

**JUDGMENT SHEET.**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**Writ Petition No.1788 of 2020**

M/s Proxima Beta Pte. Ltd.

**Versus**

Federation of Pakistan, through the Secretary, Ministry of Information Technology and  
Telecommunication, Islamabad and 02 others.

Petitioner By : Ms. Zainab Samantash, Advocate.

Respondent By : Mr. Faisal Bin Khurshid and Hafiz  
Muhammad Naeem Ashraf, Advocates for  
respondent No.2/PTA.  
Mr. Aarsal Hashmi, Advocate.  
Mr. Khurram Siddiqui, Director (Law),  
PTA.  
Ch. Adil Javed, AD (Law), PTA.  
Mr. Khalid Wazir, AD (CVD), PTA.

Date of Hearing : 14.07.2020.

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**AAMER FAROOQ, J.** - The petitioner is aggrieved of the decision of Pakistan Telecommunication Authority (**PTA**) regarding temporary suspension of Player Unknown's Battle Grounds Mobile (**PUBG**) (hereinafter referred to as the '**Game**'), vide its decision taken in the meeting on 02.07.2020.

2. The petitioner is a non-resident private limited company incorporated under the laws of Singapore and alleges to have exclusive rights to operate, offer and control the Game in Pakistan. The petitioner has filed the instant petition through Mr. Tariq Sultan, who claims to be the duly authorized Special Attorney

and competent to file the present petition on the basis of the authorization given in his favour.

3. Learned counsel for the petitioner, *inter-alia*, contended that no prior intimation was given or hearing was conducted before suspending the online Game. It was submitted that under Pakistan Telecommunication (Re-organization) Act, 1996, PTA is required to provide an opportunity of hearing to a person against whom any action is proposed to be taken. It was further contended that the suspension of the Game has allegedly been done under Section 37 of Prevention of Electronic Crimes Act, 2016 (**PECA**), however, the parameters prescribed under the said provision are not attracted in the facts and circumstances. It was further submitted that PTA under Section 37 *ibid* could only remove or block or issue directions for removal or block and has no power to temporarily suspend the Game. Learned counsel further pointed out that only a press release was issued and the impugned order has not been passed and with the reply to the petition respondent No.2 has appended minutes of the meeting, which clearly show that the same are without reasons and application of mind and fail to fulfill the criteria provided under Section 24-A of General Clauses Act. It was vehemently argued that under the facts and circumstances the action taken by PTA is without lawful authority.

4. At the very outset, learned counsel for respondent No.2 objected to the maintainability of the petition on the ground that a person signing the petition does not have the authority to do so. In this behalf, it was contended that the Power of Attorney appended with the petition is not registered and also is not notarized either with the Embassy of Pakistan or the Foreign Office. It was further submitted that no proper resolution was passed to authorize the Directors for execution of the Power of Attorney. In support of his contentions, learned counsel placed reliance on cases reported as "*Muhammad Yaseen Siddiqui Vs.*

*Tahseen Jawaid Siddiqui" (2003 MLD 319), "Muhammad Aslam Vs. Mst. Gulraj Begum" (1989 SCMR 1), "Messrs. China Machinery Engineering Corporation (CMEC) through Project Manager and another Vs. Azad Jammu and Kashmir Council Board of Revenue and others" (2017 CLC 1519), "American Life Insurance Company (Pakistan) Ltd. Vs. Commissioner, Sindh Employees Social Security Institution and others" (2009 CLD 1329), "Great Bear International Services (Pvt.) Ltd. Vs. Pakistan Telecommunication Authority" (2015 CLD 1721), "Messrs. Wazir Khan Store and others Vs. United Bank Limited through Authorized Attorney" (2015 CLD 1729) and "Asif Ali and others Vs. K.M.C. through its Administrator and 6 others" (1995 CLC 1659). It was also contended that the petitioner has alternate and adequate remedy under Section 37 (4) of PECA as review is provided to any person aggrieved of any decision taken by PTA.*

5. Learned counsel for the respondents further contended that no conclusive action has yet been taken to block the Game and only it has been suspended temporarily. It was also submitted that on 09.07.2020 a public hearing was conducted in which the petitioner also participated and the final decision under Section 37(1) shall be taken in due course. It was submitted that the impugned action was taken on the various complaints received as well as letter written by CCPO, Lahore and on directions of the Hon'ble Division Bench of Lahore High Court. Learned counsel also pointed out that the Game was also found to be against the glory of Islam; hence the suspension.

