

Judgment Sheet

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

Present:

Mr. Justice Muhammad Shafi Siddiqui, CJ  
Mr. Justice Jawad Akbar Sarwana

**Constitution Petition No. D – 2646 of 2024**

**Shahid Hussain & Four (4) Others v. M/s PEMRA & Three (3) Others**

- Petitioners : (1) Shahid Hussain, (2) M. Amin Anwar,  
(3) Muhammad Asghar, (4) Irfan-ul-Haq  
and (5) Shoukat Korai, through M/s  
Muhammad Tariq Mansoor, Advocates
- Respondent Nos.1 & 2 : M/s PEMRA through its Chairman, The D.G.  
Operations Broadcast Media PEMRA,  
through Mr. Amel Khan Kasi, Advocate.
- Respondent Nos.3 : The Federation of Pakistan, through its  
Secretary Ministry of Information and  
Broadcasting, Government of Pakistan,  
through Mr. Zia-ul-Haq Makhdoom,  
Additional Attorney General, Mr. Khaleeq  
Ahmed, D.A.G and Ms. Wajiha Mehdi,  
D.A.G.
- Respondent Nos.4 : Pakistan Broadcaster Association (PBA)  
through Nemo

**Constitution Petition No. D – 2802 of 2024**

**Pakistan Federal Union of Journalists (PFUJ) v. The Federation of  
Pakistan & Two (2) Others**

- Petitioner : Pakistan Federal Union of Journalists (PFUJ),  
through its Secretary General, Mr. Alauddin  
Khanzada through M/s Abdul Moiz Jaferii  
and Aadil Lalani, Advocates
- Respondent No.1 : The Federation of Pakistan, through its  
Secretary Ministry of Information and  
Broadcasting, Government of Pakistan,  
Through Mr. Zia-ul-Haq Makhdoom,  
Additional Attorney General, Mr. Khaleeq  
Ahmed, D.A.G and Ms. Wajiha Mehdi,  
D.A.G.
- Respondent Nos.2 & 3 : Pakistan Electronic Media Regulatory  
Authority (PEMRA) through its Chairman,  
and The Director General (PEMRA).

Operations Broadcast Media, through  
Mr. Amel Khan Kasi, Advocate.

Dates of Hearing : 12.08.2024, 05.09.2024, and 09.10.2024

Date of Judgment : 22.11.2024

### **COMMON JUDGMENT**

JAWAD AKBAR SARWANA, J.: The petitioners, who are journalists / professionals / “Court Reporters” for various Satellite TV Channels, and the Pakistan Federal Union of Journalists (“PFUJ”), in these two petitions, claim to be aggrieved persons and have impugned two (2) Directives of the Pakistan Electronic Media Authority (“PEMRA”)(Respondent No.1) issued under the Pakistan Electronic Media Regulatory Authority Ordinance (“PEMRA Ordinance”), 2002,<sup>1</sup> to Satellite TV Channel Licensees, namely, Directive No.3(07)/2024/OPS-BM/5485 dated 21.05.2024 (Islamabad)<sup>2</sup> and a Corrigendum of even date (Islamabad)<sup>3</sup> regarding handling news and current affairs programmes' content concerning sub-judice matters and court proceedings. These petitions are decided by way of a common judgment.

2. Counsel for the petitioners contend that the impugned directives cannot be enforced as they result from an illegal process which is covered neither by the PEMRA Ordinance, 2002 nor the Pakistan Electronic Media Regulatory Authority Rules (“PEMRA Rules), 2009. Counsel argued that the Directives are arbitrary, patently illegal, unconstitutional, and tantamount to imposing a complete and total ban on Court reporting of sub-judice matters. They seek declarations to this effect and pray that the impugned Directives be cancelled and/or set aside. Counsel for PEMRA vehemently denies contentions of the Petitioner Counsel. He submits that the directives have been issued in accordance with law, are proper, and are currently being enforced by

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<sup>1</sup> Pakistan Media Regulatory Authority Ordinance, 2002 as amended by the Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2023 (as of 16.08.2023)

<sup>2</sup> Marked and reproduced hereinbelow as Exhibit “A”

<sup>3</sup> Marked and reproduced hereinbelow as Exhibit “B”

Respondents, PEMRA. He argued that they introduced nothing new and simply clarified PEMRA's Code of Conduct - 2015.

3. We have heard Counsels and the learned AAG and perused the documents on record. To address the challenge raised by the petitioners against the impugned Directives, we propose to discuss the content of the impugned directive(s), its status, compare it to the provisions of the Electronic Media (Programmes and Advertisements) Code of Conduct – 2015 (hereinafter referred to as “the Code”), which are currently in force, examine if the impugned Directives have been issued within the framework of the relevant laws and regulations and case law applicable to the case at hand and finally assess if the impugned Directive(s) are violative of Articles 4, 18, 19 and 19-A of the Constitution of Pakistan, 1973.

4. The extract of the two impugned Directives, Exhibit “A” and “B”, are reproduced hereinbelow.

### **Exhibit “A”**

“PAKISTAN ELECTRONIC MEDIA  
REGULATORY AUTHORITY  
ISLAMABAD

PEMRA Headquarters,  
Mauve Area,  
G-8/1, Islamabad,  
Ph: 051-9107176

Islamabad, the 21<sup>st</sup> May, 2024

No.3(07)/2024/OPS-BM/5485

**All Satellite TV Channel Licensees  
(News and Current Affairs & Regional Languages Channels)**

Subject: **Directives – Discussions on Sub-Judice matters**

Reference is invited to specific provisions of Electronic Media (Programmes and Advertisements Code of Conduct, 2015 on the subject matter are reproduced as under:

4. **News and current affairs programmes:**– The licensee shall ensure that :-

(3) Programmes on sub-judice matters may be aired in informative manner and shall be handled objectively:

Provided that **no content shall be aired, which tends to prejudice the determination by a court, tribunal or any other judicial or quasi-judicial forum.**

(6) Content based on extracts of court proceedings, police records and other sources shall be fair and correct.

