JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

F.A.O. No.44 of 2016

ARY News
Versus
PEMRA, etc

Date of Hearing : 28.02.2017
Appellant by : Mr. Faisal Fareed Hussain, Advocate.
Respondents by : M/s Ali Zeeshan Gondal and Rehan Seerat, Advocates.

MIANGUL HASSAN AURANGZEB J. Through the instant appeal under Section 30-A of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 ("PEMRA Ordinance"), the appellant, M/s. ARY Communications (Private) Limited, impugns the order dated 04.04.2016, passed by the Pakistan Electronic Media Regulatory Authority ("PEMRA") (respondent No.1), whereby a fine to the tune of Rs.100,000/- was imposed on the appellant on the recommendations of the Council of Complaints ("C.O.C.") (respondent No.2).

2. The record shows that on 25.01.2016, a complaint was sent by one Shanila Sikandar (respondent No.3) to respondent No.1 alleging that Dr. Danish had asked the Chief of Army Staff to come and take over charge and to carry out the accountability of politicians. Respondent No.3 in her complaint asked for necessary measures to be taken against Dr. Danish. Respondent No.3's stance was that asking the Chief of Army Staff to take over charge was a violation of Article 63 of the Constitution.

3. The Chairman, PEMRA referred respondent No.3's said complaint to be placed before respondent No.2. at Islamabad for appropriate recommendations. The appellant and respondent No.3 were summoned to record their statements before respondent No.2 on 15.02.2016 and 16.02.2016. Respondent No.3's stance before respondent No.2 was that Dr. Danish had violated the Constitution by asking the Army Chief to take over the affairs of the government. Respondent No.2 adjourned the matter at the instance of the appellant's authorized representative. On 22.02.2016, the appellant submitted its

written reply and denied the allegations made by respondent No.3. Dr. Danish appeared before respondent No.2 in its 32nd meeting and submitted that his statements were misunderstood, and that he had simply reminded the Chief of Army Staff to defend the boarders of the country, and the ideology of the nation in accordance with his oath. After viewing the relevant content aired by the appellant, respondent No.2 observed that Dr. Danish's remarks were that if the Chief of Army Staff retired, the country would be left in the hands of traitors. Respondent No.2 after hearing both the parties, made the following recommendation:

> ***"i. ARY News be fined Rs.100,000/- and be issued Warning for airing content that tend to debase and demean a group of persons, that incite, directly or indirectly, dislodgement of the democratic setup when the fact is that all members of the armed forces take oath that they will bear allegiance to Pakistan and uphold the Constitution of the Islamic Republic of Pakistan and not engage in any political activities whatsoever.***
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> ***ii. Also, "All satellite TV licensees be advised to refrain from using derogatory words against persons and the institutions.""***

4. On 04.04.2016, respondent No.1, on the basis of the said recommendations of respondent No.2, directed the appellant to comply with the 'decisions' of respondent No.2 and deposit a fine amounting to Rs.100,000/- within a period of thirty days. The said decision dated 04.04.2016, has been impugned by the appellant in the instant appeal.

5. Messrs Chaudhry Faisal Hussain, A.S.C., and Ehtisham Aslam Khan, Advocate, learned counsel for the appellant after narrating the facts leading to respondent No.1's impugned decision dated 04.04.2016, submitted, in reiteration of the appellant's pleadings in the appeal, that respondent No.1 was a regulatory authority established under the PEMRA Ordinance; that respondent No.1 regulates the affairs of the electronic media in Pakistan; that respondent No.2 was constituted under Section 26 of the PEMRA Ordinance; that the appellant had been granted a license by respondent No.1 for a television channel called ARY News; that respondent No.2 issued summons to the appellant on respondent No.3's complaint; that the appellant

submitted a detailed reply to respondent No.3's complaint, denying the allegations hurled against the appellant; that during the hearing respondent No.2 admitted that no violation of any sort was committed by the appellant in the program called *"Sawal yeh hai"*; that subsequently a fine of Rs.100,000/- was imposed on the appellant; that the appellant was shocked to know that a different decision from the one taken during the hearing was communicated to the appellant; that respondent No.1 had made the impugned decision dated 04.04.2016 without application of mind, and by ignoring the relevant facts and circumstances; that respondent No.2 failed to comprehend the program aired by the appellant in its true prospective; that respondent No.1 has not provided the minutes of the proceedings to the appellant; that the transcript of said program shows that no objectionable statements were made by Dr. Danish; that the impugned decision has been taken on a misconceived complaint; that the respondents decided the matter in a hasty manner; and that the conduct of respondent No.1 is against the principle of natural justice, and amounts to condemning the appellant without being heard.

