

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

F.A.O.No.15 of 2020  
M/s Labbaik (Pvt.) Ltd.

**Versus**

Pakistan Electronic Media Regulatory Authority through its Chairman

**Date of Hearing:** 16.03.2020

**Appellant by:** Raja Rizwan Abbasi, Naila Noreen, Ch.  
Ghulam Ashraf Goraya, Muhammad Zaheer  
and Raaz Ali Shah, Advocates

**Respondents by:** M/s Tahir Farooq Tarar and Yahya Farid  
Khawaja, Advocates for the  
respondent/P.E.M.R.A.

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**MIANGUL HASSAN AURANGZEB, J:-** Through this judgment, I propose to decide F.A.O.No.15/2020 and F.A.O.No.19/2020 as in both the said appeals, the order dated 20.01.2020 passed by the respondent (Pakistan Electronic Media Regulatory Authority) has been assailed.

2. Through F.A.O.No.15/2020, the appellant, M/s Labbaik (Pvt.) Ltd. (“M/s Labbaik”), impugns the order dated 20.01.2020 passed by the respondent, whereby the programme called “*Champions*” and its host, Waqar Zaka, were “*prohibited*” under Section 27 of the Pakistan Electronic Media Regularity Authority Ordinance, 2002 (“the P.E.M.R.A. Ordinance”) and a fine of Rs.10,00,000/- was imposed on M/s Labbaik under Section 29 of the said Ordinance.

3. Through F.A.O.No.19/2020, the appellant, Waqar Zaka, also impugned the said order dated 20.01.2020.

4. Learned counsel for the appellants submitted that M/s Labbaik had aired a reality show called “*Champions*” hosted by Waqar Zaka; that in the said show, a group of participants live together in a controlled environment, and also travel to different destinations; that the participants also perform tasks that challenge their physical and mental strength; that the said show is popular with the youth; that all of a sudden, show cause notice dated 03.12.2019 was issued by the respondent to M/s Labbaik; that M/s Labbaik, in its reply to the said notice, took the position that it had complied with all the rules, regulations and code of conduct issued by the respondent; that the respondent, without taking into consideration the contents of M/s Labbaik’s reply, issued a warning on 27.12.2019 with the direction to

M/s Labbaik to stop the airing of the said programme; that it was unthinkable for M/s Labbaik to have violated any of the respondent's directives, and in this regard another reply dated 03.01.2020 was addressed to the respondent; that M/s Labbaik also requested for an opportunity of a personal hearing; that on 20.01.2020, an adjournment was applied for since the learned counsel for M/s Labbaik was abroad; that on 20.01.2020, the respondent passed an order prohibiting the said programme as well as its host in addition to imposing a fine of Rs.1 million on M/s Labbaik; and that the said order dated 20.01.2020 is unlawful and liable to be declared as such by this Court.

5. Learned counsel for the appellants further submitted that said order dated 20.01.2020 was passed by the respondent without affording an adequate opportunity of a hearing to M/s Labbaik; that the said order was passed in violation of the requirements of Article 10-A of the Constitution as well as the principles of natural justice; that the imposition of a fine amounting to Rs.1 million is most exorbitant and unprecedented; that in the impugned order, it has not been mentioned as to which provision of law had been violated by M/s Labbaik and/or Waqar Zaka; and that there is no provision in the P.E.M.R.A. Ordinance or any rules/regulations made thereunder under which a person can be prohibited from appearing on electronic media. Learned counsel for the appellants prayed for the appeals to be allowed and for the impugned order dated 20.01.2020 to be set-aside.

6. On the other hand, learned counsel for the respondent submitted that the host of the programme "*Champions*", aired on 01.10.2019 had indulged in an inappropriate and vulgar conversation with female participants; that indecent and improper activities were performed by the participants in the said programme; that the respondent had received hundreds of complaints against the appellants due to the aired content; that complaints had also been submitted to the Prime Minister Citizen's Portal; that on 29.10.2019, M/s Labbaik was directed to immediately stop airing the promotions of the programme "*Champions*"; that despite the said direction, M/s Labbaik aired the second and third episodes of the said programme on 04.11.2019 and 11.11.2019, respectively; that in the said episodes, Waqar Zaka again indulged in an inappropriate and vulgar conversation with female participants; that one of the female participants shared her experience about drinking

