

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

Suit No.1292 of 2022

ARY Communications Ltd.

Versus

Federation of Pakistan & others

| Date | Order with signature of Judge |
|------|-------------------------------|
|------|-------------------------------|

1. For hearing of CMA 11676/2022 (stay).
2. For hearing of CMA No.13142/2022 (U/S 39 R-4 CPC).
3. For hearing of CMA No.13143/2022 (U/S 39 R-4 CPC).

**Dates of hearing: 01.12.2022, 16.01.2023, 06.02.2023, 17.02.2023
and 23.02.2023.**

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

Mr. Haider Waheed a/w Mr. Zoha Sirhandi, Advocates for defendants No.2 to 4.

Ms. Mahreen Ibrahim, Assistant Attorney General.

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Muhammad Shafi Siddiqui, J.- This suit is filed by a licensee of Pakistan Electronic Media Regulatory Authority (PEMRA), engaged in the business of television broadcasting, having various electronic channels. The subject matter is the cancellation of NOC (No Objection Certificate) which was originally granted by the Ministry of Interior, for the purposes of security clearance when license was granted. In response to a news content, the no objection certificate granted earlier was withdrawn while the application for the renewal of license was pending. The said withdrawal of NOC is challenged in the proceedings as being malafide, without notice and devoid of any reasoning or rationale within their domain.

2. Litigation on some related issues was going on between the plaintiff and defendants for quite some time wherein the root cause is perhaps the same news content that was aired on 27.06.2022 regarding activation of a ruling party's strategic media cell to run a malicious campaign against the leader of another political party.

PEMRA, in this regard, sought response from concerned Ministry for security clearance via security agencies, who withdrew it, for reasons later made available.

3. Plaintiff's counsel has given some details of litigation which led to this situation but perhaps what is more important for this Court is to see the legality of the withdrawal of NOC at this stage where PEMRA is yet to make a final decision in this regard.

4. It is argued by Mr. Zuberi that the NOC has a binding effect and in no way the PEMRA could avoid the effect of result and consequences of withdrawal/cancellation of NOC, which is independently challenged in these proceedings and PEMRA has no role to interfere in these proceedings. It is claimed that the issue is between the plaintiff and defendant No.1/ Ministry of Interior Federation of Pakistan. Mr. Zuberi submits that if at all the Court would come to the conclusion that the NOC was lawfully cancelled, the PEMRA would take its decision pursuant to the show cause notice in accordance with law and in case it is declared to have been cancelled and/or withdrawn unlawfully, nothing could pass on to the PEMRA in response to show cause notice issued to it. Mr. Zuberi has taken me to the text of impugned notice which contains no reasons, however defendants in their reply separately filed reasons, which will be considered. He submitted that their NOC since cancelled/withdrawn, therefore, vested rights have been prejudiced, hence they have challenged the same.

5. Mr. Haider Waheed initially appeared for defendant No.1 that is Federation of Pakistan as well as PEMRA, however, he was, when enquired, as to how in presence of the law officers of the Federation, he could represent the Federation, he insisted that this

is neither clash of interest nor the law prohibits him. He was then asked to assist first on this point when he realized and made a statement that he would be addressing the court on behalf of defendant No.2 PEMRA alone and would not assist on behalf of Federation. This statement however was made without withdrawal of the vakalatnama for the Federation. This aspect of the matter shall be discussed later and responded.

6. The direct arguments of Mr. Haider Waheed, learned counsel for defendant No.2 is that PEMRA internally enquired about the clearance of the directors of M/s ARY Communication Private Limited (PEMRA's licensee) from concerned Ministry, who responded by withdrawing the NOC as recommended by security agencies and it is now for PEMRA to complete the formality to pass an order after hearing the plaintiff. It is argued that this internal communication could neither be impugned in any independent proceedings nor the plaintiff has any right over it as its right could only be prejudiced once the license is cancelled and not NOC. It is defendant No.2's case that the official authority to follow the consequences of NOC's withdrawal is PEMRA who may ignore the cancellation/withdrawal of the NOC, in case they are satisfied that it was unlawfully cancelled and/or that it was without any reason and rationale. Learned counsel submits that no provision of statute (PEMRA Ordinance) would permit plaintiff to challenge the internal correspondence between PEMRA and the Ministry of Interior, from whom the clearance was obtained before issuance and/or renewal of licence. He submits that current interference would prolong the matter and would also bypass statutory provisions of appeal under Section 30A of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 as the licensee would