6. Responding to the objections taken by respondent No.2 regarding the maintainability of the petition, learned counsel for the petitioner, *inter-alia*, contended that the petition has been duly filed inasmuch as the Attorney namely Tariq Sultan has been authorized through Special Attorney. In this behalf, it was contended that resolution was passed through circulation as one Director was

based in Hong Kong and the other in China. It was also submitted that the Special Power of Attorney is duly executed and notarized. It was argued that where such is the case that the matter is to be agitated in an urgent manner, the strict requirements regarding the filing of Power of Attorney and having it registered/notarized can be dispensed with. Reliance was placed on case reported as *"Messrs. S.I.S Corporation (Pvt.) Ltd. Vs. Federation of Pakistan through Secretary, Ministry of Interior and others"* **(PLD 2018 Islamabad 150)**. It was also contended that where the alternate and adequate remedy is illusory and is not adequate and efficacious, there is no bar on filing a petition under Article 199 of the Constitution especially so where the forum which passed the impugned order is also the one, which is to review the same. Reliance was placed on *"Nizamuddin and another Vs. Civil Aviation Authority and 2 others"* **(1999 SCMR 467)** and *"Ms. Ayyan Ali Vs. Federation of Pakistan through Secretary Interior, Islamabad and another"* **(2017 P Cr. L J Note 228)**. It was also contended that the impugned order was in violation of principles of natural justice as no hearing was provided.

7. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

8. The background, leading to filing of the instant petition, has been mentioned with brevity hereinabove, therefore, need not be reiterated.

9. Before proceeding to deal with the merits of the case, I intend to decide the legal objections taken by respondent No.2. It has been argued on behalf of respondent No.2 that the petition has been filed without authority inasmuch as the Power of Attorney on the basis of which the petition has been filed is neither registered nor notarized and the original has not been filed. The petitioner alongwith the petition has appended the Extracts of the meeting Board of Directors. In the referred meeting Mr. Wang Zheng, Director has been

authorized as representative of the company in China and abroad and also to delegate his authority in order to appoint any lawyer, consultant or representative for conducting litigation in any Court before any authority, *inter-alia*, in the jurisdiction of Pakistan. The referred resolution was passed through circulation as it has been signed by the Director Wang Zheng and subsequently by the other Director Ma Xiaoyi. On the basis of the referred resolution, Mr. Wang Zheng executed a Special Power of Attorney in favour of Mr. Tariq Sultan and delegated the authority to sign pleadings and institute proceedings on behalf of the company. Even otherwise, in case reported as "*Messrs. S.I.S Corporation (Pvt.) Ltd. Vs. Federation of Pakistan through Secretary, Ministry of Interior and others*" (**PLD 2018 Islamabad 150**), this Court observed as follows:-

**"25. Learned counsel for respondent No.9 raised an objection to the maintainability of the writ petition on the ground that the authorization dated 24.01.2017 issued by the petitioner/Safran in favour of Mr. Salman Ejaz, to engage counsel, and to institute a petition, and to defend the petitioner/Safran (who was respondent No.10 in Writ Petition No.4560/2016), had neither been notarized by a Notary Public in the country where the said document was executed, nor was it attested by Pakistan's diplomatic mission in the country where the said authorization was made. Indeed, when Writ Petition No.295/2017 was filed on 26.01.2017, the copy of the said authorization dated 24.01.2017, filed along with the said writ petition was neither notarized nor attested by Pakistan's diplomatic mission. However, before the judgment was reserved, the original authorization dated 24.01.2017 duly notarized and attested by the third secretary of Embassy of Pakistan at Paris, was brought on record. This having been done, I do not find any merit in the said objection raised by the learned counsel for respondent No.9. At times a company incorporated abroad and having a place of its business in Pakistan has to invoke the jurisdiction of the Court in Pakistan on an emergent basis. In such circumstances to**

