

Order Sheet

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 2429 of 2011

Dated _____ Order with signature of Judge. _____

:-

1. For katcha peshi.
2. For hearing of M.A. No. 10985/2011.
3. For hearing of M.A. No. 4164/2012.

24.04.2013

Mr. Moin Azhar Siddiqui, advocate for the petitioner.

M/s. Mehmood Abbas & Ali Akbar Sehto, advocates for respondent No.2.

Mr. Muhammad Ashraf Mughal, DAG.

ORDER

Nadeem Akhtar, J. - The petitioner, which is a private limited company, was granted three licenses by respondent No.2 Pakistan Telecommunication Authority (**PTA**), including the Fixed Local Loop License (**FLL License**), under Section 21 of the Pakistan Telecommunication (Re-Organization) Act, 1996, (**the Act of 1996**). This petition relates only to the FLL License, and the other two licenses are not the subject matter of this petition. The FLL license was granted to the petitioner on 09.5.2005 by respondent No.2 PTA. Under Clause 3.2.1 of the FLL License, the petitioner was required to establish at least one 'Network Connection Point' in each 'Licensed Region' and commence the provision of 'Mandatory Services' in each 'Licensed Region' within 18 months from the 'Effective Date'. As per the averments made in this petition, the petitioner made all the efforts to roll out the services under the FLL License, but for the reasons mentioned in the petition, the petitioner admittedly could not roll out the services within the period of 18 months agreed vide the said Clause 3.2.1. At the request of the petitioner, the said agreed period of 18 months was extended twice by respondent No.2 by granting two extensions of 12 months each. The originally agreed period of 18 months expired on 09.11.2006 as per the FLL License ; the first extension of 12 months expired on 09.11.2007 ; and the second extension expired on 09.11.2008.

2. On 02.03.2009, a show cause notice was issued by respondent No.2 to the petitioner under Section 23 of the Act of 1996, requiring the petitioner to remedy the aforementioned contravention committed by the petitioner, within 30 days of the said notice. The petitioner responded to this show cause notice through its reply dated 01.04.2009, whereby the petitioner committed to roll out its services by the third quarter of the year 2009. It was further stated in this reply that the license would be surrendered by the petitioner for both KTR and LTR regions in case the time requested was not allowed by respondent No.2. The petitioner's request for extension was accepted by respondent No.2 and time was accordingly granted till 30.06.2009. As the roll out process by the petitioner was not forthcoming, a show cause notice dated 17.04.2009 was issued by respondent No.2, whereby the time was once again extended till 30.06.2009, but it was specifically cautioned that in case the petitioner still fails in rolling out its services even after extension in time till 30.06.2009, the license shall stand terminated with effect from 01.07.2009.

3. It is an admitted position that after all the aforementioned extensions at the request of the petitioner, issuance of show cause notices by respondent No.2, and right of hearing given to the petitioner, the petitioner could not roll out its services as per the terms and conditions of the FLL License. In view of the failure on the part of the petitioner, a notice dated 08.09.2009 was issued by respondent No.2 to the petitioner, whereby the FLL License was terminated by respondent No.2. The petitioner has filed this petition praying that respondent No.2 be directed to revive the FLL License granted to the petitioner, and to facilitate the petitioner to roll out their services under the said license.

4. At the very outset, the learned counsel for respondent No.2 submitted that this petition is not maintainable as the petitioner ought to have filed an appeal under Section 7 of the Act of 1996, if it was aggrieved by any of the actions or decisions of respondent No.2. He further submitted that all the actions taken and notices issued by respondent No.2 were within the four corners of the Act of 1996, and the same were issued in view of the failure on the part of the petitioner in rolling out the services under the FLL License within the agreed period, or the extensions granted subsequently.

5. It is a settled law that High Court in its inherent jurisdiction can convert an Appeal, Constitutional Petition or Revision to any other remedy, as held by the learned Division Bench of this Court in the case of Syed Ghazanfar Hussain through Legal Heirs and others V/S Nooruddin and others, **2011 CLC 1303**. We could have considered the conversion of this petition into an appeal under Section 7 of the Act of 1996, but we are afraid that such discretionary powers cannot be exercised in this matter in favour of the petitioner as this

petition was not filed within a period of 90 days, which is the limitation prescribed in Section 7 of the Act of 1996 for filing an appeal. The petition is also hit by laches, as the FLL License was admittedly terminated on 08.09.2009, and this petition was filed 06.07.2011 after a long delay of about 22 months, for which no explanation has been given at all by the petitioner. Moreover, we have noticed that the cancellation of the FLL License has not been challenged in this petition, but only its revival and extension has been sought. When admittedly there is no subsisting license in favour of the petitioner, there is no question of its revival or extension, more particularly when the cancellation has not been challenged.

In view of the foregoing, this petition along with the listed applications is dismissed with no order as to costs.

Chief Justice

Judge