

IN THE HIGH COURT OF SINDH, KARACHI

M.A No. 45 of 2012

Independent Media Corporation (Pvt) Ltd

versus

Pakistan Electronic Media Regulatory Authority

Before: Mr. Justice Zulfiqar Ahmad Khan

Date of Hearing : 10.11.2016
Appellant : Through M/s. Bahzad Haider and
Umar Pirzada, Advocates alongwith
Abid Naseem
Respondent : Mr. Kashif Hanif, Advocate

JUDGMENT

Zulfiqar Ahmad Khan, J.:- In compliance of this Court's order dated 30.09.2016 Nazir has filed his report dated 18.10.2016 confirming that the appellant has deposited the fine amounting to Rs.1 million with him.

2. Before I revert to the arguments put forwarded by learned counsel for the Appellant today, by way of background, contents of this Court's order dated 30.09.2016 are reproduced hereunder:-

"The instant appeal stems from the decision passed by PEMRA on August 2, 2012 with regards airing of certain program-contents (by the appellant) in respect of which the later was initially warned on 28.4.2012. However, ignoring the warning as to unsuitability of the contents for the general public on account alleged "vulgarity", "obscenity" and "indecentcy" of those contents, the appellant still aired those program-contents on 30th April, 2012.

Having aired those program-contents, complaints were received by PEMRA, which, as provided for by the PEMRA Ordinance and Rules, were forwarded to the Council of Complaints ("CoC") established under Section 26 of the PEMRA Ordinance, where an opportunity of hearing was given to the representative of the appellant. The assertions of the representative of the appellant who appeared before CoC, as well as, those of the learned counsel appearing before this Court were synchronized to the extent that they contended that neither PEMRA Ordinance nor the regulations or codes define the words "vulgarity", "obscenity" and "indecentcy" or set standard thereof, thus no judicial determination could be made by

CoC as if the program-contents were vulgar, obscene or indecent, therefore the appellant is not to be held in violation of PEMRA laws, codes and rules.

In the hearing today also, the learned counsel vehemently asserted that in the absence of any judicial interpretation of these words, there were no grounds for PEMRA to pass an order and to hold that the subject contents contained vulgarity, obscenity and were indecent thus cognizable under Section 20(c) of the Ordinance or violative of Clause 1(b), 1(i) and 3 of the Code of Conduct of PEMRA Rules, and under Regulation 18(2) of the PEMRA TV Broadcast Regulations.

As to technicality, the counsel further contended that no comments have been filed by the respondent (PEMRA) in this appeal thus the application/appeal is premature for hearing. To me this assertion does not have any persuasive value, as in such type of appeal cases, the Appellant *ab initio* has to put forward its own *prima facie* case. Notwithstanding therewith, the matter is still at the stage of *Katcha Peshi*, thus such preliminary objections do not carry any weight.

To me, while the standard of mental acceptability (or rejection) of society's widespread views regarding obscenity, vulgarity and indecency change with the passage time, however laws always provide means to arrest such violations. Look at, for example Section 292 of the Penal Code where dissemination of obscene material is held a penal offence. Also of relevance is Section 2(b) of the Indecent Advertisements Prohibition Act, 1963 where the term 'indecent' is defined to include *whatsoever may amount to any incentive to sensuality and excitement of impure thoughts in the mind of an ordinary man of normal temperament, and has the tendency to deprave and corrupt those whose minds are open to such immoral influence, and which is deemed to be detrimental to public morals and calculated to produce pernicious effect, in depraving and debauching the minds of persons*. Section 6 of the said Act provides that if the person who contravened any the provisions of the said Act was a company, every person who at the time the offence was committed, was in charge of and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Above all the Constitution of Pakistan, 1973 even in its preamble and, as well as, under Article 19, while guarantees freedom of speech, legitimizes reasonable restrictions on such right by prescribing that the said freedom should not be violative of decency and morality.

