

*Form No: HCJD/C-121.*

**JUDGEMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

FAO No. 42 of 2016

CM Pak Limited

**Vs**

The Pakistan Telecommunication Authority

DATE OF HEARING: 28-11-2017.

PETITIONER BY: M/s Mian Shafaqat Jan, Umer Ijaz Gillani,  
Ibrar Bashir and Hadiya Aziz, Advocates.

RESPONDENT BY: Barrister Munawar Iqbal Duggal, for PTA.  
Mr Israr ul Haq, Assistant Attorney General.

**ATHAR MINALLAH, J.-** Through this consolidated judgment I shall decide the instant appeal alongwith the constitutional petitions listed in 'Annexure-A' attached hereto.

2. The instant appeal has been filed by CM Pak Limited (hereinafter referred to as the "**appellant Company**") while through the connected petitions the customers of the licensed providers of telecommunication services, such as the appellant Company, have invoked the jurisdiction of this Court, asserting that their fundamental rights are violated

when the cellular services are suspended. In a nut shell, the appellant Company and the petitioners have challenged the suspension of mobile cellular services pursuant to the orders of the Pakistan Telecommunication Authority (hereinafter referred to as the "**Authority**"). The appellant Company has assailed the orders/directions of the Authority whereby it was directed to suspend its cellular mobile voice and data services.

3. The facts, in brief, are that the Authority, pursuant to powers conferred under the Pakistan Telecommunication (Reorganization) Act 1996 (hereinafter referred to as the "**Act of 1996**") has granted licenses to the appellant Company and other such service providers. For the purposes of rendering services the licensed service providers inevitably require 'radio frequency spectrum' which is acquired through an open competitive bidding process. It is the case of the appellant Company that, as a licensee, it is compelled by the Authority from time to time to suspend its services on the basis of mere apprehensions which on the one hand infringes the fundamental rights guaranteed under the Constitution and on the other causes a breach of its obligations to the customers i.e. to provide uninterrupted cellular voice and data services. Likewise, the petitioners who use such services assert a violation of their rights due to the suspension of the services.

4. The learned counsels who have appeared on behalf of the appellant Company and the petitioners in the connected petitions have contended that; the Authority is under a statutory obligation to ensure that the rights of the licensees are duly protected; the Authority is under an obligation to ensure that the licensees get reasonable and expected return; the services under the licenses can only be discontinued or disconnected either under clause 6.21 or clause 6.71; sub section (3) of section 54 of the Act of 1996 mandates that suspension of operations can only be justified if the President exercises the power relating to the proclamation of an emergency; the Federal Government, through a policy directive issued under section 8 of the Act of 1996, cannot empower the Authority to suspend the cellular services in disregard to the provisions of section 54; if operations are suspended under section 54 then the Federal Government is required to compensate the licensees for the losses suffered by the latter; the expression 'proclamation of emergency by the President' used in section 54 of the Act of 1996 has a nexus with Part X of the Constitution; section 54(3) of the Act of 1996 can only be invoked if there is a proclamation of emergency under Articles 232 to 237; there is no other provision which empowers the Authority or the Federal Government to suspend the services; the practice adopted by the Authority to direct the mobile cellular operators to suspend its operations without prior notice or information is without lawful authority and jurisdiction; the

directions issued by the Authority are not supported by any law, rules or regulations; there is no provision under the Act of 1996 to empower the Federal Government or the Authority to direct the blocking of cellular mobile operations on the basis of mere apprehension e.g. to avoid any untoward incident; the expression 'security of Pakistan' defined under Article 260 of the Constitution has explicitly excluded public safety; suspension of services can only be ordered or directed under section 54(3) of the Act of 1996; reliance has been placed on the cases of "Khushi Muhammad through L.Rs. and others v. Mst. Fazal Bibi and others" [PLD 2016 S.C. 872], "Shahida Bibi and others v. Habib Bank Limited and others" [PLD 2016 S.C. 995], "Muhammad Akram v. Mst. Zainab Bibi" [2007 SCMR 1086]; The policy of the Federal Government has to meet the law laid down by the august Supreme Court in the case titled "Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others"[PLD 2016 S.C. 808]; the suspension of mobile phone services by the Authority is ultra vires of section 54; the fundamental rights guaranteed under Articles 10-A, 9, 15, 16, 17, 18, 19 and 19-A are violated when mobile phone users are deprived from availing the services; access to telecommunication services has become a fundamental right.

