

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
M.A No. 46 of 2015

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DATE                      ORDER WITH SIGNATURES OF JUDGE(S)  
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Hearing of priority case

1. For orders on office objection No.1
2. For hearing of CMA No.6794/2015
3. For hearing of CMA No.6796/2015
4. For hearing of Main Case

21.10.2016

Mr. Muhammad Ishaq Khan, Advocate for the applicant  
Mr. Kashif Hanif, Advocate for the respondent  
Mr. Muhammad Shoaib Mirza, Standing Counsel  
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The present appeal arises from the order passed by the respondent dated 07.09.2015 which is reproduced on Page-359.

The said order, in substance states as under:-

- i. M/s Faizan Production Pvt Ltd (Madni TV) is directed to clear all outstanding dues, immediately, without installment as there is no provision/policy of installment fee in PEMRA Rules and Regulation.
- ii. In case "Madni TV" failed to clear outstanding dues, the same may be recovered as arrears of land revenue under section 29-A of PEMRA Ordinance 2002 Amendment Act 2007.
- iii. By airing the channel illegally, Madni TV is clearly violating section 19(2) and section 31(1), therefore action may be taken against Madni TV in the light of Section 33(3) and Section 34-A of the PEMRA Ordinance 2002 as amended by the PEMRA Amendment Act 2007.

As it could be seen, in terms of paragraph-1, the applicant is directed to clear its outstanding dues immediately in lump sum. The learned counsel for the applicant by way of background of these accumulated dues states that the applicant was granted permission to broadcast its contents through up-linking vide a letter issued by the respondent on September 13, 2008 and Table-VIII of the schedule to the Pakistan Electronic Media Regulatory Authority (PEMRA) Rules, 2002 required that for such up-linking, the content provider channel would be charged at the rate of US Dollar 250 per day. Learned counsel for the applicant has attached

evidence that his client had regularly paid this fee on monthly basis for the period Sept-2008 upto Dec-2009, which remains undisputed.

Per counsel, the controversy commenced, in terms of the show cause notice dated 08.06.2010 issued by the respondent (reproduced on Page-197), when the applicant was informed that it was broadcasting its channel illegally, thus pursuant to Section 19(2) of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 applicant was called upon to immediately stop its operations. Against the said notice, the applicant filed a constitutional petition before this High Court, which is serialised as C.P. No. D-3010/2010, in which vide orders dated 5.11.2010, the applicant was allowed to resume its transmission in parity with an identical petition filed as C.P No.D-2534 of 2010. Provided however, the applicant makes payment of the requisite fees.

From the date of the above referred court order on 5.11.2010 upto 12.3.2015, when the instant petition was disposed of giving instructing PEMRA to issue a show cause notice to the applicant, and after giving the applicant an opportunity of hearing, pass appropriate orders under the applicable PEMRA Ordinance. Thus, per counsel, through the impugned notice dated 07.09.2015, PEMRA has asked the applicant to pay the above accumulated fee in respect of the uploading of the content for the period commencing from Dec-2009 upto Mar-2015, which are in the sum of US Dollar 81,250, which amount is undisputed, except that the applicant has already made a payment of Rs.1 Million in this regard to PEMRA, which is not denied.

With regards the said payment of US Dollar 81,250, it was conceded by the counsel for the applicant that the applicant had no hesitation in making the payment of the said amount which interest was already shown by the applicant in its letter dated

27.7.2015 (reproduced on Page-339), as required under Paragraph-1 and 2 of the impugned order provided however, applicant's fear is that having made the said payment, there is possibility that the respondent would immediately unplug its channel and its transmission will be stopped since the respondent in the impugned letter has also alleged that the applicant's channel is in violation of section 19(2) and 31(1). Giving back ground to this allegation, the learned counsel for the applicant submits that its permission for uplinking and its license in respect of satellite channel (both) have been denied since the applicant was not given the pre requisite security clearance on both the accounts. While the applicant challenged these actions in the above referred constitutional petition, the same was disposed of vide orders dated 12.3.2015 as detailed hereinabove.

In relation to that, it surfaced during the heated arguments that PEMRA as yet have not included religious content channels in its list of permissible contents (which inter alia include news, sports, entertainment and education etc.) notwithstanding that about 3 channels have been broadcasting religious contents. In connection with that, the learned counsel for the applicant drew court's attention to a letter reproduced between Page-355 & 357 of unknown date. Since text of the said letter is very vital in this context, I am taking the liberty of reproducing the same in verbatim hereunder:

Hon'ble Supreme Court of Pakistan while hearing the petition titled "Dr. Shahid Masood v/s. Federation of Pakistan and others C.P.No.46/2010" on 24th August, 2010 directed PEMRA that its law must be applied in letter and spirit. Accordingly, all the un-licenced/illegal channels regardless of their genre or content have to be off-aired. Likewise, actions have to be taken against all the illegal/defaulting cable operators and FM radio licenses. Copy of the Additional Attorney General's letter is enclosed.

2. PEMRA, in pursuance thereof, has directed all the cable TV operators to off-air all the un-registered / illegal channels being distributed in Pakistan. These un-registered channels also included some religious channels e.g. QTV, Peace and Madni etc., which were

not granted licenses by PEMRA due to lack of security clearance by the Ministry of Interior, which is however, mandatory under the law. Secondly, no specific policy on licensing of religious TV channels is formulated as yet. It is also relevant to mention that security agencies have also raised serious concern on licensing of religious channels as they viewed that it could ignite religious /sectarian disharmony.

