



Decision of the Authority pursuant to Court Order dated 22nd March, 2021 Passed in W.P 19321/2021 titled “Zain Telecom Vs Federation of Pakistan etc.”

File No: PTA/LAW & Regulation/Law/1849/2021/531

Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 25th May, 2021

Panel of Hearing:

Maj. Gen. Amir Azeem Bajwa (R): Chairman
Dr. Khawar Siddique Khokhar: Member (Compliance & Enforcement)
Muhammad Naveed: Member (Finance)

Issue:

“Termination of Franchise Agreement by PMCL (Mobilink)”

DECISION OF THE AUTHORITY

1. BRIEF FACTS:

1.1 This order will dispose of the application of Mr. Usman Khalid s/o Muhammad Khalid (the “Complainant”) filed through Ch. Ishtiaq Ahmed Khan, Advocate Supreme Court, pertaining to termination of franchise agreement by Pakistan Mobile Communication Limited (PMCL) vide letter dated 5th November, 2020 (the “impugned letter”).

1.2 Being aggrieved by the impugned letter, the Complainant filed W.P No. 19321/2021 titled M/s Zain Telecom Vs Federation of Pakistan etc. before the Hon’ble Lahore High Court, Lahore. The Honorable High Court vide order dated 22nd March, 2021 disposed of the said petition in the following manner:

“3. In view of the above noted request, the respondent No. 2 is directed to decide the application, if pending, strictly in accordance with law, after affording opportunity of hearing to all concerned and through a well-reasoned speaking order as expeditiously as possible.”

1.3 In light of court order, PTA vide letter dated 29th March, 2021 sought comments from PMCL on the matter. Upon receipt of comments the matter was fixed for hearing on 25th May, 2021. Ch. Ishtiaq Ahmed Khan (Advocate Supreme Court) and Mr. Momin Khan (Legal Counsel) on behalf of the Complainant, Ms. Fariha Khan (Manager Legal) and Mr. Naser Hamdani (Director Regulatory) on behalf of PMCL attended the hearing on the said date. During the course of hearing, the crux of arguments advanced by the Complainant and PMCL are as under:

2. ARGUMENTS OF THE COMPLAINANT:

2.1 Legal counsel on behalf of the Complainant contended that it is running the business of franchise of PMCL with the Franchise ID 7076 by virtue of agreement dated 3rd May, 2021. For the purpose of running the franchise business, the Complainant invested Rs. 1, 41, 00,000/-. It was further argued that as a consequence of execution of franchise agreement, the Complainant is like a partner of PMCL. For running franchise business, the Complainant has put his best efforts and abilities to promote the business of the franchise and always met the targets as per policy of PMCL.

2.2 Legal counsel on behalf of the Complainant further asserted that PMCL enhanced the targets which were quite unreasonable and unjustifiable keeping in view the market dynamics. In this regard the Complainant showed his reservation to the company several times. However, PMCL through its representative also adopted various tactics to pressurize the Complainant and its staff to achieve targets of 200% which is even otherwise against the policy. For this purpose, the representative of the PMCL visited the franchise on 4th November, 2020 and during conversation the representative of the PMCL used objectionable and abusive language, as a reason thereof, hot words were exchanged between the representative of PMCL and the staff of the Complainant.

2.3 As a consequence thereof, on 5th November, 2020, the Regional Business Head of the Company without conducting any prior inquiry or issuance of notice upon the Complainant unilaterally terminated franchise agreement by violating the settled terms and condition of the franchise agreement and forcibly snatched the possession of the business premises and gave the same to a third party illegally and unlawfully and also blocked the services of the personal cell number of the complainant.

2.4 The afore-mentioned termination of the agreement through a letter dated 5th November, 2020 without giving any show cause notice is against the principle of natural justice and violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"). The action on the part of PMCL is a sheer violation of Article 23 and 18 of the Constitution.

2.5 As far as jurisdiction of PTA to entertain such nature of complaint is concerned, legal counsel submitted that under the scheme of Act any issue directly connected with or incidental to the matter provided in the Act, mandates and empowers PTA to take cognizance and adjudicate upon the instant complaint. This issue is connected with or incidental to the matters provided in the Act i.e., to regulate the provision of telecommunication services in Pakistan.

