

IN THE HIGH COURT OF SINDH AT KARACHI
M.A. No. 32 of 2020

Appellant : M/s. ARY Communication Pvt Ltd,
through M/s. Abid S. Zuberi, and Ayan Mutafa
Memon, advocates for appellant alongwith Ms.
Shahreen Chughtai, advocate.

Respondent No.1 : The Federation of Pakistan

Respondent No.2 : Pakistan Electronic Media Regulatory
Authority, through Mr. Kashif Hanif, advocate.

Date of hearing : 15th September 2020.

Date of order : 15th September 2020.

JUDGEMENT

SALAHUDDIN PANHWAR,J:- Through instant appeal appellant has challenged order dated 10.09.2020 in reference No. 13(84)/OPS/019/237 passed by respondent No.2, whereby the respondent No.2 prohibited the broadcasting and rebroadcasting of the drama serial “JALAN” on ARY Digital under Section 27 of the PEMRA Ordinance 2002.

2. Relevant facts of the case are that appellant is a company which is engaged in the business of broadcasting various T.V channels including ARY Digital, ARY Zindagi, HBO, Nickelodeon and the Musik; that the respondent No.2, is an Authority regulating the broadcasting media of Pakistan vide its letter dated 17.06.2020 sought comments along with script of drama serial “JALAN” for review of Authority immediately but not later than 23.06.2020, as it is observed by the Authority that the promos/teaser of the drama allegedly containing controversial theme. The appellant responded the said letter through its reply dated 22.06.2020, wherein the appellant questioned the powers of the respondent No.2, for submission of script or contents of the drama from the appellant, without any complaint filed/lodged before the concerned Council of Complaints of the respondent No.2. However, the appellant assured the respondent No.2 that they have in-house Monitoring Committee and they would ensure that no violation of cultural and ethical is happened during transmission of the said Drama and the appellant also

assured the respondent No.2 that they will arrange the script of the Drama; that due to COVID-19, the appellant limited their operations and therefore, the appellant sought time from the respondent No.2 and further requested the Authority not to review the contents of the Drama merely on the basis of promos and some episodes on aired till date. However, the respondent No.2 issued letter dated 29.07.2020, warned the appellant from on airing objectionable contents in said Drama and directed the appellant to review its contents through their In-House Monitoring Committee and edit it by giving due consideration to the apprehensions of the viewers; that after such warning the appellant ensured that all the contents of the said Drama are upto the standards and policies as established by the appellant management; that again the respondent No.2 vide letter dated 27.08.2020 directed the appellant to amend the script of the further episodes of the Drama immediately before its broadcasting; that the appellant submitted reply dated 08.09.2020 in response to the letters dated 29th July and 27th August of 2020 issued by respondent No.2, whereby the appellant clarified their position and informed the respondent No.2 that they have reviewed and edited the contents of the upcoming episodes of the said Drama in accordance with PEMRA laws. The respondent No.2 issued press release dated 10.09.2020 to the utmost surprise of the appellant, whereby it was asserted that broadcasting of the Drama serial "JALAN" has been prohibited. On 11.09.2020 the impugned order dated 10.09.2020 was communicated to the appellant, whereby the appellant was prohibited from telecasting and rebroadcasting the said Drama under section 27(a) of PEMRA Ordinance 2002 as amended by PEMRA (Amendment) Act 2007. The appellant addressed a letter dated 11.09.2020 to the respondent No.2, wherein it was submitted that the said impugned order was passed without hearing the appellant and no fair opportunity of hearing was provided to the appellant and thus the action taken by the respondent No.2 was in violation of the fundamental rights of the appellant as guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. Hence, this M.A is filed by the appellant.

3. At the outset, learned counsel for the appellant, inter alia, contended that impugned order is not reflecting any content of in question drama serial "JALAN"; appellant has been deprived from the right of hearing; respondent

without any justification on a complaint made by some individuals passed such harsh order, whereas mechanism is provided under Section 26 of PEMRA Ordinance 2002. He has relied upon decisions reported as 1998 SCMR 1863, 2005 SCMR 678, PLD 1965 Supreme Court 90, 2001 SCMR 934, PLD 2004 Supreme Court 413, 2019 YLR 1737, 2015 SCMR 630 PLD 1991 Supreme Court 14, PLD 1990 Supreme Court 1092, 1997 SCMR 1804, PLD 2019 Supreme Court 189, 1993 SCMR 1533, 2019 PTD 1922, PLD 1997 Karachi 41 and 1997 SCMR 1804.

