JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

F.A.O.No.146/2017
Sunbiz Private Limited (7 News TV Pakistan)
Versus
Federation of Pakistan through Secretary M/o Information and others

Date of Hearing: 20.02.2018
Appellant by: Mr. Aasim Shafi, Advocate.
Respondents by: Mr. Ali Shah Gillani, Advocate for respondents No.2 and 4,
Mr. Mushtaq Ahmad Malik, Advocate for respondent No.3.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide F.A.O.No.143/2017 and F.A.O No.146/2017, as they have certain features that are common. The parties to the said appeal are also common.

2. Through F.A.O. No.143/2017, the appellant, Sunbiz Private Limited, impugns the order dated 06.07.2017, whereby Pakistan Electronic Media Regulatory Authority, approved the Council of Complaint's recommendation to impose a fine of Rs.5,00,000/- on the appellant due to its "*highly non-serious attitude*".

3. Through F.A.O. No.146/2017, the appellant impugns the order dated 27.10.2017, passed by respondent No.2/Pakistan Electronic Media Regulatory Authority, whereby the appellant's licence was suspended for a period of seven days. Furthermore, the appellant was directed to air an apology in its news bulletin.

4. For the sake of brevity, in this judgment, the Pakistan Electronic Media Regulatory Authority, Islamabad, shall be referred to as **"respondent No.2 or PEMRA"**; the Pakistan Electronic Media Regulatory Authority Ordinance, 2002, shall be referred to as **"PEMRA Ordinance"**; the Council of Complaints shall be referred to as **"the COC"** or **"respondent No.4"**; the PEMRA (Council of Complaints) Rules, 2010, shall be referred to as **"COC Rules"**; and the Electronic Media (Programmes and Advertisements) Code of Conduct, 2015, shall be referred to as the **"Code of Conduct, 2015"**.

5. The facts essential for the disposal of these appeals are that on 15.03.2017, the Medical Superintendent of the National

Hospital Jinnah Colony, Faisalabad, addressed a letter to the Vice Chancellor of the Government College University, Faisalabad (respondent No.3) informing the latter that 12 students of respondent No.3 University had been received at the National Hospital with *"illegally induced pregnancy"*. It was also stated that these girls had come with complaints of missed menstrual cycle, and on examination and scan by the National Hospital's Gynecologist, they were labeled as pregnant.

6. It is an admitted position that the appellant, on 12.04.2017 aired, as breaking news, information regarding the contents of the said letter dated 15.03.2017. This caused the Additional Registrar of respondent No.3 to file a complaint on 18.04.2017 before respondent No.2, praying for *inter-alia* the suspension of the appellant's licence. On 27.04.2017, respondent No.2 referred the matter to the COC/respondent No.4 for appropriate recommendations/disposal in accordance with the law. On 08.05.2017, respondent No.3 submitted its complaint before respondent No.4 against the appellant. In the said complaint, it was pleaded *inter-alia* that the appellant's act of telecasting an unverified and false story had caused disgrace to respondent No.3 and injured its dignity, honour and reputation. It was also pleaded that the appellant's act of airing an unverified news item was a violation of the provisions of the PEMRA Ordinance, and the rules and regulations made thereunder, as well as the Code of Conduct, 2015.

7. After notices were issued to the parties, the matter was taken-up by respondent No.4, in its 73rd meeting, held on 25.05.2017 at Lahore. On the said date, the appellant's Finance Manager sought an adjournment on the ground that appellant's counsel was busy at Islamabad. Respondent No.4 recommended the imposition of a fine of Rs.5,00,000/- on the appellant for its *"highly non-serious attitude".* Furthermore, the appellant was directed to send a responsible person along with all the evidence regarding the allegations levelled against the appellant by respondent No.3 in its complaint. The said recommendations

were approved by respondent No.2, vide its letter dated 23.06.2017, the operative part whereof reads as follows:-

> *"2. I am directed to convey that the Competent Authority has been pleased to approve the recommendations of 73rd meeting of the Council of Complaints (CoC) Lahore, as requested vide your letter under reference."*

8. Thereafter, respondent No.2's Regional Office at Lahore, on 06.07.2017, informed the appellant and respondent No.3 that respondent No.2 had approved the recommendations made by respondent No.4 in its 73rd meeting. The imposition of a fine on the appellant has been challenged by the appellant in F.A.O. No.143/2017 before this Court.

