

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

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

**C.P. Nos. D-2518 of 2016, D-2064 and 7798
of 2017, and D-3499, 3500 and 3783 of 2018**

Petitioner : Jaag Broadcasting (Private) Limited, through Muhammad Vawda, Advocate.

Respondent No.1 : Pakistan Electronic Media Regulatory Authority (PEMRA) through Kashif Hanif and Sarmad Ali, Advocates.

Respondent No.2 : Secretary, Council of Complaints, Sindh, through Khaleeq Ahmed, DAG.

Date of hearing : 16.01.2023.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner is a media broadcasting company operating a news channel by the name of "SAMAA TV", and has preferred the captioned Petitions so as to impugn several letters emanating from the Pakistan Electronic Media Regularity Authority ("**PEMRA**") on the subject of certain complaints that had been referred to the Council of Complaints (the "**COC**") regarding the content of the programs aired by the Petitioner on various dates, and directing it to comply with the recommendations made by the COC.

2. Broadly stated, the case of the Petitioner is that PEMRA has not properly appreciated the scheme of the regulatory framework under which it operates and has not properly discharge its adjudicatory role in as much as it has failed to appreciate that the COC was only empowered to make a non-binding recommendation, whereas it (PEMRA) was the deciding authority and was required to independently apply its mind to the attendant facts and circumstances so as to determine whether those recommendations were to be adopted or not.
3. With the scope of our inquiry being circumscribed accordingly, we need not touch upon or make any determination as to the merit of the complaints underpinning the proceedings of the COC or render a finding as to the correctness of its recommendations. As such, it is unnecessary to embark upon a detailed exposition of the allegations underpinning each complaint beyond the point that they find mention in the relevant paragraphs of the letters impugned in each case, which are significant to the extent that they reflect PEMRA's *modus operandi*.
4. The excerpts of those letters, being (i) Letter No. 13(23)/OPS/016/1402 dated 04.04.2016, (ii) Letter No. 1(01)PEMRA-KHI/RGM/COC/0676 dated 27.03.2017, and (iii) Letter No. 1(01)PEMRA-KHI/RGM/COC/1803 dated 24.10.2017, (iv) Letter No. 1(01)PEMRA-KHI/RGM/COC/0766 and (v) Letter No. 1(01)PEMRA-KHI/RGM/COC/0765, both dated 25.04.2018, and (vi) Letter No. 1(01)PEMRA-KHI/RGM/COC/0839 dated 07.05.2018, (hereinafter referred to collectively as the "**Impugned Letters**"), read as follows:

C.P. D-2518/16: Letter No. 13(23)/OPS/016/1402

“Subject:- Decision in pursuance of 32nd Meeting of Council of Complaints, Islamabad, Agenda Item 1 (xiv) about a Complaint lodged by Deputy Chairman NAB against Samaa TV for Airing Defamatory Content Against Chairman NAB.”

“2. The Council was apprised that PEMRA Operations Wing forwarded a self-explanatory complaint lodged by Deputy Chairman NAB on 09.09.2015,/complainant against false and baseless allegations casted by Samaa TV channel/defendant on Tuesday 08.09.2015 between 09:30 pm to 10:30 pm about Chairman NAB and the NAB as an institution. Consequently, a show cause notice dated 10.09.2015 was issued to M/s. Jaag Broadcasting System (Pvt.) Ltd/Samaa TV under the relevant provisions of PEMRA laws and Electronic Media Code of Conduct 2015 followed by personal hearing on 28.09.2015.”

“11. The Council, after hearing both the parties at length, perusing the papers on record as well as analyzing the video clips of both of the instances, recommended disposal of the matter with the following recommendations which has been approved by the competent authority:

Recommendations:

- i. Samaa TV be issued Warning for not presenting information in an accurate and fair manner about NAB and its Chairman, defaming him and NAB as an institution, not airing rebuttal of Chairman WAPDA regarding Chairman NAB in the same manner and magnitude and airing the news item without taking the point of view of NAB.
- ii. Samaa TV be advised to contact the designated officer of NAB before airing news item about NAB in order to avoid damage to the credibility of the institution in future.
- iii. Samaa TV should air apology on the same medium in the same manner and magnitude as that of false news or information was aired.

12. Now, Therefore, M/s. Jaag Broadcasting Systems (Pvt.) Ltd. (Samaa TV) is hereby directed to comply with above decision of the Council of Complaints. The channel is also warned to remain vigilant in future while presenting information / rebuttal in an inaccurate and unfair manner about NAB and its Chairman.”

