

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-4660 of 2015

[Muhammad Iqbal & Others

vs

Pakistan Telecommunication Authority & others]

**Before: Chief Justice and
Mr. Justice Zulfiqar Ahmad Khan**

Date of Hearing : 09.02.2016.
Date of Order : 09.02.2016
Petitioners : Through Mr. Muhammad Anwar Tariq,
Advocate
Respondent No.1 : Through Mr. Haq Nawaz Talpur,
Advocate a/w Mr. M. Talib Dogar, D.G. Type
Approval-PTA
Mr. Ali Akber Sahito, Dy Director Law-PTA
Respondent No.2 : Through Mr. Kashif Nazir, Advocate
Respondent No.3 : Through Ms. Masooda Siraj, Advocate
Respondent No.4 : Through Mr. Aslam Butt, DAG

ORDER

Zulfiqar Ahmad Khan, J.:- The Petitioners are individuals engaged in the cellular business and deal with terminal equipment as well as cellular phones. In their normal course of business they import and distribute cellular phones all over Pakistan. The Petitioners are aggrieved by SRO No.797(I)/2004 dated 09.07.2004 (known as Type Approval Regulation, 2004) and have prayed that the terminal equipment/cellular phones imported by them are not to be hit by the said Regulations, with the result that the letter issued by the Federal Board of Revenue to the Custom Authorities calling upon the latter to ensure that only Type Approved terminal equipment/cellular phones should be allowed to be imported into Pakistan does not apply to them.

2. At the hearing dated 27.01.2016 the Hon'ble Court came to the conclusion that the principal point involved in the instant petition is "whether Type Approval from Pakistan Telecommunication Authority (PTA) is required before the import of cellular phone or afterwards under the applicable Law, Rules or Regulations"?

3. Today, the learned counsel representing Pakistan Telecommunication Authority appeared along with Mr. M. Talib Dogar, D.G. Type-Approval who assisted the court answering the above referred key question. Mr. Dogar by bringing with him set of documents assisted the court in explaining the process of grant of Type Approval from the stage of making an application thereof up to its grant and maintenance of Type Approval Register, as well as, he brought to our attention various standards and tests used for IMEI (International Mobile Equipment Identity) registration in Pakistan and he appraised the court of the regulators' concerns and their point of view. Case study of "Blackphone" was also briefly presented.

4. From the documents submitted and verbal assistance provided, we gather that the issue regarding IMEIs viz Type Approval gained momentum in the year 2013 when a task force in pursuance of the Hon'ble Supreme Court's order dated 29.11.2013 in the Suo Moto Case No.16/2011 advised the Custom Authorities not to allow import of terminal equipment (meaning to include cellular phones) which do not have proper IMEIs and thus, not to have any such devices imported without having Type Approval Certificate issued by PTA in this regard in advance. Attention of the Hon'ble court was also drawn to Article 9.6 of the Telecommunication Policy, 2015 which inter alia requires that all terminal equipment/cellular phones will be subjected to Type Approval based on international norms, and regulatory mechanism will be developed in order to identify persons using phones with duplication identification in order to have such phones blocked. Also, issues regarding incompatible, as well as, use of stolen phones throughout the country was in the sight. The policy required each terminal equipment/cellular phone to have a valid and unique IMEI and such equipment should have to have a certificate issued by GSMA (Groupe Speciale Mobile Association) providing appropriate TAC (Type Allocation Code) identifier comprising 8 digit string

after which 6 additional numbers are added by the manufacturer to create unique IMEIs for each cellular phone produced and brought into the market. Mr. Dogar submitted a copy of Type Approval Certificate (page 27) which provides information about the origin, operating frequency, trade name and the type of cellular phone approved by PTA in advance, before its import is allowed into the country.

5. The very purpose of such approval mechanism is to ensure that the terminal equipment (cellular phones) being imported in the country are distinguishable/compatible by the operators' telecommunication infrastructure, meet certain minimum health and safety requirement, operate within the frequency range which can be regulated by PTA and are not encrypt-able. These precautions have taken fresh impetus because of the possibility of these communication devices falling into wrong hands. The Hon'ble court was also provided with a copy of NOC (page 25) which is issued to an intending importer in respect of a Type Approved cellular phone which includes detail as to GSMA-TAC number, as well as, IMEIs.

6. Upshot of the above discussion is that it is obligatory for an intending importer to obtain a Type Approval and NOC from PTA in advance before importing terminal equipment/cellular phone into Pakistan to ensure that no unwarranted phones can be imported which may cause havoc to the regulators in order to have them tracked, as well as, enabling the regulators to take charge of encryptions techniques used within such devices. Instruments like "Black phones" are lethal stealth weapons, a nightmare for the regulators to track and encrypt. If they are allowed to be landed in the country, it would be very hard to identify, track, encrypt and control their users.

7. The learned counsel for the Petitioner raised question as to the implementation of the Type Approval Regulation, 2004 by the Federal Board of Revenue (i.e. Customs Authorities), which allegedly falls within the ambit of Pakistan Telecommunication Authority. The answer to this assertion could be found in the fact that FBR through Customs Authorities enforces a large number of laws at the borders. These even include intellectual property, wild life preservation, narcotics and antiquities laws because the

Customs Authorities are competent to enforce border measures through Section 16 of the Customs Act, 1969 which empowers them to prohibit or restrict the bringing into or taking out of Pakistan of any goods of specified description by air, sea or land. Accordingly, there is no cavil in the fact that the Customs authorities are fully empowered to restrict import of prohibited type of terminal equipment and cellular phones also. Further, as per the orders passed in the above referred Suo Moto case, the Apex Court passed orders for PTA to start process of type approval of phones and, per clause (vii) paragraph 1 of these orders, the Apex Court has instructed the Customs Authorities to restrict import of phones without IMEI. We therefore do not find any strength in this assertion of the learned counsel.

8. For the aforesaid reasons, the answer to the questions posed at the hearing of 27.01.2016 is in the affirmative, with the result that Type Approval must be obtained from PTA before any terminal equipment/cellular phone is imported into Pakistan.

9. For reasons mentioned in the foregoing paragraphs, we find no merit in the instant petition, which is hereby dismissed.

JUDGE

CHIEF JUSTICE