

HIGH COURT OF SINDH, AT KARACHI

Misc. Appeal No.30 of 2013

ORDER

Appellant : Independent Media Corporation (Pvt) Limited.,
Through Mr. Saim Hashmi, Advocate.

Respondent : Pakistan Electronic Media Regulatory Authority
Through Mr. Kashif Hanif, Advocate.

DATE OF HEARING: 10.05.2018

NAZAR AKBAR, J. The appellant has challenged an order dated **09.9.2013**, passed by Pakistan Electronic Media Regulatory Authority (PEMRA) whereby respondent has imposed fine of an amount of Rupees One Million under **section 29 sub-section (6) of PEMRA Ordinance, 2002** to be paid within 30 days.

2. In brief the PEMRA has taken action against appellant through a show cause notice dated **26.4.2013** for airing message of **proscribed / banned organizations**. The appellant has aired message of Hakeemullah Mehsood of Tehreek-e-Taliban Pakistan (TTP) the banned organization in which he has declared that democracy is "*Kufr*". In the show cause it has been categorically stated that on **21.5.2012** all the news & satellite TV channel including the appellant were directed not to air the statement of any of the proscribed organization and a list of proscribed organization was also appended with the circular wherein TTP was mentioned at serial No. 22. The appellant filed their reply to the show cause on **20.5.2013** in which they tried to justify airing of such statement of leader of proscribed TTP on various grounds. The authority of PEMRA in its 85th Meeting held on **3.7.2013** examined reply of show cause from the appellant and after

detailed deliberations it was unanimously decided that the appellants have committed willful violation of the various provisions of PEMRA Ordinance, 2002 and **Section 11-W** of the Anti-Terrorism Act, 1997. Therefore, impugned decision was taken by the authority and communicated to the appellant.

3. Despite notice to the respondent and suspension of the impugned order for the last five years the respondent authority has not filed any counter affidavit / objection to this Misc. Appeal. The record shows the appellant knowing well about the fate of their appeal never requested for a date. In view of the admitted facts, I am of the view that no formal reply to the memo of appeal was necessary and even if it is no further time can be given for the formality. Therefore, I have heard counsel for both the side and perused record.

4. Learned counsel for the appellant has begun his arguments by referring to the show cause notice in which according to him revocation of license under **Section 30** of the PEMRA Ordinance, was also threatened therefore, he contended that the case of appellants' should have been referred to **Council of Complaints**. According to him the impugned order is in violation of the said provisions of PEMRA Ordinance. The examination of three lines of the show cause notice reproduced below shows that it was option of PEMRA to proceed against the appellant on either of the two provision of PEMRA Ordinance.

NOW THEREFORE, M/s. Independent Media Corporation (Pvt) Ltd (Geo News) is hereby called upon to show cause immediately within **Fifteen (15)** days of issuance of this notice as to why necessary legal action, under PEMRA Ordinance should not be initiated against "GEO NEWS" on willful violation of the above provisions

which may include revocation of license under Section 30 and / or imposition of fine under section 29 of the PEMRA Ordinance, 2002 amended by PEMRA Amendment Act 2007. You are also required to appear for Personal Hearing on Monday, 13th May, 2013 at PEMRA HQs, Islamabad.

5. Learned counsel has further contended that it is right of the people of Pakistan to know the facts about the person whose name was under discussion in different print and electronic media internationally and therefore his interview was aired on TV stand protected under **Article 19-A** of the Constitution of Pakistan, 1973. The contention of learned counsel is misconceived. The appellant has right to “tell” and there is difference between citizens “*right to accesses to information*” and the appellant “*right to transmit information*” which is “*subject to reasonable restriction imposed by the law*”. The appellant has never challenged the circular of PEMRA dated **21.5.2012** whereby a reasonable restriction protected by Article 19A of the Constitution was imposed by the PEMRA on the appellant. The show cause notice contained only of one (**para 4**) which needed reply is reproduced below.

4. WHEREAS the act of airing such message is, prima facie, is in direct violation of clauses 1€, (k) and (n) of PEMRA Code of Conduct for Media Broadcasters, contained in scheduled “A” of PEMRA Rules 2009 read with Section 20(c) of PEMRA Ordinance 2002 as amended by PEMRA (Amendmente) Act 2007 and your licence terms & conditions as well as Section 11-W of the Anti-Terrorism Act, 1997. The said provisions of law specifically prohibit airing of any message from banned/proscribed organization and any such message that may promote/encourage terrorism / criminal activities. The same is also in violation of the orders of Hon’ble Balouchistan High Court in the CP # 682/2011 and amounts to contempt of Court and therefore, also contravenes (1)(f) of the Code of Conduct.

6. Learned counsel for the appellant was asked to simply reply whether on the day mentioned in the show cause the interview of proscribed leader of TTP was aired by the appellant or not. He conceded that it has happened, however, he gave excuses for it and in his argument he mostly repeated what was stated in the reply to show cause. In the reply to show cause notice the airing of message of TTP Leader and knowledge of circular dated **21.5.2012** issued by the PEMRA was not categorically denied.

7. I have also perused reply of show cause notice. The appellant has not specifically replied any of the charge in para-4 of the show cause notice. However, I found only para 6 relevant for referring in the judgment. It is reproduced below:-

6. Thirdly and most importantly, please note that the militant anti state organizations such Tehreek-e-Taliban Pakistan, have always threatened the journalists, reporters and anchorpersons of Pakistan for giving them proper coverage and to broadcast/air/publish their statements on the national media.

8. Apparently the above quoted reply to show cause notice was the only compelling reason if not any other hidden mischievous reason for airing the interview of proscribed leader of TTP. The appellant seems to have obliged the proscribed organization to avoid the threat and if that is the case the appellant has no moral justification to continue in the noble business of journalism both in print and electronic media. The alleged act of the appellant is not short of aiding and abetting of the terrorist and their failure to legally justify it does attract the provisions of **Section 11-W** of the Anti-Terrorist Act, 1997. It is reproduced below:-

11-W. ²[Printing, publishing, or disseminating any material to incite hatred or giving projection to any person convicted for a terrorist act or any proscribed organization or an organization placed under observation or anyone concerned in terrorism. ---(1) A person commits an offence if he prints, publishes or disseminates any material, whether by audio or video cassettes ¹[or any form of data, storage devise, FM radio station or by any visible sign] or by written, photographic, electronic, digital, wall-chalking or any other method ²[or means of communication] which ³[glorifies terrorists or terrorist activities or] incites religious, sectarian or ethnic hatred or gives projection to any person convicted for a terrorist act, or any person or organization or an organization placed under observation:

Provided that a factual news report, made in good faith, shall not be construed to mean "projection" for the purpose of this section.

⁴[(2) Any person guilty of an offence under subsection (1) shall be punishable on conviction with imprisonment which may extend to five years and with fine.]

9. In my humble view, the respondents were very lenient in their approach when they opted to take action under **Section 29(6)** of PEMRA Ordinance, 2002. The respondent has already ignored to take into account the violation of order of the Baluchistan High Court in C.P. No.682/2011 as well as the offence under **Section 11-W** of the Anti-terrorist Act, 1997.

10. This Misc. appeal was dismissed by short order on 10.5.2018 and the above are reasons for the same.

JUDGE

Karachi
Dated:24.5.2018