

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

C.P. No.D-62 & 63 of 2012

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.

Mr. Justice Adnan Iqbal Chaudhry.

C.P. No.D-62 of 2012

M/s. Gaaza Broadcast System Pvt. Ltd.....Petitioner

Versus

The Federation of Pakistan & others.....Respondents

C.P. No.D-63 of 2012

M/s. Indus Entertainment (Pvt) Ltd.....Petitioner

Versus

The Federation of Pakistan & others.....Respondents

Date of hearing 04.09.2018.

M/s. Arshad M. Tayebaly and Amel Khan Kasi, Advocates for the Petitioners.

Mr. Kashif Hanif, Advocate for the Respondent No. 2 to 5.

Mr. M. Zahid Khan, Assistant Attorney General.

Muhammad Ali Mazhar, J: These Constitution Petitions have been brought by the petitioners for entreating declaration that act of non-issuance of Satellite T.V Channel Licenses within the mandatory period of hundred days as stipulated under Section 22 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 is illegal, unconstitutional and without lawful authority. The petitioners have also implored for the writ of mandamus against the respondent No. 2 to 5 to issue Satellite T.V Channel License “G.KA Boom” to the petitioner in C.P. No.D-62 of 2012 and “Indus News” to the petitioner in C.P. No.D-63 of 2012.

2. The brief facts of the case are that the petitioners submitted applications under the provisions of Pakistan Electronic Media Regulatory Ordinance, 2002 to the respondent No.2 in 2004 for issuance of licenses but PEMRA failed to decide the applications within the period of hundred days as required under Section 22 of the PEMRA Ordinance 2002.

3. The learned counsel for the petitioners argued that applications were moved to the PEMRA in 2004. The petitioners also made fee/charges from time to time for temporary up linking of the channel. A group company (Indus TV Network Private Limited) was granted a non-exclusive license to establish a Satellite Television (International Scale) Channel "Indus Music" for a period of fifteen years vide License dated 25.03.2004. It was further contended that the petitioners have completed all formalities for the licenses and PEMRA received NOC/Security Clearance from Ministry of Interior, Govt. of Pakistan. The security clearance was accorded in response to respondent No.2's letter addressed to the Ministry of Interior. He further argued that PEMRA itself belatedly sent the request for security clearance in the month of May, 2010 whereas the applications were processed in 2004. Many reminders were sent with the request to grant the licenses but no action was taken. However on 24.05.2011, a letter was sent by PEMRA that they have stopped issuing additional Satellite TV channel licenses and decided to award further satellite TV channel licenses through open bidding so the petitioners may apply when the bidding is advertised in the newspapers. The petitioners in response emphasized that they had complied with all procedural formalities and paid significant amount. The petitioners also pointed out

that the new policy would not apply to the petitioners' case as they had applied and paid the process fee way back in 2004. Again vide letter dated 15.6.2011, PEMRA informed the petitioners that in pursuance of the decision taken in Authority's 65th meeting, they have stopped issuing further licenses. The learned counsel argued that the stance taken by the Authority in withholding the license of the petitioners is not only misconceived and illegal but clearly discriminatory. He specifically referred to Section 22 of the PEMRA Ordinance which provides that the authority shall take decision on the application for a license within one hundred days from the receipt of the application. The learned counsel referred to a case reported in **PLD 2011 S.C. 805** in which, the apex court held that as the application of the petitioners had not been rejected for a period of more than 100 days, petitioner had acquired a right that they should be dealt with in accordance with law as envisaged under Article 4 of the Constitution. In the above case PEMRA was directed to issue the license. It was further contended that the decision taken in Authority's 65th meeting cannot take retrospective effect. In any event, the license of the petitioner, was in fact approved by PEMRA in its 62nd meeting, however, no formal license was issued. The learned counsel also referred to Item No.5 of the Minutes of the 62nd Meeting, which shows that respondent No.2 indeed decided to issue Satellite TV licenses to eight companies, details of which are mentioned in Annexure B appended to the minutes of meeting. He further referred to Annexure "A" of the statement dated 08.05.2018 filed by the respondent No. 2 to 5 wherein a list of Satellite TV channels with their dates of award of license are mentioned. The learned counsel invited our attention at

Serial No.3 and 5 to demonstrate that two companies i.e. Media Roots (Pvt) Ltd. and Devine Intervention (Pvt) Ltd. have been awarded licenses on 12.06.2013 and 23.05.2013 respectively. The column of "Remarks", reflects above two licenses were issued after the alleged change of policy. It was further averred that in the similar circumstances, the respondent No.2 has issued STV license to GEO Super.