C.P. D-2064/17 : Letter No. 1(01)PEMRA-KHI/
RGM/COC/0676

Subject:- **DECISION IN PURSUANCE OF 42ND
MEETING OF COUNCIL OF COMPLAINTS PEMRA
SINDH HELD ON 2ND FEBRUARY, 2017.**

“2. A summon letter No.1 (01)/PEMRA-KHI/RGM/COC/0194 dated 23rd January, 2017 was issued to M/s Jaag Broadcasting System (Pvt.) Ltd (Samaa TV) on the complaint lodged by Mr. Altaf Ahmed, Director Public Relations, Election Commission of Pakistan against a news story aired on 4th September, 2016 in the news bulletin from 09:00 PM to 10:00 PM in which video clip made through a cell phone was shown about the consolidation of result process in bye-election in PP-232 Vehari-I which was merely the recording the consolidation of the result process in the office of the Returning Officer.”

“4. The Council after detailed deliberation recommended the following in exercise of its powers conferred under section 26 (5) of PEMRA Ordinance 2002, as amended by PEMRA Amendment Act 2007 duly approved by the Competent Authority.

- The Council unanimously recommended that strict action must be taken by the Authority for airing highly objectionable remarks without presenting any substantial proof. The Samaa News may be fined of Rs.300,000/- which must be submitted within fifteen days. The Channel is also warned that in case of repeated violation of similar nature, and or non-compliance to the above decision, the Authority shall proceed against the channel for revocation of its license under Section 30 of PEMRA Ordinance 2002 as amended by the PEMRA (Amendment) Act 2007 and other enabling provisions of PEMRA laws.
- The Channel is directed to apologize on-air to its viewers and run tickers about the said content aired with the same manner and magnitude within fifteen days.
- The Council also recommended that an Advisory should be issued by headquarters to all Satellite TV Channels to be careful before reporting any story and also take the versions of both parties before airing any story.

5. For necessary compliance, please.”

C.P. D-7798/17 : Letter No.1(01)PEMRA-KHI/RGM/COC/1803

Subject:- DECISION OF AUTHORITY IN PURSUANCE TO RECOMMENDATIONS OF COUNCIL OF COMPLAINTS PEMRA SINDH IN ITS 52ND MEETING HELD ON 03.10.2017.

“2. Whereas, a complaint was made by Dr. Nusrat Shah, Professor of Gynecology and obstetrics at Jinnah Sindh Medical University (JSMU), Karachi against Samaa TV for telecasting false and fabricated news report on 27th May, 2017 against complainant.”

“5. The Council, after detailed deliberation, recommended the following in exercise of its powers conferred under Section 26 (5) of PEMRA Ordinance 2002, as amended by PEMRA (Amendment Act 2007) read with Rule 8(4) of the PEMRA (Council of Complaints) Rules 2010, which has also been approved by the Competent Authority:

- In this particular case Samaa TV has broadcast one sided story with full of accusation but no evidence was presented before the Council. Documents shows that Dr. Nusrat Shah’s appointment in Jinnah hospital was made after following all relevant formalities and her appointment was made through selection board and she was not on deputation as alleged by Samaa TV. There was a lapse in Samaa Story and international journalistic principle has been violated. We have reminded Satellite TV Channels repeatedly that one sided story must not be broadcast in any case.
- A fine of Rs.300,000/is imposed on “Samaa TV” which must be submitted within fifteen days and is strongly warned to practice responsible journalism.

6. M/s. JAAG Broadcasting System (Pvt.) Ltd (Samaa TV) is therefore directed to ensure compliance with the above decision in letter and spirit, under intimation to this office.”

C.P. D-3499/18 : Letter No. 1(01)PEMRA-KHI/RGM/COC/0766

Subject:- DECISION OF AUTHORITY IN PURSUANCE TO RECOMMENDATIONS OF COUNCIL OF COMPLAINTS PEMRA SINDH IN ITS 60th MEETING HELD ON 11.04.2018.

2. And Whereas, complaints were made by Mr. Moiz-Uddin-Khan on behalf of JS Bank Limited (JSBL) against M/s. Jaag Broadcasting System (Pvt.) Ltd, (Samaa TV) channel's programme titled "Khara Sach" hosted by Mr. Mubashir Lucman... aired on 15.03.2018 wherein it was reported that false, defamatory, scandalous and derogatory propaganda was made on appointment of Mr. Ali Jehangir Siddiqui (Chairman of JSBL) as Ambassador of Pakistan to the USA."

