

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

**Present:-**

**Mr. Justice Sajjad Ali Shah**

**Mr. Justice Muhammad Junaid Ghaffar**

**C.P.NO. D-3610 OF 2012**

**Apna TV Channel (Pvt) Limited & another -----Petitioners**

**Versus**

**Federation of Pakistan & another-----Respondents**

**C.P.NO.D-4483 OF 2014**

**Independent Media Corporation (Pvt) Ltd**

**& another-----Petitioner**

**Versus**

**Federation of Pakistan & another-----Respondents**

**C.P.No.D-1215 OF 2014**

**Independent Newspaper Corporation (Pvt) Ltd**

**& another -----Petitioner**

**Versus**

**Federation of Pakistan & another-----Respondents**

**C.P.No.D-56 OF 2015**

**Aurora Broadcasting Services (Pvt) Ltd -----Petitioner**

**Versus**

**Federation of Pakistan & another-----Respondents**

**Date of hearing: 05.11.2015**

**Date of order: 05.11.2015**

**Petitioners: Through Mr.Khalid Jawed Khan,**

**Advocate in C.P.No.D-3610 of  
2012 & Mr. Behzad Hyder and  
Mr. Jam Asif Mehmood, Advocates  
in CP.Nos.D-1215 & 4483 of 201  
& C.P.No.56 of 2015**

**Respondent No.1: Through Mr.Asim Mansoor, DAG**

**Respondent No.2: Through Mr.Kashif Hanif  
Advocate**

### **J U D G M E N T**

**Muhammad Junaid Ghaffar J:-** In all the aforesaid petitions, the petitioners are aggrieved by issuance of Show Cause Notices by Pakistan Electronic Media Regulatory Authority, (PEMRA), or otherwise, whereby, they have been directed to comply with conditions stipulated in their Licenses vide Clause No.7.2 through which petitioners / Licensees are required to Broadcast a Maximum of 10% Foreign content in their programming mix Schedule.

2. The facts in C.P.No.D-3610 of 2012 are that initially, the petitioner was granted a license for Entertainment / Food and Cooking in the name of "Tarrka", whereafter, vide letter dated 30.6.2011, the petitioner requested for conversion of their license into a Music Channel with the name and style of "8XMusic"; such request, further proposed content of Music in Urdu as 75%, English as 5%, Punjabi as 10% and other as 10%. Such request was approved by PEMRA vide letter dated 29.7.2011, whereby, the category of license was allowed conversion from Cooking / Food Program to Music Program, however, the petitioner was directed to propose a new name for its license, which must not match with any other channel name. It is further stated that since then, the petitioner has been broadcasting Music program(s) through its channel in the name of "8XM", whereafter, the petitioner has been issued Show Cause Notice dated 25.7.2012, whereby, the petitioner has been directed to refrain from Airing content in violation of the given program mix as prescribed in their license, as according to PEMRA, the petitioner had been persistently broadcasting excessive Foreign content, mostly Indian, and beyond permissible limit of 10% of the total broadcast. Such Show Cause Notice has been impugned through instant petition and interim

order passed on 10.10.2012 is continuing till date in favor of the petitioner.

3. The petitioner in C.P.No.D-1215 of 2014 has been granted Satellite T.V Channel in the name of “Geo Kahani” and is also aggrieved by a Show Cause Notice dated 4.3.2014 by PEMRA for having violated Clause 7.2 of the License condition for broadcasting excessive Foreign content as against the permissible limits.

4. In C.P.No.D-56 of 2015, the petitioner has been granted Satellite T.V Channel in the name of “Dawn News” and is aggrieved by Show Cause Notice dated 13.3.2015, for having violated Clause 7.1 of the License terms and conditions, which permitted the petitioner to broadcast 85% News and Current Affairs programs, whereas, the petitioner in question was broadcasting Foreign Drama Serial and therefore Show Cause Notice had been issued.

