JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3745 of 2020
The Communicators (Pvt.) Ltd.
Versus
Pakistan Electronic Media Regulatory Authority

Date of Hearing:	15.03.2022
Petitioner by:	M/s Ch. Haseeb Muhammad and Muhammad Bilal Ibrahim, Advocates
Appellant by:	Malik Manzoor Hussain and Mazhar Akram, Advocates
Respondents by:	Ch. Muhammad Tahir Mehmood, learned Assistant Attorney-General, M/s Barrister Ehsaan Ali Qazi, Muhammad Jalal Haider, Usama Akbar and Tahir Farooq Tarar, Advocates for P.E.M.R.A., Sahibzad Sheikh, Deputy Director (Legal), P.E.M.R.A.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petition No.3745/2020 and writ petition No.3906/2021 (which was renumbered as C.M.A.No.18/2021) since they entail common features.

2. Through writ petition No.3745/2020, the petitioner, the Communicators (Pvt.) Ltd., seeks a direction to the respondent, Pakistan Electronic Media Regulatory Authority (**"P.E.M.R.A."**), not to require the petitioner to deposit licence renewal fee on the basis of P.E.M.R.A.'s letter dated 18.05.2020 and public notice dated 13.11.2020. Vide the said letter dated 18.05.2020, P.E.M.R.A. required the petitioner to *inter alia* pay the licence renewal fee for the petitioner's three FM Radio Broadcast Stations at Islamabad, Abbottabad and Vehari, and vide the said public notice P.E.M.R.A. required the FM radio licencees to deposit the licence renewal fee within a period of 30 days, failing which legal action was to be initiated against them.

3. Through C.M.A.No.18/2021, the appellant, The Communicators (Pvt.) Ltd. (herein after referred to as **"the petitioner"**) impugns notice dated 05.10.2021 whereby the petitioner was required to deposit licence renewal fee for the three FM Radio Station Licences for Islamabad,

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Abbottabad and Vehari after deducting the amount already paid by the petitioner. The petitioner also assails the *vires* of the Pakistan Electronic Media Regulatory Authority (Radio Broadcast Station Operations) Regulations, 2012 (“the 2012 Regulations”).

4. The record shows that on 18.10.2002, P.E.M.R.A. granted three non-exclusive licences to the petitioner to establish and operate FM Radio Broadcast Stations at Islamabad, Abbottabad and Vehari. These licences were valid for a period of ten years. The validity period of these licences expired on 17.10.2012.

5. Despite the expiry of the licences, the petitioner continued with the operation of its three FM Radio Broadcast Stations without the payment of the licence renewal fee. Apparently, some licencees similarly placed as the petitioner had filed writ petitions before the Hon'ble Lahore High Court and obtained interim orders regarding the payment of licence renewal fee. These petitions were allowed vide judgment dated 12.05.2017, which was assailed by P.E.M.R.A. in Civil Petitions No.2459 to 2465 of 2017 before the Hon'ble Supreme Court. Vide judgment dated 01.10.2019 (reported as Pakistan Electronic Media Regulatory Authority Vs. Trade Serve International (Pvt.) Ltd. (2020 SCMR 206) hereinafter referred to as “Trade Serve’s case”) the said petitions were allowed and the said judgment dated 12.05.2017 was set aside. In the said judgment, it was held as follows:-

> ***“I. The renewal license fee for the next term sought by the licensee-respondents, would be the last bidding price determined by the bidding carried out and approved by PEMRA for the category and area of F.M. radio for which license is sought to be renewed plus the rate of inflation calculated as prescribed by the State Bank of Pakistan.***
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> ***II. And in cases, where after the grant of license by PEMRA to licensee-respondents, there has been no bidding for the category and area of F.M. radio for which license is sought to be renewed, then the renewal license fee for the next term, would be the bidding price approved by PEMRA in favour of the licensee-respondent plus the rate of inflation calculated as prescribed by the State Bank of Pakistan.”***

6. Thereafter, vide letter dated 18.05.2020, P.E.M.R.A. required the petitioner to pay licence renewal fee for the three licences. Through writ petition No.3745 of 2020, the petitioner has impugned the said letter. Reminders were issued by P.E.M.R.A. to the petitioner vide letters dated 01.07.2020 and 04.08.2020. Subsequently, vide letter dated 05.10.2021,

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P.E.M.R.A. required the petitioner to deposit the licence renewal fee for its three FM Radio Broadcast Stations after deducting the amount already paid. Furthermore, P.E.M.R.A. directed the petitioner to furnish documents listed in paragraph 4 of the letter dated 18.05.2020. The said letter dated 05.10.2021 as well as the *vires* of the 2012 Regulations have been assailed by the petitioner in C.M.A.No.18/2021.

