

IN THE HIGH COURT OF SINDH, KARACHI

**C.P.No.D-482 OF 2007**

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Date                      Order with signature of Judge  
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**Present:**

**Mr. Justice Aqeel Ahmed Abbasi.**

**Chief Justice.**

**Mr. Justice Abdul Mobeen Lakho.**

**Southern Network Limited                      .....Petitioner**

Versus

**The Government of Pakistan & others.....Respondents**

**Date of hearing 14-12-2023**

M/s.Abbas Leghari and Nadeem Ahmed, Advocates for the Petitioner.

Mr.Badar Alam, Advocate for the Respondent No.2

M/s.Kashif Hanif, Sarmad Ali, Zafar Iqbal Arain and Ms.Shaista Perveen,  
Advocates for Respondent No.3 (PEMRA).

Mr.Salar Khan, Advocate for the Respondent No.4 (Frequency Allocation  
Board)

Mr.Ali Akbar Sehto, Deputy Director Law PTA.

Mr.Khaleeq Ahmed, D.A.G.

**JUDGMENT**

**Abdul Mobeen Lakho-J,** Through instant petition, the petitioner firm, who is engaged in the business of managing, operating, distributing Cable Television Network under MMDS System and claims to have been granted an exclusive license on 20.03.1995 in perpetuity by the Respondent No.1, has impugned the letter dated 12.07.2006, whereby, the petitioner has been asked to approach for frequency allocation to Frequency Allocation Board (FAB) within 15 days, failing which the Authority will take legal action. Being aggrieved by the letter dated 12<sup>th</sup> July, 2006 issued by PEMRA, the petitioner has prayed as follows:-

- (i) declared that MMDS license being peculiar to this frequency and there being no MMDS frequency available for multiple grants, enjoyed by the petitioners under their license of 1995 is inviolable and shall continue to be enjoyed by the Petitioners
- (ii) direct the said respondent to refrain from interfering with the aforesaid rights and license of the Petitioners.
- (iii) declare that Section 23 of PEMRA Ordinance is ultra vires the Fundamental Rights of the Petitioner, is a malafide piece of legislation, being petitioners-specific and discriminatory and

therefore is of no legal effect or consequences to the right of petitioners under the license granted to them in 1995.

- (iv) It be declared that the license granted to the Petitioners cannot be made inoperative under the PEMRA Ordinance 2002
- (v) It be declared that the Respondent has acted illegally, and all actions of each of the Respondents be set aside.
- (vi) Direct the Respondents and each of them to act on the existing licenses granted by the Respondent No. 1, namely the MMDS License No. CT. 001 dated 20.03.1995 and the Frequency Allocation by the Pakistan Wireless Board dated 28.01.1995.

2. Brief facts of the case as narrated in the memo of petition are that in the year 1994 the Petitioner alongwith some other parties submitted to the Respondent No. 1, through the defunct Pakistan Wireless Board (PWB), their proposal for setting up Cable Television Network under MMDS System at various locations in Pakistan, thereafter, the Respondent No. 1 granted to the Petitioner (then Pay TV Ltd) an exclusive Television Transmission License No. C.T. 001 dated 20th March 1995, to establish a Cable Television Network under MMDS all over the Country, which is reproduced as under:-

**“GOVERNMENT OF PAKISTAN  
MINISTRY OF INFORMATION AND BROADCASTING**

No.2(5)/95-TV

Islamabad March 20, 1995

**LICENSE FOR CABLE TELEVISION NETWORK  
(NO. C.T.001)**

1. **M/s. Pay TV Limited, No. 4, Mohammadi Plaza, F-6, Blue Area, Islamabad, with its registered offices at No.15/1-7th Gizri Lane, PHASE IV, Defence Housing Authority, Karachi with Company Registration No K-05920 of 1994-95 is hereby granted LICENSE to establish a Cable Television Network under MMDS (in the Private Sector) for transmission of Programmes all over the country.**
2. **This is an exclusive Licence in the private sector for establishing and operating Cable TV Network (MMDS) in Pakistan.**
3. **This license is subject to compliance of terms and conditions between the licensee (Pay TV Ltd) and Licensor (Ministry of Information and Broadcasting.)**

**Sd/-  
(SALIM GUL SHEIKH)  
Director General (IP)  
Tele: 823744”**

In order to transmit programmes, Petitioner applied to the Pakistan Wireless Board in July 1995, for assignment/allocation of frequency band and on 28.01.1996 the Board assigned frequency for MMDS Cable TV Wireless Broadcasting system, which reads as under:-

**“GOVERNMENT OF PAKISTAN  
MINISTRY OF COMMUNICATIONS  
PAKISTAN WIRELESS BOARD SECRETARIAT  
85-WEST RIZWAN CENTRE, BLUE AREA ISLAMABAD**

No W.6-86/95

Dated: 28-1-1996

To,

M/s Pay TV Private Ltd.  
1st Floor, Umer Plaza,  
76-West, Blue Area,  
Islamabad

**Sub:- ASSIGNMENT OF FREQUENCY FOR MMDS CABLE TV  
WIRELESS BROADCAST SYSTEM**

Reference your letter No. PAY TV/95/001 dated 16-7-95 on the above cited subject.

