IN THE HONORABLE ISLAMABAD HIGH COURT

W.P No. 4994/2014

Bolo Bhi

Versus

Federation of Pakistan

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 READ ALONG WITH ALL OTHER ENABLING PROVISIONS OF LAW

BRIEF SUMMARY OF THE CASE:

1. Petitioners filed the instant Petition on 12.12.2014 impugning the Notifications dated 25.05.2012 ("**Policy Notification**") and 29.08.2006 (together referred as "**Impugned Notifications**"). Respondent No.1 directed Respondent No.3 to implement the Policy Notification dated 25.05.2012 aimed at regulating, blocking and censoring content on the internet. Pursuant to the Impugned Notification dated 29.08.2006 issued by Respondent No.1, Respondent No.2 was constituted with the following terms of reference:

    i. Formalization of procedure for blocking of websites (URLs)
    ii. To evaluate/examine all such materials and requests for blocking of offensive, objectionable/obnoxious websites (URLs) forwarded by the agencies, Ministries or individuals and shall send its recommendation to MoIT for issuance of necessary directives after scrutiny for filtering/blocking by the PTA accordingly
    iii. The Committee will also finalize TOR, procedure and mechanism for examining the requests for blocking the websites (URLs) on rational *(sic)* and merit

    The Petitioner vide the Instant Petition prayed as follows:

    i. Declare that the Impugned Notifications and the constitution of

ii. Declare that the Impugned Notifications, the Internet censorship regime established pursuant to them and the actions of Respondents aimed at regulating, blocking and censoring Internet content and access to it illegal, unconstitutional, arbitrary, whimsical a devoid of legal authority;

iii. Declare that all orders, directives and notifications issued by Respondents No.2, and directions issued by Respondent No.1 and 3 in pursuance of such orders, directives and notifications are illegal, unconstitutional, without lawful authority and *void ab initio*;

iv. Declare that the Respondents have no legal authority to undertake Internet censorship or content regulation and direct the Respondents to act strictly within the legal authority duly vested in them under law;

v. Order Respondent No.3 to recall all orders issued to ISPs to blocks or bans websites and URLs that have been issued in excess authority vested in it under the Telecom Act, dismantle and filtering devices installed by ISPs or telecom service providers to obstruct access to Internet content without the permission and content of consumers; and

vi. Grant the cost of this litigation and any other relief deemed fair and just in the circumstances.

2. During the pendency of the Petition, Respondent No.1 issued the Telecommunication Policy, 2015 pursuant to which management of content on the internet was granted to Respondent No.3 without any legislative backing. In view of the same, Petitioner's sought to amend the Plaint to impugn the said Telecommunications Policy 2015 on the following grounds:

i. Respondent No.1 has no legal authority to block or regulate content on internet and assume the role of regulator; and

ii. According to settled legal principles of delegation of authority, only that power or authority may be delegated which the delegator itself possesses. Since the Respondent No.1 lacks any legal authority to block and censor content, it cannot

The Petitioner also sought to amend the prayer in following terms:

> *"PRAYER*
>
> *In light of the above, it is humbly prayed that this Honorable Court may allow the Petitioners to amend their Prayer in the afore-titled petition to add an additional Prayer Clause, without prejudice to the Prayer already requested for in the Petition, as follows: "Declare that Section 9.8 of the Impugned Policy is ultra vires the Constitution and Telecom Act."*

The Honorable Court was pleased to grant permission to Petitioners to amend the Plaint and prayer in the aforesaid terms.

3. During the pendency of the Petition, Respondent No.2 was dissolved through a notification No. 5-1/2005-DFU dated 13.03.2015.

4. During the pendency of the Petition, Pakistan Electronic Crimes Act, 2016 ("**PECA**") was passed, pursuant to which Respondent No.3 being an independent regulator was authorized to regulate content on the internet.