have a right to challenge the final order of PEMRA, in case their licence is cancelled, but that could only be done after issuance of notice and hearing the plaintiff followed by final order. Any challenge to such cancellation of NOC would then be included in the statutory appeal provided under Section 30A of the PEMRA Ordinance, 2002.

7. I have heard learned counsels and perused the material available on record.

8. Before I could discuss the controversy questioned in this suit for the cancellation/withdrawal of the NOC by the Ministry of Interior, who were assisted by security agencies, the preceding events are very necessary to be disclosed. The record prima facie disclosed that on 08.08.2022 Cable Operators were communicated to suspend the transmission of ARY News and on the same day a show cause notice was issued by PEMRA, which was perhaps 9th Moharam, questioning the broadcast of a disputed news content which defendant No.2 claimed to be a hateful and seditious content and consequently PEMRA banned the transmission. The show cause was ordered to be responded in three days' time which includes the Moharam holidays as well.

9. On 10.08.2022 a suit bearing No.1457/2022 was filed to challenge the show cause notice and the ban which was imposed on the transmission. In the above suit, this Court granted interim injunction which restrained PEMRA from suspending/ revoking the plaintiff's broadcasting license and also put the plaintiff on certain terms as well as PEMRA's counsel, as he appeared on the same day. PEMRA was directed to restore the channel at the same position as it existed on 07.08.2022.

10. The said order was not complied and the event then followed by the impugned notification whereby NOC was cancelled by the Ministry of Interior on 11.08.2022. A meeting was then arranged on 12.08.2022 by PEMRA in pursuance of a show cause notice issued to the plaintiff and the working papers were prepared with an item/agenda as to why on account of security clearance, the application for the renewal of its broadcast licence may not be declined. On attaining knowledge of such show cause and the notification dated 11.08.2022, contempt application was filed on 12.08.2022 in the earlier suit, filed on 10.08.2022, wherein again the PEMRA was directed to comply with the orders of the court earlier passed on 10.08.2022.

11. The injunction was granted to the plaintiff on the first date of hearing whereby the impugned notice was suspended; however it is for this court to see whether the challenge through these proceedings could be made to a letter issued on 11.08.2022 by the Ministry of Interior to PEMRA whereby the security clearance was withdrawn (granted earlier) which could result in the cancellation of license to broadcast, instantly without notice. The impugned notice originally filed without any reason with the plaintiff, however, with an application under Order XXXIX Rule 4 CPC, such reasons were filed by defendant. It is difficult to understand if those were of the same date, since the same does not cumulatively, formed part of the order challenged however a copy of reasons apparently forwarded to plaintiff.

12. Notwithstanding the above fact, let us now see whether, under the law, this indulgence (enabling plaintiff to impugn decision of Ministry of Interior) could be given to the plaintiff in

presence of the statutory provisions that could enable the plaintiff to file appeal, if PEMRA decides against it in consideration of withdrawal of NOC. There is no cavil that an appeal is provided under Section 30A of the PEMRA Ordinance, 2002, which speaks as under:-

30A. Appeals.- *Any person aggrieved by any decision or order of the Authority may, within thirty days of the receipt of such decision or order, prefer an appeal to the High Court.*

However, what is important for the purpose of present controversy is whether the decision of Ministry of Interior, which was based on the information given by the security agencies, PEMRA could adjudicate upon it (“Ministry’s refusal”) independently on merit, ignoring such recommendation of the security agencies forwarded through the Ministry of Interior. I am of the view that PEMRA, based on the statutory scheme of PEMRA Ordinance, 2002 and rules and regulations framed thereunder, cannot. It is only a judicial intervention or a judicial review which could be invoked and exercised, in order to provide and restore rights to all those whose rights have been infringed, and/or threatened to be infringed without recourse of guaranteed rights under the Constitution of Islamic Republic of Pakistan and without providing an opportunity of assisting the Ministry for the subject cause. This decision /reasoning was forwarded to plaintiff. Thus this decision of Ministry would deprive an individual including the company being licensee of PEMRA from exercising their rights guaranteed by the law as well as constitution.

