

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui, CJ

Mr. Justice Jawad Akbar Sarwana

C.P.No.D-1151/2020

Shamal Media Service (Pvt.) Ltd.

Versus

Federation of Pakistan & another

Along with

1	C.P.No.D-1152/2020	Infotainment World (Pvt.) Ltd.	V/S	Federation of Pakistan & another
2	C.P.No.D-1221/2020	Syndicate Entertainment (Pvt.) Ltd.	V/S	Federation of Pakistan & another
3	C.P.No.D-1903/2020	Kohinoor Airwaves (Pvt.) Ltd.	V/S	Federation of Pakistan & another
4	C.P.No.D-1904/2020	Salaar Engineering Trading Enterprises	V/S	Federation of Pakistan & another
5	C.P.No.D-1905/2020	Jaag Broadcasting System (Pvt.) Ltd.	V/S	PEMRA & another
6	C.P.No.D-1981/2020	Recorder Television Network Pvt. Ltd.	V/S	PEMRA & another
7	C.P.No.D-2040/2020	Apna TV Channel (Pvt.) Ltd.	V/S	PEMRA & another
8	C.P.No.D-2061/2020	Vision Network Television Ltd.	V/S	PEMRA & another
9	C.P.No.D-2062/2020	Aurora Broadcasting Services Pvt. Ltd.	V/S	PEMRA & another
10	C.P.No.D-2063/2020	ARY Communication (Pvt.) Ltd.	V/S	PEMRA & another
11	C.P.No.D-2064/2020	Independent Media Corp. (Pvt.) Ltd.	V/S	PEMRA & another
12	C.P.No.D-2065/2020	Hum Network (Pvt.) Ltd.	V/S	PEMRA & another
13	C.P.No.D-2066/2020	Fun Infotainment (SMC-Pvt.) Ltd.	V/S	PEMRA & another
14	C.P.No.D-2067/2020	Kashish Television Network (Pvt.) Ltd.	V/S	PEMRA & another
15	C.P.No.D-2068/2020	Dolphin Media (Pvt.) Ltd.	V/S	PEMRA & another
16	C.P.No.D-2069/2020	National Communication Services	V/S	PEMRA & another
17	C.P.No.D-5900/2020	Pakistan Broadcaster Association	V/S	Federation of Pakistan & another
18	C.P.No.D-409/2022	Airways Media (Pvt.) Ltd.	V/S	PEMRA & another
19	C.P.No.D-410/2022	24-7 Media Network (Pvt.) Ltd.	V/S	PEMRA & another

Date of Hearing: 01.10.2024

Petitioners: Through Mr. Saad Fayyaz Advocate.

Respondent Federation of Pakistan: Through Mr. Khaleeq Ahmed, Deputy Attorney General.

Respondent PEMRA: Through Mr. Kashif Hanif Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, CJ.- The petitioners are companies incorporated under the laws of Pakistan and for the purposes of current issues could be divided into two sets. Set '1' includes the companies which own and operate as Radio Broadcaster whereas set '2' own and operate as Television Broadcasters. To make them operate for different region and on different FM Bandwidth various licenses were issued/granted to the petitioners. For Radio Broadcast Stations the

period of the licenses was 10 years whereas for that of Satellite Television Channels the same was for 15 years. The particulars of these licenses are as under:-

Set - 1 Radio Licenses

S.No.	C.P. No.	Area/Region	Date of issuance	Date of expiry
1.	D-1151/2020	1. Karachi 2. Lahore 3. Sukkur 4. Islamabad 5. Peshawar	18.10.2002 18.10.2002 18.10.2002 21.02.2003 16.07.2007	18.10.2012 18.10.2012 18.10.2012 21.02.2013 16.07.2017
2.	D-1152/2020	1. Hyderabad 2. Nawabshah 3. Karachi 4. Quetta 5. Larkana	27.01.2004 27.01.2004 12.09.2005 12.09.2005 12.09.2005	27.01.2014 27.01.2014 12.09.2015 12.09.2015 12.09.2015
3.	D-1221/2020	Karachi	03.05.2003	03.05.2013
4.	D-1903/2020	1. Faisalabad 2. Islamabad 3. Lahore 4. Karachi	22.02.2003 22.02.2003 22.02.2003 22.02.2003	22.02.2013 22.02.2013 22.02.2013 22.02.2013
5.	D-1904/2020	1. Gawadar 2. Islamabad 3. Karachi 4. Lahore	18.10.2002 18.10.2002 22.05.2004 22.05.2004	18.10.2012 18.10.2012 22.05.2014 22.05.2014
6.	D-5900/2020	1. Gujrat 2. Shekhupura 3. Gujranwala 4. Khanpur 5. Sadiqabad	18.10.2002 27.01.2004 27.01.2004 15.03.2005 15.03.2005	18.10.2012 27.01.2014 27.01.2014 15.03.2015 15.03.2015

