

ORDER SHEET
THE HIGH COURT OF SINDH KARACHI

Suit No. [-] 1500 of 2022

[ARY Communications Ltd., versus Federation of Pakistan and others]

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA No.11675 of 2022.
2. For orders on Office Objection at Flag 'A'.
2. For orders on CMA No.11676 of 2022.

13-08-2022

M/s. Abid S. Zuberi, Ayan Mustafa Memon, Amna Khalil and Arif Ansari, Advocates for the Plaintiff.

M/s. Khawaja Shams-ul-Islam and Kashif Hanif, Advocates for the PEMRA.

Mr. Khaliq Ahmed, Deputy Attorney General for Pakistan.

- 1] Urgency granted.
- 2] Four [04] days' granted for court fees.
- 3] The Plaintiff has challenged a notice dated 11-08-2022 issued by the Ministry of Interior communicating to the PEMRA that "*The NOC issued in favour of M/s. ARY Communications (Pvt.) Limited (ARY News) is cancelled with immediate effect and until further orders on the basis of adverse reports from agencies.*" Though the notice does not specify which NOC is cancelled, it is contended that the same refers to the security clearance earlier given to the Plaintiff by the Ministry of Interior.

The chronology of events leading to the suit, as narrated from the record by learned counsel for the Plaintiff, is as follows:

- (i) On 08-08-2022, cable operators were communicated *via* WhatsApp messages that the PEMRA has instructed to suspend the transmission of ARY news (pages 65 to 71);
- (ii) Again, on 08-08-2022, which was the 9th of Muharram and a public holiday, the PEMRA issued show-cause notice to the

Plaintiff for airing "*false, hateful and seditious content*" and at the same time "banned" its transmission. Though the notice gave the Plaintiff 3 days' time to show-cause (expiring on 12-08-2022), the date of hearing was fixed for 10-08-2022;

- (iii) On 10-08-2022, the Plaintiff filed Suit No. [-] 1457/2022 before this Court to challenge the show-cause notice and the ban on its transmission. When the case was taken up on the same day, PEMRA's counsel entered appearance and stated that PEMRA has not passed any order banning the channel. By an interim order (dated 10-08-2022), the Court allowed the Plaintiff to file a reply to the show-cause notice by 15-08-2022; it restrained the PEMRA from suspending/revoking the Plaintiff's broadcast license while also putting the Plaintiff on certain terms; and given the statement made by PEMRA's counsel, the defendants were directed to restore the channel at the same position as it existed on 07-08-2022;
- (iv) The above order was not complied with, and instead on 11-08-2022 the impugned notice was issued by the Ministry of Interior to PEMRA.
- (v) On 12-08-2022 the Defendant No.3 was "re-appointed" Chairman PEMRA, who proceeded to call a meeting of the Authority the same day at 19:00 hrs, to take decision on a working paper prepared for said meeting (page 279), which proposed that in view of the notice dated 11-08-2022 issued by the Ministry of Interior, the security clearance already issued to the Plaintiff may be withdrawn, and the Plaintiff's application pending for renewal of its broadcast license may be declined;
- (vi) Per the Plaintiff, since neither the Plaintiff nor the Court were disclosed of the impugned notice, the Plaintiff filed a contempt application in said suit on 12-08-2012, whereupon the Regional Director PEMRA was directed to appear before the Court at 04:00 pm. Since none appeared for PEMRA, the

Court issued a direction to the Chairman PEMRA to comply with the order dated 10-08-2022 by 10:00 pm same day; however no compliance was made. On being apprised of the impugned notice, the Plaintiff has filed this fresh suit.

M/s. Abid S. Zuberi and Ayan Memon, learned counsel for the Plaintiff point out from the record that the Plaintiff's application for renewal of license was pending with PEMRA since 03-09-2018 (page 275), and in process thereof, a security clearance was already issued by the Ministry of Interior to the Plaintiff on 10-11-2021 (page 277). They submit that in the background of the case the cancellation of such security clearance is clearly *malafide*, for political considerations, aimed at stifling the fundamental rights of making and receiving free speech (Articles 19 and 19-A of the Constitution) and the Plaintiff's fundamental right in Article 18 of the Constitution. They submit that the overnight appointment of a Chairman, PEMRA, without any advertisement, has apparently been made with the aim of 'fixing' the Plaintiff.

At this juncture, M/s. Khawaja Shams-ul-Islam and Kashif Hanif Advocates enter appearance for PEMRA, and Mr. Khaliq Ahmed, Deputy Attorney General for the Federation. They request for a brief audience. Permission granted. They submit that the impugned notice is not un-substantiated and the underlying adverse reports received from agencies will be shared with the Court, however, till such time they request that no interim order be passed. Learned counsel for the PEMRA also placed reliance on the case of *Labbaik (Pvt.) Ltd. versus Federation of Pakistan*, a Division Bench judgment of this Court dated 03-07-2015, to submit that it is futile to argue that the security clearance given by the Ministry of Interior cannot be re-called.

While it is correct that it has been held in the case of *Labbaik (Pvt.) Ltd.* that a security clearance earlier issued by the Ministry of Interior can be recalled, that was in facts where new directors were inducted on the board of the licensee, and hence the learned

Division Bench observed “that the law envisages security clearance of the management and not of the company...”. Here, the case of the Plaintiff is that the security clearance has been withdrawn (a) with *malafides*, for extraneous reasons, (b) to frustrate orders passed in Suit No. -1457/2022, and (c) without affording the Plaintiff any opportunity of explaining itself. The impugned notice does not state that the security clearance is cancelled on account of change of management, but simply that there are “*adverse reports from agencies*” without adverting to those reports. Therefore, the case of *Labbaik (Pvt.) Ltd.* does not appear to be presently relevant. Conversely, and on a tentative view of the matter, the chronology of events discussed above, which are borne from the record, *prima facie* give force to the contention of the Plaintiff. Issue notice for **17-08-2022 at 11:00**. Till then, the impugned notice dated 11-08-2022 issued by the Ministry of Interior cancelling the Plaintiff’s security clearance, is suspended.

SHABAN*

JUDGE