

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui, CJ
Mr. Justice Jawad Akbar Sarwana

C.P. No. D-1379 of 2023

M/s Adamjee Insurance Company Ltd.
Versus
The President, Islamic Republic of Pakistan & others

Date of Hearing: 13.08.2024

Petitioner: Through Mr. Muhammad Ghazali Shaikh
Advocate.

Respondent No.4: Through Mr. Shahab Imam Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, CJ. - The issue complained of is framed as maladministration, allegedly noticed by policy holder in respect of a fire policy provided by the petitioner to respondent No.4 in consideration of premium. The subject Fire Policy dated 15.02.2019, effective from 01.03.2019 to 28.02.2020 disclosed "General Exclusions", which are adjudicatory.

2. It is petitioner's case that apart from general exclusions, schedule of the policy explicitly warranted that the petitioner shall not be liable for any loss or damages caused by rainwater directly coming through windows and/or ventilators kept open or by leakage and/or seepage from walls/floors/roofs of the premises insured and/or by sweating or moisture damage.

3. On the other hand, it is respondent No.4's (policy holder's) case that heavy monsoon rains on 28.09.2019 damaged the building and stock of plastic/paper rolls stored on the insured premises and consequently he (respondent No.4) intimated the losses to the petitioner on 16.09.2019. On receipt of such complaint Surveyor was appointed by the

petitioner on 23.09.2019 and consequently survey was carried out on 29.09.2019 and on several subsequent dates and it (Surveyor) evaluated the net loss amounting to US\$ 63,740.15. The first survey also disclosed recording of a statement of the Manager of the Insured premises who informed that the rainwater seeped through the roof of the warehouse and due to such seepage the stock of insured premises was soaked. The first surveyor also informed the respondent No.4 about the said statement of the Manager. The petitioner accordingly informed respondent No.4 vide email dated 23.10.2019 about surveyor's report sent through email dated 05.10.2019. The conclusion of the first surveyor disclosed that the loss occurred due to seepage which is excluded under class 3 of the Schedule of the Policy, disclosed above. Consequent upon the Surveyor's report petitioner repudiated the claim vide letter dated 15.05.2020 and assigned reasons that said loss does not fall under the ambit of petitioner's policy and proceeded to close the file.

4. Being dissatisfied with the First Surveyor report, the respondent No.4 requested respondent No.2 i.e. Federal Insurance Ombudsman's Secretariat for additional survey. On 23.02.2022 the respondent No.2 directed respondent No.3 i.e. Security & Exchange Commission of Pakistan to appoint Second Surveyor pursuant to the complaint lodged by respondent No.4 against the petitioner. Respondent No.3 then on 10.03.2022 directed the petitioner to appoint an independent Surveyor from the list of three provided to them. Consequently on 16.03.2022 petitioner confirmed to SECP that they have appointed second Surveyor as M/s OCEANIC SURVEYORS PVT. LTD. (Second Surveyor).

5. The Second Surveyor undertook the survey of the insured premises and reported vide survey report dated 17.09.2022, referred as Second

Report, that water ingress was experienced through broken vents which is an outright exclusion in the subject policy and the subject loss is not indemnifiable under insurance policy.

6. The two concurrent reports were under challenge before respondent No.2 i.e. Federal Insurance Ombudsman Secretariat in the aforesaid complaint, which was decided in favour of respondent No.4 vide order dated 15.11.2022. The crux of the reasoning assigned was that the petitioner was involved in maladministration.

7. The petitioner being aggrieved of such findings of the respondent No.2 then approached and filed representation under section 14 of the Federal Insurance Ombudsman Institutional Reforms Act, 2013 before the respondent No.1 which maintained the same order of respondent No.2 vide decision dated 27.01.2023. The basis of respondent No.1's ruling, as evident from paragraphs 10 and 11 of the decision, is that the exclusion of liability was merely on the basis of statement of an employee who was insurance policy illiterate; the complainant did not get an opportunity to cross examine the insurance policy illiterate employee; and the insurance in question was a renewed policy issued after pre-insurance inspection conducted by the petitioner, therefore, it (petitioner) is estopped from relying upon the plea of alleged seepage/ leakage at warehouse on account of its old structure.

