

IN THE HIGH COURT OF SINDH, AT KARACHI

Present

Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J

C. P. No. D-7142 of 2021

Fresh Case

1. For orders as to the maintainability of the petition
(statement filed)

18.1.2022

Mr. Muhammad Aqil, Advocate for petitioner.

ORDER

AHMED ALI M. SHAIKH, CJ.- Cable Operators Association of Pakistan (the “COA”), registered under the Societies Registration Act, 1860, providing broadcast services to license TV channels, has invoked the Constitution Jurisdiction of this Court seeking following relief:-

“a. To declare that the Respondents to impose ban upon the cable operators to telecast/broadcast on Satellite channels containing international content and permit the international channels Netflix, Amazon, Youtube and International DTH on internet only depriving the Petitioners is illegal, Malafide, Arbitrary, unlawful, unconstitutional, void, abinitio, completely without Jurisdiction and of no Legal Effect.

b. Directing the Respondents to ensure that the telecast/broadcast on satellite channel containing International content by the cable operators i.e. Netflix, Amazon, Youtube and International DTH parallel to internet.

c. Grant injunction restraining the Respondents their agents, sub-ordinates, servants, employees, attorney(s) or any other person(s) on their behalf from broadcasting/telecasting international channels Netflix, Amazon, YouTube and International DTH on internet and/or Petitioners Association may be allowed to run their cable services on satellite channel containing international content like previous parallel with internet pending disposal of this Petition.

d. Grant any other better relief which this Honourable Court deems fit may be granted.

e. Grant cost of the Proceedings.”

2. Facts as pleaded in the memo of Petition are that in 2000 the Respondents had issued licenses to the cable operators, including the Petitioner, to run and manage their cable services on Satellite channels containing international contents and presently 132 licenses TV Channels have been functioning. It is averred that in October, 2018, the Respondents imposed ban on cable operators to broadcast/

telecast on Satellite Channel international content but permitted the same on internet due to which clients of cable operators shifted to internet i.e. Netflix, Amazon, Youtube and International DTH causing financial losses to the petitioner. The Petitioner approached the Respondents Pakistan Telecommunication Authority (PTA) and Pakistan Electronic Media Regulatory Authority (PEMRA) and also requested in writing via letters dated 07.2.2020, 15.7.2021 and 25.11.2021 to allow the cable operators to run their cable services on Satellite Channel containing international content i.e. Netflix, Amazon, Youtube and International DTH but they failed to reply the same. Hence, having no alternate, adequate and efficacious remedy the Petitioner filed the present Petition.

3. Learned counsel for the Petitioner submits that the Petitioner under a valid license was running its cable service on Satellite Channel containing international contents. However, in October, 2018, the Respondents imposed ban only on the cable operators to broadcast/telecast on Satellite Channel containing international content, which is illegal, malafide, arbitrary and liable to be reviewed/reversed. He submitted that if running Satellite Channel containing international content on cable is illegal then same ban should also be imposed on internet and due to such arbitrary and unconstitutional action on the part of the Respondents, clients of the cable operators are shifting to internet, causing financial loss to them.

4. We have heard the learned counsel for the Petitioner and perused the material available on record, including the statement dated 12.1.2022, under the cover which Petitioner has annexed photocopies of reply of PEMRA dated 09.12.2021 and letter/notice dated 31.10.2018. The reply dated 09.12.2021 furnished by the PEMRA in response to petitioner's letter dated 25.11.2021 is reproduced hereunder:-

“Your request has been evaluated at appropriate level and the same is regretted on grounds that Netflix, Amazon, Youtube etc does not fall under purview of PEMRA. However, the Authority in the recent past had initiated consultation with all stakeholders for regulating such services, which is yet to be finalized. Additionally, it is reminded that under existing licensing regimethe content having copy rights can only be aired on in-house CD channels, which is not possible in this case.

2. With regard to international DTH it is informed that the same is illegal and strictly prohibited to be used within Pakistan. Pertinently, PEMRA has conducted bidding for award of three (3) DTH licenses and it is expected that the operators of the same will be started soon.

3. On the contrary, it is also highlighted that PEMRA has taken rigorous efforts to ensure availability of foreign channels and the Authority has recently relaxed the terms & conditions for issuance of Landing rights permission (LRP) for foreign satellite TV channels. Subsequently as many

as forty two (42) LRP permissions have been issued to various foreign channels for operation with the country and many other are in pipeline.

4. Foregoing in view, you are required to continue adherence with the PEMRA laws even support the licensed content i.e. indigenous STV channels & foreign LRP permission holders, please.”

5. Per learned counsel though the Petitioner approached the Respondents through letters and reminders no orders/directions were issued, therefore, having no alternate remedy Petitioner has approached this Court under Article 199 of the Constitution. It seems that during pendency of the Petition, the Respondents have considered and regretted the request of the Petitioner and in the circumstances, instant petition has become infructuous as the Petitioner, if aggrieved by the said directions/letter dated 09.12.2021, copy annexed with aforesaid statement filed by the learned counsel, it can avail the remedy provided under the law, if so advised. Petition alongwith pending misc. applications stands dismissed.

Chief Justice

Judge