

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

C.M.A No.112-2023

Independent Media Corporation (Pvt.) Limited

Versus

Pakistan Electronic Medial Regulatory Authority through its Chairman and another.

S. No. of order/proceedings	Date of order/Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	12.09.2023	Mr. Bahzad Haider, Advocate for the applicant/appellant. Barrister Ehsam Ali Qazi, Advocate for PEMRA. Barrister Muhammad Ahmed Pansota and Barrister Khadija Siddique for complainant. Mr. Sajjad Hussain, Law Officer, Syed Ali Asghar, Law Officer.

C.M No.02-2023

Learned counsel for the applicant contends that respondent No.1/PEMRA had imposed prohibition order on Broadcast of Drama Serial "Hadsa" on the complaint of respondent No.2/Barrister Khadija Siddique. He further contends that no right of hearing was extended to the applicant/appellant before passing the prohibitory order, neither was any Show Cause Notice served to him.

2. Conversely, learned counsel for respondent No.1 contends that PEMRA had restricted the broadcast of Drama Serial "Hadsa" as it replicates the incident of Lahore Sialkot Motorway gang rape, therefore, broadcasting of such drama, whose story/plot is highly inappropriate, disturbing and portraying a negative image of the Pakistani citizen in general, therefore, proviso to Section 27 extends the powers to PEMRA to pass a

prohibitory order at the first instance and then refer the matter to the Council of Complaints for appropriate recommendations.

3. Learned counsel for respondent No.1/PEMRA has been confronted as to whether Council of Complaints is available to deal with the present issue, whereby it has candidly been conceded that at present Council of Complaints is not available due to non-appointment of the Members by the Federal Government.

4. Arguments heard and record perused.

5. Perusal of record reveals that Independent Media Corporation Geo Entertainment had broadcasted a drama serial "Hadsa" for daily transmission and at this stage, 10 episodes have already been aired, and the remaining 15 episodes have been prohibited from telecast by the PEMRA authorities on the complaint filed by respondent No.2.

6. I have confronted the counsel for PEMRA as to whether drama serial "Hadsa" had been viewed by the PEMRA authorities. However, no satisfactory explanation has been provided, and there is neither any record available nor such reference made in the impugned order.

7. It is settled law that every individual has the right to freedom of expression and right to do lawful trade, business or profession, though in this case, a prohibitory order has been passed by PEMRA authorities in light of Section 27 and the proviso added therein through PEMRA Amendment Act, 2023 dated 16.08.2023. Section 27 of the

PEMRA Ordinance enables the authority to pass such orders in writing by giving reasons, and though short reasons have been mentioned in the impugned order, but the record reveals that PEMRA did not afford the right of hearing to the applicant/appellant before passing the impugned order which is mandated by Article 10-A of the Constitution and has been enunciated by the Apex Court in a myriad of judgments. Furthermore, a unique situation arises in which it is necessary to determine the competent authority responsible for adjudicating whether the content of the drama serial "Hadsa" can be labeled as obscene, vulgar, and contrary to the standards of Pakistani society. In the instant case, the respondent had claimed that the objectionable content i.e. the rape scene is only shown in episode-5. The applicant/appellant side has reassured that this particular scene has been portrayed in a manner consistent with the accepted standards of decency recognized in Pakistani society.

8. Respondent No.2 claims that commonalities between various aspects of the Sialkot and Lahore Motorway case and the said drama serial gave rise to the filing of the complaint, and broadcasting such a drama will impact the privacy rights of that survivor.

9. No doubt that the right to privacy is a fundamental right and no one should be allowed to use the name of any survivor or to dramatize their experience in any manner with similarity. At this point, this court is not in a position to equalize the minute details of Sialkot and Lahore

Motorway rape case *viz-a-viz* the plot of the drama serial “Hadsa”. The applicant/appellant side as well as respondents have submitted their short details of each program/episode.

10. The comparative analysis falls within the jurisdiction of the Council of Complaints and since the Council of Complaints is a public regulatory authority, it is the best entity to assess whether the content of any drama or program complies with the standards outlined in Section 27. However, due to the non-availability of Council of Complaints, the applicant/appellant could not be deprived of the constitutional guarantees provided under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, therefore, minimum standard at this stage has to be seen. Whereas PEMRA had not given any right of hearing to the applicant/appellant before passing of the prohibitory order *prima facie* makes the case of the applicant/appellant arguable, the inconvenience caused to the applicant/appellant side including their irreparable loss is visible, all these ingredients compel this Court to pass injunctive order.

11. In view of above, the impugned order dated 30.08.2023, passed by PEMRA Authorities is hereby suspended in the light of case law reported as *PLD 2023 SC 431 (Pakistan Electronic Medial Regulatory Authority (PEMRA) through Chairman and another Vs. Messrs Ary communications Private Limited (ARY Digital) through Chief Executive Officer and another)*, whereby it was held

that “where the obscenity of such part is too pronounced to eschew, only the objectionable part should be prohibited from being broadcasted and directed to be suitably modified, and the broadcast or rebroadcast of the complete play or drama must not be prohibited” subject to furnishing of an undertaking by the Producer/ Director of the drama serial “*Hadsa*” that the rape scene (if any) referred in Episode-5 may not be repeated/re-telecasted/broadcasted in any manner in the subsequent episodes.

Main Case.

Section 26 of the PEMRA Ordinance, 2002 imposes a duty upon the Federal Government to notify, establish Councils of Complaints at Islamabad, the Provincial capitals, therefore, due to non-appointment of the Members of the Council, the regulatory framework has been compromised, therefore, office is directed to issue notice to Secretary, Ministry of Information and Broadcasting to submit a concise report qua the appointment of Members of Council of Complaints before the next date of hearing.

2. Re-list on 30.10.2023.

**(MOHSIN AKHTAR KAYANI)
JUDGE**