

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-1218 of 2016

Order with signature of Judge

Before: **Muhammad Ali Mazhar and Agha Faisal, JJ.**

- 1. For hearing of CMA No.5486 of 2016*
- 2. For hearing of main case*

01.02.2019.

Mr. Mohammad Vawda, Advocate for the petitioner.
Mr. Ishrat Zahid Alvi, Assistant Attorney General.
Mr. Kashif Hanif, Advocate for the respondents.

Mohammad Ali Mazhar, J.- The petitioner is a company incorporated under the laws of Pakistan which, inter alia, runs the television channel 'SAMA TV' from Karachi, Lahore, Islamabad, Quetta, Peshawar and Dubai. Through this petition the petitioner has impugned the recommendation conveyed by the Council of Complaints Sindh to the Authority as a result of which the decision dated 22.01.20016 was communicated by the Secretary COL/RGM, Sindh PEMRA to the Chief Executive of the petitioner.

2. Learned counsel for the petitioner argued that under section 26(5) of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 ("PEMRA Ordinance 2002") the Council of Complaints may only recommend to the Authority appropriate action of censure, fine against a broadcast or CTV station or licensee for violation of the codes of program content and advertisements as approved by the Authority as may be prescribed. He further argued that under section 8(5) of the PEMRA Ordinance 2002 all orders, determinations and

decisions of the Authority shall be taken in writing and shall identify the determination of the Chairman and each member separately. The learned counsel argued that there was no decision in fact passed by the PEMRA which could have been challenged in appeal, therefore, the petitioner has taken recourse of the constitutional jurisdiction of this Court. He further argued that in the alleged impugned decision the Council has recommended for the payment of suitable compensation to the complainant without mentioning the quantum thereof.

3. On the contrary the learned counsel for PEMRA argued that in fact the decision was taken by the Authority but was communicated by the Secretary COC/RGM, Sindh to the petitioner on 22.01.2016. He further argued that the decision should have been challenged in the appeal in terms of section 30-A of the PEMRA Ordinance, 2002, which provides that any person aggrieved by any decision or order of the authority may, within thirty days of the receipt of such decision or order, prefer an appeal to the High Court.

4. Heard the arguments.

5. Through the impugned decision in pursuance of the 27th meeting of the Council of Complaints held on 14.01.2016, the Council of Complaints after taking into consideration the PEMRA Ordinance, 2002 and the relevant Rules, resolved that the petitioner violated section 20(c) of the PEMRA Ordinance, 2002 as amended by PEMRA (Amendment) Act 2007, 20(g) read with Rule 15(1) of PEMRA Rule 2009 and Television Broadcast Station Operations Regulations 2012, 14(1), (2) and Clause 3, 1(g), 7(1)(2) of Electronic Media (Program and

Advertisement) Code of Conduct 2015. In fact the proceedings were initiated on the complaint of Shahnawaz Chachar, a freelance video documentary filmmaker who launched the complaint against the petitioner for some copyright infringement. So far as the sections mentioned in the order, Section 20(c) provides that a person who is issued a licence under this Ordinance shall have to ensure that all programmes and advertisements do not contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency; whereas section 20(g) places embargo not to broadcast or distribute any programme or advertisement in violation of copyright or other property rights. We understand from the tenor of the decision that basically the complaint was lodged in respect of an alleged copy right infringement, but in the decision section 20(c) has also been relied upon without any further reference or proven culpability of the petitioner. In paragraph 4 of the impugned decision recommendations of the Council have been reproduced which depicts that recommendations were made by the Council to pay suitable compensation to the complainant against the use of his video documentary trailer contained in the programme "TAFTISH". We have also gone through Section 26 of the PEMRA Ordinance which basically germane to the role of the Council of Complaints under which Federal Government may by Notification in the Official Gazette, establish Council of Complaints. In Section 26 (3-A) of the PEMRA Ordinance, 2002, the Council has the powers to

summon a licensee against whom a complaint has been made and call for his explanation regarding any matter relating to its operation. Under subsection 5 of section 26, the Council may recommend to the Authority appropriate action of censure, fine against a broadcast or CTV station of licensee for violation of the codes of programme. While the Council has a right to make certain recommendations keeping in mind niceties of the complaint lodged before them under the letters of law, they have apparently no right to recommend for payment of compensation but it is under their domain to recommend action of censure fine against the broadcast or CTV Station for violation of the codes of programme content and advertisement. Under Rule 10 of Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010 the procedure is provided for dealing with the recommendations issued by the Council in which it is stated that the authority shall take into consideration the recommendations made by a Council in each matter and may approve the recommendations or disagree with the recommendations while recording the reasons in writing for the same and pass such order as deemed appropriate or refer the matter back to the Council for reconsideration if so considered necessary in the opinion of the Authority. According to section 8 subsection 5 of the PEMRA Ordinance, 2002, all orders, determinations and decisions of the Authority shall be taken in writing and shall identify the determination of the Chairman and each member separately. Learned counsel for the petitioner submitted that the alleged decision communicated to the petitioner on 22.01.2016 was not commensurate to the directions contained

under subsection 5 of section 8 of the PEMRA Ordinance, 2002. On this learned counsel for the PEMRA referred to Section 13 of the PEMRA Ordinance, 2002, which pertains to the delegation of powers under which the Authority may delegate the Chairman, or a member or any member of its staff or an expert, consultant, adviser, or other officer or employee of the Authority any of its powers, responsibilities or functions under this Ordinance subject to such conditions as it may by rules prescribe and argued that even otherwise the directions contained under subsection 5 of section 8 are directory in nature and not mandatory. Whether the impugned order passed under the delegated Authority or not, the fact remains that it has not been passed in terms of the Rule 10 of the Rules 2010 in which onerous duty lies upon the authority to record the reasons in the order and pass a speaking order as deemed appropriate but in this case only recommendations of the Council have been reproduced in the order and in paragraph 5 it is simply communicated to the petitioner that petitioner is directed to strictly follow the recommendations of the Council failing which necessary legal action shall be initiated under the PEMRA Ordinance, 2002 and rules and regulations made thereunder. We understand, even under the delegated power, the officer concerned has to pass a speaking order which he deems proper after application of mind as to whether the recommendations made by the Council were in accordance with law or not, but in this case an order has been passed in a slipshod manner. Even the quantum of compensation is not recommended by the Council nor was it appreciated by the

Authority that the word 'suitable compensation' is vague terminology and it is not necessary that a quantum suitable for the petitioner will also be suitable for the complainant. Even this aspect was not considered in the order as to whether compensation can be awarded or whether it was within the jurisdiction and power of the Council of Complaints to grant such relief or not. All these questions referred were not considered and appreciated by the authority while acting or accepting any recommendations of the Council which, in our view, the Authority has failed to consider. Learned counsel for the petitioner argued that since there was no order therefore the appeal was not filed. In this regard we would like to observe that Section 30-A of the PEMRA Ordinance, 2002, very clearly states that any person aggrieved by any decision or order of the Authority may, within thirty days of the receipt of such decision or order, prefer an appeal to the High court, therefore, in all fairness, the petitioner could have filed appeal rather than approaching this Court in constitutional jurisdiction and whether this was an order of the Authority or not that could be considered even in such proceedings. As a result of above discussion, this petition is converted into an appeal and the impugned order passed by the Authority dated 22.01.2016 is hereby set-aside and the matter is remanded to the Authority to pass speaking order on the recommendations given by the COC. This petition is disposed of in terms herein alongwith pending applications.

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