

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No. -1457 of 2022

[ARY Communications Ltd....v.... Federation of Pakistan through Secretary M/o
Information and Broadcasting and others]

Order with signature of Judge(s)

1. For orders on CMA No.11848/2022 (Urgent Application)
2. For orders on CMA No.11849/2022 (Contempt Application)
(The matter is already fixed for 24.08.2022)

17.08.2022

M/s. Abid S. Zuberi, Ayan Mustafa Memon and Ms. Amna Khalili,
Advocates for the plaintiff

1. Urgency granted.
2. Learned counsel for the plaintiff submits that in compliance of this Court's order dated 15.08.2022 a circular attached with the application was issued in the background where it was brought to this Court's attention personally by Mr. Muhammad Saleem Baig, Chairman PEMRA, who appeared before this Court on 15.08.2022 in contempt proceedings that he has not issued any directions for off-airing transmission of ARY News channel and that he has no objection if cable operators restore the said channel's transmission. Learned counsel states that even despite issuance of the said circular on 15.08.2022, transmission of ARY News has not been restored as yet. Learned counsel states that the alleged contemnor/Chairman PEMRA was present before this Court on the last date of hearing giving an impression to the Court that he has no role in taking off ARY News transmission from television sets and *in fact* probably it was on account of the cable operators that those transmissions are not visible to the viewers. In this regard, learned counsel has referred to Sections 19 and 28 of the PEMRA Ordinance, 2002 to show that it is the duty of broadcast media as well as distribution service operator (cable operators) to not to cause any ceasure or suspension of a channel's broadcasts, except on account of force majeure or with the prior approval of the Authority i.e. PEMRA. Learned counsel thereafter refers to Rule 8(8) and Rule 8(9) of the Pakistan Electronic Media Regulatory Authority (Distribution Service Operations) Regulations, 2011 to show that it is responsibility of every cable operator to include compulsory channels in the basic service and, except in the case of force majeure such licensee i.e. cable operator not to change

the position of any channel being distributed by it unless a prior notice is issued in this regard. Learned counsel states that *in fact* PEMRA law and the Rules empower to take penal action against the cable operators, who in the absence of any direction issued by PEMRA, cease or suspend transmissions of a channel.

Learned counsel states that in these circumstances, PEMRA cannot be absolved of its responsibilities and in support, places reliance on the judgment passed by the Hon'ble Supreme Court in the case of *Dr. Shahid Masood and others v. Federation of Pakistan and others (2010 SCMR 1849)*, where transmissions of the plaintiff's channel and Geo News channel were blocked and where defence was taken by the then Chairman PEMRA that they have no role in such a blockage and it was on account of the cable operators, it perturbed the Court that as to why the Chairman had not invoked the powers vesting in him, inter alia, under section 30 read with section 28 and why criminal proceedings were not initiated under section 33 of the PEMRA Ordinance, 2022.

Para 13 and 14 of the judgment are reproduced hereunder:-

“13. In this view of the matter, we can find that the act of the respondent Operators of the Cable T.V. Networks blocking/obstructing the transmission of ARY News and GEO News and the consequent denial of distribution service to the said Channels and to the viewers who were paying the said operators for the said service, prima facie, was a gross violation of the terms and conditions of the licenses granted to them under sections 20 and 24 read with the provisions of sections 27 and 28 of the said Ordinance of 2002 and thus attracted penal provisions of sections 30 and 33 of the said Ordinance in respect of not only the ones committing the said violations but also those abetting the same.

14. The PEMRA must realize that the licence issued by it to a T.V Cable operator is a certification by it for all concerned that such an operator had committed and consequently stood obliged to offer undisturbed distribution service to the broadcasters as also the viewers. And it is on the basis of the said certification by the PEMRA that on the one hand, the said broadcasters entrust the transmission of their broadcasts to these operators and on other, the hundreds and thousands of viewers/subscribers pay their hard-earned money to the said operators to receive the said service. Therefore, besides being a legal, it is also a moral obligation of the PEMRA, through its Chairman, to ensure that the promised and the legally obligated services are provided by the operators not only to the broadcasters but also to the hundreds and thousands of the public who are paying money to the operators for the said service. Needless to add that any dereliction of duty on the part of the officials of the PEMRA including its Chairman, which appears lacking in good faith, could fall within the purview of abetment of the penal offences and the consequent punishment in terms of section 33 of the said Ordinance.”

In para 15, the Hon'ble Supreme Court held that the role of Chairman PEMRA does not appear to have remained above-board. Hon'ble Supreme Court held that such a blockage was not only denial of (his) duties towards law, towards PEMRA and towards the broadcasters, but was also a serious breach of the constitutional, legal, moral and financial obligations of the cable operators in question to the hundreds and thousands of subscribers who had the right to information (protected by the Constitution) and who had paid for their right to such a viewership. The Hon'ble Supreme Court went on to hold that the PEMRA and its Chairman are custodians of the rights the broadcasters and of the millions of viewers, and such a gross breach of constitutional and legal obligations on the part of cable operators not to be let go unchecked. Counsel states that the Hon'ble Supreme Court was pleased to pass orders for restoring transmissions and directed PEMRA to ensure immediate restoration of broadcast services of ARY and Geo News, even if the same involved taking strict legal action against the delinquent cable operators. Similar treatment is sought in the circumstances at hand.

The Hon'ble Supreme Court per learned also directed the Chairman PEMRA to personally monitor and ensure that the transmissions of channel are continued to be aired without any hindrance or obstruction of whatever kind and the latter was directed to submit a report in that behalf under his own signatures. Counsel states that the said judgment of the Hon'ble Supreme Court announced in the year 2010, was in the circumstances when the above mentioned Regulations were not in place and now these Regulations have statutorily bounded the Chairman PEMRA and holds the Authority responsible to ensure that transmissions of a broadcast media to continue to be available to end users.

Contentions raised by the learned counsel merit considerations. In the circumstances, issue notice of the instant contempt application to the alleged contemnors by first three modes as well as by TCS courier (at the cost of the plaintiff) for **24.08.2022**, when the matter is already fixed. Chairman PEMRA to ensure that his considered reply is filed on or before the next date of hearing. Personal statements from the alleged contemnor Nos.20 and 21 as per the dictum laid down by the Hon'ble

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Supreme Court in *supra* case should also be available before the next date of hearing.

Let copy of this order additionally be sent to the alleged contemnor Nos.20 and 21 through fax, email and WhatsApp for immediate compliance and by furnishing a written report in that behalf in no later than two days.

In case of failure in restoring the transmissions of ARY News channel, let all the alleged contemnors be present in person on the next date of hearing.

JUDGE

B-K Soomro