

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
M.A.No.58 of 2015

DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

Hearing / Priority Case

1. For orders on office objection and reply at "A".
2. For orders on CMA No.7196/2015
3. For hearing of Main Case.
4. For hearing of CMA No.7197/2015

28.09.2016

M/s. Anwar Mansoor Khan, Abdul Karim Khan, Imdad Ali Sahato and Zeeshan Bashir Khan, Advocates for the Appellants.

Mr. Muhammad Qasim, Standing Counsel.

1. Deferred.

2. Granted subject to all just exceptions.

3&4. Pursuant to the Court's Order dated 22.09.2016, the Appellant has supplied copies of the cases which it was directed to provide in the last date of hearing. Perusal of the orders passed by Hon'ble Islamabad High Court dated 24.07.2015 depicts that the Petitioners in that case (being, Pakistan Broadcasters Association – 'PBA') made a prayer before the Hon'ble Islamabad High Court that PBA had made a representation before the Respondent No.2 (i.e. PEMRA) and it wanted indulgence of the Hon'ble Islamabad High Court to the extent that directions be issued to PEMRA so that the representation pending before it be heard and decided expeditiously. From paragraph-3 of the said order, the learned Judge made alike orders and directed PEMRA to decide the representation of PBA after giving an opportunity of hearing to it within a period of 15 days.

The learned counsel for the Appellant Mr. Anwar Mansoor Khan has attached on page 25-A, a copy of the impugned order dated 23.09.2015, through which the licenses issued by PEMRA to BOL News and BOL Entertainment were suspended. In the interest of entirety, the said order is reproduced hereunder:

**PAKISTAN ELECTRONIC MEDIA
REGULATORY AUTHORITY
ISLAMABAD**

No.10-2(44)STV-2007

23rd September, 2015

Subject: **Suspension of the Licences of Satellite TV Channels "BOL NEWS" & "BOL ENTERTAINMENT"**

It is conveyed that the Authority in its 106th meeting held on 16th September, 2015 while deliberating the agenda item as per recommendations of the Council of Complaint Sindh in pursuance with the directives of Hon'able Islamabad High Court in the matter of C.P No.2413 of 2014 titled "Pakistan Broadcasters Association V/s Federation of Pakistan etc" while exercising the powers under section 30 of the PEMRA Ordinance 2002 (Amendment Act 2007) has decided the following:

"The Authority while approving the proposal as per recommendations of the Council of Complaint Sindh unanimously decided to suspend both the licenses of M/s Labbaik (Pot) Ltd namely "BOL News" & Bol Entertainment" with immediate effect till completion of all legal and codal requirements including security clearance of the proposed management or any future change in the circumstances and further permitted by the Authority under relevant provisions of PEMRA laws. The Authority also approved the withdrawal of the approval for the change of name/logo for the channels "ASK TV" to "BOL TV", "BOL TV " to " BOL Entertainment" conveyed vide letters No. 10-2(44) STV-2006 dated 14.03.2013, 10-2(44)STV-2011 dated 09.04.2013 and "Jinnah TV" to "BOL NEWS" conveyed vide letter N.10-2(26) Phase II-2005 dated 05.04.2013"

2. The decisions of the Authority are hereby conveyed to M/s Labbaik (Pvt) Ltd for immediate compliance.

3. This issues with the approval of the Competent Authority.

Sd/-
Assistant General Manager
(Licensing)

Chief Executive Officer
M/s Labaik (Pvt.) Ltd
BOL Media Network, BOL Headquarters,
Bolistan, BOL Road, Creek Cantonment,
Karachi

Cc.

- i. Director General (Operations), PEMRA HQs, Islamabad
- ii. All RGMs, PEMRA {With request to ensure compliance with decisions of the Authority}

Perusal of the afore-reproduced order shows that Authority in its 106th meeting held on 16.09.2015, upon recommendations of the Council of Complaint Sindh (“CoC”) and in pursuance of the directions of the Hon’ble Islamabad High Court in the above referred petition, while exercising powers under section 30 of the PEMRA Ordinance, 2002 (“the PEMRA Ordinance”) decided suspension of the licenses issued to the Appellant in respect of BOL News and BOL Entertainment channels. Learned counsel for the Appellant took this Court to Section 6 of the PEMRA Ordinance, which provided that PEMRA Authority to be consist of a Chairman, besides having other twelve members. The learned counsel while placing reliance on a Press Release dated 16.09.2015 issued by PEMRA itself submitted that the said 106th meeting (in which the impugned order was passed) was headed by an executive member, who was presiding the said meeting as an Acting Chairman. Learned counsel while referring to the case reported as PLD 2013 SC 244 (Hamid Mir and another v/s. Federation of Pakistan and others) submitted that in similar circumstances, as reproduced in paragraph 5 of the said judgment, where certain orders were passed by an Acting Chairman, the Apex Court held that since PEMRA Ordinance does not provide for the position of an Acting Chairman, the orders passed in the absence of the Chairman are devoid of the compliance of the statutory provisions of the PEMRA Ordinance and cannot be construed as valid. Such view of the learned counsel finds support from a number of judgments passed by the Apex Court, which in the interest of justice, and in adherence to the compliance of rules and regulations, require that procedure as prescribed by laws must be

followed in letter and spirit, and acts done devoid of such adherence would not be sustainable in eyes of law.

