

Form No: HCJD/C.  
**JUDGEMENT SHEET.**

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.  
JUDICIAL DEPARTMENT.

**FAO No.72 of 2017.**

Independent Media Corporation (Pvt.) Limited.

Vs.

Pakistan Electronic Media Regulatory Authority  
through its Chairman.

Appellant's by: ***M/s Jam Asif Mehmood & Faisal  
Iqbal Khan, Advocates for the  
appellant.***

Respondent's by: ***Ali Shah Gillani, Advocate for  
respondent.***

Date of hearing: ***08.05.2017.***

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**Aamer Farooq, J.-** This appeal is directed against order dated 27.04.2017 whereby Pakistan Electronic Media Regulatory Authority (PEMRA) has prohibited the appellant from broadcasting the interview of Ehsan Ullah Ehsan, a member of proscribed organization.

**02.** Learned counsel for the appellant, inter alia, contended that the impugned order has been passed without providing an opportunity of hearing to the appellant. In this behalf it was contended that under Section 29 (6) of Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (***Ordinance***) the authority has

to provide a reasonable opportunity to show cause before imposing fine on a licensee who contravenes any provision of the Ordinance or the rules and regulations made thereunder; that under Section 27 of the Ordinance the authority can prohibit broadcasting of any program or advertisement on the touchstone of the grounds mentioned in the section by order in writing giving reasons for the same which has not been done in the instant case. It was further contended that the impugned order is without any justification or basis and does not meet the criteria/reasons required for prohibiting the broadcasting of any programme. It was further pointed out that the sole reason provided in the impugned order is that the program in question violates clause 3(3) of Electronic Media Code of Conduct, 2015 whereas the referred clause favours the case of the appellant. Learned counsel further contended that though in the impugned order it has been mentioned that a number of complaints have been received on the basis of promos aired on Geo Net Work and if such is the case the matter should have been referred to the Council of Complaints constituted under Section 26 of the Ordinance. Learned counsel also contended that the entire script of the interview is appended with appeal and the link was also shared with the respondent for the very purpose that there is nothing in the interview which is in violation of the provisions of the Ordinance, rules and regulations framed thereunder including Code of Conduct as well as the terms of the license.

03. Learned counsel for respondents, inter alia, contended that promos aired on the Geo Network were found to be in violation of clause 3(3) of the Code of Conduct, therefore restriction was imposed on the appellant to broadcast the program. Learned counsel for the respondent in response to the query of the Court regarding providing an opportunity of hearing to the appellant contended that the same could be done in order to ensure that the contents of programme are not in violation of the Ordinance or the Rules & Regulations framed thereunder.

04. The appellant is aggrieved of order dated 27.04.2017 passed by respondent whereby prohibition has been imposed on the appellant to broadcast the interview of Ehsan Ullah Ehsan, Member of a proscribed Organization conducted by Anchor Saleem Safi. The thrust of the arguments by the learned counsel for the appellant was that no opportunity was provided to the appellant before passing the impugned order. Respondent authority in the impugned order has mentioned that a number of complaints were received against the promos of the interview aired on Geo Network. In this behalf when such is the case that complaints are received from public the procedure provided in Section 26 of the Ordinance is to be followed by the respondent authority viz the complaint(s) are referred to the Council of Complaints against any aspect of the programme broadcasted or distributed by the

licensee for rendering opinion on such complaint(s). While examining the complaint(s) the Council has the powers to summon the licensee to seek explanation in this behalf. The Council then makes its recommendations to the authority for taking appropriate action. Admittedly, the above mentioned procedure has not been followed by the PEMRA while imposing restriction vide the impugned order.

05. The respondent authority in the impugned order has stated that the interview in question violates clause 3(3) of the Code of Conduct. In this behalf clause 3 (3) of Code of Conduct, 2015 provides that licensee shall ensure that statement of member of proscribed organization or their representatives shall not be aired unless such statement is an admission which may be in the larger public interest for exposing ideology, abuse of religion or barbarianism provided always that such broadcast does not in any way aid, abet, glorify or give excuse to their means and ways in any shape or form. The bare reading of the referred clause shows that statements of proscribed organization or their representative are not to be aired unless the broadcast is in the larger interest of public and the same is an admission or shown to expose the exploitation in the nature of barbarianism or abuse of religion by such organization. The breach of terms and conditions of the Code of Conduct entails action either under section 26 of the Ordinance, if there are complaints or under

Section 29 *ibid*. However, in case action is to be taken against the licensee under Section 29 of the Ordinance for violation of the Ordinance, rules and regulations a show cause is required to be issued. The respondent authority proceeded against the appellant for violation of clause 3(3) of the Code of Conduct, 2015 which is violation of the rules framed under the Ordinance as the Code of Conduct has been framed under section 39 of the Ordinance which empowers the PEMRA to frame rules. Hence, it was mandatory for the respondent to issue a show cause notice prior to taking any action against it.

