

## Pakistan Information Commission

### Government of Pakistan

1<sup>st</sup> Floor, National Arcade, 4-A Plaza

F-8 Markaz, Islamabad

Website: [www.rti.gov.pk](http://www.rti.gov.pk)

Phone: 051-9261014

Email: [appeals@rti.gov.pk](mailto:appeals@rti.gov.pk)

  @PkInfoComm



### In The Pakistan Information Commission, Islamabad

#### Appeal No 837-01/21

**Hamza Hassan Khan**

(Appellant)

Vs.

**Securities and Exchange Commission of Pakistan**

(Respondent-I)

**Pakistan Mercantile Exchange**

(Respondent-II)

#### ORDER

**Date:** March 01, 2021

**Zahid Abdullah:** Information Commissioner

#### **A. The Appeal**

1. The Appellant filed an appeal, dated 09-01-2021, to the Commission, stating that he submitted information requests to the Chairman, Securities and Exchange Commission of Pakistan and to the Chief Regulatory Officer, Pakistan Mercantile Exchange on November 27, 2020 under the Right of Access to Information Act 2017 but did not received any response from both public bodies.
2. The information sought by the Appellant is as follows:
  - i. *“Whether you have any law to refund the funds of an investor without his/her permission/authority?”*
  - ii. *Whether in case your institution released the funds to any one without any permission, who one will be held responsible for releasing such funds?*
  - iii. *Whether you may inform the applicant that how much amount is lying in my account No. TRD1830014 at present?*
  - iv. *Whether the Floret Commodities (Pvt) Limited is still functioning as your Broker and doing business in the Market and any such security is kept with your institution?*
  - v. *Whether your institution as well as broker are not responsible in case the broker withdrew the funds with fraudulent manner from the account of client/ applicant?*
  - vi. *Whether your institution as well as your broker can release the funds from an individual account to someone else without his/her permission?”*

#### **B. Proceedings**

3. Through notices dated January 19, 2021, sent to Chief Regulatory Officer, Pakistan Mercantile Exchange, and to Executive Director, Security and Exchange Commission of

Pakistan, the Commission called upon the Respondent to submit reasons for not providing the requested information.

4. The Appeal was fixed for hearing on February 11, 2021 and Respondent-I, Respondent-II and the Appellant was informed through notices send on February 01, 2021.

5. The Respondent-I through a letter vide No. SMD/BCD/2021/PIC/2362 dated February 10, 2021 submitted its response which is as under:

*“It is hereby submitted that the letters dated 16.01.2018, 12.02.2018, 21.03.2018, 04.05.2018, 12.05.2018, 11.06.2018 and final notice dated 27.11.2020 mentioned in initial para of the instant Appeal were not shared by the Applicant with the SECP.*

*In pursuance to the above, the SECP had taken up the matter with the PMEX. In response, the PMEX informed that the matter was thoroughly investigated in the past and the required information was provided to the Applicant number of times. The PMEX has also informed that the Information Act, 2017 is not applicable on PMEX and as such PMEX is not under any legal or regulatory compulsion to respond to the queries raised by the complainant through letter dated November 27, 2020.*

*However, the SECP has obtained point-wise replies from the PMEX to the queries raised by the Applicant, which are reproduced here:*

*Quote*

- i. PMEX does not deal with investors directly. Prior to direct fund model, all the collection and withdrawal of funds were undertaken through broker, who generally has the authority. In case of any unauthorized refund, the complaint should be filed against the broker and the payee.*
- ii. Please see response to 1 above.*
- iii. As on February 9, 2021, Rs. 39,728/02 lying in Account No. TRD1830014.*
- iv. M/s. Floret Commodities (Pvt.) Limited is no more a licensed broker of PMEX.*
- v. If it is established that the broker withdrew the customer's funds in a fraudulent manner, then appropriate disciplinary action may be taken against the broker by PMEX, SECP and other law enforcement agencies as well.*
- vi. A broker cannot release any customer funds to someone else without customer or his authorized person's authority.*