Set - 2 Television License

S.No.	C.P. No.	Name of TV Channel/Licensee	Date of issuance	Date of expiry
1	D-1905/2020	M/s JAAG Broadcasting Systems Private Limited (JAAG TV)	09.08.2007	09.08.2022
2	D-1981/2020	M/s Recorder Television Network Pvt. Ltd. (AAJ TV)	23.01.2008	23.01.2023
3	D-2040/2020	M/s Apna TV Channel Pvt. Ltd.: 1. Apna Channel, 2. Apna News, 3. Tarka & 4. KOOK TV	22.05.2008 29.08.2007 06.10.2010 22.05.2008	22.05.2023 29.08.2022 22.05.2025 22.05.2023
4	D-2061/2020	M/s Vision Network Television Ltd.	30.10.2004	30.10.2019
5	D-2062/2020	M/s Aurora Broadcasting Services (Pvt.) Limited (Herald News)	29.06.2009	29.06.2024
6	D-2063/2020	ARY Communication (Pvt.) Ltd. :		

		1. ARY Digital 2. ARY One World 3. Shopping Channel	13.04.2004 13.04.2004 01.07.2008	13.04.2019 13.04.2019 01.07.2023
7	D-2064/2020	M/s Independent Media Pvt. Ltd.: 1. GEO News 2. GEO Entertainment 3. GEO English 4. AAG 5. GEO Super	22.05.2008 22.05.2008 25.06.2008 22.05.2008 08.06.2011	22.05.2023 22.05.2023 25.06.2023 22.05.2023 08.06.2026
8	D-2065/2020	M/s Eye Television Network Pvt. Ltd.: 1. Food Channel 2. Channel station 3. Only Youth Ent. 4. Style 360	24.04.2007 23.06.2007 12.11.2009 12.11.2009	24.04.2022 23.06.2022 12.11.2024 12.11.2024
9	D-2066/2020	M/s Fun Infotainment Pvt. Ltd. (FUN TV)	23.01.2009	23.01.2024
10	D-2067/2020	M/s Kashish Television Network Pvt. Ltd.: 1. KTN 2. KTN News 3. Kashish	23.01.2008 29.08.2007 23.01.2008	23.01.2023 29.08.2022 23.01.2023
11	D-2068/2020	M/s Dolphin Pvt. Ltd: 1. Sindh TV News 2. Sindh TV	29.08.2007 07.09.2010	29.08.2022 07.09.2025
12	D-2069/2020	M/s National Communication Service Pvt. Ltd.	23.06.2007	23.06.2022
13	D-409/2022	In this petition 9 petitioners have been issued the respective licenses	15.08.2007 29.08.2007 15.08.2007 17.11.2011 23.05.2013 18.10.2006 23.06.2007 28.05.2009 28.07.2011 07.09.2007 23.01.2008 30.06.2009 27.05.2010 08.05.2009	15.08.2022 29.08.2022 15.08.2022 17.11.2026 23.05.2028 18.10.2021 23.06.2022 28.05.2024 28.07.2026 07.09.2022 23.01.2023 30.06.2024 27.05.2025 08.05.2024
14	D-410/2022	In this petition 9 petitioners have been issued the respective licenses	03.11.2004 23.01.2005 04.06.2013 23.02.2004 29.08.2007 12.06.2013 22.05.2008 14.01.2009 01.07.2008 23.01.2008	03.11.2019 23.01.2020 04.06.2028 23.02.2019 29.08.2022 12.06.2028 22.05.2023 14.01.2024 01.07.2023 23.01.2023