5. And whereas, the Council perused the matter at length and unanimously held the opinion that the said content aired by the Channel is clearly in violation of Section 20 of the PEMRA Ordinance 2002 as amended by the PEMRA (Amendment Act 2007) read with Rule 15 (1) of PEMRA Rules 2009, Clause 3(1-i, k, 1), 4(1), 4(10), 5 and 22 of Electronic Media (Programmes and Advertisement) Code of Conduct 2015.

6. The Council, after detailed deliberation, recommended the following in exercise of its powers conferred under Section 26 (5) of PEMRA Ordinance 2002, as amended by PEMRA (Amendment Act 2007) read with Rule 8(4) of the PEMRA (Council of Complaints) Rules 2010, which has also been approved by the Competent Authority:

- Council is of the view that the news report and program "Khara Such" contains allegations against Mr. Ali Jahangir Siddiqui, Chairman of JSBL and JS Bank who were not given the opportunity to explain position and it is not fair to compare Pakistani businessman with an Indian spy whose is convicted in various cases. PEMRA has repeatedly reminded the management of Satellite TV Channels that one sided stories / programs must not be broadcast in any case. Whenever there is an allegation, views of the other side must also be given which is missing in this report / story. The Channel's representatives could not justify allegations leveled on complainant.

- A fine of Rs.300,000/- (Three Hundred Thousand) is imposed on M/s. Jaag Broadcasting Systems (Pvt.) Ltd (Samaa TV) (which must be submitted within fifteen days from the issuance of this letter) and is strongly warned to practice responsible Journalism."

C.P. D-3500/18 : Letter No. 1(01)PEMRA-KHI/RGM/COC/0765

Subject:- DECISION OF AUTHORITY IN PURSUANCE TO RECOMMENDATIONS OF COUNCIL OF COMPLAINTS PEMRA SINDH IN ITS 60TH MEETING HELD ON 11.04.2018

“2. And whereas, complaints were made by Mr. Muhammad Yousuf Abbasi, Deputy Secretary (Staff) to Minister against Samaa TV for allegedly telecasting false, misleading, malicious and defamatory news. The details of complaints and summon letters are as under:

- ... allegedly telecasting a false, misleading, malicious and defamatory news package on 27th & 28th February, 2018 against Mr. Sohail Anwar Khan Siyal, Minister for Home, Agriculture and Mines, Sindh.

- ... allegedly telecasting a false, misleading, malicious and defamatory news package on 2nd March, 2018 against Mr. Sohail, Anwar Khan Siyal, Minister for Home, Agriculture and Mines, Sindh.”

“6.The Council, after detailed deliberation, recommended the following in exercise of its power conferred under Section 26 (5) of PEMRA Ordinance 2002, as amended by PEMRA (Amendment Act 2007) read with Rule 8(4) of the PEMRA (Council of Complaints) Rules 2010, which has also been approved by the Competent Authority:

- Council is of the view that the news report/story contains allegations against the Home Minister Sindh who was not given the opportunity to explain his position. Neither the Channel sought the verdict of Home Department. PEMRA has repeated reminded the management of Satellite TV Channels that one sided stories must not be broadcast in any case. Whenever there is an allegation, views of the other side must also be given which is missing in these news reports / stories. The Channel’s representatives could not justify allegations leveled on the complainant.

- A fine of Rs.500,000/- (Five Hundred Thousand) (which must be submitted within fifteen days from the issuance of this letter) is imposed on M/s Jaag Broadcasting Systems (Pvt.) Ltd (Samaa TV) and is strongly warned to practice responsible journalism.

M/s. Jaag Broadcasting System (Pvt.) Ltd (Samaa TV) is therefore directed to ensure compliance with the above decision in letter and spirit, under intimation to this office.”

C.P. D-3783/18: Letter No. 1(01)PEMRA-KHI/
RGM/COC/ 0839

Subject:- **DECISION OF AUTHORITY IN PURSUANCE TO RECOMMENDATIONS OF COUNCIL OF COMPLAINTS PEMRA SINDH IN ITS 61ST MEETING HELD ON 27.04.2018**

“2.And Whereas, self-explanatory complaints were made by Dr. Nasreen Aslam Shah, Convener, “Committee of Protection against harassment of women” and Dr. Munawwer Rasheed, Registrar University of Karachi against Samaa TV allegedly for airing defamatory, biased and immoral allegations against the University and its employees before proven guilty.”