4. The learned counsel for the Respondent No. 2 to 4 argued that the petitions have been filed without board resolution. An alternate efficacious remedy has been provided under Section 30-A of the PEMRA Ordinance, 2002 by way of filing an appeal before the High Court if the petitioners are aggrieved from any decision of the Authority. The decision of Authority to grant all the satellite TV licenses through bidding was widely publicized in the media as well as uploaded on PEMRA website. The petitioners' alleged applications for grant of licenses were decided by virtue of the said Authority decision and in this regard the petitioners were again informed vide letter dated 18.05.2011 as well as the same was reiterated through letter dated 24.05.2011. He further argued that the petitioners' group is a defaulter of PEMRA. He admitted two licenses granted to "M/s Indus TV Network" & "Indus Music". He further argued that before receiving security clearance in the case of petitioners, PEMRA had already stopped issuance of new licenses and decided to grant all the licenses through bidding in accordance with Section 19 of the PEMRA Ordinance, 2002. Mere filing an application does not in any manner confer any vested right on the petitioner or any other person and it is for the respondent to satisfy itself regarding compliance with the relevant law, rules and regulations before issuance of

the licenses. He further argued that Section 22 of the PEMRA Ordinance 2002 is declaratory in nature and cannot be made basis for claiming any vested right.

5. Heard the arguments. The purpose of promulgation of Pakistan Electronic Media Regulatory Authority Ordinance, 2002 was to improve the standards of information, education and entertainment, enlarge the choice available to the people of Pakistan in the media for news, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest and to facilitate the devolution of responsibility and power to the grass-roots by improving the access of the people to mass media at the local and community level and ensure accountability, transparency and good governance by optimizing the free flow of information. Under Section 3 the Federal Government has established a public authority known as Pakistan Electronic Media Regulatory Authority for carrying out the purposes of this Ordinance. Under Section 4, the functions of the authority have been depicted to figure out and translate the responsibilities of Authority to regulate the establishment and operation of all broadcast and CTV stations in Pakistan for the purpose of international, national, provincial, district, local or special target audiences. Under Section 19 the Authority has exclusive right to issue licenses for the establishment and operation of all broadcast media and distribution services, provided that this exclusive right shall be used by the Authority in conformity with the principles of fairness and equally applied to all potential applicants for licenses whose eligibility shall be based on prescribed criteria notified in advance and this shall be

done through an open and transparent bidding process. Whereas under Section 22 a clear condition is provided that the authority shall take decision on the application for a license within one hundred days from the receipt of the application. For the ease of reference, Section 22 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 is reproduced as under:-

Section.22--Duration for consideration of the application for a license:

The authority shall take decision on the application for a license within one hundred days from the receipt of the application.

6. In exercise of powers conferred under sub-section (1) of Section 39 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002, the Pakistan Electronic Media Regulatory Authority with the approval of Federal Government framed the Pakistan Electronic Media Regulatory Authority (PEMRA) Rules, 2002. In Rule 11 the Authority was responsible to process each application as provided under Section 19 of the Ordinance and in sub-Rule 5 it is provided that the Authority shall take decision on the application for a license within one hundred days from receipt of the application. It is an admitted position that the applications were filed by the petitioners in 2004 but their applications were not decided within one hundred days. PEMRA 2002 Rules were repealed by PEMRA Rules 2009 but in Rule 19 also, it is provided that application shall be decided within hundred days subject to the clearance from Ministry of Interior and Frequency Allocation Board (FAB). The learned counsel for the PEMRA argued that this condition is directory and not mandatory for the reason that no penal consequences are provided under the law. In the case of **Independent Music Group SMC (Pvt.)**

Ltd vs. Federation of Pakistan (PLD 2011 S.C. 805),

the apex has held as under:-

6. After hearing both the sides and having gone through the contents of the judgment of the High Court, under challenge, we are of the opinion that the learned High Court, keeping in view the fact that the petitioners have already suffered for a period of about four years, instead of remanding the case, may have issued a writ in the nature of mandamus. Be that as it may, if it has not done so, the PEMRA is under obligation, both legally and morally, to issue licence to the petitioners because the reason which prevailed upon it for refusing to issue licence to the petitioners i.e. "security clearance", has not been accepted by the learned High Court, therefore, the petitioners who on the basis of their application waited for a period of more than 100 days, during which his application has not been rejected, has acquired a right that they should be dealt with in accordance with law as is envisaged under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. Any excuse now being made on behalf of the PEMRA is not acceptable for the reason that earlier when the rejection order was passed on 8th June, 2007, which has been reproduced hereinabove, no such demand was put forward calling upon the petitioners to fulfill the same or to remove the objection if any. If such practice is allowed to prevail then there would be no end to the litigation and if a request has been rejected/refused beyond the statutory period and the order is not sustained before the High Court then, with a view to deprive a person who is entitled to the licence and his application has been kept pending for four years, without being processed, there shall be no end to his matters and he is to enter into litigation time and again for the reasons which shall be put before him from time to time.