It is pertinent to mention here that the Supreme Court of Pakistan has laid down certain principles with regard to discussion on sub-judice matters in its judgment passed in suo Moto Case No.28 of 2018 dated September 12, 2018 (reported as 2019 PLD SC 1) and the same was communicated to satellite TV channels on various occasions. Except of relevant part of the referred judgment is reproduced below:

...

3. Moreover, in judgment passed by the Supreme Court of Pakistan in civil Petition No.3258 of 2017 has made the following observation:

40. During the course of hearings we observed that whilst most of the media acted maturely and fairly reported the proceedings, there were some who violated the parameters of factual reporting and also broadcasted and printed views of persons who were interested in a particular outcome of this case. **The media should not dilate on a sub judice case, rather should only accurately report the proceedings.** However, once a judgment is announced it may be analyzed, evaluated or critiqued.

4. It has been observed with the concern that satellite TV channels, in talk shows/news bulletins/tickers, while reporting court proceedings are airing content out of context. Channels are airing exaggerated versions and statements of legal counsels in order to spread despair, sensationalism and to attract high ratings. Furthermore, observations made by the judges have been broadcasted without mentioning the context and without waiting for the court order/decision. Therefore, airing of such content shows negligence on the part of editorial boards of the TV channels.

5. Whereas, all PEMRA licensees are obliged to comply with the provisions of PEMRA Ordinance 2002, PEMRA Rules, Electronic Media (Programmes and Advertisements) Code of Conduct, 2015, Regulations, terms and conditions of the license and directives issued by the Authority.

6. Foregoing in view, all Satellite TV channel licensees in the genre of "News and Current Affairs" and "Regional Language" are hereby directed that **no content, including commentary, opinions or suggestions about the potential fate of such sub judice matter which tends to prejudice the determination by a court, tribunal, etc., shall be aired. Further TV Channels are directed to refrain from airing tickers/headlines with regard to court proceedings till the final order.**

7. All satellite TV channel licensees are once again directed to ensure strict compliance to the PEMRA laws and Electronic Media (Programmes and Advertisements) Code of Conduct, 2015 and follow the principles of law as laid down in the judgment of the Hon'ble Supreme Court of Pakistan passed in Suo Moto Case No.28 of 2018 (reported as 2019 PLD SC 1) in letter and spirit.

8. In case of any violation observed legal action under Section 27, 29, 29-A and 30 of PEMRA Ordinance shall be initiated.

9. This issues with approval of the Chairman PEMRA.

Director General  
(Operation-Broadcast Media)"

### **Exhibit "B"**

"PAKISTAN ELECTRONIC MEDIA  
REGULATORY AUTHORITY  
ISLAMABAD

PEMRA Headquarters,  
Mauve Area,  
G-8/1, Islamabad,  
Ph: 051-9107176

Islamabad, the 21<sup>st</sup> May, 2024

No.3(07)/2024/OPS-BM/5485

**All Satellite TV Channel Licensees  
(News and Current Affairs & Regional Languages Channels)**

#### **CORRIGENDUM**

Reference; Directives with regard to discussions on sub-judice matters issued vide letter No.3(07)/2024/OPS-BM/5485, dated May 21, 2024.

2. It is conveyed that the text of Para-6 of directives under reference may please be read as per the following amended text:

Foregoing in view, all Satellite TV channel licensees in the genre of "News and Current Affairs" and "Regional Language" are hereby directed that **no content, including commentary, opinions or suggestions about the potential fate of such sub judice matter which tends to prejudice the determination by a court, tribunal, etc., shall be aired. Further TV Channels are directed to refrain from airing tickers/headlines with regard to court proceedings and shall only report the written orders of court. However, where court proceedings are broadcast live, such proceedings may be reported by the TV channels.**

3. This issues with approval of the Chairman, PEMRA.

Director General  
(Operation-Broadcast Media)"

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5. At the outset, it is clear from the impugned Directives that the second Directive, titled "CORRIGENDUM", amended and replaced paragraph 6 of the first (initial) Directive. Thus, the first (initial) Directive is now modified by the "CORRIGENDUM" to the extent of paragraph 6 and stands merged into the first (initial) Directive. All references made by us in this Common Judgment to the "impugned Directive", means

both the Directive dated 21.05.2024 and the merged “CORRIGENDUM” dated 21.05.2024.

6. One of the arguments the Counsel for PEMRA raised was that the impugned Directive(s) did not introduce anything new and clarified the position already clearly set out in the Code and judgments of the Supreme Court. Accordingly, it may be relevant to compare the impugned Directive(s) with the relevant provisions of the Code relating to court proceedings, particularly the operative paragraph of the impugned Directive, that is, paragraph 6 of the Directive and the Code both placed side by side to each other in tabular format. The resultant tabular comparison is shown below, albeit with certain edited changes to accentuate the similarities, overlaps and differences.

