

IN THE HIGH COURT OF SINDH AT KARACHI

Miscellaneous Appeal No.41 of 2017

(Hum Network Limited v. Pakistan Electronic Media Regulatory Authority)

A N D

Miscellaneous Appeal No.10 of 2018

(Apna TV Channel (Pvt) Ltd v. Pakistan Electronic Media Regulatory Authority&Another)

Before:

Sana Akram Minhas J

Appellant in Misc. Appeal No.41/2017	Hum Network Limited Through, Mr. Waqar Ahmed, Advocate
Respondent in Misc. Appeal No.41/2017	Pakistan Electronic Media Regulatory Authority Through, Mr. Manzar Bashir, Advocate
Appellant in Misc. Appeal No.10/2018	Apna TV Channel (Pvt) Limited Through, Mr. Syed Maqbool Hussain Shah, Advocate
Respondents in Misc. Appeal No.10/2018	(1) Pakistan Electronic Media Regulatory Authority (2) Ashfaq Ahmed Jumani Through, Mr. Khaleeq Ahmed, Advocate
<u>Date(s) of Hearing:</u>	23-4-2026 & 30-4-2026
<u>Date of Decision:</u>	30-7-2026

J U D G M E N T

1. Sana Akram Minhas, J: Since both Misc. Appeals – instituted under the then Section 30A¹ of the *Pakistan Electronic Media Regulatory Authority, Ordinance, 2002* (“**PEMRA Ordinance**”) – raise identical questions concerning the interpretation of the statutory framework governing the exercise of regulatory powers under the PEMRA Ordinance and the rules framed thereunder, they are being decided through this common judgment.

¹Section 30A: **Appeals.** – Any person aggrieved by any decision or order of the Authority may, within thirty days of the receipt of such decision or order, prefer an appeal to the High Court:

Provided that PEMRA shall make available a copy of its decision or order of revocation of licence within twenty-four hours of the decision to the licensee for preferring an appeal to the High Court.

2. Through these Appeals, the Appellants have challenged Decisions dated 30.3.2017 and 12.3.2018 (**collectively, “Impugned Decisions”**) purportedly passed by the *Pakistan Electronic Media Regulatory Authority* (“**Authority**”), whereby penalties were imposed upon the Appellants in respect of the broadcasts (**collectively, “Objectionable Content”**) on the allegation that they violated the provisions of, inter alia, the PEMRA Ordinance, the *Pakistan Electronic Media Regulatory Authority Rules, 2009* (“**PEMRA Rules 2009**”)² and the *Electronic Media (Programmes and Advertisements) Code of Conduct, 2015* (“**Code of Conduct**”)³ framed thereunder.
3. Briefly stated, the Impugned Decisions arise in the following circumstances:
 - i) In the first Appeal, the Appellant challenges the imposition of a fine of Rs.1,000,000/- (*Rupees One Million*) in relation to the telecast of a single-episode drama titled “*Chew Gum*”, from the series “*Kitni Girhain Baqi Hain*”, which allegedly contained the Objectionable Content.
 - ii) In the second Appeal, the Appellant assails the imposition of a fine of Rs.100,000/- (*Rupees One Lac*) in relation to the broadcast of an episode of the discussion programme titled “*Benaqab*”, during which one of the participants allegedly made remarks against a political party leader, which allegedly constituted the Objectionable Content.

Scope Of Adjudication

4. Learned Counsel for the Appellants, while assailing the Impugned Decisions, raised numerous legal and factual grounds. During the course of arguments, however, learned Counsel for the parties fairly agreed that the present Appeals turn upon two short jurisdictional issues, which are sufficient for their disposal, without requiring this Court to examine the merits of the respective broadcasts or decide whether the Objectionable Content was, in fact, objectionable or otherwise in violation of the PEMRA Ordinance, the rules framed thereunder, or the Code of Conduct. In these circumstances, the remaining submissions advanced on behalf of the parties need not be examined and are accordingly left open, as their determination is unnecessary for the disposal of the present Appeals.