5. However, to the extent of the Impugned Telecommunications Policy, 2015 (being still in field) and the assumption of authority by Respondent No.1 to regulate internet content the Petitioner submits as follows:

WRITTEN ARGUMENTS ON BEHALF OF THE PETITIONER

I. The Impugned Telecommunications Policy 2015 issued by Respondent No. 1 and its assumption of authority to regulate content on the internet are ultra vires of the Constitution.

i. Article 19 of the Constitution states:

> *"**Freedom of speech, etc.** Every Citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in interest of the glory of Islam or integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public*

Article 19-A states:

> *"**Right to information.** Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law"*

The fundamental rights envisaged under Articles 19 and 19-A may be subjected to reasonable restrictions imposed only by law. The Honorable apex court in the case titled ***Pakistan Muslim League (N) v. Federation of Pakistan,*** reported as ***PLD 2007 SC 642*** held that:

> *"Any invasion upon the rights of citizens by anybody no matter whether by a private individual or by public official or body, must be justified with reference to some law of the country. Therefore, executive action would necessarily have to be such that it could not possibly violate a Fundamental Right. The only power of the Executive to take action would have to be derived from law and law itself would not be able to confer upon the executive any power to deal with a citizen or other persons in Pakistan in contravention of Fundamental Right…No infringement or curtailment in any Fundamental Right can be made unless it is in the public interest and in accordance with valid law. No doubt that reasonable restriction can be imposed but it does not mean arbitrary exercise of power or unfettered or unbridled powers which surely would be outside the scope of "reasonable restriction" and it must be in the public interest."*

It is an established principle of law that redundancy cannot be attributed to any word in a provision of law or statute. Articles 19 and 19-A of the Constitution require reasonable limits to be imposed by law and the same ought to be imposed by law and not assumed by any public official or functionary without any legislative authority. Reliance may be placed upon the following cases:

> ***2011 PLD SC 407 - Munir Hussain Bhatti vs. Federation of Pakistan***:
>
> *"It is an established rule of interpretation that Parliament does not waste words and redundancy should not be imputed to it. This principle would apply with even greater force to the Constitution the supreme law of the land."*
>
> ***2010 PTD 1024 – Director Intelligence and Investigation vs. Bagh Ali:***
>
> *"Be that as it may, addressing question No.2 first, it may be held that the interpretation of the relevant provisions invoked in these cases needs to be structured on*

provisions and words of statute, (iii) where the law requires and act to be performed or a thing to be done in a particular manner it has to be so performed/done"

Section 9.8 of the Impugned Telecommunications Policy, in the absence of any legislative backing, in essence imputes redundancy to the words specified in Articles 19 and 19-A of the Constitution and therefore ought to be declared ultra vires of the Constitution. The fundamental rights and freedoms enshrined in Articles 19 and 19A of the Constitution cannot be restricted arbitrarily at the whims and wishes of the executive and the aforesaid Policy protecting/authorizing such acts of Respondent No.1 is *ultra vires* of the Constitution of Islamic Republic of Pakistan.

ii. The Impugned Telecommunications Policy being inconsistent with fundamental rights are in violation of Article 8 of the Constitution and therefore liable to be declared *ultra vires* of the Constitution. Article 8 unequivocally provides that:

> *"**Laws inconsistent with or in derogation of Fundamental Rights to be void.** (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.*
>
> *(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void."*

II. The actions of Respondent No. 1 regulating internet censorship and issuing the Impugned Telecommunications Policy are unconstitutional, illegal and unlawful as neither the Constitution nor any law empowers Respondent No.1 to regulate speech which they find offensive, objectionable or obnoxious:

i. Section 9.8 of the Telecommunication Policy, 2015 states:

> *"9.8.2 … PTA is required to manage content over the internet through integrated licenses or ISPs as per their licensing conditions under the Act. Federal Government (MoIT) recommended to the GOP to authorize PTA to determine the characteristic of content irrespective of the channel used for its supply. PTA will have to consider the characteristics of each channel in determining how to manage its content which it will do under a well defined framework.*
>
> …

itself or on recommendation of a concerned agency and/or a duly mandated forum as the case may be."