3. PMCL RESPONSE/SUBMISSIONS:

3.1 At the very outset, the representative of PMCL stated that the Writ Petition filed by Zain Telecom (the "Complainant") and application filed by it before PTA both are not tenable. Since the Complainant and PMCL's contractual relationship is governed by the Franchise Agreement

entered into the terms therefore recourse to arbitration is available to resolve dispute between the parties. PMCL also objected to the jurisdiction of the Authority to adjudicate on purely contractual dispute between the parties.

3.2 The legal counsel of PMCL further added that the Hon'ble Lahore High Court has not proceeded to appoint PTA as the arbitrator to adjudicate on the dispute between the parties and has merely directed for the Complainant's application to be decided strictly in accordance with law. To this end, the law does not envisage PTA to perform the function of an arbitrator since the roles and the functions of PTA as envisaged in the Act do not provide for it to act as an adjudicator in a commercial dispute between a licensee and its franchisee.

3.3 The representative on the behalf of PMCL averted that clause 17 of the Franchise Agreement provides that in case of any dispute or difference between the parties which cannot be resolved amicably, such dispute/difference shall be referred to arbitration to be conducted by one arbitrator to be appointed with the mutual consent of the parties. Should the parties fail to agree on the nomination, the court of competent jurisdiction shall appoint the arbitrator in accordance with the provision of the Arbitration Act, 1940. Since the Agreement envisages the adjudication of a dispute by one arbitrator who shall be appointed in accordance with agreement, thus PTA cannot fall within the terminology of "one arbitrator" which should, as is evident, be a natural person and not a juristic person.

3.4 During the course of hearing, the representative of PMCL placed on record cases already decided by PTA relating to the issues of franchise termination under the doctrine of lack of jurisdiction of PTA. PMCL on the aforesaid ground prayed for the dismissal of the application of the complainant.

4. FINDINGS OF THE AUTHORITY:

4.1 After careful examination and perusal of record and hearing the parties, the findings of the Authority are as under;

4.1.1 Jurisdiction to entertain complaints of franchisee(s) under the Pakistan Telecommunication (Re-organization) Act, 1996

a. By virtue of section 4 (1) (f) of the Act, PTA is empowered to investigate and adjudicate on complaints and other claims made against the licensee arising out of alleged contraventions of the provisions of this Act, Rules made and licenses issued thereunder and take action. In addition, section 4(1) (l) of the Act provides that PTA shall settle disputes between licensees. Further section 4(1) (m) states that the Authority shall regulate competition in the telecommunication sector and to protect consumer rights.

b. As far as instant matter is concerned, the Complainant is neither a licensee nor a telecom consumer. The relation between Complainant and PMCL is a relation of contractor/franchisees, therefore, such nature of cases do not fall within the regulatory ambit of PTA for adjudication. Thus, being a regulatory body, PTA lacks jurisdiction to adjudicate upon the issues related to

Dated. 7th September, 2021

recovery of compensation and commercial settlement between franchisee(s) and cellular mobile operator(s). The Complainant may approach appropriate competent forum having jurisdiction to entertain such nature of case.

c. It is also relevant to point out here that clause 17 of the Agreement provides that in case of any dispute between the parties agreed to resolve dispute amicably and in good faith through negotiations or through sole arbitrator appointed by PMCL for conducting arbitration in Islamabad. In light of this condition of the agreement PTA has not been appointed as arbitrator thus the matter cannot be proceeded in light of agreement.

4.1.2 In the instant matter since the issue has been referred by the Honorable Lahore High Court, Lahore as mentioned at para 1.2 above of this order, PTA after providing fair opportunity of hearing to both the parties and perusal of the record is of the view that the agreement made between the parties expressly provided the circumstances of termination which are required to be adhered in true letter and spirit by PMCL while invoking the condition 15 of the Agreement. In such circumstances, PTA could not find any substantive material on record which postulates termination of the agreement within the terms and conditions as agreed by the parties.

5. ORDER:

5.1 Without going into factual controversy on the matter as alleged by the Complainant and not contested by PMCL by rebutting the point of contention of reasonability of legitimate reasons for termination of franchise agreement as per agreed terms and conditions, PTA is of the view that impugned letter needs to reviewed by PMCL in the best interest of consumer. However, factual controversies if any, the same may be dealt with and treated separately as per applicable law and which has no nexus with regard to the findings of PTA.

5.2 Foregoing in view of the above factual and legal position, the matter is hereby disposed of in the manner as provided at para 5.1 above.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

This order signed on 7th day of Sep, 2021 and comprises of (4) pages only.