

2019 Y L R 574

[Sindh]

Before Muhammad Shafi Siddiqui, J

AURORA BROADCASTING SERVICES (PVT.) LTD. and 13 others-Appellants

Versus

**PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY and another---
Respondents**

Misc. Appeals Nos. 10, 14 to 23, 26, 27 and 50 of 2017, decided on 16th April, 2018.

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

---Ss.13, 20 (c), 29 (6), 30(1)(b) & 30-A---Electronic Media (Programs and Advertisements) Code of Conduct, 2015, Paras. 3(1)(i) & 23---Fake news---Imposition of penalty---Parameters--Personal Hearing Committee, recommendations of---Appellants were licensed broadcasting Media houses and Pakistan Electronic Media Regulatory Authority imposed penalty for airing a fake news of bomb blast---Validity---Powers delegated to Personal Hearing Committee were to see whether any provisions of Electronic Media (Programs and Advertisements) Code of Conduct, 2015, were violated for imposition of fine or penalty---Such was within the domain and parameters of S. 13 of Pakistan Electronic Media Regulatory Authority Ordinance, 2002--Personal Hearing Committee after hearing all satellite channels, local and national, recommended its views which could have formed a decision by the Authority---Recommendations could or could not be correct but delegation of power was lawful---Those who aired news in simple words as a 'blast' could find a rescue in terms of R. 3(1)(i) of Electronic Media (Programs and Advertisements) Code of Conduct, 2015, and recommendation of Personal Hearing Committee was not appropriate in general but for those who linked the news of blast with the first one by showing / airing it to be a 'second blast' or 'another blast' or 'as well' had definite intention to present it for viewers as if it was in continuity with earlier one---Said news presented it in continuity of earlier one to be within the parameters and clutches of cl. 3(1)(i) of Electronic Media (Programs and Advertisements) Code of Conduct, 2015, and did not find any reason for their escape under any mitigating circumstance--High Court declined to interfere in decision of the Authority for all those appellants who acted in violation of Cl. 3 (1)(i) of Electronic Media (Programs and Advertisements) Code of Conduct, 2015---High Court set aside the fine imposed upon those appellants who only aired the news as 'blast' could not be roped in Electronic Media (Programs and Advertisements) Code of Conduct, 2015, for imposition of fine as they had only aired a news of 'blast' not linking it with earlier blast, as the news was a fact as a blast had occurred---High Court defined parameters to be set to regulate balance in imposition of fine so that question of discrimination be not

exercised--- Appeal was allowed accord-ingly.

Muhammad Vawda along with Nadeem Ahmed for Appellants (in M.As. Nos.10 and 15 of 2017).

Ehsan Raza for Appellant (in M.A. No.17 of 2017).

Asad Halepota for Appellant (in M.A. No.18 of 2017).

Raj Ali Wahid Kunwer for Appellant (in M.A. 19 of 2017).

Ayan Mustafa Memon along with Asif Ansari for Appellants (in M.As. Nos.20 and 21 of 2017).

Abdul Karim Khan for Appellants (in M.A. No.22 of 2017).

Shabbir Ahmed Shaikh for Appellants (in M.A. No.23 of 2017).

Nabil Kolachi and Jam Asif for Appellants (in M.A. Nos.16 and 26 of 2017).

Nemo for Appellants (in M.As. Nos. 14, 27 and 50 of 2017).

Furkan Ali for Respondent.

Dates of hearing: 8th and 27th February, 2018.

JUDGMENT

MUHAMMAD SHAFI SIDDIQUI, J.---This bunch of Misc. Appeals under section 30-A of Pakistan Electronic Media Regulatory Authority Ordinance, 2002, impugns a decision of the authority whereby in pursuance of alleged exercise of powers conferred upon the authority under the PEMRA Ordinance 2002, as amended by PEMRA Amendment Act, 2017, considering the recommendation of personal hearing committee, the authority decided to impose fine of Rs.1 Million (Maximum) payable in three weeks and a sum of Rs.0.5 Million to local television network with further direction for tendering an apology through a news anchor on 06.03.2017 at 6:00 p.m. in the same manner and of the same magnitude as the alleged news of blast was aired and tickers/scrolls. As to apology, the Authority further instructed that it shall be aired from 6:00 p.m. to 7:00 p.m. during regular transmission of which text was also provided. The channels were further directed to activate in-house editorial committee with intimation to the authority to ensure compliance of code of conduct with further warning that in case of non-compliance to the above decision as a whole or in case of repeated violation of Code of Conduct, the authority may proceed against the channels for suspension and/or revocation of license under PEMRA Ordinance 2002, as amended.

