

IN THE HIGH COURT OF SINDH AT KARACHI

CP D – 1554 of 2016

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

East West Insurance Co. Limited
vs.
Federal Insurance Ombudsman and Others

For the Petitioner: Saiyed Younus Saeed, Advocate.

For the Respondent No. 1: Mr. Ishrat Zahid Alvi, AAG.

For the Respondent No. 2: Mr. Fidaullah Qureshi, Advocate.

For the Respondent No. 3: Mr. Imran Shamsi, Law Officer.

Date of Hearing: 15.01.2019

Date of Announcement: 15.01.2019

JUDGMENT

Agha Faisal, J. The present petition was filed to restrain the Federal Insurance Ombudsman (“**Ombudsman**”) from proceeding further in a complaint filed by an insurance claimant against the petitioner, being an insurance company.

2. It was observed that while seized of complaint against the petitioner, the Ombudsman had passed an order dated 05.11.2015 in Complaint 172 of 2015 (“**Ombudsman Order**”) wherein, after observing that since the insurance company had accepted the claim, therefore, there was no element of maladministration, the matter was referred to the Securities and Exchange Commission of Pakistan (“**SECP**”) for necessary action. The relevant constituent of the Ombudsman Order is reproduced herein below:

“I am directed to refer the matter to SECP for such further necessary action as deemed appropriate on merits. It would be appreciated if the decision taken in the matter is communicated to this Secretariat for record”.

3. It was observed that the Ombudsman Order expressly recorded that the petitioner had neither disputed the claim filed there against nor repudiated the same and had already made part payment thereof. It was also recorded that since the petitioner had only expressed reservations about the manner of apportionment of loss by the concerned surveyor and approached the SECP in such regard, hence, the matter was referred by the Ombudsman to the SECP for further action. It was noted that subsequent to the Ombudsman's Order the SECP had required the petitioner to settle the claim in the manner assessed by the concerned surveyor, however, the petitioner failed to do so and thus vide its letter dated 16th December, 2015, the SECP required the Ombudsman to take necessary action in the said matter. The Ombudsman issued notice to the petitioner, dated 02nd March 2016 and the same precipitated the institution of the present petition.

4. At the very onset we put a direct query to the respective learned counsel present to comment upon whether the Ombudsman was empowered to delegate his responsibility, with respect to complaint filed therewith, to another authority. The said query was answered in the negative, despite the pleadings of the petitioner stipulating that the reference to the SECP was *intra vires*. We also asked the learned counsel for the petitioner if the petitioner had assailed the Ombudsman Order before any forum and the said query was also replied to in the negative.

5. It appears that the petitioner accepted the claim there against, as recorded in the Ombudsman Order, and then subsequently reneged on its position. The Ombudsman Order, recording the admission of the petitioner, was never challenged by the petitioner and no controversion thereof is present in the pleadings filed herein. The petitioner had itself approached the SECP, only with regard to apportionment, and then refused to accept the decision of the SECP in such regard. Notwithstanding the apparent conduct of the petitioner, we are constrained to first determine the legality of the Ombudsman Order, prior to entering into any other deliberation.

6. It is noted that the Federal Ombudsman Institutional Reforms Act, 2013 (“**Act**”) stipulates, *inter-alia* in Section 18 thereof, that no authority shall assume jurisdiction in respect of any matter pending with or decided by an Ombudsman. The definition of Ombudsman is contained in Section 2(a) of the Act and includes an Ombudsman appointed under the relevant legislation. The reference to relevant legislation includes *inter-alia* the Federal Tax Ombudsman Ordinance, 2000 and the Insurance Ordinance, 2000. It would follow that if it was impermissible for any authority to assume the jurisdiction of an Ombudsman then it would also be improper for any such jurisdiction to be delegated to an authority, unless with express statutory sanction. The Ombudsman seized of the complaint was empowered to decide the same in accordance with the law and not abdicate its role to another authority. In the light of such reasoning it would appear that the Ombudsman Order referring the matter to the SECP for further necessary action is not justifiable.

7. Therefore, it is considered view of this Court that the Ombudsman's Order is not sustainable in law and, therefore, vide short order dated 15.01.2019, we set aside the Ombudsman's Order and directed that the matter be remanded back to the Ombudsman for *denovo* consideration of Complaint 172 of 2015 filed by the respondent No. 2 against the petitioner. The Ombudsman is directed to afford an opportunity of hearing to the parties and thereafter decide the complaint, on the basis of the record available, in accordance with the law within a period of one month. These are the reasons for our aforesaid short order.

8. The office is instructed to convey a copy hereof directly to the office of the Insurance Ombudsman for compliance.

JUDGE

JUDGE

Karachi.

Dated 08th February 2019.

Shaban Ali/PA