At the time of introducing the Impugned Telecommunications Policy, there existed no law that authorized any of the Respondents to regulate and block content on the internet. Subsequently, PECA was introduced to authorize Respondent No.3 to regulate the internet content. The Act does not empower Respondent No.1 to regulate content on the internet. The power granted to Respondent No.3 under s.37 of PECA is as follows:

> **"*Unlawful on-line content*** *– (1) The Authority shall have the power to remove or block or issue directions for removal or blocking of access to an information through any information system if it considers it necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court or commission of or incitement to an offence under this Act.*
>
> *(2) The Authority shall, with the approval of the Federal Government, prescribe rules providing for, among other matters, safeguards, transparent process and effective oversight mechanism for exercise of powers under sub-section (1).*
>
> *(3) Until such rules are prescribed under sub-section (2), the Authority shall exercise its powers under this Act or any other law for the time being in force in accordance with directions issued by the Federal Government not inconsistent with the provisions of this Act.*
>
> *(4) Any person aggrieved from any order passed by the Authority under sub-section (1), may file an application with the Authority for review of the order within thirty days from the date of passing of the order.*
>
> *(5) An appeal against the decision of the Authority in review shall lie before the High Court within thirty days of the order of the Authority in review."*

It is submitted that without prejudice to the constitutionality of the aforesaid provision, pursuant to sub-section 3 a power to issue directions has been granted to Respondent No.1 however use of the words: "*until such rules are prescribed…",*

would tantamount to ***fraud on the statute***. Reliance is placed on the following pronouncements of the Honorable superior courts:

PLD 2011 SC 811 - Al-Jehad Trust vs. Federation of Pakistan

"The real issue in the present case, therefore, is as to whether such a statutory delegation during a vacancy in the office of the delegator can be stretched to a period which is unduly protracted and indefinite and which creates an irresistible impression that those responsible for filling the vacancy in the office of the delegator are not interested in filling that vacancy and are contented with running the affairs of the concerned institution or department through the delegate himself. This surely is a serious matter and in case such an impression is well-founded then such an exercise may amount to committing a fraud with or upon the relevant statute."

(2005) 7 SCC 605 - Bhaurao Dagdu Paralkar vs. State of Maharashtra

"It has been aptly observed by Lord Bridge in Khawaja v. Secretary of State for Home Deptt. (1983) 1 All ER 765, that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation of statutory law. "Fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute. "If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised… (See Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers, (1992 (1) SCC 534)."

ii. Section 8 of the Pakistan Telecommunication (re-organization) Act 1996 (**"Telecom Act"**) gives authority to Respondent No.1 to issue policy directions in relation to matters specified in the said section but such authority does not include directions to regulate, block or censor comment on the internet. Section

the Authority, not inconsistent with the provisions of the Act, on the matters relating to telecommunication policy referred to in sub-section (2), and the Authority shall comply with such directives.

(2) The matters on which the Federal Government may issue policy directives shall be—

(a) the number and term of the licenses to be granted in respect of telecommunication systems which are public switched networks, telecommunication services over public switched networks and international telecommunication services, and the conditions on which those Licenses should be granted;

(aa) framework for telecommunication sector development and scarce resources; and

(2a) Notwithstanding anything contained in sub-section (2), the Cabinet or any committee authorized by the Cabinet may issue any policy directive on any matter related to telecommunication sector, not inconsistent with the provisions of this Act,. And such directives shall be binding on the Authority.

(b) the nationality, residence and qualifications of persons to whom licenses for public switched networks may be issued or transferred or the persons by whom licensees may be controlled; and

(c) requirements of national security and of relationships between Pakistan and the Government of any other country or territory outside Pakistan and other States or territories outside Pakistan.

(3) The Federal Government may, from time to time, call for reports on the activities of the Authority and Board and provide for representation in meetings of international telecommunication organizations."