2. All the licencees/appellants being aggrieved of such decision allegedly forwarded to them on 03.03.2017 by the General Manager Operation of PEMRA have impugned the same before this Court in these appeals.

3. In brief the facts are that on or about 23.02.2017 while the regular transmission was being broadcasted, the appellants reported a bomb blast that occurred in 'Y' Block of DHA, Lahore as breaking news. The subject of these appeals is a subsequent breaking news, which was aired soon after the earlier news of bomb blast (referred above) and most of the networks provided the source of such information. (The text of the subject news shall be discussed later). It is the case of the appellants that along with private channels, the Pakistan Television Network i.e. a State owned television network also reported that a loud blast had been heard in the vicinity of Gulburg Lahore.

4. A show-cause notice on account of above alleged fake news was then issued by PEMRA under signature of General Manager Operations requiring appellants to show-cause as to why it should not be punished by a fine of Rs.1 Million under section 29 of PEMRA Ordinance or be not punished by way of Section 30 through cancellation or suspension of its licence on account of airing false breaking news. The reply was filed by the appellants/television network companies.

5. The show-cause notice was followed by Personal Hearing notice of 24.02.2017 for the appearance of Chief Executive Officer of the network companies, before duly constituted

"Personal Hearing Committee" as per the schedule prescribed therein. In response to the notice of personal hearing a decision was proposed by the Committee after hearing representative of respective channels, analyzing tickers and video aired by the respective channels and it was concluded that the electronic news channels violated PEMRA laws such as clause 3(1-i), 4(I), (7-a) of Electronic Media (Programmes and Advertisements) Code of Conduct, 2015 by airing fake news of explosion in Gulberg, which created unnecessary panic and fear amongst general public and were therefore liable to be proceeded against under section 29 of PEMRA Ordinance 2002, as amended. The alleged decision, gist of which is mentioned above, is impugned in these proceedings. The decision imposed fine and tendering apology, text of which is provided by the Authority.

6. A follow up show-cause notice was then issued on 08.03.2017 as the appellants allegedly failed to comply with the decision of the authority whereby the licencees were directed to air apology on Monday, 6th March 2017 between 6:00 p.m. to 7:00 p.m. in terms whereof the authority imposed an additional fine of Rs.1 Million (maximum fine), which is also impugned in these proceedings.

7. Mr. Ayan Memon, learned counsel appearing for appellants in M.A. 20 and 21 of 2017 argued that the Personal Hearing Committee cannot recommend a decision to be taken against the network company/ appellants as it is a mandate of at least 1/3rd of the total members of the authority to be considered as a quorum under the authority, requiring a decision by the authority and a Personal Hearing Committee cannot be delegated such powers either by the Chairman or by the Members of the authority.

8. He further submitted that the Minutes of Meeting available does not establish that it was signed by the quorum as required in terms of Section 8(2) of the Ordinance. The members of the authority in terms of Section 6 consist of a chairman and 12 members to be appointed by the President of Pakistan. Out of 12 members, one to be appointed by the Federal Government on full-time basis and five eminent citizens to be chosen to ensure representation of all provinces with expertise in one or more of the following fields:--

- i. Media;
- ii. Law;
- iii. Human rights and
- iv. Social service.

9. Out of these five members from the general public, two members are to be women. In terms of subsection (4) of Section 6, the Secretary, Ministry of Information and Broadcasting, Secretary Interior Division, Chairman Pakistan Telecommunication Authority and Chairman Central Board of Revenue shall be the ex-officio members of the authority constituting the quorum. In terms of subsection (4-A) of Section 6, the remaining two members are to be appointed by Federal Government on need basis on the recommendation of the Chairman.