7. We have noted regretfully that the authorities, who are required to discharge their functions under statutory provisions, kept the matters lingering on without any legal or constitutional justification; as it happened in the instant case because it was for the PEMRA either to have rejected the application within 100 days under the law or it would have accepted the same; but now when the Court has intervened and passed the impugned order, no other excuse shall be acceptable for the purpose of causing delay in disposal of application of the petitioners.

Thus for the foregoing reasons, the petition is converted into appeal and allowed. The PEMRA is directed to issue immediately licence to the petitioners, in terms of their application, which they have submitted on 2-7-2007 and submit compliance report of this order to the Registrar of this Court within a period of three days, which shall be placed before us in Chambers for perusal. Parties are left to bear their own costs.

7. No doubt under the Ordinance 2002, no penal consequences are provided in case application is not decided by PEMRA within one hundred days but at the same time the purpose of this cutoff date and the excuses offered to give good reason for the delay necessitate some attentiveness and concentration to

thresh out the actual purpose of this deadline/cutoff date. The purpose of providing no penal consequences does not mean simpliciter to keep the application pending at the rest and leisure of the Authority beyond one hundred days but this is a serious business for which an onerous duty has been imposed on the authority under the law to discharge their responsibilities and duties in accordance with law and in fair and transparent manners. If the delay beyond one hundred days in deciding the application is taken for granted then the whole purpose and scheme of law which basically triggers and activates from an act of filing application to the Authority is frustrated. We do not ruminates it appropriate that since no consequences are provided, therefore, PEMRA may keep the application pending for an unlimited period of time. The establishment of any broadcast station of satellite T.V. is not a job of one day but sizable infrastructure and groundwork required to be put together with various other formalities to launch T.V. channel. It is not a basic theme and idea of law that applications should be filed and authority may delay the applications to respond for number of years. In fact in doing so the Authority is not discharging its functions in accordance with law and also frustrating and defacing the very purpose of fairness and transparency in their affairs. In the similar controversy, the apex court in the case of GEO Super (supra) observed that the petitioner waited for a period of more than 100 days, during which the application was rejected hence they acquired a right that they should be dealt with in accordance with law as envisaged under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. The apex court further held that any excuse now being made on behalf of PEMRA is not acceptable for the reason that earlier when the

rejection order was passed, no such demand was put forward calling upon the petitioners to fulfill the same or to remove the objection if any. If such practice is allowed to prevail then there would be no end to the litigation and if a request has been rejected/refused beyond the statutory period. The apex court further observed that authorities, who are required to discharge their functions under statutory provisions, kept the matters lingering on without any legal or constitutional justification; as it happened in the instant case because it was for the PEMRA either to have rejected the application within 100 days under the law or it would have accepted the same.

8. In the case in hand, the matter is not confined only to the grievances of the petitioners that their applications have not been decided within one hundred days but the matter has gone one step ahead. The minutes of 62nd meeting of Pakistan Electronic Media Regulatory Authority dated 25.05.2010 demonstrated that the meeting of the authority was convened on 12.05.2010. In Item No.5, the authority approved issuance of Satellite T.V. license to eight companies, the names of companies with Satellite T.V. Channels are mentioned in Annexure "B" appended to the minutes subject to completion of all legal requirements and subject to payment of Pakistan Electronic Media Regulatory Authority dues/license fee. In the Annexure "B" appended to the Minutes, at Sr. 7 the name of Indus Entertainment Pvt. Ltd. (petitioner in C.P. No.D-63 of 2012) is mentioned with proposed channel "**Indus News**" whereas at Sr. No. 8 the name of M/s. Gaaza Broadcast System Pvt. Ltd. (petitioner in C.P. No.D-62 of 2012) is mentioned with proposed channel "**G.**". The learned counsel for the respondent No.2 to 5 though not denied the minutes of meeting with Annexure

“B” but he argued that due to delay in the security clearance, licenses could not be issued to the petitioners. Here we would like to observe that in the security clearance the petitioners have no role to play as this is purely internal matter of the PEMRA to send credential and antecedents of the applicant to the concerned Agency or Agencies for Security Clearance and keep the follow up for an early response and report.