2. The commonness amongst the two sets of petitions is:

- (i) a challenge to Rule 17 of Pakistan Electronic Media Regulatory Authority Rules 2009 (2009 Rules) as being ultra vires to the Pakistan Electronic Media Regulatory

Authority Ordinance, 2002 (Ordinance 2002) and thus notices impugned claimed to be without jurisdiction, illegal and of no legal effect;

- (ii) a challenge to the Regulation 11 of Pakistan Electronic Media Regulatory Authority (Radio Broadcast Station Operations) Regulations 2012 (2012 Regulations [Radio]) as being ultra vires to PEMRA Ordinance 2002 and notices impugned claimed to be without jurisdiction, illegal and of no legal effect; and
- (iii) a challenge to the Regulation 12 of Pakistan Electronic Media Regulatory Authority (Television Broadcast Station Operations) Regulations 2012 (2012 Regulations [Television]) as being ultra vires to PEMRA Ordinance 2002 and also claimed to be without jurisdiction, illegal and of no legal effect.

3. The challenge is also thrown to both 2012 Regulations i.e. Pakistan Electronic Media Regulatory Authority (Radio/Television Broadcast Station Operations) “Regulations 2012” and actions thereunder claimed to be without jurisdiction and illegal and does not germane to PEMRA Ordinance 2002.

4. The petitioners have also challenged the impugned notices issued in pursuance of the aforesaid Rules & Regulations. The first set of petitions challenges the notices of 12.12.2019 wherein, while considering the applications of the petitioners for the renewal of commercial FM Radio Licenses, certain documents, enlisted therein along with process fee, were required/asked for by PEMRA. These impugned notices appear to have been issued on petitioners’ applications for renewal of the licenses. The other notices dated 23.10.2019/03.03.2020 in other set of the petitions received by those

entities who owned the television channels whereby the audited financial statements in respect of the petitioners companies' accounts for all the financial years from award of license till 30.06.2019 were required with details of annual gross revenue earned from advertisement by all the licensed channels of the company required in terms of Rule 17 of 2009 Rules and Regulation 12 of 2012 Regulations (Television).

5. Notices were also issued under Order 27-A CPC on 17.08.2020 as an abundant caution since the vires of Rules and Regulations were challenged. The spirit of Order 27-A CPC however is only to the extent when substantial question as to interpretation of constitutional law is involved, the Court may not proceed to determine that question unless notice under Order 27-A CPC has been given to the Attorney General in case if the question of law concerns the Federation and the Advocate General of the province if the question of law concerns with a province, which situation does not exist here.

6. We have heard Mr. Saad Fayyaz, learned counsel appearing for petitioners and Mr. Kashif Hanif, appearing for PEMRA and Mr. Khaleeq Ahmed, learned Deputy Attorney General who appeared on behalf of learned Attorney General, and perused material available on record. Since the issue in hand is common in all the petitions, for references to the documents we have taken the petitions bearing No.1151 and 1905 of 2020 as leading cases from both sets.

7. After hearing the petitioners' counsel at length, the detailed arguments of learned counsel for the petitioners posed following propositions, which include the additional grounds taken in the application bearing CMA No.20430/2024 (under Order VI Rule 17 CPC). The arguments however do not lay emphasis on waiver/acquiescence based on past practices. The propositions are summarized as under:-

- That Rule 17 of 2009 Rules, Regulation 11 of 2012 Regulations (Radio) and Regulation 12 of 2012 Regulations (Television) do not find any such requirements as none of the provisions of PEMRA laws could have empowered PEMRA to call for audited financial statements;
- Rules and Regulations are beyond the frame of preamble and the Ordinance 2002;
- 2009 Rules were enacted by PEMRA without approval of the Federal Government; Section 39(1) of Ordinance 2002 provides that the PEMRA may, with the approval of the Government, by notification in the official Gazette, make rules to carry out the purposes of the Ordinance. The 2009 Rules were not enacted with the approval of the Government and the Regulations for the same subject cannot takeover mandate of the Rules as it would then render the scheme as envisaged for the Rules, redundant;
- That from 13.05.2011 to 15.01.2023 PEMRA had no Chairman and since the PEMRA enacted the Regulations on 31.01.2012 the absence of the Chairman would render the two Regulations as invalid subordinate legislation like the PEMRA (Content) Regulations, 2012 which were invalidated by Supreme Court in Hamid Mir's case¹.
- The ratification claimed in PEMRA's 117th meeting on 05.09.2016 is illegal and unconstitutional; besides it is not signed by the Chairman/members by providing independent reasoning, which is mandatory;
- The two Regulations under dispute cannot be saved in the light of Competition Commission Act, 2010 as the two Regulations claimed