5. The learned counsel who has appeared on behalf of the Authority has argued that; the Federal Government is

vested with the jurisdiction to issue policy directives under section 8(2)(c) read with section 54 (2) of the Act of 1996; the Federal Government has issued the policy directive, dated 26-12-2009 (hereinafter referred to as the "**Policy Directive**") regarding the closure of telecommunication services due to national concerns; pursuant to the said Policy Directive the Authority is under an obligation to issue orders/directions to the licensees for closing down telecommunication services on the requests received from the law enforcing agencies; under section 54 (2) the Federal Government has preference and priority in relation to the telecommunication system; it is within the exclusive domain of the Federal Government to decide matters relating to the defence or security of Pakistan; the Policy Directive is binding upon the Authority under section 8(1) of the Act of 1996; pursuant to the Policy Directive the Authority has issued a Standing Operating Procedure, dated 15-02-2010 (hereinafter referred to as the "**SOP**"); the judgment of the august Supreme Court in the case of "Mustafa Impex, Karachi and others " *supra* is not attracted since the expression 'Federal Government' has been expressly defined in the Act of 1996.

6. The learned Assistant Attorney General has also been heard at length. It is the case of the Federal Government that it was empowered under section 8 of the Act of 1996 to issue the Policy Directive and that the Authority is under an obligation to comply therewith.

7. The learned counsels have been heard and the record perused with their able assistance.

8. The controversy in the instant appeal and the connected petitions is regarding the power and jurisdiction vested in the Federal Government or the Authority to direct the service providers licensed under the Act of 1996 to suspend the mobile cellular services to their customers. The questions which emerge for consideration are in the context of the powers vested in the Federal Government under section 8 of the Act of 1996 to empower the Authority, through a policy directive, to pass orders and directions relating to the suspension of mobile cellular services. The adjudication essentially involves interpretation of the provisions of the Act of 1996, particularly sections 8 and 54(3) *ibid*. This Court is also required to examine whether the Policy Directive is in conflict with section 54 of the Act of 1996 and, if so, then the ensuing consequences. In essence, this Court has to determine the scope of the powers vested in the Federal Government and the Authority to direct the licensed service providers of mobile cellular services to suspend its operations.

9. In order to answer these questions it would be beneficial to examine the relevant provisions of the Act of 1996. The Act of 1996 was, *inter alia*, promulgated to provide

for the re-organization of the telecommunication system in Pakistan by establishing the Authority and to regulate the telecommunication industry and the transfer of telecommunication services to the private sector. Section 2 defines various expressions. 'Federal Government' is defined in section 2(fa) as meaning the Federal Government in the Ministry of Information, Technology and Telecommunication Division, unless for any specific purpose specified otherwise by notification in the official Gazette or amendment in the Rules of Business, 1973. 'Licence' has been defined in section 2(h) while 'licensee' under section 2(j). The expression 'scarce resource' has been defined in section 2(qc) as meaning radio frequency spectrum, right of way and numbering. The expression 'telecommunication service' is defined in section 2(v). The Authority has been established under section 3 and its functions and powers are described in sections 4 and 5 respectively. The responsibilities of the Authority have been explicitly mentioned in section 6 and they, inter-alia, include ensuring that the rights of licensees are duly protected and that the interests of users of telecommunication services are duly safeguarded and protected. Section 8 describes the powers of the Federal Government to issue policy directives. It empowers the Federal Government to issue policy directives to the Authority as and when it considers necessary; however, such directives issued by the Federal Government cannot be inconsistent with the provisions of the Act of 1996. The matters regarding