Column “A”	Column “B”
<p align="center"><b>Electronic Media Code of Conduct – 2025 (Provisions relating to sub-judice matters/court proceedings)</b></p>	<p align="center"><b>Impugned Directive (1 of 2) issued by PEMRA as modified by the Corrigendum  (Paragraph 6 only)</b></p>
<p>Clause 4. News and current affairs programmes:- The licensee shall ensure that :-</p> <p>(1) . . .</p> <p>. . .</p> <p>(3) Programmes on sub-judice matters may be aired in informative manner and shall be handled objectively.</p> <p>Provided that no content shall be aired, which tends to prejudice the determination by a court, tribunal or any other judicial or quasi-judicial forum.</p> <p>. . .</p>	<p>Foregoing in view, all Satellite TV channel licensees in the genre of “News and Current Affairs” and “Regional Language” are hereby directed that <b><u>no content, including commentary, opinions or suggestions about the potential fate of such sub judice matter which tends to prejudice the determination by a court, tribunal, etc., shall be aired.</u></b> [Portion - “B1”]</p> <p><b><u>Further TV Channels are directed to refrain from airing tickers/headlines with regard to court proceedings and shall only report the written orders of court.</u></b> [Portion - “B2”]</p>

(6) Content based on extracts of court proceedings, police records and other sources shall be fair and correct.	<b><u>However, where court proceedings are broadcast live, such proceedings may be reported by the TV channels.</u></b>
(9) News or any other programme shall not be aired in a manner that is likely to jeopardize any ongoing inquiry, investigation or trial.	[Portion - "B3"]

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7. The impugned Directive contains two operative parts. The first operative part is found in paragraph 6 of the impugned Directive, and the second operative part is contained in paragraph 7. The references to the impugned Directive in this Common Judgment are to the first operative part of the impugned Directive, which is paragraph 6. It may be noted that paragraph 7 of the impugned Directive directs all satellite TV channel licensees to follow the principles laid down in the judgment of the Supreme Court in *In the matter of: Suo Motu Case No.28/2018* in letter and spirit. However, paragraph 7 of the impugned Directive gives direction to follow the “principles of law” but does not state specifically where these principles are to be found in the impugned Directive, say, for example, the roman numerals (i) to (x) on pages 30 and 31 of the reported Judgment.<sup>4</sup> The ratio and principles of law are detailed throughout the Suo Motu judgment, not just on pages 30 and 31. Further, paragraph 2 of the impugned Directive, reproduces paragraph 19 of the Suo Motu judgment as “excerpts of relevant part of the referred judgment”. Paragraph 2 does not state that paragraph 19 is a directive of PEMRA. Further, paragraph 19 of the Suo Motu judgment itself does not describe the roman numerals (i) to (x) are “principles of law”. Thus, the so-called “principles of law” of paragraph 7 are not expressly identified in said paragraph of the impugned Directive. However, as the Suo Motu Case is important in the context of the Directive, therefore, while discussing paragraph 6 of the impugned Directive, we have cross-referenced other paragraphs of the Suo Motu Judgment, which are not

<sup>4</sup> *In the matter of Suo Motu Case No.28 of 2018*, PLD 2019 SC 1

reproduced in the impugned Directive as well as the relevant clauses in the Code.

8. It may not be out of place to mention here that the current Code of Conduct – 2015 had its genesis based on a consensus reached between the Pakistan Broadcasters Association (PBA), other stakeholders and the Federal Government pursuant to a case before the Supreme Court of Pakistan in Hamid Mir and Another v. Federation of Pakistan and Others, etc. (Constitution Petition No.105/2012). The Code also enjoyed the blessings of an order of the Supreme Court dated 18.06.2015, was duly notified by the Federal Government and incorporated into the Rules. About three years later, a three-member bench of the Supreme Court of Pakistan in In the matter of: Suo Motu Case No.28 of 2018, PLD 2019 SC 1, once again, scrutinised the clauses of the Code, particularly its Clause 4. In paragraph 14 of the said Judgment, the Apex Court made the following observations regarding Clauses 4(3) and 4(6) of the Code:

“While Clause 4(3) of the Code of Conduct allows programmes on sub judice matters to be aired, thereby guaranteeing the rights enshrined in Articles 19 and 19A of the Constitution mentioned above, the regulation and reasonable restrictions imposed are that such programmes are aired in an informative manner, are handled objectively [Clause 4(3) of the Code of Conduct], and that no content is to be aired which would tend to prejudice the determination by a Court, Tribunal or any other judicial or quasi-judicial forum [Proviso to Clause 4(3) of the Code of Conduct]. Furthermore, Clause 4(6) of the Code of Conduct states that content based on extracts from court proceedings, police records and other sources shall be fair and correct, while Clause 4(9) thereof prohibits news or any other programme from being aired in a manner that is likely to jeopardize any ongoing inquiry, investigation or trial. Therefore, the foregoing clauses ensure that the freedom of speech and right to information (Articles 19 and 19A of the Constitution) are protected, and at the same time provide that the discussion of sub judice matters must be conducted in a manner which does not negatively affect another person's fundamental right to be dealt with in accordance with the law (Article 4 of the Constitution) and the right to fair trial and due process (Article 10A of the Constitution).”

9. The Code, including the relevant clauses of the Code pertaining to sub-judice matters and court proceedings, stood sanitized by the Court of last resort in 2015, and again in 2018. In In the matter of: Suo Motu Case No.28 of 2018, the apex Court had the opportunity to test the relevant clauses from the Code to an actual event and found that Clause 4(3), 4(6) and 4(9) as structured were not violative of the Articles



of the Constitution of Pakistan and struck a right balance between the freedom of expression and the right to information (Articles 19 and 19A). Further, the clauses in question did not disturb another person's fundamental right to be dealt with in accordance with law (Article 4) and the right to a fair trial and due process (Article 10A) and did not interfere or obstruct the process of the court in the way of disobedience (Article 204). Thus, the contents of the impugned Directive must be examined in the context of the Code, keeping in mind the observations of the Supreme Court in the above *Suo Motu Case*.