²PEMRA Rules, 2009 have been framed in exercise of the powers conferred by Section 39(1) of the PEMRA Ordinance 2002

³ Code of Conduct, 2015 have been framed in exercise of the powers conferred by Section 39(1) of the PEMRA Ordinance 2002 as amended by *Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2007*

Facts

5. The facts pleaded by the Appellants are as follows:
 - i) **Misc. Appeal No.41/2017(HUM Network)**: The Appeal arises from proceedings initiated by the Authority in relation to the telecast of a single-episode drama titled “*Chew Gum*”, aired on 29.1.2017 between 9:00 pm and 10:00 pm. According to the Appellant, the programme was intended to create awareness regarding the social consequences of extra-marital relationships and was broadcast during a late-evening time slot. Following the telecast, the Authority issued a Show Cause Notice dated 20.2.2017 alleging violations of the PEMRA Ordinance and the Code of Conduct. The Appellant submitted a written reply and appeared before a “*Personal Hearing Committee*” constituted by the Authority. Thereafter, the Impugned Decision dated 30.3.2017 was passed, imposing a fine upon the Appellant.
 - ii) The Appellant principally challenges the Impugned Decision on jurisdictional and procedural grounds, contending that the statutory procedure prescribed under the PEMRA Ordinance was not followed, as the matter was neither referred to the Council of Complaints (“**COC**”), a statutory body, nor decided by the Authority in a duly convened meeting in accordance with Sections 8 and 26 of the said Ordinance and the relevant rules. It is further alleged that the Show Cause Notice and the Impugned Decision were issued by the General Manager (Operations), Islamabad who lacked statutory authority, while the hearing was conducted by a committee having no legal basis under the said Ordinance. The Appellant also asserts that the complaints forming the basis of the proceedings were never supplied, the Impugned Decision neither identified the objectionable portions of the programme nor disclosed reasons for imposing the penalty, and was publicised before the statutory right of appeal could be exercised, thereby causing reputational damage.
 - iii) **Misc. Appeal No.10/2018 (Apna TV Channel)**: The Appellant, a licensed satellite television broadcaster operating the news channel “AbbTakk News”, challenges proceedings arising from an episode of the discussion programme titled “*Benaqab*” broadcast on 21.2.2018, during which participants discussed the implementation of a judgment of the Supreme Court concerning the disqualification of the President of a major political party from holding that office, a matter

which, according to the Appellant, was then the subject of widespread public debate.

- iv) Following the broadcast, the Authority issued a Show Cause Notice dated 22.2.2018 alleging that one of the participants made derogatory remarks against a political leader, which were aired without editing, in violation of Section 20(c) of the PEMRA Ordinance, Rule 15 of the PEMRA Rules 2009, and various provisions of the Code of Conduct. The Appellant submitted a detailed reply denying the allegations and asserted that, as a precautionary measure, the participant concerned was immediately removed from the programme to avoid any possible breach of the applicable legal framework. Thereafter, despite the written reply and the Appellant's appearance before the "*Personal Hearing Committee*", the Impugned Decision dated 12.3.2018 was passed, imposing the aforesaid fine and directing the Appellant to constitute an in-house monitoring committee.
- v) The Appellant principally assails the Impugned Decision on jurisdictional and procedural grounds, contending that, at the relevant time, the office of the Chairman of the Authority remained vacant following the setting aside of the Chairman's appointment by the Lahore High Court⁴, with the result that no lawful decision of the Authority could be taken in accordance with the statutory scheme. It is further alleged that the Respondent No.2 rendered the Impugned Decision without lawful authority, without complying with the mandatory statutory procedure governing the respective roles of the COC and the Authority, and without supplying the complaint forming the basis of the proceedings, thereby violating the requirements of due process and fair hearing.