¹ PLD 2013 SC 244 (Hamid Mir v. Federation of Pakistan)

to have been taken over the role as envisaged in the Competition Commission Act, 2010;

- The impugned notices to the Television and Radio Broadcasters whereby retrospective effect was given are violative of Article 4(c) of Constitution of Islamic Republic of Pakistan, 1973;
- That an application seeking exemption in annual radio license renewal fee and reduction of renewal license fee under sections 32, of Ordinance 2002 ought to have been decided first before the impugned notices could have been issued and/or acted upon;

8. Two kinds of licenses were issued to the petitioners during the preceding year. For most of them when the licenses were issued, 2002 Rules were in vogue whereas the renewal was applied and responded when almost 2009 Rules took over the regime w.e.f. 12.12.2009 whereas the two Regulations that concern with Television and Radio Broadcast Stations operation took over the regime on 31.01.2012. However, the Rules and Regulations replacing earlier ones are not significantly different which could said to have snatched any valuable right of the petitioners.

9. The approval of the 2002 Rules was never challenged on the touchstone that the federal government's approval was not obtained. Likewise the same was not opposed as being one in exercise of power under section 39 of Ordinance 2002. Approval for framing of rules includes reframing of rules as well. Earlier approval (not challenged) enabled the Authority under section 39 to reframe its Rules on 12.12.2009. It is nothing but resurrection of the earlier 2002 Rules which carried the same mandate.

10. When the petitioners came into being to operate as PEMRA's Licensee, Ordinance 2002 was in vogue and Section 19 empowered the Authority to have exclusive right to issue licenses which right is to be

exercised in conformity with the principles of fairness and equity to all potential applicants for licenses.

11. The eligibility was based on prescribed criteria notified. Subsection (3) of Section 19 provides that every license shall be subject to such terms and conditions as may be prescribed. Its subsection (4) provides that the Authority shall have the power to determine number of licenses to be issued in each category or sub-category and charge fees at such rates as the Authority may fix from time to time for the grant of a license and for its annual renewal. Section 23 provides that no person shall be entitled to the benefit of any monopoly or exclusivity in the matter of broadcasting or the establishment and operation of broadcast media or distribution service or in the supply to or purchase from, a national broadcaster of air time, programmes or advertising material and all such existing agreements and contracts to the extent of conferring a monopoly or containing an exclusivity clause are, to the extent of exclusivity, shall be declared to be inoperative and of no legal effect. Section 25 provides that license shall not be granted to a person who is not a citizen of Pakistan or resident in Pakistan, a foreign company organized under the laws of any foreign government, a company, the majority of whose shares are owned or controlled by foreign nationals or companies and whose management or control is vested in foreign nationals or companies and any person funded or sponsored by a foreign government or organization. Section 29 empowers the Authority to authorize inspections, essentially for such scrutiny but not limited to it.

12. Neither Rules of 2002 nor that of 2009 and/or Regulations transgress any provision of PEMRA Ordinance 2002. A comparative statement of the two Rules i.e. 2002 and 2009 Rules with para materia analysis of the respective rules is reproduced for the sake of brevity:

PARI MATERIA/COMPARATIVE STATEMENT OF
RULES 2002 AND RULES 2009

PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY RULES 2002 (RULES 2002)	PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY RULES 2009 (RULES 2009)
Issuance/grant of license	
<p>11. Issuance of licence.- (1) The Authority shall process each application and on being satisfied that the applicant(s) fulfills the conditions and the criteria and procedure as provided for in section 19 of the Ordinance, may, on receipt of the applicable licence fee, as determined through the bidding process, and the prescribed security deposit, issue licence to the applicant(s) concerned.</p> <p>(2) In addition to General Terms and Conditions contained in the Schedule, the Authority may impose on the licensee such other terms and conditions as appear to it necessary;</p> <p>(3) The Authority will consult the Government of the Province, with regard to proposed location of the broadcast station and the possible area of coverage, through the Chief Secretary of the Province or an officer so authorized by him.</p> <p>(4) The Authority, if satisfied that the issue of the licence to a particular person is not in the public interest, may, for reasons to be recorded in writing and after giving the applicant an opportunity of being heard, refuse to grant a licence.</p> <p>(5) The Authority shall take decision on the application for a licence within one hundred days from receipt of the application;</p> <p>(6) The Authority shall make regulations setting the procedures for an open and transparent bidding process in such cases where the number of the applicants is likely to exceed the number of licences which the Authority has fixed for that category of licence.</p>	<p>9. Grant of licence.- (1) The Authority shall, if it is satisfied that the applicant fulfils the criteria as provided for in the Ordinance, these rules and regulations made thereunder and has paid the prescribed fee and other charges, if any, grant licence to the applicant.</p> <p>(2) Every licensee shall follow the general terms and conditions as set out in Schedule-C.</p> <p>(3) The Authority shall, except where the application for grant of licence relates to Islamabad Capital Territory, invite the comments of the Provincial Governments concerned, as provided for in section 21 of the Ordinance.</p> <p>(4) The Authority, if satisfied that the grant of the licence to a particular person is not in the public interest, may, for reasons to be recorded in writing and after giving the applicant an opportunity of being heard, refuse to grant a licence.</p> <p>(5) The Authority shall, within one hundred days from the date of its receipt, take decision on the application for grant of a licence subject to clearance from the Ministry of Interior and frequency allocation by FAB in relevant cases.</p> <p>(6) The Authority shall prescribe procedures for an open and transparent bidding in such cases where number of the applicants is likely to exceed the number of licences which the Authority has fixed for that category or sub-category.</p>
Extension/renewal/expiry of license	
<p>16. Extension of the licence term.- (1) The licensee may, at least six months before the expiry of the original term, referred to in rule 7 sub-rule (1), apply to the Authority, for the extension of the licence for such term, and the Authority shall extend the licence subject to:</p> <p>i. satisfactory past performance of the licensee. The Authority may seek opinion in this regard from Council of Complaints;</p> <p>ii. payment of the extension fee as determined by the Authority at</p>	<p>12. Renewal of licence on expiry of the licence term.- (1) A licensee may, at least six months prior to the expiry of the licence, apply to the Authority for renewal of its licence and the Authority may renew the licence subject to-</p> <p>(a) satisfactory past performance of the licensee;</p> <p>(b) the opinion of the concerned Council if the Authority so requires;</p> <p>(c) payment of the prescribed fee prevalent at the time of renewal and</p>

<p>that time;</p> <p>iii. all other terms and conditions as prescribed in the rules and including any new terms and conditions which the Authority may deem fit to impose having regard to all relevant factors including without limitation, changes in technology and prevalent market conditions.</p> <p>(2) The Authority may decide not to extend a licence beyond the expiry date of the on-going term; provided that the Authority shall convey such decision to the licensee, not later than the one-fourth of the on-going term, before the expiry of the term.</p>	<p>payment of outstanding dues, if any; and</p> <p>(d) fulfillment of any other terms and conditions as prescribed, or varied in the public interest, by the Authority from time to time.</p> <p>(2) In case of refusal to renew a licence the Authority shall record reasons in writing.</p> <p>(3) The Authority may renew a licence for such term as the original term of the licence beginning from the date of expiry of the licence.</p>
<p>Proscription of foreign broadcasting service</p>	
<p>19. Proscription of a foreign broadcasting service.- (1) If the Authority, on having brought to its notice, considers that the content of any foreign broadcasting service is unacceptable, it shall order proscription of that service;</p> <p>(2) The Authority shall not consider a foreign broadcasting service to be unacceptable, for the purpose, unless it is satisfied that the content of that service included any matter which prejudices the security and sovereignty of Pakistan, the public interest or order or national harmony or is against good taste or decency or morality.</p>	<p>14. Proscription of a foreign broadcasting service.- No foreign channel shall be distributed unless landing rights permission for such channel has been obtained from the Authority:</p> <p>Provided that a distribution service operator shall relay only TV channels licensed by the Authority</p>
<p>Program contents</p>	
<p>24. Programming content.- (1) The contents of the programmes and advertisements broadcast or distributed by the broadcast or cable TV network stations shall conform to the provisions of section 20 of the Ordinance and the Code of Conduct set out in the Schedule;</p> <p>(2) Programmes shall conform to the provisions of the Motion Pictures Ordinance, 1979 (XLIII of 1979), and the rules and Code of Conduct framed thereunder;</p> <p>(3) The advertisements shall conform to the TV Code of Advertising Standards and Practices in Pakistan.</p> <p>(4) The duration of the advertising break shall not be more than three minutes continuously and there must be at least a fifteen-minute regular programme duration between successive advertisement breaks;</p> <p>(5) The licensee shall maintain a record and register of the programmes being broadcast by him and shall preserve the programmes aired or distributed, on audio or as the case may be on the video tapes,</p>	<p>15. Programms and advertisement content.- (1) The contents of the programmes and advertisements which are broadcast or distributed by the broadcast media or distribution service operator, shall conform to the provisions of section 20 of the Ordinance, these rules, the code set out in the Schedule-A and terms and conditions of the licence.</p> <p>(2) The programmes shall also conform to the provisions of the Motion Pictures Ordinance, 1979 (XLIII of 1979), the rules and code of conduct made thereunder, whereas the advertisements shall also conform to the TV Code of Advertising Standards and Practices in Pakistan and Advertisement Code issued by the Authority.</p> <p>(3) During a regular programme a continuous break for advertising shall not exceed three minutes and duration between two such successive breaks shall not be less than fifteen minutes.</p> <p>(4) The licensee shall maintain a record and register of the programmes being broadcast or distributed by him and shall, for a period of not less than forty-five</p>