9. On 12.06.2017, summons were issued to the appellant requiring it to appear before respondent No.4 on 20.06.2017. The appellant claims never to have received the said summons. Since the appellant did not appear before respondent No.4, in its 74th meeting, held on 20.06.2017, the latter found that the appellant, by airing the content which was the subject matter of respondent No.3's complaint, had violated Section 20(c) and (f) of the PEMRA Ordinance, Regulation 18(c) of the PEMRA (Television Broadcast Stations Operations) Regulations, 2012, and clauses 3, 4 and 22 of the Code of Conduct, 2015. Furthermore, respondent No.4 recommended that the appellant's licence be suspended for a period of at least one month.

10. Respondent No.2, vide letter dated 14.07.2017, gave directions for a working paper on the matter to be placed before it. After respondent No.2's Regional Office at Lahore submitted a working paper, respondent No.2, vide order dated 27.10.2017, decided to *inter-alia* suspend the appellant's licence for a period of seven days starting from 01.11.2017. Furthermore, the appellant was called upon to air an apology. Respondent No.2, in the said order dated 27.10.2017, held that the appellant, by airing the news item in question, had endangered the future of the nation's daughters and maligned their repute, and had thereby violated clauses 3(l)(e), 3(l)(l), 4(l), 4(7)(a), 17 & 22 of the Code of Conduct, 2015. Respondent No.2 also decided to refer the matter to the Government of Punjab with the

recommendation to initiate proceedings against the management/directors of the appellant as well as the then Medical Superintendent of the National Hospital, Faisalabad. The appellant has challenged the suspension of its licence for seven days in F.A.O. No.146/2017.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE APPELLANT:-

11. Learned counsel for the appellant, after narrating the facts leading to the filing of the appeals, submitted that the imposition of fine of Rs.5,00,000/- on the appellant for seeking only one adjournment was very harsh and unprecedented; that since the appellant's counsel was busy at Islamabad on 25.05.2017, the appellant had a genuine cause for seeking an adjournment on the said date; and that no provision in the PEMRA Ordinance or the rules made thereunder, empower respondent No.4 to recommend the imposition of a fine on a party for seeking an adjournment. Learned counsel for the appellant prayed for F.A.O. No.143/2017 to be allowed and for the imposition of a fine to be set-aside.

12. Furthermore, learned counsel for the appellant submitted that respondent No.2 erred by not appreciating that the recommendations dated 20.06.2017 were made by respondent No.4 against the appellant in violation of the principles of natural justice; that no notice had been served by respondent No.4 on the appellant regarding the 74th meeting scheduled to be held on 20.06.2017; that respondent No.4 gave ample opportunity to the complainant/respondent No.3 to present its case, whereas the appellant had not been provided a reasonable chance to defend itself; and that the impugned order dated 27.10.2017 was devoid of reasons and therefore the same was in violation of Section 24-A of the General Clauses Act, 1897 which makes the recording of reasons mandatory.

13. Learned counsel for the appellant further submitted that the news item broadcast by the appellant on 12.04.2017 was based on the contents of the letter from the National Hospital, Faisalabad; that the appellant never intended to malign respondent No.3; that the existence of the letter from the

National Hospital to respondent No.3 has not been denied; that before the news item was broadcast by the appellant on 12.04.2017, it had verified the fact about the letter having been sent by the National Hospital to respondent No.3; that there was nothing unethical, derogatory, indecent, defamatory, abusive, false or baseless in the news item broadcast by the appellant; that the appellant had simply disclosed the information without giving its own opinion; and that respondent No.2's decision to suspend the appellant's licence on the basis of respondent No.4's recommendations is in violation of the PEMRA Ordinance. Learned counsel for the appellant prayed for the appeals to be allowed, and for respondent No.2's decisions based on respondent No.4's recommendations made, in its 73rd and 74th meetings, to be set-aside.