alcohol in parties; that the hearings pursuant to the show cause notice dated 03.12.2019 were adjourned on 10.12.2019 due to the absence of the appellants' principal counsel; that since the programme "*Champions*" had been aired in violation of Section 20(b),(c) and (f) of the P.E.M.R.A. Ordinance read with Rule 15(1) of the P.E.M.R.A. Rules, 2009, and clauses 3(1)(a), 3(1)(e), 12, 13 and 17 of the P.E.M.R.A. (Programmes and Advertisements) Code of Conduct, 2015 ("**Code of Conduct**"), and since M/s Labbaik had aired two episodes of the said programme despite a direction by the respondent to refrain from doing so, the impugned order dated 20.01.2020 was passed; and that since the content of the said programme was highly obnoxious, the measures taken by the respondent against the appellants were strictly in accordance with the law. Learned counsel for the respondent prayed for the appeals to be dismissed.

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

8. The record shows that the respondent had found that in the promotions aired by M/s Labbaik since 01.10.2019 for the programme called "*Champions*", the host, appellant/Waqar Zaka, had indulged in an inappropriate and vulgar conversation with female participants. Apparently, a lot of complaints had also been made in this regard in the Prime Minister Citizen's Portal. Vide letter dated 29.10.2019, the respondent directed M/s Labbaik to immediately stop airing the promotions for the said programme, and to submit the content recorded so far so that it was checked to see whether it complied with the Code of Conduct.

9. Despite the above-mentioned direction, M/s Labbaik aired the second and the third episode of the programme "*Champions*" on 04.11.2019 and 11.11.2019, respectively.

10. The respondent has brought on record the transcript of the objectionable content in the programme called "*Champions*" aired by M/s Labbaik on 04.11.2019. I refrain from naming the female participant in the programme. The objectionable content in the said programme was between the female participant and the appellant/Waqar Zaka. The conversation was with respect to alcohol consumption by the female

participants in parties. For the purposes of clarity, the transcript of the said content is set out in "**Schedule-A**" hereto.

11. On 03.12.2019, the respondent issued a show cause notice informing M/s Labbaik that it had violated the Section 20(b), (c) and (f) of the P.E.M.R.A. Ordinance read with Rule 15(1) of the P.E.M.R.A. Rules, 2009, and clauses 3(1)(a), 3(1)(e), 4(10), 12, 13 and 17 of the Code of Conduct. M/s Labbaik was directed to immediately stop the airing of the said programme. Furthermore, M/s Labbaik, through its Chief Executive Officer, was directed to appear for a personal hearing on 10.12.2019 at Islamabad. The personal hearing, which was originally scheduled for 10.12.2019, was rescheduled on M/s Labbaik's request for 16.12.2019.

12. On 16.12.2019, M/s Labbaik submitted a reply to the said show cause notice taking the position that it had not violated any of the laws referred to in the said notice; that the said programme had been aired for social awareness; that the discussion in the said programme about alcohol consumption was in a negative manner; that a number of plays/dramas had been aired by other channels showing the consumption of alcohol by characters; that other broadcasters had been airing content which was against the norms of the society; and that the respondent's interpretation of the content aired in the said programme was illogical.

13. On 27.12.2019, a warning was issued by the respondent to M/s Labbaik for violating the direction issued to it in the respondent's letter dated 29.10.2019. Furthermore, M/s Labbaik was once again directed to immediately stop the airing of the programme "*Champions*" and to provide the content/transcript of the said programme by 03.01.2020. In the said letter dated 27.12.2019, it was also mentioned that if the said direction was not complied with, the programme "*Champions*" as well as its host would be prohibited under Section 27 of the P.E.M.R.A. Ordinance.

14. Vide letter dated 03.01.2020, M/s Labbaik requested the respondent to provide an opportunity of a hearing on 20.01.2020. In the said letter, M/s Labbaik had not taken the position that the respondent's above-mentioned directions would be complied with.