<p>at least for a period not less than thirty days.</p> <p>(6) The Authority may issue regulations regarding minimum Pakistani content in the programmes and channel mix, to be broadcast or distributed by a licensee.</p> <p>(7) The Authority may, by regulations, specify as eligible channels, which it considers suitable for broadcasting or distribution.</p> <p>(8) The cable TV operation licensee shall include the national TV broadcast channels, in his respective bouquet, amongst the first five of the serial order of the distributed channels.</p>	<p>days, preserve such programmes.</p>
<p>Mergers and transfers</p>	
<p>27. Mergers and transfers.- (1) A licensee shall not merge or amalgamate with any other person without the prior approval of the Authority.</p> <p>(2) A person who is the shareholder of, or owns an interest in, a company which is a licensee, shall not transfer or dispose of his shares or the interest, without the prior approval of the Authority,</p> <p>Provided that in the case of a listed company, the shares, representing not more than two percent of the issued and paid up share capital, may be transferred without such approval.</p>	<p>16. Mergers and transfers.- (1) Without prior approval of the Authority, a licensee shall not transfer, merge or amalgamate with any other person any rights conferred under the licence.</p> <p>(2) Without prior approval of the Authority, any person shall not transfer or dispose of his shares or interest which he is holding or owning in a company which is a licensee: Provided that in the case of a listed company, the shares, representing not more than two per cent of the issued and paid up share capital, may be transferred without such approval.</p>
<p>Maintenance of accounts</p>	
<p>28. Maintenance of accounts.-The licensee shall maintain proper accounts, as required by the applicable laws, and shall cause to be carried out the audit of his accounts by one or more auditors who are chartered accountants within the meaning of Chartered accountants Ordinance, 1961 (X of 1961) and shall submit the audited financial statement to the Authority not later than three months after the closing date of its financial year.</p>	<p>17. Maintenance of accounts.- The licensee shall maintain proper accounts, as required by the applicable laws, and shall cause to be carried out the audit of his accounts by one or more auditors who are chartered accountants within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961) and shall submit the audited financial statement to the Authority not later than three months of the closing date of its financial year.</p>

13. The petitioners in the first set of petitions were issued licenses somewhere in between October 2002 to July 2007 which disclose its duration in the last column where expiry date is shown, and when the license period came to an end 2009 Rules were in vogue which Rules came into being on 12.12.2009. In the second set of petitions which is meant for Television Licenses, the licenses shown to have been issued both when 2002 and 2009 Rules were in vogue and also Regulations 2012, as some of the licenses were issued beyond 2012.