13. Therefore, if the scheme of ordinance is such that PEMRA cannot escape from the conclusion reached by Ministry via security agencies, then the appeal against final order of PEMRA is illusory.

Right of appeal originates when such rights were actually denied, which rights were denied and infringed like here when NOC was withdrawn and follow up by PEMRA is only a formality. PEMRA cannot escape from its consequences.

14. The first judgment in this regard that could be of some importance is of Independent Music Group¹. The Division Bench of this Court in relation to the stance of Mr. Haider Waheed (that if the circumstances so demands it can overcome and ignore Ministry's decision) discussed the controversy therein as under:-

12. On the other hand, learned counsel for the petitioner submitted that he is not really aggrieved by the order passed by the PEMRA: he is rather aggrieved by the order passed by the Ministry of Interior and PEMRA has merely communicated such an order. Contention of the learned counsel for the petitioner appears to be correct because the learned counsel for PEMRA has clearly submitted that firstly PEMRA has no jurisdiction to question the conclusion arrived at by the security authorities and secondly that PEMRA is duty bound to follow the instructions of Ministry of Interior in the matter of security. If the PEMRA could not do that while exercising its original jurisdiction it is difficult to see as to why in sum and substance and in reality the impugned order should not be seen as an order by the Ministry of Interior rather than an order by the PEMRA. PEMRA merely mouthed (or typed) what had been written by the Ministry of Interior and learned counsel for PEMRA all but underlined absolute binding nature on PEMRA of such a conclusion arrived at by the Ministry of Interior. Moreover it is settled law that existence of an alternate remedy is not an absolute bar on power of this Court to entertain Constitution Petition under Article 199 of the Constitution. If any authority is needed one may refer to Nagina Silk Mill, Layallpur v. The Income-Tax Officer, A-Ward Layallpur and another, PLD 1963 SC 322, Fazal Din alias Mina and 2 others v. Commissioner, Peshawar Division and another, PLD 1968 Peshawar 30 and A.F. Ferguson and Co. v. The 5th Sindh Labour Court Karachi and another, 1974 PLC 98. Moreover as observed above and in fact it has been contended by the learned counsel for PEMRA that PEMRA has merely followed the dictat of Ministry of Interior and no appeal is provided within the four corners of PEMRA Ordinance against the dictat of the Ministry of Interior. Contention of learned counsel for the PEMRA is consequently repelled.

¹ 2011 PLD Karachi 494 (Independent Music Group SMC (Pvt.) Limited v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad and another).

The above judgment was assailed before Hon'ble Supreme Court² by the Independent Music Group itself, (though it was in their favour), however, it was with regard to a part of the order only.

Relevant portion of the judgment is reproduced as under:-

6. *After hearing both the sides and having gone through the contents of the judgment of the High Court, under challenge, we are of the opinion that the learned High Court, keeping in view the fact that the petitioners have already suffered for a period of about four years, instead of remanding the case, may have issued a writ in the nature of mandamus. Be that as it may, if it has not done so, the PEMRA is under obligation, both legally and morally, to issue licence to the petitioners because the reason which prevailed upon it for refusing to issue licence to the petitioners i.e. "security clearance", has not been accepted by the learned High Court, therefore, the petitioners who on the basis of their application waited for a period of more than 100 days, during which his application has not been rejected, has acquired a right that they should be dealt with in accordance with law as is envisaged under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. Any excuse now being made on behalf of the PEMRA is not acceptable for the reason that earlier when the rejection order was passed on 8th June, 2007, which has been reproduced hereinabove, no such demand was put forward calling upon the petitioners to fulfil the same or to remove the objection if any. If such practice is allowed to prevail then there would be no end to the litigation and if a request has been rejected/refused beyond the statutory period and the order is not sustained before the High Court then, with a view to deprive a person who is entitled to the licence and his application has been kept pending for four years, without being processed, there shall be no end to his matters and he is to enter into litigation time and again for the reasons which shall be put before him from time to time.*