***require such a foreign entity to have a power of attorney or a board resolution notarized and attested in the foreign country and then file such a document along with the petition or suit instituted in Pakistan, would be unreasonable and inequitable. As long as in the pleadings it is pleaded that the legal proceedings are being instituted with proper authorization/authority and that during the proceedings such authorization/authority, obtained prior to the institution of the proceedings, but notarized and consularized subsequently, is brought on the record, the proceedings cannot be considered to have been wrongfully instituted.”***

The contention of the learned counsel for the respondents that the Power of Attorney was required to be registered or notarized by the Embassy has no substance. The Special Power of Attorney does not provide authority to Mr. Tariq Sultan for transacting in any immovable property, hence it is not a document, which is to be compulsorily registered under Section 17 of the Registration Act, 1948. The document is already notarized before the notary public in China. There is no requirement under the law that the document is to be notarized specifically by the Embassy of the Country. The case law relied upon by the learned counsel is not relevant in the facts and circumstances of the case.

10. The second objection regarding the maintainability of the petition is that remedy of review is provided under Section 37 (4) of PECA. The bare reading of sub-Section 4 of Section 37 shows that for review to be filed there must be a specific order; no such order was passed by PTA rather only a decision has been taken to temporarily suspend the Game and a press note was released. In such facts and circumstances, the petitioner could not have agitated the remedy of review as no specific order has been passed. Even otherwise, there is ample law on the subject that where the order impugned is without lawful authority or jurisdiction or the same is illusory, non-availing of the alternate

remedy is not fatal for the petitioner under Article 199 of the Constitution. This Court in case reported as "*Messrs. SIS Corporation (Pvt.) Limited through Chief Executive Vs. Federation of Pakistan through Secretary, Ministry of Interior and others*" (2018 CLD 48) observed as follows:-

**18. As mentioned above, ordinarily writ jurisdiction is not available in cases where there is an adequate and specific remedy provided under a statute. However, in order for the High Court to decline the grant of mandamus, the remedy provided under the statute to the petitioner must be specific, adequate, equally convenient, beneficial and effective. It is the inadequacy and not the absence of the alternative remedy that would determine whether a writ petition should be entertained. In the case of *Lt. Col. Nawabzada Muhammad Ameer Khan v. Controller of Excise Duty (PLD 1961 SC 119)*, it was held that the rule that a High Court will not entertain a writ petition when another appropriate remedy is available, is not a rule of law barring the jurisdiction of the High Court but rule by which the Court regulates its jurisdiction. The same view was taken by the honourable Supreme Court of Pakistan in the cases of *Murree Brewery Co. Ltd. v. Pakistan (PLD 1972 SC 279)*, and *Town Committee, Gakhar Mandi v. Authority under the Payment of Wages Act (PLD 2002 SC 452)*. In the case of *Gatron (Industries). Pvt. Ltd. v. Government of Pakistan and others (1999 SCMR 1072)*, it has' been held as follows:-**

**"15... it is well-settled that the rule about invoking the Constitutional jurisdiction only after exhausting all other remedies, is a rule of convenience and discretion by which the Court regulates its proceedings and it is not a rule of law affecting the jurisdiction. A Constitution petition is competent if an order is passed by a Court or Authority by exceeding its jurisdiction even if the remedy of appeal/revision against such order is available, depending upon the facts and circumstances of each case."**

The upshot of above discussion is non-availing of alternate remedy before filing a petition under Article 199 of the Constitution is not fatal to the maintainability of

petition in every case. In view of the referred position of law and facts, the legal objections are without substance.