10. Portion - "B1" of the impugned Directive on an initial reading appears to be a re-formulation of Clause 4(3) and 4(9) of the Code picking up upon the observations of the Supreme Court from *In Suo Motu Case No.28/2018*. However, on closer examination, content-wise, whereas Clause 4(3) permits the airing of programmes on sub-judice matters in an "informative manner" and on the basis that it is "handled objectively," Portion - "B1" imposes a blanket ban on airing news and current affairs programmes on pending matters. It may be noted that Portion "B1" of the impugned Directive is the exact reproduction of a part of a paragraph appearing in roman numeral (iii) on page 30 of *In the matter of Suo Motu Case No.28 of 2018*. This Portion - "B1" inserted by PEMRA as an operative part of the impugned Directive is neither a summary of the *Suo Motu Case* nor a summary of the impugned Directive. In the circumstances, Portion - "B1" is more of a cut-and-paste job that is out of context from the Supreme Court's *Suo Motu Case* itself. Without making all the material observations made by the Supreme Court in the *Suo Motu Case* an operative part of the impugned Directive, the said Portion - "B1" alone cannot be said to be a direction of the Supreme Court as suggested by PEMRA in the impugned Directive and argued by their Counsel before us. If PEMRA wanted, it could have directed parties to adhere to the specific ratio laid down in the said *Suo Motu case*. But PEMRA did not do so. PEMRA merely reproduced the principles on pages 30-31 of the reported *Suo Motu Case*. It did not indicate (as in paragraph 2) that these sub-points of paragraph 19 in the shape of roman numerals (i) to (x), which were

being reproduced in paragraph 2 of the impugned Directives, are directions. PEMRA's directions are only found in paragraphs 6 and 7 of the impugned Directive (see paragraph 7 above).

11. PEMRA does not appear to have appreciated that the Supreme Court In *In the matter of: Suo Motu Case No.28 of 2018* approved the Code and its "reasonable restrictions". For instance, Clause 4(3) of the Code with the phrases "informative manner" and "shall be handled objectively" was approvingly cited by the Supreme Court as encompassing the principles of constitutionality and reasonable restrictions and left untouched. However, these reasonable restrictions are left out from Portion - "B1" of the impugned Directive. Portion "B1" of the impugned Directive excludes the rest of the observations of the Supreme Court, which are part of the body of the *In the matter of: Suo Motu Case No.28 of 2018*. For instance, the Code allows the airing of programmes on sub-judice proceedings provided they are aired in an "informative manner" and "handled objectively" by the licensee and provided such content does not tend to prejudice the determination by a court, tribunal or any other judicial or quasi-judicial forum. In *In the matter of: Suo Motu Case No.28 of 2018*, the Supreme Court opined that "the phrase [in the proviso] 'tend to prejudice' in the context of sub-judice matters would mean that a sub judice matter is discussed in a manner which is likely to, or has a mere tendency to result in pre-judgment or forming of an opinion to the disadvantage of any person therein, without proper grounds or knowledge with regards to such proceedings/investigation/inquiry". The Suo Motu case has approved this modus operandi of Clause 4(3) set out in the Code; but the Portion "B1" of the impugned Directive is a complete ban. According to Portion "B1", "no content. . .is to be aired"(ellipsis are ours). If this position is accepted, then certain clauses in the Code, such as, Clause 4(10) become meaningless. Clause 4(10) of the Code concerning "Editorial Oversight" requires that the concerned personnel of the licensee dealing with airing of a programme internally discuss and review the contents of the programme before it is aired or recorded, ensuring that the programmes on sub-judice matters when they are aired, they are done

so, in an “informative manner” and are “handled objectively”. Additionally, the “Editorial Oversight” has to ensure that no programme is aired or recorded whose content “tends to prejudice the determination by a court, tribunal, etc.” The Portion “B1” of the impugned Directive places a complete ban halting all content pertaining to sub-judice matters without providing any discretion to the licensee. The term “content” in the Directive includes “commentary, opinions or suggestions”, thereby reducing the utility of Clause 4(10) to a cipher. Therefore, we find that Portion - “B1” of the impugned Directive has made material changes to media reporting on sub-judice matters as framed under Clause 4(3) and (9) of the Code, which the Supreme Court sanitised in *In the matter of: Suo Motu Case No.28 of 2018*. The impugned Directive has removed the reasonable restrictions. PEMRA’s position that the impugned Directive is being introduced because of the Suo Motu Case is at odds with the Suo Motu Case itself when read as a whole.

12. Portion - “B2” of the impugned Directive also appears to be a significant departure from Clauses 4(3) and 4(6) of the Code. Before proceeding to examine the implications of Portion – “B2” on Clauses 4(3) and 4(6), it will be helpful to dilate on the term “extracts of court proceedings” found in the Code, which term is not mentioned in the impugned Directive, presumably replaced by the reference to “the written orders of court”. The term “extracts of court proceedings” is not defined under the landscape of PEMRA laws and was not discussed in the *In the matter of: Suo Motu Case No.28 of 2018*.

