commission" means the Securities and Exchange Commission of Pakistan established under section 3 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

(xli) "regulated market" means any securities exchange, over-the-counter market or platform that is licensed by the Commission;

(xlii) "regulations" means regulations made by the Commission under this Act;

(xliii) "securities exchange" means a public company that is licensed by the Commission as a securities exchange under section 5;

(xliiii) "security market" means any market or place at which or any service or facility (whether electronic or otherwise) by means of which, offers of invitations to sell, purchase or exchange securities are regularly made on a centralized basis, being offers or invitations that are intended or may reasonably be expected, to result, directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange securities;

32. Regulations as defined leaves no doubt that Act of 2015 recognizes regulations of Commission i.e. SECP, therefore wherever the word

"Regulation" is used in Section 7 of ibid Act it is in its colloquial or liberal sense but not regulations under Act, 2012.

33. Sections 160 and 161 of Act of 2015 are also reproduced for the sake of convenience:-

160. Penalty to be imposed by the Commission.----Wherever a penalty is provided for any offence, contravention of or default in complying with, any of the provisions of this Act, rules or regulations made under this Act, such penalty shall be imposed by the Commission after providing a reasonable opportunity of hearing to the party.

161. Appeal.---(1) Any person aggrieved by the final decision of the Commission may, within sixty days of the decision communicated to him, prefer an appeal to the Court.

(2) The Court may, on an appeal made to it under sub section (1), accept, set aside or vary the decision of the Commission or make such other order as the interests of justice require.

Explanation.-For the purposes of subsection (1), "final decision of the Commission" means a decision of the Appellate Bench of the Commission under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

(3) The Court shall, at the stage of admission of the appeal or at any time thereafter on the application of the aggrieved person and after due notice to the Commission, decide by means of a reasoned order whether the appeal is to be admitted in part or in whole depending on the facts and circumstances of the case: Provided that the admission of the appeal shall not per se operate as a stay and nor shall any stay be granted therein unless the Commission has been given an opportunity of being heard.

(4) Notwithstanding anything contained in any other law, the hearing of appeal shall continue day-to-day, unless sufficient cause has been shown by the parties jointly or severally which is beyond the control of the parties, the Court may adjourn the hearing for maximum of two dates and such adjournment shall not be more than fifteen days at any one time or for more than thirty days in all.

(5) Where on third hearing any party fails to appear and address arguments before the Court the Court shall proceed and decide appeal on merits and it shall be deemed that such party has relinquished its rights to address arguments."

34. Section 160 of the Act of 2015 empowers SECP to impose penalty for violation of any "Regulation" made under the Act. Had the status of so-called Regulations issued (in pursuance of Section 7 ibid) been that of "Regulations" issued under the Act, 2012, then Karachi Stock Exchange should have been named as an authority empowered to issue regulations in Section 2(xlix) ibid and also as an authority to impose penalty for violation of such regulations under section 160 of the Act of 2015. It thus establishes that the word "Regulations" as used in Section 7 in Act of 2015 is not in context of rendering/ referring to any statutory regulations but merely internal regulations of stock exchange for carrying out daily business activities in transparent manner, as required by its regulator.

35. The other definitions such as "security exchange", "regulated market" and "securities market" available in Section 2 of Act of 2015 cumulatively yields that the definitions are of places where services are provided for commercial/economic activity and it is the commercial activity of the

company itself which does not form either functions or sovereign functions of the State. Section 7 of Act of 2015 which deals with the regulations is to be read in connection with Section 5 of Act of 2015 as Section 7 itself makes reference to it which deals with the registration requirement. It is Section 5 subsection (4) that empowers the SECP to grant licence to a company for working as "securities exchange" provided that the SECP is satisfied as to the requirements. Section 5(5) further clarifies that while granting licence, SECP shall ensure that the company to whom licence is being issued has made satisfactory provision in its internal regulations for protection of customers to avoid conflict of interest and to provide level playing field by providing fair, transparent and efficient security market and proper regulation and supervision to control influential entities in the market.

36. The cumulative effect would thus lead us to conclusion that the regulations of the securities exchange is only for regulating the company so that investors should know beforehand that Karachi Stock Exchange has put in place satisfactory arrangement for fair and transparent security market and free from conflicting interest. It is thus not those statutory regulations through which in normal way the official functions of the government are being performed.

37. Penalties imposed by securities exchange and by commission are of two different origin. There is no specific provision or definition under Act, 2012 to enable forced penalty of the nature as available in Section 160 for which appeal is also provided.