10. Thus, Mr. Ayan concluded that if a Chairman is to be included in the total strength then out of 13 1/3rd should not be less than five members including the Chairman whereas if the interpretation excludes the Chairman than out of twelve, four members and Chairman should have been available to constitute a quorum which was not there and hence the alleged quorum

consisting of three members and a Chairman was not competent to take a decision or even to recommend any decision for the authority.

11. Mr. Muhammad Vawda, learned counsel appearing for appellants in M.As. Nos.10 and 15 of 2017, submitted that under the Code of Conduct, the licencees were only required to ensure that no content is aired which is known to be false or there exists sufficient reasons to believe that the same may be false beyond reasonable doubt. Counsel further submitted that at the most Rule 3(1)(i) could have been taken into consideration by this Court whereas rest of the rules i.e. 4(I) and (7-a) of the 2015 Code of Conduct are not applicable at all. Counsel has relied upon Rule 3(1)(i) of Electronic Media (Programmes and Advertisements) Code of Conduct, 2015 and submitted that there was every reason to believe subject news to be correct since there was a genuine bomb blast on the same day earlier.

12. He further submitted that there was no malice on the part of the appellants. It is not even suggested either in the show-cause notice or in the alleged decision. Such decision in pursuance of such provisions could have been taken only if the news, as aired, was believed to be false by the licencees, beyond a reasonable doubt.

13. Learned counsel, without prejudice to the above, further submitted that these rules and sub-rules were not taken into consideration by the alleged forum/quorum or by the Committee for Personal Hearing. These rules were only incorporated in a decision forwarded by the General Manager Operations.

14. Mr. Asad Halepota, learned counsel appearing for appellants in M.A. No.18 of 2017, while adopting above arguments added that in terms of Section 8(1) and (2) of PEMRA Ordinance, 1/3rd of the total members makes the quorum which is lacking in the instant case. Learned counsel while relying section 26 of PEMRA Ordinance submitted that it is alleged that the respondent had received certain complaints however the procedure as provided in Rules 8, 9 and 10 of PEMRA (Council of Complaints) Rules, 2010 was not followed. He further argued that an immediate disclaimer and clarification was made hence the impugned action is uncalled for.

15. Counsel have also urged that no such decision could have been complied with on 06.03.2017 when the Minutes itself were recorded on 08.03.2017, as reflected in the Minutes of Meeting, hence the subsequent decision and/or show-cause notice for not airing an apology, as prescribed, would fall on this count alone, without prejudice to the above that the television networks clarified that it was a fake news.

16. All other counsel have adopted the above arguments. Mr. Raj Ali Wahid Kunwar, learned counsel appearing for appellants in M.A. No.19 of 2017, who in addition has referred to the contents of the relevant portion of the transcript of news coverage annexed with his appeal. He submits that his client was the first news channel who within eight minutes have aired the breaking news to the effect that the news of blast was not true. He further submitted that the show-cause notice was issued by the General Manager Operations which is against the spirit of Section 29(5) and (6) of PEMRA Ordinance.

17. Mr. Muhammad Furqan, learned counsel appearing for respondent in all the appeals, in reply to above arguments submitted that although under section 6(1) the respondent/Authority

is comprised of the Chairman and 12 members but section 6(4A) provides that two members shall be appointed on need basis which were not appointed and hence per learned counsel the quorum with 4 out of 11 including the chairman was complete. He further submitted that the decision was communicated on 03.03.2017 however the minutes of 126th meeting reflects date as 08.03.2017 but such does not affect the validity and legality of the decision.

18. On merits learned counsel for the respondent submitted that in terms of clause 4(1) of Code of Conduct 2015 the appellants/news channels are supposed to air accurate and fair information which they failed. Learned counsel further argued that in terms of 101st Authority meeting of PEMRA dated 26.01.2015 it was resolved that the Chairman shall have the power to issue show-cause notices and constitute Personal Hearing Committee and there is no requirement in PEMRA Ordinance 2002 to afford a personal hearing, although the personal hearing was conducted by the Personal Hearing Committee.

