

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

Date	Order with signature of Judge(s)
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Present
Mr. Justice Muhammad Ali Mazhar.
Mr. Justice Agha Faisal.

C.P. No.D-2559 of 2018

Cyber Internet Services (Pvt.) Limited.....Petitioner

Versus

Federation of Pakistan & Others.....Respondents

Date of hearing 29.08.2019

Mr. Ovais Ali Shah, advocate for the petitioner.
None present for the respondent Nos.2 & 3.
Mr. Nadeem Ahmed, Assistant Attorney General.

Muhammad Ali Mazhar, J.: Learned counsel for the petitioner at the very outset pointed out an application dated 04.04.2013 moved by the petitioner to the Director General (Licensing), Pakistan Telecommunication Authority, Islamabad, in respect of a license of Long Distance/International (LDI) Telecommunication Services. Per learned counsel the application was submitted in accordance with authority's information memorandum dated 08.03.2004. Learned counsel also pointed out De-Regularization Policy for the Telecommunication Sector promulgated in July 2003 and specifically referred to paragraph 4(3) therein which specified that the entry to the LDI market will be unrestricted and open; any person who requests for a license and meets the licensing requirements will be eligible for a license on payment of prescribed fee. The policy sought to ensure that only serious players enter the market under this regime, hence, stringent requirements of technical and financial capabilities, experience and rollout would be incorporated in the licensing documents. It is further stated that the decision of award of license will be preceded by an open, public hearing process.

Learned counsel further pointed out that during pendency of their application Ministry of Information and Technology, Government of Pakistan also notified Telecommunication Policy 2015, Clause 5.2 whereof clearly provided that the current licensing regime will continue

to apply. Separate categories in class licenses regime associated with satellite service will be introduced and that PTA will conduct bi-annual assessment of market absorption capacity and any new licensing in LL, LDI and WLL sectors will be subject to such assessment.

Learned counsel also pointed out Section 6 (e) of Pakistan Telecommunication (Re-Organization) Act, 1996, wherein it is provided that authority while exercising its functions and powers under this Act will ensure fair competition in the telecommunication sector exists and is maintained.

2. Though nobody is present to represent the PTA but their comments are available on record. PTA in their comments stated that the Authority has been established under Section 3 of Pakistan Telecommunication (Re-Organization) Act, 1996 with the mandate to regulate to establishment, maintenance of telecommunication system and provision of telecommunication services in Pakistan. By virtue of Section 5 read with Section 20 and 21 of the aforesaid Act, PTA grants and renews licenses for telecommunication system and any telecommunication services on payment of fee. It is further noted that under Section 8 of the Act, Federal Government issues policy directives on the matters related to telecommunication. It is further stated in the comments that PTA through letter dated 12.06.2017 has already informed the petitioner that further licensing in LDI domain in Pakistan is subject to the outcome of bi-annual market assessment as per the policy.

Learned counsel for the petitioner responded that bi-annual assessment is to be conducted every year but none has ever been conducted as of date. It was submitted that where they themselves failed to conduct by-annual assessment the petitioner should not be blamed and there is no justification to refuse the license on the inaction of the PTA.

Learned DAG though relied on the comments filed by the PTA but he could not confirm as to whether petitioner's pending application has not been decided by the PTA.

3. We have also noted in the comments filed by the PTA that no cogent reason has been assigned for not deciding the application which is pending since the year 2013. If any such application is filed for

licensing, it is the duty of the authority to decide the application within reasonable period of time and with proper application of mind.

As a result of above discussion, this petition is disposed of with directions to the Director General, Pakistan Telecommunication Authority to decide the pending application of the petitioner after providing ample opportunity of hearing to the petitioner. This exercise should be completed within one month. The petitioner shall remain at liberty to assail the findings rendered in respect of his application.

A copy of this order may also be provided to the learned DAG for compliance.

JUDGE

JUDGE