

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Nasir-ul-Mulk
Mr. Justice Jawwad S. Khawaja
Mr. Justice Umar Ata Bandial

Civil Petition No.630 of 2014

(Against the judgment dated 26.02.2014 of
the Islamabad High Court passed in FAO
No.72 of 2011)

Pakistan Telecommunication Company Ltd. ... Petitioner(s)

Versus

Pakistan Telecommunication Authority ... Respondent(s)

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

For respondent No.1: Mian Shafaqat Jan, ASC

For respondent Nos.2-3: Sardar Ijaz Ishaq Khan, ASC

Date of hearing: 25.06.2014

ORDER

Jawwad S. Khawaja, J. The petitioner before us is the Pakistan Telecommunication Company Limited (PTCL). It impugns the judgment of the High Court dated 26.2.2014 whereby FAO No.72/2011 which had been filed by PTCL to challenge the decision of the Pakistan Telecommunication Authority (PTA) dated 18.11.2011, was dismissed. As a consequence, the decision rendered by PTA was affirmed by the High Court. PTCL has now sought leave to appeal against the aforesaid determination dated 18.11.2011 and the judgment of the High Court dated 26.2.2014.

2. We have heard learned counsel for the petitioner at some length and have also gone through the impugned judgment and the Order of the PTA dated 18.11.2011. On 2.6.2014, it was noted by us that the issue arising in this case is simple. Respondents Nos. 2 and 3 namely, the Micronet Broadband (Pvt) Ltd. and LINKdotNET Telecom (Pvt) Ltd. are providers of DSL Broadband services in Pakistan. The petitioner PTCL provides a number of services to consumers in Pakistan including DSL Broadband service. PTCL and

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Superintendent
Supreme Court of Pakistan

the afore named respondents provide DSL Broadband services to consumers in Pakistan and are thus competitors *inter se*.

3. It is the case of the respondents Nos. 2 and 3 that PTCL is in fact subsidizing its DSL Broadband service through its other businesses and as such is indulging in anti-competitive practices by providing a cross subsidy to its DSL Broadband service from revenues generated by its other services.

4. The respondents Nos. 2 and 3 feeling aggrieved of the anti-competitive practices of PTCL, filed complaints with the PTA which is the regulator of the Telecommunication sector in Pakistan. The allegations made in the complaints were considered by PTA which after hearing the parties recorded its findings. Consequently, the PTA vide letter dated 12.5.2011 directed PTCL to *"submit its separated accounts for FY 2010-11 on current cost basis, in accordance with Accounting Separation Regulations/Guideline, 2007"*. The PTA also observed that PTCL was providing services in both retail and wholesale segments of Broadband services. PTCL was, therefore, directed to *"provide separated accounts for broadband services, in addition to services already covered in Accounting Separation Regulations/Guidelines 2007"*. The necessity for requiring separated accounts was fully justified by the reasoning of PTA appearing in its decision of 18.11.2011. Based on its findings, the PTA passed the following order:-

"Keeping in view the aforementioned facts and findings, the Authority hereby disposes off the complaints lodged by the Complainants and directs PTCL to prepare and submit its audited separated accounts for retail and wholesale segment of broad band services in addition to services already covered in Accounting Separation Regulations/Guidelines 2007 by 31st December, 2011".

5. Feeling aggrieved of the aforesaid order, PTCL, as noted above, filed FAO No. 72 of 2011 in the Islamabad High Court which was dismissed by the High Court. As such the order of PTA dated 18.11.2011 held the field and was required to be complied with.

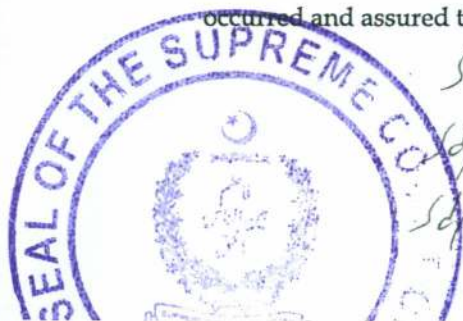
6. Before us learned counsel for PTCL argued that the requirement by PTA to provide for the separated accounts went beyond the regulations/guidelines of 2007. On this basis it was contended that the order of 18.11.2011 was not legally sustainable. This contention is completely misconceived. The PTA as regulator of the Telecom sector is fully mandated to ensure fair competition between the service providers rendering the

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same service. The PTA is also required to ensure that none of the service providers indulge in anti-competitive practices. This mandate of the PTA is not disputed. Therefore, if PTA has ordered the submission of separated accounts this is meant for the purpose of determining if indeed PTCL is indulging in anti-competitive practices as alleged by the respondents Nos. 2 and 3. The PTA is empowered to seek information from service providers licensed by it, to hear and decide the complaints alleging anti-competitive practices such as cross subsidies. The learned counsel for the petitioner also acknowledged that there was no bar in the regulations/guidelines of 2007 which prohibits PTA from demanding the information which had been sought by it in its order dated 18.11.2011.

7. In the foregoing circumstances, we are not inclined, while exercising our jurisdiction under Article 185(3) of the Constitution, to interfere in the impugned judgment and in the well reasoned order of the PTA dated 18.11.2011. The petition, being devoid of any merit, is, therefore, dismissed and leave to appeal is refused.

8. Before parting with this judgment, we may note that on the last date of hearing i.e. 18.6.2014, we had taken serious notice of the fact that although the High Court had rendered its decision on 26.2.2014, the PTA as a regulatory authority had not taken or initiated any action against PTCL in terms of its own order of 18.11.2011. In the circumstances, the Chairman PTA as well as the Director (Commercial Activities) were asked to explain "*as to why inordinate delay has been caused in the regulatory functions*" of PTA. Today, Mian Shafaqat Jan learned counsel appearing on behalf of respondent No. 1 states that such laxity in the performance of PTA's regulatory function should not have occurred and assured the Court that this will not happen again.



Sd/- Wasir ul Mulks }
 Sd/- Jawwad S. Khawaja }
 Sd/- Umar Ata Bandial }
 Sd/-

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