CONTENTIONS OF THE LEARNED COUNSEL FOR RESPONDENTS NO.2 AND 4:-

14. On the other hand, learned counsel for respondents No.2 and 4 submitted that after respondent No.3 submitted its complaint dated 18.04.2017 to respondent No.2, the matter was placed before respondent No.4 for appropriate recommendations; that on 08.05.2017, respondent No.3 submitted its complaint against the appellant under Section 26 of the PEMRA Ordinance before respondent No.4; that on 19.05.2017, summons were issued to the appellant requiring the latter to appear before respondent No.4 on 25.05.2017; that on 25.05.2017, the appellant's representative appeared before respondent No.4 and sought an adjournment on the ground that the appellant's counsel was busy at Islamabad; that for delaying the matter by seeking an adjournment, a fine of Rs.5,00,000/- was recommended to be imposed on the appellant; and that under Section 26(5) of the PEMRA Ordinance, and under Rule 8 (5) of the COC Rules, respondent No.4 could recommend the imposition of a fine on a licencee for violation of the Code of Conduct, 2015.

15. Furthermore, it was submitted that on 12.06.2017, summons were again issued to the appellant, requiring the latter to appear before respondent No.4 on 20.06.2017; that the said

summons dated 12.06.2017 were sent to the appellant on the same address on which the earlier summons dated 19.05.2017 were sent; that the appellant was well aware of the proceedings before respondent No.4, and had also attended the 73rd meeting of respondent No.4 held on 25.05.2017; that since the appellant did not bother to appear before respondent No.4 on 20.06.2017, respondent No.4, after hearing the learned counsel for respondent No.3, decided to recommend the suspension of the appellant's licence for a period of one month; that vide impugned order dated 27.10.2017, respondent No.2, after taking into consideration the working paper prepared for it by PEMRA's Regional Office at Lahore, decided to suspend the appellant's licence for a period of 7 days; and that respondent No.2 applied its mind to the recommendations made by respondent No.4, in its 74th meeting, and found that the suspension of the appellant's licence for a period of one month would be too harsh and therefore decided to suspend the appellant's licence for a period of seven days.

16. Learned counsel for respondents No.2 and 4 further submitted that under Rule 8(5) of the COC Rules, respondent No.4 could recommend the suspension of a licencee's licence for violating the provisions of the PEMRA Ordinance or the rules and regulations made thereunder; that under Section 30 of the PEMRA Ordinance, respondent No.2 has been empowered to suspend a licence if the licencee contravenes any provision of the PEMRA Ordinance or the rules and regulations made thereunder; that respondent No.2 could suspend a licence under Section 30 of the PEMRA Ordinance independent of any recommendations of respondent No.4; that respondent No.2 could suspend a licence without the issuance of a show cause notice if the issuance of such a notice was considered not to be necessary in the public interest; that under Section 26(5) of the PEMRA Ordinance, respondent No.4 could recommend action of censure and imposition of fine against a broadcast or Cable T.V. station or a licencee for violation of the Code of Conduct, 2015; that the case at hand not just pertains to the violation of the Code

of Conduct, 2015, by the appellant but also in violation of the provisions of Sections 20(c) and (f) of the PEMRA Ordinance, 2002, Regulation No.18(c) of the PEMRA (Television Broadcast Stations Operations) Regulations, 2012, and Clauses 3, 4 and 22 of the Code of Conduct, 2015; that respondent No.4, by virtue of Rule 8(5) of the COC Rules, was empowered to recommend the suspension of the appellant's licence on account of violation of the PEMRA Ordinance, and the rules and regulations made thereunder, and the Code of Conduct, 2015; and that decisions impugned in the appeals do not suffer from any legal infirmity. Learned counsel for respondents No.2 and 4 prayed for the appeals to be dismissed.