Respondents' Submissions

- 6. Learned Counsel for the Respondents opposed the Appeals and supported the Impugned Decisions. It was contended that the Authority was competent to initiate and determine proceedings under Section 27 of the PEMRA Ordinance and was not bound to obtain the opinion or recommendations of the COC before exercising its statutory powers.
- 7. Counsel for the Respondent appearing in the Misc. Appeal No.41/2017 (HUM Network) further contended that the Appeal was not maintainable, having been instituted by a person allegedly lacking lawful authority to do so

⁴2018 CLC 530 (*Munir Ahmad v. Federation of Pakistan*)

on behalf of the Appellant. Elaborating upon this objection, Counsel submitted that the only document placed on record was a Sub-Power of Attorney⁵, whereas no antecedent power of attorney or other instrument conferring authority upon the executant of the Sub-Power of Attorney had been produced.

Questions For Determination

8. The following questions arise for determination:
 - i) Whether, under the statutory scheme of the PEMRA Ordinance, complaints relating to the content of a programme can lawfully be examined and decided without first being received, reviewed and opined upon by the COC constituted under Section 26 of the PEMRA Ordinance.
 - ii) Whether the Impugned Decisions, founded upon the recommendations of a so-called “*Personal Hearing Committee*” and issued under the signatures of the General Manager (Operations), Islamabad, in the first Appeal and the Regional General Manager, Karachi Region, in the second, without any decision of the Authority taken in accordance with Sections 6 and 8 of the PEMRA Ordinance, are sustainable in law.

Opinion Of The Court

9. The matter has been heard and the record perused.

Maintainability Of Misc. Appeal No.41/2017 (HUM Network)

10. The preliminary objection to the maintainability of this Appeal is misconceived. A perusal of the Court File shows that, in addition to the Sub-Power of Attorney⁶ executed by Mr. Duraid Qureshi, Chief Executive Officer of the Appellant Company, in favour of Mr. Mohsin Naeem, Company Secretary, the antecedent Power of Attorney dated 4.9.2014 executed by the Appellant Company in favour of Mr. Duraid Qureshi is also available on record. The extract of the minutes of the meeting of the Board of Directors of

⁵At Court File Pg.19 (Annex B)

⁶While the opening words of the first recital of the antecedent Power of Attorney refer to “Eye Television Network Limited”, the document is titled, signed and sealed by HUM Network Ltd. Counsel for the Appellant confirmed that Eye Television Network Limited was the former corporate name of HUM Network Ltd

the Appellant Company held on 4.9.2014, authorising the execution of the said Power of Attorney, also forms part of the record⁷. The authority to institute the Appeal on behalf of the said Appellant is, therefore, duly established, and the preliminary objection is rejected.

Statutory Scheme Under PEMRA Ordinance, 2002

11. The determination of the present Appeals requires an examination of the statutory framework governing the regulation of programme content and the adjudication of complaints relating thereto. The PEMRA Ordinance and the rules framed thereunder establish a carefully structured regulatory mechanism, under which the respective functions of the COC and the Authority are distinct yet complementary.
12. Section 26(2) of the PEMRA Ordinance provides that the COC– established under Section 26(1) – shall receive, review and examine complaints made by persons or organizations from the general public against any aspects of programmes broadcast or distributed by a licensed broadcaster and shall render its opinion thereon. Under Section 26(5), the COC may recommend to the Authority appropriate action of censure or fine for violation of the applicable codes relating to programme content.
13. Rule 10 of the *Pakistan Electronic Media Regulatory Authority (Councils of Complaints) Rules, 2010* (“**COC Rules 2010**”)⁸ further provides that the Authority shall consider the recommendations made by the COC in each matter and may either approve or disagree with such recommendations, while recording reasons in writing, or refer the matter back to the COC for reconsideration.
14. The statutory scheme thus contemplates two mandatory statutory stages. The first consists of the examination of the complaint by the COC and the rendering of its opinion and recommendations. The second consists of the consideration of such opinion and recommendations by the Authority, which alone is competent to pass the final order in accordance with law.
15. Equally significant are Sections 6 and 8 of the PEMRA Ordinance. Section 6 constitutes the Authority as a statutory body comprising the Chairman and twelve Members. Section 8 regulates the manner in which the Authority performs its functions and mandates, inter alia, that every order,

