

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

F.A.O. No.68 of 2017

M/S LABBAIK (PVT) LTD.

Vs.

PEMRA, ETC.

PETITIONER BY: Raja Rizwan Abbasi and Mr. Sohail Akhtar, Advocates.

RESPONDENTS BY: M/s Ali Shah Gillani and Ali Zeeshan Haider Gondal, Advocate for PEMRA.

DATES OF HEARING: 10.05.2018.

SHAUKAT AZIZ SIDDIQUI; J. Instant appeal u/s 30(A) of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002, has been preferred against order dated 27.03.2017, passed by the Respondent Authority in which it decided as follows:-

DECISION:

- i. on or before march 31, 2017, the Channel and Dr. Amir Liaquat, Shall separately during the same time slot of the programme "whereby amount paid by the Appellant Corporation in excess for the years 30th June, 2007 to 30th June, 2009 has been adjusted against outstanding R & D Fund and Contribution on the basis of decision taken, vide the said order that 'Fees' and 'Contribution' are different in their nature and scope as the contribution by virtue of license condition is a fiscal liability and required to be paid in the manner as prescribed in the license and it does not fall within the category of Fee and late payment of the same leads to imposition of Late Payment Additional Fee (LPAF).*
- ii. The Channel shall also ensure that text to the same effect is also scrolled / displayed on the screen during the entire programme wherein Dr. Amir Liaquat apologizes to the viewers.*
- iii. The Lincensee shall submit an affidavit by march 31, 2017, 1600 Hrs with PEMRA, assuring the Authority that no hate speech or any content in violation fo Electronic Media (Programmes and Advertisements) Code of Conduct, 2015, notified by the Federal Government on the orders of the Hon'ble Supreme Court of Pakistan, shall be aired in future.*

- iv. *In case of failure of the Channel and / or the host of the said programme, either in part thereof or as a whole of the above decision, broadcasting or re-broadcasting or distributing of the programme "Aisay Nahi Chalay Ga" and appearance on BOL TV , in any manner, whatsoever, of its host, Dr. Amir Liaquat, shall stand prohibited with effect from April 1 , 2017 till such a time compliance to the above decision is made.*
- v. *A fine of Rs. One million is imposed on the Channel to be deposited within fifteen days of issuance of this decision.*
- vi. *The Licensee is warned that in case of failure to comply with para 17 (iv and v) above, or in case of violation of the PEMRA laws and / or terms and conditions of the license in future, action under relevant provisions of PEMRA law shall be initiated."*

Appellant has prayed that said order may be set aside while declaring same as illegal, unlawful, unconstitutional null and void.

2. Briefly stated facts of the case are that the Appellant on its channel "BOL News" has started a current affairs and political talk show "Aisay Nahi Chalay Ga" which is hosted by Dr. Amir Liaquat, however, on 26.01.2017, Appellant came to know about the press release issued by Respondent No.1 that a prohibition order against the said programme and its host has been passed by the Respondent and suspended it till further order. Respondent No.1 also completely banned the host from hosting any programme, or to appear in any manner, including but not limited as a guest, analyst, reporter, actor in audio video beeper promo/advertisement. Said prohibition order was challenged by the Appellant through application u/s 151 CPC through M.A. No. 58/2015 and the Hon'ble High Court of Sindh suspended the prohibition order dated 26.01.2017, issued by Respondent No.1. Respondent, feeling aggrieved assailed the said order before the Hon'be Supreme Court of Pakistan through CPLA No. 173/2017, in which the hon'ble apex Court directed the appellant to appear before the Respondent Nos. 2 & 3 and submit replies, whereas, Respondents were directed to pass final order after hearing the Appellant. Accordingly, Appellant as well as host of the above programme appeared before the Council of Complaints and filed their replies before the Council of Complainants, Karachi and Lahore, where after, hearing of the complaints filed against the Appellant started and it transpired that some serious allegations of hate speech, derogatory remarks, incitement to violence against citizen and casting accusation of being anti-state and anti-Islam on various individuals were leveled in Complaints and in prohibition order, against the host of the program "Aisay nahi Chalay Ga" but no evidence was neither being produced by the Complainants nor Respondent No.1 along with Complaints and in prohibition order to substantiate the leveled allegations. Appellant denied all the allegations and produced all the material in support of his contentions before the Council of Complainants/Respondent Nos.

