

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Khalil-ur-Rehman Ramday

CONSTITUTION PETITIONS NO.46 & 47 OF 2010

Dr. Shahid Masood. ...in Const.P.46/2010
Muhammad Farhan etc. ...in Const.P.47/2010

...PETITIONERS.

VERSUS

Federation of Pakistan and others.

...RESPONDENTS.
(in both petitions)

...

For the petitioners: Mr. Muhammad Akram Sheikh, Sr. ASC.
a/w petitioner.

On Court's notice: Maulvi Anwar-ul-Haq, Attorney General.
Mr. Agha Tariq Mehmood, DAG.

Ch. Qamar Zaman, Secy. M/o Interior.

Mansoor Sohail, Act. Secy. Information.

Mushtaq Malik, Chairman, PEMRA.
Nayyar Nasir Hayat, Legal Advisor &
Irfan, D.G. (License).

Date of hearing: 13.08.2010.

...

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.- These two petitions, one filed by the President of ARY Digital Network and the other by some members of the public who claim to be keen viewers of News Channels, especially GEO News, invoke the extra-ordinary jurisdiction of this Court under Article 184(3) of the Constitution; complain of a breach of the Fundamental Rights guaranteed not only to them but also to the public at large caused by the respondents

through closure and suspension of broadcasting and transmission of at least two T.V. Channels i.e. ARY and GEO.. It was further complained that it had been so done by the respondent licensed T.V. Cable Operators, at the instance of and in collusion with some of the other respondents for reasons which were motivated by personal malice and for extra-legal reasons.

2. Having heard Mr. Muhammad Akram Sheikh, the learned Sr. ASC appearing for the petitioners, we directed appearance of the Chairman of the Pakistan Electronic Media Regulatory Authority (hereinafter called the PEMRA), the Secretary of the Ministry of Information and the Interior Secretary of Pakistan. Notice was also issued to the learned Attorney General to be of assistance in the matter.

3. On entering appearance, the said Chairman denied any closure or blockade of the distribution of the said two T.V. channels and submitted that both the said channels were being aired without any obstruction or hindrance. The said claim of the Chairman was immediately repudiated; controverted and contradicted by Mr. Muhammad Akram Sheikh, Sr. ASC whereupon the Chairman changed his stance to say that no one had brought any denial of distribution service in question to his notice. He was then confronted with the fact that dis-continuance and blockade of transmission of the broadcast of these two channels had hit the media headlines not only nationally but had even evoked reaction of the international community and how was it that being the Regulator of the electronic media, he was ignorant of such an act on the part of the T.V. cable operators. At the said stage, the Chairman

submitted that he was aware of the matter and had in fact issued show cause notices to four T.V. cable operators, namely, M/s City Communications, M/s Worldcall Telecom Limited Broadband, M/s Karachi Cable Service and M/s Media Plus Communications on August 9, 2010 and which exercise had then been repeated on August 10, 2010. Copies of these alleged show cause notices were placed before us which were almost identical in content and, therefore, the contents of only one of them issued to M/s City Communication are being reproduced hereunder:-

“It has come to the notice of the Authority that M/s City Communication have suspended/stopped the distribution of PEMRA Licensed channels namely “GEO News” and ARY News” on its network in sheer contravention to the PEMRA laws and your license terms and conditions which were duly agreed and signed by you.

*2. M/s City Communication are therefore, **DIRECTED TO RESUME THE DISTRIBUTION OF “GEO NEWS” AND “ARY NEWS” ON ITS NETWORK,** immediately. Failing which appropriate legal action shall be taken against you.”*

4. When the Chairman was confronted with the contents of the said notice which hardly qualified as show cause notices, his submission was that according to the practice in his office, this is how a show cause notice was worded.

5. It was on being repeatedly questioned as to why he had not invoked the powers vesting in him, *inter-alia*, under section 30 read with section 28 or why criminal proceedings could not be initiated under section 33 of the PEMRA Ordinance of 2002, that the

Chairman of PEMRA reluctantly submitted that the T.V. cable operators in question had dis-continued the distribution service of ARY and GEO channels to the viewers because of the law and order situation obtaining in Karachi and which was continuing in the said area wherein loss/damage had been caused to the equipment and to the property etc. of the T.V. cable operators in question and wherein not only the said property but even the safety of the employees and workers of the said Operators had come under serious threat. He was then joined by the Information Secretary who added that on account of a news-item aired by the said two T.V. channels, some hooligans in Karachi had caused a law and order situation which had made it un-safe and impossible for the cable operators in question to continue airing the service of the said two T.V. channels.