7. *We have noted regretfully that the authorities, who are required to discharge their functions under statutory provisions, kept the matters lingering on without any legal or constitutional justification; as it happened in the instant case because it was for the PEMRA either to have rejected the application within 100 days under the law or it would have accepted the same; but now when the Court has intervened and passed the impugned order, no other excuse shall be acceptable for the purpose of causing delay in disposal of application of the petitioners.*

² 2011 PLD (SC) 805 (Independent Music Group SMC (Pvt.) Ltd. v. Federation of Pakistan and others).

Thus for the foregoing reasons, the petition is converted into appeal and allowed. The PEMRA is directed to issue immediately licence to the petitioners, in terms of their application, which they have submitted on 2-7-2007 and submit compliance report of this order to the Registrar of this Court within a period of three days, which shall be placed before us in Chambers for perusal. Parties are left to bear their own costs.

What was concluded through the above decisions was that the recommendation and conclusion of the Ministry of Interior in the matter of security clearance is binding on PEMRA and they could not find any room to escape, under the garb of their discretionary powers.

15. Pakistan Electronic Regulatory Authority (Television Broadcast Station Operations) Regulations, 2012 which were framed under Sub-section 3 of Section 4 read with all enabling provisions of PEMRA Ordinance, 2002 provides a mechanism for the renewal of licence. Regulation 9 discuss a situation for renewal of a license, whereas, regulation 9(2) deals with the renewal fee. Provisions of Section 9(1)(c) to regulation provides that if decision of the Ministry of Interior regarding security clearance of the applicant is not received within a period of six months or before expiry of licence, whichever is earlier, subject to fulfillment of other conditions, the licence may be renewed conditionally subject to security clearance of the Ministry of Interior and if the security clearance is refused (any time later), the licence shall be withdrawn immediately without incurring any liability on part of the Authority.

16. This proviso of the *ibid* regulation does not provide any space for PEMRA either to ignore or bypass the Ministry of Interior's decision; thus, it is binding on PEMRA. Had it not been binding on PEMRA, the *ibid* regulation would have demanded a show cause or

a notice to the licensee by PEMRA on the event or situation where the security clearance was later refused or cancelled. Ibid regulations, as framed, would strengthen the view expressed by the Bench of this Court referred above, that this is not only binding on PEMRA but form an absolute direction and hence, provide a cause to through a challenge before a court of law, as the rights guaranteed by law and constitution have been infringed. PEMRA's decision, which will be dependent on such decision, in fact, would not infringe the rights as it would only obliged to complete a formality to cancel the license in absence of security clearance.

17. This infringement would have a direct nexus with Article 19 of the Constitution of Islamic Republic of Pakistan, which is reproduced as under:-

19. Freedom of speech, etc. -- *Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court,¹[commission of] or incitement to an offence.*

Reasonable restriction imposed by law, by no stretch of imagination means to condemn a person/entity without any justification and without hearing³. According to (RSF) "Reporters without borders" Pakistan press, since beginning is oscillated between civil society's demand for greater press freedom and the political and executive/establishment elite's constant reassertion of extensive control over the media. This has to be streamlined within frame of law not by dictations.

³ PLD 2016 SC 692 (Pakistan Broadcasters Association and others v. Pakistan Electronic Media Regulatory Authority and others).

