ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A.No.59 of 2024
Pakistan Telecommunication Authority
Versus
Pakistan Telecommunication Company Limited and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	16.12.2024	**Ms. Natalya Kamal, Advocate for the appellant.** **M/s Barrister Mustafa Munir Ahmed, Saad Shurab Wyne and Wasi Ullah Khan Surrani, Advocates for respondent No.1.** **Mr. Azmat Bashir Tarar, learned Assistant Attorney-General.**

Through the instant appeal the appellant, Pakistan Telecommunication Authority (“PTA”), impugns the judgment dated 18.01.2024 passed by the learned Judge-in-Chambers whereby writ petition No.3658/2018 filed by respondent No.1, Pakistan Telecommunication Company Limited, was allowed and the Long Distance and International (“LDI”) licence for the territories of Azad Jammu and Kashmir and Gilgit-Baltistan granted by PTA to respondent No.3, Paragon Telecom (Pvt.) Ltd., was declared to be invalid on the sole ground that the tenure of two members of the Authority / PTA had expired and a single member could not have granted such a licence. During the pendency of the instant appeal, PTA decided that the licence granted to respondent No.3 on 06.11.2017 is revalidated and respondent No.3 is allowed to continue its licensed services. As a result of this development, respondent No.3 withdrew intra Court appeal No.42/2024 which had been filed to challenge the very same judgment assailed in the instant appeal.

2. Learned counsel for the appellant submitted that the learned Judge-in-Chambers should have confined his judgment to the prayer sought by

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respondent No.1 in its writ petition which was to the effect that the licence dated 06.11.2017 granted by PTA to respondent No.3 be declared as being without lawful authority. Instead of confining himself to such relief, the learned Judge-in-Chambers ventured beyond the controversy in the writ petition by holding that *"even all the actions approved in that time frame, when only one Member was in existence in the PTA* ***requires accreditation / validation by the existing PTA Members comprising of valid quorum*** *provided under the law, however, if the present PTA regime does not re-validate those acts / orders, the parties should have to face the consequences accordingly."*

3. We do appreciate the anxiety of the appellant caused by such observation. However, we are of the view that the objection taken by the learned counsel for respondent No.1 as to the maintainability of the instant appeal needs to be decided first.

4. Learned counsel for respondent No.1 submitted that *"the law applicable"* to the proceedings for the grant of a licence by PTA was the Pakistan Telecommunication (Re-organization) Act, 1996 (**"the 1996 Act"**).

5. An intra Court appeal is competent only in a case in which the statutory remedy of appeal, revision or review is not available at the time of the passing of the original order in the proceedings. Section 3(2) of the Law Reforms Ordinance, 1972 (**"the 1972 Ordinance"**) provides that an appeal shall lie to a Bench of two or more Judges of a High Court from and order made by a single Judge of that Court under clause (1) Article 199 of the Constitution not being an order made under sub-paragraph (i) of the paragraph (b) of

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that clause. The proviso to Section 3(2) of the 1972 Ordinance is reproduced herein below:-

> ***"Provided that an appeal referred to in this sub-section shall not be available or competent if the application brought before the High Court under Article [199] arises out of any proceedings in which the law applicable, provided for at least one appeal [or one revision or one review] to any Court, Tribunal or authority against the original order."***

6. In the cases of Karim Bibi Vs. Hussain Bakhsh (PLD 1984 SC 344), Muhammad Abdullah Vs. Deputy Settlement Commissioner (PLD 1985 SC 107) and Nawazul Haq Chowhan Vs. The State (2003 SCMR 1597), it was held *inter alia* that if a remedy in the form of an appeal, review or revision was available under the law and despite such fact the remedy was not availed before the filing of a writ petition, the intra Court appeal would not be competent / maintainable against the order of the single Judge of a High Court.

7. Section 7(1) of the 1996 Act provides that a person aggrieved by any decision or order of the Authority on the ground that it is contrary to the provisions of this Act, may, within thirty days of the receipt of such decision or order, appeal to the High Court or to any other Tribunal established by the Federal Government for the purpose, in the manner prescribed by the High Court for filing the first appeal before that Court or the Tribunal and the Court or the Tribunal shall decide such appeal within ninety days. A licence is granted by PTA in exercise of the powers conferred by Section 21 of the 1996 Act. A person aggrieved by the grant of such licence can file an appeal in terms of Section 7(1) of the said Act. Since we are of the view that the law applicable to the proceedings for the grant of a licence, i.e. the 1996 Act provides for a right of an appeal, therefore, in view of the law laid down in the

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cases referred to in paragraph 6 above, the instant intra Court appeal is **dismissed as not maintainable**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

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