

Fun Infotainment (Pvt) Limited/NEO T.V., Lahore v. PEMRA and others

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This case revolves around an appeal against a decision of the Lahore High Court which concerned an episode of the Neo TV’s program titled “Harf-e-Raaz with Orya Maqbool Jan” aired on March 8, 2021. The episode, which discussed the Aurat March (the “March”) held on the same day, was challenged for mistakenly identifying a tri-colour flag carried by the March participants as the French flag, leading to comments deemed to violate the Electronic Media (Programmes and Advertisements) Code of Conduct, 2015 (“Code of Conduct”) and the precedent set in *Rd. Zahoor Mehdi v. Chief Election Commissioner of Pakistan*.¹ Following a public apology rendered by Maqbool Jan in another broadcast and subsequent communications between the television channel and the Pakistan Electronic Media Regulatory Authority (“PEMRA”), the issue was brought before PEMRA’s Council of Complaints (the “COC”), which recommended a fine of Rs. 500,000 against Neo TV for violating the Code of Conduct and advised that PEMRA caution other channels in discussing matters of religious sentiment.

The question before the Supreme Court (the “Court”) was whether PEMRA’s Chairman had the authority to approve the recommendations made by the COC. This question required delving into the regulatory framework established by the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (the “Ordinance”). This Ordinance envisions PEMRA as an autonomous body overseeing Pakistan’s electronic media and endowed with the power to address public complaints through its COC. The COC can recommend actions against broadcasters for code violations, but the final authority to impose fines rests with PEMRA.

The case highlighted a significant procedural issue: the delegation of power from PEMRA to its Chairman to approve COC recommendations. PEMRA is mandated to delegate such powers to the Chairman under Section 13 of the Ordinance. The Section also states that the only power that cannot be delegated is the power to “grant, revoke or cancel a broadcast media or distribution service licence except Cable TV.”² PEMRA’s delegation of power in this case stemmed from a meeting held in January 2007. This delegation was scrutinized in the

¹ PLD 2019 Supreme Court 1.

² Pakistan Electronic Media Regulatory Authority Ordinance 2002, s 13.

context of legal precedents such as *PEMRA v. Pakistan Broadcasters Association*³ that mandated such delegations be made under clear and legally sustainable conditions. The Court identified a lack of formal rules governing this delegation, suggesting that the powers granted to the Chairman were overly broad and undefined, contrary to the intended structure of the Ordinance.

The judgment underscored the necessity for public bodies like PEMRA to operate within a framework of reasonableness and non-arbitrariness, particularly when delegating significant powers. It concluded that the Chairman of PEMRA did not possess validly delegated authority to approve the COC's recommendations, leading to the appeal's success. This decision not only highlights the importance of adhering to legal and procedural frameworks in regulatory actions but also comments on balancing rule-based governance and discretion when overseeing media content.

The Lahore High Court had derived its conclusion from previous rulings. It referenced the judgement in *Muhammad Ashraf Tiwana v. Pakistan and others*,⁴ which stipulated that statutory authorities are required to personally exercise the functions and responsibilities conferred upon them by statute, except where the law explicitly permits the delegation of those powers. This principle aims to prevent improper sub-delegation of powers, ensuring that statutory responsibilities are not passed down in a manner that dilutes accountability or strays from the legal framework established by the statute.

The crucial distinction made by the Supreme Court in the current case is the emphasis on the conditions under which delegation is permitted. Specifically, the judgment highlighted that delegation is legally permissible only “in terms of, and subject to, legally relevant and sustainable conditions imposed by rules.” In this respect, the Supreme Court relied on its previous ruling in the case titled *PEMRA v. Pakistan Broadcasters Association*.⁵ The Supreme Court's determination on this point is also important because it now ensures that delegation of powers by PEMRA cannot be done in a manner that leaves “everything in the Chairman PEMRA's discretion,” without specifying any standards for the lawful exercise of such delegated power. Hence, this judgment may preserve the purpose of the Ordinance while

³ 2023 SCMR 1043.

⁴ 2013 SCMR 1159.

⁵ 2023 SCMR 1043.

ensuring that where powers are delegated under Section 13, they will not be arbitrarily exercised.

This focus on the necessity for delegation to be rooted in established rules, as required by the Ordinance, reestablishes a critical caveat to the concept of delegation within the statutory authority's context. It underlines that while delegation is within the authority's lawful powers, it must be executed according to specific and predefined rules. The absence of such regulations in the present case rendered the delegation of authority to the Chairman of PEMRA invalid.

Therefore, the judgment builds upon existing legal principles by adding a layer of specificity regarding how statutory powers can be delegated. It mandates a balance between the discretionary powers of statutory authorities and the rule-based framework within which such discretion must be exercised. This requirement aims to ensure that delegated powers are used in a manner that is transparent, accountable, and consistent with the intended legal and regulatory objectives. The judgment serves as a guiding principle for future cases, emphasizing the importance of establishing clear, rule-based criteria for delegating statutory powers.

This case also serves as a reflection of Pakistan's socio-political landscape, particularly when it comes to media regulation. It underscores the need for media outlets to exercise caution in their commentary to avoid inadvertently targeting individuals or organizations, such as the Women's Democratic Front (the "WDF"), or fostering violence against them, especially when their remarks stem from misunderstandings. Additionally, the case sheds light on the hurdles encountered by groups like the Aurat March, which deal with sensitive issues related to gender and inequality. Conversely, the case also brings to the forefront the challenges of maintaining free speech in Pakistan, as media channels and electronic media providers may find themselves at risk of penalties even in instances where apologies have been issued, as seen with the Neo TV and Maqbool Jan in the present case.

Therefore, this decision prompts a broader discussion on the boundaries of delegated authority within statutory bodies like PEMRA, and the constraints such bodies place on the liberties of electronic media.