38. Section 161 of Act of 2015 which deals with appeals does not mention that any appeal can be filed against imposition of so-called penalty by Karachi Stock Exchange as appeals only lie against order of SECP. Even Section 11 of the Act of 2015 suggests that word "penalty" has been used in context of disciplinary actions in colloquial or literal sense rather than for statutory penalty. The statutory penalty has some attributes such as it is to be imposed by some statutory authority and it is to be cleared from any unambiguity and certainly not to be derived by intendment and that the statutory mechanism of appeal is available against such penalty and lastly the recovery procedure of penalty such as attachment or sale of properties should have been made available including the restrictions, transfer and alienation of property of defaulted person and its recovery as land revenue. No such mechanism is provided for such penalties as relied upon.

39. The penalty imposed and recovered under statutory authority are supposedly meant for government consolidated funds or for public account of the federation in terms of Article 78 of the Constitution. The penalties and levies collected under any of statutory powers are first to be credited to the funds established under the relevant enactment as being done by SECP, Civil Aviation Authority etc. Nothing of its kind is provided in the Act of 2015 regarding the deposit of fee collected by Stock Exchange or the so-called penalty levied by it to any funds and hence it does not said to be performing functions of the State. To the contrary the penalty imposed by Karachi Stock Exchange forms part of its income which is utilized as agreed by the Board of Directors for their internal business activities and surplus is distributed as dividend amongst the shareholders of the company, which facts are not controverted by petitioner.

40. The government function and sovereign functions have been discussed in detail in the case of Province of Punjab and Kh. Ahmed Tariq (Supra). The nature of the listing fee being recovered by the stock exchange is such that company who intends to list itself or its securities to be traded on a securities exchange, they may require designated listing fee for the purposes of economic activities. Once such fee is paid and collected by the stock exchange, it lists such company or companies or its securities on its electronic display along with making them available for sale/trading



online/website as in its absence such securities may not be available for trading. This is a service which is being provided by the stock exchange in course of their economic activity within the scope of Sections 3 and 4 of Sindh Sales Tax on Services Act, 2011. This listing fee cannot be pictured as statutory fee as it is not recovered on account of any statutory command of any statute/law. The Civil Aviation Authority Ordinance however, in contrast has empowered Civil Aviation Authority to levy and collect various fee and charges as well as security exchange Commission of Pakistan Act which empowers SECP to levy and collect fee and other charges. It has been explained by learned counsel for defendants that this amount (listing fee) is being recovered through a Rule Book of Pakistan Stock Exchange Ltd. which clearly mentions that deposit, fee, contributions and other sums are in fact consideration for facilities and services provided by the Exchange which contention again is not materially opposed. Such amount in the shape of listing fee and/or levy as being imposed and recovered by stock exchange were not credited to federal consolidated funds or to public account and there is absolutely no restriction through any statute for the utilization of these funds generated by Stock Exchange which are consumed, as per the decision of the Board of Directors, to their business activities and surplus is distributed regularly as dividends amongst the shareholders which fact is also not denied by petitioner's counsel. We thus conclude that regulations of Commission and those of Stock Exchange are on different footings and regulations of stock exchange cannot be attributed to be statutory regulations.

41. The next submission we take up is one that relates to Entry 6 of Part-II of the Federal Legislative List of the Fourth Schedule, which primarily concern with the regulatory authorities established under any federal law. We have already stated that the stock exchange either in its original or in the present form is not the creation of any statute i.e. either Karachi Stock Exchange or Pakistan Stock Exchange and such was not established (per force) by any federal law rather it was an act (voluntary) of some of the members who associated themselves to form a company under the enactment available at the relevant time such as Companies Act, 2013. Karachi Stock Exchange or Pakistan Stock Exchange was not performing any statutory or regulatory functions and the imposition and collection of fee/penalty is not under any statutory command rather meant for their internal mechanism to keep their business transparent. The regulator of the stock exchange is the Security Exchange Commission of Pakistan which is established under SECP Act, 1997. The arguments of Mr. Hyder Ali Khan that it being a regulator and formed in pursuance of Entry 6 of Part-II of the Federal Legislative List is not confidence inspiring.