6. At this stage, the written replies submitted before us by the Secretary Information of the Government of Pakistan and by the Chairman of PEMRA may also be noticed. The reply by the Information Secretary reads as under:-

? *“The Government strongly believes in freedom of the press.*

? *No instructions explicit or implicit have been issued to any organization or individual to block the transmission of GEO and ARY.*

? *At the advice of the Government, PEMRA issued notices to four concerned cable operators who have blocked the transmission of GEO and ARY in Karachi. It must be pointed out that there are 235 cable operators in Karachi and overall there are more than 2500 cable operators in Pakistan who have not done so.*

- ? *After notices by PEMRA these cable operators have reportedly restored the transmission of ARY.*
- ? *The Government will take all steps as permissible under the law in this regard.*
- ? *The compliance of the orders of the Honourable Court shall be carried out faithfully.”*

The relevant parts of the reply filed by the said Chairman read as under:-

“That in compliance of the Hon’ble Court’s directions, PEMRA has issued show cause notices to all the concerned four cable operators i.e. M/s World Call, M/s Media Plus Communication, M/s Karachi Cable Service and M/s City Communication (copies enclosed). It has been clearly mentioned in the show cause notice if the transmission of Geo News and ARY News (although as per PEMRA’s information ARY News is already on air) is not restored immediately their licences shall be suspended/revoked.

That one of the above four cable operators (M/s World Call) replied vide letter dated 11.08.10 and claimed that the transmission of Geo News was suspended on account of law and order situation in order to continue the airing of remaining TV Channels. M/s World Call also requested law protection in this regard.”

7. The Chairman PEMRA then also placed before us a copy of a letter dated August 11, 2010 addressed by the Chief Executive Officer of M/s Worldcall Telecom Ltd. to the General Manager (Legal)

of the PEMRA.. The relevant part of the said letter is re-produced hereunder:-

*“Foremost, we confirm that all PEMRA licensed channels, including ‘Geo News’ and ‘ARY News’ , are being distributed by Worldcall on its cable network throughout the country. However, the distribution of these two channels is suspended in Karachi temporarily in the larger interest of our company and to keep the remaining service running. **WE BELIEVE THAT PEMRA IS WELL AWARE OF THE CIRCUMSTANCES WHICH ARE PREVAILING AT KARACHI VIZ. THE CABLE OPERATORS SHOWING THESE TWO CHANNELS.**”*

(emphasis has been supplied)

And it was to substantiate the said alleged fears of the Cable Operators and the PEMRA’s response thereto that Regional Manager of PEMRA addressed a letter to the Capital City Police Officer, Karachi which was purportedly written yesterday i.e. on August 12, 2010 and faxed to the said Officer at 11:17 a.m. today i.e. on 13th August, 2010 which was after the hearing of this case had commenced this morning and after the Chairman of PEMRA and others had been asked to appear before this Court. Be that as it may, the Regional General Manager of PEMRA in Karachi had requested the Chief of Karachi Police to provide appropriate police security to four Cable T.V. Networks in Karachi so that the distribution of ARY News and GEO News was not interrupted or off-aired. The four Cable T.V. Network Operators mentioned in the said communication were M/s City Communication, M/s Karachi Cable Services, M/s Media Plus Communications and M/s Worldcall Telecom Limited Broadband.