5. In C.P.No.4483 of 2014, the petitioners have been issued Satellite T.V Channel in the name of “Geo Entertainment and Geo Kahani” and though no Show Cause Notice has been issued to them, however, through this petition, they have sought a declaration from this Court that PEMRA has no authority to regulate the programming mix and consequently Clause 7.2 of the License issued to the petitioner is void, ab-nitio, unlawful and liable to be struck down.

6. Mr. Khalid Jawed Khan, Counsel for the petitioner in C.P.No.D-3610 of 2012 has contended that once the request of the petitioner vide letter dated 30.6.2011, whereby, the category of license from Food/Cooking as well as program mix content was accepted by the PEMRA, the condition stipulated in Clause 7.2 in the license stood modified, and, therefore impugned Show Cause Notice has been issued without any lawful authority and jurisdiction. He has further contended that the Regulations issued by the PEMRA in respect of program content has been set aside by the Hon’ble Supreme Court in the case of *Hamid Mir and another Vs Federation of Pakistan (PLD 2012 SC 244)*, whereas, PEMRA Ordinance, 2002 does not restrict or provide for any such restriction of broadcasting a certain percentage of Foreign content

and therefore, the impugned Show Cause Notice may be set aside. He has also submitted that there are other Channels / Broadcasters who are also violating such condition of program mix and are also airing Indian content much beyond the restrictions, but no action is being taken against them, whereas, the petitioner has been discriminated by issuance of impugned show cause notice.

6. Similarly, Mr. Behzad Haider, Counsel for other petitioner(s) has contended that Section-20 of the PEMRA Ordinance, which provides the terms and conditions of the license, does not put any restriction with regard to broadcast of Foreign content and therefore, the impugned Show Cause Notices as well as condition / clause 7.2 stipulated in the terms and conditions of the license, is ultra-vires and beyond the scope of the Ordinance, hence, liable to be struck down.

7. Conversely, Mr. Kashif Hanif, Counsel for respondent No.2 (PEMRA) has vehemently opposed the maintainability of instant petitions, on the ground that the petitioners, instead of responding to the Show Cause Notice(s) have filed aforesaid petitions and have obtained restraining order(s), whereas, per counsel, the petitioners have violated the terms and conditions of their license, therefore, they are not entitled to seek any discretionary relief. He has further referred to Regulation No.2 (p) and 18(a) of the Pakistan Media Electronic Regulatory Authority (Television Broadcast Station Operation) Regulation 2012 notified vide SRO No.360 (1)/2012 dated 31.1.2012 and has contended that the licensees are required to ensure the proportion of program mix as approved in their license, which must not be less than 90% of the total Programming and has prayed for dismissal of the petition(s).

8. Similarly, learned DAG has contended that the restriction with regard to the maximum ceiling of 10% of the Foreign content is provided under Clause 7.2 of the terms and conditions of the license, which is in conformity with Section-20 of the PEMRA Ordinance, 2002 and further that being a licensee, the petitioners have no right to object to the condition(s) of the license, which they have accepted and on the basis of which they are broadcasting their programs through said Channels.

9. We have heard all the learned Counsel, learned DAG and perused the record. By consent all the aforesaid petitions are being finally decided at Katca Peshi stage.

10. It appears that all the petitioners on their applications for grant of Licenses have been issued such Licenses by PEMRA in terms of the Ordinance 2002, and License of each petitioner has common terms and conditions prescribed therein, along with a Schedule of their respective program mix which appears to have been accepted and acted upon by the petitioners. Once such clause of the terms and conditions is clause 7 which relates to program mix and the moot point of dispute in these petitions is in fact clause 7.2 of the program mix. Clause-7 of the terms and conditions of the license, reads as under:-

- 7.1 The Licensee shall only be allowed to broadcast programs as per the programming mix provided by the Licensee at Annex-IV.
- 7.2 The Licensee shall be allowed 10% foreign content, the breakup of 10% is as follows:
- i) 40% of the 10% (4% of the overall) may be English content.
  - ii) 60% of the 10% (6% of the overall) may be Indian or other content.
- 7.3 While chalking out the programming mix, referred to in Para 7.1, the Licensee shall uphold national interest and identity, shall generally focus on the specific fields of its licensed service and shall comply with respective proportionate duration of such programs.

