

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-4008 of 2020

Date Order with signature of Judge

Before:-

Mr.Justice Muhammad Ali Mazhar

Mr.Justice Amjad Ali Sahito

M/s.Horizon Media (Pvt.) Ltd.....Petitioner

V/s

Federation of Pakistan

& others.... Respondents

09-02--2021

Mr.Choudhry Atif Rafiq & Ms.Tehmeen, Advocates for the Petitioner.

Mr.Muhammad Haroon Mumtaz and Mr.Shahid Iqbal Rana, Advocates for Respondent No.3

Mr.Omair Nisar, Advocate for Respondent Nos.4 to 8.

Mr.Kashif Nazeer, Advocate for PEMRA.

Mr.Hussain Bohra, Assistant Attorney General.

Muhammad Ali Mazhar, J: The case of the petitioner is that the respondent No.3 is engaged in the business of “Rating” television channels to ascertain how many viewers or household watch or watched a particular television channel during any time slot. Precisely this petition is against the issuance of license in favor of respondent No.3 by PEMRA and the petitioner has entreated for cancellation of their license by PEMRA in the following terms:-

“A. Declare that the failure of the Respondent No.3 to disclose its conflict of interest with Respondents No.6 to 8 to the Respondent No.2 at the time of the grant of License, or anytime thereafter, for rendition of TAM/TRP services, is illegal and in violation of the TAM Regulations, 2018 and therefore the license granted to Respondent No.3 is liable to be cancelled;

B. Declare that the failure of the Respondent No.3 to disclose its Directors (Respondent No.4) being non-resident and providing false Affidavits for the same is illegal and in violation of the TAM Regulations, 2018 and therefore the license granted to Respondent No.3 is liable to be cancelled;

C. Direct the Respondent No.2 to conduct afresh the process for the award of License vis-a-vis rendition of TAM/TRP services, in an open and transparent manner;

D. Direct the Respondent No.2 to cancel the License dated 29.4.2019 issued to the Respondent No.3 and to impose appropriate penalties and sanctions and take all other requisite action against the Respondent No.3 as contemplated under the PEMRA Registration/Accreditation of Television Audience Measurement (TAM)/Rating Service Regulations 2018;

E. Permanently prohibit and restrain the Respondent No.3, its Directors etc., from publishing, assigning or allocating TAM/TRP ratings of media channels to the advertisers;

F. Grant such further, additional or alternative relief, as this Hon'ble Court deems fit and proper."

2. Learned counsel for the petitioner pointed out page-95 of the court file, which is in fact copy of PEMRA Registration/Accreditation of Television Audience Measurement (TAM)/Rating Service Regulations, 2018, promulgated in pursuance of the directions of hon'ble Supreme Court of Pakistan in Criminal Original Petition No.108/2018 in HRC No.34069/2018. Learned counsel for the petitioner pointed out Regulation 2.3, 2.5, 3.5, 3.8, 3.10 and he argued that PEMRA issued license to respondent No.3 in violation of aforesaid Regulations and in addition, he also pointed out Regulation 5.17 and 5.18, whereby the applicant company is required to submit an affidavit that neither the applicant company nor any of its directors or shareholders are directly or indirectly owning, controlling or operating any broadcasting, landing rights, advertising or any other television rating service whereas in Regulation 5.18 an affidavit is required to be submitted that all information furnished along with the application form are true and nothing has been concealed or misrepresented with further rider that any concealment of facts or misrepresentation revealed

subsequently may result disqualification of the applicant and or cancellation of registration/accreditation.

3. Learned counsel for PEMRA has referred to page 331, which is in fact the reply submitted by PEMRA. He argued that while granting license to respondent No.3 all documents were examined and applicant also submitted undertaking and affidavit that whatever information submitted along with the application form are true and correct. He further argued that no such complaint was ever submitted by the petitioner to examine and determine as to whether the license was issued to the respondent No.3 in violation or contravention of the aforesaid regulations. In this regard he pointed out paragraph 9, 10, 11 and 14 of their reply, which demonstrate the clear stance of PEMRA that in case of any violation of aforesaid Regulations, 2018 the authority will take appropriate action. He further argued that in the constitutional jurisdiction factual controversy cannot be decided and let PEMRA be allowed to call both the parties and examine all the documents, and after providing ample opportunity of hearing the appropriate order will be passed.

4. Learned counsel for respondent No.3 argued that the Regulations quoted by the learned counsel for the petitioner are irrelevant to the case of the respondent No.3. He further argued that there is no violation of any regulation and the license was issued in accordance with law and they have not committed any violation. He further argued that the petitioner is aggrieved by rating analysis and they have filed this petition in order to exert pressure on the respondent No.3. The petitioner has already filed

application before PEMRA, which is pending adjudication with regard to some rating issues separately.

5. Be that as it may, whether the respondent No.3 has violated any terms and condition of the license or regulations pointed out by learned counsel for the petitioner, it is the responsibility and domain of PEMRA to first examine the complaint in accordance with Regulations and in case of any violation they may take action in accordance with law, but in the constitutional jurisdiction factual controversy cannot be decided whether the respondent No.3 is involved in advertising business or engaged in any other business tantamount to a conflict of interest in terms of aforesaid Regulations. The PEMRA in their reply has clearly stated that if any complaint is lodged, they will take appropriate action in accordance with law.

6. As a result of above discussion, this petition along with pending applications is disposed of by consent with the directions to PEMRA to decide the complaint of the petitioner within 40 days and pass speaking order after providing ample opportunity of hearing to the petitioner and respondent No.3. The learned counsel for the petitioner shall file complaint to PEMRA within 03 working days with advance copy to the learned counsel for PEMRA and learned counsel for respondent No.3.

Judge

Judge

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