

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP D 5321 of 2014

Order with signature of Judge

Present: **Muhammad Ali Mazhar and Agha Faisal, JJ.**

APNA TV Channel Private Limited

vs.

Pakistan Electronic Media Regulatory Authority and another

17.09.2019

Mr. Najeeb Jamali, Advocate for the petitioner.

Mr. Ishrat Zahid Alavi, Assistant Attorney General.

Mr. Kashif Hanif, Advocate for respondent No.1/PEMRA

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Muhammad Ali Mazhar, J. The petitioner has been brought to challenge the show cause notice dated 19th September, 2014 issued by DGM (Operations), Pakistan Electronic Media Regulatory Authority, Islamabad. The allegations against the petitioner (APNA TV Channel Private Limited) are more particularly jotted down in paragraph 2 of the show cause notice which reads as under:

“2. And whereas, M/s APNA TV Channel (Pvt.) Ltd. (Abb Takk News) on 02.09.2014 around 2:02 a.m. while covering the Azadi and InqLab march in the Red zone, Islamabad aired the interview of a worker who used extremely derogatory, vulgar and abusive language against the Prime Minister of Pakistan in sheer disregard to above mentioned provisions of PEMRA laws.”

2. The petitioner’s TV channel was called upon to immediately stop airing of objectionable content and show cause as to why appropriate legal action may not be taken against the company that may, inter alia, include imposition of fine, suspension and/or revocation of license under Section 29 and 30 of the PEMRA Ordinance, 2002. The petitioner was also directed to appear for hearing. After issuance of show cause notice, the petitioner has

directly approached this Court to challenge the show cause notice but according to the learned counsel for the petitioner, reply was also submitted to the PEMRA after filing the instant petition. The learned counsel for the petitioner argued that the show-cause notice is illegal, mala fide and without jurisdiction for the reason that powers to revoke the license only vests in the Authority hence DGM (Operations) PEMRA cannot give such threat in the show cause notice to the petitioner. So far as the factual controversy or the allegations mentioned in the show cause, a detailed reply has already been submitted to PEMRA, but due to pendency of this petition the hearing could not be conducted.

3. In contrast, the learned counsel for the PEMRA argued that the petitioner has failed to point out any illegality, lack of jurisdiction or abuse of process in the show cause notice. It was further contended that the show cause is in fact based on some crucial allegations for which enquiry or personal hearing was to be conducted but the petitioner opted to file this petition rather than approaching the competent authority. So far as the issue of revocation of license as warned in the show cause, the learned counsel for the PEMRA unequivocally avowed that the power to revoke the license vests in the Authority exclusively.

4. Heard the arguments. We are mindful of the fact that at the moment the matter is only confined to the issuance of the show cause notice, for which reply has already been submitted to the competent authority. The Authority is obligated to provide ample opportunity of hearing to the petitioner to present their case and their point of view and thereafter speaking order is required to be passed by the Authority whether the allegations are substantiated or not. Under Section 29(6) of the Pakistan Electronic Regulatory Authority Ordinance, 2002, it is postulated that the Authority may, after the licensee has been given reasonable opportunity to show cause, impose fine up to one million rupees on a licensee who

contravenes any of the provisions of the ordinance or the rules or regulations made thereunder whereas Section 30 of the same Ordinance germane to power to vary conditions, suspend or revoke license. The powers to vary conditions, suspend or revoke the license of a broadcast media or distribution service license are exclusively under the domain and province of the Authority (PEMRA) by an order in writing on one or more of the grounds mentioned in this section which includes the licensee has contravened any provision of the ordinance or rules or regulations made thereunder. It is further provided that in case of revocation of a license of a broadcast media an opinion to this effect shall also be obtained from the council of complaints. Since a comprehensive mechanism has already been provided under 2002 Ordinance before exercising the power of revocation of a license therefore, the apprehension of the petitioner is uncalled for that it is the DJM who will revoke or recall the license.

5. This bench has recently addressed the issue of show cause notices being impugned before the Constitutional jurisdiction of the High Court in the case of *Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* and connected matters reported as *PLD 2019 Sindh 516* (authored by one of us Muhammad Ali Mazhar-J) that a mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice, the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. This Court ought to be careful when it passes an interim order to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially

decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition. Abstinance from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule.

6. The whys and wherefores lead us to a finale that neither the show cause notice has been issued without jurisdiction nor it can be considered an abuse of process of law nor it is totally non est. in the eye of law for absolute want of jurisdiction or coram non judice. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved person could approach the high court. A reasonable reading of show-cause notice does not unearth or establish that it is an empty ceremony nor an impenetrable wall of prejudged opinion in which a fair procedure with reasonable opportunity of defence may not commence or afforded so in our good judgment, the interference at the show cause notice stage should be rare and in an exceptional circumstances but not in a routine manner. However a significant attribute cannot be disregarded that when a show cause notice is issued then obviously a fair chance to contest must also be provided. In our Constitution, right to fair trial is a fundamental right. This constitutional reassurance envisaged and envisioned both procedural standards that courts must uphold in order to protect peoples' personal liberty and a range of liberty interests that statutes and regulations must not infringe. On insertion of this fundamental right in our Constitution, we ought to analyze and survey the laws and the rules/regulations framed thereunder to comprehend whether this indispensable right is accessible or deprived of? In case of stringency and rigidity in affording this right, it is the function rather a responsibility of court to protect this right so that no injustice and unfairness should be done to anybody,

therefore, we direct that the respondent No.1 shall provide fair opportunity to the petitioner to defend the show cause notice and with proper application of mind consider the grounds raised in the response to rebut the show cause.

7. As a result of above discussion, this petition is disposed of with the directions to the PEMRA to provide ample opportunity of hearing to the petitioner and decide the fate of the show cause notice strictly in accordance with law.

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