2 & 3. After detailed proceedings and hearing at length, the Council of Complaints reserved their recommendations and finally on 27.03.2017 impugned order was passed against the Appellant.

3. Learned Counsel for Appellant submitted that Respondents have failed to understand that through his program Appellant by giving the reference of Blasphemy pages of 'Bhensaa' has just shown other side of the picture to the nation which in no way can be called violation of any law or right of any body as the blasphemous contents on the said page and other similar pages targeted the honor of the Holy Prophet (PBUH) which contents were later on intentionally hidden by those involved in the matter. Moreover, Appellant's program of the was against the mentality who used to abuse malign Pakistan Army and national institutions on the basis of their self-developed imaginary definition of freedom of speech. Learned Counsel further submitted that the adjudication authority is duty bound to weight conflicting evidences and to draw their own inference and conclusion in order to administer substantial justice but the impugned order is passed without considering any factor put forward before the authority by the Appellant and went on passing a non speaking order which lacks substantial material which could support the decision taken therein rather they have failed to incorporate the Appellant's version and issued the impugned order in violation of fundamental rights guaranteed to the Petitioner under Articles 10-A, 18 & 19-A of the Constitution of Islamic Republic of Pakistan. Learned Counsel added that Respondents have failed to decide the issue through an unbiased and impartial approach and ignored the reality that the Appellant has raised his voice against the Blasphemers who were involved in heinous crime and nothing in support of allegations leveled against the Appellant was neither annexed with the complaints nor produced during the proceedings before the Council of Complainants. Learned Counsel reiterated that the Respondents with malafide intention discriminated and victimized the Appellant at the behest of competitors of the Appellant and actually they themselves have violated the PEMRA laws, rules and regulations by passing the impugned order while performing their duties unlawfully and unethically.

4. On the other hand, learned Counsel for Respondents supported the impugned order as being well reasoned and passed strictly in accordance with law and rules. Learned Counsel further submitted that whole the proceedings prior passing of impugned order have been conducted fairly while keeping in mind the rights of the Appellant relating to fair trial and while remaining within the parameters prescribed by the law. Learned Counsel prayed for dismissal of instant F.A.O. as being devoid of any force.

5. Arguments heard, record perused.

6. Basic objection which appellant has raised on the impugned decision is that their channel neither violated any rule or regulation nor stepped beyond the restrictions imposed on them by the PEMRA Ordinance, 2002 or prescribed in terms and conditions of license issued to them under the said Ordinance. Respondents issued license for establishment and operation of a broadcast media and distribution services under Section 19 of the Ordinance *ibid*, whereas, powers to devise a code for programme and advertisements for compliance by the licenses under Section 19(5) were also vested to the Respondent No.1. Moreover, under Section 20 of the Ordinance a person who is issued a license under the said Ordinance has to ensure that all programmes and advertisements do not contain any material offensive to commonly accepted standards of decency. Similarly, Section 27 of the said ordinance empowers the Authority to prohibit and broadcast media or distribution service operator for broad casting or rebroadcasting any programme which *inter alia* is offensive to the commonly accepted standards of decency or is like to create hatred amongst the people or willfully causes damage to any other person, by a well reasoned written order. For convenience above referred Sections of PEMRA Ordinance, 2002 are reproduced here-in-below:-

19. License to broadcast or operate.- (1) The Authority shall have exclusive right to issue licenses for the establishment and operation of all broadcast media and distribution services, provided that this exclusive right shall be used by the Authority in conformity with the principles of fairness and equity applied to all potential applicants for licenses whose eligibility shall be based on prescribed criteria notified in advance and that this shall be done through an open, transparent bidding process:

Provided that the bidding shall be held if the number of applications exceeds the number of licenses to be issued by the Authority.

(2) No person shall engage in any broadcast media or distribution service except after obtaining a license issued under this Ordinance.