15. On 16.12.2019, Ms. Naila Noureen, Advocate had appeared on behalf of M/s Labbaik during the personal hearing, and had asked for the proceedings to be adjourned to 20.01.2020. The said request was not

acceded to and the personal hearing committee of the respondent decided to proceed with the matter. The said committee, after taking into account all the necessary facts, recommended that the programme “*Champions*” and its host, Waqar Zaka, be prohibited under Section 27 of the P.E.M.R.A. Ordinance, and for not complying with the directions given by the respondent a fine of Rs.1 million be imposed on M/s Labbaik. The said recommendations were accepted by the competent authority/respondent which passed the impugned order on 20.01.2020. The said order has been assailed by the appellants before this Court.

16. Vide orders dated 27.01.2020 and 06.02.2020, this Court suspended the operation of the said order dated 20.01.2020 subject to the furnishing of a bank guarantee for Rs.1 million.

17. Section 20(b) of the P.E.M.R.A. Ordinance provides that a person who is issued a licence under the said Ordinance shall ensure the preservation of national, cultural, social, and religious values and the principles of public policy as enshrined in the Constitution of the Islamic Republic of Pakistan. Section 20(c) requires a person who is issued a licence under the said Ordinance to ensure *inter alia* that all programmes and advertisements do not contain vulgarity or other material offensive to commonly accepted standards of decency. Furthermore, clause 3(a) of the Code of Conduct provides that the licensee shall ensure that no content is aired which is *inter alia* against Islamic values whereas clause 3(e) provides that no content should be aired which *inter alia* contains anything indecent.

18. Section 27 of the P.E.M.R.A. Ordinance provides that P.E.M.R.A. shall, by an order in writing, giving reasons therefor, prohibit any broadcast media or distribution service operator from broadcasting or rebroadcasting or distributing any programme or advertisement if it is of the opinion that such particular programme or advertisement is *inter alia* obscene or vulgar or is offensive to the commonly accepted standards of decency.

19. Having gone through the transcript of the objectionable material aired by M/s Labbaik on 04.11.2019, I am of the view that the same certainly does not preserve national, cultural, social, and religious values, and is offensive to commonly accepted standards of decency. Moreover, the said content is also indecent and against Islamic values. I do not find any substance in the position taken on behalf of the

appellants that the content for which the prohibition was imposed on the appellants was aired to create social awareness. The appellant/Waqar Zaka is not shown to have condemned alcohol consumption or drug abuse in any manner but on the contrary, prodded the female participant to speak further about alcohol consumption. No religious condemnation, drawbacks or adverse effects of alcohol consumption were discussed.

20. Had M/s Labbaik shown compliance with the direction in the respondent's letter dated 29.10.2019 and stopped airing the promotions for the programme "*Champions*" or the programme itself, the occasion for the issuance of the show cause notice or the imposition of a fine would not have arisen. In defiance of the directions contained in the respondent's said letter dated 29.10.2019, M/s Labbaik went ahead and aired the second episode of the programme "*Champions*" which contained the conversation set out in the transcript.

21. Under Section 29(6) of the P.E.M.R.A. Ordinance, the respondent has been empowered to impose a fine up to Rs.1 million on a licensee who contravenes any provisions of the said Ordinance or the rules or regulations made thereunder. Such a fine can be imposed on the licensee after having been given a reasonable opportunity to show cause. It is not disputed that in the show cause notice dated 03.12.2019 issued by the respondent to M/s Labbaik, specific reference to Section 29 of the said Ordinance had been made. Given the nature of the objectionable content aired by M/s Labbaik, I am of the view that the fine of Rs.1 million was not disproportionate.

22. Now, as regards F.A.O.No.19/2020 is concerned, the same is against the impugned order dated 20.01.2020 to the extent of the prohibition imposed on the appellant/Waqar Zaka. The said prohibition was imposed under Section 27 of the P.E.M.R.A. Ordinance, which is reproduced herein below:-

***"27. Prohibition of broadcast media or distribution service operation. The Authority shall by order in writing, giving reasons therefore, prohibit any broadcast media or distribution service operator from,–  
(a) broadcasting or re-broadcasting or distributing any programme or advertisement if it is of the opinion that such particular programme or advertisement is against the ideology of Pakistan or is likely to create hatred among the people or is prejudicial to the maintenance of law and order or is likely to disturb public peace and tranquility or endangers national security or is pornographic, obscene or vulgar or is offensive to the commonly accepted standards of decency; or***

*(b) engaging in any practice or act which amounts to abuse of media power by way of harming the legitimate interests of another licensee or willfully causing damage to any other person.”*

