

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Sayyed Mazahar Ali Akbar

Naqvi, JJ

ADAMJEE INSURANCE COMPANY LTD.---Petitioner

Versus

MUHAMMAD RAMZAN and others---Respondents

Civil Petitions Nos. 1483-L to 1495-L of 2018, decided on 2nd July, 2020.

(On appeal from the orders of Lahore High Court, Lahore dated 30-05-2018, passed in W.Ps. Nos. 215957/2018, 215958/2018, 215959/2018, 215960/2018, 215962/2018, 215963/2018, 215966/2018, 215967/2018, 215969/2018, 215971/2018, 215972/2018, 215973/2018 and 215974/2018).

(a) Constitution of Pakistan---

---Art. 199--- Constitutional petition--- Scope--- Sub-constitutional legislation could not curtail or abridge the jurisdiction of a constitutional court---Legislature, being the creature of the Constitution could not take away the jurisdiction of a constitutional court conferred by the Constitution---Sub-constitutional legislation could not control the constitutional remedy available under Art.199 of the Constitution---While the constitutional courts may consider the legislative object and purpose of a statute, still they could not shut their doors to an aggrieved person who invoked the constitutional jurisdiction of the court under Art. 199 of the Constitution.

Arshad Mehmood v. Commissioner/Delimitation Authority Gujranwala and others PLD 2014 Lah. 221; Khan Asfandiyar Wali and others v. Federation of Pakistan through Cabinet Division Islamabad and others PLD 2001 SC 607; Mrs. Shahida Zahir Abbasi and 4 others v. President of Pakistan and others PLD 1996 SC 632; Malik Muhammad Mukhtar, through Legal Heirs v. Province of Punjab through Deputy Commissioner (Collector) Bahawalpur and others PLD 2005 Lah. 251; Miss Asma Jilani v. The Government of the Punjab and another PLD 1972 SC 139; Government of West Pakistan and another v. Begum Agha Abdul Karim Shorish Kashmiri PLD 1969 SC 14 and Federation of Pakistan and another v. Malik Ghulam Mustafa Khar PLD 1986 SC 26 ref.

(b) Insurance Ordinance (XXXIX of 2000)---

---S. 124--- Constitution of Pakistan, Art. 199--- Constitutional petition before the High Court against a decision passed by the Insurance Tribunal on a miscellaneous application---Maintainability--- Constitutional jurisdiction under Art.199 of the Constitution could be invoked to challenge miscellaneous decisions passed during the course of proceedings before the Insurance Tribunal covered under S.124(1) of the Insurance Ordinance, 2000 (the 'Ordinance')---In the present case, the order of the Insurance Tribunal passed against the insurance-company through which the right to file a written statement had been denied, did not fall within the purview of S.124(2) of the Ordinance and could only be challenged by invoking the constitutional jurisdiction of the High Court under Art.199 of the Constitution---Constitutional court then had to examine whether such a petition met the requirements of Art.199 and required interference in the light of the established jurisprudential principles that guided a constitutional court---Constitutional court may also consider the decision in the overall scheme of the Ordinance under which it arose and give due deference to the legislative object and purpose--- Petitions for leave to appeal were converted into appeals and allowed, the order passed by the Tribunal, as well as, the impugned order of the High Court were set-aside and the Supreme Court directed the parties to appear before the Tribunal where the insurance-company would file its written statement and there from the Tribunal shall proceed further and decide the matter strictly in accordance with law.

Federation of Pakistan and another v. Malik Ghulam Mustafa Khar PLD 1986 SC 26 and Hashwani Hotels Limited through Senior Manager v. Sindh Insurance Tribunal, Karachi 2016 CLD 1790 approved.

Farooq Amjad Meer, Advocate Supreme Court for Petitioner (in all cases).

Ms. Tasneem Amin, Advocate-on-Record along with Munir Ahmad Khan Sadhana, AHC (appeared with special permission of the Court).

Date of hearing: 2nd July, 2020.

ORDER

SYED MANSOOR ALI SHAH, J.---Legal question regarding the scope of Appeal provided under section 124 of the Insurance Ordinance, 2000 ("Ordinance") has come up before us. This question emerges from the following factual background: Respondent policy holder filed an application for the recovery of insurance claim and liquidated damages under his Crop Insurance Policy against the insurer (the petitioner) before the Insurance Tribunal ("Tribunal") under the Ordinance. In the course of these proceedings the right of the petitioner to file its written reply was closed vide order dated 28.03.2018 of the Tribunal. This order was challenged by the petitioner before the High Court by invoking the constitutional jurisdiction under Article 199 of the Constitution. The writ petition was dismissed vide impugned order dated 30.05.2018, inter alia, on the ground that alternate remedy of a statutory appeal was available against the said order under section 124(2) of the Ordinance.

2. Learned counsel for the petitioner argued that the constitutional petition was maintainable against order dated 28.03.2018 as appeal under section 124(2) of the Ordinance has a limited scope and is available against decisions that finally adjudicate upon the insurance claim or the penalty thereof. He also pointed out that different High Courts have expressed conflicting opinions and therefore a definitive opinion of this Court will help clarify the legal position. He referred to *State Life Insurance Corporation of Pakistan through Chairman and another v. Additional District Judge-I and another* (2010 CLD 845), *UBL Insurers Limited v. Ashiq Hussain and another* (2014 CLC 1155), *Hashwani Hotels Limited through Senior Manager v. Sindh Insurance Tribunal, Karachi* (2016 CLD 1790) and *State Life Insurance Corporation of Pakistan through Attorney v. Additional District Judge and others* (2019 CLD 144). Learned counsel for the respondent supported the impugned judgment.