CONTENTIONS OF THE LEARNED COUNSEL FOR RESPONDENT NO.3:-

17. Learned counsel for respondent No.3 submitted that the appellant had acted in a highly irresponsible manner by airing a news item which was false and highly derogatory and defamatory to the interests of his client; that it was the appellant's responsibility to have verified the correctness of the facts stated in the National Hospital's letter to respondent No.3; that the appellant had deliberately absented itself from the 74th meeting of respondent No.4; and that the recommendations made by respondent No.4 and the impugned decision taken by respondent No.2 do not suffer from any legal or jurisdictional infirmity. Learned counsel for respondent No.3 also adopted the arguments made by the learned counsel for respondents No.2 and 4.

18. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

19. The facts leading to the filing of the appeals have been set out in sufficient detail in paragraphs 5 to 10 above, and need not be recapitulated.

F.A.O. No.143/2017:

20. I propose, first to decide the question as to whether respondent No.4 could recommend the imposition of the fine to

the tune of Rs.5,00,000/- on the appellant for seeking an adjournment; and whether respondent No.2 could, on the basis of the said recommendation, impose such a fine on the appellant. As mentioned above, the recommendation made by respondent No.4 in its 73rd meeting held on 25.05.2017 to impose the said fine on the appellant was approved by respondent No.2 on 23.06.2017. Respondent No.2's decision to impose the said fine on the appellant was not *dehors* of respondent No.4's recommendation. In other words, but for the said recommendation, respondent No.2 would not have imposed a fine on the appellant.

21. Now, Section 26(5) of the PEMRA Ordinance provides that a COC may recommend to PEMRA *"appropriate action of censure, fine"* against a broadcast or CTV station for violation of the codes of programme content and advertisements, as approved by PEMRA. The fine recommended by respondent No.4 to be imposed on the appellant was not for *"violation of the codes of programme content and advertisements"*, but for seeking an adjournment. It is an admitted position that the proceedings against the appellant before respondent No.4 did not come to an end with the said recommendation made in respondent No.4's 73rd meeting. The said proceedings came to an end when respondent No.4, in its 74th meeting, recommended *inter-alia* the suspension of the appellant's licence for a period of one month.

22. Under Rule 8(5) of the COC Rules, respondent No.4 has been empowered to recommend *inter alia* the imposition of a fine on a broadcast media or distribution service operator or a licencee but that too only for violation of the PEMRA Ordinance, rules, regulations, Code of Conduct and conditions of a licence. Respondent No.4 has not been empowered to recommend the imposition of fine on a licencee for seeking an adjournment in the proceedings before respondent No.4. Seeking an adjournment cannot be termed as a violation of the PEMRA Ordinance, rules, regulations, Code of Conduct and conditions of a licence. Respondent No.4's recommendations dated 25.05.2017 and respondent No.2's approval dated 23.07.2017 do not show that

the imposition of the said fine on the appellant was for any of the reasons set out in Rule 8(5). A Court or a Tribunal does not have an inherent power to impose a fine. The imposition of a fine is a penalty and must have its genesis in the statute. Therefore, respondent No.2's decision to impose a fine on the appellant for seeking an adjournment is declared as unlawful and therefore set-aside.

23. Independent of any recommendations of the Council of Complaints, PEMRA has the power, under Section 29(6) of the PEMRA Ordinance, to impose a fine of up to one million on a licencee who contravenes any of the provisions of the said Ordinance or the rules or regulations made thereunder. However, a fine under the said provision cannot be imposed unless the licencee has been given a reasonable opportunity to show cause. In the case at hand, it is an admitted position that at no material stage was any opportunity to show cause given by respondent No.2 to the appellant before the imposition of the fine. The imposition of the impugned fine on the appellant by respondent No.2 was not pursuant to Section 29(6) of the PEMRA Ordinance.