**(Emphasis added)**

23. Perusal of the said Section shows that the respondent had been empowered to pass a reasoned order in writing prohibiting any *“broadcast media or distribution service operator”* from *“broadcasting or rebroadcasting or distributing any programme or advertisement”* if in the respondent’s opinion it is against the standards enumerated in paragraphs (a) and (b) of the said Section. It is an admitted position that the channel *“BoI News”* (on which the objectionable content was aired), is owned by M/s Labbaik Pvt. Ltd., which comes within the meaning of *“broadcast media or distribution service operator”*. The letter dated 29.10.2019, warning dated 27.12.2019, and the impugned order dated 20.01.2020 was addressed by the respondent to M/s Labbaik.

24. As regards the prohibition imposed on the appellant/Waqar Zaka, I am of the view that Section 27 of the P.E.M.R.A. Ordinance does not empower the respondent to impose such a prohibition on a television anchor or a programme host. A prohibitory order under Section 27 of the P.E.M.R.A. Ordinance can be passed only against any *“broadcast media or distribution service operator”*. Since the appellant/Waqar Zaka does not come within the meaning of a *“broadcast media or distribution service operator”*, the impugned order dated 20.01.2020 is liable to be set-aside only to the extent of imposing a prohibition on the appellant/Waqar Zaka.

25. Section 27 of the P.E.M.R.A. Ordinance is a penal provision which needs to be strictly construed. In the cases of Muhammad Ali Vs. State Bank of Pakistan (1973 SCMR 140), Afzal Masih alias Noori Masih Vs. The State (2004 MLD 970), and Malhar Vs. Government of Sindh (2005 CLC 285), it has been held that penal provisions in a statute have to be strictly construed. The said provision can neither be interpreted such as to include television anchors or programme hosts within the meaning of the terms *“broadcast media or distribution service operator”*. In other words, the prohibition under Section 27 can be imposed only on *“broadcast media or distribution service operator”* and none other.

26. It ought to be borne in mind that a broadcast media or distribution media operator cannot be permitted to flout the prohibition imposed under Section 27 of the P.E.M.R.A. Ordinance on the broadcast or re-

broadcast or distribution of any programme by simply changing the name of the programme and continue with the broadcast with the same television anchor or programme host. Such a device adopted to circumvent the directions of the respondent or a prohibition imposed under Section 27 of the P.E.M.R.A. Ordinance can be met with the imposition of a fine by adopting the procedure provided in Section 29(6) of the said Ordinance. A broadcast media or a distribution media operator would be contravening Section 27 of the P.E.M.R.A. Ordinance if it is to broadcast or distribute a programme or advertisement in violation of the prohibition imposed under the said Section.

27. As regards the contention of the learned counsel for the appellants that M/s Labbaik had not been provided an adequate opportunity of hearing, the same is contrary to the record. Vide the show cause notice dated 03.12.2019, the licensee/M/s Labbaik was directed through its Chief Executive Officer ("C.E.O.") to appear for a personal hearing on 10.12.2019. On the said date, the C.E.O. of M/s Labbaik did not appear before the respondent. However, on the request of M/s Labbaik's authorized representative, Ms. Naila Noreen, Advocate, the hearing was rescheduled for 16.12.2019, on which date, neither the C.E.O. of M/s Labbaik, nor his principal counsel appeared before the respondent. Yet another request for an adjournment was made which was not acceded to by the respondent. The respondent or its personal hearing committee is under no obligation to adjourn or reschedule personal hearings simply because the broadcast media or distribution service operator or its principal counsel happens to be preoccupied elsewhere. Enough indulgence had been shown by the respondent to M/s Labbaik by rescheduling/adjourning the personal hearing on 10.12.2019 to 16.12.2019. In the case of Messrs Evernew Agencies Vs. Customs, Central Excise and Sales Tax Appellate Tribunal, Lahore (2006 PTD 207), it had been held that a party absenting himself to appear before an Authority could not claim that he was not provided an opportunity of a hearing. Additionally, in the case of Water and Power Development Authority/Lahore Vs. Messrs Bhatti Ice and Rice Mills, Buchiki (2004 YLR 1263), it had been held that where the petitioner was granted several opportunities to appear and file a reply but failed to do so, he cannot be subsequently allowed to take the plea that the order was passed in violation of the principles of natural justice.