19. I have heard the learned counsel and have perused the material available on record and so also the relevant provisions of law, as involved in these appeals and referred by the learned counsel.

20. In the 126th Meeting dated 03.03.2017 minutes of which were allegedly prepared on 08.03.2017, one of the members Mrs. Shaheen Habibullah inquired whether decision of the authority will be applicable on all satellite television channels including State owned channel which was responded by the Secretary of the Authority that the Personal Hearing Committee recommended that the decision be made applicable on all 29 satellite TV channels (not the State-owned channel) with a fine of Rs.0.5 Million and Rs.1 Million on regional and national level news channels respectively. Another member Mrs. Nargis Nasir pointed out that response of 29 satellite TV channels was apologetic rather than aggressive which was appreciable. She made reference to statement of few satellite TV channels that they carried news of PTV forward. She further inquired reasons of such news by PTV, the Chairman responded that PEMRA cannot ask PTV about it as it does not come under purview of their authority to which the Member replied that the PEMRA at least convey its concern to PTV by quoting statement of State TV for airing false news of Gulburg Lahore blast so that the appellants may also take correct measures. This was the brief debate which is relevant for further course in the determination of guilt, as despite these questions from private members, decision was unanimous.

21. Firstly I would determine the consequences of the quorum and the committee who has recommended the impugned decision to be taken by the authority.

22. A hearing notice dated 24.02.2017 was issued by a Personal Hearing Committee comprising of employees of PEMRA. The Chairman PEMRA and/or members claimed to have not conducted any hearing and were not present at the time of scheduled hearing. It is not the case of the appellants that Chairman or Members have not delegated this function to the employees, rather it is a case that Chairman/members cannot, whereas the determination is to be made by the Authority in terms of Sections 6(1) and 8(2) of PEMRA Ordinance, 2002. Members of Authority, in terms of Section 6 of the Ordinance, consist of Chairman and 12 members to be appointed by President of Pakistan. The Chairman has to be an imminent

professional of known integrity and competent and should have substantial kind of experience in media, business, management, finance, economics or law.

23. Out of 12 members one is to be appointed by Federal Government on full time basis, five shall be eminent citizens chosen to ensure representation from all provinces with expertise in one or more of the subjects and fields mentioned in subsection (3) of Section 6. Out of these five members from general public, two members shall be women. The other members include (i) Secretary, Ministry of Information and Broadcast, (ii) Secretary Interior Division, (iii) Chairman Pakistan Telecommunication Authority and (iv) Chairman Central Board of Revenue to be ex-officio members. The permanent two members are to be appointed by Federal Government on need basis on the recommendation of the Chairman. A cumulative effect of all subsections of section 6 shows that in addition to Chairman the maximum number of members, which can constitute total strength of the authority, should not be more than 10 + 2. Last two members are to be appointed on need basis subject to recommendation.

24. Now dealing with Section 8 read with section 6 of the PEMRA Ordinance 2002 a minimum of 1/3rd of the total members is stated to constitute quorum for meeting of the authority requiring a decision by the authority. In terms of Section 6(1) the Chairman included as member of the Authority. Certainly one of them is designated as Chairman to preside. So Chairman qualifies first as member besides being a Chairman. Subsection (4-A) of Section 6, which deals with the additional two members to be appointed by Federal Government, was on account of need which could be expressed by the Chairman. Meaning thereby that the total strength of 12 + 1 members, including Chairman, is not the minimum strength. It could be less than 13 in case the remaining two members were not needed by the Chairman. Subsection (6) of Section 6 further provides that a member, other than an ex-officio member, shall be deemed to have vacated his office if he/she absents herself/himself for three consecutive meetings of the Authority without leave. The consequence of not having a 1/3rd forum of the original strength is not provided under the PEMRA Ordinance. On the contrary an overriding subsection (4) of section 3 provides a rescue for a situation where the quorum is invalid. Subsection (4) of section 3 says that no act or proceeding of the authority shall be invalid by reason only of the existence of a vacancy in or defect in constitution of the authority. It may require an interpretation as to whether defect in constitution of authority may include incomplete quorum but that is not required here and I may leave this here as it was not argued.

