

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.

Mr. Justice Tariq Parvez

Mr. Justice Amir Hani Muslim

**CIVIL PETITION NO. 683 OF 2011**

(On appeal from the judgment/order dated

18.05.2011 passed by Sindh High Court,

Karachi in CP.D-1743 of 2009)

Independent Music Group SMC (Pvt) Ltd.

and another

...

...

Petitioners.

## Versus

Federation of Pakistan, etc. ... ... Respondents.

Federation of Pakistan, etc.

...

...

Respondents.

For the petitioners : Mr. Mohammad Akram Sheikh, Sr. ASC.

For the petitioners

$$\vdots$$

Mr. Mohammad Akram Sheikh, Sr. ASC.

Mr. Mehmood A. Shiekh, AOR.

For respondent No.2 : Mr. M. Ali Raza, ASC.

For respondent No.2

$$\vdots$$

Mr. M. Ali Raza, ASC.

Mr. Abdul Jabbar, Acting Chairman PEMRA.

Respondent No.1 : Not represented.

## Respondent No.1

$$\vdots$$

Not represented.

Date of hearing : 06.06.2011.

Date of hearing

$$\vdots$$

06.06.2011.

## JUDGMENT

**IFTIKHAR MUHAMMAD CHAUDHRY, CJ.** – This petition has

**IFTIKHAR MUHAMMAD CHAUDHRY, CJ.** – This petition has

been filed for leave to appeal against the judgment dated 18.05.2011 passed

by High Court of Sindh, Karachi. Challenge has been made to the

impugned judgment only to the extent of seeking relief that the learned

Division Bench of the High Court, in the facts and circumstances of the

case, instead of remanding the matter to the respondent i.e. Print &

Electronic Media Regulatory Authority (PEMRA) to decide the application of the petitioners for licence, should have issued a writ in the nature of *mandamus*, directing the PEMRA to issue the licence.

2. Briefly stated facts of the case are that as back as on 2<sup>nd</sup> July, 2007, the petitioners submitted an application to the respondent No.2 for issuance of licence to establish & operate Satellite TV broadcast channel station, under Rule 6 of the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance, 2002 [hereinafter referred to as ‘the Ordinance, 2002’] for a period of 15 years i.e. period permissible to avail such licence. Admittedly this application remained pending and the PEMRA failed to decide the same within the period of 100 days as required under Section 22 of the Ordinance, 2002. However, after passing of a considerable period, on 08.07.2009 it refused to grant licence due to “security clearance” not given by Ministry of Interior. Contents of the letter are reproduced hereinbelow:-

*“2. It is informed that the Authority in its 55<sup>th</sup> meeting held on 3<sup>rd</sup> July, 2009 has refused the award of satellite TV licence to M/s Independent Music Group (SMC-PVT) due to regret of security clearance by Ministry of Interior, which is obligatory under Rule 10(iv) of PEMRA Rules for issuance of licence.”*

The petitioner being dissatisfied from the above order as well as the order of the Secretary Interior dated 09.06.2009, preferred a writ petition before the High Court of Sindh at Karachi on 17.08.2009, *inter alia*, praying therein that directions be issued to the respondents particularly the

respondent No.2 i.e. the PEMRA to immediately issue the Satellite TV broadcast channel licence to the petitioners. The petition was contested by the respondents. However, the learned Division Bench of the High Court vide impugned judgment allowed the same but the case was remanded to the PEMRA as it has been noted hereinabove. Relevant paras are reproduced hereinbelow for convenience:-

*“13. It was contended by the learned counsel for the petitioner that petitioner’s case is governed by PEMRA Rules of 2002 and not by PEMRA Rules of 2009. PEMRA Rules of 2009 were promulgated on December 12, 2009 and this Constitution Petition was filed on 17.8.2009, therefore, the date on which the PEMRA Rules were promulgated this Constitution Petition was already pending. It is settled law that notifications, instructions, circulars etc., issued by the government or statutory bodies operate prospectively and not retrospectively. In this regard one may refer to Hashwani Hotels Limited v. Federation of Pakistan and others, PLD 1997 SC 315, Army Welfare Sugar Mills Ltd. v. Federation of Pakistan and others 1992 SCMR 1652 and Dadabhoy Cement Industries Ltd. v. M/s National Development Finance Corporation, 2002 CLC 166. Even otherwise PEMRA Rules of 2009 which repealed the Rules of 2002 in Rule 20(2)(d)(v) which provide for repeal of Rules of 2002 provide that the repeal shall not:*

*“(v) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.”*

*Present legal proceedings were already pending when the Rules of 2009 came and therefore in any case the petitioners application could not have been dealt with under PEMRA Rules of 2009 and should have been processed under Rules of 2002.*

*14. Contention of the learned counsel for the petitioner was that there was no requirement of security clearance under Rule 10 of PEMRA Rules of 2002, whereas the requirement of security clearance was for the first time brought about by Rule 9(5) of the*

*Rules of 2009. Learned counsel for the PEMRA submitted that requirements of “credibility and track record” provided in Rules of 2002 themselves encompass security clearance. We do not think that we need to decide this controversy and leave it for decision in an appropriate case because what has happened in this case is that PEMRA while referring the case to Ministry of Interior pointed out that Respondent No.2 is also Director of another company which has already been granted a licence for one satellite broadcasting station. Moreover the Ministry of Interior has not given any reason whatsoever as to why security clearance was not given to the petitioner. Leaned Standing Council merely stated that she relied upon the comments submitted by the Ministry of Interior. It was available to the Ministry of Interior to bring to this Court the material that they had against the petitioners. They have chosen not to do so. This Court cannot ignore the fact that GEO SUPER has been, though through up linking licence, temporary landing rights permission telecasting sports programmes, it was stated, for five years and the sole owner of Petitioner No.1, (such sole owner is himself Petitioner No.2) has been granted TV Licenses for four other channels. No material has been placed before us to prima facie establish as to what threat if any was perceived to be likely to be caused by grant of licence to the petitioners. Therefore, based on the material produced before us, it appears to us that it was not justified for the Ministry of Interior to refuse clearance to the petitioners. Moreover every executive order must contain reasons for the order and we have not been able to divine any reason in this regard at the best none has been pleaded.*

