

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 4994 of 2014

Bolo Bhi, etc

Vs

Federation of Pakistan, etc.

PETITIONER BY: Ms. Zainab Janjua, Advocate

RESPONDENTS BY: M/s. Muhammad Nasir Ayyaz, Attaullah Hakim
Kundi, Advocates.
Kh. Muhammad Imtiaz, Assistant Attorney General.

DATE OF HEARING: 25-05-2018.

ATHAR MINALLAH, J.- The petitioners had invoked

the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 challenging Notification, dated 29-08-2006 and constitution of the Inter Ministerial Committee for Evaluation of Websites.

2. The notification of the said committee was withdrawn while the instant petition was pending before this Court. Moreover, the Majlis-e-Shoora (Parliament) also promulgated the Prevention of Electronic Crimes Act, 2016 (hereinafter referred to as the "**Act of 2016**"). Section 37 of the Act of 2016 is reproduced as follows:-

JE COPY

11 JUN 2018

Supply
Islamabad High Court
Islamabad

"37. *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 the 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."

TRUE COPY

11 JUN 2018

Examining
Copy Supply Section
Islamabad High Court
Islamabad

It is obvious from the above provision of the Act of 2016 that Pakistan Telecommunication Authority has been vested with exclusive power to decide matters relating to removal or blocking of access to any information through any information system or for

issuing directions in respect thereto. The learned counsel for the petitioner has argued that subsection (3) of section 37 is being misinterpreted by the respondents. She has argued that powers vested in the Authority are being used by the Federal Government through directions.

4. A plain reading of section 37 as a whole unambiguously shows that subsection (3) *ibid* is a transitory arrangement and that a direction issued by the Federal Government which is not consistent with the provisions of the Act of 2016 is not binding on the Authority. The Federal Government like any other person can lay an information before the Pakistan Telecommunication Authority but the same cannot be treated as binding in the context of subsection (1) of section 37. The Authority is exclusively empowered under subsection (1) of section 37 of the Act of 2016 to consider any information laid before it and then to decide whether or not to take action in the manner prescribed therein. In matters which fall within the exclusive domain of Pakistan Telecommunication Authority under subsection (1) of section 37 of the Act of 2016, the powers and discretion is required to be exercised independently and without being influenced by any direction or information laid before it by the Federal Government.

5. In the context of the instant petition it would be beneficial to refer to two passages from the celebrated *treaties* by De Smith, as quoted with approval by the august Supreme Court of Pakistan in the case of *M.A.Rahman Versus Federation of Pakistan and others* [1988 SCMR 691]. The said two passages are as follows:

BLUE COPY

21 JUN 2018

Examiner
Supply Section
Islamabad High Court

"The relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously."

And:--

"An authority entrusted with a discretion must not, in the purported exercise of its discretion, act under the dictation of another body or person. In at least two modern Commonwealth cases licensing bodies were found to have taken decisions on the instructions of the heads of Government who were prompted by extraneous motives. But, as less colourful cases illustrate, it is enough to show that a decision which ought to have been based on the exercise of independent judgment was dictated by those not entrusted with the power to decide, although it remains a question of fact whether the

TRUE COPY
11 JUN 2018
Examiner
Copy Supply Section
Islamabad High Court

repository of discretion abdicated it in the face of external pressure. An it is immaterial that the external authority has not sought to impose its policy."

6. The august Supreme Court observed and held in the case of M.A Rehman supra that a discretion must be exercised only by the authority to which it is committed, and that in exercising the same the authority must genuinely address itself to the matter before it and must act in good faith, and have regard to all relevant considerations. It was further held that in exercising discretion, the authority must not be swayed by irrelevant considerations, nor must it seek to promote purposes alien to the letter and/or spirit of the legislation that gives it the power to act and, therefore, must not act arbitrarily or capriciously.

7. It is, therefore, obvious from the above discussion that the Authority is exclusively vested with the power and jurisdiction to decide all matters described under subsection (1) of section 37 of the Act of 2016 independently ^{and} uninfluenced by any direction issued by the Federal Government under subsection (3) *ibid*.

8. The petition is allowed and disposed of in the above terms.

sd
(ATHAR MINALLAH)
JUDGE



TRUE COPY
11 JUN 2019
Examiner
Copy Supply Section
Islamabad High Court
Islamabad