F.A.O. No.146/2017:

24. As for respondent No.2's decision to suspend the appellant's licence for seven days, it ought to be borne in mind that respondent No.4, in its 74th meeting, held on 20.06.2017, had recommended the suspension of the appellant's licence for a period of one month after holding that the appellant had violated the provisions of (i) PEMRA Ordinance, (ii) PEMRA (Television Broadcast Stations Operations) Regulations, 2012, and (iii) Code of Conduct, 2015. Although respondent No.2 had passed the impugned order dated 27.10.2017 after considering the recommendations of respondent No.4 but decided to suspend the appellant's licence for seven days, after concluding that the appellant had violated the provisions of Code of Conduct, 2015, only.

25. Section 26(1) of the PEMRA Ordinance provides that the Federal Government shall, by notification in the Official Gazette,

establish Councils of Complaints at Islamabad, the Provincial capitals and also at such other places as the Federal Government may determine. Section 26(2) of said Ordinance provides that each COC shall receive and review complaints made by persons or organizations from the general public against any aspects of programmes broadcast or distributed by a station established through a licence issued by PEMRA and render opinions on such complaints. Under Section 26(3A) of the said Ordinance, the COC has the power to summon a licencee against whom a complaint has been made and call for his explanation regarding any matter relating to its operation. Section 26(4) of the said Ordinance empowers PEMRA to "*formulate rules for the functions and operation of the Councils"*. In exercise of the powers conferred by section 26(4) of the said Ordinance, PEMRA has made the COC Rules. Rule 8(5) of the COC Rules empowers a Council not just to recommend to PEMRA appropriate action of censure or fine against a broadcast media or distribution service operator or a licencee but also to recommend seizure or suspension or revocation of a licence for violation of the provisions of the 2002 Ordinance, rules and regulations made thereunder, and the Codes of Conduct. For ready reference, rule 8(5) of the COC Rules is reproduced herein below:-

> ***"8(5). A Council may recommend to the Authority appropriate action of censure, fine upto the limit prescribed in section 29 of the Ordinance, seizure, suspension or revocation of licence against a broadcast media or distribution service operator or licensee for violation of the Ordinance, rules, regulation, code of conduct for programmes and advertisement or terms and conditions of licence."***

26. As mentioned above, Section 26(5) of the PEMRA Ordinance provides that a COC may recommend to PEMRA *"appropriate action of censure, fine"* against a broadcast or CTV station or a licencee for violation of the codes of programme content and advertisements, as approved by PEMRA. For the purposes of clarity, the said Section is reproduced herein below:-

> ***"26(5). The Councils may recommend to the Authority appropriate action of censure, fine against a broadcast or CTV***

station or licensee for violation of the codes of programme content and advertisements as approved by the Authority as may be prescribed."

27. On 29.08.2015, PEMRA made Code of Conduct, 2015. The recommendations that the Council of Complaints may make against a broadcast or cable TV station or a licencee under Section 26(5) of the PEMRA Ordinance, are to be for violation of the codes of programme content and advertisements as approved by PEMRA. The term *"codes of programme content and advertisements"* in Section 26(5) of the 2002 Ordinance is relatable to the Code of Conduct, 2015, made by PEMRA. Therefore, recommendation for the imposition of penal measures under the said provisions could only be made by a Council if a broadcast or cable TV station or a licencee violates the provisions of the Code of Conduct, 2015. Since section 26(5) of the said Ordinance provides for recommending the imposition of penal measures, the same has to be construed strictly.