14. Apart from above legislative frame, the license term 15.6 provides that the licensee shall supply to the authority copy of its annual return as filed with the Securities & Exchange Commission of Pakistan under Companies Ordinance and a copy of its annual report and accounts, as soon as possible after they are circulated to the shareholders of the relevant body corporate. The license term provides that where the licensee has not incorporated any returns, reports, accounts or other information which is, in the opinion of the Authority is analogous or equivalent to the above, the Authority may ask for such at such time and in such forms as the Authority may from time to time specify. It further calls for the statements of annual gross revenue in respect of each/entire accounting period in such form as the Authority may require. The licensee is further required to provide details of whatever form or within such period as the Authority may reasonably require of any particular advertisement or any class of advertisements specified by the Authority or any sponsored program which the Authority may from time to time require.

15. Clause 16 of the Agreement provides further for the renewal and the extension of the lease covenants. The renewal and extension of license is subject to the authority's discretion on the satisfactory past performance of the licensee and the Authority may seek opinion from Council of Complaints. It further enables the Authority to respond any extension and claim any increase in the fee as determined by the Authority at that point in time. It also enabled the Authority to include all other terms and conditions as prescribed in the Rules (in vogue at the time of extension) and include any new terms and conditions which the Authority may deem fit to impose having regard to all relevant factors including without limitation, changes in technology and prevalent

market conditions. These terms were already incorporated in the license agreements when 2009 Rules came into being.

16. General frame of Rules 2009 vis-à-vis PEMRA Ordinance 2002 is not found head on. Rule 5 of 2009 Rules talks about duration and renewal of licenses. Rule 12 talks about renewal and expiry of license term and Rule 12(c) discusses payment of prescribed fee prevalent at the time of renewal and payment of outstanding dues if any. It also, in terms of Rule 12(d), require the Authority to ask for fulfillment of any other terms and condition as prescribed by the Authority in the public interest from time to time. Rule 13, which apparently is analogous to Section 23 of the Ordinance 2002 provides media ownership concentration and exclusion of monopolies to ensure fair competition is facilitated amongst the competitors. This rule also enables the Authority to curtail the number of satellite Television and Radio Licenses to a maximum of four, to a person or any of its directors or partners where such person is a company or firm, directly or indirectly controlling, owning or operating more than one media enterprises. These Rules (2009) repealed 2002 Rules on the same day when these Rules were promulgated i.e. 12.12.2009. Not a single Rule in 2009 is stated to have an alien concept as compared to the 2009 Rules. Licensees otherwise cannot urge for any vested rights thereunder as “Licensee’s” scope under the law is also determined.

17. Without prejudice, the licensees have also surrendered to the regime provided by later subordinate legislation in shape of 2009 Rules or Regulations of 2012, thereafter.

18. We now come to the Regulations for television and radio broadcasting operations. Both the Regulations discussed about renewal of licenses as Regulation 9 including but not limited to license fee prevailing at the time, maintenance of accounts in terms of Regulation 12 and the accounts shall cause to be carried out and disclose audit by

one or more auditors who are chartered accountants within the meaning of Chartered Accountants Ordinance, 1961. The two Regulations of 2012 also repeal Pakistan Electronic Media Regulatory Authority (Radio/ Television Broadcast Operations) Regulations 2002. For the sake of brevity the comparative table is not provided

19. So the scheme envisaged under 2009 Rules and 2012 Regulations are not alien as found within the frame of Ordinance 2002 and in consonance with licenses issued to the petitioners or the earlier regime of 2002 Rules and Regulations repealed via 2009 Rules and 2012 Regulations.

20. It had the validation/approval required under Section 39 of PEMRA Ordinance 2002 from Federal Government when 2002 Rules came into being (as not opposed), and this validation or approval from Federal Government would continue, unless withdrawn, when Rule 2009 surfaced.

21. The argument of the petitioners' counsel is inconceivable that the object enshrined in the preamble is not being towed. In fact the very purpose of the Rules and the two Regulations is nothing but to carry forward not only the preamble but entire concept of Ordinance 2002. A preamble need not to be an encyclopedia as far as frame of the statute is concerned; here (in the preamble) the object of law is only outlined which is explained through different provisions of the Ordinance and the subordinate legislation i.e. Rules and the Regulations and there is not an iota of evidence that the impugned subordinate legislations could in any way offend any of the provisions of the Ordinance 2002 including but not limited to preamble.