(3) Every license shall be subject to such terms and conditions as may be prescribed.

(4) The Authority shall have the power to determine number of licences to be issued in each category or sub-category and charge fees at such rates as the Authority may fix from time to time for the grant of a license and for its annual renewal .

(5) The Authority shall devise a Code of Conduct for programmes and advertisements for compliance by the licensees.

20. Terms and conditions of license.- A person who is issued a license under this Ordinance shall-

- (a) **ensure preservation of the sovereignty, security and integrity of the Islamic Republic of Pakistan;**
- (b) **ensure preservation of the national, cultural, social and religious values and the principles of public policy as enshrined in the Constitution of the Islamic Republic of Pakistan;**
- (c) **ensure that all programmes and advertisements do not contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency**
- (d) **comply with rules made under this Ordinance;**
- (e) **broadcast, if permissible under the terms of its licence, programmes in the public interest specified by the Federal Government or the Authority in the manner indicated by the Government or, as the case may be, the Authority, provided that the duration of such mandatory programmes do not exceed ten per cent of the total duration of broadcast or operation by a station in twenty-four hours except if, by its own volition, a station chooses to broadcast such content for a longer duration;**
- (f) **comply with the codes of programmes and advertisements approved by the Authority and appoint an in-house monitoring committee, under intimation to the Authority, to ensure compliance of the Code;**
- (g) **not broadcast or distribute any programme or advertisement in violation of copyright or other property right;**
- (h) **obtain NOC from Authority before import of any transmitting apparatus for broadcasting, and distribution or teleporting operation**
- (i) **not sell, transfer or assign any of the rights conferred by the licence without prior written permission of the Authority.**

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 tranquillity 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.**

Section 27 *ibid* permits the authority to initiate action against licensee who acts in violation of any provision of the Ordinance, Rules and Regulations including the Code of Conduct. Likewise in the case of Appellant, Respondent in exercise of powers vested through Section 27 of the PEMRA Ordinance, 2002, by giving reasons in writing prohibited the Appellant from broadcasting and re-broadcasting, fresh old or repeat program named "Aisay Nahi Chale Ga" and banned its host Mr. Aamir Liaquat from hosting any program or appearing any manner including but not limited to as a guest, analyst, reporter, actor, in audio, video beeper promo/advertisement on BOL News, till the time respective Councils of Complaints make recommendations on the complaints received by PEMRA and the subsequent decision of the Authority on these recommendations.

7. Appellant was duly represented in the proceedings before the Council of Complaints through its representatives which fact is not even denied by the Appellant thus it cannot be said that due hearing was not provided to the Appellant in accordance with Article 10-A of the Constitution of Islamic Republic of Pakistan, principles of natural justice and provisions of the Ordinance *ibid*.

8. Another objection on the impugned order passed by the Respondents raised by the Appellant is that same is violative of the rights of trade, business or profession guaranteed to the Appellant by Article 18 of the Constitution of Islamic Republic of Pakistan which for ready reference is reproduced here-in-below:-

"18. Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent—

- (a) the regulation of any trade or profession by a licensing system; or**
- (b) the regulation of trade, commerce or industry in the interest of free competition therein; or**
- (c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons."**

I have carefully gone through the provisions of Article 18 above and reached to the considered conclusion that Provisions of Art.18 *ibid* are not attracted in the matter in hand because right of freedom of trade, business or profession guaranteed by Art.18 of the Constitution is not absolute or unfettered, as it can be subjected to reasonable restrictions and regulations as may be prescribed by law. Regulation of any trade or profession by a system of licensing empowers the authorities concerned to impose reasonable restrictions on the exercise of the right which should bear true "trade" or "profession" and for purposes of promoting general welfare. Moreover, in the case of Appellant there exists no guarantee to the effect that when some contents of the programme aired by the Appellant channel travelled beyond the restrictions