11. PTA has allegedly suspended the Game temporarily under Section 37 of PECA. For ease of convenience Section 37 (1) is reproduced below:-

***"37. Unlawful on-line content.- (1) The Authority shall have the power to remove or block or issue directions for removal or blocking of access to an information through any information system if it considers it necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court or commission of or incitement to an offence under this Act."***

The bare reading of the Section shows that PTA has power to remove or block or issue directions for removal or blocking of access to an information through any information system. The condition precedent for invoking such power is that the material/information is against the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of Court or commission of or incitement to an offence under PECA. The decision of PTA to suspend the Game was made public not through an order but by a press release on 01.07.2020. Along-with the reply, PTA appended the minutes of the meeting dated 02.07.2020. The bare reading of the document shows that minutes of the meeting cannot be termed as an order in any way. Though certain decisions were taken in the referred meeting including the decision of suspension of the Game but no formal order was passed as is envisaged in Section 37 nor any direction was made. The propriety demanded that after taking the decision, PTA should have passed a formal order spelling out the decision taken by it. It is pertinent to observe that press release was made on 01.07.2020, whereas minutes of meeting are dated 02.07.2020, meaning thereby press release was made prior to decision. Moreover, there is no



concept of temporary suspension of any information under Section 37 (1) *ibid*. None of the pre-conditions provided in Section 37(1) *ibid* have either been taken into consideration or seems to be the driving force for taking the decision. The sole basis for taking decision of temporary suspension was the complaints received from segment of the public and the learned counsel for the PTA apprised the Court that the complaints were with respect to suicides committed by few members of the public and on that basis a letter was written by CCPO, Lahore.

12. Under PECA, PTA is required to frame rules for its operation under the referred Act, however, the same has not been done till to date despite direction by this Court in another case. Under Section 6(d) of Pakistan Telecommunication (Re-organization) Act, 1996, where PTA is to take some decision under the said Act, notice thereof has to be given to a person likely to be affected providing them an opportunity of being heard. However, Section 6(d) is applicable to any action, which PTA decides to take under Act of 1996 only, however, it is trite law that even where the principles of natural justice are not made specifically applicable they would be read in the statutes especially where any person is likely to be affected by actions under the same. Moreover PTA, as noted above, has not framed its rules despite there being a provision for the same. PTA under the facts and circumstances was required to afford an opportunity of hearing to all concerned, which it did so on 09.07.2020 i.e. after the decision of temporary suspension of the Game.

13. Under Section 37 of PECA, the power to block or give directions with respect thereto is to be exercised by authority, which is defined in Section 2 (4) of PECA as Pakistan Telecommunication Authority established under the Pakistan Telecommunication (Re-organization) Act, 1996. Section 3 of Pakistan Telecommunication (Re-organization) Act, 1996 establishes Pakistan

Telecommunication Authority (PTA). Under sub-section 2 of Section 3, the Authority is to consist of three members one of whom is to be a professional telecommunication engineer and the other to be a financial expert. Out of the members, the Federal Government is to appoint Chairman of the Authority. Minutes of the meeting dated 02.07.2020 show that Chairman PTA as well as Member (Finance) and Member (Compliance and Enforcement) were present; alongwith the administrative staff. The propriety demanded that once the decision was taken a formal order should have been passed by PTA as defined and explained in Section 3 of the Act of 1996.

14. In view of the reasons stated hereinabove, the instant petition is **allowed** and decision of PTA dated 02.07.2020 regarding suspension of the Game is **set-aside** as being without lawful authority. Since PTA has already conducted a public hearing, providing an opportunity of hearing to all concerned including the petitioner, it shall pass a speaking and reasoned order on the complaints received by it keeping in view the mandate of Section 37, PECA or any other applicable law within the period of Seven (07) days from the date of this judgment. All pending applications are disposed of accordingly.

**(AAMER FAROOQ)**  
**JUDGE**

**Announced in Open Court this 24<sup>th</sup> day of July, 2020.**

**JUDGE**

*\*M. Zaheer Janjua\**