

IN THE HIGH COURT OF SINDH AT KARACHI

Misc. Appeal No.47 of 2016

Present: Mr. Justice Nazar Akbar, J.

Appellant : ARY communication Limited.,
Through M/s. Ayan Mustafa Memon &
Munir Khan, advocates.

Versus

Respondent No.1 : Absar Alam, Chairman PEMRA;

Respondent No.2 : Pakistan Electronic Media Regulatory
Authority;

Respondent No.3 : Muhammad Tahir, General Manger
(Operation), PEMRA.
Through Mr. Kashif Hanif, advocate.

Mr. Shoaib Ali Mirza, Asstt: Attorney General

Date of hearing **19.11.2018**

Decided on **19.11.2018**

ORDER

NAZAR AKBAR, J--- The appellant/petitioner was aggrieved by the order dated **31.10.2016** passed by Respondent No.2, whereby the Petitioner's landing rights for satellite TV Channel "Nikelodeon" have been suspended. There is hardly any controversy to the facts for disposal of this Miscellaneous Appeal and, therefore, I do not need to reproduce facts. The operative part of the impugned order passed by Respondent No.2 is reproduced below:-

Permission No. PEMRA/ARY COM./E-07-14/LR-Nikelodeon, issued in favor of M/s ARY Communications (Pvt.) Ltd. (Nikelodeon) on 07.08.2007 is hereby suspended with immediate effect.

The main contention of the learned counsel for the appellant was that the impugned order was in contravention of **Article 10-A** of the Constitution as well as the concept of principle of natural justice

though this principle is already acknowledged in writing by Respondents under **Clause 25.5** of the Landing Rights for Encrypted Satellite TV Channel “Nekelodeon” (Advertisement Channel) to M/s. ARY Communication Pvt. Ltd. (annexure P/5) which is reproduced below:-

*25.5 If the Authority is satisfied that the Landing Rights Holder has failed to comply with any condition of the Ordinance, Rules and or the permission or with any direction given to him hereunder and **it has given him a reasonable opportunity of making representations to it about the matters complained of, it may revoke the permission.** (Emphasis supplied).*

2. Learned counsel for Respondents did make an effort to impress upon the Court that the action has been taken on the basis of Circular dated **19.10.2016** issued by Respondent No.2 which was in respect of airing Indian contents and it has been violated by the appellant. The Respondents have not filed any document with their reply/counter affidavit to the appeal to show that they had even informed the appellant about the material placed before the learned Chairman, PEMRA (Respondent No.1) for passing the impugned order. The said Circular has already been placed on record by the appellant as Ex-P/3. The perusal of the Circular clearly indicates that it was not a “show cause” to the appellant. It could be basis for an action. Beside this, through the circular, the landing rights agreement does not stand modified nor it means that **clause 25.5** of the agreement between the appellant and Respondent No.2 reproduced above stand nullified. In any case at least non-compliance of the said Circular dated **19.10.2016** should have been brought to the knowledge of the appellant before penalizing.

3. Learned counsel for the Respondents in fact had no answer to this legal proposition that the appellant has been condemned unheard to the extent that neither any show cause notice was issued nor any material was supplied to them showing the violation of circular dated **19.10.2016**.

4. In view of the above, this Miscellaneous Appeal was allowed by short order dated **19.11.2018** and the impugned order was set aside only on the ground that the appellant was not given proper opportunity to defend their case against alleged allegations of the Respondents which provided the basis of impugned order. Therefore, Respondent No.2 shall be within its authority to initiate fresh proceedings against the appellant by giving a proper opportunity to the appellant in accordance with law and the constitution before passing the order against the appellant.

5. Above are the reasons for the short order dated **19.11.2018**.

JUDGE

Karachi
Dated: 19.01.2019

Ayaz Gul