22. The concept of retrospective effect in terms of Article 4(c) of Constitution of Islamic Republic of Pakistan, 1973 is also nullified and/or of no help to the petitioners when the licenses are seen, as framed in

terms of the earlier regimes of 2002 Rules and Regulations, which carried the same mandate. They were and are under same obligations in 2002, 2009 and 2012.

23. The concern of Mr. Saad Fayaz, learned counsel appearing for the petitioners, that as PEMRA “Content” Regulation 2012 were declared unlawful on the count that when it was introduced there was no Chairman, therefore, by applying same principle the two impugned Regulations could also be nullified is not surfaced as logical and we are not convinced by learned counsel for the petitioner on this submission as well. It is not disputed that from 13.05.2011 up until 15.01.2013 PEMRA had no Chairman and consequently the PEMRA “Content” Regulation 2012 were nullified, however the situation before us is significantly different.

24. PEMRA Content Regulation 2012 was nullified as there was no validation or ratification of the ibid Regulations whereas in the instant case the two impugned Regulations were validated and ratified in 117th Meeting and the effect could be seen in 118th Meeting when minutes were approved. In our view the De-facto doctrine and validation or ratification of Regulations from the required source are different and distinct altogether. De-facto doctrine is a concept of the past, dead or buried (along with doctrine of necessity) as observed by Supreme Court in Hamid Mir’s case; whatever benefit the De-facto doctrine still confers is limited to those functionaries who act bona fide and their legal status has not been challenged. Turning to the validation and ratification of Regulations (as opposed to De-facto doctrine), this would place the Regulations (under scrutiny) on a better pedestal than an action taken under De-facto doctrine without validation. Only bona fide actions were legitimized under De-facto doctrine whereas after ratification of a purported Regulation, since such ratification processed through a

competent and legitimate power, all actions taken were/are presumed to have been done under valid enactment. Therefore actions without ratification or validation of law and those with validation and ratification of law are different, distinct and lead to distinguishable consequences.

25. In short, actions without ratification or validation of law will be of no legal consequences and those with validation and ratification of laws may be sustained and deemed validly enacted. The validated law is also tested on the touchstone of its purported offending nature against PEMRA Ordinance 2002 which test is also failed.

26. As happened in this case, in 117th Meeting Item No.4 is for the ratification of Regulation/Revision/Guidelines promulgated by the Authority in the tenure of acting Chairman. The Item No.4 of 117th Meeting came for approval/ confirmation and the 118th Meeting of the Authority confirmed it. The Authority in pursuance of Paragraph 5 of 118th Meeting unanimously approved the draft Minutes of 117th Authority Meeting.

27. The ancillary question of Mr. Saad Fayyaz was that it does not provide independent reason by each member as required under section 8(5) of Ordinance 2002. For agreeing, the pre-amended version of Section 8(5) of Ordinance 2002 (which is allegedly applicable), provides that all orders, determinations and decisions of the Authority shall be taken in writing and shall identify the determination of the Chairman and/or Member separately. If the “determination and reasons” of author, are agreed by other members then in this situation there is no need for a separate note; it could only be if the additional reasons are required in support of a decision or if the decision is dissented by any member but the member is under no compulsion or obligation to write a separate note and/or reason if he is “agreeing” with the reasons

provided by other members, which is demonstrated by Members by a simple signature of assent. The reasons were provided in terms of Para 4 of the 117th Authority Meeting which is accepted by all members.

28. The application of Competition Act, 2010 cannot be applied to oust the jurisdiction of PEMRA from acting within their frame. Competition Act, 2010 thus cannot be read to oust the jurisdiction as being exercised by PEMRA. The notices issued to the petitioners are in response to respective applications of the petitioners and are thus stand responded accordingly.

29. With the above analysis, we find no reason to interfere in the notices issued as found within Ordinance 2002 and the Rules and Regulations framed thereunder. The Rules and the Regulations under challenge do not offend any provisions of PEMRA Ordinance 2002. The petitions are accordingly dismissed along with pending applications.

30. Before we part with this lis, we would like to appreciate the submissions of both the counsels, especially of Saad Fayyaz who was well prepared and delivered his submissions while all along actively listening to the queries put to him and responded precisely and on point.

Dated: 21.10.2024

Chief Justice

Judge