“5. The Council, after detailed deliberation, recommended the following in exercise of its powers conferred under Section 26(5) of PEMRA Ordinance 2002, as amended by PEMRA (Amendment Act 2007) read with Rule 8(4) of the PEMRA (Council of Complaints) Rules 2010, which has also been approved by the Competent Authority:

- Complainant Dr. Nasreen Aslam Shah and Dr. Munawarrer Rashid appeared before the Council and gave details about the story and subsequent program based on a complaint of a girl student against the teacher of the Petroleum Technology Department. The concerned teacher allegedly tried to blackmail some students on the matter of marks.

- They complained that the channel Samaa sensationalized the issue of complaint by generalizing the story issue that all male teachers are of the same character. The channel in an effort to gain rating used a number of objectionable words and uncultured language. The channel’s representative admitted that its anchor, in irresponsible way of talking used objectionable language (درندہ، بھیڑیا) Black Sheep). The representative tendered her unconditional apology for anchor’s irresponsible behavior and promised to be extra careful in future.

- A fine of Rs.300,000/- (Three Hundred Thousand) is imposed on M/s. Jaag Broadcasting Systems (Pvt.) Ltd (Samaa TV) which must be submitted within fifteen days from issuance of this letter and is strongly warned to practice responsible journalism.

6. M/s. Jaag Broadcasting System (Pvt.) Ltd (Samaa TV) is therefore directed to ensure compliance with the above decision in letter and spirit, under intimation to this office.”

5. Proceeding with his submissions, learned counsel for the Petitioner pointed out that the COC had been established under Section 26 of the Pakistan Electronic Media Regularity Authority Ordinance, 2002 (the “**Ordinance**”), which stipulates that:

26. Council of Complaints.- [(1) The Federal Government shall, by notification in the Official Gazette, establish Councils of Complaints at Islamabad, the Provincial capitals and also at such other places as the Federal Government may determine].

(2) [Each] Council shall receive and review complaints made by persons or organizations from the general public against any aspects of programmes broadcast [or distributed by a station] established through a licence issued by the Authority and render opinions on such complaints.

(3) [Each] Council shall consist of a [Chairperson] and five members being citizens of eminence from the general public at least two of whom shall be women.

(3A) The Councils shall have the powers to summon a licensee against whom a complaint has been made and call for his explanation regarding any matter relating to its operation].

(4) The Authority shall formulate rules for the functions and operation of the [Councils] within two hundred days of the establishment of the Authority.

(5) The [Councils] may recommend to the Authority appropriate action of censure, fine against a broadcast or CTV station or licensee for violation of the codes of programme content and advertisements as approved by the Authority as may be prescribed.

6. Furthermore, it was pointed out that the COC’s mandate and its interrelation with the functions of PEMRA had been structured through the Pakistan Electronic Media Regulatory Authority (Councils of Complaints) Rules 2010 (the “**Rules**”), with Rules 8 and 10 providing as follows:

8. Filing of complaint and functions of the Councils:- (1) any person aggrieved by any aspect of a program or advertisement may lodge a complaint before the Council or the authorized officer, in whose jurisdiction that programme of [sic] advertisement is viewed:

Provided that where a complaint is received by an authorized officer, the authorized officer shall place the same before the Council for consideration and further proceedings.

(2) A Council or the authorized officer may issue summons to the operator against whom complaint has been lodged and to such other persons as may be deemed necessary for disposal of the complaint, and record their statements.

(3) Where summons are served to the operator or a person under sub-rule (2), and such operator or person fails to appear or provide his explanation on the date fixed in the summons, the Council may proceed with the matter on the basis of the record available and make appropriate recommendation to the Authority.

(4) A Council shall also take cognizance of such matters as referred to it by the Chairman or the Authority and render its opinion thereon.

(5) A Council may recommend to the Authority appropriate action of censure, fine upto the limit prescribed in section 29 of the Ordinance, seizure, suspension or revocation of licence against a broadcast media or distribution service operator or licensee for violation of the Ordinance, rules regulation, code of conduct for programmes and advertisements or terms and conditions of licence

(6) A Council shall keep the Authority informed on the feedback and public response to the contents quality and impact of the programmes and advertisements broadcast or distributed.