Please be informed that the frequency Band 2556-2619 MHz and 2668-2689 MHz (Total 12 TV channels of 7 MHz each) have been assigned for the applied PAY TV Broadcast System for the cities of Lahore, Islamabad & Rawalpindi and the Band 2550 - 2690 MHz (20 TV Channel of 7 MHz each) for Karachi City. The balanced TV Channel applied for the cities of Lahore and Islamabad/Rawalpindi are under consideration and shall be assigned on vacation from the existing users

You are requested to pay a sum of Re: 28740/- (Twenty Eight Thousand Seven Hundred and Forty) In respect of registration, wireless licence fee and royalty to Senior Accounts Officer Telephone Revenue, Karachi and paid voucher be sent to this office. These charges are provisional and subject to the condition that M/s Pay TV will have to pay the revised charges with arrears as and when the new tariff schedule is approved by the competent authority.

Sd/-  
( Khushmir Khan )  
Director  
Pakistan Wireless Board”

Both acts are supplementary to each other and the Petitioner kept paying the fee regularly, but allegedly on the behest of some influential persons the petitioner was threatened with cancellation of their license for reasons devoid of any bonafide. The petitioner in order to protect its valuable Constitutional rights filed Constitutional Petition bearing No.D-971/1995 on 21st May 1995 and was successful in obtaining a status quo order on 22.05.1995, however, as the law had completely been altered, it was necessary to file another petition with some additional grounds. After grant of license to the Petitioner in 1995, the Government brought amendments in the relevant laws and/or has promulgated new laws but the central issue of validity of the broadcasting license, its protection from any unlawful or unilateral cancellation and for safeguard of the frequency remained the same.

3. That in 1996 under Pakistan Telecommunication (Reorganization) Act, Frequency Allocation Board (Respondent No.3) was created to take over the functions performed by the Pakistan Wireless Board, thus Respondent No.3 took various steps to curtail the lawful use of the license in question. That under Rule 26 of PEMRA Rules, all Private broadcasters having license in MMDS System are required to apply for a license under the Rules. That after the license was granted, the Petitioners took up the challenge and stated to set up the MMDS System Station at its relevant location. The said MMDS System Stations are functioning and has been very successful. That suddenly the Respondent No.4 (FAB) insisted that the Petitioner is liable to surrender the MMDS frequencies and apply afresh for allocation to the FAB, whereafter, the Respondent No.4 would allocate “**fresh frequencies**” as are in its discretion and on such terms and conditions as are prescribed by it. The Respondent No. 4 called upon the petitioner to suspend their test transmission and launching of their upgraded network, whereas, the Respondent No.4 is only concerned with the fresh allocation of frequencies and the frequencies already allocated by the Pakistan Wireless Board to the petitioner are binding on Respondent No.4 (FAB), because it is not in Respondent No.4's domain to raise such an issue and secondly there is no transfer of license and the license No.001 continues to be held by and vested in Petitioner and the Respondent No. 4 cannot impose restrictions on the issue of the license. That on 07.12.2005 the Respondent No.3 served a notice on the Petitioner with the threat to cancel the frequency already allocated to the Petitioner under a subsisting license in clear violation of the rights of the Petitioner, which is reproduced as under:-

“Government of Pakistan  
PAKISTAN TELECOMMUNICATION AUTHORITY  
Zonal Office, Wireless Compound, Opp. J.P.M.C. Karachi-75530  
Phone #92-21-5211285, 5655437 Fax # 92-21-5680640  
www.pta.gov.pk  
No. PTA-KR/602/05/05 Dated 7 December 2005  
Subject: Unauthorized use of the RF spectrum”

Frequency Allocation Board has reported that your organization is using the 2556.262 Mhz frequency slot without authorization. Unauthorized use of the RF spectrum is a violation of the Pakistan (Telecommunication) Re-Organization Act 1996, you are therefore advised to stop the unlicensed activity forthwith under intimation to this office by 19th December 2005 positively. Non-compliance will constrain this office to initiate legal action as per Pakistan Telecommunication (Re- Organization) Act 1996.

Sd/-  
Rizwan Ahmed Hydri  
Zonal Director

Station Manager  
M/s Southern Networks Ltd.  
Saima Towers, Tower-A,  
II. Chundrigar Road, Karachi.”

subsequently, the Respondent No.3 on 12.07.2006 served another notice upon the Petitioner with the threat to proceed legal action if the Petitioner failed to apply for frequency allocation to FAB, which is in clear violation of the rights of the Petitioner to deprive the Petitioner from exercising its right over the licence and against the Articles 18 of the Constitution and action of the said respondent is liable to be declared illegal and without lawful authority and of no legal and consequences. The notice is reproduced as under:-

**“PAKISTAN ELECTRONIC MEDIA  
REGULATORY AUTHORITY  
ISLAMABAD**

**No.F.10-3(1)PhaseI-2005**

**12<sup>th</sup> July, 2006**

**Subject: ILLEGAL USE OF FREQUENCIES**

**Reference: MMDS licence No.5, 6 and 7, dated 20<sup>th</sup> May, 2004 issued for Karachi, Lahore and Islamabad stations respectively.**

Pakistan Electronic Media Regulatory Authority has issued MMDS licences to establish and operate MMDS TV channel distribution stations at Karachi, Lahore and Islamabad on the frequency to be allocated by Frequency Allocation Board (FAB).