8. On these facts and circumstances, we have heard the learned counsel for petitioner and respondent No.4 and perused material available on record whereas none has appeared on behalf of remaining respondents.

9. What is missed by the two forums below is the domain of their competence. Sections 122 and 127 of Insurance Ordinance 2000 is very material as both the sections of the ibid ordinance relates to respective powers of the Tribunal and Insurance Ombudsman. Section 127 of the

Insurance Ordinance enables the Insurance Ombudsman on a complaint of an aggrieved person to undertake any investigation into any allegation of “maladministration” on the part of the insurance company. The first immediate proviso excludes the jurisdiction of Insurance Ombudsman in respect of matters of investigation and inquiry, which are within the jurisdiction of Wafaqi Mohtasib under the establishment of Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O. 1 of 1983) and/or subjudice 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.

10. Subsection 2 of Section 127 provides the frame of maladministration. The “maladministration” in terms of the definition provided by the Ordinance is:

- (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, favoritism, 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.*

11. On the other hand Section 122 of the Insurance Ordinance, 2000 describes the powers of the Tribunal which may be framed as:

- a) *in the exercise of its civil jurisdiction, have in respect of a claim filed by a policy holder against an insurance company in respect of, or arising out of a policy of insurance, all the powers vested in a civil Court under the Code of Civil Procedure, 1908 (Act V of 1908);*

- b) *in the exercise of its criminal jurisdiction, try the offences punishable under this Ordinance and shall, for this purpose, have the same powers as are vested in the Court of Sessions under the Code of Criminal Procedure, 1898 (Act V of 1898);*
- c) *exercise and perform such other powers and functions as are, or may be, conferred upon, or assigned to it, by or under this Ordinance; and*
- d) *in all matters with respect to which procedure has not been provided for in this Ordinance, follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908) or the Code of Criminal Procedure, 1898 (Act V of 1898) as the case may be.*

12. It is further provided in subsection (3) of Section 122 that no Court other than a Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of a Tribunal extends under this Ordinance including a decision as to the territorial limits and the execution of a decree, order or judgment passed.

13. It is thus required, under the facts and circumstances of the case, to see if it is a case of maladministration on the part of the Insurance Company.

14. Chronology of events is as under:-

15.02.2019	Fire Policy was issued from 01.03.2019 to 28.02.2020
28.08.2019	Heavy monsoon occurred
16.09.2019	Respondent No.4 intimated the loss to the petitioner
23.09.2019	Surveyor was appointed by the petitioner
05.10.2019	First Surveyor informed the respondent No.4 about the Manager's statement and exclusion clause
23.10.2019	Petitioner conveyed Surveyor's email to respondent No.4.
10.04.2019	First Survey report concluded
15.05.2020	Repudiation letter by the petitioner - No loss
10.08.2020	Complaint No.1351/2020 filed by respondent No.4 before respondent No.2.
23.02.2022	Respondent No.2 requested respondent No.3 for appointing second Surveyor.
10.03.2022	SECP gave three names/options of Surveyors
16.03.2022	Oceanic Surveyors was appointed
17.09.2022	Second Surveyor concluded the report and conceded.
15.11.2022	Respondent No.2 decided complaint in respondent No.4's favour.

21.11.2022	Ibid order was received by petitioner.
16.12.2022	Petitioner filed representation before respondent No.1.
27.01.2023	Respondent No.1 dismissed petitioner's representation.

15. Two reports of the Surveyor became the basis of the refusal by the petitioner to indemnify policy holder under Insurance policy. The second Survey Report was obtained on the direction of the Federal Insurance Ombudsman where the respondent No.4 agitated to have a second bite of cherry via complaint No.1351/2020. The gist of the complaint in terms of paragraph 5 of the order of Federal Insurance Ombudsman is that the survey was not only delayed but the insurance company played foul by manipulating it to get the desired result.