18. I am of the view that this decision of Ministry, since formed a concluded view under the ordinance, the aggrieved party should have been heard before and if that has not happened, and/or denied, then this constitute a cause and calls for a consequential remedy. Therefore, this cancellation notification, whereby security clearance was denied, is an independent cause and could be challenged independently as their rights have been infringed, in case it is acted upon and given effect by PEMRA without its judicial determination first. Although this is enough that plaintiff was not heard before decision is made, yet we would now see the merit of the reasoning assigned separately. The Ministry of Interior, on receipt of some recommendations from the security agencies, cancelled the NOC of the plaintiff vide letter dated 11.08.2022, which is reproduced as under:-

F.No.9/152/2020-S-III
GOVERNMENT OF PAKISTAN
MINISTRY OF INTERIOR

<><><>

To: *The Chairman, Islamabad 11th August, 2022*
PEMRA HQs,
Islamabad

Subject:- CANCELLATION OF NOC DATED 10.11.2021 OF M/S ARY COMMUNICATIONS (PVT) LTD. FOR AIRING FALSE, HATEFUL AND SEDITIOUS CONTENT.

I am directed to refer to this Ministry's U/O of even number dated 11.08.2022 (copy enclosed) on the subject cited above and to state that this Ministry has received adverse reports from the security agencies with the following observations:-

| <i>Inter-Services Intelligence</i> | |
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| <i>i.</i> | <i>The ARY News Channel (M/S ARY Communication Ltd, 6th Floor, Madina City Mall, Abdullah Haroon Road, Karachi) is involved in airing the seditious/ false content, with malafide intentions of creating discord between state institutions, masses and Armed Forces of Pakistan. The subject activity is tantamount to violation of Constitution, freedom of speech and threat to national security. Gist of the anti – state activities aired are appended below:-</i> |
| <i>a.</i> | <i>ARY News Channel aired Breaking News on 8 Aug 2022 at 1618 hours claiming that a Strategic Media Cell of the Govt is <u>tasked to malign Chairman PTI through propagating anti-military narrative.</u> The content of the news is biased and clearly point to the malafide intentions of ARY spreading dis-information and hatred against Government and State Institutions. It is important to note that this was broadcast as “Breaking News” by the channel itself and was a repeat of a story earlier aired on the said channel on 27th June, 2022.</i> |

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| b. | <i>In addition to above, a beeper of Dr. Shehbaz Gill was aired uttering extremely hatful and seditious comments inciting the rank and file of Armed Forces towards revolt.</i> |
| c. | <i>The ARY News Channel intentionally provided a platform to Dr. Shehbaz Gill to use it against the Government and institutions.</i> |
| d. | <i>The statements made by the guest are clear violations of Article 19 of the Constitution and PEMRA laws.</i> |
| e. | <i>Subsequently, separate FIRs were lodged at Police Station Kohsar, Islamabad and Memon Goth, Dist. Malir, Karachi as the same constitute serious criminal offences under the PPC.</i> |
| ii. | <i>Keeping in view such anti-state seditious and hateful content maligning state machinery, NOC of ARY News channel may be cancelled and its registration may be de-notified.</i> |
| <i>Intelligence Bureau</i> | |
| i. | <i>It has been observed with grave concern that of late ARY News Channel (M/s ARY Communication Ltd.) with head office at Abdullah Haroon Road, Karachi is involved in airing content on its channel which is highly seditious and hateful in nature. The said channel has also been found to air news and views aimed at sowing discord and schism within the state institutions and to provoke public at large.</i> |
| ii | <i>The ARY news channel has stepped up its slandering and provocative propaganda with an alarming audacity and impunity. On 8th August 2022 at around 04:15 pm, the said channel broadcast a news alleging that the incumbent federal Government has established a separate cell entrusted with the task to prepare and propagate an anti-establishment narrative with the aim to malign the person of Mr. Imran Khan, Chairman PTI. The said news aried with the malafide intent and design to foment hatred and false propaganda against institutions and the Government.</i> |
| iii | <i>Furthermore, the said News channel, during one of its recent programme aired an uninterrupted audio talk of Dr. Shehbaz Gill, Chief of Staff of PTI Chairman, which was highly seditious with the purported intent to inciting internal discord amongst the ranks of Armed Forces of the motherland. It has been noted with serious concern that none of the hosts (Arshad Sharif, Senior Anchor ARY News and Khawar Ghumman, Bureau Chief ARY News, Islamabad) of the programme stopped or intervened Dr. Shehbaz Gill from spewing venom against the Armed Forces. This clearly shows that the management of the channel acted in connivance with Dr. Shehbaz Gill and provided him an opportunity for uttering anti-state propaganda.</i> |
| iv. | <i>The above said instances establish the fact that ARY News has not only violated the applicable PEMRA Rules but also transgressed the law of the land. Forgoing in view, it is suggested that the NOC issued to ARY News be revoked forthwith.</i> |

