JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT

1. ICA No.**198** of 2023

(Pakistan Electronic Media Regulatory Authority and another Versus Shoukat Ali and another.)

2. **ICA** No.**352** of 2023

(Federation of Pakistan Versus Shoukat Ali and another)

Date of hearing	**19.05.2025**
Appellants by:	Barrister Muhammad Mumtaz, Advocate with Tahir Farooq DG Law, Mohsin Hameed DG Regulations, Rohail Ashraf, Law Officer PEMRA.
Respondents:	Raja Rizwan Abbasi, Advocate. Ms. Asia Batool, AAG.

SARDAR MUHAMMAD SARFRAZ DOGAR, ACJ:- The captioned Intra-Court Appeals emanate from the same judgment and have common issue, therefore are being decided through this single judgment**.**

2. Precisely, the appellants have challenged the *vires* of judgment dated 02.05.2023 ("**Impugned Judgment**") (reported as PLD 2024 Islamabad 135) whereby learned Single Judge in Chambers while allowing writ petition No.2225 of 2022, declared Rule 9(5) of the Pakistan Electronic Media Regulatory Authority Rules, 2009 ("**Rules**") *ultra-vires*, to the extent that it requires Pakistan Electronic Media Regulatory Authority ("**PEMRA**") to seek security clearance for an applicant prior to grant of license, to Sections 19, 22 and 25 of the PEMRA Ordinance, 2002 ("**Ordinance**"). Leaned Single Judge in Chambers, through the impugned judgment, also directed the Federal Government to take appropriate steps to amend provisions of Rules, PEMRA Eligibility Criteria Regulations, 2019 ("**Regulations**") and any other rules and regulations framed under the Ordinance to ensure that they do not impinge upon the exclusive power and obligation of PEMRA to evaluate the eligibility of applicants to grant licenses under the Ordinance. For convenience, latter on in this judgment,

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PEMRA would be referred to as Appellant whereas Shoukat Ali as Respondent No.1.

3. The threshold of the case is that M/s AAA Media House (Pvt.), Limited, Sahiwal ("**Company**"), applied for the grant of satellite TV license in "News & Current Affairs category" on 05.01.2019 pursuant to the advertisement dated 25.12.2018 and was declared as provisionally successful bidder for the grant of license. After deposit of required amount/fee, the case of Company and other provisionally successful bidders/companies was presented to the Appellant, which approved the grant of license subject to the completion of all legal requirements. However, vide U.O No.9/270/2019-S-III dated 21.01.2021 the security clearance was denied, which was conveyed to the Company. The company requested to review/reconsider its case vide its letter dated 05.05.2021, which was forwarded to the Federal Ministry of Interior on 24.05.2021. Thereafter, reminders dated 09.09.2021 and 28.02.2022 were also sent as follow up. Meanwhile, the respondent No.1 filed Writ Petition and assailed U.O No.9/270/2019-S-III dated 21.01.2021 before this Court wherein, learned Single Judge in Chambers passed the Impugned Judgment, hence instant Intra-Court-Appeals.

4. Learned counsel for the Appellants, with vehemence, questioned the findings of learned Single Judge in Chambers and argued that learned Single Judge in Chambers has overlooked the pleadings and arguments advanced by Appellants in their entirety and failed to pass a well-reasoned and sound judgment in accordance with law; that the entire edifice of the Impugned Judgment is based on the premise that the Appellant remained failed to discharge its statutory authority in accordance with sections 19, 22 and 25 of the Ordinance and section 24A of the General Clauses Act, 1897. The learned Single Judge in Chambers also failed to appreciate that Appellant infact acted strictly in accordance with provisions of Ordinance. It has been argued that Impugned Judgment suffers from non-reading and misreading of the statutory schemes as it was in pursuance of Section 33A of the Ordinance read with rule 9(5) of the rules, the Appellant/authority