42. As discussed, Act 2012 is not a law for establishment or creation of authority as it merely provides enabling provision for conversion of a company limited by guarantee to a company limited by shares and provides an easy way for amalgamation and integration without undergoing hassle of the recourse available under Company law available at the relevant time. The accounts of security exchange are maintained and audited by a chartered accountant, appointed by stock exchange as per the requirement of Companies Ordinance, 1984 as it then was and Companies Act 2017 as it is now. Karachi Stock Exchange or Pakistan Stock Exchange since are not the forced creation of any federal statute therefore cannot be deemed to be performing functions of the State or acting as a regulator and hence are beyond the scope of Entry 6 of Part-II of Federal Legislative List on the aforesaid count.”

6. Given the above-selected observations, and even otherwise. it is clear that the Federal Government exercises no control over PSX as a shareholder

and by no stretch of the imagination can its functions be said to be the functions of the State involving the exercise of sovereign or public powers. Further, merely because the SECP regulates its activities, PSX cannot be regarded as a person performing functions in connection with the Federation's affairs. PSX does not depend on public funds for its operations, nor does the federal government provide any funding. Finally, it has been recorded in reported and unreported judgments that the PSX, having both private persons and private organisations as its majority shareholders, and being a limited liability entity, carries on business for profit-maximization of its shareholders and not any public good.<sup>6</sup> PSX's role as a stock exchange for shares and futures market cannot be regarded as a person performing State functions. Finally, TSSPL has raised a challenge to ongoing institutional arbitration proceedings that PSX is managing as an administrator only. The dispute that is the subject matter in the arbitration does not arise out of or is in relation to or is in connection with any affairs of the Federation or the State, and PSX is a private party.

7. TSSPL has also impleaded Respondent No.1/SECP in the petition. While, we find that SECP falls within the definition of a "person" under Article 199, yet, in the present case at hand, which is an arbitration proceeding, SECP has nothing to do with TSSPL's cause of action. No prayer can be made out against SECP in the facts and circumstances of the case. TSSPL has challenged the arbitration process/procedure but SECP is not a party in the arbitration. This arbitration process has nothing to do with SECP. SECP has not initiated any action against the petitioner. No writ under Article 199(1)(a)(ii) can lie against a person who has yet to initiate any "act done" or "proceeding taken" or passed any order which may be amiable to judicial review. No ground has arisen for any judicial intervention against Respondent No.1/SECP, and none has been made out by petitioner. As such, impleading SECP in the array of

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<sup>6</sup> A stock exchange is not equivalent to a public good like electricity or water. Also see unreported Division Bench Judgment dated 21.10.2024 in CP No.D-4449/2021, Pakistan Stock Brokers Association v. Pakistan Stock Exchange Limited and Another, and Competition Commission of Pakistan Order dated 21.03.2023 in Case No. 1346/Merger-CCP/22, 2023 CLD 475 (Paragraphs 5 and 6).

Respondents alone cannot save the petition. The petitioner must still make out a case against Respondent No.1/SECP. Simply because SECP is the first Respondent does not make the writ petition maintainable against SECP under Article 199 of the 1973 Constitution, even otherwise, it is not a necessary party.

8. Another aspect also requires consideration: TSSPL has challenged the arbitration in writ jurisdiction. Under the Rule Book of the Pakistan Stock Exchange Limited (hereinafter referred to as the "PSX Regulations"), Chapter 18, titled "Investors' Claims, Securities Brokers's Disputes and Arbitration Regulations," Respondent No.2/PSX has provided a comprehensive procedure for referral of disputes between Securities Brokers inter se, or between any of the Securities Brokers and their clients or between any of the Securities Brokers and authorized traders or between authorized trader(s) and their clients in connection with any trade or transaction or subscription of securities offered through Initial Purchase Offer ("IPO") and is not otherwise settled amicably. Detailed procedure is set out in Chapter 18 pertaining to scrutiny of an application for arbitration, rejection or dismissal of such application, etc. Power to administer oath and procedure for evidence is also provided. Chapter 18 also sets out an appeal provision to the arbitral award. At present, TSSPL is aggrieved that the arbitration is hopelessly time-barred, contrary to the PSX Regulations, etc. If this is so, these matters can be decided by the arbitral tribunal, including its own jurisdiction under the principle of "Kompetenz-Kompetenz", which implies that the arbitrators are empowered to make a final ruling as to their jurisdiction, with no subsequent review of the decision by any court. The Arbitral Tribunal can also decide the point of limitation. In our opinion, the dispute between the parties can be resolved by arbitration as agreed between the parties as per the PSX Regulations, which is the preferred mode of dispute settlement for disputes at the Pakistan Stock Exchange. When an alternative and equally efficacious remedy is open to a litigant, he should pursue that remedy. In the presence of an arbitration agreement between the parties, there is no other option left but for the aggrieved party to proceed with the agreed alternative dispute resolution

mechanism, i.e. arbitration. There is no reason to invoke the Constitutional jurisdiction of the High Court for the issuance of a writ in an ongoing arbitration matter unless some exceptional ground can be made out for such intervention in the facts and circumstances of the case or in law. Petitioner's grievance concerning limitation/allegedly for a time-barred complaint lodged against them, in the facts and circumstances, does not merit any intervention under the 1973 Constitution. None has been shown in the case at hand.

