

In the supreme court of pakistan

(Appellate Jurisdiction)

BENCH

Mr. Justice Amir Hani Muslim

Mr. Justice Mushir Alam

Mr. Justice Mazhar Alam Khan Miankhel

CIVIL PETITION NO.173 OF 2017

(On appeal against the judgment dated 27.01.2017)

Passed by the High Court of Sindh Karachi, in

CMA No.721/2017 in Misc. Appeal No.58/2015)

Pakistan Electronic Media Regulatory Authority Petitioner

Versus

Labbaik (Pvt) Ltd and another Respondents

For Petitioner : Mr. Zahid F. Ebrahim, ASC
Mr. Kashif Hanif, ASC
Mr. Tariq Aziz, AOR

For Respondents : Not represented.

Date of hearing : 31-01-2017

ORDER

Through these proceedings, the Petitioner has impugned the interim order passed by the learned High Court of Sindh in Miscellaneous Appeal No.58 of 2015; whereby it has suspended the operation of the prohibition order dated 26.01.2017, passed by the Chairman of the Petitioner, till the next date and also sought comments from the alleged contemnor, the Chairman, Pakistan Electronic Media Regulatory Authority (hereinafter referred to as the Authority).

2. The learned Counsel for the Petitioner states that the Respondent No.1 has filed a Miscellaneous Appeal No.58 of 2015 under Section 30-A of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (hereinafter referred to as the Ordinance), challenging the order dated 16.9.2015; whereby the Petitioner has suspended the licences of

Satellite TV Channels “BOL NEWS” and “BOL Entertainment”. The prayer in the said Miscellaneous Appeal is reproduced hereunder:-

“It is, therefore, respectfully prayed that this Hon’ble Court may be pleased to set aside the impugned order dated 16.09.2015 (23-9-18), passed by the Authority and allow Appeal of the Appellants.

Further, grant cost of the proceedings and grant any other relief which this Honourable Court may deem fit and proper under the circumstances of the case.”

3. The learned High Court had suspended the order dated 16.09.2015, of the Petitioner/Authority which was communicated through press release on 23.09.2015, by its interim order dated 28.09.2016, with the observation that the Petitioner or any person acting on behalf of the Petitioner shall not take any coercive action against the Respondent No.1, by any means and further ordered the Petitioner to act strictly in accordance with law. The learned Counsel contends that the order dated 16.09.2015 was withdrawn by the Petitioner/Authority on 19.10.2016 and the learned High Court was informed accordingly. Even on 08.11.2016, the Petitioner filed application in the Court to confirm the fact that order challenged in appeal has been withdrawn by the Petitioner. The learned Counsel submits that after withdrawal of the order dated 16.09.2016, passed by the Petitioner, the learned High Court was bound to dismiss the Appeal as having become infructuous, instead the learned High Court did not dispose of the Appeal.

4. On 23.12.2016, the Petitioner/Authority has issued a show cause notice to the Respondent No.1 for revocation of the licence of Respondent No.1’s channel after the security clearance of its Directors was rejected by the Ministry of Interior. This show cause notice was not challenged by any independent proceedings instead a C.M.A was filed challenging the order in the Miscellaneous Appeal No.58 of 2015.

Alongwith the C.M Application, a contempt application was also filed against the Petitioner, *inter alia*, on the ground that the show cause notice issued to the Respondent No.1 amounts to defiance of the order of the Court passed on 28.09.2016. The learned High Court while issuing notice on both the Applications, suspended the show cause notice, vide order dated 02.01.2017, staying the action of the Petitioner/Authority pursuant to the show cause notice dated 23.12.2016.

5. The Petitioner further claims that the show cause notice dated 23.12.2016 was issued on an independent cause of action and it has no nexus or bearing with the order passed by the Petitioner on 16.09.2016 in the Miscellaneous Appeal No.58 of 2015 and become infructuous on 16.09.2016. The Counsel contends that the show cause notice issued by the Petitioner could only be challenged by a separate appeal and not in Miscellaneous Appeal No.58 of 2015.

6. The learned Counsel for the Petitioner next contended that on 16.01.2017, the Authority on different complaints being received by it, took notice on 26.01.2017, by issuing a prohibition order, in terms of Section 27 of the Ordinance, whereby it restrained the programme “*Aisay Nahi Chalay Ga*” telecast by Dr Aamir Liaquat Hussain. In spite of the prohibition order passed by the Petitioner/Authority, on the same evening the said Doctor Aamir Liaquat continued the programme and on the following day, the Respondent No.1 made Application C.M.A.No.721 of 2017, challenging the prohibition order and also filed another contempt application, which order was passed on a separate cause, by the competent authority of the PEMRA.

7. The learned High Court has entertained the Miscellaneous Applications of the Respondent No.1 in the same Appeal which became infructuous overlooking the scope of the Appeal, granted interim relief while issuing notice to the Petitioner even on contempt Application.

8. The learned Counsel for the Petitioner has contended that in the first place, the learned High Court has become *functus officio*, as the order appealed against was withdrawn on 19.10.2016, which fact was brought to the notice of the learned High Court not only on 19.10.2016 but also on 08.11.2016 by an Application. The learned Counsel next contended that through these orders, which were passed subsequent to the order dated 19.10.2016, the learned High Court has enlarged the scope of the Appeal, by entertaining the Miscellaneous Application of the Respondent No.1, through which it has challenged the orders passed by the Authority at times on independent causes. The learned Counsel for the Petitioner has contended that passing of interim orders at times has led the Authority to stand still. The interim orders passed by the learned High Court without examining the merits and material had made the Petitioner dysfunctional.

9. The learned Counsel for the Petitioner contends that all the orders passed in these proceedings by the competent authority of the Authority/PEMRA were in conformity with the Ordinance and issuance of the notices on contempt applications were without jurisdiction.

10. We have heard the learned Counsel for the Petitioner and have perused the record. The Appeal is fixed for hearing before the learned High Court tomorrow, therefore, we are not inclined to pass any further order and will wait for the orders which are yet to be passed by the High Court in these proceedings. However, we issue notice to the Respondents

for a date in the next week and in the intervening period, restrained the High Court from proceeding against the Chairman, PEMRA, or any other person on the contempt applications filed by the Respondent No.1 at times under the garb of orders passed by them against the Respondent No.1. The Registrar of the High Court of Sindh, Karachi, shall immediately place this Order before the Bench hearing Miscellaneous Appeal No.58 of 2015.

To come up on **06.02.2017.**

Judge

Judge

Islamabad, the
31-01-2017
Sohail/*

Judge