13. We have checked the law and found that the term “extracts” appears neither in the Civil Procedure Code, 1908, nor the Qanun e Shahadat Order, 1984,<sup>5</sup> nor the Sindh Civil Courts Ordinance, 1962. Given this predicament, the term “extracts of court proceedings” in the context of Clause 4(6) of the Code may be read to include, references to, inter alia, a copy (be it certified or uncertified) of a judgment or an

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<sup>5</sup> According to Article 85(3) of the Qanun e Shahadat Order, 1984 “documents forming part of the records of judicial proceedings” are public documents. But the Code does not refer to “public documents” here.

order of the court; a diary of court proceedings maintained by the Registrar, the Nazir (the Marshall), the Official Assignee, a Court-appointed Commissioner for Recording Evidence, a Magistrate or Judge in relation to and/or in connection with court proceedings; a copy of pleadings, affidavits, written comments, statements, sworn testimony (examination-in-chief, cross-examination, re-examination) obtained from the court as a part of court proceedings; any document or thing exhibited in and/or forming part of the evidence in a case (or available on the court's record); electronic recording/data of court proceedings conducted through video link; copy of Powers of Attorney, Vakalatnama and/or any other material or information available in the official case file of the court (be it pending or consigned to record) – all such material falls within the ordinary definition of “extracts of court proceedings”.

14. It is, therefore, apparent from the preceding analysis that an “extract of court proceedings” in the Code is not limited to the court's written orders only. Further, “extracts of court proceedings” also do not mean, in the literal sense, the selection of phrases and paragraphs from the Court's written orders. Clause 4(6) of the Code enables news and current affairs programs to draw and rely upon as part of their content on all the substantial material described herein as “extracts of court proceedings”. As a corollary, this means that under the Code, PEMRA expects the licensee's content pertaining to news and current affairs programmes to be based on extracts of court proceedings, which the licensee will ensure is fair and correct.

15. Given the above reading of Clause 4(6) of the Code, Portion - “B2” of the impugned Directive introduces several prohibitions to and removes restrictions from the Code approved by the Supreme Court in *In the matter of: Suo Motu Case No.28 of 2018*. First, the impugned Directive imposes a complete content ban on airing tickers/headlines concerning court proceedings. Tickers and headlines comprise the briefest summary. By default, they flash across our TV screens and are short and pithy, aiming to convey a message in the shortest number of

words.<sup>6</sup> A ban on airing tickers/headlines means eliminating news of extracts of court proceedings in summary form, which was not previously prohibited under the Code. Secondly, the impugned Directive's direction to licensees to refrain from airing tickers/headlines of court proceedings also constitutes a restriction on the type of medium/vehicle of communication previously available to the licensee to convey information. The medium of using tickers/headlines is no longer available to communicate certain information now. In other words, the medium of broadcasting information through tickers/headlines is available to licensees for communicating all kinds of information but not information pertaining to court proceedings. This is not allowed. The Code does not impose such a restriction. Thirdly, Portion - "B2" of the impugned Directive narrows the definition of "extracts of court proceedings" as it requires that TV Channels to only "report the written orders of the court." As discussed earlier, the term "extracts of court proceedings" has a broad definition, but according to PEMRA, only the court's written orders are to form the basis of content, as opposed to "extracts of the court proceedings". Finally, whereas the licensee under the Code has the discretion to state its opinion or comment or make suggestions based on "extracts of court proceedings including interpret a court's order and thereafter analyze it or report in his own words, now, as per Portion - "B2" of the impugned Directive, the licensees cannot do so. TV Channels are directed to "report the written orders of the court" only. Reporting on the written order also implies that the TV Channel cannot state its opinion even in a fair and correct manner. This new recommendation by PEMRA in the impugned Directive is opposed to the Code of Conduct's protocol available to a licensee when dealing with sub-judice matters in court who could generate media content for its news and current affairs programmes based on an interpretation of a court order in a fair and correct manner. Now, it appears that summarising, paraphrasing, rephrasing, reframing, reflecting, debating, and discussing the written order of the court is to

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<sup>6</sup> An example of a digital communication platform which limits words to convey messages is Elon Musk's currently banned in Pakistan social media platform, "X" (formerly known as Twitter) or Marc Zuckerberg's "Threads".

be refrained from, limiting the content of court proceedings to only reporting the written orders of the Court. The Supreme Court of Pakistan in Pakistan Electronic Media Regulatory Authority (PEMRA) through Chairman and another v. Messrs. ARY Communications (Pvt.) Ltd (ARY DIGITAL) through Chief Executive Officer and Another (“ARY Communications case”), PLD 2023 SC 431, 442, has summarized PEMRA’s responsibility in the following terms:

“9. PEMRA on the one hand has to ensure that the freedom of expression through media broadcast is enhanced without infringing the reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court or commission or incitement of an offence under Article 19 of the Constitution. While on the other hand, it also has to ensure that the right to information of the public is enlarged without impinging on the reasonable restrictions imposed by law under Article 19A of the Constitution. These constitutional restrictions are further actualized through the restrictions provided under PEMRA Ordinance and the rules, regulations and the code of conduct developed thereunder. The "reasonable restrictions" flow from Articles 19 and 19A of the Constitution and the statutory restrictions by and under the PEMRA Ordinance are to be interpreted in a forward looking manner in order to persistently advance and promote the constitutional values of tolerance, freedom, equality, democracy and social justice.”

