

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

M. A. No.05 of 2021

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Date                      Order with signature(s) of Judge(s)  
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1. For orders on CMA No.505/2021 (Exemption)
  2. For hearing of CMA No.506/2021
  3. For hearing of main case
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**14.04.2021**

Mr. Muhammad Vawda, advocate for appellant  
Mr. Furkan Ali, advocate for respondent (PEMRA)  
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Reply to appeal has been filed on behalf of the respondent, copy has been supplied earlier to the learned counsel for the appellant, who is ready to proceed.

Although there is some history so far as the complaints are concerned, as some litigation started between the appellant and Labbaik (Pvt.) Limited (BOL), however, after passage of time, another complaint was filed but this time against the appellant by one Umair Yasir, who claimed to be an employee of 'Bol News'. The complaint was lodged before Pakistan Electronic Media Regulatory Authority (PEMRA), Islamabad. It was initially marked to the Council of Complaints, Khyber Pakhtunkhwa (KPK), however, it is claimed by the appellant that since their head office is situated at Karachi and as earlier complaint was also decided by Council of Complaints, Sindh, and since complainant also hails from Karachi, therefore, an application was moved that this may also be referred, transferred or marked to Council of Complaints, Karachi (Sindh). An application routed by it in this regard, to appraise Council of Complaints, KPK.

Council of Complaints, KPK in its 80<sup>th</sup> meeting held on 01.12.2020, took up the subject issue on their own and on account of deliberation, declined the request of appellant/Samaa TV for referring the "complaint" to Council of Complaints, Sindh, or for referring it to PEMRA. Followed by this decision, is a decision taken by PEMRA, Islamabad on 30.12.2020, whereby the competent

authority was pleased to refer the subject complaint to Council of Complaints, Karachi (Sindh) for its redressal and appropriate recommendations for PEMRA authority. This decision was later claimed to have been withdrawn by virtue of impugned order. The reasons provided by the learned counsel for the respondent/PEMRA were that they were not aware of the decision taken by Council of Complaints, KPK of their earlier decline referred above, and, hence, they withdrew their own order for its transfer to Council of Complaints, Karachi (Sindh). Thus, in the light of the earlier cognizance taken by Council of Complaints, KPK, the decision of referring the matter to Council of Complaints, Karachi (Sindh) was withdrawn and impugned in this appeal.

In my humble view, once a decision was taken for the withdrawal of the complaint and to refer it to Council of Complaints, Karachi (Sindh) there should be some logical reasons for not referring it to the Council of Complaints, Karachi (Sindh). Logic and reason existed when it was withdrawn from Council of Complaints, KPK to Council of Complaints, Sindh. It was exclusive prerogative of PEMRA and not Council of Complaints, KPK. In fact it raises the eyebrows of litigant when Council of Complaints, KPK in their 80<sup>th</sup> meeting held on 01.12.2020 took the cognizance and declined the request of the appellant for referring the matter even to PEMRA who holds authority in this regard. If at all, a decision in this regard is likely to be taken and as taken on 30.12.2020, it was PEMRA and not Council of Complaints, KPK. Surprisingly, PEMRA did not take the cognizance of a decision taken by Council of Complaints, KPK in its 80<sup>th</sup> meeting by deciding the transfer application on their own, which amounts to stepping over the jurisdiction of PEMRA. By remaining indolent, PEMRA in fact surrendered to a decision of Council of Complaints, KPK, which was the domain and jurisdiction of PEMRA. Hence, the appellant, in view of the above facts and circumstances, has lost the faith and trust as, per learned counsel, Council of Complaints, KPK seem to be interested in the proceedings.

After hearing the learned counsel at length and in view of the facts, I am of the view that this decision of marking the complaint ought to have been taken by PEMRA, on the transfer application of appellant which they did and for misconceived reason surrendered to a dictating decision of Council of Complaints, KPK.

This matter is therefore being referred back to PEMRA for a decision on the application of the appellant afresh for referring the complaint to a Council other than Councils KPK and Sindh. The PEMRA, however, may decide amongst the available Councils, such as Islamabad, Punjab or Balochistan or any forum available under the law, if any recommendation or opinion is inevitable. Impugned decision thus is set aside.

The appeal is disposed of in the above terms along with pending applications.

J U D G E