

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 950 of 2021

Date	Order with signature of Judge
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Mr. Salman Akram Raja, advocate for the plaintiffs.

Mr. Muhammad Omer Soomro along with Mr. Shah Bakht Pirzada, advocate for defendants 3 and 4.

Mr. Muhammad Ahmer, Assistant Attorney General for Pakistan, for defendants 1 and 2 a/w (1) Muhammad Khurram Siddiqui, Director Law PTA, (2) Ali Akbar Sahito, Dy. Director Law PTA, and (3) Barrister Aamir Ali Qureshi, Assistant Director Law PTA.

Dates of hearing : 19.05.2021, 28.05.2021, 02.06.2021 and 27.08.2021.

ORDER ON C.M.A. No. 8722 of 2021

NADEEM AKHTAR, J. – Through this application under Order VII Rule 10 CPC, defendants 3 and 4 have prayed that the plaint of the instant Suit be returned to the plaintiffs for presentation before the Court having jurisdiction to entertain and adjudicate the Suit. According to the said defendants, this Court does not have the territorial jurisdiction in respect of this Suit as the cause of action or any part thereof, as alleged in the plaint or otherwise, did not accrue within the jurisdiction of this Court ; and, the principal office of each of the defendants is located outside the territorial jurisdiction of this Court. In order to decide this question, the averments and allegations made in the plaint have to be examined closely. Due to this reason and also as extensive arguments were advanced by learned counsel for the parties, this order has become a bit lengthier than expected.

2. The facts relevant for deciding the application at hand, as averred in the plaint, are that plaintiff No.1 is an unlisted public limited company engaged in the business of providing telecommunication services in Pakistan since the year 2004 when the first GSM license was issued to it by defendant No.3 / Pakistan Telecommunication Authority (**'PTA'**) for cellular mobile service 2G under Section 21 of the Pakistan Telecommunication (Reorganization) Act, 1996, (**'the Act'**). Plaintiff No.2 is a shareholder of the plaintiff No.1-company. On 07.10.2013, the Government of Pakistan issued a Policy Directive under Section 8 of the Act for auctioning the spectrum for introducing the Next Generation Mobile Services (**'NGMS'**), commonly known as 3G services. As per the said Policy Directive, it was the responsibility of PTA to conduct a transparent competitive auction wherein all existing cellular mobile operators,

including plaintiff No.1, were eligible to participate. Additionally, under Section 5 of the Act, PTA had the power to undertake an auction on such terms and conditions as it may determine from time to time for licensing the radio frequency spectrum allocated and specified by defendant No.4 / Frequency Allocation Board (**'FAB'**) constituted under the Act. Under Section 43 of the Act, FAB has the exclusive authority to allocate and assign portions of the radio frequency spectrum, *inter alia*, to the providers of telecommunication services and telecommunication systems. It was represented to the plaintiffs that FAB had "30 MHz in 1.9 GHz / 2.1 GHz" band available for auction. Prior to the auction, the trials / testing of the temporary assignment of spectrum band in the range 1935-1940 / 2125-2130 MHz (**'F-4 band'**) was authorized by FAB on 24.02.2014. Upon running such trials, no interference was found therein by plaintiff No.1 who was led to believe that the F-4 band was representative of the other bands that were being made available for auction. On the basis of such test run on the F-4 band made available to it by FAB, plaintiff No.1 made substantial investment for procuring a clean and non-interfered spectrum for providing NGMS services to its customers. The auction of the spectrum was conducted by PTA on 23.04.2014 wherein plaintiff No.1 participated along with other bidders and also deposited the security amount required for participating in the auction. On 25.04.2014, PTA issued a letter to plaintiff No.1 informing it that it was the provisional winner of the spectrum band of 1920-1930 MHz paired with 2110-2120 MHz (F-1 and F-2 bands) for which plaintiff No.1 made a payment of US \$ 306,920,000.00 plus 10% advance income tax thereon, making the total payment of about US \$ 500.000 million. Consequently, license No.NGMS-01/WLL&M/PTA/2014 dated 21.05.2014 was issued by PTA granting permission to plaintiff No.1 to use the spectrum specified therein for providing NGMS services to its customers for a period of fifteen (15) years. The license was granted to plaintiff No.1 subject to the terms and conditions and the roll-out obligations stipulated therein, including payment of license fee and other amounts and maintenance of Quality of Service (**'QoS'**) by plaintiff No.1.