which the Federal Government is vested with discretion to issue policy directives have been enumerated under clauses (a) to (c) sub section 2 of section 8. Section 8(2)(c) empowers the Federal Government to issue policy directives regarding 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. It may be noted that sub section (2) has to be read with sub section (1). Thus the power of the Federal Government to issue policy directives regarding matters described in sub section (2) of section 8 is circumscribed by the use of the expression 'not inconsistent with the provisions' of the Act of 1996. Section 20 provides for powers vested in the Authority to grant licenses. Section 54 is titled as 'National Security'. The said provision is divided into 3 sub sections. Sub section (1) empowers the Federal Government to authorize any person or persons to intercept calls and messages or to trace calls through any telecommunication system in the context of national security or if there is an apprehension of the commission of any offence. Sub section (2) of section 54 provides that during war or hostilities against Pakistan by a foreign power or internal aggression or for the defence or security of Pakistan, the Federal Government shall have preference and priority in telecommunication systems over any licensee. Sub section (3) of section 54 explicitly empowers the Federal Government to suspend or modify an order or license made or issued



under the Act of 1996 or to 'cause suspension of operations', functions or services of any licensee for such time as it may deem necessary. However, the power vested under section 54(3) has been expressly confined to the eventuality or happening of the 'proclamation of emergency by the President'. The proviso to sub section (3) of section 54 provides that the Federal Government may compensate any licensee whose facility and services have been affected on account of invoking the powers described *ibid*. The power to suspend or 'cause suspension of operation, functions or services of any licensee' is exclusively provided under section 54(3) of the Act of 1996. It is relevant to note that the Act of 1996, by no stretch of the imagination, independently vests power in the President to 'proclaim an emergency'. The power and jurisdiction vested in the President relating to the 'Proclamation of Emergency' is provided under Part X of the Constitution i.e. from Articles 232 to 237.

10. A plain reading of the Act of 1996 as a whole and the above highlighted provisions unambiguously shows that the said statute is a comprehensive special law covering, *inter alia*, all matters relating to the regulation of telecommunication industry and services. The rights of a licensee as well as a customer of telecommunication services, such as mobile service operations, are determinable and exclusively regulated under the Act of 1996. The power to suspend or cause suspension of operations, functions or

services of a licensee is explicitly provided under sub section (3) of section 54 *ibid*. There is no other provision in the Act of 1996 which vests the power or jurisdiction in either the Authority or the Federal Government to suspend or cause suspension of operations, functions or services of a licensee on the ground of "National Security". The legislature, by using clear and unambiguous language, has confined the power and jurisdiction of the Federal Government to issue policy directives by using the expression "not inconsistent with the provisions of the Act' in sub sections (1) and (2A) of section 8 of the Act of 1996. The Federal Government, therefore, cannot issue any policy directive on matters relating to telecommunication policy referred to in sub section (2) of section 8 which would be inconsistent with the other provisions. The power under section 8 is neither independent nor exclusive, rather the language used by the legislature makes it obvious that it has been made subject to the other provisions of the Act of 1996. Sub section (1) of section 8 has an overriding effect over sub section (2) and, therefore, the latter provision cannot be read in isolation. Clause (c) of sub section (2) of section 8 is, therefore, to be read with sub section (1) *ibid*. A plain reading of the Policy Directive and SOP unambiguously shows that they are inconsistent with sub section (3) of section 54 of the Act of 1996. As already noted above, the only eventuality contemplated under the Act of 1996 to cause the suspension of operation of a licensee is when the President has proclaimed an Emergency in the

exercise of powers conferred in this regard under the Constitution i.e. such proclamations which have been described under Part X *ibid*. This is definitely the obvious and explicit intent of the legislature.

11. It is a settled principle of statutory interpretation that in order to discover the intention of the legislature the statute is to be read as a whole. The provision which is being interpreted has to be compared with the other parts of the statute. If the language is clear and the meaning is plain then the Court is required to give effect to the legislative intent regardless of the consequences. Moreover, redundancy cannot be attributed to the legislature. Every part and word of the statute has to be given effect. As a corollary, an interpretation which renders any part of the statute redundant has to be avoided.