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sought assistance regarding the security clearance of the Company before issuance of the license. It was further argued that section 39 of the Ordinance bestows Appellant the power to make rules with the approval of the Federal Government to carry out the purposes of Ordinance which also stipulates for providing terms and conditions for granting a license, hence, it is concluded by the learned counsel for the Appellant that rule 9(5) of the Rules is in full conformity with the Ordinance; that the Appellant/authority does not possess the requisite expertise to screen any Applicant regarding the prohibitions provided under Section 25 of the Ordinance, therefore, Rule 9(5) was enacted to fill this vacuum; that freedom of trade and business under Article 18 of the Constitution of Islamic Republic of Pakistan, 1973 ("**Constitution**") are also contingent upon Article 18(a) i.e. regulation of any trade or business through licensing, therefore, the Impugned Judgment shall itself result in impinging the Appellant No.1's power to regulate as envisioned by the legislature through the Ordinance read with Article 18(a) of the Constitution by taking away its power to seek security clearance of a potential licensee through an instrumentality of the Federal Government which is absolutely in conformity with the Ordinance and that learned Single Judge in Chambers has not considered the underlying effect of the Impugned Judgment that it would redundant section 25 of the Ordinance. Finally prayed for acceptance of instant appeals and setting aside of Impugned Judgment while contending that learned Single Judge in Chambers has not provided any reasoning for disagreeing with the judgment of learned Division Bench of the Hon'ble Sindh High Court in the case law reported as **2016 CLC 575** whereby it was held that rule 9(5) of the Rules is "*intra vires*" to the Ordinance and the seeking and grant of security clearance is in accordance with the practice in vogue, which is unobjectionable.

5. On the other hand, learned counsel for the Respondent No.1, after arguing the case at some length, admitted the facts that company was granted security clearance and subsequent license during the pendency of Writ Petition and that there remained no grievance of the Respondent No.1. Learned counsel for the Respondent No.1 unequivocally did not object the

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instant Intra Court Appeals, however, requested for protection of rights of Respondent No.2.

6. Arguments heard and record perused.

7. From the matrix of the whole scenario of the case, it is gathered that since, the discussions encompassing fundamental rights, national security and scope of delegated legislation would quantify depending upon the conclusion of this Court as to legitimacy of framing of the Rules. Therefore, the primary question before this Court is:-

> "**Whether rule 9(5) of the Rules to the extent that it requires PEMRA to seek security clearance for an applicant prior to grant of license is *ultra vires* to sections 19, 22 & 25 of the Ordinance**?"

Hence, it would be apropos to discuss the route, if any, which enabled the Authority to frame Rules.

8. The learned Single Judge in Chambers while declaring Rule 9(5) of the Rules *ultra vires*, to the extent of security clearance, has laid much emphasis on the ground that it has enlarged the scope of Ordinance as it does not find any nexus to its sections and PEMRA has failed to discharge its statutory authority in accordance with sections 19, 22 and 25 of the Ordinance and section 24A of the General Clauses Act, 1897.

9. Therefore, in order to achieve precision and to circumvent the unnecessary details, it is in the fitness of things to reproduce the relevant sections i.e.19, 22 and 25 of the Ordinance, which are as under:-

> "**19. License to broadcast to operate**.—(1) 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."

> "**22 Duration for consideration of the application for a licence**.—The Authority shall take decision on the application for a licence within one hundred days from the receipt of the application."
>
> **25. Certain persons not be granted licence**.—A licence shall not be granted to—
>
> (a) a person who is not a citizen of Pakistan or resident in Pakistan;

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> (b) a foreign company organized under the laws of any foreign government;
> (c) a company the majority of whose shares are owned or controlled by[;or]
> (d) any person funded or sponsored by a foreign government or organization.

Now, discussing the origin of Power enabling the Authority to make rules/regulations, it is noted that the legislature, in order to carry out the purposes of the Ordinance, empowered the Authority, under section 39 of the Ordinance, to make Rules. The term "Rules" has been defined in sub-section (u) of Section 2, which is reproduced as under:-

> (u) "rules" means the rules made under this Ordinance.

In this context, the bare perusal of the Rules makes it unequivocal that the same have been framed by the Authority in exercise of the powers conferred by sub-section (1) of the section 39 of the Ordinance, which, for ease of reference, is reproduced verbatim:-

> "**39. Power to make rules**.—(1) The Authority may, with the approval of the Government, by notification in the official Gazette, make rules **to carry out the purposes of this Ordinance**."
>
> (Emphasis added)

Here, the discussion to the extent of route that enabled the Authority to make "Rules" met with its end and it is needless to questions its legitimacy. It is, therefore, held that Authority exercised the power within the bounds of the Ordinance to make Rules.

