

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, C.J.
Mr. Justice Muhammad Sair Ali
Mr. Justice Khalil-ur-Rehman Ramday

CONSTITUTION PETITION NO.03 OF 2011

Independent Music Group SMC (PVT) Ltd. and another
...Petitioners.

Versus

Federation of Pakistan and others
...Respondents

For the petitioner(s): Mr. Muhammad Akram Sheikh, Sr. ASC
Mr. Mehmood A. Sheikh, AOR

For respondent(s) No.2: Mr. Salman Akram Raja, ASC

For respondent No.4-5: Mr. Raza Kazim, Sr. ASC
Mr. M. S. Khattak, AOR

Respondents No.1 & 3: N.R.

For applicant in CMA 222/11: Mr. Irfan Qadir, ASC

Date of hearing 24.1.2011

ORDER

This is a petition under Article 184(3) of the Constitution which is accompanied by a Civil Miscellaneous Application for grant of interim relief.

2. Mr. Muhammad Akram Sheikh, the learned senior ASC appearing for the petitioners submits that the first petitioner had entered into a Licence Agreement for Media Rights dated June 05, 2009 with ESPN (Mauritius) Limited (hereinafter called 'the EML') whereby the first petitioner had secured the Rights to broadcast ICC cricket events on cable and digital satellite broadcast platforms within the territory of Pakistan which included the ICC Cricket World Cup to be held in March, 2011. It was further submitted that through separate agreements executed between the first petitioner and the

International Media Corporation FZLLC, a Free Zone Limited Liability Company incorporated in Dubai and with the second petitioner GEO SUPER was to air the said cricketing event. The first petitioner consequently approached the Sindh Regional Office of the PEMRA for issuing necessary directions to the Cable Operators/MMDS distributors. The request so made by the first petitioner was allowed through a communication dated December 22, 2010 which is reproduced hereunder: -

“PAKISTAN ELECTRONIC MEDIA
REGULATORY AUTHORITY
SINDH REGION
GOVERNMENT OF PAKISTAN

No.1(01)PEMRA-KHI/REGM-MISC/2491
December 22,2010

ALL CABLE TV OPERATORS/MMDS DISTRIBUTORS

CIRCULAR

Subject: **DISTRIBUTION OF “ICC CRICKET
WORLD CUP 2011”**

This is to inform that ESPN (Mauritius) Limited has licensed the rights for the subject event to M/s Independent Music Group SMC (Pvt.) Limited (Geo TV Network) on an exclusive basis for cable and satellite transmission on a live basis within Pakistan. The event is scheduled to be telecast on ‘Geo Super’ from 19th February 2011 to 02nd April, 2011.

All cable TV operators/MMDS distributors are therefore, intimated that unauthorized distribution of the event through any satellite TV channel other than “Geo Super” shall invoke strict legal action, under PEMRA Ordinance and rules/regulations made there under, for infringement of the legal rights acquired by M/s Independent Music Group SMC (Pvt.) Limited.”

3. All concerned appeared to have felt satisfied with the above-quoted communication as no one, including the respondent Pakistan Television Corporation and the two petitioners, never voiced

any grievance nor agitated against the issuance of the above-quoted directions.

4. The two petitioners, however, claimed to have been shocked by the issuance of a letter by the respondent PEMRA dated 10.01.2011 whereby the above-quoted letter dated 22.12.2010 was withdrawn and it was to question the said subsequent letter dated 10.01.2011 that the petitioners felt compelled to approach this Court through this petition for redress of their grievance. It was submitted that the impugned action/conduct of the respondent PEMRA was a gross infringement of fundamental rights which stood guaranteed not only to the two petitioners but even to the public at large; that the same was an act calculated to cause, *inter-alia*, huge un-bearable financial losses to the two petitioners; that respondents No.3 to 5 were obliged not to infringe the copy rights of the two petitioners nor to allow infringement thereof by anyone else and further that the impugned action appeared to be rooted in malice.

5. Mr. Salman Akram Raja, the learned counsel for the PEMRA, who appeared on caveat, vehemently argued for the dismissal of this petition contending that the above-quoted communication dated December 22,2010 had been unauthorizedly issued by the Regional General Manager, PEMRA which was also violative of the relevant law regulating the subject and it was for the said reasons that the same had been withdrawn. On our query, the learned ASC submitted that a letter had been issued to the said General Manager on 11.01.2011 seeking his explanation about issuance of the said communication. A copy of the said letter was placed on our record which had commanded the said Manager to submit his explanation within seven days. Today, however, happens to be the 13th day but neither the explanation submitted by the said Regional Manager was

placed before us nor could it be shown that any disciplinary action had been initiated against him for issuing the said communication which was being vociferously condemned by the learned counsel as a display of gross illegality and misconduct on the part of the said officer.

6. Mr. Raza Kazim, the learned senior ASC appearing for the respondent PTV submitted that the said letter dated 22.12.2010 had been issued by a regional office of the PEMRA and not by the PEMRA itself. He, however, conceded that petitioner No.1 had been granted the broadcasting rights for airing the ICC Cricket World Cup, 2011 but added that the respondent PTV had the terrestrial broadcasting rights of the said tournament. He added that once the PTV broadcasted the event exercising its said terrestrial rights then it had no control over the same which broadcast could then be caught up by any person including the Cable Operators which Operators could then air the same and that the said operators were under the control of PEMRA and not of the PTV.. He, however, further conceded on our query that the PTV had not raised any grievance against the above-mentioned letter dated 22.12.2010 nor had it approached any forum including the PEMRA to agitate against the same or for its recall.

7. Mr. Irfan Qadir, learned ASC has entered appearance and submits that he had filed an application on behalf of the Collective Bargaining Agent of the PTV to become a party to this lis. Let notice of the same be issued to all the parties to this petition.

8. Having heard the learned counsel for the petitioners, the PEMRA and for the PTV, we are, prima-facie, of the opinion that the first petitioner was possessed of the requisite Rights to air the cricketing event in question i.e. the ICC Cricket World Cup, 2011 which had been secured by it from the ESPN (Mauritius) Limited and was, through the

second petitioner and others entitled to air the same through GEO SUPER. We further find, again least prima-facie, that the PEMRA having issued the communication dated December 22,2010 had no lawful authority to withdraw the same and more so without notice to the petitioners especially when the petitioners had already made preparations and had even incurred liabilities with respect to the broadcasting of the ICC Cricket World Cup, 2011. Therefore, pending decision of this petition, the operation of the letter dated 10.01.2011 issued by the PEMRA is suspended as a consequence whereof the operation of the letter dated 22.12.2010 is restored with direction to the PEMRA to implement the same in letter and spirit.

9. Let notice of this petition issue to the un-represented respondents.

Chief Justice

Judge

Judge

Islamabad, the
24th January, 2011
Nisar*/