6. Furthermore, it was submitted that there is no provision in the PEMRA Ordinance providing for a reference to be made by the Chairman, PEMRA to respondent No.2; that respondent No.2 was not bound to act on the reference sent to it by the Chairman, PEMRA; that 'Council of Complaints' is not defined in the PEMRA Ordinance; that under Rule 8 (4) of the PEMRA (Council of Complaints) Rules, 2010, the Chairman, PEMRA can refer a matter to the Council of Complaints; that there was a dichotomy between the PEMRA Ordinance and the said Rules; that the impugned decision dated 04.04.2016, does not mention any provision of the Code of Conduct or any other law that was violated by the petitioner; that Article 6 of the Constitution provides that the Parliament shall by law provide for the punishment for a person found guilty of high treason; that at no material stage was Dr. Danish tried under the provisions of the High Treason Act, 1973; and that the appellant or Dr. Danish could not have been held to have violated Article 63 of the

Constitution, because the same pertains to disqualification of members of Parliament. Learned counsel prayed for the impugned decision dated 04.04.2016 to be set aside.

7. Mr. Rehan Seerat, Advocate, tendered appearance on behalf of respondent No.3 and defended the impugned decision dated 04.04.2016, by submitting that there was no legal infirmity in the said decision; that none of the members of respondent No.2 agreed with or accepted the point of view put forth by the appellant and Dr. Danish during the proceedings; that respondent No.3 is an active supporter of democracy and wants to enforce, in letter and spirit, the doctrine of separation of powers; that it is a matter of common knowledge that the only way that the Chief of Army Staff cannot retire is by either getting an extension or taking an extra-constitutional measure; that the statements of Dr. Danish aired by the appellant show that he was posing questions to the then Chief of Army Staff indirectly instigating him to take an extra-constitutional measure and start the accountability of the politicians; that in making the said statements the appellant and Dr. Danish had violated Paragraph 4 (7) (c) of the Electronic Media (Programs and Advertisements) Code of Conduct, 2015; that reference to the contents of the said provision in the Code of Conduct, has also been made in the impugned decision; that the appellant had also violated Section 3 (1) (b) of the said Code of Conduct; that the appellant and Dr. Danish had, by making the said statements, incited the dislodgment of democratic setup against the command of the Constitution; that the Chief of Army Staff could not carry out the accountability of politicians by simply getting an extension in his tenure; and that the appellant and Dr. Danish were clearly inciting the Chief of Army Staff to take over control by dislodgment of the democratic setup. Learned counsel prayed for the appeal to be dismissed.

8. I have heard the contentions of the learned counsels for the contesting parties, and have perused the record with their able assistance. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraphs 01 to 04 above, and need not be recapitulated.

9. Vide the impugned decision dated 04.04.2016, respondent No.1 had imposed a fine of Rs.100,000/- on the appellant for *inter alia* violating paragraph 3 (1) (b) of the Electronic Media (Programmes and Advertisements) Code of Conduct, 2015 ("Code of Conduct, 2015"), notified by the Federal Government in exercise of the powers conferred by Section 9 (1) of the Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2007. Paragraph 3 (1) (b) *ibid* provides that a licensee shall ensure that no content is aired which incites or condones dislodgment of democratic setup against the command of the Constitution of Pakistan, provided, the discussion on improvement of democracy shall constitute fair comment.

10. The appellant has challenged the said decision dated 04.04.2016. This appeal was first taken up for hearing on 05.05.2016, when notices were directed to be issued to the respondents. Vide order dated 12.05.2016, the appellant was permitted to deposit an amount of Rs.100,000/- with the Additional Registrar (Judicial) of this Court. Therefore, it was ordered that no adverse measures should be taken against the appellant on account of the non-payment of the fine to respondent No.1.