imposed by the Respondents as per relevant rules and regulations, there could be no question of any such Fundamental Right. The competent authority which in the present case is PEMRA is at liberty to regulate its affairs through reasonable restrictions and limitations which should not be arbitrary, discriminatory, or demonstrably irrelevant to the policy and should not cause an unnecessary and unwarranted interference with individual liberty. Under Section 19 of the PEMRA Ordinance, 2002, Respondent authority is duly empowered to prescribe certain terms and conditions which as per Section 20 of the said Ordinance are mandatory for the licensee to follow in letter and spirit. Further if the Respondent authority is of the opinion that any particular programme or advertisement is against the policy laid down by it then under Section 27 of the Ordinance *ibid* can validly prohibit such distribution service operator from broadcasting such content. Guidance in this regard can be sought from case law reported as **Pakcom Limited and others Versus Federation of Pakistan and others (PLD 2011 SC 44)**.

9. As far as availability of right to access to information by the general public guaranteed as per Article 19-A of the Constitution as contended by the Appellant is concerned it is stated that Subsequent to the passing of Freedom of Information Ordinance, 2002, said Article was inserted in the Constitution through Constitution (Eighteenth Amendment) Act, which grants every citizen the right to have access to information in all matters of public importance subject to regulation and reasonable restriction imposed by law thus the present case the information which was to be given to the general public through the programme aired by the Appellant should have been well within the spheres/restrictions prescribed/imposed by the Respondent Authority, whereas, although Question as to whether content of programme contained any objectionable content under the code of conduct or terms and conditions of license, was best suited to be answered by the appropriate forum which in the present case was the Council of Complaints under S.26 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002, but, under Section 27 of the Ordinance, *ibid* the Respondent authority is also empowered to prohibit any channel from broadcasting or re-broadcasting or distributing any programme or advertisement if it is of the opinion that such particular programme or advertisement is likely to create hatred among the people and It is a well-settled principle that when the legislature entrusts to an authority the power to pass an order in its discretion an order passed by that authority in exercise of that discretion is, in general, not liable to be interfered with by an appellate court, unless it can be shown to have been based on some mistake of facts or misapprehension of the principles applicable thereto which is not the situation in Appellant's case. Reliance in this regard is placed on the Indian case law reported as **Corporation of Calcutta v. Mulchand Agarwala (PLD 1956 SC Ind. 231)**.

10. Nutshell of the above discussion is that the license was issued to the Appellant which was subject to certain restrictions imposed through PEMRA Ordinance, 2002, and other relevant Rules and Regulations, including the Code of Conduct as well as terms and conditions of license, and in case of violation of any such restriction there were sufficient powers available to the Respondents under Section 27 of the Ordinance to take action against the delinquent news channel. Similarly, Council of Complaints is also empowered to render its opinion on such matters either on the complaints received by it directly from the public or those referred to it by the Authority, however, it has to maintain certain standards relating to fair opportunity to the party against whom complaint is received, which in my view is sufficiently provided to the Appellant, hence, I am of the considered view that the process which was adopted and the way the proceedings before passing the impugned order are being carried out is well within the spheres drawn by the relevant rules and regulations. The Council of Complainants Sindh and Lahore in its joint meeting held at PEMRA headquarters on 10.03.2017, thoroughly analyzed the complaints including the complaint received through Complaint and call centre of PEMRA, reviewed the clips/episodes of the programme "Aisay Nahi Chalay Ga", heard the authorized representatives of M/s Labbaik (Pvt) Ltd as well as host of the programme in person and made its recommendations to Respondent No.1 / PEMRA which in its 127th meeting held on 24.03.2017 determined that contents aired on Appellant's Channel from January 2 to 24, 2017 during the programme titled "Aisay nahi Chalay Ga" were in violation of Section 20 of the PEMRA Ordinance, 2002, read with Rule 15 of PEMRA Rules 2009 amounts to hate speech within the meaning of Clause 23 of Electronic Media (Programmes and Advertisements) Code of Conduct, 2015 and passed the impugned order, thus, in my estimation, the impugned order does not suffer from any illegality, unfairness or arbitrariness, hence, no exception can be taken to the same. Resultantly, titled appeal is dismissed.

11. These are the reasons for my short order dated 10.05.2018.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

Approved for Reporting.

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*Adnan/**