This view is also articulated in several judgments of the Supreme Court of Pakistan and the High Courts.<sup>7</sup>

16. Lastly, Portion - “B3” of the impugned Directive confines reporting of live court proceedings only in situations where such proceedings are broadcast live by the Court itself. In the Code, there are no such restrictions. Indirectly, this Portion “B3” implies that TV channels are restricted from live reporting of court proceedings, even through court

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<sup>7</sup> (i) Messrs. Fun Infotainment (Pvt.) Ltd./NEO T.V., Lahore v. Pakistan Electronic Media Regulatory Authority through its Chairman, Islamabad and Others, PLD 2024 SC 230, paragraph 3; (ii) Independent Newspapers Corporation (Pvt.) Ltd. and Others v. Federation of Pakistan and Others, PLD 2017 Lahore 289, paragraph 9 (Ayesha A. Malik, J.); and, (iii) Messrs. GAZA BROADCAST SYSTEM PVT. LTD. through Authorized person and Others v. Federation of Pakistan and Others, PLD 2019 Sindh 332, paragraphs 5 and 6 (Muhammad Ali Mazhar, J.)(DB)

reporters and/or on-the-spot interviews of experts and lawyers who may wish to comment on the court proceedings as they unfold live.

17. The impugned Directive provides no clarification on whether it seeks to amend, modify, supplement, add, override or repeal the existing clauses of the Code pertaining to sub-judice matters and court proceedings. Are the impugned Directives meant to co-exist with the Code? Or do they trump the Code? The Code is earlier in time (dated). Do the Directives suppress the Code? Do they overlap it? Indeed, suppose the impugned Directives are meant to co-exist with the code. In that case, the next question is how they are intended to be reconciled when the provisions of the Code and the stand-alone paragraph 6 of the impugned Directive contradict each other. Further, why does paragraph 6 of the Directive (one of the two operative parts of the impugned Directives) identify and expressly issue direction for only one (i) out of ten (x) of the roman numerals identified *In the matter of: Suo Motu Case No.28/2018*, i.e. partially roman numeral (iii) only? Why does the Directive in paragraph 7 (the second operative paragraph in the Directive) direct the licensees to follow the principles of law as laid down in the Suo Motu case in letter and spirit? The impugned Directives offer no directions. We find the impugned Directives vague and unclear for all the above reasons.

18. The above analysis also reveals that the impugned Directive has no portions within the framework of the Code. Portions of the impugned Directive (content-wise) that could co-exist with the Code, if any, could have been treated as explanations for the existing clauses in the Code. They may be couched in different language and tones; however, these portion(s), if they had synchronised with the Code, could have assisted in better understanding and/or explaining the clauses in the Code, and we would not be inclined to make any intervention concerning such portion(s) in the impugned Directive. Presently, content-wise, we cannot identify any such part of the Directive that has synchronized portions in the operative parts of the impugned Directive. Contents of paragraph 6 of the impugned Directive, as a stand-alone directive,

eliminate, restrict, prohibit or oppose the reasonable restrictions found in the Code on sub-judice matters and content of news and current affairs programmes based on extracts of court proceedings. Standing all by itself, the contents of paragraph 6 are out of sync with Clause 4 of the Code. Whereas, with regard to paragraph 7 of the impugned Directive, the same, content-wise, as an operative part of the Directive suffers from arbitrariness, capriciousness and lacking clarity.

19. Our tentative view regarding the constitutionality of the impugned Directive (particularly its operative paragraph 6), based on the analysis of its several portions discussed herein above, is that the impugned Directive has disturbed the balance of reasonable restrictions in the law concerning sub-judice matters and content based on extracts of court proceedings, which balance was acknowledged by the Supreme Court as of 12.09.2018 and existed upto the date of notification of the impugned Directive as of 21.05.2024. The Supreme Court of Pakistan in the ARY Communication case (supra)<sup>88</sup> has opined that:

“PEMRA on the one hand has to ensure that the freedom of expression through media broadcast is enhanced without infringing the reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court or commission or incitement of an offence under Article 19 of the Constitution. While on the other hand, it also has to ensure that the right to information of the public is enlarged without impinging on the reasonable restrictions imposed by law under Article 19A of the Constitution. These constitutional restrictions are further actualized through the restrictions provided under PEMRA Ordinance and the rules, regulations and the code of conduct developed thereunder. The "reasonable restrictions" flow from Articles 19 and 19A of the Constitution and the statutory restrictions by and under the PEMRA Ordinance are to be interpreted in a forward looking manner in order to persistently advance and promote the constitutional values of tolerance, freedom, equality, democracy and social justice.”

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<sup>88</sup> PLD 2023 SC 431, 442 paragraph 9.



20. Taking inspiration from the *In the matter of: Suo Motu Case No.28 of 2018*, itself, the impugned Directive has disturbed the Code of Conduct - 2015 balance between protecting the freedom of expression, the right to information, the right to a fair trial and due process, and the freedom of trade, business and profession, etc. The impugned Directive, even if assumed to be equivalent to rules/regulations framed under the law, also fails the test of reasonable restrictions imposed by law as read in the light of *ARY Communication* case (supra). At this juncture, for efficiency, we now turn to the next question of whether PEMRA has issued the impugned Directive in accordance with the law?

21. The Counsel for PEMRA has argued that the impugned Directive is neither a decision nor an order of PEMRA. He contended that it is merely a directive/direction issued by the regulator to its licensees and the Chairman. PEMRA has the authority to issue such directions, and the Authority has the power under the statute to delegate powers to any of its officers, enabling them to issue such directions.

22. Section 39 of the PEMRA Ordinance, 2002 empowers PEMRA to make rules, with the approval of the Government, to carry out the purposes of the said PEMRA Ordinance, 2002, while Section 19(5) thereof states that PEMRA shall devise a Code of Conduct for programmes and advertisements for compliance by the licensees. Pursuant thereto, PEMRA has issued the PEMRA Rules 2009 and the Code of Conduct (incorporated as Schedule A). According to Section 20(f) of the PEMRA Ordinance, 2002, a person who is issued a license under the Ordinance shall, inter alia, comply with the codes of programmes and advertisements approved by PEMRA. Furthermore, Rule 15(1) of the Rules provides that the contents of the programmes and advertisements which are broadcast or distributed by the broadcast media or distribution service operator shall conform to the provisions of Section 20 of the PEMRA Ordinance, 2002, the PEMRA Rules, the Code of Conduct and the terms and conditions of the license.