9. The learned counsel for the respondent No.2 has also filed a statement on 25.04.2018 and placed certain documents on record. Annexure A/1 is letter dated 02.12.2010 issued by Section Officer, Ministry of Interior with the subject **“security vetting; M/s. Gaaza Broadcast System Pvt. Ltd”**, the Section Officer has given a reference of PEMRA letter dated 11.05.2010 and communicated to the PEMRA that Ministry of Interior has no objection to the subject proposal from security point of view. Despite approval of the Authority for the grant of license to the petitioners in their 62nd meeting of the Authority convened on 13.05.2010, the licenses were not issued to the petitioners and petitioners from time to time sent reminders to PEMRA. However, on 24.05.2011, the PEMRA communicated both the petitioners through separate letters of the same date that Authority has stopped issuance of any more Satellite T.V. Channel license and decided that the award of further Satellite T.V. Channel license will be made through open bidding and both the petitioners were advised to apply as and when same is advertised in the newspapers. The petitioners in same letters were also requested to clear their outstanding dues on account of up-linking fee. The record reflects that on 25.04.2018 petitioners’ counsel made a request to the learned Division Bench of this

court that the respondents may be directed to submit details relating to issuance of similar license to other channels during the relevant period. In compliance of the order, learned counsel for the respondent No.2 submitted the details of licenses granted to the other T.V. channels pursuant to the decision taken in the 62nd meeting, whereby, the Authority decided to issue Satellite T.V. license to 8 companies mentioned in Annexure "B". In the statement the names of said 8 companies have been reproduced as under:-

S #	Name of Companies	Channel category	Name of Channel	Date of application	Date of security clearance from Mol	Date of award of license	Remarks
i	M/s Dhoom Television Network (Pvt.) Limited	News & Current Affairs	Dhoom Tv	06.08.2008	30.06.2007	20.09.2010	Converted from LRP to Satellite TV License
ii	M/s. Dolphin Media (Pvt.) Limited	Regional Language	Sindh TV	20.08.2008	--	17.09.2010	Converted from LRP to Satellite TV License
iii	M/s Media Roots (Pvt.) Limited	Entertainment	Pak Plus	26.01.2009	14.11.2009	12.06.2013	The Authority in its 62 nd meeting held on 13.05.10, was initially approved the grant of STV license subject to the completion of illegal requirement. The company was granted STV license in 2013 in pursuance to the decision of the Authority in its 81 st Meeting held on 15.02.2013 since it was earlier approved by the Authority in its 62 nd meeting.
iv	M/s. Pamir Media (Pvt.) Limited	Regional Language	Wat-an News	--	--	--	There is no any satellite TV license issued to company.
v.	M/s. Divine Intervention (Pvt.) Limited	News & Current Affairs	Mashriq	02.07.2009	15.03.2010	23.05.2013	The Authority in its 62 nd meeting held on 13.05.2010, was initially approved the grant of STV license subject to the completion of illegal requirement. The Authority in its 82 nd Meeting held on 14.03.13 approved the award of satellite TV license subsequent to

							the completion of all legal & codal formalities since it was earlier approved by the Authority in its 62 nd meeting
vi	M/s APNA TV Channel (Pvt.) Limited	Entertainment/ Food	Tarka	06.08.2008	30.06.2007	06.10.2010	The company was already operating three (3) STV licenses
vii	M/s Indus Entertainment (Pvt.) Limited	News & Current Affairs	Indus News	--	--	--	There is no any satellite TV license issued to company
viii	M/s Gaaza Broadcast System (Pvt.) Limited	Entertainment/ Music	Channel G	--	--	--	There is no any satellite TV license issued to company

10. It appears from the aforesaid table reproduced from the statement filed by the learned counsel for the respondent No.2 that the company mentioned at Sr. No.1 was awarded license on 20.09.2010 which was converted from LRB to STV license. While company at Sr. No.2 was granted license on 17.09.2010 and it was also converted from LRP to STV license. Whereas, company mentioned at Sr. No. 3 was granted license on 12.06.2013 which was also approved in the 62nd meeting, whereas the license of company mentioned at Sr. No.4 was also approved on 13.05.2010 in 62nd meeting. The company mentioned at Sr. No.6 was also granted license on 06.10.2010 but at Sr. No.7 & 8 the names of petitioners are mentioned and in the remarks, PEMRA mentioned that there is no Satellite T.V. license issued to the company. This statement filed by the learned counsel for the respondent No.2 obviously depicts that except the petitioners, other companies mentioned in Annexure "B" of the minutes were granted license pursuant to the decision taken by the Authority in its 62nd meeting held on 13.05.2010. In the letter dated 24.05.2011, PEMRA informed the petitioners that they have stopped the issuance of any more Satellite T.V. license and decided to award of further/future Satellite T.V. licenses