2. However M/s Southern Networks has not applied for frequency allocation to FAB till date therefore the operation of MMDS services in the licenced region is illegal.

3. M/s Southern Networks is therefore requested to apply for frequency allocation to Frequency Allocation Board (FAB) within 15 days from the date of issuance of this letter, failing which the Authority would be constrained to take legal action.

Sd/-

(Dr. Abdul Jabbar)

Director General (Tech).

**Mr.Salman Rasheed,  
Regional Manager,  
M/s.Southern Network,  
H#190-A, St.36, F-10/1,  
Islamabad.”**

4. Learned counsel for the petitioner argued that since the petitioner had been granted exclusive license commencing from 20.03.1995, therefore, respondents are estopped by act and deed under the doctrine of promissory estoppel from cancelling the license. Learned counsel further argued that the petitioner has invested enormous amount and has contributed in terms of skill, time, labour and other resources pursuant to above license, therefore, cannot be subject to any act of cancellation/suspension of the license arbitrarily, capriciously at the whims of respondents. According to learned counsel, the petitioner was neither informed even though there is a specific arbitration clause nor given any opportunity of being heard before initiating adverse proceedings seeking cancellation/suspension of a valid exclusive license. Per learned counsel, the grant of the license is within the discretion of the Government, however, once such discretion is exercised, the same cannot be withdrawn or

revoked as it is violative of the vested right of the Petitioner. Learned counsel argued that the decision of the Cabinet suffer from bias and *malafides* and the respondent neither has power or authority to cancel the license directly or indirectly nor to alter it in any manner and/or dilate or encroach upon it by granting parallel license or thereby destroying and/or dilating exclusivity of the license or altering any conditions therein cause the change of board/frequency. Learned counsel for the petitioner argued that the petitioner was granted license with exclusivity clause and it was necessary to make project viable because the license for MMDS broadcasting can be granted only to one person for overwhelming technical reasons and commercial propriety and to make a law which is applicable only to one person is ultra vires the Constitution. Learned counsel argued that the license was granted to the petitioner in the year 1995, whereas, PEMRA was created in 2002 vested with the same functions as were enjoyed by Respondent No.1, therefore, the powers would be exercised in respect of the same license of which the revocation and grant afresh is not called for and is without any lawful justification. Learned counsel for the petitioner argued that under Section 32 the PEMRA has authority to grant exemption from any provisions of the Ordinance where it serves public interest and there are reasons for such exemptions and without prejudice to the above, there are overwhelming reasons for grant of exemption to the petitioner from such of the provisions of the Ordinance as have the effect of revoking and existing license and necessitating filing of application for similar license under the Ordinance. Learned counsel further argued that Rule 23 of PEMRA Rules is in violation of the vested rights of the petitioner in which it is provided that the new license granted to an existing licensee by way of validation shall be on such terms and conditions as the authority may from time to time prescribe, whereas, there can be no change of conditions attached to the existing license of the petitioner. Learned counsel also argued that the action of the Pakistan Telecommunication Authority and the Frequency Allocation Board to have incorrectly presumed that the Petitioner is using the frequency band 2556-2619 MHz, 2668-2689 MHz and 2550-2690 MHz for wireless system when, according to them no wireless license has been granted to the Petitioner. He further argued that the Respondent Nos. 2 and 4 without hearing the petitioner have arrived at a wrong conclusion that the petitioner has committed an offence under Section 31 of the Pakistan Telecommunication (Re-organization) Act 1996. In support of his contention, learned counsel for the petitioner has cited the following case law:-

- (1) PLD 2014 S.C. 478 (Pak Telecom Mobile Limited.....v...Pakistan Telecommunication Authority, Islamabad).  
 (2) PLD 2002 S.C. 208 (Pakistan & another....v.....FECTO Belarus Tractors Limited).  
 (3) 1992 SCMR 1652 (M/s.Army Welfare Sugar Mills Limited & others.....v.....Federation of Pakistan & others).

5. Conversely, learned counsel for the respondent No.2 (PTA) argued that the license was issued to M/s.PAY T.V. to setup analogue MMDS system, however, the PAY T.V. changed its name as Shaheen PAY T.V. Limited due to inherent joint venture of PAY T.V. Limited and Shaheen Foundation, thereafter, in 2003 Shaheen PAY T.V. changed its name as Southern Network (Pvt) Limited, therefore, the petitioner is illegally and unlawfully installed digital MMDS without having permission or valid license. Per learned counsel, the Respondent No. 2, wrote letter to the petitioner for allocation of frequencies for their use, but the petitioner intentionally and deliberately is avoiding to get the frequency allocated, whereas, illegally and unlawfully is using frequency which was allocated under the expired license, and is causing loss to government exchequer billions of rupees per month. He further argued that the Petitioner itself failed to renew its Pay TV license as under clause 15 of the License issued to Pay T.V it is clearly stated that "the licensed will terminate on the last day of December, 1996 when it becomes invalid unless renewed further". Learned counsel for the respondent No.2 further argued that the license was granted by the then Pakistan Wireless Board to Pay TV, while now the Petitioner does not possess license of Wireless System, because the same expired in 1996 due to non-renewal, therefore, the use of the frequency by the Petitioner is illegal and unlawful and due to the illegal use national exchequer suffers financial loss on account of frequency charges. According to learned counsel for the Respondent No.2 that the illegal use of frequency without valid license is a violation of Section 31 of the PTA Act, which reads as under:-