10. Procedure upon recommendation by a Council:- The Authority shall take into consideration the recommendations made by a Council in each matter and may approve the recommendations or disagree with the recommendations, while recording the reasons in writing for the same, and pass such order as deemed appropriate, or refer the matter back to the Council for reconsideration if so considered necessary in the opinion of the Authority.

7. With reference to Rule 10, learned counsel submitted that it was manifest that the COC was merely a recommendatory body, with it clearly being provided in the said Rule that once a recommendation was made, PEMRA could either approve or disagree, but in either case had to record its reasons for doing so, and could then either pass such order/decision as was appropriate or could even refer the matter back to the Council for reconsideration if that was considered necessary. It was argued that before taking action on a recommendation made by the COC so as to fine or censure a broadcaster, PEMRA was required to independently apply its mind to the matter so as to satisfy itself that the allegations underpinning the proceedings before the COC constituted a violation of the Electronic Media (Programmes and Advertisements) Code of Conduct 2015, as notified by PEMRA through SRO No. 1(2)/2012-PEMRA-COC dated 19.08.2015 (the “**Code**”) in terms of Section 26(5) of the Ordinance, as well as to then assess and satisfy itself as to the propriety of the particular recommendation made. It was contended that such exercise had not been carried out by PEMRA prior to issuing the Impugned Letters, and the recommendations of the COC had instead been adopted in mechanical manner without any application of mind. It was submitted that as the Impugned Letters had been rendered in contravention of the Ordinance and Rules, the same ought to be declared to be bad in law and could not be validly regarded as decisions of PEMRA. In support of his submissions, learned counsel placed reliance on a judgment rendered by this very Bench in an analogous case reported as AYR Communications Limited through duly Authorized Officer versus Council of Complaints, Islamabad through Secretary and 2 others PLD 2022 Sindh 552.

8. Conversely, learned counsel for PEMRA contended that the Impugned Letters had been issued after fulfilling all relevant codal formalities and constituted decisions that had been validly taken by PEMRA in accordance with law, hence were binding on the Petitioner. Whilst conceding that the judgment rendered in the ARY case (Supra) was correct within its particular framework, he sought to distinguish the Impugned Letters in matter at hand from the decisions impugned in that earlier case by pointing out that whereas the operative paragraph of each of the Impugned Letters stated that the recommendation(s) of the COC had been approved by the competent authority, the decisions under challenge in the ARY case and been bereft of any such narration. Per learned counsel, such reference to approval having been accorded by the competent authority signified that the recommendation(s) had been scrutinized and endorsed by the Chairman, PEMRA, and sufficed for purpose of compliance of the Rules. Furthermore, he placed reliance on an Order made by the Honourable Supreme Court on 26.09.2022 in CPLA Nos. 3046 to 3052 of 2022, titled as M/s. Labbaik (Pvt) Ltd versus Pakistan Electronic Media Regulator Authority, to argue that a decision rendered in similar terms had been upheld before the Apex Court.
9. We have heard the arguments and examined the Impugned Decisions as well as the other material placed on record.
10. In the ARY case, whilst setting aside certain purported decisions of PEMRA that directed compliance of the recommendations of the COC in a mechanical fashion without reflecting application of mind, we had *inter alia* noted and observed in paras 12 to 18 as follows:

“12. Looking to the ground advanced on behalf of the Petitioner, it is well settled that where a statutory power vests in a particular authority and the discharge of the reciprocal duty is its responsibility, that authority cannot merely rubberstamp an action taken elsewhere or simply endorse or ratify the decision of another. In that regard, it was held by the Honourable Supreme Court in the case reported as Messrs H. M. Abdullah v. The Income Tax Officer, Circle V, Karachi and 2 others 1993 SCMR 1195 that:

“as a general rule an authority in whom discretion is vested under provisions of Statute cannot bargain away or fetter its powers. The position is however different when such fetters are authorized by the Statute itself. Reference in this connection may be made to the following observations appearing at page 588 in "Constitutional and Administrative Law" by S.A. de Smith, Second Edition:---

"One authority cannot lawfully act under the dictation of another unless the other is a superior in the administrative hierarchy or is empowered by law to give instructions to it."

