

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
M.A No.45 of 2012

DATE ORDER WITH SIGNATURES OF JUDGE(S)

- Hearing/Priority case
1. For hearing of CMA No.4196/2012
2. For hearing of Main case

30.09.2016

Ms. Zahrah Sahar Viyani, Advocate for the appellant
Mr. Kashif Hanif, Advocate for the respondent

The instant appeal stems from the decision passed by PEMRA on August 2, 2012 with regards airing of certain program-contents (by the appellant) in respect of which the later was initially warned on 28.4.2012. However, ignoring the warning as to unsuitability of the contents for the general public on account alleged “vulgarity”, “obscenity” and “indecentcy” of those contents, the appellant still aired those program-contents on 30th April, 2012.

Having aired those program-contents, complaints were received by PEMRA, which, as provided for by the PEMRA Ordinance and Rules, were forwarded to the Council of Complaints (“CoC”) established under Section 26 of the PEMRA Ordinance, where an opportunity of hearing was given to the representative of the appellant. The assertions of the representative of the appellant who appeared before CoC, as well as, those of the learned counsel appearing before this Court were synchronized to the extent that they contended that neither PEMRA Ordinance nor the regulations or codes define the words “vulgarity”, “obscenity” and “indecentcy” or set standard thereof, thus no judicial determination could be made by CoC as if the program-contents were vulgar, obscene or indecent, therefore the appellant is not to be held in violation of PEMRA laws, codes and rules.

In the hearing today also, the learned counsel vehemently asserted that in the absence of any judicial interpretation of these words, there were no grounds for PEMRA to pass an order and to hold that the subject contents contained vulgarity, obscenity and were indecent thus cognizable under Section 20(c) of the Ordinance or violative of Clause 1(b), 1(i) and 3 of the Code of Conduct of PEMRA Rules, and under Regulation 18(2) of the PEMRA TV Broadcast Regulations.

As to technicality, the counsel further contended that no comments have been filed by the respondent (PEMRA) in this appeal thus the application/appeal is premature for hearing. To me this assertion does not have any persuasive value, as in such type of appeal cases, the Appellant *ab initio* has to put forward its own *prima facie* case. Notwithstanding therewith, the matter is still at the stage of *Katcha Peshi*, thus such preliminary objections do not carry any weight.

To me, while the standard of mental acceptability (or rejection) of society's widespread views regarding obscenity, vulgarity and indecency change with the passage time, however laws always provide means to arrest such violations. Look at, for example Section 292 of the Penal Code where dissemination of obscene material is held a penal offence. Also of relevance is Section 2(b) of the Indecent Advertisements Prohibition Act, 1963 where the term 'indecent' is defined to include *whatsoever may amount to any incentive to sensuality and excitement of impure thoughts in the mind of an ordinary man of normal temperament, and has the tendency to deprave and corrupt those whose minds are open to such immoral influence, and which is deemed to be detrimental to public morals and calculated to produce pernicious effect, in depraving and debauching the minds of persons.* Section 6

of the said Act provides that if the person who contravened any the provisions of the said Act was a company, every person who at the time the offence was committed, was in charge of and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Above all the Constitution of Pakistan, 1973 even in its preamble and, as well as, under Article 19, while guarantees freedom of speech, legitimizes reasonable restrictions on such right by prescribing that the said freedom should not be volatitive of decency and morality.

As alleged in the instant appeal, to me probably judicial is not the best forum to give a stone-carved legal meaning to the above referred words, it is thus exactly why in such circumstances, laws provide for independent councils, whistle-blowers and public interest groups assimilating from a divergent spectrum of the society to deliberate on such matters. Incidentally (and rightly so) it is provided for in the PEMRA laws through the CoC which comprises members coming from various parts of the society to hear and decide the matter or complaints agitated before it, which includes complaints as to the moral suitability of the contents of the programs and the advertisements.

Other than the foregoing, neither the learned counsel nor the memo of appeal point out any question of law as to the inherent legal deficiency of the impugned decision, neither any hostility has been alleged against the appellant by CoC members.

At this juncture, I am not impressed that the appellant has any prima facie right on the strength of which it can seek stalling of the impugned PEMRA order to the extent of payment of fine, thus in the absolute sense of fairness and in the very interest of justice, I am of the view that if the fine imposed by PEMRA be

deposited with the Nazir of this Court and the Nazir to invest the same into a profit bearing scheme, no loss would be caused to the appellant till the matter is finally decided.

The appellant is thus ordered to deposit the fine imposed by PEMRA with the Nazir of this Court within seven days, and Nazir to file compliance report immediately thereafter.

Adjourned to 10th November, 2016.

JUDGE