⁷All the aforesaid documents are annexed with the Appellant’s “*Rejoinder To Parawise Response*”

⁸COC Rules, 2010 have been framed in exercise of the powers conferred by Section 26(4) read with Section 39 of the PEMRA Ordinance 2002

determination or decision of the Authority shall be taken in writing and shall identify separately the determination of the Chairman and each Member.

16. It is, therefore, evident from the statutory framework that the legislature has entrusted the initial examination of complaints relating to programme content in the first instance exclusively to the COC, whereas the final adjudicatory function rests exclusively with the Authority constituted under Section 6 of the PEMRA Ordinance. The statutory responsibilities of these two bodies are distinct and neither can substitute the other.

Judicial Interpretation Of Relevant Statutory Scheme

17. The scope and operation of the aforesaid statutory framework no longer admit of any controversy. The interpretation of the relevant provisions of the PEMRA Ordinance, particularly Sections 26 and 27 thereof, as well as the manner in which the Authority is required to exercise its statutory powers, stand authoritatively settled by the judgments of the Supreme Court in Pakistan Electronic Media Regulatory Authority v. ARY Communication (Pvt) Limited⁹(“**ARY Communication**”) and Fun Infotainment (Pvt) Limited v. Pakistan Electronic Media Regulatory Authority¹⁰(“**Fun Infotainment**”).
18. The first and foremost principle emerging from the ARY Communication ruling is that the PEMRA Ordinance envisages a mandatory two-tier statutory mechanism for examining complaints relating to programme content. Under this statutory framework, the COC and the Authority perform distinct but complementary functions. The legislature has deliberately entrusted the initial examination of complaints concerning programme content to the COC, an independent statutory body constituted under Section 26 of the PEMRA Ordinance, whereas the ultimate decision-making authority vests in the Authority itself after considering the opinion and recommendations of the COC.
19. The Supreme Court further held that Section 27(a) of the PEMRA Ordinance is not an independent or self-governing provision enabling the Authority to bypass the COC and directly adjudicate complaints relating to programme content. Rather, Section 27(a) must be read harmoniously with Section 26 of the PEMRA Ordinance and the COC Rules 2010. Accordingly, where any complaint relates to the content of a programme or advertisement, the matter must first be examined by the COC, which is required to receive and review

⁹PLD 2023 SC 431 (*Pakistan Electronic Media Regulatory Authority v. ARY Communication (Pvt) Limited*)

¹⁰PLD 2024 SC 230 (*Fun Infotainment (Pvt) Limited v. Pakistan Electronic Media Regulatory Authority*)

the complaint and render its opinion under Section 26(2). Where appropriate, the COC may also make recommendations under Section 26(5). It is only thereafter that the matter can lawfully be considered by the Authority in accordance with the statutory framework.