**06.** Section 27 of the Ordinance envisages action by the PEMRA against licensee preventing it by way of prohibition from showing any programme or advertisement provided that the same is done by an order giving reasons in writing, however, the prohibition can only be imposed if any programme contains material which in the opinion of the authority is such that it is against the ideology of Pakistan or is likely to create hatred among the public 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. Admittedly, in the impugned order none of the reasons provided in section 27(a) and 27(b) *ibid* have been mentioned. Therefore, apparently the same has

not been passed under the referred provision. This Court in case titled "ARY Media Communications (Pvt.) Limited vs. Pakistan Media Regulatory Authority & another"(FAO No.81 of 2016) vide judgment dated 07.09.2016 observed as follows:

***"13. The proceedings initiated by the respondents are in the nature of executive/quasi-judicial in which certain standards are to be maintained; primarily, it is to be ensured that the fair opportunity is allowed to the party to whom show cause notice is issued or against whom action is to be taken to present its case; in other words the principles of natural justice are to be duly complied with. In the instant case show cause notice was issued and reply thereto was filed by the appellant whereafter right of hearing was also provided to the appellant so due compliance to the principles of natural justice were made.***

**14. The Supreme Court of India in case titled S. Mulgaokar v. Unknown (1978) 3 SCC 39) observed as follows:**

***"Some people perhaps believe that attempts to hold trials of everything and everybody by publications in newspapers must include those directed against the highest Court of Justice in this country and its pronounce-ments. If this is done in a reasonable manner, which presupposes accuracy of information about a matter on which any criticism is offered, and arguments are directed fairly against any reasoning adopted, I would, speaking for myself, be the last person to consider it objectionable even if some criticism offered is erroneous. In Bennett Coleman & Co. & Others v. Union of India & Ors.(1) I had said (at p. 828).***

***"John Stuart Mill, in his essay on "Liberty", pointed out the need for allowing even erroneous opinions to be expressed on the ground that the correct ones become more firmly established by what may be called the 'dialectical' process of a struggle with wrong ones which exposes errors. Milton, in his "Areopagitica" (1644) said:***

***'Though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously be licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; whoever knew Truth put to the worse, in a free and open encounter?..... Who knows not that Truth is strong, next to the Almighty; she needs no policies, no stratagems, no licensings to make her victorious; those are the shifts and defenses that error makes against her power .....Political philosophers and historians have taught us that intellectual advances made by our civilisation would have been impossible without freedom of speech and expression. At any rate, political democracy is based on the assumption that such freedom must be jealously guarded. Voltaire expressed a democrat's faith when he told an adversary in arguments' I do not agree with a word you say, but I will defend to the death your right to say it'. Champions of human freedom of thought and expression throughout the ages, have realized that intellectual paralysis creeps over a Society which denies, in however subtle a form, due freedom of thought and expression to its members.***

***Although our Constitution does not contain a separate guarantee of Freedom of the Press, apart from the freedom of expression and opinion contained in Article***

***19(1) (a) of the Constitution, yet, it is well recognized that the Press provides the principal vehicle of expression of their views to citizens. It has been said 'Freedom of the Press is the Ark of the Covenant of Democracy because public criticism is essential to the working of its institutions. Never has criticism been more necessary than today, when the weapons of propaganda are so strong and so subtle. But, like other liberties, this also must be limited'."***

07. The up-shot of the above mentioned factual and legal position is that in case the appellant broadcasts any programme which violates the terms of the Code of Conduct, 2015 or the provisions of the Ordinance; rules and regulations framed thereunder then proceedings may be initiated by PEMRA under Section 29(6) of the Ordinance which require issuance of show cause and an opportunity of hearing. However, if with respect to any programme aired by the licensee there are public complaints the matter should be referred to the Council of Complaints (***Council***), under Section 26 of the Ordinance, which after providing an opportunity to the licensee to render explanation can make recommendations to PEMRA, in case there is violation of Code of Conduct or the Ordinance etc., for initiation of appropriate action against the licensee. However, the sole provision under which PEMRA can prohibit broadcasting of any programme is Section 27 *ibid*, however, the same can only be done if the reasons/grounds mentioned in Section 27(a) and 27(b)



are attracted and the reasons are to be record in writing for imposition of prohibition.

08. For the reasons set out above the instant appeal is allowed, impugned order dated 27.04.2107 is set aside with the observation that in case the programme to be broadcasted by the appellant on Geo Network violates either Code of Conduct or Section 27 of the Ordinance or any other provision of the Ordinance then PEMRA may proceed against it in accordance with law.

  
(AAMER FAROOQ)  
JUDGE

\*Altaf Malik\*

*Approved for Reporting.*