2. *The Negative utterances, specially inviting the junior officers note to obey the command and orders of their superiors amounting to mutiny cannot be conceived, discipline being the hallmark of the Armed Forces and the same constitute serious criminal offences under the PPC.*

3. *in view of the above, the NOC issued in favour of M/S ARY Communication (Pvt.) Ltd. (ARY NEWS) dated 10.11.2021 has been cancelled vide this Ministry's U.O of even number dated 11th August 2022 with immediate effect and until further orders on the basis of adverse reports from security agencies.*

Encl: As above.

(Sardar Shahzad Khan)
Section Officer (KP)

Cc:
Chief Executive officer (CEO)
ARY Communications (Pvt) Ltd.
Karachi

19. The text reproduced by the security agencies above is something which could be read as statement, as no material enabling them to reach such conclusion in support of such statement was made available. If they believe that information aired was incorrect, they should not have moved by it, rather provided reports that there was no such strategic media cell of the Government. However, in case they conceived it to be correct, they should have probed. No such enquiry or investigation is available yet the conclusion was reached that news/information was biased.

20. It is stated that they aired a news content with malafide intention of creating discord between state institutions, masses and Armed Forces of Pakistan but prima facie they have not given any material in support thereof. The law requires something more than these statements originally presented by PEMRA and they added nothing in it. If the content of the programme is seditious or is of such magnitude that it formed a narrative as demonstrated, then under the PEMRA Ordinance, 2002 it is the responsibility of the Council of Complaint under Section 26 of PEMRA Ordinance, 2002 to decide the veracity of such content. What is demonstrated in the reasons of the Ministry of Interior is prima facie the domain of the Council of Complaints. From the security agencies/ Ministry of Interior what is required is something in-depth analysis of their direct involvement which could be a threat to national security.

21. Section 26 of PEMRA Ordinance, 2002 provides that the Federal Government may establish Councils of Complaints at Islamabad, the Provincial capitals and also at such other places as the Federal Government may determine. Each Council was then under the obligation to receive and review complaints made by the

persons and organizations from the general public against any aspect of programmes broadcast or distributed by a station established through a licence issued by the Authority and render opinions on such complaints. The Council also enjoys the power to summon a licensee against whom a complaint has been made and call for his explanation regarding any matter relating to its operation and finally the Council may recommend to the authority appropriate actions of censure, fine against a broadcast or CTV station or licensee for violation of the codes of programme content and advertisements as approved by the authority as may be prescribed. So if the content of programme violates any code of conduct and Council finds it to be seditious, it has a direct role to perform.

22. I would not score off the parallel forum of concerned Ministry, however its scope is only to see if an element of national security is compromised, but the burden to be discharged is heavier and response to it must carry some element of probe and investigation which is totally missing. The Ministry of Interior, based on the statement of the security agencies, recommended to cancel the licence and that is done without hearing the plaintiff. This recommendation in the absence of reasons, logics, rationale, material and investigation lost its efficacy and venom. Such recommendations constitute a conclusive tool for a decision by PEMRA, hence should not be taken lightly as serious allegations of anti-military and anti-national have been foisted. Impugned letter is not a document based on internal corporate doctrine between PEMRA and Ministry of Interior since it would infringe a guaranteed right available and enjoyed by plaintiff. Besides it was forwarded to plaintiff directly.

23. As I have observed above that this decision would act as a binding piece of direction and would ultimately end up in the cancellation of a licence or not renewing licence, in both ways the rights would be infringed. I am of the view that where such rights, guaranteed by the Constitution and law are being infringed, legal recourse is always available.