11. Before I go on to examine whether respondents No.1 and 2 were correct in recommending and imposing a fine of Rs.100,000/- on the appellant it is essential to consider the content aired by the appellant which caused respondent No.3 to submit a complaint to respondent No.1 against the appellant. The portion of the content aired by the appellant which caused respondent No.3 to submit the complaint, is reproduced herein below:

" ڈاکٹر دانش -- ٹھیک ہے میں آگے آپ سے بات کروں گا، ناظرین ایک بات---عوام پاکستان کی محب وطن عوام،جرنل راحیل شریف صاحب آپ سے سوال کرتی ھے،میں آپ کے سامنے سوال رکھتا ھوں،آپ سنئیے راحیل شریف صاحب، اللہ نے آپکو بھت عزت سے نوازا ھے اور اس قوم نے آپکو وہ عزت دی ھے جو آج کے اس دور میں کسی آرمی جنرل کو آرمی چیف کو دنیا میں حاصل نہیں ھے،آپکے گھر مین نشان حیدر ھیں، آپکے گھر میں غازی بھی ھیں، آپکے گھر میں شہید بھی ھیں ، کیا راحیل شریف صاحب جو آج آپ آرمی چیف ہیں اور جو آپ نے حلف اٹھایا ھے کہ اس ملک کو اور اس ملک کی عوام کی ایک ایک انچ کے تحفظ کریں گے نہ صرف بارڈر کا بلکہ آئیڈیالوجی کا اور ان معصوم جانوں کا جو آپ سے بے پناہ پیار کرتے ہیں اور اس ادارے کا جسکا آپ نے حلف لیا ہے جسے پاکستان آرمی کہتے ہیں، آپ اس کے سپہ سالار ہیں 29 نومبر کو یہ عوام آپ سے سوال کرتی ہے کہ 29 نومبرکو آپ کیا ہیی حالات میں انہیں

چھوڑ کے جائیں گے، اس ملک کو، اس ادارے کو اور اس تکلیف جس میں قتل و غارت گری کی اور نوجوان نسلوں کی انھوں کے بازار لگا دیا ہے اور ملک کو بیچنے کے لیے یہ تیا ر ہیں اور ایٹمی رول بیک کرانے کے لے بھی تیار ہیں کیونکہ آج 70 بلین ڈالرز ایکسٹرنل اپکا لان ہے اگر ماہر معاشیات اور بہت اہم لوگ کہتے ہیں اگر 90 چلا جاتا ہے تو کل ویسٹرن امریکا اور آئی ایم ایف آپ سے تقاضا کریگا کہ رول بیک کرو گے تو تمہارا ملک چلے گا اور آپ اسوقت مجبور ہوں تو کیا راحیل شریف صاحب آپ نے اس ادارے کو اس پاکستان کو جس کی آپ عزت ہیں، اس ادارے کی عزت ہیں، اس قوم نے آپ کو بہت عزت دی ہے، آپ ان لوگوں کے حوالے چھوڑ کر جا رہے ہیں جو پاکستان کو بیچ رہے ہیں، پاکستان کو لوٹ رہے ہیں، پاکستان کو تباہ کر رہے ہیں، کیا ان کے حوالے چھوڑ کر جائیں گے یہ ایک سوال ہے راحیل صاحب سے، جواب دینا آپ کا کام ہے، نہں دیتے، دیتے ہیں یہ آپ کا کام ہے اور تاریخ بتائےگی راحیل شریف صاحب کہ پاکستان کے ایک جرنل جسکو اسکی قوم نے وہ ہیرو بنایا جو دنیا کے کسی جرنل کو نہیں بنایا اور جاتے جاتے اس جرنل نے اس قوم کو اس ملک کو اور اپنے ادارے کو کیا دیا اور ان غداروں کو جنہوں اس ملک کو تباہی اور اس جگہ موجود ہیں انکے لیے کیا کیا، ایک چھوٹا سا بریک، پھر واپس آتے ہیں—

ویلکم بیک ناظرین بہت سے لوگ کہتے ہیں مجھ سمیت اوروں کو بھی کہ آپ اتنا بولتے ہیں ان پر اثر نہیں ہوتا، کچھ اثر نہیں ہوتا تو میں انکو ایک جواب دینا چاہتا ہوں-"