20. The Supreme Court also clarified that the mandatory involvement of the COC is not confined only to complaints received from members of the public. Even where the Authority or its Chairman takes cognizance of a matter on its own motion, the statutory procedure remains unchanged. In such circumstances, the matter must still be referred to the COC under Rule 8(4) of the COC Rules 2010 for its opinion before any final action is taken. The COC, therefore, is not merely an optional consultative forum but an indispensable statutory stage in the decision-making process concerning programme content.
21. The inevitable consequence flowing from the above interpretation is that any action taken by the Authority relating to programme content without first obtaining and considering the opinion of the COC is contrary to the statutory scheme envisaged by the PEMRA Ordinance and is without lawful authority. The Supreme Court expressly upheld the setting aside of the impugned action in that case on the ground that the COC had been bypassed.
22. The second principle relevant to the present Appeals emerges from the decision in *Fun Infotainment* (supra), wherein the Supreme Court examined the limits of the Authority's power of delegation under Section 13 of the PEMRA Ordinance and the validity of the exercise of delegated powers. The Court held that although Section 13 permits delegation of certain powers, such delegation must strictly conform to the conditions prescribed by the PEMRA Ordinance and must be regulated by rules prescribing the conditions governing its exercise. In the absence of such rules, any purported delegation is without lawful authority. Statutory powers cannot be exercised by any person or authority merely on the basis of administrative convenience or internal arrangements unsupported by law.
23. The Supreme Court emphasised that where the legislature vests an important adjudicatory or quasi-judicial function in the Authority, the exercise of such function must strictly conform to the statutory framework. Any delegation of such powers must be authorised by law, structured by prescribed conditions, and exercised in a manner consistent with the statutory purpose. The Court further held that the more important the statutory power sought to be delegated, the greater the obligation to prescribe appropriate conditions regulating its exercise. Accordingly, a person or officer not lawfully vested with such authority cannot assume or

exercise powers exclusively conferred upon the Authority by the PEMRA Ordinance, and any exercise of such power is legally unsustainable.

24. Read together, the aforesaid judgments establish the following principles of law:
 - i) Complaints concerning content of programmes or advertisement are required, in the first instance, to be examined by the COC constituted under Section 26 of the PEMRA Ordinance.
 - ii) The opinion of the COC under Section 26(2), and where applicable its recommendations under Section 26(5), are mandatory jurisdictional preconditions before the Authority may proceed to determine the matter.
 - iii) Even where the Authority or its Chairman proceeds suo motu, the matter must first be referred to the COC for its opinion.
 - iv) The Authority must thereafter consider the opinion and recommendations of the COC and exercise its statutory powers in the manner prescribed by the PEMRA Ordinance and the rules made thereunder.
 - v) Statutory adjudicatory powers vested in the Authority cannot be exercised by a body or officer lacking statutory authority, or by any person in the absence of a valid delegation made in accordance with Section 13 of the PEMRA Ordinance and the rules framed thereunder.
25. The validity of the Impugned Decisions must, therefore, be examined strictly in the light of the statutory framework as authoritatively interpreted by the Supreme Court, and not on the basis of any administrative practice or procedure adopted by the Respondents inconsistent therewith.

Application Of The Above Principles To The Appeals

26. The controversy in the present Appeals turns on the foundational question whether the mandatory statutory procedure prescribed by the PEMRA Ordinance was followed before the Impugned Decisions were passed. For the reasons that follow, that question must be answered in the negative.
27. Applying the aforesaid statutory framework and the principles authoritatively laid down in ARY Communication, the first question requiring determination

is whether the complaints relating to the alleged Objectionable Content were, in the first instance, referred to the COC for examination in accordance with Section 26 of the PEMRA Ordinance.