10. Moving towards the next vital aspect of the matter i.e. whether the condition of security clearance does or does not find its nexus with the Ordinance? In this regard, the perusal of Section 19 of the Ordinance, which endowed the Authority exclusive right to issue license for the establishment and operation of all broadcast media and distribution services also, by virtue of its sub-section made it definite that every license shall be subject to prescribed terms and conditions. For ready reference, the said sub-section is reproduced as under:-

> (3) Every licence shall be subject to **such terms and conditions as may be prescribed**.
>
> (Emphasis added)

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The term "prescribed" has been defined in Section 2(s) of the Ordinance, which means prescribed by the rules or [regulations] made by the Authority. For ease of reference, the same is also reproduced as under:-

> (s) "prescribed" means prescribed by the **rules or [regulations] made by the Authority**.
>
> (Emphasis added)

From the above, it can safely be concluded that the Authority, where it is empowered to issue license, is at the same time also empowered to place it under term or condition by virtue of rule.

11. Furthermore, Section 20 (d) of the Ordinance is also of much importance as Section 20 of the Ordinance lays down certain "Terms and conditions of license". For brevity, sub-section (d) is hereby reproduced as under:-

> (d) comply with rules made under this Ordinance;

In addition to it, Section 30(2) of the Ordinance the Authority may vary any of the terms and conditions of the licence where it deems that such variation is in the public interest. These sub-sections also make obligatory to comply with rules made under this Ordinance even the Authority can also vary from said terms and conditions. Therefore, it cannot be said that the rule 9(5) of the Rules has been framed in excess of the scope of the Ordinance and without authority to do so. The Authority, in pursuit of the powers conferred upon it by the ordinance, was very much within its scope to frame Rules, as such, any term or condition imposed by the Authority by framing of Rules is within its domain and power.

12. The learned Single Judge in Chambers, in the Impugned Judgment, has emphasized that security of the State must not be projected by the State itself to be so fragile that critical speech or a level-playing field for the media would shake its foundation. In this respect, it is observed that it is an era of technology, where through electronic media mental attributes of individuals can be very easily interfered with by the anti-state sectors, which trigger the alarming situation, required to be tackled with much caution by the State through executive authority. Thereby, it emphatically involves the "**National Security**". The Supreme Court of India while

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dealing with a matter of "**Security Clearance**" and "**National Security**" discussed the special exceptions to the principles of natural justice in case titled "Ex.Armymen's Protection Services P.Ltd vs. Union of India and others"[1] and held as under:-

> 15. It is difficult to define in exact terms as to what is **national security**. However, the same would generally **include socio-political stability, territorial integrity, economic solidarity and strength, ecological balance, cultural cohesiveness, external peace, etc**.
>
> 16. What is in the interest of **national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of State or not. It should be left to the Executive**. To quote **Lord Hoffman in Secretary of State for the Home Department v. Rehman**:"… in the matter of national security is not a question of law. It is a matter of judgment and policy. **Under the Constitution of the United Kingdome and most other countries, decisions as to whether something is or is not in the interest of national security are not a matter for judicial decision. They are entrusted to the executive**."
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> 17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases it is the duty of the Court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. **Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party.**"

Reference can also be placed on the subsequent pronouncement of Indian Supreme Court in case "Digi Cable Network (India)"[2] wherein latter case was referred and the requirement of "Security Clearance" which was added in the Rules was held to be mandatory requirement.

13. It has been noticed by this Court that the "Security Clearance" has been discussed by the Division Bench of Sindh High Court in MESSRS GAAZA BROADCAST SYSTEM [3], and Court unequivocally observed that:-

> "… Here we would like to observe that in **security clearance petitioners have no role to play as this is purely internal matter of PEMRA** to send credential and antecedents of applicant to concerned Agency or

[1] **AIR 2014 SC 1376, 2014(2) SCALE 676, (2014)5 SCC 409**
[2] "Digi Cable Network (India) Pvt. Ltd. vs. Union of India & Ors" (**2019 INSC 27**)
[3] "Messrs GAAZA BROADCAST SYSTEM PVT. LTD. through authorized person and others vs. FEDERATION OF PAKISTAN through Ministry of Information and Broadcasting Pakistan and others" (**PLJ 2020 Karachi 38**)

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> Agencies for Security Clearance and keep follow up for an early response and report."
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> (Emphasis added)

14. The matter was also before august Supreme Court of Pakistan in *Pakistan Electronic Media Regulatory Authority (PEMRA) through Chairman, Islamabad and others*[4] and the hon'ble Court enlightened and declared **Rule 9(5)** to have mandatory effect while observing as under:-