As alleged in the instant appeal, to me probably judicial is not the best forum to give a stone-carved legal meaning to the above referred words, it is thus exactly why in such circumstances, laws provide for independent councils, whistle-blowers and public interest groups assimilating from a divergent spectrum of the society to deliberate on such matters. Incidentally (and rightly so) it

is provided for in the PEMRA laws through the CoC which comprises members coming from various parts of the society to hear and decide the matter or complaints agitated before it, which includes complaints as to the moral suitability of the contents of the programs and the advertisements.

Other than the foregoing, neither the learned counsel nor the memo of appeal point out any question of law as to the inherent legal deficiency of the impugned decision, neither any hostility has been alleged against the appellant by CoC members.”

3. Learned counsel for the Appellant submits that the Appellant was given license somewhere in 2008, which has been diligently used by the Appellant and per counsel, the Show Cause Notice issued by the Respondent is in violation of Article 10-A of the Constitution since his right as to fair trial has been violated. The counsel submitted that no specific allegation as to which part of the program was obscene or vulgar was specified, and if PEMRA would have provided the Appellant those specific part(s), the Appellant would have been in a better position to distinguish them and suitable defense in this regard would have been taken. Learned counsel also submitted that the copy of the Counsel of Complaint's ("CoC") findings was not provided to it and issuance of the instant Show Cause is an unfair treatment given to the Appellant viz. a viz. the foreign channels, which carry on broadcasting similar contents unabated.

4. Responding to such assertions, learned counsel for PEMRA submitted that it was a consensus decision of the authority and it is not mandatory under the PEMRA laws that copy of CoC finding be provided to the Appellant. Learned counsel submitted that PEMRA timely warned the Appellant of the forthcoming contents of the television program and the impugned Show Cause Notice should not have come as surprise, as the Appellant despite such warning, aired the program in question in full length and with

sound and images, which PEMRA had asked them not to broadcast. Learned counsel consented that with regard to the matter of “obscenity”, “indecentcy” or “vulgarity” it is the Council of Complaints, which makes the decision and the Council is composed of private individuals and in order to protect their exposure, views of independent members of CoC are not communicated to the Appellant, as it could cause harm to the interest and impartiality of the members of CoC.

5. With regard to violation of Article 10-A, learned counsel submitted that full opportunity of hearing was provided to the Appellant, which it duly attended and it was allowed to place its defence before the impugned Show Cause Notice was issued.

6. Heard the counsel. As deliberated in my orders of 30.09.2016, CoC is the appropriate forum, wherein matters related to “obscenity”, “indecentcy” or “vulgarity” are to be adjudicated. In particular when public complaints were mounting against the program aired by the Appellant.

7. With regards counsel’s contentions that Court should determine whether the contents aired by the Appellant contained “obscenity”, “indecentcy” or “vulgarity”, I do not see this as a job of this Court. Courts are best suited for the job of upholding the rule of law and to provide a forum to resolve disputes and to test and enforce laws in a fair and rational manner. Therefore, the questions that whether the contents as aired by the Appellant contained “obscenity”, “indecentcy” or “vulgarity” are best suited to be answered by the appropriate forum, which in the instant case is of the Council of Complaints, which gave its findings in affirmative, whereupon PEMRA issued Show Cause Notice and imposed fine.

8. Placing reliance on the order dated 22.08.2014 passed in M.A No. 37 of 2012, a copy of which was presented by the counsel for the Appellant that in situations where violation was not willful, Courts have reduced the penalty imposed by PEMRA to half. I tend to disagree with the proposition that the act of the Appellant in the instant case was devoid of willfulness, as prior intimation was already given by PEMRA to the Appellant in respect of the program in question, notwithstanding therewith the Appellant adamantly proceeded with the broadcast of the warned contents. I therefore do not think that a case has been made out for the reduction of the penalty imposed by PEMRA in the sum of Rs.1 million, which along with any interest accrued thereon, be handed over by the Nazir to the respondent after completing the codal formalities.

Appeal is accordingly dismissed.

Karachi: 01.12.2016

JUDGE