25. In the present quorum apart from the Chairman, amongst three additional members one is Chairman FBR whereas two are eminent citizens out of five available. So there were four members including Chairman out of 11 (eleven) (10+1), which makes 1/3rd strength of 11.

26. Item No.3 of the Minutes shows that the authority was informed that personal hearing of all the channels was scheduled for 02.03.2017 at PEMRA Headquarter Islamabad for which a personal hearing committee has also been constituted for making appropriate recommendations to the authority for its decision. The personal hearing committee placed before the authority the alleged recommendations. The Secretary of the Authority was further apprised that the Personal Hearing Committee was of the view that it had been confirmed that the subject news aired by the channels was fake which is in violation of the Code of Conduct

2015, PEMRA Rules and PEMRA Act and subsequently recommended for imposition of fine, airing of apology by all channels, text of which was recommended by the Committee, with directions to activate in house monitoring committee and time delay mechanism.

27. The two members from the citizens' slot have inquired about the imposition of fine on the State-owned channel and sought imposition of same fine or penalty as being planned to be imposed on private channels. The chairman apprised that PEMRA cannot ask Pakistan Television for the same as it does not come within their purview of authority under PEMRA Laws. However, the Chairman FBR opined that PEMRA may convey its concern to the Ministry of Information and Broadcast and National Heritage rather than writing directly to the Pakistan Television Corporation. The decision taken by the authority on recommendation of Personal Hearing Committee is as under:-

"Decision:

14. In exercise of powers conferred upon the Authority under the PEMRA Ordinance 2002 as amended by PEMRA (Amendment) Act 2007 and while considering the recommendations of the personal hearing committee, the Authority hereby unanimously decides as follows:

a. On account of airing fake news of bomb blast in Gulberg, Lahore on 23.02.2017, a fine of Rs.1,000,000/- (rupees One Million) is imposed on each national news and current affairs channel namely Samaa TV, Dawn News; Channel-5, 7 News, Din News, Capital TV, BOL News, News One, Abb Takk, Roze TV,

K-21, Jaag TV, Waqt TV, Channel-92, Express News, Sach TV, Channel-24, Lahore News, Metro One, Geo News, Dunya TV, ARY News, Neo TV and Koh-e-Noor, whereas Rs.500,000/- (five hundred thousand) is imposed on each regional news and current affairs channel namely KTN News, Sindh TV News, Khyber News, Awaz TV and Mehran TV, to be deposited within three weeks from the date of issuance of the decision to the channels.

b. All above Channels are also directed to air the following apology through a news anchor on 6th March, 2017 at 6:00 pm in the same manner and magnitude as the fake news was aired. Besides, tickers/scroll pertaining to apology shall also be aired from 6:00 pm to 7:00 pm during the regular transmission of the channels:

a. Moreover, all the channels are further directed to activate their respective In-house Monitoring Committees under intimation to the Authority to ensure compliance of the Code of Conduct. The Channels, at all reasonable times, shall also facilitate the inspection of time-delay mechanism.

b. The Channels are also warned that in case of non-compliance with the above decision in part thereof or as a whole and/or in case of repeated violation of the Code of Conduct, the Authority shall proceed against such channel(s) for suspension and/or revocation of their licence(s) under Section 30 of PEMRA Ordinance 2002 as amended by PEMRA (Amendment) Act, 2007 and other enabling provisions of PEMRA Laws.

The Authority also unanimously resolved to sensitize the Ministry of Information, Broadcasting and National Heritage of the matter in writing that Pakistan Television

Corporation (Pvt.) Ltd. also aired fake news of bomb blast in Gulberg, Lahore on 23.02.2017, which was stated by some private TV channels as the reason for carrying the same news on their channels in their defence during the proceedings initiated against them in the matter."

28. The authority and domain of Personal Hearing Committee is to be seen within the parameters of PEMRA Ordinance 2002 and the Act as amended. It is the case of appellant that authority cannot delegate such powers, it is not the case that Authority has not delegated, therefore, all that is required to be seen is whether it can be delegated or not leaving aside whether it was actually delegated. Moreover, had it not been delegated then during meeting, members could have objected which they did not.