23. As set out by the Supreme Court in the ARY Communication case (supra), to regulate the two critical fundamental rights under Articles 19 and 19A, the media content broadcasted and received in the public space is regulated under the PEMRA Ordinance, 2002, through a two-tiered regulatory system. First, through the independent public regulatory bodies called the Councils of Complaints, which are comprised of citizens of eminence selected from the general public. Second, by PEMRA, a Government-controlled regulatory body. The primary responsibility of these two bodies is to ensure that the media content is constitution-compliant under Articles 19 and 19A and meets the reasonable restrictions under the PEMRA Ordinance, rules, regulations and the code of conduct. The importance of establishing independent Councils of Complaints amongst citizens of eminence from the general public is to ensure that public representatives also review the media content for the public through a public regulatory body by applying commonly accepted or community-based standards of decency. As the media content has to be put out in the public space, it is, therefore, first and foremost, that an independent public body representing a broad cross-section of society reviews the media content. This helps protect, nurture and enhance the freedom of expression and right to information of the people, as well as shields the media content against government interference and control.<sup>9</sup>

24. In the present case, the impugned Directive has been issued by the Director General (Operations-Broadcast Media), PEMRA, with the approval of the Chairman, PEMRA. The Supreme Court of Pakistan in the ARY Communications case (supra)<sup>10</sup> observed that, “. . .the PEMRA Ordinance envisages a two-tiered regulatory system. The media content has to be first viewed by the Council of Complaints, an independent public regulatory body and after obtaining its opinion, PEMRA, the government regulatory body, is to consider the opinion of the Council of Complaints and finally decide the matter. It is also worth taking note that

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<sup>9</sup> PLD 2023 SC 431, paragraph 10.

<sup>10</sup> Pakistan Electronic Media Regulatory Authority (PEMRA) through Chairman and another v. Messrs. ARY Communications (Pvt.) Ltd (ARY DIGITAL) through Chief Executive Officer and Another, PLD 2023 SC 431

under Section 13 of the PEMRA Ordinance, PEMRA allows delegation of its powers and functions to its Chairman or a member or to any member of its staff, or to an expert, consultant or adviser. This delegation of the powers and functions of a 13-member authority to a single person also necessitates that the Councils of Complaints, comprising six members of eminence from the general public, must first examine the complaints. Even if suo motu notice is taken by PEMRA or its Chairman, as to "any aspects of programmes", the matter has to be first sent to a Council of Complaints for its opinion and after considering the said opinion, PEMRA or its Chairman, as the case may be, can take the final decision."

25. The Counsel for PEMRA has been unable to demonstrate that the power of PEMRA under clause (a) of Section 27 is not dependent on obtaining and considering the opinion of a Council of Complaint. Further, we are also cognizant of the observations of the Supreme Court in the ARY Communications case (supra) that "if the power of PEMRA under clause (b) of Section 27 is to be exercised in respect of 'any aspects' of a program or advertisement, then it must be exercised after obtaining and considering the opinion of the Council of Complaint concerned under Section 26(2) of the PEMRA Ordinance." Therefore, the impugned Directives could not leap-frog the Council of Complaints, avoiding circulation within the Council. The contents were subject to sanitization by the Council of Complaints before their release and, thus, violated the scheme of the PEMRA Ordinance, 2002, when the Chairman rushed to amend/modify the statutory Code of Conduct through a simplicitor directive. In the circumstances, the impugned Directives are in contravention of and/or inconsistent with the provisions of PEMRA Ordinance, 2002, identified in paragraphs 24, 25 and 26 of this common judgment. Accordingly, the impugned Directives are annulled and/or set aside.

26. Further, as discussed hereinabove, the impugned Directive essentially sought to amend/modify/displace certain clauses of the Code of Conduct - 2015 relating to sub-judice matters and content of

news and current affairs programs concerning court proceedings which are codified in the Code of Conduct – 2015 forming a part of the Schedule “A” of the PEMRA Rules, 2009. PEMRA’s impugned Directive constituted an attempt by the Chairman, PEMRA, to amend/modify the statutory Rules without subjecting them to public scrutiny and the process required under section 39 of the PEMRA Ordinance, 2002. As explained herein, the Rules clearly modify/amend the Code, which cannot be side-stepped by Directives that lack the force of law. Therefore, the impugned Directives violate the provisions of the PEMRA Ordinance, 2002, notably Section 39, and on this score, too, are of no effect.

27. Finally, last but not least, PEMRA’s impugned Directive attempted to allegedly piggyback a judgment of the Supreme Court to modify a statutory Code of Conduct without following the statutory process. Just because a directive in 2024 cross-references a judgment of the Apex Court of 2018, did not make it kosher for PEMRA to avoid the procedural requirements of introducing an amendment to the Code of Conduct, i.e. through Council of Complaint and/or to elicit public opinion on the draft version before its introduction into PEMRA Rules, 2009, etc. A judgment of the Supreme Court may be binding based upon or enunciating a principle of law,<sup>11</sup> but this did not give ground to PEMRA to issue a Directive without following the process required to make it a law. Giving such allowance to the Regulator (read: the Executive) would violate the separation of power, a fundamental principle of our constitutional construct.<sup>12</sup>

28. In view of the above, the impugned Directive in CP No.D-2646/2024 and CP No.D-2802/2024 is declared illegal, unlawful, inconsistent with the PEMRA Ordinance, 2002, under which the Directive is made and issued, and beyond the authority conferred on the Chairman, PEMRA sans Council of Complaints. The Directive cannot

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<sup>11</sup> Article 189 of the Constitution of Pakistan – Decision of Supreme Court binding on other Court.