3. It is the case of plaintiff No.1 that despite its fulfillment of the terms and conditions of the license and the roll-out obligations stipulated therein, the spectrum in the F-1 and F-2 bands granted to it by PTA was compromised as it suffered from interference. This fact was brought to the notice of PTA by plaintiff No.1 vide its letter dated 09.06.2014 along with a comprehensive technical report, wherein the reason for such interference was specifically highlighted i.e. the illegal use of Digitally Enhanced Cordless Telecommunications (**'DECT'**) phones that were being sold by PTA on its website. PTA was requested by Plaintiff No.1 to immediately stop selling DECT phones. No action was taken by PTA and FAB due to which plaintiff No.1 continued to incur heavy losses

because of the continuous interference in its spectrum bands. Plaintiff No.1 issued further letters dated 17.02.2015 and 04.05.2015 to FAB and held several meetings with the officials of PTA and FAB, but its grievance was not redressed as PTA failed in providing an interference free spectrum to plaintiff No.1. Vide letter dated 11.08.2015, FAB acknowledged the fact that the interference was due to the illegal sale and operation of DECT cordless phones and FAB in coordination with PTA was in the process of monitoring and identifying the locations of their illegal operation. However, no remedial steps were offered or taken by FAB in this behalf. In the above background, plaintiff No.1 served a 'Notice of Claim' to PTA on 07.10.2015 whereby the assurances given to it at the time of auction of the subject spectrum with regard to its quality were highlighted ; and, a request was made that an alternate band of spectrum in the range 1950-1955 MHz / 2140-2145 MHz (F-7) be provided as a substitute for the interfered spectrum, and the auction price of 5 MHz be refunded to plaintiff No.1 along with markup. An alternate proposal for compensation was also made by plaintiff No.1 in its aforesaid Notice of Claim. Vide letter dated 11.03.2016, FAB acknowledged that the degradation in the QoS in the plaintiff No.1's spectrum was caused due to illegal operation of DECT cordless phones, and accordingly spectrum band 1950-1955 / 2140-2145 MHz ('F-7') was temporarily assigned to plaintiff No.1. In its 42nd meeting, it was resolved by FAB that action will be initiated for resolution of the interference in the plaintiff No.1's spectrum and F-7 will be stopped upon elimination of the interference by DECT cordless phones. Several letters and reminders were sent by plaintiff No.1 to PTA and FAB requesting for an early resolution of the interference in the plaintiff No.1's spectrum, but no action was taken in this behalf.

4. The plaintiffs have further averred that plaintiff No.1 filed an application with PTA on 19.04.2018 seeking an amendment in its license whereby it could be provided the F-7 band as compensation / replacement for the interfered spectrum assigned to it in the year 2014, or in the alternative an offset against its payment obligations under the license in the sum of US \$ 225 million. The amendment sought by plaintiff No.1 was declined by PTA vide its decision dated 20.06.2019. The said decision was challenged by plaintiff No.1 before the learned Islamabad High Court in F.A.O. No.128/2019 which was dismissed vide order dated 17.09.2019 with direction to plaintiff No.1, PTA and FAB to mutually settle the issue within three months by way of consultation and negotiations, and further direction to PTA and FAB to determine the cost incurred by plaintiff No.1 due to interference and to assess the effect of the use of the F-7 band by plaintiff No.1. Plaintiff No.1 and PTA filed Civil Petition Nos. 3683/2019 and 4228/2019, respectively, before the Hon'ble Supreme Court against the aforesaid order dated 17.09.2019. Through common order dated 31.01.2020

passed with the consent of the parties, both the above petitions were disposed of by the Hon'ble Supreme Court by referring the matter to defendant No.2 / the Ministry of Information, Technology and Telecommunication to examine it holistically, after hearing all the parties concerned and taking assistance from PTA and FAB to the maximum possible extent and to decide the matter within thirty days, strictly in accordance with law and without being influenced by any of the observations made by the learned Islamabad High Court. Through the impugned decision communicated vide letter dated 06.04.2021, it was concluded by defendant No.2 that as plaintiff No.1 has availed additional spectrum for quite some time without any charge, it should vacate the same immediately to make it available for disposal through auction ; and, usage of additional spectrum has to be charged with effect from 12.03.2018 till the date of its withdrawal, the cost whereof payable by plaintiff No.1 should be determined by PTA.