Perusal of the above-mentioned provisions reveal that the Telecom Act does not give power to the Federal Government to issue directions to regulate, block or censor the material available on the internet. It is submitted that the executive can only be permitted to do what it has been authorized to do under law. In the case of ***Gadoon Textile Mills vs. WAPDA*** reported as ***1997 SCMR 641***, it was held that:

"A public authority or corporation is a creature of statute and its sphere of activities and action are circumscribed by the relevant law. Such juristic person is permitted to do what it is authorized to do by law, unlike a human being who is permitted to do what

amenities to public, are required to mould their decisions and actions within the framework of law for the benefit of public. De Smith Judicial Review of Administrative Action, Fourth Edition, at page 317 observed as follows:

'A public authority cannot effectively bind itself not to exercise a discretion if to do so would be to disable itself from fulfilling the primary purpose for which it was created. It has been said that if a person or public body is entrusted by the legislature with certain powers and duties expressly or impliedly for public purposes, those persons or bodies cannot divest themselves of these powers and duties. They cannot enter into any contract or take any action incompatible with the due exercise of powers or duties. So to act would be to announce a part of their statutory birthright.'"

iii. It was unequivocally stated by the Supreme Court in the case of ***Pakistan Muslim League vs. Federation of Pakistan*** reported as ***PLD 2007 SC 642*** that in order to be legitimate, executive action must be backed by law and ought not to violate fundamental rights. Moreover, rights guaranteed by the Constitution do not confer powers on the State, but they impose responsibilities in relation to citizens that the state is required to fulfil. The state is only allowed to infringe upon any fundamental right of a citizen only in accordance with the law and in strict adherence to the requirements and limits prescribed in the Constitution. In the case of ***K.B. Threads Pvt Ltd vs. Zila Nazim Lahore*** reported as ***PLD 2004 Lahore 376*** it was held as follows:

"The political institutions and social structure rest on the theory that all men have certain rights of life, liberty and pursuit of happiness, which are unalienable, fundamental and inherent. When these 'unalienable' rights are protected by Constitutional guarantees, they are called 'fundamental' rights because they have been placed beyond the power of any organ of the State, whether executive or legislative to act in violation of them. They can be taken away, suspended or abridged only in the manner which the Constitution provides…It is thus clear that the fundamental rights are most superior and special in nature and cannot be interfered with without strict recourse to the law and that too subject to the conditions provided for the exercise of these rights"

In view of the above, it is submitted that the assumption of authority to regulate content on the internet by Respondent No.1 and the Impugned Telecommunications Policy 2015 may be declared as unconstitutional, illegal, arbitrary and whimsical.

"*PTA is required to manage content over the internet through integrated licenses or ISPs as per their licensing conditions under the Act. Federal Government (MoIT) recommended to the GOP to authorize PTA to determine the characteristic of content irrespective of the channel used for its supply…",*

Furthermore, section 9.8.5 purportedly authorizes Respondent No. 3 to block content on the internet:

"Although mechanism mentioned above will take into account all freedom of information safeguards provided under the Constitution and law with requisite application of limits and constraints. ***Telecommunications operators and service providers will nevertheless need to be mindful of any content filtering and blocking that may be obligated by PTA either by itself or on recommendation of a concerned agency and/or a duly mandated forum as the case may be."***

It is submitted that Respondent No.1 had not been vested with the power by any law to regulate and block content on the internet as envisaged in section 9.8 of the Impugned Telecommunications Policy. Thus, the executive possessed no power in law that could possibly be delegated to Respondent No.3 at the relevant time. Reliance is placed on the following:

1981 PLC 219 [Lahore High Court] Pakistan Television Corporation Ltd v. M. Babar Zaman

"…a delegate (Chairman) from a delegate (Federal Government) who itself is a delegate (from the Legislature) can hardly be supposed to have a right to further delegate legislative authority. If permissible, the process can go ad infinitum. Fourthly, can it be possible that the law made at the fourth hand or fortieth for that matter should have the sway over the Statutes made by the Legislature itself as contended by the learned counsel for the appellant that the Rules so made by the Member on the authority of the Chairman who was empowered by the Federal Government who in turn was authorized by the Legislature to make rules will apply notwithstanding any Statute like West Pakistan (Standing Orders) Ordinance, 1968. The contention on the face of it is untenable. If it were otherwise, the entire legislative process would be thrown in the whirlpool of confusion. Even in administrative spheres, "Where the exercise of discretionary power is entrusted to a named officer-e.g. a chief officer of Police, a medical officer of health, a town clerk or an

outweighs desirability of maintaining the principle that the officer designated by statute should act personally . . . ."