4. In contra, learned counsel for the respondent No.2 voluntarily appeared waived notice filed certain documents with statement and argued while referring certain complaints with the plea that contents of such serial are against morality and will seriously affect upon the new generation of society that will seriously affect upon values of our society. He has relied upon unreported judgment passed by learned Islamabad High Court in FAO No. 15 of 2020 [M/s. Labbaik (Pvt) Ltd vs. Pakistan Electronic Media Regulatory Authority through its Chairman.

5. Heard learned counsel for the respective parties and perused the record.

6. It would be conducive to refer impugned order dated September 10, 2020 passed by Pakistan Electronic Media Regulatory Authority Islamabad, which is that:

“Chief Executive Officer
M/s ARY Communications (Pvt) Ltd./**ARY Digital**
6th Floor, Madina City Mall, Abdullah Haroon Road, Saddar,
Karachi.

Subject: PROHIBITION ORDER ON BROADCAST/ REBROADCAST OF DRAMA SERIAL “JALAN”

Reference; this office letter No. 13(84)/OPS/019/ 2227 dated June 17 2020, letter No. 13(84)/OPS/2016/2294 dated July 29, 2020 and letter No. 13(84)/OPS/019/2352 dated August 27, 2020 regarding content of Drama Serial “Jalan”.

2. Whereas, M/s. ARY Communications (Pvt) Ltd. (**ARY Digital**) was warned to review and edit/ amend script of subject drama serial as per moral, religious and cultural values of Pakistani society and the complaints lodged by public. The channel management was also directed to refrain from airing such controversial topics and strengthen their editorial board for conceptualizing content keeping in view public feedback, PEMRA laws and customs of Pakistani society.

3. Whereas, M/s. ARY Communications (Pvt) Ltd. (**ARY Digital**) continued airing (controversial content compromising sanctity of relationship in its episodes aired on September 2, 2020 and September 9, 2020. The content aired is against the established social, cultural, and religious values. It seems that the licensee is intentionally ignoring the concerns shared by the Authority as well as the viewers. Ideally, the channel management and its editorial board should have accounted for the sensitivities hibernated within a particular topic as well as negative connotations associated with it so that public sentiments are not hurt by any plot, dialogue or scene.

4. Whereas, public at large has criticized the topic and script of the subject drama serial and PEMRA being a regulator has always encouraged its licensees to protect/promote social, cultural and religious values of the country and telecast such content which public intends to watch rather imposing any specific content with a purpose to distract minds, distorting social fabric and being against the commonly accepted standards of decency.

5. Whereas, M/s ARY Communication (Pvt.) (**ARY Digital**) has not only been failed to comply with the directives issued vis-a-viz reviewing script of the Drama Serial "Jalan" nor any satisfactory justification has yet been received from the licensee. **Therefore, the Authority by invoking Section 27 (a) of PEMRA Ordinance 2002 as amended by PEMRA (Amendment) Act 2007, hereby prohibits broadcast and rebroadcast of the drama serial "Jalan" on ARY Digital, immediately.** In case, M/s. ARY Communications (Pvt) Ltd. (**ARY Digital**) fails to comply with the aforementioned directives, the Authority shall take action under Section 29 and 30 of the PEMRA Ordinance which may result in imposition of fine and suspension/revocation of licence.

6. This issues with the approval of the Authority."

7. I have meticulously examined the contentions of learned counsel for the respective parties and judgment (supra).

8. It needs be added that *Authority*, if vested with certain discretionary powers, by the law *itself*, shall always be competent to pass an order but such right must never *prejudice* the guarantee, provided by Article 10-A of the Constitution i.e *fair trial* rather shall always keep the authority bound to act fairly, evenly and justly. Reference is made to known case of Corruption

to Hajj Arrangements in 2010 (PLD 2011 SC 963) wherein it is observed as:-

38. The discretionary powers vesting in an authority are to be exercised judiciously and in reasonable manner. In the case of Tariq Aziz-ud-Din: in re(2010 SCMR 1301), it has been held that the authorities cannot be allowed to exercise discretion at their whims, sweet will or in an arbitrary manner rather they are bound to act fairly, evenly and justly. Reference may also be made to the case of Abid Hussain v. PLAC (2005 PLC (SC) 117), Abu Bakar Siddique v. Collector of Customs (2006 SMR 705), Walayat Ali v. PIAC (1995 SCMR 650). It is an unwritten rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. (Smt. Shlini Soni v. Union of India (1980) 4 SCC 544).