5. In the above background, the present Suit has been instituted by the plaintiffs praying, *inter alia*, that the impugned decision be declared as unlawful, unreasonable, arbitrary and unconstitutional ; PTA and FAB be directed to fulfil their statutory obligation by removing the interference in the spectrum, and in case of their failure, they may be directed to provide an alternative spectrum to plaintiff No.1 ; and, it may be declared that till such time plaintiff No.1 is entitled to use the additional F-7 band as compensation.

6. It was submitted by Mr. Omer Soomro, learned counsel for defendants 3 and 4, that this Court does not have the territorial jurisdiction to entertain the instant Suit. In support of his above submission, he contended that at the time of institution of a Suit the territorial jurisdiction of the Court can be determined only under Clauses (a), (b) and/or (c) of Section 20 CPC, which envisage a three-pronged test for determining the Court in which a Suit should be instituted ; and, in order to invoke the jurisdiction of a particular Court, the plaintiff has to satisfy the conditions laid down in any one of the said Clauses of Section 20 CPC in relation to that Court. He further contended that Clause (a) of Section 20 CPC provides that every Suit shall be instituted in a Court within the local limits of whose jurisdiction the defendant, or each of the defendants where there are more than one, at the time of institution of the Suit, actually and voluntarily reside(s) or carry(ies) on business or personally work(s) for gain ; and, before exercising jurisdiction, the Court is duty-bound to ensure that the mandatory requirement of Section 20(a) *ibid* is met by the plaintiff. He submitted that in the instant case this Court has to see whether the principal office of each of the defendants is located within its territorial jurisdiction or not. He further

submitted that it is an admitted position that all the defendants have their principal office / headquarter at Islamabad, and defendants 3 and 4 have only their zonal office and branch office, respectively, at Karachi. According to him, only the principal office / headquarter of the defendants can be considered as the place where they carry on business as contemplated in Section 20(a) *ibid*, and the zonal office and branch office of defendants 3 and 4 do not fall within the definition of such place in terms of Section 20(a) *ibid*. It was strongly asserted by him that this Suit ought to have been instituted only before the civil Court at Islamabad as all the defendants have their principal office and headquarter at Islamabad, and the correspondence made by defendants 3 and 4 with the plaintiffs in relation to the dispute at hand was also carried out from their respective headquarters / principal offices in Islamabad.

7. Mr. Soomro further submitted that Clause (b) of Section 20 CPC provides that where at the time of institution of the Suit any of the defendants, when there are more than one, does not reside or carry on business within the territorial jurisdiction of the Court, the Suit can be instituted before such Court only with the leave of that Court or if such defendant acquiesces the institution. He submitted that the above mandatory requirement of Section 20(b) *ibid* has also not been fulfilled by the plaintiffs. He further submitted that though the plaintiffs have not sought the leave of this Court under Section 20(b) *ibid* for instituting the present Suit, however, leave cannot be granted to them as the main relief sought by them is against defendant No.2 which admittedly carries on business only at Islamabad. Learned counsel also referred to Clause (c) of Section 20 CPC and submitted that the said Clause provides that a Court may exercise jurisdiction in respect of a matter where the cause of action arises within its jurisdiction. It was pointed out by him that the auction of the subject spectrum was held at Islamabad ; the license in respect thereof was issued in favour of plaintiff No.1 at Islamabad ; the alleged interference in the spectrum was agitated by plaintiff No.1 at Islamabad ; the additional spectrum was granted to plaintiff No.1 at Islamabad ; the application seeking amendment in the license was filed by plaintiff No.1 at Islamabad ; the said application was rejected by PTA at Islamabad which decision was challenged by plaintiff No.1 before the learned Islamabad High Court and then before the Hon'ble Supreme Court ; and, the impugned decision by defendant No.2 in compliance of the consent order passed by the Hon'ble Supreme Court was also taken at Islamabad. It was urged by him that the cause of action alleged in this Suit accrued at Islamabad at all stages, and it did not accrue at Karachi at any

stage. It was finally urged by the learned counsel that in view of his above submissions, this Court does not have territorial jurisdiction to entertain and try the instant Suit under any of the Clauses of Section 20 CPC, and thus the plaint is liable to be returned to the plaintiffs for presentation before the Court of competent jurisdiction.