3. PEMRA has submitted number of proposals to Ministry of Information and Broadcasting and have also been in close liaison with Ministry of Religious Affairs to sort out this impending issue. Lately, Ministry of Religious Affairs has forwarded some recommendations with regard to the licensing of religious channels to be made part of the Code of Conduct. Same has been done. (Copy annexed). The status of applications of religious channels pending with the Authority is as follows:

1). QTV (M/s. ARY Communication (Pvt.) Ltd. Karachi)

The channel is being up-linked from Dubai. Some of its program are also being up-linked from Pakistan illegally. M/s. ARY Communications (Pvt.) Limited had applied for license of QTV in September, 2006 by depositing Rs.3.0 Million plus Rs.200,000/- as requisite processing fee. But, PEMRA has been unable to issue license due to unavailability of the Govt. policy regarding religious channels.

2). Peace TV (M/s. Computers Products Corporation Pvt. Ltd, Karachi).

The channel is being uplinked from India and has applied through its local distributor based in Pakistan for landing rights permission on May 6, 2008 by depositing processing fee of Rs.20,000/-. The case has been referred to Ministry of Interior but no security clearance has received till date.

3). Madni TV (M/s. Faizan Productions Pvt. Ltd, Karachi)

Channel is being up-linked from Pakistan. The channel has applied for license by depositing requisite processing fee of Rs.200,000/- in July 2008 and its case has been referred to Ministry of Interior for security clearance which was regretted. (Copy enclosed). It was previously operating under temporary up-linking permission issued under NOC of Ministry of Information and Broadcasting.

An immediate kind intervention of the Hon'ble Prime Minister is requested for making a policy decision in this regard that whether these channels should be regularized other-wise.

As it could be seen, that more than 5 years ago, PEMRA sought policy nod from the government with regard religious channels, which seemingly is not done as yet. While the current state being that no policy with regards religious channels have been made, per applicant counsel one channel with name Q is being broadcasted as well as the applicant's channel is also still on. The learned counsel for PEMRA made a categorical statement in the court that both (and even any other) channels of religious

contents is being broadcasted in violation of the PEMRA laws since as yet there are no provision for airing or up-linking channels broadcasting religious contents. Per counsel, PEMRA is about to reach to a final conclusion with regards religious channels as to whether such channels be permitted or not under the PEMRA regulations. The above submissions as supported by the directions given by the Apex Court in the above referred case of *Dr. Shahid Masood vs. Federation of Pakistan* could be clearly understood to mean that in absence of government policy, any (and all) channels which are broadcasting religious contents (either by way of up-linking or satellite or else) are violative of the applicable PEMRA laws, meaning thereby where the applicant's contents are not permitted on its failure of obtaining security clearance, the contents of other channel (which may even have gotten a security clearance as alleged by the counsel for PEMRA – which however does not appear to be the case as per the above referred *Dr. Shahid Masood* case) are also in violation of applicable the PEMRA laws, thus these channels ought not to have been broadcasted as there is no possibility of allowing religious channels under the presently applicable PEMRA laws and regulations.

During the arguments it was thus observed that such ambiguity of policy while at one hand is fueling litigation, on the other hand is anti-competitive and monopolistic in nature portraying selected mindsets.

After detailed deliberations and with very valuable assistance provided by the counsel of both the sides, I make the following consent order:-

- i. That applicant will make payment of US Dollar 81,250 (Minus Rs.1 Million already paid by it) to the respondent, as demanded under Paragraph-1 of the impugned Notice within 30 days hereof;

- ii. Independent of the order passed in above paragraph (i), PEMRA to frame a conclusive policy within 90 days hereof with regards religious channels being or intended to be broadcasted (or re-broadcasted) and/or landed in Pakistan either through satellite, up-linking, DTH or by whatsoever means by wire or over the air (in un-encoded or encoded form) intended for reception by the public in any part of Pakistan, which policy should be made available to public at large, including the applicant;
- iii. Since the applicant's permission for up-linking, as well as, satellite (license) was rejected on the ground of its failure to have obtained the requisite security clearance, if the outcome of the policy framed as per paragraph (ii) above is that religious channels are permitted to be broadcasted (re-broadcasted) by any mode of communication as aforesaid, and as the only impairment for the grant of the requisite approval and license to the applicant was its failure to obtain security clearance, the applicant would be at liberty to take appropriate steps to remedy the situation, and thereafter if files a fresh application (or requests revival of the old application for satellite transmission), its past failure to obtain security clearance would not let any prejudice caused to it in considering its case afresh; and
- iv. To the contrary, if the policy is determined against broadcast (or re-broadcast) of religious channels on the ground of *inter alia* disharmony or feelings of enmity, hatred or ill-will between different religious beliefs which could disturb the public tranquility or result in promoting a political (or quasi-political) cause, or exciting disaffection under the guise of propagating or practicing a

religious belief; appropriate steps be taken across the board strictly in accordance with law for the enforcement of such policy.

The instant appeal is hereby disposed of in the above terms.

JUDGE