7. Learned counsel for the petitioner submitted that P.E.M.R.A. could not demand licence renewal fee until a process for categorization of licences was carried out as required by Regulation 9(2) of the 2012 Regulations was carried out; that the petitioner continued with the operation of the FM Radio Broadcast Stations at Islamabad, Abbottabad and Vehari after the expiry of the petitioner's licences; that the petitioner was justified in not paying the licence renewal fee for its three radio broadcast stations as there was litigation pending before the Hon'ble Lahore High Court with respect to P.E.M.R.A's demand for the payment of the licence renewal fee; that after the writ petitions filed by the licencees were allowed, P.E.M.R.A. filed civil petitions before the Hon'ble Supreme Court which were decided in P.E.M.R.A. favour; that the observation of the Hon'ble Supreme Court that *"the renewal licence fee for the next term sought by the licencee-respondents, would be the last bidding price determined by the bidding carried out and approved by PEMRA for the category and area of F.M. radio for which licence is sought to be renewed"* obligated P.E.M.R.A. to first determine the categories of the licences and radio broadcast stations and thereafter demand the licence renewal fee; and that the demand made by P.E.M.R.A. for the payment of licence renewal fee prior to the categorization of the licences and radio broadcast stations is unlawful and liable to be declared as such.

8. On the other hand, learned counsel for P.E.M.R.A. submitted that the petitioner has been able to avoid the payment of the licence renewal fee for ten long years after the expiry of its three licences on 17.10.2012; that the Hon'ble Supreme Court in the judgment in Trade Serve's case had permitted P.E.M.R.A. to demand licence renewal fee for category of radio broadcast stations; that the demand for the payment of the licence renewal fee by P.E.M.R.A. through the impugned letters dated 18.05.2020

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and 05.10.2021 is strictly in conformity with the law laid down by the Hon'ble Supreme Court's said judgment; that the law does not obligate P.E.M.R.A. to carry out a process of categorization of the licences or radio broadcast stations before a demand for the payment of licence renewal fee is raised against a licencee; that the amount demanded from the petitioner as licence renewal fee for its FM Radio Broadcast Stations at Islamabad and Abbottabad was on the basis of the last bidding for such licences; that for the petitioner's FM Radio Broadcast Stations at Vehari the amount demanded as licence renewal fee was determined by P.E.M.R.A. in accordance with Regulation 9(2) of the 2012 Regulations as well as the judgment of the Hon'ble Supreme Court in Trade Serve's case; and that the petitioner is avoiding to pay the licence renewal fee on the basis of an interim order obtained from this Court on 10.11.2021. Learned counsel for P.E.M.R.A. prayed for the petitioner's appeal and writ petition to be dismissed with costs.

9. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition and appeal have been set out in sufficient detail in paragraphs 2 to 6 above and need not be recapitulated.

10. Section 24(4) of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (“the 2002 Ordinance”) provides that a licence shall be valid for a period of five, ten or fifteen years subject to the payment of annual fee prescribed from time to time whereas Section 24(5) provides that P.E.M.R.A. may renew a licence on such terms and conditions as may be prescribed and in case of refusal to renew a licence, reasons shall be recorded in writing. The word *“prescribed”* is defined in Section 2(s) to mean prescribed by rules or regulations made by P.E.M.R.A. Section 4(3) empowers P.E.M.R.A. to make regulations and to issue determinations for carrying out the purposes of the said Ordinance.

11. In exercise of the powers conferred under Section 4(3) of the 2002 Ordinance, P.E.M.R.A. made the 2012 Regulations. Regulation 7(1) provides that the licence fee, annual fee, other charges and licence renewal fee payable pursuant to the said Regulations shall be determined

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by P.E.M.R.A. from time to time. Regulation 9(1) sets out the procedure to be followed for the renewal of a licence on expiry of its term whereas Regulation 9(2) provides that licence renewal fee shall be the prevailing applicable licence fee for the respective area and category of licence plus rate of inflation calculated as prescribed by the State Bank of Pakistan: provided that if bidding has not been held for such licence, the renewal fee shall be determined by P.E.M.R.A.