29. Section 13 deals with the delegation of powers. It says the authority may, by general or special order, delegate to the Chairman or a member or any member of its staff, or an expert, consultant, advisor or any other officer or employee of the authority any of its powers, responsibilities or functions under the Ordinance subject to such conditions and rules, as it may by rules prescribed. However, some of the powers were excluded from being delegated. This exclusion includes power to grant, revoke or cancel a broadcast media or distribution service licence except cable TV.

30. The Personal Hearing Committee was delegated such task which is other than those powers which were not required to be delegated. The powers delegated to the Personal Hearing Committee in this regard were to see whether any provisions of Code of Conduct 2015 were violated for the imposition of fine or penalty. To me this is within the domain and parameter of Section 13 of Ordinance, 2002. The Personal Hearing Committee after hearing all satellite channels, local and national, recommended its views that could have formed a decision by the authority. The recommendations may or may not be correct but the delegation of power seems to be lawful.

31. Thus, in view of above discussion I would score of contention of Mr. Ayan Memon and all other counsel that Personal Hearing Committee did not enjoy such powers of hearing in pursuance of a show-cause notice for airing false, unconfirmed or incorrect news.

32. The next point is issuance of letter on 03.03.2017 before the Minutes were signed. Although the entire minutes of 126th meeting of the authority wherein the impugned decision was taken was not filed as only first five pages through a statement dated 23.02.2018 are placed on record, yet it could be seen that the Minutes of Meeting of the authority contain a date of 08.03.2017. The meeting and short decision was stated to be held and taken on 03.03.2017 and there is no evidence contrary to such fact as the concluding paragraphs, or the last page which has been signed by all quorum members, who attended the meeting said it all. It can be seen that the 126th meeting of the Authority was held on 03.03.2017. On scrutiny of the five pages placed on record, the presumption of the final transcription of 126th meeting is that the meeting was held on 03.03.2017 and all members of the Authority constituting quorum were ultimately convinced with the recommendations of the Personal Hearing Committee and hence made a decision on the same day i.e. 03.03.2017. I used the word "ultimately" because two members raised questions on airing of this news by State-owned channel. Hence it is a decision which

was taken on 03.03.2017 that matters. It is like a short/tentative decision taken on 03.03.2017 for which detailed reasons/final transcript was finalized and reduced into writing on 08.03.2017.

33. Now in order to see the strength and gravity of the offence the individual breaking news must be seen so that one may have an idea about the intensity, gravity and nature of offence and to some extent the mens rea.

34. There is no cavil that on the same day a bomb blast occurred within the vicinity of DHA area of Lahore and hence this second blast prompted all satellite channels, local and national, to immediately broadcast subject news. All appellants stated that they have never used the word bomb blast and hence they cannot be roped in for airing the false and incorrect bomb blast news which was the main reason prevailed before the Personal Hearing Committee and the authority in imposing maximum fine and another fine for not airing the apology. Let us see how this news was aired by individual appellant channels which was placed on record through a statement with advance copy to respondent's advocate. Same is reproduced as under:-

S. No.	Case No.	Channel Name	News reported
1.	10/2017	Dawn News	Breaking news: Lahore, a blast was heard in the area of Gulberg
2.	14/2017	K21	In the area of Gulberg also a blast reported
3.	15/2017	Samaa TV	A blast occurred in Gulberg
4.	16/2017	News One	Breaking News: In Gulberg, next to a foreign restaurant, there was a blast
5.	17/2017	Sindh TV News	Latest News: In the area of Gulberg, Lahore, the sound of a second blast has been heard
6.	18/2017	Abb Takk News	Breaking News: After Defence, another blast has been reported in Gulberg
7.	19/2017	Express News	In the area of Gulberg, Lahore, another blast was reported
8.	20/2017	Mehran TV	Breaking News: Lahore: In the area of Gulberg, the sound of another blast has been heard
9.	21/2017	ARY News	Lahore: In Gulberg, the noise of a blast was heard
10.	22/2017	Bol News	Hot News: Another blast in Lahore
11.	23/2017	KTN News	Lahore: In the area of Gulberg a second blast occurred near a restaurant. Police and rescue teams are enroute