13. In that regard, one may also look further to the later edition of the same work (De Smith's, Judicial Review, 8th Edition, 2018) where it was opined that:

9-002 A decision-making body exercising public functions which is entrusted with discretion must not disable itself from exercising its discretion in individual cases. It may not "fetter" its discretion. A public authority that does fetter its discretion in that way may offend against either or both of two grounds of judicial review: the ground of legality and the ground of procedural propriety. The public authority offends against legality by failing to use its powers in the way they were intended, namely, to employ and to utilize the discretion conferred upon it. It offends against procedural propriety by failing to permit affected persons to influence the use of that discretion. By failing to "keep its mind ajar", by "shutting its ears" to an application, the body in question effectively forecloses participation in the decision making process.

9-004 The principle against fettering discretion does not prevent public authorities upon which a discretionary power has been conferred guiding the implementation of that discretion by means of a policy or a rule that is within the scope of its conferred powers. The principle directs attention to the attitude of the decision-maker, preventing him from rigidly excluding the possibility of any exception to that rule or policy in a deserving case. Nor does the principle focus upon the content of the hearing or other means of communication which must be afforded to persons interested in changing the decision-maker's mind. The decision-maker must allow interested individuals the opportunity to persuade him to amend or deviate from the rule or policy, but, unlike the principle of natural justice or fair hearing, the principle against fettering is not concerned with any particular form of hearing or with any particular technique of making or receiving representations. Thus, while the issue of fettering often arises where an authority has adopted a fixed rule or policy, complaints of fettering may also arise in the context of "one-off" decisions. In short, the no-fettering principle means that a person must know what the relevant policy of a public authority entails and must be able to make submissions about its application in their individual case. The public authority must then consider that case on its merits..."

14. On that very note it was observed in the case reported as *Messrs Gadoon Textile Mills and 814 others v. WAPDA and others* 1997 SCMR 641 that¹:

"40. Reference has also been made to Administrative Law by Basu, in which it has been stated that "the general rule is that where a statute directs that certain acts shall be done by a specified person; their performance by any other person is impliedly prohibited". This rule is so well-settled that needs no further elaboration. Any authority vested with a discretion must exercise it himself by applying his independent mind uninfluenced by irrelevant and extraneous considerations. He should neither accept any dictation nor delegate his authority to any other person. Violation of these rules for exercise of discretion will render such decision illegal. If the argument that WAPDA has independent

¹ From the additional note of Saleem Akhtar, J, at Pages 799 DDD, EEE and 802 JJJ 8

power under section 25 of the WAPDA Act to determine rate/tariff, then it has defaulted in exercise of its power and discretion by accepting the dictates of Task Force, Ministry of Water and Power and ECC approved by the Prime Minister ignoring CCL.”

“45....The rule of reasonableness is so embedded in the jurisprudence that even where statute confers arbitrary powers on any authority, it is to be read in such statute that the authority while exercising its discretion shall act reasonably. The reasonableness of any action by an authority is eroded where it acts with improper motive, on irrelevant considerations, or without regard to relevant considerations, allowing the dictates of others instead of applying its own independent and judicious mind or delegates unless provided by law or surrenders its power to any other authority whether it is superior, equal or inferior to him.”

14. Related to the rule against acting under dictation is that against unsanctioned delegation, derived from the maxim *delegatus non potest delegare*, which lays down that a delegate cannot further delegate the power to someone else. This is to ensure that when a specific person or body is given a statutory discretion, the discretion is exercised by that very person or body and not by someone else. In *Muhammad Yusuf Ali Shah v. Federal Land Commission, Government of Pakistan, Rawalpindi and 2 others* 1995 CLC 369 a learned Division Bench of the Lahore High Court articulated the principle as follows:

“Before we proceed to deal with the contentions of the parties in regard to this point, we feel it necessary to state that it is a settled proposition of law that when a power is conferred on a particular person then that person can neither transfer its exercise to another person nor can exercise it without application of his mind to the facts and circumstances of that case. What is required, is that he has to exercise that power with application of his independent mind to the facts and circumstances of that case regardless any extraneous/dictative influence.”²

² [At page 374 A]

16. Ergo, even in matters where the opinion of a recommendatory body is envisaged, the exercise of the statutory power ultimately remains that of the designated authority, and its decision is to necessarily be made for advancing the purposes of the statute, supported by valid reasons. In other words, if a statute expressly confers a statutory power on a particular body or authority or imposes a statutory duty on the same, then such power must be exercised or duty performed, as the case may be, by that very body or authority itself and none other. However, if the body or authority exercises the statutory power or performs the statutory duty acting at the behest, or on the dictate, of any other body or person, that would constitute an abdication of the statutory mandate and any decision taken on such basis would be contrary to law and liable to be quashed.