28. There appears to be a glaring inconsistency between section 26(5) of the PEMRA Ordinance and rule 8(5) of the COC Rules. PEMRA has, through Rule 8(5) *(ibid)*, given the COC powers to make those recommendations i.e. (seizure, suspension or revocation of a licence) which the legislature had not given to the COC. In Section 26(5) of the PEMRA Ordinance, the legislature had restricted the COC's power only to make recommendations of *"appropriate action of censure"* or *"fine"*. The power of the COC to recommend seizure, suspension or revocation of a licence is conspicuously absent in section 26(5) of the PEMRA Ordinance.

29. Now, the appellant has not challenged the *vires* of rule 8(5) of the COC Rules. Therefore, the said rule needs to be interpreted harmoniously with section 26(5) of the PEMRA Ordinance. It has to be interpreted in such a way so as to give effect to section 26(5) of the PEMRA Ordinance which, as mentioned above, is a penal provision with a limited scope. A rule made in exercise of powers conferred under Section 26(4) of the PEMRA Ordinance cannot widen the scope of Section 26(5) (ibid) by conferring on the COC recommendatory powers for punitive

measures like seizure, suspension, or revocation of a licence which have not been specifically provided in the said section. Giving such powers to the COC in exercise of rule making power, PEMRA has ventured beyond mandate of Rule 26(4) of the PEMRA Ordinance which just authorized it to "*formulate rules for the functions and operation of the Councils.*" A rule made in exercise of the powers conferred by a parent statute cannot expand or enhance the scope of a penal provision in a parent statute. If it is to be held that the COC has the power to recommend not just appropriate action of censure or fine against a licencee but also to recommend the seizure, suspension or revocation of a licence, the restriction contained in Section 26(5) of the PEMRA Ordinance on the power of the COC to recommend only an action of censure or fine against a licencee, would be rendered redundant. It is a cardinal principle of interpretation of statutes that redundancy must not be unnecessarily attributed to the legislature. No provision of law is to be interpreted in a manner which may render another provision as superfluous, redundant or nugatory. If it is to be held that under section 8(5) of the COC Rules, the COC had the power to recommend the seizure, suspension or revocation of a licence, the said restriction contained in section 26(5) of the PEMRA Ordinance would have to be held as superfluous. This is simply impermissible. Therefore, I am of the view that given the express restriction on the power of the COC only to recommend an appropriate action of censure or fine against a licencee, the Council does not have the power to recommend the seizure, suspension or revocation of a licence for violating the Code of Conduct, 2015. In the case of Qaiser Javed Malik Vs. Pervaiz Hameed (2009 SCMR 846), it has been held as follows:-

> ***"6. It is settled principle of interpretation that the Courts should adopt an interpretation, which may give meanings of each word of an enactment taking into consideration the spirit of such legislation. An interpretation, whereby any portion of an enactment is rendered ineffective is not to be adopted when clear meanings can be given to various provisions of an enactment in a harmonious manner as held by this Court in the cases of ShahidNabi Malik and another v. Chief Election Commissioner and 7 others PLD 1997 SC 32, M. Aslam Khaki v. Muhammad Hashim PLD 2000 SC 225, Hafiz Abdul Waheed v.***

Mrs.AsmaJehangir PLD 2004 SC 219, D.G. Khan Cement Company Limited and others v. Federation of Pakistan and others 2004 SCMR 456 and ShoukatBaig v. ShahidJamil PLD 2005 SC 530..."

30. It is well settled that rules and regulations are subordinate and delegated legislation deriving authority and legal cover from the provisions of the parent statute. Rules framed under a statute cannot override the provisions of the statute under which they were framed and on which their very existence was dependent. The power to make subordinate legislation/rules/regulations is derived from the enabling statute and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the statute. Rules cannot be made to supplant the provisions of the enabling statute but to supplement it. The delegate is not authorized to make a provision beyond the policy of the statute. The delegate cannot override the statute either by exceeding the authority or by making provisions inconsistent with the statute. Rules made under a statute are treated for the purpose of construction as if they were in the enabling statute and are to be of the same effect as if contained in the statute. But the rules are to be consistent with the provisions of the statute, and if a rule goes beyond what the statute contemplates, the rule must yield to the statute. A general power to make rules or regulations for carrying out or giving effect to the statute is strictly ancillary in nature and cannot enable the authority on whom the power is conferred to extend the scope of general operation of the statute. Therefore, the rule making authority cannot widen the purposes of the statute, or to add new and different means to carrying them out, or to depart from or vary its terms. In holding so, I derive guidance from the law laid down in the following cases:-

