

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:

Mr. Justice Muhammad Shafi Siddiqui

M.A. No. 23 of 2013

Media Un-Limited (Pvt.) Limited

Versus

Pakistan Electronic Media Regulatory Authority

Date of Hearing: 22.03.2018

Appellant: Through Mr. Saalim Salam Ansari Advocate

Respondent: Through Mr. Kashif Hanif Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- The appellant is a private limited company which claimed to have been issued a licence under PEMRA Ordinance 2002 and Amendment Act 2007 for running and operating satellite TV channel under the name and style of N-Vibe under entertainment category on 17.02.2007 having Kamran Tajammul Babar and Mrs. Nusrat Humayun as its directors. The authority issued a show-cause notice on 01.02.2013 to the appellant in which it is claimed that Form 29 and Form-A for the year 2012 reveals that the company in response to a letter dated 05.12.2012 got one of his directors Mrs. Nusrat Humayun changed as she claimed to have resigned on 31.10.2012. The Company then inducted two new directors Mr. Muhammad Hasan Kashan Tajammul and Muhammad Saleem without prior approval in writing from the authority. It is claimed in the show-cause notice that Section 30(d) of PEMRA Ordinance 2002 (Amendment Act 2007) read with Rule 16(2) of PEMRA Rules 2009 have been violated.

2. In response to show-cause notice and in arguments it is contended that it is not a major transfer of shareholding as number of shares transferred were not more than 0.1% of total paid up shares of the



Chairman Mr. Babar Tajammul, therefore, the ownership and management of the company was not changed.

3. I have heard the learned counsel and perused the material available on record.

4. The prime consideration of the appellant's counsel is the effect of section 30(d) of the Ordinance 2002 which, for the sake of convenience, is reproduced as under:-

"30. Power to vary conditions, suspend or revoke the licence.- (1) The Authority may revoke or suspend the licence of a broadcast media or distribution service by an order in writing on one or more of the following grounds, namely:-

(a)

(b)

(c)

(d) where the licensee is a company, and its shareholders have transferred a majority of the shares in the issued or paid up capital of the company or if control of the company is otherwise transferred to persons not being the original shareholders of the company at the time of grant of licence, without written permission of the Authority.

(2)

(3) ..."

5. A limited company is operated by its directors irrespective of number of shares being held by them. It is immaterial that the existing chairman or any other director transferred 0.1% of his shareholdings to the new directors who were inducted. What is important is that two new directors were inducted who may play a vital role in the management and decision making and hence for all intent and purposes the functioning and management of the company was altered by virtue of induction of two new directors. It is however worth considering for the authority to probe about the funding used for transferring the shares but that is not the case here.

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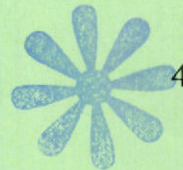
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6. Section 29(1) of the Ordinance 2002 empowered the authority of such action which may be delegated to any of its officers or its nominee to carry out inspection which may include SECP record. In terms of subsection (6) the authority was within the empowerment to impose a fine up to Rs.1 Million on a licensee who contravenes any of the provisions of this Ordinance or rules and regulations made therein. It is not the case of the appellant that they were not under the obligation to seek such permission as far as change of director of the company is concerned nor have they agitated that this is not a ground on which the licence could be suspended or revoked. It is otherwise statutory obligation in terms of Section 30(d) of the PEMRA Ordinance, as agreed.

7. Thus, any violation, i.e. either in terms of licence or contraventions of the provisions including but not limited to 30(d) of the Ordinance or rules and regulations made thereunder, shall be subjected to the consequences provided under the Ordinance. For imposition of fine, the authority, after providing opportunity to licensee may impose fine as mandated. It is a lessor punishment given to the appellant/ licensee than required under section 30(d) as neither their (appellant's) transmission was suspended nor the licence was revoked. As maintained by Mr. Kashif Hanif, learned counsel appearing for the respondent, that since it was first contravention of any provision of the Ordinance, ever since the licence was issued to the appellant, therefore, they have imposed a lessor fine/punishment rather than revoking or suspending the licence as in consequence of which they (appellant) may have suffered more financial losses.

8. The PEMRA Rules 2009 also caters for such a situation. Rule 16 provides that without prior approval of the authority a licensee shall not transfer, merge or amalgamate with any other person (entity) any right conferred under the licence. Sub Rule 2 further provides that without

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prior approval of the authority any person shall not transfer or dispose of his share or interest which he is holding or owning in a company, which is a licensee. It is perhaps to monitor the funds being used to transfer shares of the company.

9. Rule 16 in fact is to be framed under section 39 of PEMRA Ordinance 2002 with approval of Federal Government, keeping in mind scope of 30(d) in a manner that in addition to above, the functioning and management of the company should not be allowed to change. In the instant case it is not a question of transfer of shareholding which may be less than 0.2% or insignificant or the investigation of funds used, but its effect is such that it alters the management of the appellant which in fact is prohibited in terms of Section 30(d) unless otherwise approved by PEMRA.