A perusal of the impugned order further reveals that the reason for the suspension of the licenses of the Appellant was hinged to the decision of CoC, which was fast-tracked in the light of the order of the Hon'ble Islamabad High Court. The impugned order, and the directions passed by Hon'able Islamabad High Court, when read together do not supported the grounds taken by PEMRA in the impugned order. As it is evident from the order passed on 24.07.2015, the Hon'able Islamabad High Court made very clear directions for PEMRA to hear and decide the representation of PBA, and in the said order there was no mention, nor any call, that the said representation be forwarded to CoC. Astonishingly the learned counsel submits that as a matter of fact, no complaint was ever made by any person or was at all present before CoC in respect of the matter in question.

At this juncture, it is pertinent to refer to section 26 of the PEMRA Ordinance, in terms of which CoC is established and its mandate is prescribed. Sub-section (2) of Section 26 enables CoC to receive and review complaints made by persons or organizations from the general public against any aspects of programmes broadcast or distributed by a station established through a license issued by the Authority. Since the above referred mandate very clearly provides that CoC can only receive and review complaints, once the station (in respect of which license is granted) is operative and broadcasting, and once such broadcast is made, if any persons and organizations, from the general public, have any complaints in relation to the contents of such programs, they can approach CoC

and present their complaint. In the instant case, when the channel has not started broadcasting its transmission, CoC's authority to receive and review complaints is unconceived.

It is worth mentioning that beside section 26, there are complete set of rules called 'Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010' in terms of which operation of CoC is prescribed. Per Rule 3, CoC is mandatorily required to work independent of the Authority, except that Authority has to merely facilitate operations of CoC. Per Rule 8(1) any person aggrieved by any aspect of a program or advertisement may lodge a complaint before the Council, and once the complaint has been lodged, the process as prescribed by the said Rule kicks in, which requires CoC to summon the operator against whom the complaint is made to hear its point of view, before finalizing its recommendations. It is also very pertinent to mention that Authority is not bound by the recommendations of CoC, and per Rule 10, if the Authority is not satisfied with the recommendations of CoC, it can refer the matter back to CoC for re-consideration.

While in the instant case, there was no complaint pending before CoC, even if the case was otherwise, the above Rules require CoC to give an opportunity of being heard to the operator against whom a complaint is made, thus CoC could not have passed any orders against the Appellant without hearing it under Rule 8. Notwithstanding therewith, as mentioned above, since the Appellant had not commenced its broadcast to public, there was no practical possibility that a complaint would have been arisen and agitated before CoC. It is also important to keep in mind that the complaints before CoC can only be filed against the programs by persons or

organizations from the general public. In the instant case, the presentation made to PEMRA was by PBA, which is group of stakeholders of the media industry having commercial and beneficial interests in the subject matter, thus even if the current representation was placed before CoC (theoretically at the time when the Appellant had commenced its broadcasts), CoC could not have entertained the same, and that is exactly the reason PBA made a representation to PEMRA and not to CoC and the Hon'ble Islamabad High Court ordered PEMRA to hear and decide PBA's representation without any reference to CoC.

A review of the said PBA's representation depicts that therein PBA has raised a number of issues against the Appellant, but none of those relates to the contents of the programs. In particular, reference has been made to certain international news in relation to an independent legal entity being called AXACT. Learned counsel submitted that the proceedings were initiated under law against the said entity which are still pending. In my view it would be violative of Article 13 of the Constitution to double punish a person in an independent matter wherein no illegality is alleged.

Be that as it may, while the impugned order was defective on account of the absence of Chairman PEMRA from the 106th meeting, ends of justice were not met even by PEMRA as it before passing the said order did not give any opportunity of hearing to the Appellant, which after the grant of license on 27.12.2006 had made huge investments in order to realize the objects for which the license was granted. It is evident that the licenses must have been granted to the Appellant after it had complied with the strict and stringent conditions prescribed by law and its revocation after nine years,

when huge investments having been made, is not only against the commercial interest and vested rights of the Appellant, public interests are also adversely affected by such unilateral act of PEMRA.

Lastly it is also pertinent to note that the instant appeal is filed under section 30-A of the PEMRA Ordinance, which empowers any person aggrieved by any decision of PEMRA to prefer an appeal before the High Court. In legislations, where right of appeal is given before the High Courts, the entity which takes cognizance of the matter in the first instance acquires status of judicial or quasi-judicial functionary as it starts to function as a trial court and thus required to hear the case within the four corners of law and equity and deemed to make decisions keeping in mind the principles of natural justice by independently applying judicial mind to the facts and the evidence brought to its attention and it cannot merely act as a postbox, as has been done in this case, where the Authority summarily and on the 'recommendations' of CoC passed the impugned order adverse to the interests of the Appellant. A scrutinizing review of the impugned order leaves no doubt in my mind that none of the aforementioned principles of equity and justice have been complied with by the Authority before the impugned order was passed.

For the aforementioned reasons, I while allowing the Appellant's application filed under Order 39 Rule 1 and 2 (Read with S.151) CPC, in the interim suspend operation of the impugned order dated 23.09.2015 and restrain the Respondents, their officers, agents, assigns, employees and any person(s) acting or claiming on their behalf from taking any coercive action against the Appellant by

any means, and order the Respondents to act strictly in accordance with law.

To come up on 19.10.2016.

Judge