<sup>12</sup> *Flying Cement Company v. Federation of Pakistan and Others*, 2015 PTD 1945, 1977 (paragraph 46)

be sustained; therefore, the impugned Directives are annulled, struck off, and set aside.

29. Based on the principle of judicial restraint, while we have tested the constitutionality of the impugned Directive, we are not inclined to weigh in and determine or to definitively announce the test results of the constitutional check-up of the matter, viz. our finding whether the impugned Directive violates Articles 4, 18, 19, 19A and 25 of the Constitution. Our approach is based on the trite principle that if a case can be decided on either of two grounds, one involving a constitutional question and the other a question of statutory construction or general law, the Court will decide only the latter.<sup>13</sup> To this end, we have determined the Petition based on statutory construction.

30. Before parting with this case, it would be appropriate to mention here that during the course of arguments, learned counsel for the Petitioner in CP No.D-2802/2024 vigorously relied on an Order dated 15.03.2023 seemingly passed by two out of a three-member Bench of the Hon'ble Supreme Court of Pakistan in Suo Motu Case No.04/2022. The Petitioner ("PFUJ") discussed the consequences of the said Order in paragraph 10 of its petition filed on 01.06.2024.<sup>14</sup> An uncertified copy of the said Order was marked as Annexure "P-3" and attached to the petition on pages 49-67. Counsel relied on paragraph 15 of the said Order, which, according to him, provided the context of *In the matter of: Suo Moto Case No.28 of 2018*, PLD 2019 SC 1, which was cross-referenced in PEMRA's impugned Directive. In his initial submissions, arguments, and closing, he read out several paragraphs from this order, consuming substantial time of the Court. He provided neither any information of the Suo Motu Case No.04/2022 nor the context of the Order dated 15.03.2023 nor what had transpired prior to its hearing date of 15.03.2023 nor what transpired thereafter in the Suo Motu Case ultimately. He kept totally silent. In hindsight, it may have been that he wished to impress upon us that the author of the said Order dated

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<sup>13</sup> Lahore Development Authority through D.G. and Others v. Ms Imrana Tiwana and Others, 2015 SCMR 1739, 1769.

<sup>14</sup> PFUJ filed CP No.D-2802/2024 on 01.06.2024.

15.03.2023, at least when this matter was heard by us in 2024, was now the Hon'ble (sitting) Chief Justice of Pakistan. The entire conduct of the Petitioner's counsel is regrettable. An advocate is expected to be an important ally in the administration of justice and owes a duty to the Court. This duty of an advocate is well-articulated in the Division Bench judgment of this Court in Muhammad Siddiq and another v. Mst. Ruqaya Khanum and others, PLD 2001 Karachi 60. It appears that Petitioner's counsel was unaware of this case too. After reserving this petition while conducting further research in the matter, this Bench came across PLD 2023 SC 387, when it emerged that the Order dated 15.03.2023 passed in Suo Motu Case No.04/2022 was followed by a dissenting note issued on 30.03.2023 wherein one of the member of the three member Bench of the Supreme Court who dissented from the said Order entirely distanced himself from the Order dated 15.03.2023. Counsel did not attach this dissenting Order which was available in the relevant PLD Publication. Further, the Order dated 15.03.2023 was observed by a six (6) member Bench of the Supreme Court of Pakistan on 04.04.2023, to be:

“both without and beyond jurisdiction. . . passed by the two Hon'ble members of the Bench was inoperative and ineffective when made, was such at all times thereafter and continuous to remain so.”

The six (6) member Bench of the Apex Court had recalled the interim Order dated 15.03.2023 (released on 29.03.2023). Yet inspite of all this, the Counsel for the Petitioner in CP No.D-2802/2024 annexed it to his petition filed almost a year later on 01.06.2024 when he was fully aware of the background. Thus, he miserably failed to fulfil his duty as an Advocate and attempted to mislead the Court contrary to the standards expected of him as set out in the Mst. Ruqaya Khanum case. He consumed an inordinate amount of time in court. The matter does not end here as the Petitioner's counsel in CP No.D-2646/2024 could have intervened, clarified, and assisted us. But he chose to remain silent, too and was complicit with the Council in CP No.D-2802/2024.

Accordingly, based on the recent judgment of the Supreme Court,<sup>15</sup> we impose costs of Rs.25,000 each on both the Counsels in the two Petitions, which will be deposited in the Herbert Mills Birdwood High Court Bar Law Library at Karachi in four (4) weeks time.

31. For the above reason, the two petitions are allowed in the above terms with no order as to costs.

Judge

Chief Justice

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<sup>15</sup> Zakir Mehmood v. Secretary, Ministry of Defence (D.P.), Pakistan Secretariat, Rawalpindi, etc., 2023 SCMR 960 (CP No.2712/2020). Also see Suit No. Nil of 2020, Order dated 18.05.2020 in Damen Shipyards Gorinchem B.V. v. The Ministry of Maritime Affairs & Others (unreported)(Muhammad Junaid Ghaffar, J.) and Suit No.765 of 2024 in Order dated 31.07.2024 in Vista Apparel (Pvt.) Ltd. v. S.M. Traders (Pvt.) Ltd. & Others (unreported)(Muhammad Abdur Rahman, J.)