*Unquote*

*Our para-wise comments on the Appeal are also being submitted (along with annexure) for consideration of the Pakistan Information Commission.”*

6. The response of the Respondent was shared with the Appellant on February 11, 2021.

7. The Appellant on February 16, 2021 submitted his rejoinder to the response of the public body, which is as under:

*“That the applicant has received this Honourable Commission letter dated 11.02.2021 along with Reply vide letter No. SMD/ BCD/ 2021/PIC/2362 dated 10th February, 2021 of SECP whereby the reply of O6 points asked for by the applicant were mentioned which are found unsatisfactory and a stereo type reply was mentioned. It is noteworthy that SECP is playing*

*Role of Regulatory Authority of PMEX but in this matter no such character was played. Anyhow the applicant again submits as under:*

- 1. It is settled principle that investor make request to PMEX through broker or release of funds from his/her account but in the case of the applicant, the funds were released without any formal request which is sheer violation on the part of both PMEX as well as broker.*
- 2. As regard para iv 1s concerned, the applicant has been requesting since 2018 but this office has not taken or initiated any action against the Floret Commodities (Pvt) Limited. It is noteworthy that still the security of Floret is intact with your office therefore, the amount Rs.7,00,000/- wrongly deducted may be made good of the applicant.*
- 3. It is well established and evident from the record that broker withdrew the funds in a fraudulent manner and inspite of repeated requests since 2018 to your office as well as PMEX no concrete efforts were made to make the loss good of the applicant.*
- 4. That so far as para (vi) is concerned the applicant has not authorized to anybody else for release of fund.*

*It is pertinent to mention here that this office as well as PMEX has not responded even refused the 6 questions of the applicant and Subsequently the applicant got the requisite information from a lawful authority i.e. Pakistan Information Commission, F-8 Markaz, Islamabad. The Floret in revenge of asking requisite information/ reply of question, ultimately filed a false and frivolous suit damages on the sole matter of asking information/questions and It is sign of satisfaction that the applicant got the said information through the Constitution Act under Right of Access to Information.*

*Keeping in view of above, the applicant prays to this Honourable Commission to initiate action under the relevant law of Right of Access to Information Act, 2017 as the respondents have been proved as guilty of the matter and liable to be prosecuted under the law. The respondents wilfully and intentionally did not provide the requisite information and a valuable time of the applicant has been wasted, therefore, the applicant bless and has great sanctity to the Act *ibid.*”*

### **C. Discussion and Commission’s View on Relevant Issues**

8. This commission is of the view that it is responsibility of the regulatory bodies to ensure that the respective private entities disclose to citizens all information pertaining to matters of public importance.
9. Be it right to education, right to healthcare, right to gainful employment, access to quality financial services, in short, exercise of all such rights is dependent on right to information. As such, regulatory bodies are required to ensure that all such rights of citizens are not compromised because of lack of transparency on the part of private entities.
10. Informed citizenry is prerequisite for a functioning democracy. This commission notes with satisfaction that the Appellant exercised the constitutional right of access to information and the Respondent, Securities and Exchange Commission of Pakistan, as a responsible regulator, on the intervention of this commission, gathered the requested information from the private entity and shared it with the Appellant.

11. There is no provision in the Right of Access to Information Act 2017 which requires this commission to take any action, as requested by the Appellant, against a private entity for filing a law-suit against a citizen for seeking information, as alleged by the Appellant.
12. The powers vested in this commission can only be exercised to the extent of ensuring provision of information to citizens that is declared public under the Right of Access to Information Act 2017 and cannot be exercised to issue directions to regulatory bodies in matters pertaining to their other functions.

**D. Order**

13. The appeal is disposed of as the requested information has been provided to the Appellant.
14. Copies of this order be sent to the Respondents and the Appellant for information.

**Fawad Malik**

Information Commissioner

**Zahid Abdullah**

Information Commissioner

Announced on:

March 01, 2021

This order consists of 4 (four) pages, each page has been read and signed