JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 1092 OF 2021

M/S TV NATION (PRIVATE) LIMITED & ANOTHER

VS

FEDERATION OF PAKISTAN THROUGH SECRETARY, MINISTRY OF INFORMATION, BROADCASTING AND NATIONAL HERITAGE, ETC

Petitioners by	**:**	**Ch. Hasan Murtaza Mann, Advocate.**
Respondents by	**:**	**Syed Safeer Hussain Shah, Advocate for the Respondent No.2.** **Raja Zamir-ud-Din Ahmed, A.A.G.** **Mr. Umar Khitab and Mr. Khalid Mehmood, Directors Legal, on behalf of the PEMRA.**
Date of hearing	**:**	**16.09.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the **"Constitution"**), the petitioners have prayed as under: -

i. Declare that Regulation 5(2) of the Distribution Services Regulations is *ultra vires* of the Constitution, PEMRA Ordinance, and PEMRA Rules, and the same is *void ab initio*, inoperative, and is of no legal effect.

ii. Declare that the verbal ban by PEMRA on issuance of new Cable TV licences is illegal and Respondent No. 2/ PEMRA may be directed to issue new Cable TV licenses to the Petitioners in accordance with law.

iii. Declare that the classifications and sub-categories created by PEMRA in the category of Distribution Services Licences for Cable TV are *ultra vires* of the law for being arbitrary, whimsical, unreasonable, and amounting to the exercise of unfettered discretion.

iv. Direct the Respondents to treat all the stakeholders in the media distribution services equally, and all the Petitioners and other stakeholders also be granted an IPTV licence for all 14 zones of

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Pakistan in the same manner as has been done for PTCL, in order to avoid discrimination.

2. Brief facts of the case, as per the contents of the petition, are that M/s TVNation (Pvt.) Ltd. **("Petitioner No. 1")** initially acquired distribution licenses for three cities and now seeks to expand operations across Pakistan, beginning with a first phase targeting 16 major cities, including Karachi, Lahore, Islamabad, Rawalpindi, and others, with an estimated investment of Rs. 1.244 billion. The project includes deploying high-definition digital television services and internet through advanced infrastructure and equipment, aiming to replace the outdated analogue system and offer over 220 HD channels. Despite PEMRA's stated goal of digitization since 2016, progress has been hindered due to its archaic and inconsistent licensing regime. The Petitioners intend to extend their services to at least 40 more cities and generate large-scale employment, but face serious regulatory roadblocks. Chief among them is Regulation 5(2) of PEMRA's Distribution Service Regulations, which (i) arbitrarily limits each distribution company to four licenses, and (ii) bars acquisition of more than one license per area, effectively preventing cross-technology operations. Additionally, PEMRA has informally suspended the issuance of new Cable TV licenses for years without public justification or a transparent process, citing a future bidding mechanism that has never materialized. These measures have created artificial scarcity, inflated license prices, and benefit dormant license holders, while PEMRA has selectively granted expansive licenses to certain entities like PTCL. The Petitioners argue that these actions and regulations are unreasonable, discriminatory, and in violation of the PEMRA Ordinance, PEMRA Rules, and the Constitution, infringing upon their fundamental rights and public interest. They seek that these restrictions and PEMRA's *de facto* ban on new licenses be declared unconstitutional, illegal, and void.

3. The learned counsel for the Petitioners submitted that Regulation 5(2) of the PEMRA Distribution Service Regulations, 2011, along with PEMRA's verbal ban on the issuance of new Cable TV licenses, is unconstitutional, *ultra vires* of the PEMRA Ordinance and Rules, and violates the Petitioners' fundamental rights under Articles 18, 19, 19A, and 25 of the Constitution. Regulation 5(2) imposes (i) an arbitrary cap of four licenses per distribution company, and (ii) prohibits the grant of multiple distribution licenses, even across different technologies, within the same area. This restriction has no

legislative backing under the PEMRA Ordinance, particularly Sections 19 and 23, which do not authorize numerical license caps. Section 23 merely aims to prevent "undue concentration" and "monopoly," but these terms remain undefined in the Ordinance, and Section 39(e) makes clear that such definitions and restrictions, if any, must be introduced by rules with Federal Government approval, not regulations. Rule 13 of the PEMRA Rules also imposes limits on broadcast media licenses, not on distribution licenses, further affirming that no such cap was legislatively intended for distribution service providers. The Regulation is therefore an unlawful exercise of delegated authority, as PEMRA cannot override the statute or introduce restrictions beyond the powers granted. Furthermore, Regulation 5(2) is anti-competitive, disproportionately affects Cable TV operators compared to other technologies like IPTV, DTH, Mobile TV, and OTT, which enjoy nationwide reach through a single license. For instance, PTCL has been granted one IPTV license for all 14 zones, while Cable TV licensees are limited to four fragmented areas with unclear territorial classifications. This results in unequal treatment and market distortion, in clear violation of Article 25 of the Constitution. Additionally, PEMRA's verbal moratorium on new Cable TV licenses, with no formal notification, no bidding process, and no market study, is arbitrary, whimsical, and legally invalid, as verbal orders have no legal force. This not only restricts fair competition but also entrenches existing licensees by creating artificial scarcity and promoting a franchise-like system, contrary to the goals of the PEMRA Ordinance's preamble, which emphasizes plurality, access to information, and free media development. Such restrictions also undermine the public's right to access diverse and quality information, protected under Articles 19 and 19A, as interpreted by the Supreme Court in PLD 1993 SC 473 (*Muhammad Nawaz Sharif v. President of Pakistan*). Regulation 5(2) stifles competition, innovation, and investment, preventing modern companies from offering advanced, affordable services. The restriction is not based on any intelligible differentia, lacks a rational nexus with the object of preventing monopoly, and effectively creates monopolies by excluding capable competitors under the pretext of anti-concentration. Finally, Article 18 protects freedom of trade, business, and profession subject only to reasonable restrictions. Courts have consistently held that regulation cannot amount to prohibition, and any such cap must be expressly authorized by law, which is not the case here. Since Cable TV licenses are already geographically and numerically constrained, allowing more licenses

would not create a monopoly but enhance consumer choice, foster healthy competition, and facilitate technological advancement. In sum, Regulation 5(2) is unconstitutional, *ultra vires*, discriminatory, anti-competitive, and legally unsustainable, and thus liable to be struck down along with PEMRA's unannounced moratorium on new licenses.