16. The conclusion drawn by the Federal Insurance Ombudsman on receipt of second Survey Report i.e. M/s OCEANIC SURVEYORS PVT. LTD. is that the Second Surveyor mainly relied upon the photographs of first survey report and physical inspection of site and concluded that the water ingress was through damaged ceiling and through broken/open vents, which, as per report, is excluded in the subject policy. In paragraph 19 the Ombudsman disclosed that the two surveyors failed to conduct survey scientifically on the count that after almost three years it was difficult to collect the evidence of water seepage from the ceiling/broken windows. Per Ombudsman, the impression drawn by the Surveyors in the report was that entire stock was destroyed by rain coming through the ceiling and broken windows and this impression, per Ombudsman, was not correct as the Surveyor did not bother to collect the evidence regarding quantity of rainwater in millimeter on that day i.e. 28.08.2019.

17. In view of Ombudsman, he (Surveyor) ought to have measured the ground floor height of the warehouse and the level of the roof and if there was any chance of water accumulation after rain, especially in

areas where ceiling/roof was damaged. Paragraph 20 of the impugned/Ombudsman's order contribute that the damaged ceiling and broken windows may have contributed to some extent to the loss/damage to the stock but it cannot be concluded that entire stock was loss/damaged due to rainwater coming from the damaged ceiling and broken windows and the report completely ignored the fact that the stock "could have been destroyed" by flooding of warehouse because of heavy rainfall hence, per Ombudsman, Section 12(1)(a) and Section 12(5) were violated. Consequently in pursuance of Section 130 of Insurance Ordinance, 2000 the petitioner was directed, in terms of the order of Ombudsman, to pay an amount of US \$.63,740.15 as assessed by First Surveyor as loss accruing to the complainant/respondent No.4 within 30 days from the receipt of the aforesaid order, though first surveyor also did not indemnify the policy holder.

18. In proceeding the aforesaid case the Ombudsman has totally misread the jurisdiction enjoyed by the office of Ombudsman. It extends only to the extent of maladministration of petitioner, which is not remotely highlighted. Chronological events disclosed above show that the incident was reported after almost 18 days of monsoon rain causing damage. The complainant at the very outset discussed the losses faced on account of monsoon rain. It is insurance policy determination matter and ought to have been taken to the Tribunal. Performance of surveyors (both) cannot form maladministration on the part of the petitioner (Insurance Company). Surveyor's performance cannot be kept in the basket of petitioner's maladministration per Section 127 of *ibid* Ordinance. It is the decision, process, recommendation, act of omission or commission of Insurance Company, which could be framed as maladministration. Policy holder intimated losses after 18 days of monsoon rain whereas surveyor was appointed within seven days of such

intimation. Insurance company took less time than policy holder. 05.10.2019 was only date of communication of report which was conducted before.

19. While discussing the merit of case the Ombudsman travelled away from his contours defined under the law. It was a case to be tried before Tribunal and not Ombudsman, however, the respondent No.4 opted for a wrong forum for a claim under the Fire Policy. If such adjudication of policy claims is entrusted to the Ombudsman the adjudication via Tribunal becomes redundant. The adjudication of this policy was not required under Section 127 of *ibid* Ordinance.

20. We have embarked upon the findings to the extent of maladministration, which we do not find and we refrain from any comments as far as merit of claim is concerned as adjudication before proper forum was never tested. Although it is concurrent finding but the case of lack of jurisdiction being exercised by two forums below has reduced the findings to a cipher.

21. None of the observations made by us herein in relation to and/or arising out of the policy will bind the parties or the Tribunal if any such attempt of adjudication is made.

22. The petition is accordingly allowed and the two findings (i) Federal Insurance Ombudsman, Pakistan order dated 15.11.2022 and (ii) the President's decision dated 27.01.2023 communicated by Director (Legal-I), President's Secretariat (Public) are set aside.

Dated:

Chief Justice

Judge