24. I, therefore, grant the injunction application bearing CMA No.11676/2022 and in consequence of the above, two applications under Order XXXIX Rule 4 CPC have served their purpose and have become infructuous. In view of order above, applications bearing CMAs No.13142/2022 and No.13143/2022 filed on behalf of defendants No.1, 2, 3 and 4 respectively are accordingly dismissed.

25. One of the questions that became necessary to be responded in the proceeding is of filing vakalatnama by a private counsel on behalf of Federation, who also appeared for PEMRA. It is claimed that there is no clash of interest but the argument of Mr. Haider does not support as he himself said that he would see if such decision could be ignored while arguing for PEMRA but for Federation he insisted for the decision to be correct. Notwithstanding above, I do not find any compelling reason to allow a private counsel to appear for Ministry of Interior, Federation of Pakistan, in presence of fleet of Assistant, Additional and Deputy Attorney General for Pakistan. Nothing was established that this is such a case where appointment of private counsel is inevitable. Such question came for consideration before

Hon'ble Supreme Court⁴ in PEMRA related case, which discussed the issue as under:-

21. *The Constitution, the Rules of Business, the Attorney-General for Pakistan (Terms and Conditions) Rules, 2011, the Central Law Officers Ordinance, 1970 and the Additional Attorney-General, Deputy Attorney-General and Standing Counsel Rules, 2011 do not specifically permit the Federal Government to engage private counsel. There may however be cases which involve complicated questions of the Constitution or some extremely technical law which the Attorney General, in the case of the Federation, and the Advocate General, in the case of a province, and their law officers do not have the requisite ability to attend to. In such a case the concerned constitutional office holder should certify that he and the law officers do not have the requisite expertise in the field and that the engagement of a private counsel who is competent and experienced is required. Needless to state, the engagement of private counsel can only be sanctioned for compelling reasons and in the public interest and not to protect or save a particular individual (as was done in WP 1548) or for any other ulterior reason. The Government of Punjab has issued instructions (vide letter No.Admn-III:4-22/2015(P)6083 dated November 25, 2015) mandating that cases should be "conducted [only] through the duly appointed Legal Advisors. However, in rare cases of extreme necessity, a private counsel may be engaged with prior approval in writing from the Government."*

22.

23. *It may be mentioned that the present Chief Justice of this Court, Hon'ble Mian Saqib Nisar, when he was a judge of the Lahore High Court, had taken exception to the engagement of a private counsel by the Punjab Housing Department in September 2007. The learned Judge took umbrage at the waste of public resources, particularly when the office of the Advocate General had a budget of seventy nine million rupees, therefore, there was no justification to expend an amount of one million rupees on private counsel which was a waste of resources. Justice Mian Saqib Nisar (as he then was) observed that the Government was causing loss to the national exchequer by engaging private counsel despite the availability of enough law officers to dispense its work. This matter was also reported in the media (English newspaper 'Dawn' published on September 19, 2007).*

24. *It is regrettable that governments persist in engaging private advocates for no justifiable reason,*

⁴ PLD 2017 SC 121 (Rasheed Ahmed v. Federation of Pakistan through Secretary, Ministry of Information, Broadcasting and National Heritage, Govt. of Pakistan, Islamabad and others).

which practice must now stop. If the procedure as mentioned above (in paragraph 22 above), or a better one prescribed by governments, is not followed before engaging a private advocate then any statement made before a court or comments/written statement that are filed would not be binding on the concerned government. Moreover, to pay the fee of such private advocate would constitute financial impropriety by the person who does so on behalf of the government, subjecting him/her to disciplinary action in accordance with the applicable law.

26. Counsel has not withdrawn his vakalatnama. Despite clear observation of Hon'ble Supreme Court above, the Ministry has not provided any valid reason for such engagement. I would observe that if any fee was paid, it is liable to be recovered back and may not be accounted for in the audit. Copy of this order be forwarded to Auditor General for Pakistan and Ministry of Interior for compliance.

J U D G E

Dated: 03.03.2023

Ayaz Gul