

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Tassaduq Hussain Jillani, CJ
Mr. Justice Khilji Arif Hussain
Mr. Justice Sh. Azmat Saeed

CIVIL PETITION NO.2082 OF 2013.

*(On appeal from the order dated 3.12.2013 of the
Islamabad High Court, Islamabad passed in FAO
No.56 of 2011)*

Pakistan Telecommunication Company
Limited

Petitioner (s)

VERSUS

Pakistan Telecommunication Authority and others Respondent (s)

For the Petitioner (s) : Mr. Ali Raza, ASC
Mr. Tariq Aziz, AOR

For Respondents Nos.3, 4, 6: : Barrister Sardar Ejaz Ishaq Khan, ASC

Date of Hearing : 08.01.2014.

JUDGMENT

SH. AZMAT SAEED, J.- This Civil Petition for Leave to Appeal is directed against the Order dated 03.12.2013 passed by the learned Islamabad High Court, Islamabad, whereby FAO No.56 of 2011, filed by the

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Superintendent
Supreme Court of Pakistan
Islamabad

present Petitioner under Section 7(1) of the Pakistan Telecommunication (Re-Organization) Act, 1996 (hereinafter referred to as "the Act of 1996") was dismissed.

2. The brief facts necessary for adjudication of the *lis* at hand are that the Petitioner, Pakistan Telecommunication Company Limited, applied for and was granted a licence by Respondent No.1, Pakistan Telecommunication Authority, in terms of the Act of 1996, to provide a broad range of telecommunication services, including local loop services, wireless local loop ("WLL") services, local and long distance and international telephonic services to customers within Pakistan. The said license was valid for a period of 25 years till 2021 and renewable thereafter. In terms of the said license, the Petitioner was entitled to use a specified radio frequency spectrum/bandwidth.

3. On 14.12.2010, Respondent No.1 issued a letter to the present Petitioner alleging that the Petitioner was using extra unauthorized radio frequency spectrum/bandwidth. Being dissatisfied with the response of the Petitioner, Respondent No.1 issued a Show Cause Notice dated 27.4.2011, alleging the violation of the terms

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of the license by the Petitioner by using extra unauthorized radio frequency spectrum/bandwidth. Such notice was apparently issued on the basis of monitoring of the activities of the Petitioner by the Frequency Allocation Board (FAB). The said Show Cause Notice was replied to by the present Petitioner on 26.5.2011. Whereafter a hearing was commenced culminating in the Determination dated 16.9.2011 by Respondent No.1, whereby it was held that the Petitioner had indeed violated the terms of its license and had used extra radio frequency spectrum/bandwidth, as a consequence whereof a fine of Rs.82.496 Million was imposed upon the Petitioner under Section 23 of the Act of 1996. The fine was required to be paid within a period of 30 working days.

4. Aggrieved, the Petitioner filed FAO No.56 of 2011 under Section 7(1) of the Act of 1996 before the learned Islamabad High Court, Islamabad. During the course of proceedings, Respondents Nos.2 to 6, who are competitors of the present Petitioner sought to be impleaded as a party to the proceedings. Such request was eventually acceded to. The learned High Court after

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hearing the parties, vide Impugned Order dated 03.12.2013, dismissed the appeal, filed by the Petitioner.

5. It is contended by the learned counsel for the Petitioner that the findings arrived at both by Respondent No.1 vide Determination dated 16.9.2011 as well as by the learned High Court vide the Impugned Order dated 03.12.2013 are not supported by the evidence or material available on record and that it has not been proved that the Petitioner had violated any of the terms of its license or had used extra unallocated radio frequency spectrum/bandwidth, therefore, neither the Determination of Respondent No.1 nor the Impugned Order of the learned High Court are sustainable in law. The learned counsel further contended that the Petitioner by way of good faith and without prejudice had paid the fine, as imposed. The primary grievance is with regards to the findings of the violation of the license by way of the Determination and the Impugned Order of the learned High Court.

6. The learned counsel for the private Respondents on caveat has controverted the contentions raised on behalf of the Petitioner. It is added that the factum of the violation of the terms of the license by the Petitioner by the

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unauthorized use of extra radio frequency spectrum/bandwidth stood established through a monitoring survey of the Frequency Allocation Board (FAB).

7. Heard and the available record perused.
8. The Petitioner was granted a license by Respondent No.1, to operate telecommunication services, including "WLL". In terms of the said license, a quantified and specified radio frequency spectrum/bandwidth was allowed to be used by the Petitioner. The activities of the Petitioner were apparently monitored, as required by the FAB and a survey report in this behalf was generated through applying National Frequency Management and Monitoring System (NFMMS), which disclosed that the Petitioner was using extra unallocated radio frequency spectrum/bandwidth. It is not the case of the Petitioner that the FAB did not possess the requisite technical skill to monitor the radio frequency spectrum/bandwidth actually being used by the Petitioner or that the NFMMS was not an appropriate tool for such determination. On the basis of such monitoring survey of the FAB, Respondent No.1 returned the findings to the effect that in fact the Petitioner

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was unauthorisidly using the radio frequency spectrum/bandwidth, which was not allocated to it and thereby had violated the terms of its license. Such findings have been upheld in appeal by the learned High Court by way of the Impugned Order dated 03.12.2013. In the instant case, there is a concurrent finding of fact, which appears to be consistent with the record. While, exercising the jurisdiction under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, we are not persuaded to embark upon a fresh enquiry or reappraise the material available on record.

9. Consequently, this petition being without merit is dismissed and leave declined.

Sd/- Tassaduq Hussain Jillani,HCJ
 Sd/- Khilji Arif Hussain,J
 Sd/- Sh. Azmat Saeed,J



Islamabad
 08.01.2014.

'NOT APPROVED FOR REPORTING'
 M. Sajdar Mahmood*

Certified to be True Copy
[Signature]
 Superintendent
 Supreme Court of Pakistan
 Islamabad

GR No: 435/14 Civil/Criminal

Date of Presentation: 9-1-14

No. of Words: 1865

No. of Follies: 18

Requisition Fee Rs: 5.00

Copy Fee in: 11.16

Court Fee stamps: 16.16

Date of Completion of Copy: 12/1/14