

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition.No.3361/2019

Adeel Arshad
Vs.
Federation of Pakistan etc

Petitioner by : Raja Rizwan Abbasi, Advocate.
Respondents by : Mr.Muhammad Naeem Ashraf, Advocate.
Mr.Abdul Batin, Director (Numbering),
PTA.
Ch.Adil Javed, A.D (L & R), PTA.

Date of decision : 10.10.2019

MOHSIN AKHTAR KAYANI J. Through this writ petition, petitioner has Called in question order dated 01.10.2019 passed by respondent No.2 whereby short code 9903 allocated to petitioner through respondents No.3 to 5 under Number Allocation & Administration Regulations, 2018 has been recalled.

2. Learned counsel for the petitioner contends that petitioner is the head of BOLWALA Card Department and respondents No.3, 4 & 5 are SMS Gateway Service providers who being licensees of PTA entered into an agreement with the present petitioner vide agreement dated 01.04.2019 called as service agreement wherein respondents No.3, 4 & 5 have agreed to charge the petitioner with certain unit prices against the service by using short code service. It is further contended that petitioner has not been heard on merit rather his right of *audi alteram partem* has been violated. It is further contended that the impugned order for recalling of the facility through letter dated 01.10.2019 was issued by Director Numbering who is not authorized to recall allocated short code as Section 9 of Pakistan Telecommunication (Re-organization) Act, 1996 does not recommend the delegation of power referred in Section 5 of the said Act to the Director Numbering and as such the impugned order is without jurisdiction.

3. Conversely, learned counsel for PTA, alongwith officials of PTA raised preliminary objection of maintainability of instant writ petition on the ground that Section 7(2) of Pakistan Telecommunication (Re-organization) Act, 1996, provides right of appeal to an aggrieved person against the decision of order of the Authority acting under delegated power as such instant writ petition is not competent. Besides the above referred legal objection respondents have also claimed that the short code was allocated through respondents No.3, 4 & 5 for a specific term for sending program/news alerts to their subscribers against short code number 9636 and against short code number 9903 only T.V guide and information of T.V Show, however, it has been contended that the scheme introduced by Bol Enterprises is against the concept of consumer protection which provides the prohibition to use such kind of service for purpose of any lottery or gambling purpose which itself has been explained in the letter dated 06.03.2019.

4. Arguments heard. Record perused.

5. Perusal of record reveals that petitioner who claimed to be the head of BOLWALA Card Department and has filed instant writ petition against the order dated 01.10.2019 whereby short code number 9903 allocated to the petitioner has been recalled by the Director Numbering PTA. Before discussing merits of the case it is necessary to discuss the maintainability of the instant writ petition and the status of present petitioner who claimed to be the head of BOLWALA Card Department, and authorized to proceed for restoration of right claimed by BOL Enterprises Private Limited. The entire record has been scanned with the able assistance of learned counsel for the petitioner, there is no other document available on record by whom it could be assumed that the present petitioner was authorized by BOL Enterprises Private Limited nor any incorporation certificate or memorandum of Article of Association (form 29) have been appended with this petition. Neither any specific resolution is available on record. This aspect clearly reflects that present petitioner is not

authorized to file instant writ petition by claiming himself as head of BOLWALA Card Department, therefore, such kind of writ petition is not maintainable. Reliance is placed on case law titled Mamdot (Represented by 06 heirs) Versus Messrs Ghulam Nabi Corporation, LTD, Lahore (PLD 1971 Supreme Court 550), Telecard Limited through Authorized Representative Versus Pakistan Telecommunication Authority through Chairman (2014 CLD 415) and Government of Pakistan Versus Premier Sugar Mills etc (PLD 1991 Lahore 381).

6. The other important factor required to be settled, is the allocation of number 9636 allocated to 1st 4 Connect Private Limited who is the licensee of PTA. The licensee has made request for the change of service for short code from 1st 4 Connect Private Limited to BOL Enterprises Private Limited. The same was allowed by the PTA Authorities for Customer of BOL Enterprises vide order dated 15.3.2019 with specific conditions explained in para 01 which is as under:-

<i>Short Code</i>	<i>Service Description</i>
<i>9636</i>	<u><i>SMS based Services for Bol Enterprise Pvt.Ltd</i></u> <i>Sending Program/news alerts to their subscribers</i> <i>SMS Tariff: PKR 2.00 + tax for update about</i> <i>programs/news alerts</i>

Besides the above referred specific SMS tariff rate charges, certain restriction has also been imposed in para 3 of the said letter which is as under:-

1st 4 Connect (Pvt) Limited shall not offer any prize/ Inami/promotional Scheme/Lottery/Lucky Draw/Game of Chance etc to its subscribers. The short code will not be used for Donations/fund raising/charity purposes.

The above referred conditions are similarly referred in the second short code 9903 request which was allocated to Tilism Technologies Private Limited/Respondent No.4 who also entered into agreement with the BOL Enterprises through separate agreement and the PTA Authority has allowed usage of said number with certain conditions which have been referred in letter

under Number Allocation & administrations Regulations (NAAR), 2018. Besides the above referred position, the respondents No.3 & 4 have sought clarifications regarding lawful legal status of game show conducted by BOL Enterprises, in response to said letter the PTA Authorities have replied the same in which a warning has been extended to BOL Enterprises i.e “ ***We take this opportunity to remind you again that in line with the subjected matter the short cannot be used for prize/Inami/Promotional Scheme/ Lottery/ Lucky Draw/Game of chances etc***”

7. I have also gone through the Number Allocation & Administrations Regulations, 2018 whereby specific conditions provided in Section 14(1)(b) for use of number capacity was given in the following manner:-

“The allocation shall be used for the specified purpose in the manner as approved by the Authority.”

Similarly, in Section 14(1)(c)(iii) it is held that:-

“The allocation must be used in accordance with any specific conditions made by the Authority including any classification by type or tariff.”

Both these concepts confer the usage of short code as is evident from the Number Allocation documents that it is only meant for users who can text in the day to receive the TV guide via SMS, comments/feedback on shows for short code number 9903 and sending programme/news alerts to their subscribers against short code number 9636.

8. The short code have been allocated by the PTA on the basis of specific request of the petitioner subject to conditions which have been violated. Although the petitioner contended that Director Numbering has no jurisdiction to issue such kind of letter on the strength of Section 9 of Pakistan Telecommunication (Re-organization) Act, 1996 which deals with the delegation of power, as such the same could only be extended to other officer in term of Section 5 of the Act, however, the question of allocation of number under Number Allocation & Administration Regulations, 2018 falls within the exclusive

jurisdiction of Director Numbering and Regulation 20 whereof extends the jurisdiction to the Authority for withdrawal of numbering allocation.

9. Besides the above referred legal position, Pakistan Telecommunication (Re-organization) Act, 1996, provides appeal under section 7 (2) of the Act, the same has been confronted to the learned counsel for the petitioner who contended that the question of jurisdiction has not yet been settled and order passed by the Authority is illegal, therefore, appeal has not been preferred, which is incorrect view, therefore, plea raised by the petitioner is not acceptable.

10. Keeping in view the above, instant writ petition is misconceived and same is hereby **dismissed**.

(MOHSIN AKHTAR KAYANI)
JUDGE

M.S.ZAKI.