

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1526 of 2018

Junaid Iqbal ----- Plaintiff

Versus

Securities & Exchange Commission of Pakistan & others ----- Defendants

For hearing of CMA No. 10744/2018.

Date of hearing: 17.09.2018.

Date of order: 26.09.2018.

Plaintiff: through Mr. Manzoor Hameed Arain Advocate.

Defendant No.1 through Mr. Imran Shamsi Advocate along
with Mr. Tanveer Alam Additional Director SECP.

Defendant No.6 through Mr. Abdul Sattar Pirzada Advocate.

Defendant No.4 & 5 through Mr. Musawir Advocate holding brief for Mr.
Gazain Magsi Advocate.

ORDER

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration and Injunction, whereas, through listed application the Plaintiff seeks suspension of Letters / Notices dated 10.7.2018 and 11.7.2018 issued by the Defendant / Securities & Exchange Commission of Pakistan ("SECP"), whereby, he has been restrained from carrying on any business in financial services market.

2. Learned Counsel for the Plaintiff contended that through impugned Letters SECP has prohibited and restricted the Plaintiff from

carrying on any business in financial markets / trading on stock exchange and such act is without lawful authority and jurisdiction. He further contended that no Show Cause Notice was ever issued, whereas, the allegations pertain to the year 2014 to 2016 and Plaintiff has no concern with such allegations as he has always acted in good faith without being involved as alleged. He next contended that Plaintiff was an investor with M/s Axis Global Limited and used to buy and sell shares including the shares in question for which allegations have been leveled that such buying and selling was based on non-public information which is not correct. According to learned Counsel it has also been alleged that Plaintiff had some connection with Mustafa Iqbal Ahmed of Askari Funds, whereas, this is also incorrect. Per learned Counsel, the extreme action of suspension has put the Plaintiff out of business and this is a question of bread and butter, whereas, Plaintiff was forced to resign as an employee of Defendant No.6. Learned Counsel also referred to the counter affidavit of Defendants No.1 & 2 and contended that in fact in these transactions as alleged, Plaintiff suffered losses, whereas, no one involves into the front running for making losses but for gains only. He contended that this is a case wherein, some interim relief must be given as Plaintiff is out of business. As to maintainability of this Suit, he contended that the impugned orders in question are interim in nature and it is only a final order for which Appeal has been provided under the Securities & Exchange Commission of Pakistan Act, 1997 ("SECP Act").

3. On the other hand, learned Counsel for SECP contended that Plaintiff is a habitual offender as earlier also he was involved in such acts for which a complaint was filed and is pending before Special Court (Offences in Banks), Sindh at Karachi. Per learned Counsel, the Plaintiff

entered into huge transactions, whereas, sustaining loss is no excuse as the Plaintiff has transacted in violation of the Act and is involved in insider trading commonly known as front running. Per learned Counsel, proper investigation was carried out, whereas, the concerned person of Askari Funds has accepted his guilt with whom the Plaintiff always remained in touch according to the mobile data procured by SECP. He further contended that except one transaction the Plaintiff has made huge profits amounting to Rs. 8.6 million and therefore, is not entitled for any indulgence. Lastly, he contended that present Suit is not maintainable as the impugned orders are final in nature and therefore, under Section 33 of the SECP Act an Appeal can be preferred.

4. I have heard both the learned Counsel and perused the record. Firstly, I would like to deal with the objections regarding maintainability of this Suit and availability of alternate remedy. The impugned order has been passed as a prohibitory order for restriction of business under Section 143 of the Securities Act, 2015, whereas, appeal(s) before the Appellate Bench of SECP have been provided under Section 33 of the SECP Act, 1997 and reads as under:-

“143. Restriction of business.—(1) The Commission may prohibit a licensed person and its customers from doing any one or more of the following, namely:—

- (a) entering into —
 - (i) transactions of a specified description or other than of a specified description; or
 - (ii) transactions in specified circumstances or other than in specified circumstances;
- or
- (iii) transactions to a specified extent or other than to a specified extent;
- (b) soliciting business from persons of a specified description or from persons other than of a specified description; or
- (c) carrying on business in a specified manner or other than in a specified manner.
- (2) A prohibition under this section may relate to transactions entered into in connection with or for the purposes of the regulated activity or to other business that is carried on in connection with or for the purposes of any such regulated activity or to other business that is carried on in connection with or for the purposes of any such regulated activity.”

“33. Appeal to the Appellate Bench of the Commission.- (1) Except as otherwise provided any person aggrieved by an order of the Commission passed by one Commissioner or an officer authorized in this behalf by the Commission, may within thirty days of the order, prefer an appeal to an Appellate Bench of the Commission constituted under sub-section (2):

Provided that no appeal shall lie against ----

- (a) an administrative direction given by a Commissioner or an officer of the Commission.
- (b) an order passed in exercise of the powers of revision or review;
- (c) a sanction provided or decision made by a Commissioner or an officer of the Commission to commence legal proceedings; and
- (d) an interim order which does not dispose of the entire matter.