"The maxim delegates non potest delegare has not the whole been applied more strictly to the further sub-delegation of sub-delegated powers than to the sub-delegation of primary delegated powers. This is in accordance with the maxim expressio unius est exclusio alterius : where Parliament has expressly authorised sub-delegation of a specific character, it can generally be presumed to have intended that no further sub-delegation shall be permissible", so says S. A. de Smith in his "Judicial Review of Administrative Action" at pages 179 to 180."

IV. No public authority or public office holder can claim any inherent power or authority to do anything in the name of state that it is not empowered to do by the Constitution or any law under the jurisprudence settled by the courts.

- *2002 CLC 59 Lahore - Muhammad Zia v. Ch. Nazir Muhammad*

  "It is paramount duty and obligation of the public functionaries to act in accordance with law as is envisaged by Article 4 of the Constitution."

- *2005 CLC 388 [Karachi] Saeed Ahmed v. Cantonement Board, Malir Cantt*

  "It is settled position in law that there is no inherent power in public functionary or authority, they can only act within the parameters of law."

- *PLD 2007 SC 642 Pakistan Muslim League (N) v. Federation of Pakistan*

  "It may not be out of place to mention here that "there is no inherent power in the executive, except what has been vested in it by law, and that lain is the source of power and duty"

Respondent No.1 does not have any inherent power to regulate content on the internet either vide the introduction of the Impugned Telecommunications Policy or vide issuing directions to any executive authority to do the same. Federal Government even after promulgation of PECA is continuing to illegally assume the power of content management and blocking on the internet by issuing directions to various agencies like FIA, having no competence or jurisdiction to do the same.

V. A regulator is under no obligation to abide by a policy directive of the Federal Government that is beyond four corners of the law

reported as *PLD 2013 SC 224* held that regulatory authority is under no obligation to abide by a policy directive of the Federal Government that is beyond the four corners of the law. The same principle was reemphasized in the case of *PTML vs PTA (PLD 2014 SC 478)* in relation to the regulatory independence of Respondent No.3 and no binding authority of policy directives of Respondent No.1 in the following terms:

> *"It is obvious from the above reproduced portion of the order dated 26-3-2009 that PTA has conceived itself as a subordinate department of the Federal Government rather than the independent regulator envisaged by sections 3, 4 and 5 of the Act. If section 5(1)(d) of the Act is read with section 22 thereof, it will become immediately evident that the Federal Government has no role in modifying a license issued by PTA or varying any Condition thereof. This power is vested in PTA and is subject to the constraints of section 22 of the Act. The rationale for creating PTA as a regulator independent of the Federal Government by means of an Act of Parliament is to ensure that the Government has no power to interfere in the working of PTA in matters of grant and administration of licenses. The Policy directives issued by the Government under section 8 of the Act, therefore, cannot have binding affect to compel PTA to modify the terms of an existing license."*

VI. The Impugned Telecommunications Policy is in violation of State's duty to protect the fundamental rights enshrined under the Constitution

In the case of *Rangarajan v. P. Jagjivan Ram* reported as *(1989) 2 S.C.C. 574* it was held that:

> *"We are amused yet troubled by the stand taken by the State Government with regard to the film which has received the National Award. We want to put the anguished question, what good is the protection of freedom of expression if the State does not take care to protect it? If the film is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be sup- pressed on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and a surrender to black mail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression."*

Pursuant to the Impugned Telecommunications Policy the State without any lawful authority has granted arbitrary powers to executive resulting in unreasonable curtailment of the fundamental rights of the citizens and therefore infringing its aforesaid duty.