8. It is noticeable that the above said letter of M/s Worldcall dated August 11, 2010 did not mention even a single incident or any time, date or place where such an incident involving the alleged vandalism had taken place in Karachi or elsewhere wherein any loss or damage to any equipment belonging to the said operator had got caused. This letter, however, does talk of some secret confidentialities between the PEMRA and the said Operator because the above-quoted portion of the said letter talked about PEMRA being aware of the circumstances vis-à-vis the airing of the said two channels by the cable operators. The Chairman PEMRA, for reasons known to him chose not to share the said 'circumstances' with this Court. We also noticed that what had been placed before us was only one letter from M/s Worldcall and no other Operator had addressed any such communication to the PEMRA or to anyone else nor had expressed any apprehensions of the kind. Even in the above-mentioned letter of August 12, 2010 sent to the Chief of Karachi Police by PEMRA, a mention had been made only of one letter of M/s Worldcall and of no other. This then established that no such apprehension had ever been shared or expressed by any other cable operator. The obvious question then was, that why those Cable Operators were denying distribution service to the said channels. The above-noticed circumstances cast doubts about the veracity of the reason being reluctantly offered by the Chairman PEMRA and the Information Secretary for the closure of transmission of the channels in question i.e. hooliganism and vandalism. Therefore, while we were hearing this case, we directed the Registrar of this Court to establish contact with the Provincial

Police Officers of Punjab and Sindh and to check up with them about any incident involving a law and order situation on account of any broadcast of any of the two channels in question which may have been reported to the Police or which may have come to their notice; any theft or loss of or damage to any property of any T.V. Cable Operator on the said account or the lodging of any F.I.R. or even a report about any such incident or apprehensions vis-à-vis the airing of the transmission of ARY News and Geo News. The Registrar established immediate contact with the said two Police Officers and submitted his report, in writing, which was read out in Court and which is reproduced hereunder:-

“As per Court order, I spoke to Mr. Tariq Saleem, PPO, Punjab and Mr. Babar Khattak, PPO, Sindh to enquire as to whether any complaint has been filed and FIR registered by any Cable Operator pertaining to threats given to them or the law & order situation. The PPO, Punjab wanted time to seek information from the RPOs. After seeking such information, he reported that no complaint has been filed and as such, no FIR registered in the matter.

The PPO Sindh also wanted time to get necessary information from Mr. Waseem Ahmed, CCPO, Karachi. After a short while, both the PPO and CCPO reported that no complaint has been filed and as such, no FIR registered in the matter.”

9. A bare perusal of the said report indicates that the excuse being offered for blocking the transmission of the said two channels appears to be a mere fabrication only to justify an illegal and an un-lawful act as it is not believable that if any act of

vandalism causing loss or damage to the valuable property of M/s Worldcall had occurred or any threat to the security of the allegedly invaluable equipment or to the personnel of the said organization existed then the concerned victims including the Worldcall itself would not have lodged even a simple report with the Police or would not have sought Police protection or would not have reported the matter to the PEMRA informing them of their inability to continue to provide the requisite service to the Channels in question and also to the hundreds and thousands of their subscribing viewers.

10. Before proceeding with the matter any further, it would be of advantage to notice some of the relevant provisions of the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance of 2002. This Ordinance was enacted, *inter-alia*, to enlarge the choice available to the people of Pakistan in the media vis-à-vis news, current affairs and other informative, educational and entertainment programmes; to facilitate the devolution of responsibilities and powers to the grass-roots by improving the access of the people to mass media at the local level and to ensure **ACCOUNTABILITY, TRANSPARENCY** and **GOOD GOVERNANCE** by optimizing the free flow of information. An Authority (PEMRA) comprising 12 Members, to be appointed by the President, with the Chairman as its head was set up to **REGULATE** the establishment and operation of all broadcast media and distribution services in Pakistan. According to section 19 of the said Ordinance, no person could engage in any broadcast media or distribution service except after obtaining a license issued under the said Ordinance and the PEMRA was given the exclusive right to issue licenses for the

establishment and operation of all broadcast media and distribution services. As per the provisions of section 27 thereof it is only the PEMRA and that also through an order in writing, giving reasons therefor, which could prohibit any broadcast or distribution of any programme or news-item etc. if it was of the opinion that such a programme was likely, *inter-alia*, to create hatred amongst the people or was pre-judicial to the maintenance of law and order or was likely to disturb public peace and tranquility. Section 28 of the said Ordinance commanded a broadcast media or a distribution service operator not to cease or suspend broadcasting except on account of *force-majeure* or with the prior approval of the Authority. Section 30 empowered the PEMRA to suspend or even to revoke any license granted by it if the licensee contravened any of the provisions of the said Ordinance of 2002; any rules or regulations or the conditions of the license. The violation or the abetment of any violation of the provisions of the said Ordinance of 2002 was made punishable under section 33 of the said Ordinance which punishment could extend to imprisonment upto three years or a fine extending upto 10 million rupees or with both. Section 34 and 34-A of the said Ordinance, declare the said offences to be cognizable.