12.	26/2017	Geo News	In the area of Gulberg as well, there were reports of a blast
13.	27/2017	Capital TV	Breaking News: Another blast in Lahore
14.	50/2017	Awaz TV	Lahore: In the area of Gulberg, another blast has been reported

35. Appellants in Misc. Appeals Nos.17, 18, 19, 20, 22, 23, 26, 27 and 50 though have not used the word bomb blast but they have somehow linked this blast with the earlier bomb blast on the same day either by saying "another blast" or by considering it to be a "second blast" or "as well" in the city. Thus an attempt was made to show this blast in continuity of an earlier bomb blast so the exclusion of word "bomb", in view of the language used, is immaterial.

36. Some of the mitigating circumstances, claimed to be available for the rescue of these media houses/appellants is source of Pakistan Television Corporation, which broadcast this news at 1:02 p.m. and the police wireless message. Pakistan Television Corporation was not within the domain and authority of PEMRA and reliance cannot be made as such. It has not been shown whether PTV also aired it as bomb blast or just blast. There was no justification to rely and believe that there was some kind of bomb blast as reported on PTV. The gravity of the offence here is not that the news of blast was aired but the gravity is that it was shown to be in continuity of earlier one at least by some of the channels, referred above. Moreover it is not the case of appellants that they always toe or carry forward the news and views of State owned channels, otherwise they would have found continuously praising government.

37. Now, I will see it on the touchstone of Code of Conduct as applicable. The Federal Government in exercise of powers conferred in subsection (1) of Section 39 of PEMRA (Amendment) Act, 2007 in pursuance of earlier notification dated 09.05.2014 was pleased to notify Electronic Media Code of Conduct 2015 to replace the then existing Code of Conduct for Media Broadcasters and Cable TV Operators. Clause 3 (1-i) the Code of Conduct along with 4(1) and (7-a) was made applicable to the facts and it is argued that these provisions and clauses do not find their place in a decision taken by the Authority on 03.03.2017 (minutes). They further added that the discrepancy existed as only a word of "explosion" is used in the impugned letter whereas the alleged decision of the authority in its 126th meeting was based on incorrect fact that it was news of bomb blast, which was aired by these satellite channels/appellants.

38. The decision of the authority may not have disclosed the relevant clause of the Code of Conduct but the alleged offence could always be seen through Code of Conduct, and as to whether it violates any of its clause. Three proposed codes i.e. 3(1)(i), 4(1) and 7(1) are reproduced below:--

3. Fundamental principles:- The licensee shall ensure that:-

(1) No content is aired which

(a) to (h)

(i) is known to be false; or there exist sufficient reasons to believe that the same may be false beyond a reasonable doubt;

4. News and current affairs programmes:---The licensee shall ensure that:-

(1) News, current affairs or documentary programmes shall present information in an accurate and fair manner.

(2) to (6)

(7) In talk shows or other similar programmes, the licensee and its employees shall ensure that:-

(a) information being provided is not false, distorted, or misleading and relevant facts are not suppressed for commercial, institutional or other special interests;"

39. A close scrutiny of three clauses i.e. 3(1-i), 4(1) and (7-a) of Electronic Media (Programmes and Advertisements) Code of Conduct, 2015 reveals that perhaps clause 3(1-i) is closest of all three that may be applied. The language used in the text of this clause i.e. 3(1-i) shows as if it is prepared for the benefit and to safeguard the interest of satellite channels. It provides that a licensee shall ensure that no content is aired which is known to be false or there exist sufficient reasons to believe that same may be false beyond a reasonable doubt. One can hardly be roped in or caught violating on applying said clause of the Code.

