

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

Present:

**Mr. Justice Muhammad Shafi Siddiqui, CJ
Mr. Justice Jawad Akbar Sarwana**

High Court Appeal No. 274 of 2024

Pakistan Telecommunication Authority

Versus

Federation of Pakistan & others

Date	Order with signature of Judge
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1. For orders on office objection a/w reply at "A".
2. For hearing of main case.
2. For hearing of CMA 1672/24.
4. For hearing of CMA 1673/24.

Dated: 18.09.2024

Mr. Syed Ahsan Imam Rizvi Advocate along with M/s Naeem Ashraf, Ali Akbar Sahito and Adil Javed, Director (Litigation), Deputy Director (Law) and Assistant Director (Litigation) respectively of P.T.A.

Mr. Khaleeq Ahmed, Deputy Attorney General for respondent No.1.

Mr. Arshad Tayebally along with Mr. Abdul Ahad Advocates for respondent No.2.

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Impugned in this appeal is an order dated 12.07.2024 passed by learned Single Judge on an injunction application in Suit No.93 of 2023 in terms whereof the appellant was directed to decide respondent No.2's application for renewal of its Long Distance International License ("LDI License") before 26.07.2024 without imposing the condition of a further deposit towards Access Promotion Contribution for Universal Service Fund (APC for USF) dues under the agreement.

We have heard learned counsel for the parties and perused material available on record.

The subject in issue is primarily the renewal of the Long Distance International License (LDI License) of respondent No.2/plaintiff. The history shows that earlier, respondent no.2/plaintiff filed Suit No.915 of 2011¹ seeking, inter alia, permanent injunction against the appellant from taking any coercive action against respondent no.2/plaintiff for recovery of any amount on account of APC for USF contribution payable by respondent No.2/plaintiff under the agreement. While the said 2011 suit was pending, the time for renewal of license or otherwise approached. It is at this point in time when the appellant subjected the renewal of the LDI license to the deposit of APC for USF dues. The situation compelled respondent No.2/plaintiff to file yet another suit as Suit No.93 of 2023² i.e. instant suit with the prayer that the appellant may not withhold the renewal of the license for LDI License dated 26.07.2004 on account of outstanding APC for USF dues, referred above, and if that is so, then the renewal withheld on the aforesaid count, may be declared as illegal and unlawful. The respondent no.2/plaintiff also sought a permanent injunction against the appellant from hindering its smooth operations under the license on account of non-payment of outstanding APC for USF dues.

While above were the principle prayers in respondent no.2/plaintiff's 2023 suit, an injunction application was filed in 2024 as CMA No.39870/2024 praying therein that the appellant be directed to maintain status quo on the plaintiffs LDI License dated 26.07.2004 till a decision is rendered by appellant/defendant no.1 on the mutual settlement process currently underway. On the said Misc. Application the parties were heard and the impugned order was passed.

In terms of clause 3.5 of the agreement between appellant and respondent No.2/plaintiff it was agreed that a portion/share of the

¹ Available on pages 309-331 of the appeal file.

² Available on pages 457-477 of the appeal file.

revenue so generated from the income of incoming international calls between LDI/LL licensee and licensor, shall be determined through a formula specified by the authority from time to time. While this process was not in dispute, for the renewal of the LDI license, the appellant claimed an alleged amount, which was disputed by respondent No.2/plaintiff in the prior suit No.915 of 2011. The terms and conditions of the LDI license enabled the parties, especially the licensee, that in case of a dispute of such claim, the amount shall be deposited by the parties in an Escrow Account.

It appears that although certain amount was deposited in the Escrow Account as APC for USF contribution (Rs.804,493,907), however, it was not to their (appellant's) satisfaction, indicated in this appeal to be a sum of Rs.6,059,822,607. In all fairness, the claim of APC for USF dues (in principle) itself was not denied but it was only the quantum which has been denied and/or disputed. To our understanding the amount has already been determined by the licensor i.e. appellant in 2011 when a suit was filed, and in case of a dispute, which could be a legitimate one in terms of reasoning, at best it could be deposited in the Escrow Account, which is not secured in the injunctive order by the learned Judge. In fact, the impugned order, enabled the respondent No.2/plaintiff to continue to use the license for a renewed period without imposing any condition of further/additional deposit of the APC for USF dues, either directly to the licensor or by depositing it into the Escrow Account. This apart from being a mandatory injunction also does not justify three ingredients required for passing an injunction i.e. prima facie case, balance of inconvenience and irreparable loss.

Mr. Arshad Tayebally submitted that the dispute for determination of APC for USF dues is in fact subjudice in a suit since 2011, referred above, and the same is fixed today and the learned Single

Judge is likely to determine the claim for APC for USF dues one way or the other. It is conceded by both that the appellate tribunal for such adjudications is not functional and hence the learned Single Judge may hear the dispute in absence of functional appellate tribunal. While parties may undergo such exercise we are only interested in understanding the legitimacy of the impugned order specially in terms of paragraph 9 thereof, which has restricted the discretion likely to be exercised in accordance with law by the licensor while renewing the license of respondent no.2/plaintiff in consideration of the APC for USF dues, in its entirety. If that determination is already made as impugned, which up until now, according to Mr. Arshad Tayebally was not proper, then perhaps it is the determination that is to be tested on its own strength i.e. whether claim of APC for USF dues is justified or otherwise, or whether the learned Single Judge enjoys the jurisdiction to enter into such determination or should it be left to the Appellate Authority in case the law so requires/permits or whether at the stage of determination of the disputed amount of APC for USF, which is not deposited needs to be securitized with the deposit of such amount in an Escrow Account. The agreement speaks volume in this regard which is not considered by learned Single Judge.

Considering the situation in hand and as to some extent agreed by Mr. Arshad Tayebally, such exercise may be undertaken by the learned Single Judge within due course of time, preferably within six weeks, and the impugned order of 12.07.2024 in terms of paragraph 9 is likely to be recalled. In view of above, the impugned order is recalled.

As we feel that the renewal date has already lapsed, we, therefore, deem it appropriate to leave the matter to the parties to exhaust the remedy, as already under taken in the shape of pending suits by any interlocutory order after hearing, which may not take more

than six weeks to decide. If the determination of APC for USF contribution may not be reached in six weeks' time then the disputed amount (not securitized) shall be deposited in the Escrow Account without any delay. To achieve the above objectives, the licensor shall not drag or delay the process of this determination.

Appeal stands disposed of in the above terms along with pending applications.

Chief Justice

Judge