12. The question as to what should be the basis for determining the amount payable as licence renewal fee for FM Radio Stations came up for consideration before the Hon'ble Supreme Court in Trade Serve's case. The Hon'ble Supreme Court clarified that the licence renewal fee would be the last bidding price determined in the bidding carried out and approved by P.E.M.R.A. for the category and area of FM Radio Broadcast Station for which the renewal of licence is being sought plus the rate of inflation calculated as prescribed by the State Bank of Pakistan. Furthermore, it was held that where there had been no bidding for the category and area of F.M. radio for which licence was sought to be renewed, then the renewal licence fee for the next term, would be the bidding price approved by P.E.M.R.A. in favour of the licencee plus the rate of inflation calculated as prescribed by the State Bank of Pakistan

13. Now, the last bidding for the grant of licence to establish and operate FM Radio Broadcast Station for the cities of Islamabad and Abbottabad took place on 05.05.2010. The highest bid for the licence for Islamabad was Rs.36,500,000/- whereas the highest bid for the licence for Abbottabad was Rs.8,600,000/-. Bidding for the grant of a licence for Vehari had not taken place.

14. Vide letter dated 18.05.2020, P.E.M.R.A. required the petitioner to pay a licence renewal fee for the three licences. 25% of the renewal fee was required to be paid upfront whereas the remaining 75% was to be paid in two equal yearly installments. It was asserted on behalf of P.E.M.R.A. that the licence renewal fee that the petitioner was required to pay for the FM Radio Broadcast Stations at Islamabad and Abbottabad was on the basis of the highest bids received in the last bidding plus rate of inflation calculated as prescribed by the State Bank of Pakistan. In this

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way, the licence renewal fee for the Radio Station at Islamabad came to Rs.44,404,000/- whereas the licence renewal fee for the Abbottabad came to Rs.10,462,000/-. For the petitioner's Radio Station at Vehari, an amount of Rs.1,000,000/- was demanded as licence renewal fee by P.E.M.R.A. This demand was on the basis of the fee prescribed for Commercial Radio Station Licence under the category of "local area / community based" in Table-II of Schedule-B of the Pakistan Electronic Media Regulatory Authority Rules, 2009. Under the said table, this is the least amount that P.E.M.R.A. could demand as a licence fee for a commercial licence. It is not the petitioner's case that the amount demanded as licence renewal fee for the petitioner's Radio Station at Vehari should have been on the basis of the highest bid received at an earlier bidding process. The proviso to Regulation 9(2) of the 2012 Regulations empowers P.E.M.R.A. to determine the licence renewal fee if the bidding has not been held for a licence.

15. Learned counsel for the petitioner emphasized that no licence renewal fee could be demanded from it by P.E.M.R.A. until a process of categorization of licences had taken place. In other words, the petitioner wants to continue its operations at Islamabad, Abbottabad and Vehari without having paid the licence renewal fee for the past ten years and insists on not paying such a fee until a categorization of licences takes place. The petitioner avoided paying the licence renewal fee due to the pendency of writ petitions No.2446, 4366, 4367, 4368, 4369, 4370 and 4371/2013 before the Hon'ble Lahore High Court and subsequently due to the pendency of civil petitions No.2459 to 2465/2017 before the Hon'ble Supreme Court. Vide order dated 10.11.2021, the petitioner was able to obtain an injunctive order from this Court.

16. The category of licences granted to the petitioner was admittedly of commercial and non-exclusive nature. Neither does the 2002 Ordinance nor the 2012 Regulations prohibit P.E.M.R.A. from demanding the licence renewal fee without having carried out categorization of licences. Therefore, I do not find any legal infirmity in the PEMRA's demand for the payment of the licence renewal fee. In the event the petitioner does not pay the licence renewal fee, the consequences set out in the impugned

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public notice and PEMRA's letters dated 18.05.2020 and 05.10.2021 shall ensue.

17. Although no submissions whatsoever were made by the learned counsel for the petitioner as to how the 2012 Regulations were *ultra vires* the provisions of the 2002 Ordinance or the Constitution, but in the memo of the petition, it was pleaded *inter alia* that since 2012 Regulations were made at a time when no Chairman P.E.M.R.A. had been appointed, therefore, the same were without any lawful effect. It was also pleaded that the Hon'ble Supreme Court, in the judgment reported as Hamid Mir Vs. Federation of Pakistan (PLD 2013 SC 244), had declared the Pakistan Electronic Media Regulatory (Content) Regulations, 2012 to be of no legal consequence on the ground that Chairman P.E.M.R.A. had not been appointed when the said Regulations were made.

18. Now P.E.M.R.A. had, on 05.09.2016, ratified the 2012 Regulations, at which time the Chairman P.E.M.R.A. had been appointed. Thereafter, on 20.11.2019, P.E.M.R.A. made the "Pakistan Electronic Media Regulatory Authority (Radio Broadcast Station Operations) Regulations, 2012 as amended in 2019", the *vires* whereof have not been challenged by the petitioner.

19. In view of the above, I do not find any merit in this petition and civil miscellaneous appeal which are accordingly dismissed with costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 28/03/2022

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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