8. In support of his above submissions, learned counsel for defendants 3 and 4 relied upon Province of Sindh V/S Haji Razzaq and others, PLD 2017 S.C. 207, Amin Textile Mills (Pvt.) Ltd. V/S Islamic Republic of Pakistan and 3 others, 1998 SCMR 2389, Sandalbar Enterprises (Pvt.) Ltd. V/S Central Board of Revenue and others, PLD 1997 S.C. 334, WAPDA and 2 others V/S Mian Ghulam Bari, PLD 1991 S.C. 780, Muhammad Naved Aslam and 3 others V/S Mst. Aisha Siddiqui and 14 others, 2011 CLC 1176, Rimpa Sunbeam Co-Operative Housing Society Ltd. through Managing Director V/S Karachi Metropolitan Corporation through Administrator, PLD 2006 Karachi 444, Murlidhar P. Gangwani (Engineer) V/S Engineer Aftab Islam Agha and others, 2005 MLD 1506, and Dr. Zahoor Ahmed Shah V/S Pakistan Medical and Dental Council through Secretary and another, 2005 MLD 718.

9. On the other hand, Mr. Salman Akram Raja, learned counsel for the plaintiffs, contended that defendants 1 and 2, being Federal Authorities, are deemed to function all across the country, including Karachi, and defendants 3 and 4 admittedly have their offices at Karachi ; it is well-settled that if the decisions and actions taken by the Federal Government and/or its Authorities take effect all across the country, they are deemed to be functioning all across the country ; it is also well-settled that in determining the cause of action and the facts that have to be proved by the plaintiff in order to succeed, the averments made in the plaint are to be accepted as true ; the term “cause of action” has not been defined in CPC, but it is well-settled that it is said to arise at a place from where the bundle of facts that are necessary to prove the Suit emanate from ; the main relief sought by the plaintiffs is for a declaration that the impugned decision dated 06.04.2021 by defendant No.2 is unreasonable, arbitrary and of no legal effect ; the question of unreasonableness and arbitrariness of the impugned decision and the effect thereof on the plaintiff No.1’s business all across Pakistan, including Karachi, which is the single largest market for plaintiff No.1, could be established only through evidence as it is a not pure question of law, but is a mixed question of law and fact ; it is well-settled that the reasonability or otherwise of an act is a question of fact which should be decided on the basis of evidence ; as the impugned decision

has affected the plaintiff No.1's right and business all across the country, the cause of action has accrued to plaintiff No.1 within the territorial jurisdiction of civil Courts all across the country, including Karachi, and as such all such Courts, including this Court, have concurrent jurisdiction to entertain this Suit ; there is no bar under the law that disentitles or prohibits the plaintiffs from invoking the jurisdiction of this Court, particularly when the cause of action has accrued to them at Karachi which is the single largest market for plaintiff No.1 and where the impact of the impugned decision has been felt the most ; the spectrum bands allocated to plaintiff No.1 are not confined to the geographical limits of Islamabad or any one particular city, but are spread over all across Pakistan ; the highest number of cellular phones affected nationwide due to interference are in Karachi which is about 50% of interference in the entire spectrum band allocated to plaintiff No.1 nationwide ; the largest bulk of the plaintiff No.1's customers is in Karachi and due to this reason the maximum loss of revenue due to interference is in Karachi ; these particular questions i.e. whether the cause of action accrued at Karachi and whether most of the adverse effect of the impugned decision in relation to the plaintiff No.1's business was in Karachi, require inquiry and cannot be decided without evidence ; under the "take-effect test" and "take-effect" doctrine, the jurisdiction of this Court stands expanded under Section 120 CPC and also as the original civil jurisdiction of this Court is distinct from the ordinary civil jurisdiction of civil Courts in general ; the objections raised by defendants 3 and 4 with regard to the jurisdiction of this Court by relying upon Section 20 CPC are liable to be rejected as the provisions of the said Section are inapplicable to this Court in view of Section 120 CPC ; without prejudice to the above submission with regard to Section 120 CPC, the requirement of Section 20(c) CPC stands fully satisfied in the instant case ; and, this Court has entertained and adjudicated a large number of Suits in the past wherein the defendants, being Federal entities or corporations, did not have their principal place of business at Karachi, and a large number of such Suits is still subjudice before this Court.