28. The record of both Appeals clearly demonstrates that the mandatory first stage envisaged by Section 26 of the PEMRA Ordinance was completely omitted. There is nothing on record to show that the respective complaints were ever referred to the COC or that the COC rendered its opinion under Section 26(2) or made any recommendation under Section 26(5). The entire statutory mechanism was thus bypassed.
29. Instead of following the statutory procedure, the Respondents proceeded through what has been described as a "*Personal Hearing Committee*". The very nomenclature of such committee finds no mention anywhere in the PEMRA Ordinance, the PEMRA Rules 2009 or the COC Rules 2010. Significantly, the respective Counsel for the Respondents have been unable to identify any provision of the said Ordinance, the said Rules or any other statutory instrument authorising the constitution of such a committee to adjudicate complaints relating to programme content. Such a committee, therefore, had no statutory foundation and could not lawfully substitute the COC in the discharge of functions exclusively entrusted to the latter by the legislature.
30. The matter does not end there. Quite apart from the foregoing, the Impugned Decisions suffer from a second and independent jurisdictional defect.
31. Even assuming, for the sake of argument, that the recommendations of such committee could somehow be considered, the matter was still required to be placed before the Authority itself for decision in accordance with Sections 6 and 8 of the PEMRA Ordinance read with Rule 10 of the COC Rules 2010.
32. The Impugned Decisions satisfy none of these statutory requirements. There is nothing on record to demonstrate that either matter was ever placed before the Authority in a duly convened meeting; that the requisite quorum was present; that the Chairman and Members deliberated upon the matter; or that the determination of the Chairman and each Member was separately recorded, as mandatorily required by Section 8(5) of the PEMRA Ordinance. Instead, the record reveals that, in the Hum Network Appeal (No.41/2017), the Impugned Decision was signed and communicated by the General Manager (Operations), Islamabad, while, in the Apna TV Channel Appeal (No.10/2018), the Impugned Decision was signed and communicated by the Regional General Manager, Karachi Region. Neither of these officers form

part of the Authority constituted under Section 6 of the PEMRA Ordinance, nor has any provision of the Ordinance or the relevant rules been brought to the notice of this Court authorising either of them to exercise the adjudicatory jurisdiction vested exclusively in the Authority. Equally, no material has been placed on record to demonstrate the existence of any lawful delegation, made in accordance with Section 13 of the PEMRA Ordinance and the applicable rules, empowering either of the said officers to exercise such quasi-judicial authority on behalf of the Authority.

33. This conclusion finds further support in the Lahore High Court's decision in Fun Infotainment Network (SMC-Pvt) Ltd v. Pakistan Electronic Media Regulatory Authority¹¹, wherein it was held that a decision which neither reflects the determination of the Chairman and each Member nor demonstrates compliance with the statutory requirements relating to constitution and quorum is without lawful authority. Likewise, the Supreme Court in Fun Infotainment(supra), reiterated that powers vested in the Authority cannot be exercised through unlawful or unconditional delegation and that statutory functions must be exercised strictly in the manner contemplated by the PEMRA Ordinance.
34. Considered cumulatively, the Impugned Decisions suffer from two fundamental and incurable jurisdictional defects:
 - i) First, the mandatory jurisdiction of the COC under Section 26 of the PEMRA Ordinance was completely bypassed and replaced by a body (namely, the "Personal Hearing Committee") unknown to law.
 - ii) Secondly, the matters were never considered and decided by the Authority in accordance with Sections 6 and 8 of the PEMRA Ordinance but instead culminated in orders (i.e. Impugned Decisions) issued by officers having no statutory adjudicatory competence under the said Ordinance.
35. These defects strike at the very root of jurisdiction. They are not procedural irregularities capable of being cured; rather, they constitute violations of mandatory statutory requirements enacted by the legislature to regulate the exercise of quasi-judicial powers affecting valuable rights of licensees. Consequently, both Impugned Decisions, having been rendered in violation of the mandatory statutory framework by persons or bodies lacking statutory adjudicatory competence, are *coram non judice*¹², without lawful authority and of no legal effect. They are, therefore, liable to be set aside.

¹¹PLD 2019 Lah 486 (*Fun Infotainment Network (SMC-Pvt) Ltd v. Pakistan Electronic Media Regulatory Authority*)

Conclusion

36. For the foregoing reasons, both Miscellaneous Appeals are **allowed**. Accordingly, the Impugned Decisions dated 30.3.2017 and 12.3.2018 are set aside. There shall be no order as to costs.

JUDGE

¹²PLD 2019 Sindh 516 (*Dr. Seema Irfan v. Federation of Pakistan*); 2020 YLR 578 (*Muhammad Yousaf v. Trustees of the Port of Karachi*); 2024 PCrLJ 1890 (*Sikandar Ali Kolachi v. The State*)