**"31. Offences and penalties. (1) Whoever establishes, maintains or operates a telecommunication system or telecommunication service or possesses any wireless telegraphy apparatus or carries on any other activity in contravention of this Act or the rules or regulations made there under the Wireless Telegraphy Act, 1933 (XV of 1933) or the conditions of a license;"**

Learned counsel for the Respondent No.2 further argued that the Petitioner is not the licensee of the Respondent No.2 and is using frequency without having any legal justifications despite of the fact that the Respondents No. 2 repeatedly wrote letters regarding illegal use of frequency. Learned counsel for the Respondent No.2 further argued that the Respondent No.2 acted according to the

Act, Rules & Regulations and have not violated the constitutional rights of the Petitioner. He further argued that the Petitioner has no cause of action to file instant petition, therefore, it is not entitled to any relief before this Court. Learned counsel for the Respondent No.2 argued that since the License was issued to Pay T.V., and the same stood cancelled for its non-renewal by the Petitioner itself in 1996, therefore, the petitioner **without approval in writing installed digital equipment**, without site approval carried out installation of digital MMDS equipment without any clearance from the respondentNo.2 and is using illegally and unlawfully the frequency allocated under the expired license causing loss to the National Exchequer. He further argued that the Petitioner obtained Non-Exclusive license from Respondent No. 3 (PEMRA) for the use of the new digital equipment, but the allocation of frequency for new license has not been obtained from Respondent No.2 and the frequency allocated to Pay T.V is being used by the petitioner illegally and unlawfully, therefore, Petitioner is not entitled any discretionary relief and prayed that instant petition may graciously be dismissed with exemplary costs in favor of the Respondent No.2. In support of his contention, he placed reliance on the following case law:-

- (1) 2012 CLC 389 [Sindh] (Danish Kaneria....v.....Pakistan & others).
- (2) 2003 CLD 1447 [Karachi] (M.A. Kareem Iqbal....v.....Presiding Officer, Banking Court No.III, & others).

6. Learned counsel for the Respondent No.3 (PEMRA) argued that petitioner was granted an exclusive license for Cable T.V. Network under MMDS on 20.03.1995 by Respondent No.1, but since this MMDS License requires a frequency to be operated, therefore, frequency was assigned to the Petitioner vide letter dated 28.01.1996 by defunct Pakistan Wireless Board, which has been taken over by FAB after promulgation of Pakistan Telecommunication (Reorganization) Act, 1996. According to learned counsel for the Respondent No.3, during currency of the license a petition bearing No.D-971/1995 was filed before this Court on the ground of interference by the Government in exclusive license of the petitioner, in which through interim order dated 22.05.1995 parties were directed to maintain status quo and in the meanwhile, Pakistan Telecommunication Act, 1996 (PTA Act) was promulgated in order to regulate telecommunication services Frequency Allocation Board (FAB) was created. Learned counsel for the Respondent No.3 further argued that in March, 2002 Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (PEMRA Ordinance) was promulgated through which the PEMRA has the

exclusive and sole authority to regulate and grant the license to any who wishes to be engaged in the business of broadcasting and distribution services in Pakistan and under the provisions of PEMRA Ordinance PEMRA Rules, 2002, therefore, under Rule 26(2) of PEMRA Rules the broadcasters having MMDS license were required to apply within sixty days for the broadcast license, but the petitioner applied for the same after a delay of about two years, thereafter the authority decided to grant three (3) non-exclusive MMDS License on 20.05.2004. Per learned counsel for the Respondent No.3, both the parties have acknowledged that this license would be operated on frequency allocated by FAB, but inspite of this fact the petitioner did not approach FAB for allocation of frequency for the license issued by PEMRA and continued to illegally use the frequency assigned by defunct Wireless Board in respect of previous license and the petitioner never applied to FAB for allocation of frequency. Learned counsel further argued that the primary functions of controlling authority is to discourage monopoly, therefore, the legislature has incorporated Section 23 in the PEMRA Ordinance. Learned counsel for the Respondent No.3 further argued that even if the stance of the petitioner is accepted for the sake of arguments, the license of the petitioner stood expired in May, 2014, therefore, the petitioner is operating its network without a license, which is in violation of Section 19(2) of the PEMRA Ordinance. Learned counsel for the Respondent No.3 also argued that the principles of vested right and promissory Estoppel are wrongly relied on by the petitioner on the ground that the basic ingredients of the above mentioned principles are that the person claiming protection of these principles has to show the unambiguous lawful representation was made and the person has relied upon them has taken steps in accordance with law. Learned counsel further argued that the petitioner is required to abide the terms of the license and in view of the above facts, instant petition may be dismissed in the interest justice. In support of his arguments, he placed reliance on the following case law:-