> "We have read the impugned judgment carefully and find that the learned High Court failed to consider the statutory conditions laid down in section 30(1)(d) of the PEMRA Ordinance, 2002 read with Rule 16(2) PEMRA Rules, 2009. Furthermore, the impugned judgment did not take into account the specific conditions applicable to the scrutiny of an application for transfer of management of a licensee company laid down in section 25 of the PEMRA, Ordinance, 2002 read with Rules 13(3), **9(5)** and 7(e) of the PEMRA Rules, 2009. The High Court has over emphasized PEMRA's requirement demanding the outgoing directors of the respondent to be present whilst considering the application by the respondent Company for change in its management. Accordingly, the conditions of remand directed in para 37 of the impugned judgment dated 02.09.2021 disregards the mandatory requirement of prior permission imposed by the statute in the aforementioned provisions of the PEMRA Ordinance, 2002. **We consider that the said statutory provisions have mandatory effect and cannot be overlooked** merely because an unlawful or unreasonable condition of personal appearance of the outgoing directors before PEMRA had been imposed by the latter authority. It is conceivable that even such a condition may be relevant for processing the application for change of management of a licensee under particular circumstances. Therefore, the same cannot be ruled to be altogether irrelevant for consideration by PEMRA."
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> (Emphasis added)

The regulation of electronic media flows through Ordinance and the licensing regime has been established under Section 19 and 20 of the Ordinance. There is no denial to the fact that such right under supra sections is exclusive, and the licensees are subject to terms and conditions under Section 19(3) and are bound to follow Rules framed under the Ordinance in terms of Section 20(d) of the Ordinance whereas Section 25 clearly prohibits grant of license to (a) a person who is not a citizen of Pakistan or resident in Pakistan; (b) a foreign company organized under the laws of any foreign government; (c) a company the majority of whose shares are owned or controlled by [or]; (d) any person funded or sponsored by a foreign government or organization. There is also no other aspect

[4] "Pakistan Electronic MEDIA REGULATORY AUTHORITY (PEMRA) through Chairman, Islamabad and others vs. SOUTHERN NETWORKS LIMITED, KARACHI" (**2023 SCMR 1348**)

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except that the promulgation of Ordinance is for the development of electronic media and to ensure inter alia accountability, transparency and good governance through free flow information. As such, the authority is obliged to ensure strict conformity with Section 25 of the Ordinance which provides that foreign entities and those companies receiving funding from foreign governments or organizations cannot be granted licence. The Authority under Section 33A of the Ordinance is authorized to seek assistance of the officers of Federal Government, Provincial Governments and Local Governments including the Capital Territory Police and the Provincial Police in discharge of its functions under the Ordinance and **Rules** and Regulations made thereunder. The foreign funded companies or persons should not be allowed access to the mind of the people of our country or be allowed to generate public opinion to suit their purposes as a nation could be conquered without war if the minds of its people are conquered and for this reason even Pakistani nationals or local companies funded or sponsored by foreign funded organizations are not entitled to the broadcasting and transmission license under Section 25 of the Ordinance.

15. Reiterating, the rule making power has been conferred under section 39 of Ordinance, which is titled as **Power to make rules** and subsection (1) sets out the general power of delegation to carry out the purposes of the Ordinance whereas sub-section (2) provides for enumerated heads. The Authority must have conformity with Section 25 of the Ordinance, keeping into consideration the track record of the applicant/licensee and can seek assistance of Federation as well as Provincial, Local officers including Islamabad Capital Territory Police, therefore, the only non-existence of word “Security Clearance” in the Ordinance, does not preclude the very formality. Furthermore, it is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. The well-known principle of harmonious construction is that effect should be given to all the

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provisions. Summarizing the above, the role of Media, particularly Electronic Media in shaping and reshaping of minds of general public, should not be overlooked and to clog any possibility of unwarranted interference by it through mis-information in the smooth, peaceful & harmonious existence of society, the relevant part of the Rule 9(5) of the Rules in respect of security clearance from Ministry of Interior before issuance of licence, should not be declared *ultra-vires* the Ordinance. Therefore, security clearance prior to issuance of license, is not inconsistent with the Ordinance, rather it facilitates the Authority to conclude the suitability of any applicant in respect of national security and falls within the scope of General Delegation of power under Section 39 of the Ordinance. Guidance can also be sought from judgment passed in recent past in "Naresh Chandra Agrawal"[5], wherein Indian Supreme Court while taking up a similar matter dismissed the appeal seeking *ultra-vires* of Rules.