12. Applying the above principles of interpretation of a statute to the provisions of the Act of 1996, there can be no other conclusion but to hold that the services or operations of a licensed telecommunication service provider can only be suspended under clause (c)(ii) of subsection 2 of section 23 or section 54(3) read with clause 6.7.1 or clause 6.2.1 of the License granted under the Act of 1996. The service cannot be suspended or caused to be suspended in any other manner. The learned counsels appearing on behalf of the respondents, despite their able assistance, have not been able to show any

other provision which would vest the Authority with power and jurisdiction to suspend the services or operations of a licensed telecommunication service provider, thus depriving the customers or users from availing the facilities. The Federal Government is not empowered to issue any policy directive under section 8 of the Act of 1996 which is inconsistent with section 54(3) *ibid.* To the extent of inconsistency the policy directive will be *ultra vires* and void. The Policy Directive dated 26-12-2009, to the extent of its inconsistency with section 54(3), is without lawful authority and jurisdiction and, therefore, void. There is no force in the argument raised by the learned counsel for the respondent Authority that sub section (2) of section 54 of the Act of 1996 vests power in the latter to cause suspension of the mobile cellular service. The said provision can only be invoked in the eventualities described therein i.e. (i) war or (ii) hostilities against Pakistan by any foreign power or (iii) internal aggression or (iv) defense or security of Pakistan. Apprehensions relating to public safety, law and order or the happening of an untoward incident can by no stretch of the imagination attract section 54(2). Moreover, this provision merely envisages that, in the specific eventualities, the Federal Government shall have preference and priority in telecommunication systems over the licensee. The expression 'telecommunication system' has been defined in section 2(u). The preference or priority over the licensee is confined to the mediums described in the definition of the said expression

and it does not vest the power in the Federal Government to directly or indirectly suspend or cause suspension of the services and operations of a licensed telecommunication service provider. Last but not the least, if the above argument is accepted then section 54(3) would be rendered redundant. The harmonious interpretation would be that the power to suspend or cause suspension of the services, operations or functions of a licensed telecommunication provider in the context of 'National Security' is exclusively provided under sub section 3 of section 54 of the Act of 1996 and that it can only be invoked if there is a Proclamation of Emergency by the President of Pakistan pursuant to powers vested under Part X of the Constitution i.e. Articles 232 to 237 *ibid*. Causing the suspension otherwise may expose the Federal Government or the Authority to claims of compensation or damages by the licensees or the users of the mobile cellular services.

13. In the instant case, the appellant Company has impugned the orders/directives of the Authority regarding the blocking or suspension of mobile cellular services on the basis of mere apprehensions relating to avoiding an untoward incident. Such orders/directives were definitely in violation of the express provisions of the Act of 1996, particularly section 54(3) *ibid*.

14. For what has been discussed above, the instant appeal and the connected petitions are allowed. Consequently, the actions, orders and directives issued by the Federal Government or the Authority, as the case may be, which are inconsistent with the provisions of section 54(3) are declared as illegal, ultra vires and without lawful authority and jurisdiction. The Federal Government or the Authority are, therefore, not vested with the power and jurisdiction to suspend or cause the suspension of mobile cellular services or operations on the ground of national security except as provided under section 54(3).

(ATHAR MINALLAH)  
JUDGE

Announced in open Court on 26<sup>th</sup> February, 2018.

JUDGE  
*Approved for reporting.*

**ANNEXURE-A**

<b>SR. No.</b>	<b>Case No.</b>	<b>Case Title</b>
1.	W.P. No. 1498/2016.	Muhammad Ahmad Raza v. Pakistan Telecom Authority, etc.
2.	W.P. No. 1499/2016.	Muhammad Zohaib v. Pakistan Telecom Authority, etc.
3.	W.P. No. 1500/2016.	Waqar Ahmad v. Pakistan Telecom Authority, etc.
4.	W.P. No. 1513/2016.	Masooma Hassan v. Pakistan Telecom Authority, etc.

**JUDGE**