- (1) **PLD 1962 SC 42 (Abdul Rasheed....v.....Pakistan).**
- (2) **PLD 1969 SC 599 (Nabi Ahmed & another.....v.....Home Secretary & others).**
- (3) **PLD 1971 SC 252 (Mian Rafiuddin....v....Chief Settlement Commissioner & others).**
- (4) **1992 SCMR 2430 (Federation of Pakistan....v....Mirza M. Irfan Baig & others).**
- (5) **2013 MLD 601 (Landirengo Pakisan (Pvt.) Ltd.....v.....Federation of Pakistan & others).**
- (6) **PLD 1991 SC 547 (Pakistan.....v.....Salahuddin & others).**
- (7) **1998 SCMR 1404 (MY Electronics.....v....Government of Pakistan & others).**
- (8) **(200) 3 ALL. ER 850. 877 (Coated by Lord Woolf MR in R...v/s.....North & East Devon).**

7. Learned counsel for the Respondent No.4 (Frequency Allocation Board) argued that Frequency Allocation Board (FAB), has come into existence under Section 42 of the Pakistan Telecommunication (Re-organization) Act, 1996 to take over the functions of the then Wireless Board, who has the exclusive authority to allocate and assign the radio frequency to the providers of telecommunication services and telecommunication systems, radio and television broadcasting operations, public and private wireless operators and others. According to learned counsel for respondent No.4, license for Radio Spectrum was issued to M/s.Pay T.V. not to the petitioner and the same expired in the year 1996 due to non-renewal. He also argued that prayer clause (i) and (ii) have become infructuous in the year 2010 as license was otherwise stood expired. Learned counsel further argued that licenses issued by both, PTA or PEMRA are similar but allocation of frequency from the FAB is required. Per learned counsel, after the passage of PTA Act, 1996 the petitioner was required to apply for frequency and under Section 21(6), which provides that *“Every person deemed to be a licensee under sub-section (5) shall, within three months from the commencement of this Act, supply to the Authority full details of his authorization, licence or permit, as the case may be, and apply for continuance of the licence under this Act.”*, Whereas, sub-section (7) of Section 21 provides that *“Where the Authority, on reviewing the authorization, licence or permit referred to in sub-section (6), is satisfied that such authorization, licence or permit, as the case may be, had been validly issued under the laws, rules or regulations in force at the commencement of this Act, the Authority shall, within nine months of the date of application made to it, issue an order that the person authorized thereunder, licence or the permit-holder shall be a licensee under this Act till the expiry of the term of the authorization, licence or permit with such modifications thereto as the Authority may consider appropriate”*. Learned counsel for FAB argued that if it is assumed that the petitioner held a valid ‘authorization’ for the assignment of frequency under the old regime, it would be assumed to hold a valid assignment of frequency until 12 months after the commencement of date 13.10.1997 but the petitioner did not do so. He further argued that in order to have the license continue, the petitioner was required to apply for ‘continuance’ within three months of the commencement date i.e. 13.01.1997 but it does not do so, means that it shall not be a ‘licensee’ and will have no valid permission. Learned counsel for FAB further argued that the petitioner has not demonstrated any inadequate entitlement to frequency under

this license and it has only demonstrated that frequency was assigned for the purposes for which the license was sought, therefore, upon the expiry of the license, the assignment of frequency also expired. Learned counsel for FAB argued that Section 58 of PTA Act, provides ‘Ordinance to override other laws’, and mentions that it shall override the Telegraph Act, 1885 and the Wireless Telegraphy Act, 1933. Learned counsel for FAB further argued that after promulgation of PEMRA Ordinance, 2002, the petitioner applied for a license which duration was ten years upto 2014 and the same was extended for another ten years, **but the frequency was never granted or applied**, however, the petitioner was able to operate as it did solely on the basis of status quo order of this Court, whereas, separate application for grant of frequency from FAB is required, which is evident from the scheme of the law and from the terms of license, but in the instant matter PEMRA’s internal approval has been provided, but the license would not have been granted until frequency was allocated by FAB. Learned counsel for the FAB argued that at this point of time under Rule 6(3) of PEMRA Rules, 2009, PEMRA may, where applicable, forward the application to FAB through PTA for frequency allocation and under Rule 9(4) the application may be processed simultaneously, however, the license shall not be granted until the approval of frequency from FAB, therefore, it is clear that independent allocation of frequency was required to be sought from the FAB. Learned counsel for FAB argued that as per Clause 26.3 of Terms of License, the license may be revoked if the Frequency Allocation Board (FAB) on the advice of the Authority revokes the assigned frequency on which the Licensed Service is for the time being provided, therefore, there is no concept of frequency or the license granted for an unlimited duration. Learned counsel for the FAB further argued that on 16.03.2004 prior to PEMRA license FAB wrote to the petitioner that the license issued by the Pakistan Wireless Board and the frequencies allocated to M/s.Pay T.V. Ltd were not transferable, therefore, it would be in the interest of M/s.Southern Networks Ltd. not to launch the MMDS Services prior to settlement of frequency issues, which cuts the petitioner’s contention that all the investments were under some guarantee from the regulator. Learned counsel for FAB argued that the prayer of the petitioner has become infructuous and their claim does not stand on merits either, **as the petitioner claiming a monopoly by using State’s frequency in perpetuity** by seeking the exclusive right to do so, therefore, prayed that instant petition must be dismissed. In support of his contention he placed reliance on the following case law:-