16. No doubt, it is within the dominion of the Court to exercise its power of judicial review to evaluate and weigh upon the legislative and executive actions in order to maintain and sustain the rule of law, to check and balance and render null and void an unlawful action or decision, and with the same spirit and frame of mind, the Court may also invalidate and strike down laws, acts, and governmental actions if found unlawful and beyond the scope of power and jurisdiction. Judicial review can be sought if the decision maker was misdirected in terms of the law, exercised a power wrongly, or improperly purported to exercise a power that it did not have, which is known as acting *ultra vires*.[6] In Mir Shabbir Ali Khan Bijarini and 3 others[7], hon'ble Sindh High Court emphasized the phrase ultra-vires and defined certain principles in that regard. It has also been held that:-

> "Ultra vires is a Latin phrase and expression which means "beyond the powers". If an act entails legal authority and it is done with such authority, it is symbolized as intra vires (within the precincts of powers) but if it

[5] "Naresh Chandra Agrawal vs. The institute of Chartered Accountants of India and others" (**2024 INSC 94**)
[6] "Naseem Khan and others vs. The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" (**2024 SCMR 1341**)
[7] "Mir Shabbir Ali Khan Bijarini and 3 others vs. Federation of Pakistan and others" (**PLD 2018 Sindh 603**)

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> carries out shorn of authority, it is ultra vires. Acts that are intra vires may unvaryingly be acknowledged legal and those that are ultra vires illegal. The validity of the subordinate or delegated legislation can be challenged on the ground of being ultra vires the enabling or parent Act. If the subordinate or delegated legislation is found in excess of the powers conferred by the parent Act or is made without following the procedure to be followed, the delegated or subordinate legislation may be declared invalid. It is a well settled that constitutionality of any law can be scrutinized and surveyed. The law can be struck down if it is found to be offending against the Constitution for absenteeism of lawmaking and jurisdictive competence or found in violation of fundamental rights. It is also established law that the vires of delegated legislation may be subject to judicial review. **At the same time it also well-known through plethora of dictums laid down by the superior courts that the law should be saved rather than be destroyed and the court must lean in favour of upholding the constitutionality of legislation unless ex facie violative of a Constitutional provision**. When the subordinate or delegated legislation is made by the authority exercising its power mala fide or with ulterior motive or in an unreasonable and arbitrary manner then of course this court may declare it invalid. In literal sense, the expression ultra vires connotes that the rule making authority had no substantive powers under the parent statute to make rules in question. It is well known principle that Rule cannot go beyond the Act. The delegate cannot make a rule which is not authorized by the parent statute and the delegated legislation must fall within the four corners of the parent statute.
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> (Emphasis added)

17. While dealing with the matter of delegated legislation, the hon'ble Peshawar High Court in "Mudassar Wakeel and another"[8] held that:-

> "The delegated legislation can be declared as illegal only where if it is established that it is repugnant to any settled and well established principle of statue or result of excessive delegation, **however, it cannot be struck down merely on the ground that it is malafide or unreasonable and that there are strong presumptions that it can be misused**."
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> (Emphasis supplied)

The hon'ble Sindh High Court in "PAKISTAN BROADCASTERS ASSOCIATION and 10 others"[9] while referring "Pakcom Limited and others vs. Federation of Pakistan and others" (**PLD 2011 SC 44**) [wherein certain principles on the subject of discriminatory legislation were laid down including that (viii) Where the legislature lays down the law and indicates the persons or things to whom its provisions are intended to apply and **leaves the application of law to an administrative authority while indicating the policy and purpose of law and laying down the standards or norms for the guidance of the designated authority in**

[8] "Mudassar Wakeel and another vs. Government of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others" (**W.P No.3872-P of 2022**)
[9] "PAKISTAN BROADCASTERS ASSOCIATION and 10 others vs. PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY through Chairman and another" (**PLD 2014 Sindh 630**)

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exercise of its powers, no question of violation of Article 25 arises] further defined and discussed the Article 18 and Article 19 of the Constitution in detail. It has been held as below:-

> "11. From careful reading of hereinabove provisions of Article 18 of the Constitution of Islamic Republic of Pakistan, 1973, it can be gathered that the right of a citizen and freedom of trade, business or profession has been recognized as fundamental right of every citizen of Pakistan, which can be enforced by process of law, however, it will not be out of place to observe that **such right is not absolute and is subject to such qualifications as may be prescribed by law**.
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> 12. Similarly, Article 19 of the Constitution of Pakistan recognized and guarantees the right of a citizen of freedom of speech and expression as well as freedom of press, however, **subject to reasonable restrictions which may be imposed by law in the interest of glory of Islam or 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, commission of or incitement to an offence**."