(2) The Commission shall constitute an Appellate Bench of the Commission comprising not less than two Commissioners to hear appeals under sub-section (1).

(3) If any Commissioner who is included in the Appellate Bench has participated or been concerned in the decision being appealed against the Chairman shall nominate another Commissioner to sit in the Bench to hear that appeal.

(3A) Any clerical or arithmetical mistakes in any order or error arising therein from any accidental slip or omission may at any time be corrected by the Appellate Bench on its own motion or on an application made to it by any party.

(4) The form in which an appeal is to be filed and the fees to be paid therefor and other related matters shall be prescribed by rules.”

5. Section 143 *ibid* empowers SECP to prohibit a *licensed person* and its *customers* from doing various acts including but not limited to transactions of a specified description or other than of a specified description; or transactions in specified circumstances or other than in specified circumstances; or transactions to a specified extent or other than to a specified extent. It further prohibits soliciting business from persons of a specified description or from persons other than of a specified description; or carrying on business in a specified manner or other than in a specified manner. It further provides that a prohibition under this section may relate to transactions entered into in connection with or for the purposes of the regulated activity or to other business that is carried on in connection with or for the purposes of any such regulated activity. It is a matter of record that plaintiff by its own pleadings falls within the definition of customer of a licensed person. In

para 2 of the plaint it has been stated that “*plaintiff used to invest his investments in stock market through M/s Axis Global Limited (Broker Pakistan Stock Exchange Limited) as a customer defined in Securities Act 2015 under section 2 sub section XV*”. According to Section 2(xv) “*Customer*” means a person on whose behalf a regulated person carries on any regulated securities activity and includes any person commonly known as an investor. Therefore, in view of Section 143 *ibid*, SECP is empowered to initiate an action as provided thereunder against a customer which in the instant case is the plaintiff. To that there cannot be any exception that in the given facts and circumstances and the exigency in the matter, SECP is empowered and can act accordingly. It is but natural that any unfair practice on a Stock Exchange damages the credibility of the market and its general investors and this has to be looked into and protected on immediate basis by SECP at all costs.

6. It appears that pursuant to an inquiry for the period starting from December, 2014 to December, 2016 the impugned action has been taken and perusal of the impugned Letters / Notices reflects that they are in pith and substance not final in nature, as admittedly the Plaintiff being only a customer, has been restrained from carrying on any business on Stock Exchange. The impugned order itself provides in para 10 that “*...in exercise of its powers under Section 143 of the Securities Act, 2015, with immediate effect restricts and prohibits you from carrying on any business in financial services market and also restricts trading activity from your account until further orders....*”, which by itself from the wordings depicts that something else has to follow, be it a show cause notices whether for permanent restriction, or for imposing fine / penalty or for that matter recovery of alleged profits gained, or the loss incurred by the loser or sufferer due to such act(s). Sections 128, 130, 144, 159 and 160 of the Act, *ibid* provide a complete mechanism for initiating such process, and therefore, I am of the view that the orders in question are not final in nature. In fact section 143 is

a provision which empowers SECP to act immediately before any final order could be passed. And this is naturally from restraining any further damage or loss due to such insider trading or front running as alleged. In view of such position, I am of the view that the impugned order(s) in question are not final in nature and the remedy of Appeal will only be available when an order after complying with the aforesaid sections has been passed. Only then recourse will be available to the Plaintiff in accordance with the SECP Act, including but not limited to Section 33 *ibid*.

7. It is a matter of record that vide order dated 2.8.2018, plaintiff's Counsel was confronted as to maintainability of the Suit before this Court as it is only under Section 161 of the Securities Act / Section 34 of the SECP Act, that any jurisdiction has been conferred on this Court against the orders of the Appellate Bench of SECP; however, the stance taken on behalf of the plaintiff remained that no appeal lies in this matter, as impugned order(s) are interim in nature, therefore, considering the hardship being faced by the plaintiff, some injunctive orders be passed. Since I have come to the conclusion that at least the remedy of appeal is not available, therefore, it is in this background of the matter that I now give this Court's opinion regarding the issue in hand on the basis of record and merits of the case. However, this is only confined to deciding the listed application on a tentative assessment of facts and in no way gives a finding that a Civil Suit is competent in such a situation as the said matter is to be decided finally at the stage of arguments after evidence is recorded.