11. Such was then the importance attached to the obligations, *inter-alia*, cast on the Cable T.V. Network Operators offering the distribution services and the importance attached to the un-disturbed distribution of the said services by such operators. It would also be noticed from the said provisions that:-

- i) *it was the Authority and Authority alone which could prohibit any broadcast*

or any distribution thereof and that also not without an order in writing giving reasons therefor;

ii) no T.V. cable operator had the authority to cease or suspend the distribution of any broadcast except for force-majeure or with the prior approval of the Authority;

iii) the license of any such operator causing any interference/obstruction in the distribution of any broadcast could result in suspension or even revocation of the license granted to such an operator; and

iv) such an act of interference and obstruction was also a penal offence carrying a sentence of imprisonment upto three years or a fine of rupees ten million or both and such an offence was a cognizable offence authorizing the police to arrest the accused persons without any warrant.

The reason for such weight being attached to the said business is not far to find as the same stems out of the fundamental rights of freedom of speech, expression and of press as guaranteed by Article 19 of the constitution and equally importantly, if not more, the right of every citizen to have access to information in all matters of public importance as guaranteed by the recently inserted provisions of Article 19-A of the constitution.

12. Referring now to the facts and circumstances of the present case, what, *prima-facie*, stands established before us is that:-

i) the transmission and distribution of service of the broadcast of at least two T.V. channels i.e. GEO and ARY was ceased and blocked;

ii) there was an admission on the part of M/s Worldcall Telecom Limited that the said suspension or blockade of transmission had been caused by them;

iii) no such admission on the part of any other T.V. cable operator had, however, been placed before us;

iv) that the Provincial Police Officers of Sindh and Punjab had certified that no report of any incident of vandalism or of theft, loss or damage to any property or to any person relating to any of the cable operators had been reported to any police officer throughout the said two Provinces nor was any assistance ever sought by anyone in the said connection;

v) no cable operator including M/s Worldcall which had allegedly addressed the above-noticed communication dated 11.8.2010 to the PEMRA and that also after blocking the transmission of the channels in question, had brought any incident to the notice of the PEMRA before suspending and blocking the said transmission in question nor had any such cable operator ever sought prior approval of the PEMRA as required by section 28 of the said Ordinance before taking any such steps;

vi) as has been noticed above, no incident of any vandalism, loss, damage or intimidation had ever been reported by any cable operator either to the police or even to the PEMRA before shutting down

the distribution service which they were obliged to continue to offer uninterruptedly to the channels in question and to the public which had paid therefor; and finally that

vii) no order had ever been passed by the Authority in terms of section 27 of the Ordinance declaring any broadcast to be likely to create hatred amongst the people or pre-judicial to the maintenance of law and order or which was likely to disturb peace and tranquility.

13. In this view of the matter, we find that the act of the respondent Operators of the Cable T.V. Networks blocking/obstructing the transmission of ARY News and GEO News and the consequent denial of distribution service to the said Channels and to the viewers who were paying the said operators for the said service, *prima-facie*, was a gross violation of the terms and conditions of the licenses granted to them under sections 20 and 24 read with the provisions of sections 27 and 28 of the said Ordinance of 2002 and thus attracted penal provisions of sections 30 and 33 of the said Ordinance in respect of not only the ones committing the said violations but also those abetting the same.

14. The PEMRA must realise that the license issued by it to a T.V. Cable operator is a certification by it for all concerned that such an operator had committed and consequently stood obliged to offer un-disturbed distribution service to the broadcasters as also the viewers. And it is on the basis of the said certification by the PEMRA that on the one hand, the said broadcasters entrust the transmission of their broadcasts to these operators and on other, the

hundreds and thousands of viewers/subscribers pay their hard-earned money to the said operators to receive the said service. Therefore, besides being a legal, it is also a moral obligation of the PEMRA, through its Chairman, to ensure that the promised and the legally obligated services are provided by the operators not only to the broadcasters but also to the hundreds and thousands of the public who are paying money to the operators for the said service. Needless to add that any dereliction of duty on the part of the officials of the PEMRA including its Chairman, which appears lacking in good faith, could fall within the purview of abetment of the penal offences and the consequent punishment in terms of section 33 of the said Ordinance.