- (1) 2023 SCMR 1348 (Pakistan Electronic Media Regulatory Authority (PEMRA) & others....v.....Southern Networks Limited, Karachi.).
- (2) PLD 1998 S.C. 161 (Malik Asad Ali & others.....v.....Federation of Pakistan & others)

8. Learned D.A.G. has supported the arguments of learned counsel appearing for the Respondents.

9. Heard the learned counsel for the parties at length and perused the entire record and the relevant laws applicable to the facts of instant case, which reflects that applicant was granted license in the year 1995 for establishing T.V station (MMDS) as per telegraph Act 1885. For such license certain frequency spectrum was authorized/granted to applicant by Pakistan Wireless Board. Meanwhile, on the apprehension of suspension of license the petitioner sought status quo and same was granted vide order dated 22-05-1995 by this Court in C.P.No.D-971/1995. Thereafter, “*The Pakistan Telecommunications (Re-Organization) Act, 1996*” was promulgated. In the same Act (Section 58) actually overridden the Telegraphic Act, 1885 and wireless Telegraphy Act 1933. As per Section 21(5) of P.T.A Act, 1996 the previous licenses obtained before the commencement of this Act may subsists for ‘**twelve months**’ only until renewed under PTA Act subject to scrutiny under this Act and as per Section 21(6) it was mandatory requirement for licensee (previously obtained) to apply for continuity of the license and authorization within three month after commencement of this Act, which reads as under:-

“21(5) Subject to sub-section (7) and section 39 any person who, on commencement of this Act, holds an authorization, licence or permit validly issued under any law in force on that date for the establishment, maintenance or operation of any telecommunication system or the provision of any telecommunication service shall, unless it is contrary to the provisions of this Act and the rules and regulations made thereunder, be deemed to hold a licence in accordance with the provisions of this Act for a period of twelve months from the commencing date.

(6) Every person deemed to be a licensee under sub-section (5) shall, within three months from the commencement of this Act, supply to the Authority full details of his authorization, licence or permit, as the case may be, and apply for continuance of the licence under this Act.

(7) Where the Authority, on reviewing the authorization, licence or permit referred to in subsection (6), is satisfied that such authorization, licence or permit, as the case may be, had been validly issued under the laws, rules or regulations in force at the commencement of this Act, the Authority shall, within nine months of the date of the application made to it, issue an order that the person authorized thereunder, licensee or the permit-holder shall be a licensee under this Act till the expiry of the term

*of the authorization, licence or permit with such modifications thereto as the Authority may consider appropriate.*

**(8) If the Authority is not satisfied that an authorization, licence or permit referred to in subsection (5) was validly issued for any reason, it shall, by an order, direct that the deemed licence shall expire from the date of such order.**

Above statutory development reflects that license issued under the previous regime was made subject to further renewal and conditions under the new law, therefore, the claim of petitioner to have a license in perpetuity stands falsified. A license having expiry cannot be termed as license in perpetuity unless there were specific conditions outlined in the license agreement or under prevailing law. Similarly, as per Section 42 of PTA Act, 1996, a new Frequency Board was established, which had undertaken the work of Pakistan Wireless Board (established in consonance with Telegraph Act 1885), which is reproduced as under:-

**“42. Frequency Allocation Board.–(1) The Federal Government shall, by a Notification in the official Gazette, establish a Frequency Allocation Board to take over the functions performed by the Pakistan Wireless Board which shall, from the date of such notification, stand dissolved.**

10. Thereafter, PEMRA Ordinance, 2002 was promulgated on same subject matter, whereas, Section 37 (1) (b) of the Ordinance stipulates that private broadcasters shall henceforth be regulated by this PEMRA Ordinance. Generally only those provisions/ laws, which are contrary to provisions of PEMRA Ordinance have been overridden. Section 37 of PEMRA Ordinance, 2002 is reproduced as under:-

**37. Ordinance overrides other laws.–(1) The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force, or any contract, agreement or any other instrument whatsoever:**

*Provided that –*

*(a) the national broadcasters, namely the Pakistan Broadcasting Corporation shall continue to be regulated by the Pakistan Broadcasting Corporation Act 1973 (XXXII of 1973) and the Pakistan Television Corporation and Shalimar Recording and Broadcasting Company Limited shall continue to be administered under the provisions of the Companies Ordinance 1984 (XLVII of 1984); and*

**(b) other existing private broadcasters or CTV operators who had been granted respective monopolies in multi-modal distribution system, cable TV and in FM radio shall henceforth be regulated by this Ordinance except in respects where specific exemptions are granted by the Authority**

Similarly, under PEMRA **Rules 2002**, Rule 26 (2) provides that the existing broadcasters have to apply for license under new PEMRA laws. Rule 26(2) is reproduced as under:-

*26. Validation of existing broadcast and cable TV stations.- (1) The existing cable TV operators, who on the commencement of the Ordinance, held licences issued by PTA, shall be deemed to hold valid licences in accordance with the provisions of the Ordinance and the rules made thereunder and the terms and conditions of the licences as provided in these rules, and issued from time to time, by the Authority. The annual fee for renewal of the licences shall be payable to the Authority after the commencement of the Ordinance;*