I would further add that *fairness* shall always include '**due process**' which not only requires the authority to act *fairly* but to put the person (likely to be affected) on a complete notice of charge / proceeding against him. Reference is made to case of Ishtiaq Ahmed v. Hon'ble Competent Authority (2016 SCMR 943) wherein the term *due process* stood defined as:

4. The right of due process is not new to our jurisprudence and finds expression in the provisions of Article 4 of the Constitution. This right has been interpreted by this Court in several pronouncements. The case of New Jubilee Insurance Company v. National Bank of Pakistan (PLD 1999 SC 1126) summarizes the features of that right very aptly. It is held that the right of due process requires that a person shall have ***notice of proceedings*** which affect his rights; such person must be given a reasonable opportunity to defend himself; the adjudicatory tribunal or forum must be so constituted as to convey a reasonable assurance of its impartiality and that such tribunal or forum must possess competent jurisdiction.

I would take no exception to the fact that any violation of terms of *license* or PEMRA law (s) would give right to Authority to take cognizance of the matter but *balance*, demanded within spirit of Article 10-A of Constitution, shall put the Authority to give a notice of allegation / charge which the Authority, in its opinion, finds to have happened. Thus, *legally* the Authority

was /is always required to explain the '**contents**', which it (Authority) finds to be against *Social, Cultural* and *religious values* if the '**contents**'. In absence thereof an action, which is likely to operate as *penal*, is not advisable. I, however, would not prejudice the right of the Authority for an *immediate* action when the **contents** of on-aired programme is, *prima facie*, against established **norms** , as has been insisted by honourable Apex Court in para-ix of parameters, detailed in the *Suo Motu Case No.28 of 2018: In the matter of* (2019 PLD SC-1), as:-

"If any licensee is found to have violated or failed to observe the Code of Conduct in its true letter and spirit, particularly Clause 4 of thereof, and / or Articles 4, 10A and 204 of Constitution, strict and immediate action should be taken against such licensee in accordance with Section 33 of the Ordinance. The Supreme Court or any High Court retains the power to take cognizance of the matter and shall exercise its powers under Article 204 *ibid* where such Court is of the opinion that it is appropriate in the facts and circumstances of the case for it to do so; and

however, where the authority *itself* issues a *show cause notice* before taking any action it would always mean that status of such **contents of on-aired** programme is to be determined as against the **established norms** or **otherwise?**.

Having said so, now it is the time to refer relevant paragraphs No.17, 18 and 19 of above judgment which reads as:-

17. Section 20(b) of the P.E.M.R.A. Ordinance provides that a person who is issued a licence under the said Ordinance shall ensure the preservation of national, cultural, social, and religious values and the principles of public policy as enshrined in the Constitution of the Islamic Republic of Pakistan. Section 20(c) requires a person who is issued a licence under the said Ordinance to ensure *inter alia* that all programmes and advertisements do not contain vulgarity or other material offensive to commonly accepted standards of decency. Furthermore, clause 3(a) of the Code of Conduct provides that the licensee shall ensure that no content is aired which is *inter alia* against Islamic values whereas clause 3(e) provides that no content should be aired which *inter alia* contains anything indecent.

18. Section 27 of the P.E.M.R.A. Ordinance provides that P.E.M.R.A. shall, by an order in writing, giving reasons therefor, prohibit any broadcast media or distribution service operator from broadcasting or rebroadcasting or distributing any programme or advertisement if it is of the opinion that such particular programme or advertisement is *inter alia*

obscene or vulgar or is offensive to the commonly accepted standards of decency.

19. Having gone through the transcript of the objectionable material aired by M/s Labbaik on 04.11.2019, I am of the view that the same certainly does not preserve national, cultural, social, and religious values, and is offensive to commonly accepted standards of decency. Moreover, **the said content is also indecent and against Islamic values.** I do not find any substance in the position taken on behalf of the appellants that the content for which the prohibition was imposed on the appellants was aired to create social awareness. The appellant/Waqar Zaka is not shown to have condemned alcohol consumption or drug abuse in any manner but on the contrary, prodded the female participant to speak further about alcohol consumption. No religious condemnation, drawbacks or adverse effects of alcohol consumption were discussed.”

8. Perusal of impugned order reflects that contents, resulted into proceedings, are not shown/explained though the *show cause notice* was issued hence a *reasonable* reply without knowing the objectionable ‘**contents**’ can’t be hoped. It is settled principle of law that while passing restriction on press or media authorities shall not act arbitrarily and reasons shall be assigned by the relevant authorities with regard to such ban (decision) which, I would again insist, can’t sustain if the charge (**contents**) are not explained to the *addressee*. Here in this case impugned order is not showing any content which the *addressee* may explain that same, per him, were not against the moral and social values or injunction of Islam. Accordingly impugned order is set aside, case is remanded to the PEMRA with direction that they shall hear the parties and decide the fate with complete term of adjudication, which includes *explaining* specific contents which are prohibited or to be falling within prohibited category, per the authority. This exercise shall be completed within ten days. These are the detailed reasons of above referred order.

J U D G E