10. In support of his above submissions, learned counsel for the plaintiffs placed reliance upon, Searle IV Solution (Pvt.) Limited and others V/S Federation of Pakistan and others, 2018 SCMR 1444, The Federal Government through Secretary Interior Government of Pakistan V/S Ms. Ayyan Ali and others, 2017 SCMR 1179, Mian Asghar Ali V/S Government of Punjab through Secretary (Colonies) BOR Lahore and others, 2017 SCMR 118, Liberty Papers

Ltd. and others V/S Human Rights Commission of Pakistan, PLD 2015 S.C. 42, Qazi Abdul Jalil V/S N.W.F.P. Forest Development Corporation through Chairman and others, 2010 SCMR 1933, Province of Punjab through District Collector, Mianwali and others V/S Mehmood-ul-Hassan Khan, 2007 SCMR 933, State Life Insurance Corporation of Pakistan through its Chairman and another V/S Director General Military Lands and Cantonments, Rawalpindi and 4 others, 2005 SCMR 177, Sandalbar Enterprises (Pvt.) Ltd. V/S Central Board of Revenue and others, PLD 1997 S.C. 334, Messrs Al-Iblagh Limited, Lahore V/S The Copyright Board, Karachi and others, 1985 SCMR 758, Said and others V/S Fazal, Hussain and others, PLD 1959 S.C. (Pak.) 356, Muhammad Usman Memon V/S D.C.O. Hyderabad and others, 2021 MLD 200, Muhammad Azeem V/S Mst. Rani through Special Attorney and 2 others, 2020 YLR 1932 (Sindh), Safe Mix Concrete Limited through Company Secretary V/S Pakistan through Secretary (Revenue Division) and 4 others, 2020 CLC 602 (Sindh), Mrs. Humera Imran through Attorney V/S Government of Pakistan, Ministry of Defence and Production through Secretary and 3 others, PLD 2019 Sindh 467, Telecard Limited through representative V/S Federation of Pakistan through Secretary and 2 others, 2019 MLD 1053, Habib Bank Limited and another V/S Haji Riaz Ahmed and another, 2017 CLC 1671, Miss. Ayyan Ali V/S Federation of Pakistan and others, 2017 P.Cr.L.J. 920, Messrs MIA Corporation (Pvt.) Limited V/S Pakistan PWD and others, PLD 2017 Islamabad 29, Tanveer Hussain Manji and 3 others V/S Federation of Pakistan through Secretary Interior and 3 others, 2016 CLC 1534, Ms. Namoos Zaheer V/S Azfar Hussain and another, 2016 CLC 1425 (Islamabad), Karachi Electric Supply Company through authorized Officer V/S Karachi Water and Sewerage Board through Managing Director and 3 others, 2015 YLR 967, Gen. (Retd) Pervez Musharraf through Attorney V/S Pakistan through Secretary Interior and others, PLD 2014 Sindh 389, Muhammad Nawaz Khan through legal heirs and others V/S Province of Punjab through Collector and others, 2014 YLR 1222, Haji Riaz Ahmed through attorney and another V/S Messrs Habib Bank Limited through President and 2 others, 2012 CLD 491, Normeen Shafi V/S Amjad Shafi and 5 others, PLD 2011 Karachi 416, Digital World Pakistan (Pvt.) Limited through Chief Executive V/S Samsung Gulf Electronics FZE through Managing Director / Chief Executive Officer and another, PLD 2010 Karachi 274, LPG Association of Pakistan through Chairman V/S Federation of Pakistan through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and 8 others, 2009 CLD 1498, Murlidhar P. Gangwani (Engineer) V/S Engineer Aftab Islam Agha and others, 2005 MLD 1506, Muhammad Tariq Mehmood and 2 others V/S

Anjuman Kashmiri Bardari Khisht Faroshan through President Abdul Ashfaq and 21 others, 2003 CLC 335 (Lahore), Pfizer Limited and another V/S Wilson's Pharmaceuticals, 2002 CLD 1653, Messrs Lucky Cement Limited V/S The Central Board of Revenue and others, PLD 2001 Peshawar 7, Haji Hafeezuddin and others V/S Lucas Service Pakistan Limited, PLD 2000 Karachi 58, Syed Muhammad Anwar Tobal V/S Messrs Bangladesh Shipping Corporation, 1991 CLC 473, and West Pakistan Industrial Development Corporation V/S Messrs Fateh Textile Mills Ltd., PLD 1964 (W.P.) Karachi 11.