12. Perusal of the said content shows that the anchor was enticing the then Chief of Army Staff not to relinquish charge on the date of his retirement so that accountability of the politicians is carried out. It is quite a different matter that the then Chief of Army Staff was unmoved by the anchor's said enunciation. The posing of the question by Dr. Danish to the then Chief of Army Staff whether he would relinquish charge on 29.11.2016, and leave the country to be governed by those who are selling, looting and destroying Pakistan, is in view is a clear violation of paragraph 3 (1) (b) of the Code of Conduct, 2015. I do not find the content referred to herein above to be a simple discussion on improvement of democracy or constituting fair comment. Anchors of the stature of Dr. Danish are expected to exercise caution and discretion in their enunciations. It is not disputed that Dr. Danish has developed a significant viewership. He owes a duty to such viewers to act strictly within the parameters of the Code of Conduct, 2015 notified by the Federal government in exercise of statutory power.

13. Rule 3 (3) of the Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rule, 2010 ("the C.O.C. Rules"), provides that the C.O.C. shall take action on the complaints received against broadcast media or distribution service operators as provided in the PEMRA Ordinance and the C.O.C. Rules. Rule 8 (4) of the C.O.C. Rules provides that the C.O.C. shall also take cognizance of such matters as referred to

it by the Chairman, PEMRA, or PEMRA/Authority and render its opinion thereon. Under Section 8 (5) of the C.O.C. Rules, the C.O.C. can *inter alia* recommend to PEMRA appropriate action of censure or fine up to the limit prescribed in Section 29 of the PEMRA Ordinance, against a broadcast media or distribution service operator or licensee for violating the PEMRA Ordinance, Rules and Regulations and the Code of Conduct.

14. In the case at hand, the C.O.C. made recommendations to respondent No.1 to impose a fine of Rs.100,000/- on the appellant for airing content that tended to *inter alia* incite, directly or indirectly dislodgment of the democratic setup. This was done in exercise of the power vested in the C.O.C. under Rule 8 (5) of the COC Rules, which have been framed by PEMRA with the approval of the Federal Government in exercise of the powers conferred by Section 26 (4) read with Section 39 of the PEMRA Ordinance. C.O.C. made the said recommendations to respondent No.1 after affording an opportunity of hearing to the appellant. The appellant had also filed a detailed reply in the proceedings before the C.O.C.

15. Since Rule 8 (4) of the C.O.C. Rules empowers the C.O.C. to take cognizance of such matters as referred to it by the Chairman, PEMRA; and since Section 8 (5) of the C.O.C. Rules, empowers the C.O.C. to *inter alia* recommend to PEMRA appropriate action of censure or fine up to the limit prescribed in Section 29 of the PEMRA Ordinance, against a broadcast media or distribution service operator or licensee for violating the PEMRA Ordinance, Rules and Regulations and the Code of Conduct; Section 29 (6) of the PEMRA Ordinance authorizes PEMRA to impose a fine upto one million rupees on the licensee who contravenes any of the provisions of the PEMRA Ordinance or the Rules or Regulations made thereunder, I do not find any illegality or procedural irregularity in respondent No.2/C.O.C. taking cognizance of respondent No.3's complaint referred to the C.O.C. by the Chairman, PEMRA, and making recommendations to respondent No.1. It may be borne in mind that the vires of Rule 8 (4) of the C.O.C. Rules are not under challenge in these proceedings.

16. I would tend to agree with the learned counsel for the appellant that the content aired by the appellant on the basis of which proceedings had been taken by respondent No.2, was not in violation of Articles 6 or 63 of the Constitution. However, it was in violation of paragraph 3 (1) (b) of the Code of Conduct, 2015. The appellant appeared before the C.O.C. and defended itself on the merits of the case. In the written reply, the appellant did not raise any objection to the jurisdiction of the C.O.C. to have taken cognizance of the matter.

17. The impugned decision dated 04.04.2016, shows that respondent No.1 had taken into account the contentions of the contesting parties before deciding to approve the recommendations of respondent No.2 in terms of Rule 10 of the C.O.C. Rules.

18. In view of the above, I do not find any merit in the appeal, which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Announced in open Court on _____/2017.

JUDGE

M.A. Raza

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