4. The learned AAG endorsed the report submitted by PEMRA (Respondent No. 2) and argued that under Section 30-A of the PEMRA Ordinance, 2002, an aggrieved party may file an appeal before the High Court within 30 days of receiving an order or determination. Since the Ordinance provides a specific appellate mechanism, it must be strictly followed, and writ jurisdiction should be exercised only with great caution. Citing Section 29 of the Limitation Act, 1908, it was contended that where a special law like the PEMRA Ordinance prescribes its own limitation period and does not expressly adopt the Limitation Act, Section 5 (condonation of delay) cannot apply. As the PEMRA Ordinance does not allow condonation of delay, any appeal filed beyond the prescribed 30-day period is barred, and the matter attains finality. Reliance was placed on 2001 SCMR 1, affirming that the statutory limitation under special law is strict and cannot be relaxed.

5. I have heard the learned counsel for the parties and perused the record.

6. The license of the Petitioner is granted under Section 19 of the PEMRA Ordinance, 2002, which is reproduced for ease of reference as under:-

> ***"Section 19. Licence to broadcast or operate.-*** *The Authority shall have exclusive right to issue licences for the establishment and operation of all broadcast media and distribution services, provided that this exclusive right shall be used by the Authority in conformity with the principles of fairness and equity applied to all potential applicants for licences whose eligibility shall be based on prescribed criteria notified in advance and that this shall be done through an open, transparent bidding process: Provided that the bidding shall be held if the number of applications exceeds the number of licences to be issued by the Authority.*
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> *(4) The Authority shall have the power to determine number of licences 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 licence and for its annual renewal.*

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7. According to Section 19 of the PEMRA Ordinance, 2002, it is the Authority who has the exclusive right to issue license and to determine the number of licenses to be issued in each category or sub-category. Furthermore, Section 23 of the PEMRA Ordinance, 2002 provides as follows:-

> ***“Section 23. Exclusion of monopolies.-*** *(1) 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 existing agreements and contracts to the extent of conferring a monopoly or containing an exclusivity clause are, to the extent of exclusivity, hereby declared to be inoperative and of no legal effect.*
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> *(2)……..”*

8. It is the responsibility of PEMRA, i.e., Respondent No.2, to ensure that fair competition is facilitated and monopolies are excluded. The Petitioner argues that Regulation 5(2) creates market fragmentation, protecting local incumbents from broader competition. However, the Authority's power under Section 19(4) to determine the number of licenses includes the discretion to set caps to prevent any single entity from attaining overwhelming market dominance. The objective of Section 23 is to prevent dominance within a *relevant geographic market*. The four-license cap is a permissible regulatory tool to maintain a plurality of operators and prevent the consolidation of market power on a national scale, which could, over time, lead to an oligopoly controlled by a few large players. The Petitioner has not demonstrated that the cap is manifestly unreasonable or that it creates a monopoly within any specific local market; rather, it is a preventive measure. Therefore, this court finds that Regulation 5(2) is a valid exercise of PEMRA's delegated authority and is consistent with the objectives of the PEMRA Ordinance. (Reliance is placed on 2018 SCMR 1807 Supreme Court of Pakistan, and 2012 CLD 1436 Lahore).

9. Moreover, the Petitioners have challenged the vires of Regulation 5(2) of the Distribution Services Regulations, 2011, as the same is against Articles 18,

19, 19-A & 25 of the Constitution. For ready reference, Regulation 5(2) of the Distribution Services Regulations, 2011, is reproduced hereunder:-

"Regulation 5. Criteria for evaluating licence application.-

> *(2) The applicant who is, directly or indirectly, holding a licence issued by the Authority shall not be issued any further licence unless all outstanding dues in respect of all the licences held by such applicant, directly or indirectly, have been paid and a satisfactory report has been obtained regarding compliance with the relevant laws from concerned wings of the Authority: Provided that a maximum number of distribution service licences that may be issued, to a person or any of its directors or partners where such person a company or firm, directly or indirectly, shall not exceed a total of four distribution service licences:*
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> *Provided further that except in the case of landing rights permission, a person shall not be granted more than one distribution service licence in the same area of operation".*

10. The Petitioners challenge the restriction on the maximum number of licences which can be issued by the competent authority under the law discussed above, as capping its maximum number violates Articles 18, 19, 19-A & 25 of the Constitution. There is no violation of the Petitioners' fundamental rights by capping the maximum number of licenses, as the said regulation does not preclude the Petitioners from doing business, curtailing the freedom of speech, curtailing them to have right of access to information, and curbing the equality of citizens, which are guaranteed under the Constitution. The learned counsel on behalf of the Petitioners has failed to satisfy this Court on this count too, that Regulation 5(2) of the Distribution Services Regulations, 2011, is *ultra vires* of the Constitution.

11. In light of the above discussion, the instant Writ Petition is found without any merit, which is **dismissed** accordingly.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on _____.

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