11. The first objection with regard to the territorial jurisdiction of this Court was raised by learned counsel for defendants 3 and 4 by relying upon Clause (a) of Section 20 CPC. According to him, as all the defendants have their principal office / headquarter at Islamabad, and defendants 3 and 4 have only their zonal office and branch office, respectively, at Karachi, this Suit ought to have been instituted before the Civil Court at Islamabad and not before this Court. The second objection raised by the learned counsel was that the plaintiffs have not sought the leave of this Court under Clause (b) of Section 20 CPC for instituting the present Suit, and in any event leave cannot be granted to them as the main relief sought by them is against defendant No.2 which has its headquarter only at Islamabad. His second objection is interlinked with the first one. In the instant case, defendant No.1 is the Federation of Pakistan, and defendant No.2 is the Ministry of Information, Technology and Telecommunication of the Government of Pakistan ; defendant No.3 (PTA), which is a body corporate, has been established by the Federal Government under Sections 3 of the Act by a notification in the official gazette, and its members, including the Chairman, are appointed by the Federal Government ; and, defendant No.4 (FAB) has also been established by the Federal Government by a notification in the official gazette under Sections 42 of the Act, which comprises of the Chairman and one Executive Director appointed by the Federal Government, the Chairman of PTA and one nominee each from the Federal Ministries mentioned in Section 43(iv) of the Act. Thus, the defendants in the present Suit are either the Federation or the Federal entities / authorities established, controlled and managed by the Government of Pakistan.

12. In 2017 SCMR 1179 (supra), wherein the impugned notification was issued by the Federal Government at Islamabad, the Hon'ble Supreme Court was pleased to hold that the proceedings challenging the said notification at Karachi were maintainable as it is now well-settled that the Federal Government, though may have exclusive residence or location at Islamabad,

would still be deemed to function all over the country. The following jurisprudential principles deduced in this context by the learned Lahore High Court in the case reported as 2009 CLD 1498 (supra) were approved and reproduced by the Hon'ble Supreme Court in the afore-cited case :

“ (a) The Federal Government or any body politic or a corporation or a statutory authority having exclusive residence or location at Islamabad with no office at any other place in any of the Provinces, shall still be deemed to function all over the country.

(b) If such Government, body or authority passes any order or initiates an action at Islamabad, but it affects the “aggrieved party” at the place other than the Federal Capital, such party shall have a cause of action to agitate about his grievance within the territorial jurisdiction of the High Court in which said order / action has affected him.

(c) This shall be more so in cases where a party is aggrieved or a legislative instrument (including any rules, etc.) on the ground of its being ultra vires, because the cause to sue against that law shall accrue to a person at the place where his rights have been effected. For example, if a law is challenged on the ground that it is confiscatory in nature, violative of the fundamental rights to property ; profession, association, etc., and any curb has been placed upon such a right by a law enforced at Islamabad, besides there, it can also be challenged within the jurisdiction of the High Court, where the right is likely to be affected.

In this context, illustrations can be given, that if some duty / tax has been imposed upon the withdrawal of the amounts by the account holders from their bank account and the aggrieved party is maintaining the account at Lahore, though the Act / law has been passed at Islamabad, yet his right being affected where he maintains the account (Lahore), he also can competently initiate a writ petition in Lahore besides Islamabad ; this shall also be true for the violation of any right to profession, if being conducted by a person at Lahore, obviously in the situation, he shall have a right to seek the enforcement of his right in any of the two High Courts.

(d) On account of the above, both the Islamabad and Lahore High Courts shall have the concurrent jurisdiction in certain matters and it shall not be legally sound to hold that as the Federal Government etc. resides in Islamabad, and operates from there ; and the assailed order / action has also emanated from Islamabad, therefore, it is only the Capital High Court which shall possess the jurisdiction. The dominant purpose in such a situation shall be irrelevant, rather on account of the rule of choice, the plaintiff / petitioner shall have the right to choose the forum of his convenience.”

13. It was fairly pointed out by learned counsel for the plaintiffs that both the afore-cited cases were constitutional / writ petitions before the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. It was contended by him that if this Court comes to the conclusion that the principle laid down in the aforesaid cases arising out of petitions under Article 199 of the

Constitution cannot be applied to Suits, this Suit may be treated as and converted into a petition under Article 199. Indeed this Court has inherent power to convert one proceeding into another, however, in the instant case there is no occasion for exercising such jurisdiction. Suffice it to say many provisions and general principles of the Civil Procedure Code, 1908, and the law laid down by the Superior Courts in relation thereto are applicable to the petitions under Article 199. Therefore, the law laid down by the Superior Courts in petitions under Article 199 in relation to any of the provisions of CPC shall be fully applicable to the proceedings in Suits. The defendants in the present Suit, being either the Federation or Federal entities / authorities, shall be deemed to function all over the country in view of the well-settled principle reiterated by the Hon'ble Supreme Court in 2017 SCMR 1179 (supra). My above view is fortified by the words "*on account of the rule of choice, the plaintiff / petitioner shall have the right to choose the forum of his convenience*" (emphasis supplied) used in 2009 CLD 1498 (supra) and approved by the Hon'ble Supreme Court. This being the legal position vis-à-vis Clause (a) of Section 20 CPC, this Court has the jurisdiction to entertain and adjudicate this Suit, provided the cause of action alleged therein has accrued within its territorial jurisdiction in terms of Clause (c) of Section 20 CPC, which aspect shall be dealt with separately in the subsequent paragraphs. As such, the question of leave by this Court or acquiescence by the defendants under Clause (b) of Section 20 CPC does not arise. It may be noted that Suits against Federal Government and or Federal entities and authorities are not only instituted before this Court in its original civil jurisdiction, but are also adjudicated, provided the requirements of Clauses (a) and or (c) of Section 20 CPC are met. In view of the above, the objections relating to Clauses (a) and (b) of Section 20 CPC are not sustainable.

14. The next objection raised on behalf of defendants 3 and 4 with regard to the territorial jurisdiction of this Court was that the cause of action alleged in this Suit accrued at Islamabad at all stages and no part of it has accrued at Karachi. This controversy revolves around Clause (c) of Section 20 CPC which provides that every Suit shall be instituted in a Court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises. It has been observed by the Superior Courts from time to time that the term "cause of action" has indeed not been defined in the Code of Civil Procedure, 1908. However, it is well-settled by now in view of a plethora of pronouncements by the Superior Courts that cause of action means the totality of the material facts which is necessary for the plaintiff to allege and prove in order to succeed ; cause of

action consists of every fact, which if traversed would be necessary for the plaintiff to prove in order to support his right to judgment, and if not proven gives the defendant a right to judgment ; and, this expression means the bundle or totality of essential facts upon which the plaintiff rests its claim against the defendant. To my mind, cause of action is the justification for instituting the Suit by the plaintiff against the defendant for seeking the relief prayed for in the Suit. The bundle or totality of essential facts, constituting the cause of action, must be clearly pleaded in the plaint because only the facts stated in plaint are to be considered to determine whether such facts constitute the cause of action or not. A plaintiff is required to show through his plaint that not only his right has been infringed by the defendant in a manner to entitle him to a relief against the defendant, but also that when he approached the Court, the right to seek such relief was in existence. If the cause of action accrues at more than one place or within the territorial jurisdiction of more than one Court, the Suit can be instituted in any such Court having territorial jurisdiction in respect of such places. In such an event, all such Courts shall have concurrent jurisdiction to entertain and adjudicate the Suit. It is well-established that the question of the maintainability of the Suit with reference to the territorial jurisdiction vis-à-vis cause of action accrued to a party for institution of such Suit, is to be judged only on the basis of the averments made in the plaint of that Suit ; and, only the prayer made in the plaint and the facts pleaded therein are to be considered while applying Rules 10 and or 11 of Order VII CPC.

15. In Abdul Ghafoor & Brothers contractors V/S Natural Food & Beverage (Pvt.) Ltd. and 2 others, **2001 YLR 3243 (S.C., AJ&K)**, it was held that if a part of the cause of action arises within the local limits of the jurisdiction of a Court, then such Court would have jurisdiction to entertain and try the Suit, irrespective of the extent of the cause of action ; even a fraction of cause of action is a part of cause of action ; and therefore, if even a fraction of cause of action accrues within the local limits of jurisdiction of a Court, that Court shall have the jurisdiction to entertain and try the Suit. In Messrs Brady & Co. (Pakistan) Ltd. V/S Messrs Sayed Saigol Industries Ltd., **1981 SCMR 494**, the Hon'ble Supreme Court was pleased to hold that under Section 20 CPC the plaintiff has three options to sue ; where the defendant or each of the defendants actually resides, carries on business or personally works for gain (clause a) ; or in case there are more than one defendants, any of them resides, carries on business or personally works for gain (clause b) ; or at the place where the cause of action, wholly or in part, arises (clause c) ; and, if the situation in a particular