through open bidding but the statement filed by the learned counsel for the respondent No.2 shows that even after this letter the Media Roots Pvt. Ltd. and Devine Intervention Pvt. Ltd. mentioned in the statement at Sr. No.3 & 4 were granted license pursuant to the decision taken in the 62nd meeting held on 13.05.2010. No justification has been shown by the respondents that on the one hand they communicated to the petitioners in 2011 that no further licenses shall be issued without bidding process but in 2013 they granted licenses to other companies which were placed in the similar and identical situation of the petitioners. No rationale was placed to defend this discriminatory treatment with the petitioners particularly in the circumstances when the petitioners' names were also mentioned in the same Annexure "B" and their licenses were also approved by the Authority in the same meeting but without any justification, it remained pending for an unlimited period of time.

11. The learned counsel for the respondent No.2 also placed on record a copy of PEMRA (Eligibility Criteria and Bidding Procedure For Satellite T.V. Licensing) Regulations, 2014 notified in exercise of powers conferred under Section 4, 18 and 19 of Pakistan Electronic Media Regulatory Authority Ordinance 2002 read with Pakistan Electronic Media Regulatory Authority Rules, 2009. These Regulations were framed in 2014 despite that the learned counsel for the PEMRA argued that in view of the Regulations framed in 2014, the licenses will be granted through bidding process whereas the applications for licenses were filed in 2004. This bidding process was otherwise provided much earlier under Section 19 of Ordinance, 2002 regardless of that PEMRA was granting

licenses and have granted numerous licenses on the basis of approval given by the Authority in its meeting and this was also done with the applications of eight companies mentioned in Annexure "B" of the minutes of 62nd meeting held in 2010 including the applications of petitioners. Now at this belated stage when pursuant to the same meeting others were granted license, the petitioners cannot be victimized of such discriminatory treatment of the PEMRA.

12. So far as the plea that the petitioners are defaulters and failed to pay up-linking charges, this cannot be made a ground or justification for delaying or rejecting the applications and if such ground had so serious ramifications on the eligibility criteria then there should be no occasion to approve the grant of licenses by PEMRA to the petitioners in 62nd meeting. What's more, if the petitioners are defaulters, the PEMRA is not helpless but it has ample powers and authority to recover their legitimate dues. So far as the security clearance is concerned, it is evident from the letter dated 02.12.2010 that the Ministry of Interior had given their no objection from security point of view to M/s. Gaaza Broadcast System Pvt. Ltd. so this was also no reason to believe that on account of some delay in security clearance which was otherwise accorded in 2010 when even no Regulations for bidding process were in field. So in our view, there is no astute or reasonable excuse to deprive the petitioners from the award of licenses approved by the authority in 62nd meeting. On the contrary, PEMRA ought to ensure accountability, transparency and good governance in their affairs.

13. Consistent with Article 25 of the Constitution, Equal treatment means equal treatment in the midst of persons

who are evenly positioned or fit to the same class of people. Perception and onset of equality is negation of arbitrariness. Every power has its extent and legal limits. Exercise of such power should be based on evenhandedness and level-headedness. Persons in similar circumstances should have similar treatment unless segregation is based on rational cataloguing which should not be whimsical. Comprehensible differentia distinguishes persons or things that are grouped together from those who have been left out, so this ought to be judicious linkage to the purpose desired to be achieved by such classification. The concepts equal before law and equal protection before law appear to be synonyms terms, one discourages and negates all special privileges to any citizen or class and subject them of ordinary law of land, whereas the other declares that all citizens must have equal protection have placed in the same circumstances and situation. Every statutory body or public functionary is supposed to function in good faith, honestly and within precincts of their powers so that person concerned should be treated in accordance with law as guaranteed by Article 4 of the Constitution.

14. As a result of above discussion, these petitions are disposed of with the directions that pursuant to the decision taken in the 62nd meeting, the Pakistan Electronic Media Regulatory Authority shall issue licenses to the petitioners within one month for the Satellite TV Channels applied for on the payment of applicable license fee.

Karachi:-
Dated.12.2.2019

Judge

Judge