40. In general, an accused somehow always find its ways for acquittal, where rules and law as framed is weak or where the prosecution failed in its duty and perhaps the language used here would also help the cause. These electronic channels/ media houses owes a national duty, besides being media house for their professional and monetary gain. They need to be more careful in airing such news and should have sufficient material to the effect that it is correct rather than shredding the burden by taking benefit of said clause that they should not be guilty unless it is shown that the news was false to their knowledge beyond a reasonable doubt. They have attempted to find a rescue and escape in view of language used here (in the breaking news) but their intention in some of the cases is obvious and clear. The intention of those appellants who used the word another blast/second blast or "as well" is clear to depict their intention. This is not true spirit of journalism. It has lost its theme somewhere in the midst of rating hypes of channels.

41. These media houses have developed a method of airing the news under the umbrella of 'breaking news' which is not even a news or could hardly be a local news. This method of breaking a news should come to a halt. Apparent object of making such news is only to attract the viewers and to glue them permanently to their channel only. It may have a positive impact in their monetary affairs or business achievements but it could not be termed as to a policy that governs the situation in dealing public and masses through electronic media for a situation prevailing in the country.

42. No doubt Pakistan Television Corporation may have aired the said news but it does not come within the domain of PEMRA authority nor these electronic media houses are regulated through State channels. The Ministry of Information and Broadcast and National Heritage has its own way of dealing with such news but Pakistan Television Corporation cannot be roped in under PEMRA authority nor these appellants could seek exemption on account of the

roadmap being followed by Pakistan Television Corporation. Appellants are to be dealt with in terms of PEMRA Ordinance and the Amended Act and the Code of Conduct framed. However, for the current issue at the most it may provide mitigating material for those who break the news only as 'blast' and nothing else, insofar as imposition of maximum fine is concerned.

43. I have minutely considered all the news aired by news channels and media houses i.e. appellants and as discussed above found some of the channels disclosing news in continuity to an earlier bomb blast.

44. Those who have aired the news in simple words as a 'blast' may find a rescue in terms of Rule 3(1)(i) of Electronic Media Code of Conduct 2015 and the recommendation of Personal Hearing Committee may not be appropriate in general but for those who linked the news of blast with the first one by showing/airing it to be a 'second blast' or 'another blast' or 'as well' had definite intention to present it for viewers as if it was in continuity with earlier one. I find those news who presented it in continuity of earlier one to be within the parameters and clutches of clause 3(1)(i) and do not find any reason for their escape under any mitigating circumstances.

45. Having dealt with the situation, some additional parameters be set to regulate balance in imposition of fine so that question of discrimination be avoided and the discrimination be not exercised arbitrarily. There should be categories and intensity of offences which may require imposition of possible fine that is likely to be imposed so that colourable exercise of discretion be avoided. Another aspect which ought to have been considered for the future course is not only the wordings of the news or ticker that scrolled on T.V. but it is the intensity of music followed in airing news that may also at times create a sense of insecurity. The loud music or loud pitch of announcer/anchor may not be the demand of the situation and the emotions are misled to incorrect assumption irrespective of words used. The Federal Government may re-examine the code considering the present situation and an attempt be made to frame such code keeping in view the parent statute and current situation.

46. In the circumstances, in the above list the appellants at Sr. Nos.2, 5, 6, 7, 8, 10, 11, 12, 13, 14 (M.As. Nos.14, 17, 18, 19, 20, 22, 23, 26, 27 and 50 of 2017) are found to have acted in violation of clause 3(1)(i) of Electronic Media Code of Conduct 2015 and do not find any reason to interfere in a decision of the authority however those appellants at Sr. Nos.1, 3, 4 and 9 (M.As. Nos.10, 15, 16 and 21 of 2017) of the list who have only aired the news as a 'blast' cannot be roped in Code of Conduct for imposition of fine as they have only aired a news of 'blast' not linking it with earlier blast, which news was a fact as there was a blast occurred, hence I score of these appellants of such fine as imposed by the authority along with subsequent fine.

47. Miscellaneous Appeals Nos.10, 15, 16 and 21 of 2017 are thus allowed whereas Misc. Appeals Nos.14, 17, 18, 19, 20, 22, 23, 26, 27 and 50 of 2017 are dismissed. MH/A-60/Sindh Order accordingly.