*(2) The existing private broadcasters, who on the commencement of the Ordinance, were in operation after having been granted respective monopolies in multi-modal distribution system and FM radio, shall, within sixty days from the date on which these rules are notified, apply for the broadcast licences under the provisions of these rules; and the Authority, on receipt of the applicable fees and the security deposit, shall grant the licence, subject to such terms and conditions, as the Authority may, from time to time, prescribe.*

Whereas, under Rule 9(2) of the PEMRA Rules, 2002, it has been provided that the licensing authority will forward the application to Frequency Board for allocation of frequency, and Rule 9 (4) clearly put a restriction that no license shall be granted until approval of frequency allocation. Rule 9 of PEMRA Rules is reproduced as under:-

**9. Particulars of application for grant of a licence to operate a broadcast or cable TV station.-**

*(1) The applicant shall indicate the desired category of licence from amongst the categories and the sub-categories provided in rule 6.*

*(2) Every application for grant of licence shall be accompanied by the application processing fee(non-refundable), as prescribed by these rules and set out in the Table contained in the Schedule.*

***(3) The Authority may forward the application to the Frequency Allocation Board (FAB) to ascertain whether the frequency proposed to be utilized by the applicant is:***

*i. available;*

*ii. suitable for the system; and*

*iii. the application, prima facie, conforms to the criteria for allocation of frequency.*

***(4) The application may be processed simultaneously; however, the licence shall not be granted until the approval of frequency allocation is received from FAB.***

It infers from the aforementioned section that Frequency Allocation Board (authorization of frequency) is in consonance with the license authority under PEMRA laws as well as PTA Act. With the renewal of license the frequency has to be authorized according to new parameters as governed under PTA Act and thereafter PEMRA laws. Similarly Rule 9 (4) of PEMRA Rules 2009 also suggest the same policy that authorization of frequency is pre-requisite for granting license. Similarly following clause has been inserted to diminish the monopoly of broadcasters/ distributors:-

**“23. Exclusion of monopolies.”-(1) No person shall be entitled to the benefit of any monopoly or exclusivity in the matter of broadcasting or the establishment and operation of broadcast media or distribution service or in the supply to or purchase from, a national broadcaster of air time, programmes or advertising material and all existing agreements and contracts to the extent of conferring a monopoly or containing an exclusivity clause are, to the extent of exclusivity, hereby declared to be inoperative and of no legal effect.**

**(2) In granting a licence, the Authority shall ensure that open and fair competition is facilitated in the operation of more than one media enterprise in any given unit of area or subject and that undue concentration of media ownership is not created in any city, town or area and the country as a whole:**

11. Apart from above, the Hon’ble Supreme Court has also discussed the niceties of issuance of license which is a sole prerogative of PEMRA, which is statutory authority. It would be worth to reproduce the edict reported in the case of ***Mag Entertainment (Pvt.) Ltd....v.....Independent Newspapers Corporation (Pvt.) Ltd. (2018 SCMR 1807):-***

**“It is clear that section 23 of the PEMRA Ordinance confers upon PEMRA a duty to ensure "that undue concentration of media ownership is not created in any city, town or area and the country as a whole." "Undue concentration" is not defined in the PEMRA Ordinance. In fact, section 39(e) of the PEMRA Ordinance allows PEMRA to frame rules with respect to defining "the circumstances constituting undue concentration of media ownership and abuse of powers and anti-competitive practices by media companies." As the regulator, PEMRA is best placed to assess the "media market" in terms of the factors outlined in paragraphs 8 and 9 hereinabove and other relevant considerations. It is evident that having considered the relevant factors, PEMRA was of the view that vertical integration, which would come about as a result of the broadcasters being allowed to also hold distribution licences, would be detrimental to the public interest in that it would stifle choice which PEMRA is mandated to encourage. Therefore PEMRA framed and amended the PEMRA Rules 2009 to exclude such vertical integration by means of Rule 13(4) whereby a broadcaster was barred from also holding a distribution licence. There is no violation of the respondent's fundamental rights by so doing; Article 18 of the Constitution allows for the regulation of businesses. This regulation may be in the form of licenses which carry certain conditions to protect the public interest. In this particular matter the public interest is best served by ensuring that the "media market" is one where genuine competition prevails. We cannot make a fetish of the respondent's purported fundamental right to compete for and acquire a distribution license in addition to its broadcasting license(s) at the expense of the broader public interest of genuine healthy competition and the resultant choice. In the circumstances, these appeals are allowed and the impugned judgment is set aside.”**

12. In the case in hand, it appears that the petitioner, after having obtained status quo order has been using the frequency spectrum which was allotted to petitioner by Pakistan Wireless Board under Telegraph Act 1885. However, in view of the statutory development on the subject, as per enactment of PTA Act, 1996, the renewal of license along with fresh authorization of frequency was required. Similarly, as per PEMRA law

(PEMRA Ordinance, 2002) the authorization of frequency is mandatory requirement for issuance of license, however, petitioner has failed to comply with above legal requirements. As per new advancements in technology the Government of Pakistan has indeed updated its infrastructures of telecom sector which need implementation of new laws from time to time. As such there is no intention of the Legislature that once frequency obtained/granted or license is issued, it would be deemed to be in perpetuity. Rather with new enactment of laws, the Rules, made thereunder have to be followed in letter and spirit. As per wisdom of the legislature from the enactment of PTA Act 1996 and PEMRA Ordinance, 2002, it could easily be inferred that once the licensed has been expired / annulled or revoked, the authorization of frequency would be deemed to end. As such Frequency allocation Board is aligned with license authority.