17. A perusal of the Impugned Decisions reveals that while the same emanate from PEMRA under signature of its General Manager (Operations), the Respondent No.3, the paragraphs reproduced herein above were merely preceded by a narration as to receipt of the complaints by the COC, the substance of the allegations contained therein, and the proceedings that then ensued before the recommendatory body, but are bereft of any role played by PEMRA, either in accordance with Rule 10 or otherwise, and also do not disclose any reasons whatsoever for adoption of the COCs recommendations. In fact, just as fundamentally, it transpires that the Impugned Decisions are also equally bereft of even the findings of the COC as to how the allegations underpinning the complaints constituted violations of the Code, and do not even disclose the rationale for the COC making the particular recommendations.

18. As such, the Impugned Decisions do not possess the quality of a reasoned or speaking order. On the contrary, they reflect that the Authority has acted in a cursory and mechanical manner in purported exercise of its adjudicatory function without any perceptible independent application of mind, contrary to the intent and design of the Ordinance and Rules. Needless to say, such an approach to adjudication is unsound and it is manifest that the Impugned Decisions are not sustainable in law. We are fortified in this assessment by the judgment rendered by a learned Divisional Bench of this Court in an analogous case reported as World Call Cable (Pvt.) Ltd. through Chief Executive Officer v. Federation of Pakistan through Secretary and another 2020 CLC 534, where whilst setting aside a purported decision it was observed that:

“9. The eventual purposefulness of the Council is to recommend appropriate action if found for violation of the codes of programme content and advertisements as approved by the Authority but an additional exercise of jurisdiction by the Council of Complaints has been added under Sub-rule (4) of Rule 8 of the PEMRA (Councils of Complaints) Rules, 2010 that the Council may take cognizance of such matters as referred to it by the Chairman or the Authority and render its opinion thereon. If these powers are regarded as powers of the Authority to refer any matter for opinion, then in our selfeffacing understanding and interpretation, this cannot travel or regarded beyond the power and jurisdiction of Council of Complaints or the Authority under Section 26 of the PEMRA Ordinance, 2002...”

“10. What deciphers to us in this case is that instead of exercising the jurisdiction by the Authority under Section 29 of the PEMRA Ordinance, 2002, the further proceedings arising from the show cause notice were referred to the Council of Complaints for their recommendations and rendering opinion by them and vide communication dated 08.12.2017, which is alleged to be a decision of PEMRA, the petitioner was communicated the opinion of Council of Complaints that petitioner is clearly in violation of Section 29 of the PEMRA Ordinance, 2002 and the recommendation of Council of Complaints has been reproduced in paragraph 4 but no independent decision is attached nor produced by the counsel for the PEMRA, whereas under Rule 10 of Pakistan Electronic Media Regulatory Authority (Councils of Complaints) Rules, 2010 the procedure has been laid down which makes mandatory that the Authority (PEMRA) shall take into consideration the recommendations made by the Council in each matter and may approve the recommendations or disagree with the recommendations while recording the reasons in writing for the same and pass such order as deemed appropriate or refer the matter back to the Council for reconsideration if so considered necessary in the opinion of the Authority. (emphasis applied) It is quite transparent from the alleged decision that no independent application of mind was applied by the Authority on the recommendations or the opinion of the Council of Complaints but in a slipshod manner, the recommendations were approved without recording any reasons in writing and passed such order...”

11. In our view, the foregoing operates equally in respect of the Impugned Letters, as the mere narration that the recommendation(s) of the COC have been approved by the competent authority does not suffice for purpose of compliance with Rule 10, as reproduced hereinabove. The Minutes of the various meetings of PEMRA where the recommendations of the COC underpinning each of the Impugned Letters had been considered were also placed on record under cover of a Statement by learned counsel to repel the arguments of the Petitioner and reinforce the contention regarding compliance with codal requirements, but those also do not serve to advance the case of PEMRA as they do not reflect any value judgment or application of mind. As to the Order in Labbaik's case, we are constrained to note with utmost respect that the same is a leave refusing order and is also otherwise of no avail, since it addressed only a question of delegation and the subject of Rule 10 was not a point under discussion.
12. In view of the foregoing, the Petitions stand allowed, with the Impugned Letters being set aside.

Judge

Chief Justice

Karachi.
Dated: