

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

C.P.No.D-2680 of 2020

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before:-

**Mr.Justice Muhammad Ali Mazhar
Mr. Justice Arshad Hussain Khan**

Pakistan Broadcasters Association.....Petitioner

Versus

Federation of Pakistan & another.....Respondents

Date of Hearing: 05.08, 09.09, 20.10, 21.10.2020 & 19.4.2021.

Ms.Faisal Siddiqui, Muhammad Vawda & Ms.Amna Anjum
Advocates for the Petitioner.

M/s. Kashif Hanif, Sarmad Ali and Samil Malik Advocates for
the Respondent No.2.

Mr. Faqir Liaquat Ali, Deputy General Manger (Legal) PEMRA.

Mr. Kafil Ahmed Abbasi, D.A.G. & Mr.Hussain Bohra A.A.G

Muhammad Ali Mazhar, J: This constitution petition has been brought to implore a declaration that the amendment appended to a proviso of Section 13 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002, vide Section 7 of the Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2007 (Act No.II of 2007) is unconstitutional and illegal. Concomitantly, as a fall back supplication, the petitioner sought the declaration by means of doctrine of reading down that the discretionary powers under Section 13 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 cannot put into effect without enactment of Rules to structure such discretion. To all intents and purposes, the petitioner has challenged the decision of Pakistan Electronic Media Regulatory Authority corresponding to Item No.5 in its 156th Meeting convened on 24th April, 2020 conferring powers to

the Chairman PEMRA for suspending the broadcast licenses pursuant to impugned decision.

2. Mr. Faisal Siddiqui, learned counsel for the petitioner argued that the respondent No.2 cannot delegate its powers under PEMRA Ordinance, 2002 without first framing Rules. The requirement to frame rules is mandatory. The issue is not limited to this particular delegation of power by the respondent No.2 to the Chairman PEMRA. The issue relates to the interpretation of Section 13, PEMRA Ordinance as to how any of the powers under the PEMRA Ordinance could be delegated without framing of rules. Without prejudice to challenge to the vires, the learned counsel further contended that Section 13 of PEMRA Ordinance should be read down that no powers under Section 13 of PEMRA Ordinance can be delegated without framing of rules. He contended that the quasi-judicial power to suspend the license cannot be delegated without express delegation of such power of suspension in the phraseology of Section 13 of PEMRA Ordinance.

3. It was further averred that the respondent No.2 in its 156th meeting under Item 5, delegated powers to the extent of suspension of a license to the Chairman under Sections 30 of PEMRA Ordinance pursuant to Section 13 of PEMRA Ordinance. Immediately on delegation of such powers, the Chairman PEMRA exercised these powers thrice within a short span of time. He further contended unfettered discretionary delegated power is not permissible and such unfettered discretionary delegated power has to be structured either by policy guidelines or rules. Section 13, PEMRA Ordinance, expressly structures such delegated discretionary powers by imposing certain conditions for such delegation.

4. He next articulated that Section 7 of PEMRA (Amendment) Act, 2007, substituted two provisos to Section 13 by a

single proviso. The expression “subject to” connotes the conditions and obligations to be imposed. The mere fact that the word “suspension” was deleted from the first proviso to Section 13 by Section 7 of the PEMRA (Amendment) Act, 2007 does not change the intention of the proviso to Section 13. The Authority’s decision in its 156th meeting is in violation of Section 8 of the PEMRA Ordinance and does not fulfill the requirements of Section 8 (5) of PEMRA Ordinance. So far as objection to the territorial jurisdiction is concerned, the learned counsel argued that in fact by means of this writ petition, the vires and interpretation of a Federal law is under challenge as well as the respondents being part of the Federal Government have presence in Karachi as well as their decisions have effect all over Pakistan therefore this constitution petition is maintainable in this court.

5. Mr.Kashif Hanif, the learned counsel for respondent No.2 argued that Section 29 (6) and Section 30 of the PEMRA Ordinance are two independent sections. The compliance of section 8 (5) of the PEMRA Ordinance is not mandatory as the non-compliance of section 8 (5) of the PEMRA Ordinance does not entail any penal consequences. It was further contended that Section 13 of the PEMRA Ordinance was amended whereby the authority was empowered to delegate its power in respect of suspension of licence. The power of suspension being an interim measure to stop the further violation of directives of the Authority or to restrain the deliberate and contemptuous derogation and contravention of law will not amount to exercise of quasi-judicial power as the same will be finally heard and decided by the Authority when it comes to revocation and cancellation of the licence for which a right of appeal is provided under Section 30 of the PEMRA Ordinance. The language of Section 13 of the PEMRA Ordinance manifestly shows that the requirement to frame rules are directory in nature and the Authority may delegate all its powers

except to revoke or cancel or to grant a licence. It was further averred that non-framing of rules does not provide any penal consequences. The learned counsel for the PEMRA further articulated that the statute is understood to be directory when its disobedience does not entail any penal consequences. The PEMRA Ordinance, 2002 provides comprehensive framework and guidelines for the exercise of power under Sections 20, 29, 30 and 30-A.

6. The learned DAG adopted the arguments advanced by the learned counsel for PEMRA. According to him, the license could be suspended under the delegated powers by virtue of amendment even without framing rules. He further asserted that framing of rules as envisaged under the PEMRA laws is directory. No penal consequence is provided in case Chairman PEMRA suspends the license of any entity under the delegated powers without framing of rules.

7. Arguments heard. The nucleus of this case is predominantly engrossed upon the niceties of Section 13 of PEMRA Ordinance 2002. At the time of its original enactment it was as follows:

“13. Delegation.- The Authority may, by general or special order, delegate to 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:

“Provided that the delegation of such power shall not include the power to grant, suspend, revoke or cancel a broadcast licence provided further that the rules made under this Ordinance shall specify use of delegated powers and shall be framed and enforced after promulgation of this Ordinance and before the notification of the establishment of the Authority”.

However, vide Section 7 of the Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2007 (Act No.II of 2007), the proviso to Section 13 of the PEMRA Ordinance was substituted with the following proviso: [the impugned amendment]

“Provided that the delegation of such power shall not include the power to grant, revoke or cancel a broadcast media or distribution service licence except Cable TV”

8. It is quite discernible from the abovementioned amendment that the word ‘suspend’ has been removed and right now there is no limitation or restraint on the delegation of powers of suspension under Section 13 which were explicitly barred or proscribed prior to the impugned amendment. The primary contention in the case in hand that under Section 13 of the PEMRA Ordinance, 2002, the authority may delegate to the Chairman or any member of its staff, or an expert, consultant, adviser, or other officer or employee of the Authority any of its powers and functions subject to such conditions as it may by rules prescribe. In the earlier proviso attached to Section 13, the power to grant, suspend, revoke or cancel a broadcast licence was not included and it was further provided that the Rules made under the Ordinance shall specify the use of delegated powers and shall be remained in force after promulgation of this Ordinance and before the notification of the establishment of authority. On 14.04.2007, Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2007 was notified, whereby, certain amendments were made in the Ordinance. According to minutes of 156th meeting of Pakistan Electronic Media Regulatory Authority, Islamabad convened on 24th April, 2020, Agenda No.5 pertained to the delegation of powers to Chairman under Section 13 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 for suspension of broadcast media licenses. Agenda No.5 of the meeting along with its decision is reproduced as under:-

“Item No.5; Delegation of Powers to Chairman under Section 13 of PEMRA Ordinance, 2002(Amendment Act 2007) for suspension of Broadcast Media Licenses.

23. Secretary to the Authority requested the Authority to grant approval for delegation of powers to Chairman under Section 13 of PEMRA Ordinance 2002 (Amendment Act 2007) for suspension of Broadcast Media Licenses which was already delegated to the Chairman only in a case licensee fails to comply with the decision/determination of the Authority regarding prescribed limit of foreign content

and/or prohibition of broadcast of Indian content. He further added that the delegation of power would enable the Chairman to take prompt action against the Broadcast media that violates the provisions of PEMRA Laws.

Decision:

24. The Authority unanimously, under Section 13 of PEMRA Ordinance 2002, delegated its powers vested under Section 30 of PEMRA Ordinance 2002 to the extent of suspension of a license; which shall be exercised by the Chairman in case a licensee violates any provision of the Ordinance, the Rules or regulations or Terms & Condition of license. After exercising such powers, the Chairman shall bring the said action into the notice of the Authority in its forthcoming meeting.”

9. So far as the challenge to the vires of amendment made in the proviso attached to Section 13 is concerned, we are sanguine and mindful that while declaring any law intra vires or ultra vires, the court has to analyze and explore the doctrine of ultra vires which envisages that an authority can exercise only so much power as is conferred on it by law. An action of the authority is intra vires when it falls within the limits of the power conferred on it but ultra vires if it goes outside this limit. In the case of **Mir Shabbir Ali Khan Bijarini and others vs. Federation of Pakistan**. (PLD 2018 Sindh 603) (authored by **Muhammad Ali Mazhar-J.**), the court held that if an act entails legal authority and it is done with such authority, it is symbolized as intra vires (within the precincts of powers) but if it is carried out shorn of authority, it is ultra vires. The law can be struck down if it is found to be offending against the Constitution for absenteeism of lawmaking and jurisdictional competence or found in violation of fundamental rights. At the same time it is also well-known through plethora of dictums laid down by the superior courts that the law should be saved rather than be destroyed and the court must lean in favour of upholding the constitutionality of legislation unless ex facie violative of a Constitutional provision. The apex court in the case of **Federation of Pakistan and others vs. Shaukat Ali Mian and others** (PLD 1999 Supreme Court 1026), held that a colourable legislation is that which is enacted by a legislature

which lacks the legislative power or is subject to Constitutional prohibition. Whereas in the case of **Benazir Bhutto vs. Federation of Pakistan and another, (PLD 1988 Supreme Court 416)** the apex court held that vires of an Act can be challenged if its provisions are ex facie discriminatory in which case actual proof of discriminatory treatment is not required to be shown. Where the Act is not ex facie discriminatory but is capable of being administered discriminately then the party challenging it has to show that it has actually been administered in a partial, unjust and oppressive manner. The apex court in the case of **Sui Southern Gas Company Ltd. and others vs. Federation of Pakistan and others, (2018 SCMR 802)** held that when a law was enacted by the parliament, the presumption was that parliament had competently enacted it and if the vires of the same are challenged, the burden is always laid upon the person making such challenge to show that the same was violative of any of the fundamental rights or the provisions of the Constitution. Court should lean in favour of upholding the constitutionality of a legislation and it was thus incumbent upon the Court to be extremely reluctant to strike down laws as unconstitutional. In the case of **M.Q.M. and others vs. Province of Sindh and others. (2014 CLC 335) (authored by Muhammad Ali Mazhar-J)**, it was held that doctrine of severability permitted a court to sever the unconstitutional portion of a partially unconstitutional statute in order to preserve the operation of any uncontested or valid remainder but if the valid portion was so closely mixed up with the invalid portion that it could not be separated without leaving an incomplete or more or less mixed remainder, the court would declare the entire act void. In the case of **Lahore Development Authority and others vs. Ms. Imrana Tiwana and others, (2015 SCMR 1739)**, following principles are deducible for striking down or declaring a legislative enactment as void or unconstitutional:

- (i) There was a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute was placed next to the Constitution and no way could be found in reconciling the two;
- (ii) Where more than one interpretation was possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favoured validity;
- (iii) A statute must never be declared unconstitutional unless its invalidity was beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid;
- (iv) Court should abstain from deciding a Constitutional question, if a case could be decided on other or narrower grounds;
- (v) Court should not decide a larger Constitutional question than was necessary for the determination of the case;
- (vi) Court should not declare a statute unconstitutional on the ground that it violated the spirit of the Constitution unless it also violated the letter of the Constitution;
- (vii) Court was not concerned with the wisdom or prudence of the legislation but only with its Constitutionality;
- (viii) Court should not strike down statutes on principles of republican or democratic government unless those principles were placed beyond legislative encroachment by the Constitution; and
- (ix) Mala fides should not be attributed to the Legislature.

Province of East Pakistan v. Sirajul Haq Patwari PLD 1966 SC 854; Mehreen Zaibun Nisa v. Land Commissioner PLD 1975 SC 397; Kaneez Fatima v. Wali Muhammad PLD 1993 SC 901; Multiline Associates v. Ardeshir Cowasjee 1995 SCMR 362; Ellahi Cotton Mills Limited v. Federation of Pakistan PLD 1997 SC 582; Dr. Tariq Nawaz v. Government of Pakistan 2000 SCMR 1956; Mian Asif Aslam v. Mian Muhammad Asif PLD 2001 SC 499; Pakistan Muslim League (Q) v. Chief Executive of Pakistan PLD 2002 SC 994; Pakistan Lawyers Forum v. Federation of Pakistan PLD 2005 SC 719; Messrs Master Foam (Pvt.) Ltd. v. Government of Pakistan 2005 PTD 1537; Watan Party v. Federation of Pakistan PLD 2006 SC 697; Federation of Pakistan v. Haji Muhammad Sadiq PLD 2007 SC 133; Dr. Mobashir Hassan and others v. Federation of Pakistan and others PLD 2010 SC 265 and Iqbal Zafar Jhagra v. Federation of Pakistan 2013 SCMR 1337 ref.

10. We do not subscribe the stance articulated by the learned counsel for the petitioner insofar as to declare the amendment made in the proviso ultra vires. Neither the delegation of powers by Authority subject to such conditions as it may by rules prescribe as envisaged under Section 13 of the PEMRA Ordinance 2002 is ultra vires to the Constitution or PEMRA Ordinance 2002 nor it is discriminatory or colourable nor does this infringe fundamental right of any citizen of Pakistan.

11. The foremost and prime question in this petition is to deal with and decide whether in exercise of power of delegation conferred under Section 13 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 subject to such conditions as it may by rules prescribe, whether the delegated

powers for suspension of licence could have been exercised by the Chairman PEMRA (delegatee) without first framing the Rules or not?. According to Section 3 of Pakistan Electronic Media Regulatory Authority Ordinance, 2002, Pakistan Electronic Media Regulatory Authority for carrying out the purpose of this Ordinance is a body corporate having perpetual succession and a common seal, whereas, under Section 4, the Authority is responsible for regulating the establishment and operation of all broadcast media and distribution services in Pakistan for international, national, provincial, district, local or special target audiences. Section 6 of the Ordinance explicates that the authority shall consist of a Chairman and twelve (12) members to be appointed by the President of Pakistan. The Chairman must be an eminent professional of known integrity and competence having substantial experience in media, business, management, finance, economics or law. Out of twelve (12) members, one is appointed by the Federal Government on full time basis, whereas, five (05) shall be eminent citizens chosen to ensure representation of all provinces and of the five (05) members from the general public, two (02) members shall be women. The Secretary, Ministry of Information and Broadcasting, Secretary, Interior Division, Chairman, Pakistan Telecommunication Authority and Chairman, Federal Board of Revenue are the ex-officio members, whereas, the remaining two (02) members are also appointed by the Federal Government on need basis on the recommendation of the Chairman.

12. The learned counsel for the PEMRA expressed that since word “may” has been used and no penal consequences are provided if rules are not framed, therefore, the condition of framing rules is directory and not mandatory. There is a vast and noticeable difference in the rudiments of earlier proviso and

the amended proviso. In earlier proviso, the Chairman could not have been delegated the powers to grant, suspend, revoke or cancel a broadcast licence but in the amended set of circumstances, though the power to grant, revoke or cancel a broadcast media or distribution services licence except cable T.V. still cannot be delegated but power to suspend a broadcast media or distribution service may be sanctioned by delegation to the Chairman PEMRA or any other official. Bearing in mind this amended proviso, the authority in its 156th meeting unanimously decided to delegate its powers to suspend the licences by the Chairman. The decision further encapsulates that after exercising such powers, the Chairman shall bring such action into the notice of authority in its forthcoming meeting. Section 30 of the Ordinance germane to powers to vary conditions, suspend or revoke the licence which can be exercised by the authority by an order in writing. For the ease of reference Section 30 of the PEMRA Ordinance is reproduced as under:-

“30. Power to vary conditions, suspend or revoke the licence:- (1) The Authority may revoke or suspend the licence of a broadcast media or distribution service by an order in writing on one or more of the following grounds, namely:-

(a) the licensee has failed to pay the licence fee, annual renewal fee or any other charges including fine, if any;

(b) the licensee has contravened any provision of this Ordinance or rules or regulations made thereunder:

Provided that in the case of revocation of a licence of a broadcast media an opinion to this effect shall also be obtained from the Council of Complaints;

(c) the licensee has failed to comply with any condition of the licence; and

(d) where the licensee is a company, and its shareholders have transferred a majority of the shares in the issued or paid up capital of the company or if control of the company is otherwise transferred to persons not being the original shareholders of the company at the time of grant of licence, without written permission of the Authority.

(2) The Authority may vary any of the terms and conditions of the licence where it deems that such variation is in the public interest.

(3) Except for reason of necessity in the public interest a licence shall not be varied, suspended or revoked under sub-section (1) or sub-section (2) unless the licensee has

been given reasonable notice to show cause and a personal hearing.”

13. The earlier proviso was not affecting the interest of PEMRA licensees to a larger extent as no power to grant, suspend, revoke or cancel a broadcast licence could be delegated which might be the most crucial and drastic action against the licensee but in the amended form the delegatee of the authority may suspend the broadcast licence hence in such eventuality when severe and punitive action is taken under the delegated power then the tenor of law should be implemented in letter and spirit and in our considerate view such delegation of powers may not be extended without framing of Rules as provided under Section 13 of the Ordinance. Obviously when Rules are framed, the premise and parameters of delegated powers could be incorporated in the rules with further minutiae i.e. once the licence is suspended by the Chairman what would be the further course of action whether this suspension will continue for an unlimited period of time or when it will culminate or how the proceedings if any initiated on issuing show cause notice will be dealt with and in how many days the matter will wrap up for further proceedings under the provisions of PEMRA Ordinance 2002. Seemingly the net effect depicts that all said members delegated powers without any deliberation or considering the ramifications which could have addressed more aptly once the rules are framed. Without backing of rules, the Authority should have avoided conferring unguided or unregulated powers to one man to perform one man show which is in fact a situation dominated by or reliant on one person. This is the reason that the legislature in its astuteness and good judgment sanctioned the delegation of power subject to such conditions as it may by rules prescribe. Indeed, mere suspension does not amount to revocation or cancellation of broadcast licence but it is an intermediary drastic action without support of rules and guidelines for further course of action. An

act of suspension of a broadcast media license leads to the closing down the entire broadcasting activity during suspension period which is a serious matter as broadcast media activities or transmission will off air/ shut down in entirety despite having various contractual obligations. At the same time if suspension period is continued for an indefinite period or decision on suspension issue is hang around or lingered, the licensee may face serious consequences detrimental to its whole licensing activity. Quite the reverse, if the rules are framed it will not only cater the preconditions but also tailor the exercise of delegated powers prudently including the crucial features of time frame of suspension period or it will continue till next meeting of Authority whenever it will convene and if for some reasons, the meeting is not scheduled or coram is found incomplete then what would be the effect?. The conditions need to be addressed and ought to prescribed by rules with some guiding principles to regulate the delegation of powers by Authority and exercise of delegated powers by Chairman thus in our view the legislature intentionally in its vision and prudence put in a safety valve/gauge to exercise these delegated powers but subject to such conditions as it may by rules prescribe and this condition was intact even at time when no such delegation of powers could be conferred for severe or drastic action such as cancellation, revocation or suspension of license which situation is moderately changed due to amended proviso. In our sense of judgment, the delegation of powers should be regulated and guided by the rules otherwise it will radically frustrate the purpose of establishing an Authority under PEMRA Ordinance 2002 with sizeable coram to decide the matters according to Section 8(5) of PEMRA ordinance with good conscience, due diligence and proper application of mind.

14. Now we would like to take up the exactitudes, functionality and possibility of doctrine of reading down a statute in the present set of circumstances. In the case of **Peoples**

University of Medical & Health Sciences for Women & others vs. Pakistan & others (SBLR 2021 Sindh 522). (authored by Muhammad Ali Mazhar-J.). The court held that while reading down of a statute two principles had to be kept in view; first that the object of 'reading down' was primarily to save the statute and in doing so the paramount question would be whether in the event of reading down, could the statute remain functional; second, would the legislature have enacted the law, if that issue had been brought to its notice which was being agitated before the court. The doctrine of reading down or of recasting the statute can be applied in limited situations. It is an extension of the principle that when two interpretations are possible, one rendering it constitutional and the other making it constitutional the former should be preferred. The doctrine can never be called into play where the statute requires extensive additions and deletions. The Doctrine of Reading Down is therefore an internal aid to construe the word or phrase in a statute to give reasonable meaning but not to detract, distort or emasculate the language so as to give the supposed purpose to avoid unconstitutionality. It is the duty of the court to endeavor as far as possible to construe a statute in such a manner that the construction results in validity rather than its invalidity and gives effect to the manifest intention of the legislature enacting that statute. In line with the dictum laid down by the apex court in the case of **Rana Aamer Raza Ashfaq and another vs. Dr. Minhaj Ahmad Khan and another, (2012 SCMR 6)** while construing any piece of legislation, the court has to examine and keep in mind three things; (i) the statement of reasons and objects given therein; (ii) the statement of objects given in other laws in pari materia to the one under consideration; and (iii) mandate of Constitutional provision which stands adopted by way of reference.

15. The indispensable and imperative sense of duty of court in interpreting a law is to find out and discover the intention of the legislature then endeavor to interpret the statute in order to promote or advance the object and purpose of the enactment. The expression "subject to such conditions as it may by rules prescribe" employed under Section 13 PEMRA Ordinance requires purposive interpretation or construction which complements its effect to the legislative purpose by following conscientious and exact meaning of the enactment where that meaning is in accordance with the legislative purpose. Here according to the literal meaning it is clear that the Authority may delegate its powers, responsibilities or functions subject to such conditions as it may by rules prescribe so it is mandatory that before delegation of powers conditions of delegation as well as the use of delegated powers must be incorporated under the prescribed rules. While ratiocinating to the interpretation of phrase "subject to" or non-framing of rules, we also surveyed some authorities set by previous judicial decisions. In the case of **Dada Soap Factory Limited vs. Commissioner of Income Tax, Central Zone B, Karachi. (1987 PTD 420)**, the court held that words 'subject to' are not descriptive words but they impose conditions and obligations whereas in the case of **Islamic Republic of Pakistan v. Abdul Wali Khan. (PLD 1976 S.C. 57)**, the apex court held that the expression "subject to" has also been defined as "conditional upon or dependent upon" or "exposed to (some contingent action), being under the contingency". In the case of **Gram Panchayat, Gorakhpur vs. Khushali Dindayal Sahu. (AIR 1973 MP 19)**, the learned court **held** that the words "subject to rules made in this behalf" or similar words are commonly employed in enactments, where the legislature contemplates framing of rules in exercise of delegated powers that expression has to be interpreted according to the context in which it is employed. In each case the scheme and the provisions of the Act have to be examined.

Where power is conferred and machinery for its exercise already exists, it can be said that the expression "subject to rules made in this behalf" has merely an overriding effect so that if any such rules are made, the exercise of the power shall be subject to such rules but where a special power is conferred and there is nothing to regulate its exercise then that expression connotes that the power can be exercised only when the rules are framed and in accordance with them. To put it differently, in the former case, the rules will be so to say supplementary to the section: In the latter case, they will be complementary to the section. In the former case, the law is complete, even without the rules so that the rules, if any framed would have the overriding effect and in that case, the power will be exercised only in accordance with them but in latter case, the law is incomplete, and was deliberately left incomplete by the legislature to be completed by delegated legislation under the rule-making power. The phrase "subject to" signifies both these meanings i.e. (1) liable or exposed to: likely to have; and (2) dependent or conditional on. Each of them is appropriate in its own context.

16. The legislature may confer upon any person or body the power to make subordinate/delegated legislation (Rules, Regulations or byelaws, etc.) in order to give effect to the law enacted by it yet it must perform itself the essential legislative function, i.e. to exercise its own judgment on vital matters of policy and enact the general principles providing guidance for making the delegated legislation. (Ref: **PLD 2020 Supreme Court 1 (Jurists Foundation through Chairman v. Federal Government through Secretary, Ministry of Defence and others)**). The delegated legislation entitled the delegatee to carry out the mandate of the legislature, either by framing rules, or regulations, which translated and applied the substantive principles of law set out in the parent legislation or by recourse to detailed administrative directions and instructions for the implementation

of the law. Delegated legislation was intended to enforce the law, not override it, and it could be used to fill in details but not vary the underlying statutory principles. Where the authorities failed to regulate their discretion by the framing of rules, or policy statements or precedents, it became mandatory for the courts to intervene in order to maintain the requisite balance for the exercise of statutory power. (Ref. 2015 PTD 1100. **Muhammad Amin Muhammad Bashir Limited v. Government Of Pakistan through Secretary Ministry of Finance, Central Secretariat, Islamabad and others, Amanulla Khan and others v. The Federal Government of Pakistan through Secretary, Ministry of Finance, Islamabad and others** PLD 1990 SC 1092 and **Abid Hasan v. PIAC** 2005 SCMR 25). In the celebrated judgment rendered in the case of **Mustafa Impex, (PLD 2016 Supreme Court 808)**, the apex court held that Rules were framed to achieve a certain objective and to achieve this within the channels relating to the devolution and flow of statutory authority. In the absence of compelling reasons to the contrary all rules were, and should be considered to be mandatory and binding. In each and every case the presumption of law would be that the rules were mandatory and should be observed and followed. Only if a compelling public interest was established as a reason for non-compliance with the rules i.e. other than inadvertence, or negligence, or incompetence then, and only then, could the court consider whether or not to condone the breach in the observance of the rules. In the case of **Niaz Muhammad Khan (PLD 1974 Supreme Court 134)**, apex court held that as a general rule a statute is understood to be directory when it contains matter merely of direction, but not when those directions are followed up by an express provision that, in default of following them, the facts shall be null and void. Likewise, in the case of **Apollo Textile Mills (PLD 2012 Supreme Court 268)**, the apex court held that it is true that no universal rule can be laid down for the construction of statutes as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the duty of the courts to try to get real intention of the legislature by carefully attending to

the whole scope of the statute to be construed. The similar view was taken in the case of **Maulana Nur-UI-Haq (2000 SCMR 1305)** that no faultless acid test or a universal rule exists for determining whether a provision of law is mandatory or directory and such determination by and large depends upon the intention of Legislature and the language in which the provision is couched but it is by now firmly settled that where the consequence of failure to comply with the provision is not mentioned the provision is directory and where the consequence is expressly mentioned the provision is mandatory. In **Khawaja Ahmad Hassaan (2005 SCMR 186)**, apex court held that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction. It is an elementary rule of construction of statutes that the judicature in their interpretation have to discover and act upon the mens or sentential legis. Normally, Courts do not look beyond the *litera legis*. There are three methods of judicial approach to the construction of a statute, viz. (i) the Literal; (ii) by employing the golden rule; (iii) by considering the mischief that the statute was designed to obviate or prevent. Moreover, it must be assumed that the Legislature intended to correct the evils which led to the law's enactment. It is logical to assume, in a democracy, that the needs and the desires of the people will find expression in the enactments of the Legislatures consisting of representatives of the people. If this were not so, then there

would be little, if any, justification for resorting to the circumstances surrounding the enactment of a law in an effort to ascertain the legislative intent.

17. The compass and magnitude of judicial review is now well settled. The court may invalidate laws, acts and governmental actions that are incompatible with a higher authority more so, an executive decision may be invalidated for being unlawful and also maintains check and balance. This can be sought on the grounds that a decision arises when a decision-maker misdirects itself in law, exercises a power wrongly, or improperly purports to exercise a power that it does not have, which is known as acting ultra vires; a decision may be challenged as unreasonable if it is so unreasonable that no reasonable authority could ever have come to it or a failure to observe statutory procedures. The dominance of judicial review of the executive and legislative action must be kept within the precincts of constitutional structure so that there may not be any incidence to give thought to misgivings concerning the role of judiciary in outstepping its bounds by uncalled-for judicial activism. In the case of **Tariq Aziz-ud-Din, Human Rights Cases Nos. 8340, 9504-G, 13936-G, 13635-P & 14306-G to 14309-G of 2009. (2011 PLC (C.S.) 1130)**, the apex court held that all judicial, quasi-judicial and administrative authorities must exercise power in reasonable manner and also must ensure justice as per spirit of law and instruments regarding exercise of discretion. Ref: Delhi Transport Corporation v. D.T.C. Mazdoor Congress AIR 1991 SC 101 and Mansukhlal Vithaldas Chauhan v. State of Gujarat 1997(7) SCC 622. Object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application, of mind. Such objective can be achieved by following rules of justness, fairness and openness in

consonance with command of Constitution enshrined in different Articles including Arts.4 and 25 of the Constitution.

18. So far as the objection of territorial jurisdiction of this court is concerned, we would like to discern here that petitioner is the registered society functioning as an association of T.V and Radio broadcasters. The present petition has been moved in a representative form to safeguard and protect the interest of all members of the petitioner. In essence, the petition has been filed to challenge the vires of amendment made in the proviso of Section 13 of the PEMRA Ordinance which is applicable across the board. We do not mull over that challenging the vires of law even in Sindh there is any embargo or bar with regard to the territorial jurisdiction of this court hence we reject this objection and found the petition maintainable in this court. In the case of **Gen. (Ret.) Pervez Musharraf v. Pakistan. (PLD 2014 Sindh 389) (authored by Muhammad Ali Mazhar-J)**, the court held that the guiding principle is to see the dominant object of filing petition in the high court vis-à-vis territorial jurisdiction. In the case reported in **2009 CLD 1498 (LPG Association of Pakistan v. Federation of Pakistan)**, the court dilated and surveyed various pronouncements and dictums laid down by the superior courts and after considering the ratio decidendi it was held that 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. 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. It was further held that 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 affected. 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.

[Ref: Sandalbar Enterprises (Pvt.) v. CBR PLD 1997 SC 334; Messrs Al-Iblagh Limited Lahore v. The Copyright Board Karachi and others 1985 SCMR 758; Mst. Sahida Maqsood v. President of Pakistan and another 2005 SCMR 1746; Dr. Zahoor Ahmed Shah v. Pakistan Medical and Dental Council through Secretary and another 2005 MLD 718; Dr. Qaiser Rashid v. Federal Secretary, Ministry of Foreign Affairs Government of Pakistan, Islamabad PLD 2006 Lah. 789; Messrs Ibrahim Fibres Ltd. through Secretary/Director Finance v. Federation of Pakistan through Secretary/Revenue Division and 3 others PLD 2009 Kar. 154; Abdul Ghaffar Lakhani v. Federal Government of Pakistan and 2 others PLD 1986 Kar. 525; Amin Textile Mills (Pvt.) Ltd. v. Islamic Republic of Pakistan 1998 SCMR 2389; Flying Kraft Paper Mills (Pvt.) Ltd. Charsada v. Central Board of Revenue, Islamabad and 2 others 1997 SCMR 1874; Sh. Abdul Sattar Lasi v. Federation of Pakistan through Secretary, Ministry of Law Justice and Parliamentary Affairs, Islamabad and 6 others 2006 CLD 18; Muhammad Idrees v. Government of Pakistan through Secretary, Establishment Division, Islamabad and 5 others 1998 PLC (C.S) 239; Messrs Lucky Cement Ltd. v. The Central Board of Revenue and others PLD 2001 Pesh. 7; Muhammad Aslam Khan and 9 others v. Federal Land Commission through its Chairman, Central Secretariat Islamabad and 3 others PLD 1976 Pesh. 66 and Trading Corporation of Pakistan (Private) Ltd. v. Pakistan Agro Forestry Corporation (Private) Ltd. and another 2000 SCMR 1703]

19. In the wake of above discussion, we declare that the powers of the Pakistan Electronic Media Regulatory Authority vested in Section 30 of the PEMRA Ordinance 2002 could not be delegated to the Chairman or any other official of PEMRA by dint of Section 13 of PEMRA Ordinance, 2002 for suspension of Broadcast Media Licenses without framing of Rules. Henceforth, the decision of Authority to this extent conveyed vide minutes of meeting dated 24th April 2020 is also declared null and void. Consequently, all actions taken by the Chairman pursuant to the delegated powers for suspension of Broadcast Media Licenses are strike down. The petition with pending application is disposed of accordingly.

**Karachi:-
Dated.13.8.2021**

Judge

Judge