Respondents had the authority to regulate and censor the internet, which they do not possess, the manner in which it is being done is fundamentally unreasonable.

i. Test of reasonableness ought to be implemented in relation to restrictions on freedom of speech under Article 19:

(1952) S.C.R. 597 - Madras v. V.G. Row

"It is important in this context to bear in mind that the test of reasonableness, where ever prescribed, should be applied to each individual statute impugned, and no abstract standard. or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case. It is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of' the restrictions, considered them to be reasonable."

ii. Right balance needs to be struck between the fettered right and the public interest that needs protection through restriction imposed

1982 SCR (1) 1137 - Bishambhar Dayal Chandra Mohan v. State of Uttar Pradesh

"The expression 'reasonable restriction' signifies that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable in all cases. The restriction which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Art. 19(1)(g) and the social control permitted by cl. (6) of Art. 19, it must be held to be wanting in that quality."

iii. It is for the executive to establish to the satisfaction of the court that it had complied with procedural and substantive requirements in exercising authority in a manner that restrained the fundamental freedoms of the citizens.

PLD 1964 SC 673 - Saiyyid Abul a'ala Maudoodi v. Government of Pakistan

"The Courts cannot regard themselves as satisfied that the citizen's freedom has been subjected to a reasonable restriction unless it is proved to their satisfaction that not only the grounds of the restrictions as stated by the law are reasonable in themselves, but they have been applied reasonably as required by the Constitution. The only manner which the Courts themselves would regard as reasonable is that existence of the factual grounds of the restriction should have been established in the mode which the Courts recognize as essential where a right to life or liberty or property is concerned, namely, after a proper hearing given to the person concerned. (I postpone for later consideration the question whether to grant the hearing after making the order, can ever be reasonable). Any presumption that the authority in question has acted in accordance with justice or reason or equity, if made by the Courts in respect of such actions would, in my opinion, amount to a denial of the duty which the Courts are called upon to discharge in respect of these fundamental matters. The duty of the Courts would be thus to apply the principles of reason and justice according to the procedures with which they are familiar, to the ascertainment of the questions whether the restrictions in themselves are consistent with justice and reason, whether the conditions for their application have in fact been established, and whether they have been applied by competent authority. These are matters falling within the large principle of judicial review as a power possessed by the Courts for the correction of excesses in action under law."

iv. The assumption and exercise of purported authority by Respondent No.1 and the Impugned Telecommunications Policy is unreasonable apart from being illegal as it does not provide safeguards against arbitrary exercise of authority and makes no effort to pursue legitimate state interests in the least restrictive manner.

PLD 1958 Supreme Court (Pak.) 41 - East and West Steam Ship Company vs. Pakistan

"A "reasonable restriction" in the sense of Article 11 is one which is Imposed with due regard to the public requirement which it is designed to meet. Anything which is arbitrary or excessive will of course be outside the bounds of reasons in the relevant regard, but in considering the disadvantage imposed upon the subject in relation to the

restraint, in the sense of not bearing excessively on the subject and at the same time being the minimum that is required to preserve the public interest."

The manner of exercise of purported authority by Respondents is against the basic requirements of due process. The Respondents unilaterally without affording any opportunity of being heard take adverse actions in violation of the fundamental rights guaranteed under the Constitution and therefore ought to be declared unconstitutional, illegal and unreasonable.

In view of the above submissions, it is requested that that Court may declare:

- That section 9.8 of the Impugned Telecommunications Policy is illegal and ultra vires of the Constitution and the Telecom Act;
- Respondent No.1 has no legal authority to regulate internet content under the Telecom Act and/or PECA.
- The transitory and unregulated power granted to Respondent No.1 vide section 37 of PECA cannot be abused to regulate content on the internet for indefinite period

Petitioner's Counsel

Babar Sattar
(Advocate High Court)