13. License is mere a privilege, it does not mean that licensee has acquired any vested right in subject matter. More so, no one can claim vested rights on ground of *locus poenitentia* as such the legislature/authority which can pass an order, is entitled to vary, amend, add to or to rescind that order. Generally, the license issued by Government is not in perpetuity neither these licenses could be deemed as license coupled with interest. As such, in enactments revocation grounds are always available. Right to license on any trade or business is always subject to restrictions and qualification, if any, governed by law as discussed in the case of *Landirengo Pakistan (Pvt.) Ltd.....v..... Federation of Pakistan & others reported in 2013 MLD 601 [Sindh]*:-

**“28. Issuance of such licences under the law are only privileges and does not confer a vested right and is often required as condition precedent to the right to carry on some business. The State may by law direct that certain trades or professions will not be carried on except under a licence and it may by licence determine the place where and the time when certain business are to be conducted. Such views were observed by Indian Supreme Court in case of Ramdhandas and another v. State of Punjab reported in AIR 1961 SC 1559.”**

Similarly principle of promissory estoppel which otherwise not attracted in the facts and circumstances of instant case, does not operate against the law and cannot be used to enforce promises that go against the policies and generally cannot bypass or nullify statutory objections if there are specific legal requirement provided by law. Promissory estoppel alone may not be sufficed to

override them. It is a well settled law that the doctrine of promissory estoppel does not extend to legislative, executive or sovereign functions of the State as decided by the Hon'ble Supreme Court of Pakistan in its judgment reported in ***PLD 1991 S.C. 546 (Pakistan through Secretary, Ministry of Commerce and others.....v.....Salahuddin 3 others):-***

*“It may also be observed that at the same time, it was also highlighted that the doctrine of promissory estoppel was subject to the following limitations:--*

*(i) the doctrine of promissory estoppel cannot be invoked against the legislature or 'the laws framed by it because the legislature cannot make a representation;*

*(ii) promissory estoppel cannot be invoked for directing the doing of the thing which was against the law when the representation was made or the promise held out;*

*(iii) no agency or authority can be held bound by a promise or representation not lawfully extended or given;*

*(iv) the doctrine of promissory estoppel will not apply where no steps have been taken consequent to the representation or inducement so as to irrevocably commit the property or the reputation of the party invoking it; and*

*(v) the party which has indulged in fraud or collusion for obtaining some benefits under the representation cannot be rewarded by the enforcement of the promise.”*

*.....As it is now well settled that no estoppel exists against law, therefore, keeping in view the facts and circumstances of the cases, we are compelled to observe that one wrong of the respondents of not claiming their right earlier cannot be acted upon as a precedent when it comes to give effect to the express words of a statute. If a person has been bestowed some legal right by law/statute and he omits to claim such legal right for a certain period of time, it does not mean that he has waived his legal right and subsequently he cannot claim such right. Inherent power and doctrine of estoppel cannot be applied to defeat the provisions of statute.*

14. In view of rationale and deliberations discussed above, the instant petition was dismissed at the conclusion of the hearing vide short order dated 14.12.2024 in the following terms:-

**“14.12.2023.**

**M/s.Abbas Leghari and Nadeem Ahmed, Advocates for the Petitioner.**

**Mr.Badar Alam, Advocate for the Respondent No.2**

**M/s.Kashif Hanif, Sarmad Ali, Zafar Iqbal Arain and Ms.Shaista Perveen, Advocates for Respondent No.3 (PEMRA).**

**Mr.Salar Khan, Advocate for the Respondent No.4 (Frequency Allocation Board)**

**Mr.Ali Akbar Sehto, Deputy Director Law PTA.**

**Mr.Khaleeq Ahmed, D.A.G.**

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After hearing all the learned counsel for the parties at length, for the reasons to be recorded later on, instant petition is dismissed along with pending applications. However, the petitioner may approach PEMRA under Rule 6 of PEMRA Rules, 2009 within fifteen (15) days by filing application, for grant of MMDS license to operate broadcast media or distribution service as the case may be, and also to approach Frequency Allocation Board (FAB) for allocation of frequency, which application(s) shall be decided in accordance with law at an early date, however, not later than 100 days as provided under Rule 9 of PEMRA Rules, 2009, however, till decision on such the application(s) of the petitioner, no adverse action shall be taken against the petitioner.

It is however, clarified that in case, petitioner does not approach the PEMRA authorities within fifteen (15) days from the date of this order in the above terms, respondents may be at liberty to proceed in accordance with law and relevant rules.”

15. Above are the reasons of our short order dated 14.12.2023.

Judge

Chief Justice