11. Perusal of the aforesaid conditions reflects that the licensee is only allowed to broadcast the program as per programming mix provided by the licensee as an annexure to the said license, whereas, Clause 7.2 specifically provides that the licensee shall be allowed to broadcast 10% Foreign content and the breakup of such 10% is 4% English content and the remaining 6%, Indian or other content. This condition of the license on the basis of which, petitioners have been granted license, appears to have been accepted by them at the time of grant of license, after which they have deposited the fee and are broadcasting programs on their respective Channels. Therefore in our opinion, the petitioners do not appear to be entitled to contest or agitate such terms and conditions of the license. PEMRA is a Regulatory Authority under the Ordinance, 2002, for which they have framed various Rules

and Regulations. The petitioner's contention that prescribing any condition in the terms and condition of the licenses so issued is not the prerogative of PEMRA, and for that matter, any condition to which the petitioners do not agree, cannot be prescribed, does not appear to be correct and justifiable, and rather is superfluous as well as misconceived. If the petitioners do not agree with the condition(s) so prescribed, they have not been compelled to obtain any such license, which after all has to be issued by the Regulator after fulfillment of certain terms and condition imposed according to the Ordinance, Rules, Regulations and as well as policy of the Government. The licensee though has its legal right(s), but such rights are not unfettered, rather are confined and embodied within the terms and condition of the license, and not beyond that. The petitioners cannot be allowed, on the one hand to violate terms and condition of the license and, on the other broadcast programs of foreign content / origin, including Indian origin and that too without any restriction and/or supervision of the Regulator and so also in violation of the terms and conditions of the License already accepted by them.

12. Insofar as the objections with regard to condition of the license being beyond the mandate of Section-20 of the PEMRA Ordinance 2002, is concerned, on a careful examination of Section-20, the same appears to be misconceived and is hereby repelled, as according to us, Section 20 of the PEMRA Ordinance 2002, provides for various terms and conditions of the license, which are extensive, comprehensive and broad enough, to put restriction(s) with regard to broadcast of Foreign content as contained in Clause 7.2 and therefore we hold that neither Clause 7.2 is beyond the mandate of the authority nor of Section-20 of the PEMRA Ordinance, 2002. Moreover, section 19(3) of the Ordinance provides that *every License shall be subject to such terms and conditions as may be prescribed*, whereas Rule 15 of the Pakistan Electronic Media Regulatory Authority Rules, 2009, notified vide SRO 1120(I)/2009 dated 12.12.2009, provides *that the contents of the programs and advertisements which are broadcast or distributed by the broadcast media or distribution operator, shall conform to the provisions of section 20 of the Ordinance, these rules, the code set out in the Schedule-A **and terms and conditions of***

**the license.** After having carefully examined these provisions as well as the Ordinance, we are left with no doubt in our minds that it is within the competence of PEMRA to incorporate any such conditions at the time of grant of a License and after having accepted such License and acted upon, it is not left with the petitioners to agitate imposition of any such terms and conditions.

13. Insofar as the ground of discrimination raised by Mr. Khalid Jawed Khan is concerned, it would suffice to observe, that no such discrimination can be pleaded on the wrongs committed by others, as that does not become permissible in law, whereas, two wrongs do not make a right. Be that as may, we direct the petitioner to bring such violation to the notice of PEMRA, who shall act against them in accordance with law without fail and keeping in view the findings recorded in this judgment.

14. In view of hereinabove facts and circumstances, we are of the view that all the aforesaid petitions, besides being premature, as having been filed merely on issuance of Show Cause Notices, are even otherwise liable to be dismissed on merits as being misconceived in fact and law and therefore, we had dismissed all the petitions by a short order on 5.11.2015, and above are the reasons for such short order.

JUDGE

JUDGE