3. We have heard the learned counsel for the parties and have examined the Ordinance and the case law cited before us. Section 124 of the Ordinance provides as under:-

124. Appeal.- (1) Subject to the right of appeal conferred by subsection (2) hereof, the decision of the Tribunal on any application shall be final and shall not be questioned in any Court or before any other authority.
- (2) Any party aggrieved by a decision of the Tribunal may, if the amount of the claim in dispute or the penalty prescribed, as the case may be, is not less than one hundred thousand rupees, prefer an appeal to the High Court within a period of thirty days from the date of such decision.
- (3) An appeal under subsection (2) shall be heard by a Bench of not less than two judges of the High Court having territorial jurisdiction over the relevant Tribunal.

Under the statutory scheme of the Ordinance, not all decisions or orders of the Tribunal are appealable under Section 124. Infact under section 124(1) the Ordinance provides that these decisions on miscellaneous applications shall not be questioned before any court or authority. However, section 124(2) provides that if any party is aggrieved by a decision of a Tribunal which decides a claim in dispute or the penalty prescribed of an amount of not less than one hundred thousand rupees may prefer an appeal under section 124(2) before the High Court. Section 124(2), therefore, refers to the final decision regarding the insurance claim or the penalty prescribed. Any such appeal is to be heard by a bench of not less than two judges of the High Court having territorial jurisdiction over the relevant Tribunal. Limiting the right of appeal to a select category of final decisions, the legislative design of the Ordinance is to provide for an expeditious disposal of insurance claims.

4. There can be a variety of decisions passed on miscellaneous applications during the course of the proceedings before the Tribunal with varying consequences on the parties to the proceedings. Irrespective of the gravity of these decisions/orders on the parties, the statutory scheme of the Ordinance remains neutral and does not provide for a right of statutory appeal against any of these

decisions. So like in the instant case where the right to file written statement of the petitioner has been closed, is the petitioner to accept his fate and wait to file an appeal after the final decision of the Tribunal or does he have a remedy?

5. Remedy is available outside the legislative framework of the Ordinance and on a constitutional plane. It is axiomatic and by now a judicial cliché that sub-constitutional legislation cannot curtail or abridge the jurisdiction of the constitutional court. Legislature, being the creature of the Constitution cannot take away the jurisdiction of a constitutional court conferred by the Constitution¹. The Ordinance is a sub-constitutional legislation and cannot control the constitutional remedy available under Article 199 of the Constitution. While the constitutional courts may consider the legislative object and purpose of a statute, still they cannot shut their doors to an aggrieved person who invokes the constitutional jurisdiction of the court under Article 199 of the Constitution. This well settled constitutional principle loudly resonates through our jurisprudence².

6. Order dated 28.03.2018 passed against the petitioner by the Tribunal through which the right to file a written statement has been denied, does not fall within the purview of Section 124(2) of the Ordinance and can only be challenged by invoking the constitutional jurisdiction of the High Court under Article 199 of the Constitution. It is then for the constitutional court to examine whether such a petition meets the requirements of Article 199 and requires interference in the light of the established jurisprudential principles that guide a constitutional court. The constitutional court may also consider the decision in the overall scheme of the Ordinance under which it arises and give due deference to the legislative object and purpose. The views expressed by the High Courts in *Hashwani Hotels Limited through Senior Manager v. Sindh Insurance Tribunal, Karachi* (2016 CLD 1790) and *State Life Insurance Corporation of Pakistan through Chairman and another v. Additional District Judge-I and another* (2010 CLD 845) regarding the nature of appeal under section 124 of the Ordinance and the right to access to a constitutional court are correct.

7. We have noticed that the High Court while holding that the petitions before the High Court are not maintainable due to the statutory remedy of appeal under section 124, went ahead and gave a finding on the merits of the case, which was not appropriate. We were minded to remand the matter to the High Court to decide the case afresh, on merits. However, at this stage learned counsel for the respondent, on instructions, conceded that he has no objection, as far as the merits of the case are concerned, if order dated 28.03.2018 passed by the Tribunal is set aside and the petitioner is allowed to file its written statement, before the Tribunal, provided this Court directs the Tribunal to decide the matter expeditiously.

8. While holding that constitutional jurisdiction under Article 199 of the Constitution can be invoked to challenge miscellaneous decisions passed during the course of proceedings before the Tribunal covered under section 124(1) of the Ordinance, we on the concession of the learned counsel on merits set aside order dated 28.03.2018 passed by the Tribunal, as well as, the impugned order. The parties are directed to appear before the Tribunal on 20.07.2020 when the petitioner company will file its written statement and therefrom the Tribunal shall proceed further and decide the matter strictly in accordance with law definitely before the close of this year.

9. We are aware that the petitioner could have filed an intra-court appeal under Section 3 of the Law Reforms Ordinance, 1972 against the impugned order but considering that there are conflicting judgments of the two High Courts on the interpretation of Section 124 of the Ordinance and also that the learned counsel for the respondent has conceded that the petitioners be allowed to file their written statement and keeping in view the fact that insurance claim was filed way back in the year 2015, we thought it best in the interest of justice to entertain these petitions and resolve the legal question involved without further ado.

10. For completion of record it is pointed out that Mr. Munir Ahmad Khan Sadhana, advocate, who is not an advocate of this Court, has been granted special permission to argue this matter considering

that he has been attending to this case, before the Tribunal since beginning and is well versed with the facts of the case. The fact that the application for the recovery of the insurance claim filed by the respondents is pending since the year 2015, also weighed on our minds in granting this permission.

11. For the above reasons, we set-aside impugned order dated 30.05.2018, convert these petitions into appeals and allow the same.

MWA/A-26/S Petitions accepted.