(i) In the case of National Electric Power Regulatory Authority Vs. Faisalabad Electric Supply Company Ltd. (2016 SCMR 550), it has been held that rules are subservient to the statute under which they are framed, and that rules must be interpreted in a manner that they remain within the confines of the statute itself and any interpretation that

may outstretch the rules to take them out of the pale of the statute should be avoided. Furthermore, it was held as follows:-

> ***"11.... Rules and or Regulations are the progeny or off spring of a Statute and are to be strictly in conformity with the provisions of the Statute where under same are framed. It is settled proposition of law that the rules framed under a Statute are to remain within the precinct of the Statute itself and cannot transgress the limits and parameters of the parent Statute itself. All efforts are to be made to interpret the rules so as to bring it in conformity and without injuring the intent and spirit of the Statute, where it is not possible then the rules in as much as it is injuring the very intent and spirit which must yield to the Statute."***

(ii) The Hon'ble Supreme Court, in its judgment, passed in Suo Moto Case No.13 of 2009 (PLD 2011 SC 619), after referring to case law on the subject, held as follows:-

> ***"18. From an examination of the above case law it is clear that a rule making body cannot frame rules in conflict with, or in derogation of, the substantive provisions of the law or statute, under which the rules are framed. Rules cannot go beyond the scope of the Act. Thus, we are inclined to hold that no rule can be made which is inconsistent with the parent statute, whereas, no regulation can be made inconsistent with the parent statute or the rules made thereunder and the provisions of these rules or regulations, as the case may be, to the extent of their inconsistency with the parent statute or the rules shall be inoperative."***

Exactly the same ruling was given in paragraph 22 of the judgment passed in Suo Moto Case No.11 of 2011 (PLD 2014 SC 389).

(iii) In the case of Khawaja Ahmad Hassan Vs. Government of Punjab (2005 SCMR 186), it has been held as follows:-

> ***"...It is well-settled by now that a statutory rule cannot enlarge the scope of the section under which it is framed and if a rule goes beyond what the section contemplates; the rule must yield to the statute. The authority of executive to make rules and regulations in order to effectuate the intention and policy of the Legislature, must be exercised within the limits of mandate given to the rule-making authority and the rules framed under an enactment must be consistent with the provision of said enactment. The rules framed under a statute, if are inconsistent with the provisions of the statute and defeat the intention of Legislature expressed in the main statute, same shall be invalid. The Rule-making authority cannot clothe itself with power which is not given to it under the statute and thus the***

rules made under a statute, neither enlarge the scope of the Act nor can go beyond the Act and must not be in conflict with the provisions of statute or repugnant to any other law in force."

(iv) In the case of Pakistan Vs. Aryan Petro Chemical Industries (Pvt.) Ltd. (2003 SCMR 370), it was held as follows:-

"This is a settled principle that a statutory rule cannot enlarge the scope of the section under which it is framed and if a rule goes beyond what the section completes, the rule must yield to the statute. The authority of executive to make rules and regulations in order to effectuate the intention and policy of the Legislature, must be exercised within the limits of mandate given to the rule making authority and the rules framed under an enactment must be consistent with the provisions of said enactment. The rules framed under a statute if are inconsistent with the provisions of the statue and defeat the intention of Legislature expressed in the main statute, same shall be invalid."

(v) In the case of Mian Ziauddin Vs. Punjab Local Government (1985 SCMR 365), it was held that rules framed under an Ordinance could not go beyond and overreach the Ordinance itself.