28. As for the contention of the learned counsel for the respondent that this Court vide judgment dated 19.09.2016 passed in F.A.O. No.81/2016 titled “ARY Media Communications (Pvt.) Ltd. Vs. Pakistan Media Regulatory Authority” did not interfere with the ban imposed on Dr. Shahid Masood for a period of 40 days, suffice it to say that in the said judgment, it was observed *inter alia* that Dr. Shahid Masood had not assailed P.E.M.R.A.’s orders whereby the said ban was imposed. As regards the subsequent judgment dated 26.06.2018 passed in F.A.O. No.25/2017 titled “Dr. Shahid Masood Vs. Pakistan Media Regulatory Authority”, in the said judgment the question as to whether the term “*broadcast media or distribution service operator*” employed in Section 27 of the P.E.M.R.A. Ordinance would also include a television anchor or a programme host was not discussed.

29. In view of the above, F.A.O.No.15/2020, titled “M/s Labbaik (Pvt.) Ltd. Vs. Pakistan Electronic Media Regulatory Authority” is dismissed. The respondent is at liberty to encash the bank guarantee furnished by M/s Labbaik pursuant to the orders dated 27.01.2020 and 06.02.2020 passed by this Court. F.A.O.No.19/2020, titled “Waqar Zaka Vs. Pakistan Electronic Media Regulatory Authority, etc.” is partly allowed, and the impugned order dated 20.01.2020, only to the extent whereby the prohibition under Section 27 of the P.E.M.R.A. Ordinance was imposed on the appellant/Waqar Zaka, is set-aside. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

**APPROVED FOR REPORTING**

Qamar Khan\*

Uploaded By: Engr. Umer Rasheed Dar

**SCHEDULE-A****Channel Name: Bol Ent****Dated: 04-11-2019**لڑکا: **Drunk** تھی آپلڑکی: آ۔ بالکل تب میں نے **start** کیا تھا **Beer** پینا۔لڑکا: **Beer** کیوں شروع کی تھی کس **age** میں شروع کی تھی آپ نے۔لڑکی: **Beer** میں نے شروع کی تھی **I think** میٹرک میں 16 میں تھی جب **age of sixteen** لڑکا: کیا وجہ۔لڑکی: آوجہ **Enjoyment** تفریحلڑکا: یہاں پر لکھا ہوا ہے کہ آپ **Drugs** بہت زیادہ کرتی رہی ہیں۔لڑکی: نہیں بہت زیادہ نہیں کرتی رہی مطلب **Drugs** میں نے **try** کیا ہے اور پارٹیز میں **use Drugs**

کیا ہے باقی بس پارٹیز تک ہی تھا اس **addict** نہیں ہوئی سرکل ہمارا ایسا تھا کہ کبھی کسی نے ایسا ہوا نہیں کہ کوئی کرے اور باقی یہ ہے کہ **abuse** لڑکیاں اپنی وہ لڑکوں کی باتوں میں آجاتی ہیں۔ تو وہ پلاتے ہیں پیتی ہیں۔ اپنی ان کا پتہ نہیں ہوتا کہ ہم نے یہ چیز کرنی یہ چیز نہیں کرنی تو وہ اس وجہ سے ہوتا ہو گا **otherwise** مجھے تو اتنے سال ہو گئے مجھے تو کسی کی مجال نہیں ہوتی آج تک کبھی یوں ٹچ کرنے کی۔

لڑکا: تو کون سے **drugs** استعمال کرتی رہی آپ۔

لڑکی: آہ۔ ہا۔

لڑکا: کون سا زیادہ **Entertaining** تھا۔لڑکا: کون سا زیادہ **Entertaining** تھا؟

لڑکا: کیا ہوتا ہے یہ پتہ نہیں۔

لڑکی: اس میں یہ ہوتا ہے کہ مطلب وہ دکھائی ہم نے گولی اور اس پر ہم نے میوزک انجوائے کیا پارٹی انجوائے کی تھی۔ تین چار گھنٹے وہاں پر رہے پھر آپ گھر آگئے۔

لڑکا: ابھی تو نہیں کر کے آئی آپ گولی۔

لڑکی: نہیں۔

لڑکا: ابھی تو نہیں پی کر آئی۔

لڑکی: ہاں