10. This issue was further highlighted in the case of Labbaik (Pvt.) Limited v. Federation of Pakistan reported in 2016 CLC 575 the relevant paragraphs 20 and 25 of which is reproduced as under:-

"20. As to the second limb of the argument that once security clearance has been obtained then there is no requirement under the Ordinance or the Rules for obtaining fresh security clearance. The contention in view of Section 30 (d) of the Ordinance could not sustain for the simple reason that the law contemplates security clearance of the management and not of the company as company being a fictitious person run by its management and therefore, on every change in the shareholding of a company, the investment of the existing management is taken out and the new management makes investment and at that juncture the Authority has to ensure that the security clearance of the new management is undertaken in order inter alia to find out as to whether, the funds so invested in the company as well as in payment to the outgoing directors, are not funded or sponsored by a foreign government or organization and for this purpose the security clearance on change of management at every stage is required. Even Rule 30(d) of the Ordinance, 2002 itself provides that the Authority is empowered to revoke or suspend the licence of a broadcast media or distribution

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13. In view of the above, I do not find any infirmity and illegality in the order/letter dated 03.05.2013 except that out rightly a maximum fine of Rs.1 Million was imposed upon the appellant. Accordingly, since it was first contravention, as pointed out by respondent's counsel, fine is revised and reduced to Rs.500,000/- (0.5 Million).

14. Misc. Appeal in terms of above stands disposed of along with pending applications.

Dated: 02.04.2018

Judge

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Respondent: Through Mr. Kashif Hanif Advocate

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stage is required. Even Rule 30(d) of the Ordinance, 2002 itself provides that the Authority is empowered to revoke or suspend the licence of a broadcast media or distribution service in cases where the licensee is a company, and its shareholder have transferred a majority of the shares in the issued or paid up capital of the company or its control to person not being the original shareholders of the company without written permission of the Authority.

25. In the circumstances, the first petition bearing Const. Petition No. D-2867 of 2013 being premature, without cause and therefore, is dismissed. However, in the circumstances, we direct Ministry of Interior to process the security clearance as per practice in vogue and once the issue of security clearance is finalized either way the authority would proceed in accordance with law. The second petition bearing Const. Petition No. D-3224 of 2015 is allowed in the afore-stated terms."

11. Similar view was taken by Islamabad High Court in the case of Independent Newspapers Corporation (Pvt.) Ltd. v. Pakistan Electronic Media Regulatory Authority as reported in PLD 2014 Islamabad 07 wherein it has been observed as under:-

"13.....The above provision of the Ordinance clearly provides that in case of breach of any provision of Ordinance, the authority may inflict fine. The contention of the learned counsel for the respondent was that the said provision relates to inspection. I am unable to see eye to eye with the learned counsel for the simple reason that this section itself provides that "any provisions of this Ordinance". It shows that this provision is applicable for the entire Ordinance. Before cancelling the licence of the appellant, this provision has not been kept in view and a harsh order of cancellation of licence was passed."

12. In the show-cause notice by referring to Section 30(d) of the Ordinance 2002 the contravention was highlighted whereas vide the impugned letter dated 03.05.2013 the fine was imposed in pursuance of Section 29(6) of the Ordinance. In the show-cause notice the authority may have threatened to take action under section 40 but then since it was considered to be first contravention a lesser punishment in terms of Section 29(6) was awarded.

13. In view of the above, I do not find any infirmity and illegality in the order/letter dated 03.05.2013 except that out rightly a maximum fine of Rs.1 Million was imposed upon the appellant. Accordingly, since it was first contravention, as pointed out by respondent's counsel, fine is revised and reduced to Rs.500,000/- (0.5 Million).

14. Misc. Appeal in terms of above stands disposed of along with pending applications.

Dated: 2.4.2018

Certified to be true copy,

Sd/-MUHAMMAD SHAFI SIDDIQUI
JUDGE

Assistant Registrar (Civil/Writ SB)

Miscellaneous Appeal No. 23 of 2011

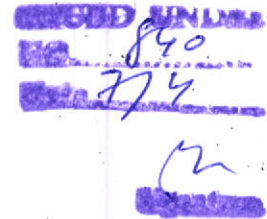
Karachi, dated: 5th April, 2018.

Forwarded for information and compliance to:

The Pakistan Electronic Media Authority, Headquarters, having Office at 3rd floor, Building Mauve Area G-8/1, Islamabad in Decision of Authority I, No.10-2(74) STV-2007.

(Abdul Rasheed Baloch)

Assistant Registrar (Civil / Writ SB)



ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

M.A No. 23 of 2013

DATE ORDER WITH SIGNATURES OF JUDGE(S)

Hearing of priority case

1. For orders on CMA No.5160/2013
2. For orders on CMA No.5161/2013
3. For hearing of CMA No.5920/2013
4. For hearing of Main Case

14.10.2016

Mr. Kashif Hanif, Advocate for the respondent

Mr. Samar Abbas, Advocate holding brief for Mr. Saalim Salam Ansari, Advocate for the appellant submits that the latter is busy before another bench. It appears that the matter has been pending without any proper hearing since the status-quo was granted, which primarily relates to imposition of fine and the onus is on the appellant to show how the imposed fine is unwarranted, failing which, the fine ought to have been deposited. As last opportunity, the case is fixed for 10.11.2016 with the caution that if the counsel for the appellant fails to appear, status-quo would be vacated.

JUDGE

Barkat Ali/PA

Hearing Case (Marked)

1. In ada on CMA 5160/2013
2. In ada on CMA 5161/2013
3. In Hf of CMA 5920/2013
4. In Hf of Main Case

(B/Moh mnd)

(Barkat report filed as flagged)

22-03-2018

Mr. Sadlim Salim Ansari for Appellant.
Mr. Hashif Hanif for Respondent

Arguments heard. Reserved.

Judge