(vi) In the case of Professor Kazim Hussain Vs. Government of Pakistan (PLD 2013 FSC 18), it has been held as follows:-

"23. …It is also a well-entrenched legal proposition that the rules made in pursuance of a delegated authority must be consistent with the Statute under which they came to be made. The authority is delegated only to the end that the provisions of the Statute may be better carried into effect, and not with the view of neutralizing or contradicting those provisions. The purpose of framing the OMs/Rules is just to facilitate and provide for procedural matters which are subsidiary to the provisions of the Act itself. By now it is a well recognized principle of the interpretation of Statutes that if the rules framed under the Statutes, or bye-laws framed under the rules, are in excess of the provisions of the Statute or are in contravention of or inconsistent with such provisions, then these provisions rules etc. must be regarded as ultra vires of the statute and cannot be given effect to."

(vii) In the case of Independent Newspapers Corporation (Pvt.) Ltd. Vs. Federation of Pakistan (PLD 2017 Lahore 289), the Division Bench of the Hon'ble Lahore High Court has held as follows:-

"25. In terms of the dicta laid down by the august Supreme Court of Pakistan in the case cited at 2005 SCMR 186 (supra) rules and regulations formed under a

statute cannot transgress the limits set by the statute. The superior courts have repeatedly held that the rule making body cannot frame rules which are in conflict with or in derogation of the substantive provisions of the statute under which the rules are framed and in case of any inconsistency with the parent statute the excessive rule will be considered illegal because it has gone beyond its delegated authority. It must be kept in mind that when the legislature confers powers on a regulatory authority to frame rules it is expected that the rules will advance the purpose of the legislature and not run contrary to it."

(viii) In the case of Malik Muhammad Din Vs. Trustees of the Port of Karachi (PLD 1967 Karachi 191) H. T. Raymond J., had the occasion to refer to the well-known principle that the rules framed under an Act cannot go beyond the Act itself.

31. Coming to the contention of the learned counsel for respondents No.2 and 4 that respondent No.2 could suspend a licence under Section 30 of the PEMRA Ordinance, 2002, independent of any recommendations of respondent No.4, suffice it to say that respondent No.2's decision dated 27.10.2017 was based on respondent No.4's recommendations dated 20.06.2017 made in its 74th meeting. Under section 30(1)(b) of the PEMRA Ordinance, 2002, PEMRA can revoke or suspend a licence of a broadcast media or distribution service by an order in writing, if *inter-alia a licencee* contravenes any provision of the 2002 Ordinance or the rules or regulations made thereunder. Section 30(3) of the said Ordinance provides that except for reason of necessity in the public interest a licence shall not be varied, suspended or revoked unless the licencee has been given reasonable notice to show cause and a personal hearing. It is not disputed that respondent No.2 did not give reasonable notice to show cause and a personal hearing to the appellant before deciding to suspend its licence for seven days. The essential prerequisites for the exercise of powers conferred under Section 30(1)(b) of the PEMRA Ordinance were not satisfied. Therefore, the contention of the learned counsel for respondents No.2 and 4 that this Court cannot interfere with respondent No.2's decision to suspend the appellant's licence, because it was empowered under Section 30(3) to suspend a licence, is not tenable. Since respondent No.4 was not

empowered by Section 26(5) of the PEMRA Ordinance to recommend the suspension of a broadcast or CTV station, the said recommendations are declared as having been made without lawful authority.

32. In view of the aforementioned, the appeals are allowed. Respondent No.2's decisions dated 23.06.2017 and 27.10.2017 based on respondent No.4's recommendations dated 25.05.2017 and 20.06.2017, respectively, are set-aside. Respondent No.4 shall be at liberty to re-issue notices to the appellant on respondent No.3's complaint and decide the same afresh. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2018.

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

Uploaded By: Zulqarnain Shah