case is not covered by clauses (a) and (b), the Suit can still be instituted by virtue of clause (c) at the place where the cause of action, wholly or in part, arises. In Digital World Pakistan (Pvt.) Limited (supra), it was held by this Court that the Court in whose jurisdiction the cause of action arises shall have the jurisdiction to entertain the Suit, irrespective of the residence of defendant ; where a party suffered some injury on account of some act of omission or commission relatable to the contract inter se, then the cause of action will be considered to have accrued at such place and the Court at such place will always have jurisdiction ; and, where two Courts have jurisdiction in respect of the same claim, then it will be the prerogative of the plaintiff that weighs more in determining the place of suing.

16. In the present case, it is not disputed that the original spectrum as well as the alternate / additional spectrum F-7 were granted to plaintiff No.1 for the entire country and not for a particular territory. It is not the case of the plaintiffs that the interference in the original spectrum was restricted to a particular region or territory. On the contrary, they have alleged that the quality of the original spectrum was compromised all across the country due to interference and the major portion of the financial and other losses / impact due to such interference has been sustained at Karachi by plaintiff No.1. It is important to note that even the defendants have not disputed that the original interfered spectrum and or the alternate / additional spectrum F-7 were granted to plaintiff No.1 for the entire country and not for a particular territory, or that the alleged interference in the original spectrum occurred all across the country. The entire case / cause of action of plaintiff No.1 rests on the allegation that there was a significant and continuous interference in the original spectrum which was acknowledged by the defendants, but no remedial steps were taken by them to eliminate the interference ; and, that the alternate / additional spectrum F-7 was granted to plaintiff No.1 as compensation which was to be stopped only upon elimination of the interference. The plaintiffs have impugned the decision of defendant No.2 whereby it was concluded, *inter alia*, that the additional spectrum granted to plaintiff No.1 should be withdrawn and the usage thereof be charged with effect from 12.03.2018 till the date of its withdrawal. I am of the view that in addition to the averments and prayer made in the plaint, the Court has to see the dominant object of filing of the Suit. It, therefore, implies that the facts relating to the original interfered spectrum, the consequences of the alleged interference therein, the grant of the additional spectrum F-7 and the decision of defendant No.2 to withdraw the additional spectrum F-7, pleaded in the plaint, shall have

to be examined collectively for determining the cause of action and the place(s) of its accrual. Such examination of the averments and prayer made in the plaint clearly shows that the cause of action alleged therein has accrued all across the country, including Karachi. Therefore, the institution of the instant Suit before this Court is fully justified under Clause (c) of Section 20 CPC. The cases cited and relied upon on behalf of defendants 3 and 4, being distinguishable, cannot be applied in the facts and circumstances of the present case.

17. The plaintiffs have alleged that the impugned decision rendered by defendant No.2 is unreasonable and arbitrary, and it has adversely affected the plaintiff No.1 all across the country, including Karachi. As held by the Hon'ble Supreme Court in State Life Insurance Corporation of Pakistan (supra), the reasonableness or otherwise of an act is a question of fact which at times requires to be decided on the basis of evidence. In Bank of Credit and Commerce and others V/S Asrar Hassan and others, **2007 SCMR 852**, the Hon'ble Supreme Court was pleased to hold that the question of fact or a mixed question of law and fact cannot be effectively decided without recording the evidence. In Mrs. Humera Imran (supra), it was held by a learned Division Bench of this Court that the question whether the impugned action was arbitrary or not was to be ultimately answered on the facts and circumstances of the said case. This being the legal position, the questions whether the impugned decision was unreasonable and arbitrary, and whether it had/has any adverse effect at Karachi in relation to the rights and business of plaintiff No.1, cannot be decided without evidence. Due to this reason also, the plaint of the present Suit cannot be returned at this stage.

18. Foregoing are the reasons of the short order announced by me on 27.08.2021 whereby C.M.A. No. 8722 of 2021 filed by defendants 3 and 4, seeking return of the plaint, was dismissed with no order as to costs.

J U D G E