15. The role of the Chairman PEMRA in this entire episode, to say the least, does not appear to be above board. It was alleged in his face that whatever was being done, was being done at his instance. He retorted by saying that if he had so desired then the broadcasts of the channels in question would not be viewable anywhere in the world. Realising that his reaction was a display of the height of arrogance and utter disregard for law, the Chairman withdrew his said words. Be that as it may, it was admitted even before us and admitted even by the Information Secretary that the blockade and closure of the two channels in question had evoked reaction not only nationally but even internationally which had caused embarrassment to us all even as a nation. The said blockade, *prima-facie*, was not only a denial of duty towards the law, towards PEMRA and towards the two broadcasters, but was also a serious breach of the constitutional, legal, moral and financial obligations of

the cable operators in question to the hundreds and thousands of subscribers who had the right to information and who had paid for their right to viewership. The only reaction of PEMRA/its Chairman who are the custodians of the rights of the broadcasters and of the millions of viewers, to such a gross breach of constitutional and legal obligations on the part of the T.V. Cable operators was the above-quoted innocuous kind of a letter of August 9, 2010 allegedly issued by the Regional General Manager of PEMRA at Karachi which was allegedly followed by a reminder of August 10.

16. The said letter of August 9 is a strange, though a rather revealing communication. The distribution of the broadcast stood blocked. It is astonishing that the **REGULATOR** of the service, who is also the custodian of the rights of the subscribers, did not even ask the non-doer the **REASON** for not doing what he was obliged to do. Does it mean that the **REGULATOR**, as was mentioned by M/s Worldcall in their letter of August 11, knew what was going on and neither the **REGULATOR** nor the licensee were prepared to take any one else into confidence about this alleged conspiracy of silence. No explanation could be offered that if all what was happening, was happening, in due course without any malafides being involved, then why shouldn't the cable operator have informed the PEMRA, in writing, of the alleged circumstances which were compelling it to discontinue distribution service to some channels and to have sought the PEMRA's prior approval in writing to suspend service. But, conspicuously enough, not that the **REASONS** for closure of service were not considered good enough to be recorded anywhere

before taking the impugned action but were not being disclosed even after the said action.

17. Having thus examined the factual, the legal and even the constitutional aspects of the matter; the factually incorrect claims being made before us and the consequent legal violations, it is ordered, for the present, as under:-

i) Mushtaq Malik, the Chairman PEMRA shall ensure immediate distribution of broadcast services of PEMRA licensed channels, namely, ARY News and GEO News even if the same involves strict legal action against the delinquent cable T.V. operators, if any;

ii) the Chairman of PEMRA shall personally monitor and ensure that the transmission of the broadcast of the said two channels i.e. ARY News and GEO News is continued to be aired without any hindrance or obstruction of whatever kind and shall submit a report in the said behalf on the next date of hearing under his own signatures;

iii) the Provincial Police Officers of all the Provinces including Sindh and Punjab are directed to ensure that if at all any law and order situation is created which could hinder the transmission of the said two channels then they shall take immediate correctional steps including strict action, in accordance with law against any person found causing such a hindrance;

iv) the Chief Secretaries of the Governments of the four Provinces shall file their written replies to these petitions

before the next date of hearing. Copies of which shall be handed over to the learned counsel for the petitioners as also to the learned Attorney General; and

v) the Chairman PEMRA as also the CEOs/license holders of the four T.V. cable operators identified by the Chairman as M/s City Communications, M/s World Call Telecom Limited Broadband, M/s Karachi Cable Service and M/s Media Plus Communications who caused blockade and obstruction in distribution of the transmission of the said two channels shall appear before this Court in person on the next date of hearing and show cause why action should not be ordered to be taken against them in accordance with law.

18. To come up on August 17, 2010 for further proceedings.

Chief Justice

Judge

ISLAMABAD, the
13th August, 2010.
Waqas Naseer