

P L D 2023 Supreme Court 431

Present: Syed Mansoor Ali Shah and Ayesha A. Malik, JJ

**PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY (PEMRA)
through Chairman and another---Petitioners**

Versus

**Messrs ARY COMMUNICATIONS PRIVATE LIMITED (ARY DIGITAL)
through Chief Executive Officer and another---Respondents**

Civil Petition No.3506 of 2020, decided on 12th April, 2023.

(Against the order of the High Court of Sindh, dated 11.11.2020, passed in M.A. No.45 of 2020).

**(a) Pakistan Electronic Media Regulatory Authority (Councils of Complaints)
Rules, 2010---**

----R. 4---Councils of Complaints---Chairperson and Members---Citizens of eminence---Term 'citizens of eminence' explained.

Council of Complaints consists of a chairperson and five members including at least two women, who all are citizens of eminence from the general public. Although the expression "citizens of eminence", which is of wide import, is not defined in the Pakistan Electronic Media Regulatory Authority Ordinance, 2002, it ordinarily refers to persons who are widely recognized and respected for their knowledge and experience in their respective fields, such as media, law, human rights and social service, etc. The term "eminence" suggests a level of distinction, implying that these persons hold a special status or position within the circle of their vocation. Additionally, those of such persons who are considered for assigning a public function, whether paid or honorary, ought to be also known for their integrity. Such consideration must also take into account the objective of ensuring that the Councils of Complaints remain independent and impartial, and are protected against both political and commercial pressure or interference. A Council of Complaints comprising of such persons reflect a broad cross-section of our society in order to represent diverse interests, balance, inclusivity and different perspectives of the public, while ensuring their independence and impartiality, which can best ensure the public interest in reviewing complaints against any aspects of programmes and advertisements. The members of the Councils therefore

hold honorary position for two years and are to perform their function independently and impartially, without any government interference.

PEMRA v. ARY Communications 2022 SCMR 1923 and Toby Mendel et al. Modernizing Media Law in Pakistan: Review of Legal Framework Governing Media, pp. 26-27 (IRADA, 2017) ref.

(b) Pakistan Electronic Media Regulatory Authority Ordinance (XIII of 2002)-

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---Ss. 26(2) & 27(a)---Pakistan Electronic Media Regulatory Authority (Councils of Complaints) Rules, 2010, Rr. 8 & 10---Councils of Complaints---Power to receive and review complaints against any content---Scope---PEMRA has to consider the opinion of Councils of Complaints before passing any order of prohibition under section 27(a) of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002.

To regulate public fundamental rights of expression and information, the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 ("PEMRA Ordinance") envisages a two tiered regulatory system. The media content has to be first viewed by the Council of Complaints, an independent public regulatory body, and after obtaining its opinion, PEMRA, the government regulatory body, is to consider the opinion of the Council of Complaints and finally decide the matter. Section 27(a) of the PEMRA Ordinance is not an independent and self-governing provision; it rather requires for its applicability the opinion of a Council of Complaints regarding the objectionable aspect of a programme or advertisement in terms of Section 26(2) of the PEMRA Ordinance read with the Pakistan Electronic Media Regulatory Authority (Councils of Complaints) Rules, 2010. [pp. 449, 451] H & K

Even if suo motu notice is taken by PEMRA or its Chairman, as to "any aspects of programmes", the matter has to be first sent to a Council of Complaints for its opinion and after considering the said opinion, PEMRA or its Chairman, as the case may be, can take the final decision.

(c) Interpretation of statutes---

---Rules made under a statute---Scope---Rules validly made to carry out the purposes of a statute are an integral part of that statute, therefore, it is also necessary to read them in conjunction with the statute to fully understand the operational scheme of any particular provision of the statute.

Ibrahim v. Regional Transport Authority AIR 1953 SC 79 and National Insurance Co. v. Swaran Singh AIR 2004 SC 1531 ref.

(d) Interpretation of Constitution---

---Holistic interpretation---Scope---Court always prefers the approach of holistic interpretation to that of fragmented interpretation while interpreting any provision of the Constitution or a statute---By this approach, the courts seek to ascertain the overall intent and purpose of the law and, by considering how its individual

provisions fit within its larger framework, attempt to harmonize their meaning and scope with each other.

Munir Bhatti v. Federation PLD 2011 SC 407; D.B.A., Rawalpindi v. Federation PLD 2015 SC 401; Reference No.1 of 2020 PLD 2021 SC 825 and Waqar Bakhtawari v. Mazhar Shah PLD 2018 SC 81 ref.

(e) Pakistan Electronic Media Regulatory Authority Ordinance (XIII of 2002)-
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---Ss. 26(2) & 27(a)---Pakistan Electronic Media Regulatory Authority (Councils of Complaints) Rules, 2010, Rr. 8 & 10---Council of Complaints---Power to receive and review complaints against any 'advertisement'---Scope---Inadvertent drafting omission in statute---Although the word "advertisement" is not mentioned in subsection (2) of Section 26 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 ('the Ordinance') but it is found mentioned in subsection (5) thereof---Omission of the word a