8. As to merits the precise case of SECP is that plaintiff is involved in insider trading ("**front running**"), in terms of (Part X) section 127 of the Securities Act, 2015. As per Wikipedia, it is also known as tailgating. It

is the prohibited practice of entering into a stock/equity trade, option, futures contract, derivative, or security based swap to capitalize on advance non-public knowledge of a large pending transaction that will influence the price of the underlying scrip. This is also termed as a form of market manipulation. It is trading stock in and out of undisclosed, unmounted accounts of relatives and confederates. It also occurs when institutional investors commit breach of knowledge gained on behalf of the institution and being privy to such information they enter into buying and selling of same stock. All in all this being an offence, is prohibited in all stock trades and exchanges since the front runner profits from nonpublic information, at the expense of its own customers, the block trade or the public market. It is an investing tactic that anticipates the impact of upcoming trades on the price of a security. It is the illegal practice of an investor or a stock broker executing orders on a security for its own account while taking advantage of advance knowledge of pending orders from its customers (here in this case knowledge about Askari Funds as alleged). The front running broker / investor either buys for his own account (before filling customer buy orders that drive up the price), or sells (where the broker / other party about whom information is available [Askari] sells for its own account, before filling customer sell orders that drive down the price). The most common example of front-running is when an individual trader / investor buys shares of a stock just before a large institutional order for the stock which will cause a rapid increase in the stock's price. This information can be obtained illegally, when the research analysts of an investment bank pass insider information to the brokerage arm of the business / any investor. The precise modus operandi by using this method, is that the trader / investor acts in an unethical manner, putting his own interest above that of others including the institution from whom non-public

information was gained, and thereby causing a fraud. By now world over, it is illegal for brokers or asset managers to practice front-running using trading information about their own or another broker's clients, and this is punishable by the respective Securities and Exchange Commission(s). Front running is tempting for those with access to inside information. In most cases, the practice is highly unethical and illegal due to the obvious information advantage of industry insiders compared to equally capable investors outside the firm. (Most of this information could be viewed on <http://www.cmic.sec.gov.lk/wp-content/uploads/2012/09/Front-running.doc-an-Unethical-Behavior.pdf>)

9. For the present purposes the primary grievance of the plaintiff is that due to impugned orders and restrictions, he is out of business; hence, as an interim measure, the said orders be suspended. However, for that a prima facie case has to be made out. On a cursory look at the response of SECP (against which there is no rejoinder affidavit), it appears that according to SECP in terms of Section 139 of the Securities Act, 2015, an inquiry was ordered, and detailed analysis of Askari Funds at the Stock Exchange in various listed companies through various Stock Brokers during 2014 to 2016 revealed that plaintiff was involved in front running the orders of Askari Funds and his moves significantly matched trades with Askari Funds and thereby he gained illegally on the basis of non-public information. It is further alleged that he took buy positions in such scrips where Askari Funds intended to buy on the day or in coming days. According to SECP selling orders of plaintiff accounts were placed before buying orders of Askari funds, proximity of time between the order placed by Askari Funds and the plaintiff were

minimal, therefore majority of the trades were matched. If further goes on to specifically detail the individual transactions, to which I must not respond as it may prejudice the case of the parties in departmental proceedings. The Commission has also matched the telephonic calls by the plaintiff to the concerned person in Askari Funds against whom it is alleged that he was the person providing such inside information. The Commission has also stated in its Counter Affidavit that plaintiff is a habitual offender and one complaint in this regard is already pending before a Special Court for Banking Offences. As stated earlier there is no denial of these allegations in the form of a rejoinder affidavit. Moreover, the plaintiff for reasons known best to him as not arrayed the brokerage firm namely M/s Axis Global Limited, through whom the investment at the relevant time was behind made in shares in question. His claim is that he was not involved in any front running as alleged as the shares in question were bought earlier in time and that too in quantities much higher in number as alleged and matched by SECP. This assertion could only be verified if the said brokerage house would have been before the Court. As to the other ground so raised that no profits were made and in fact admittedly loss was incurred, even if this was true (as it is denied by SECP in totality), for the present purposes it is immaterial, as if any offence is made out as alleged, then the offence is for indulging into insider trading ("front running") and at times losses do occur in this volatile market.

All said and done, but at the same time at this injunctive stage it is also not possible for this Court to deeply appreciate this and it would not be appropriate for this Court to give any conclusive findings as to the allegations and the material placed before the Court, lest it may be prejudice the case. Nonetheless, even otherwise, the appraisal of the

material placed on record requires a deeper appreciation of the same which cannot be done at the injunction stage and again for such reasons this Court is not in a position to give and exercise any discretionary relief to the Plaintiff. The ingredients for grant of an injunction are lacking in this matter as perhaps, it is a matter of evidence, only after which, the Plaintiff would be in a position to make out a case for grant of relief.

10. In view of hereinabove facts and circumstances of this case, this is not a fit case wherein, any injunctive order could be passed, therefore, the listed application is hereby dismissed. However, SECP shall proceed in accordance with the Securities Act, 2015, as discussed hereinabove, and, the Plaintiff if advised may seek appropriate remedy under the Act *ibid*, as above. Since the issue involves the question of Plaintiff's bread and butter as claimed, therefore, SECP is directed to finalize its proceedings preferably within a maximum period of 60 days from today.

Dated: 26.09.2018

J U D G E

ARSHAD/