(Emphasis supplied)

This judgment of hon'ble Sindh High Court was upheld by the august Supreme Court of Pakistan in "Pakistan Broadcasters Association and others"[10] wherein it was further held that the concept of freedom of media is based on the premise that the widest possible dissemination of information from diverse and antagonistic sources is sine quo non to the welfare of the people. Such freedom is the foundation of a free government of a free people. Any attempt to impede, stifle or contravene such right would certainly fall foul of the freedom guaranteed under Article 19 of the Constitution of Pakistan. For ready reference, relevant paragraphs are reproduced as under:-

> 12. The concept of freedom of media is based on the premise that the widest possible dissemination of information from diverse and antagonistic sources is sine quo non to the welfare of the people. Such freedom is the foundation of a free government of a free people. Any attempt to impede, stifle or contravene such right would certainly fall foul of the freedom guaranteed under Article 19 of the Constitution of Pakistan.
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> 13. **However even the core free speech, which propagates social, political or economic ideas, promotes literature or human thought, though fully protected, is subject to reasonable restrictions contemplated under Article 19 of the Constitution**. Whereas the advertisements/ commercial speech; where the object and purpose is restricted to mere promotion of sales of goods and services, or stimulation of purchase thereof, and where the acquisition of the article to be sold constitutes the only inducement to its viewer, does not receive the same

[10] "PAKISTAN BORADCASTERS ASSOCIATION and others vs. PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY and others" (**PLD 2016 Supreme Court 692**)

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protection as social or political speeches and is subject to higher degree of regulations than non commercial speech.

17. It is certainly not easy to define "reasonableness" with precision. It is neither possible nor advisable to prescribe any abstract standard of universal application of reasonableness. However, factors such as the nature of the right infringed, duration and extent of the restriction, the causes and circumstances prompting the restriction, and the manner as well as the purpose for which the restrictions are imposed are to be considered. The extent of the malice sought to be prevented and/or remedied, and the disproportion of the restriction may also be examined in the context of reasonableness or otherwise of the imposition. It needs to be kept in mind that "reasonable" implies intelligent care and deliberation, that is, the choice of course that reason dictates. For an action to be qualified as reasonable, it must also be just right and fair, and should neither be arbitrary nor fanciful or oppressive.

18. However, in examining the reasonableness of any restriction on the right to freedom of expression it also should essentially be kept in mind as to whether in purporting to exercise freedom of expression one is infringing upon the aforesaid right of others, and also violating their right to live a nuisance free life, as to whether one's right to time and space is being violated. It should also be kept in mind that none can be forced to listen or watch that he may not like to, and that one cannot be invaded with unsolicited interruptions while eagerly watching or listening to something of his interest. The State is not supposed to remain oblivious of such violation/invasions and cannot detract from its obligation to regulate the right to speech when it comes in conflict with the right of the viewers or listeners. **It was perhaps keeping in view, inter alia, the foregoing that the framers of our Constitution, though secured the right to free speech, but have not left the same unchecked, and have provided for reasonable restriction as postulated under Article 19 of the Constitution. Indeed the State has a compelling interest in regulating the right to speech when it comes in conflict with the rights of other individuals, or other societal interests**.

(Emphasis supplied)

18. Another important aspect of the matter is that learned Single Judge in Chambers disagreed with the dicta laid down by learned Division Bench of Sindh High Court in "*Messrs LABBAIK (PVT.) LTC. through authorized person and others*"[11] and observed that while acknowledging the practice of seeking security clearance from the Interior Division, the Sindh High Court was probably not assisted in considering whether such practice was in accordance with the intent and purpose of the Ordinance as reflected from its text. In view of above discussions, the observations of learned Single Judge in Chambers are flawed.

[11] "Messrs LABBAIK (PVT) LTD. through authorized person and others vs. FEDERATION OF PAKISTAN through Secretary for Ministry of Interior and others" (**2016 CLC 575**)

19. Summing up the discussions, it is held that Rule 9(5) of the Rules is *intra-vires* the Ordinance. However, it is expected that the Authority and other instrumentalities of the State shall ensure the fairness and equality while dealing with the matters avoiding any discrimination. Consequently, Intra-Court Appeals are **accepted** and Impugned Judgment dated 02.05.2023 is set aside. Since, admittedly, security clearance and license was granted to the company, therefore, there is no order to that extent.

(MUHAMMAD ASIF)
Judge

(ACTING CHIEF JUSTICE)

APPROVED FOR REPORTING

***Shamroz Ali**

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