9. Before we part with this lis, we may mention here that on 13.11.2024, when this Constitutional High Court heard this lis, we dismissed it by a short order on the even date. At the time, when the short order was passed, all the benches/judges of the Constitutional High Court were notified by the Judicial Commission of Pakistan ("JCP") as "Constitutional Benches" under Articles 175 and 175-A read with Article 202A of the 1973 Constitution as amended by the Constitution (Twenty-sixth Amendment) Act, 2024 (Act No.XXVI of 2024)(hereinafter referred to as "the 26th Constitutional Amendment"). After the dismissal of the Writ Petition, the JCP constituted and approved (for a period of two (2) months) the formation of specific constitution benches (judges) in the High Court of Sindh. As such we have given our reasons for the Order dated 13.11.2024 as the Constitutional High Court and not as one of the "Constitutional Benches" (judges) under the above-mentioned articles. As discussed hereinabove, TSSPL's petition and Counsel have sought the remedy/relief of declaration regarding the impugned administrative orders of PSX and the ongoing arbitral proceedings for the reason that the impugned acts done and/or proceedings taken are "without lawful authority" and "is of no legal effect". As per the unreported Order dated 02.12.2024 passed by this bench in the case of C.P. No.D-1590/2023 in Attock Cement Pakistan Ltd. and others v. Federation of Pakistan and others, the Constitutional High Court held, among other things, that even after the 26<sup>th</sup> Amendment the Constitutional High Court has the power to grant declaratory relief under Article 199(1)(a)(ii), and, further to determine whether either the Constitutional High Court bench (judges)("Constitution Bench "A") or the "Constitutional Bench" under Article 202A (Constitution Bench "B"), should

hear the matter based on the test of dominant relief/remedy being sought by the petitioner(s).<sup>7</sup> In the present case, the remedy/relief sought by TSSPL emerges out of legal proceedings, which would trigger the ingredients of Article 199(1)(a)(ii) of the 1973 Constitution. Further, TSSPL has claimed/is claiming that the actions of the person, i.e. PSX, are “without lawful authority” and “is of no legal effect”. Both these terms, i.e. “without lawful authority” and “is of no legal effect”, are mentioned in Articles 199(1)(a)(ii), alone. While as an ancillary, TSSPL has also sought directions from this Court to restrain (read: to stop and cease) Respondent No.1/the Securities & Exchange Commission of Pakistan (“SECP”) and the PSX from taking any adverse action against the petitioner, such relief/remedy is not the main/primary relief/remedy sought by the petitioner. Therefore, this bench finds that in terms of the articles of the 1973 Constitution available for judicial review, Article 199(1)(a)(ii) is both the most relevant and the dominant remedy/relief sought by TSSPL. Accordingly, this bench (judges) of the Constitutional High Court, exercising powers of the Constitutional High Court under Articles 175 and 175A read with Article 202A of the 1973 Constitution, set out the reasons for the short order dated 13.11.2024 notwithstanding that this bench always retained the roster at all times, both when it passed its short order dismissing this petition as one of the “Constitutional Benches”, and now as we articulate our reasoning today as a bench of the Constitutional High Court.

10. Based on the above understanding, the discussion set out herein, and the record available in the petition, we hold that Respondent No.2/PSX is not a person performing functions in connection with the affairs of the Federation. Further, an institutional arbitration is currently under process between the parties. TSSPL cannot renege from the same, and even otherwise, the arbitral forum provides an adequate remedy to the petitioner, which has not been exhausted by TSSPL. As a result, neither writ lies against PSX, and alternatively, in the facts and circumstances, as an arbitration is

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<sup>7</sup> Paragraph 32 of the unreported Judgment of the Constitutional High Court, Attock Cement Pakistan Ltd. and others v. Federation of Pakistan and others, C.P. No.D-1590/2023, Judgment dated 02.12.2024.

underway, this Constitutional High Court is not inclined to interfere. This petition is not maintainable and was dismissed vide our short order dated 13.11.2024. The above are the reasons for the same.

Judge

Chief Justice