15. *However, contention of learned counsel for the respondent by reference to Section 23 of the PEMRA Ordinance deserves some weight. Section 23 of the PEMRA Ordinance, provides as under: -*

**“23. Exclusion of monopolies.-(1)** *No person shall be entitled to the benefit of any monopoly or exclusivity in the matter of broadcasting or the establishment and operation of broadcast media or distribution service or in the supply to or purchase from a national broadcaster of air time, programmes or advertising material and all existing agreements and contracts to the extent of conferring a monopoly or containing an exclusivity clause are, to the extent of exclusivity, hereby declared to be inoperative and of no legal effect.*

*(2) In granting a licence, the Authority shall ensure that open and fair competition is facilitated in the operation of more than one media enterprise in any given unit of area or subject and that undue concentration of media ownership is not created in any city, town or area and the country as a whole:*

*Provided that if a licensee owns, controls or operates more than one media enterprise, he shall not indulge in any practice which may impede fair competition and provision of level playing field.”*

16. *It has been stated in the Counter-Affidavit filed to the stay application as well as in the comments that four broadcasting licences have already been granted to this group. Now this is not the reason stated in the impugned order for which the application for licence has been declined. At the same time no re-joinder to the Counter-affidavit or the comments has been filed by the petitioners. This in any case is an aspect which requires evaluation by the licensing Authority and task of such evaluation cannot be undertaken by this Court in exercise of its Constitutional Jurisdiction.*

17. *Resultantly we set aside the impugned order dated July 8, 2009 and June, 15, 2009 and remand the matter to PEMRA to decide the application of the petitioner for licence in accordance with the law within a period of two months of the date of this judgment.*

*Constitutional Petition alongwith the listed application is disposed of in the above terms.”*

3. Instant petition has been filed for leave to appeal on behalf of the Independent Music Group SMC (Pvt.) Ltd. and others whereas the PEMRA has conceded the judgment as it has not challenged the same before this Court.

4. Learned counsel for the petitioners contended that once the High Court had concluded that refusal of grant of licence is not sustainable, it may have issued clear directions to the PEMRA for issuance of licence as

it was requested for in the application dated 02.07.2007. To substantiate his plea, he has stated that under Section 22 of the Ordinance, 2002, it was incumbent upon the PEMRA to decide the application of the petitioners within a period of 100 days and as this period had already been consumed by the PEMRA because the matter was kept pending for period of about four years without any justification, no option was left with the PEMRA except to issue licence to the petitioners.

5. On the other hand, learned counsel for the respondents candidly conceded that the PEMRA has not challenged the judgment of the High Court as it has accepted whatever is stated therein but as soon as the judgment passed by the High Court of Sindh was received by the PEMRA, the process has been initiated for completing other formalities and that no sooner the same is completed the licence would be issued.

6. After hearing both the sides and having gone through the contents of the judgment of the High Court, under challenge, we are of the opinion that the learned High Court, keeping in view the fact that the petitioners have already suffered for a period of about four years, instead of remanding the case, may have issued a writ in the nature of *mandamus*. Be that as it may, if it has not done so, the PEMRA is under obligation, both legally and morally, to issue licence to the petitioners because the reason which prevailed upon it for refusing to issue licence to the petitioners i.e. “security clearance”, has not been accepted to by the learned High Court, therefore, the petitioners who on the basis of their application waited for a

period of more than 100 days, during which his application has not been rejected, has acquired a right that they should be dealt with in accordance with law as is envisaged under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. Any excuse now being made on behalf of the PEMRA is not acceptable for the reason that earlier when the rejection order was passed on 8<sup>th</sup> June, 2007, which has been reproduced hereinabove, no such demand was put forward calling upon the petitioners to fulfill the same or to remove the objection if any. If such practice is allowed to prevail then there would be no end to the litigation and if a request has been rejected/refused beyond the statutory period and the order is not sustained before the High Court then, with a view to deprive a person who is entitled to the licence and his application has been kept pending for four years, without being processed, there shall be no end to his matters and he is to enter into litigation time and again for the reasons which shall be put before him from time to time.

7. We have noted regretfully that the authorities, who are required to discharge their functions under statutory provisions, kept the matters lingering on without any legal or constitutional justification; as it happened in the instant case because it was for the PEMRA either to have rejected the application within 100 days under the law or it would have accepted the same; but now when the Court has intervened and passed the impugned order, no other excuse shall be acceptable for the purpose of causing delay in disposal of application of the petitioners.

Thus for the forging reasons, the petition is converted into appeal and allowed. The PEMRA is directed to issue immediately licence to the petitioners, in terms of their application, which they have submitted on 02.07.2007 and submit compliance report of this order to the Registrar of this Court within a period of three days, which shall be placed before us in Chambers for perusal. Parties are left to bear their own costs.

**CJ.**

**J.**

**J.**

Islamabad,  
06.06.2011.  
Irshad Hussain /\*

**NOT APPROVED FOR REPORTING.**