

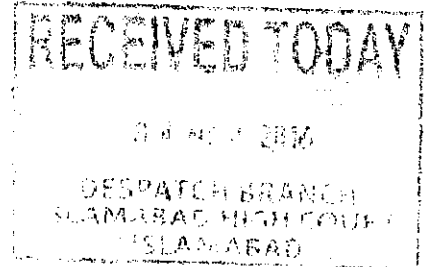
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

Writ Petition No. 1500/2016

Waqar Ahmad

Vs

PTA & others



(Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973)

REPORT AND PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1
(PTA)

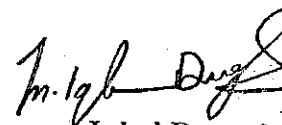
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ALI ASGHAR
Director General (Law & Regulations)
Pakistan Telecommunication Authority
Islamabad

ANSWERING RESPONDENT No. 1 (PTA)

through


Munawar Iqbal Duggal
Barrister-at-Law

State Life Building No. 7, Grounds Floor,
Jinnah Avenue, Blue Area, F-6/4
Islamabad

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

In Re:

Writ Petition No. 1500/2016

Waqar Ahmad

Vs

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(Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973)

=====
**REPORT AND PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1
(PTA)**
=====

Respectfully Sheweth:

REPORT/PRELIMINARY SUBMISSIONS:

The contents of the petition under reply are vague and are bound to mislead this Hon'ble Court, accordingly, at the outset, the answering respondent is desirous to submit/state the background facts in order to give a clear picture to this Hon'ble Court. The submissions are as under:

1. That answering Respondent, Pakistan Telecommunication Authority (hereinafter referred to as "PTA") was established under section 3 of the Pakistan Telecommunication (Re-organization) Act, 1996 (hereinafter referred to as the "Act") and is mandated to regulate the establishment, maintenance and operation of telecommunication systems and provision of telecommunication services in Pakistan.
2. That under section 5 read with section 21 of the Act, the answering Respondent (PTA) is empowered to grant and renew license for the establishment, operation and maintenance of telecommunication systems and provision of telecommunication services in Pakistan in accordance with the policy directive issued by the Federal Government under section 8 of the Act.

3. That the Respondent No.2 while exercising its powers under section 8(2)(c) read with section 54(2) of the Act issued a Policy Directive on 26th of December, 2009 (the 'Policy Directive') regarding "Closure of Telecom services due to National Security Concerns", pursuant to which the answering Respondent (PTA) has to issue directions to licensees for closing down telecommunication services on the requests of law enforcement agencies as and when required.

(Copy of the Policy Directive dated 26-12-2009 is appended as Annex-"R/I")

4. That the answering Respondent (PTA) pursuant to the Policy Directive of Respondent No.2 issued a Standing Operating Procedure (hereinafter referred to as the "SOP") for closure of telecommunication services due to National Security Concerns on 15th of February, 2010 to ensure effective implementation of the Policy Directive.

(Copy of the SOP dated 15-02-2010 is appended as Annex-"R/II")

PRELIMINARY OBJECTIONS:

The following objections, which are substantial questions of law, go to the root of the matter involved herein, and need to be decided before proceeding further:

1. That the instant Writ Petition is neither maintainable nor entertainable as no cause of action has accrued to the Petitioner either against the answering Respondent (PTA) to invoke the constitutional jurisdiction of this Hon'able Court as no action/order against legal right of the Petitioner has been passed by PTA in as much as the answering Respondent (PTA) has statutory duty to act according to the directives issued by the Federal Government as envisaged under Section 8 of the Act. Therefore the Writ Petition under reply is liable to be dismissed *in limine*.
2. That the Petitioner has approached this Hon'ble Court with unclean hands by concealing the material and substantial facts. Hence, the Petitioner is not entitled to the discretionary relief by this Hon'ble Court. || object
3. That the titled Petition is vague and scattered things have been mentioned without disclosing any violation of law on the part of the answering Respondent (PTA).

Hence, liable to be dismissed on this score alone.

4. That the Petitioner has no locus standi to file the instant petition, since the Petitioner has not come to this Court with clean hands, and the answering Respondent (PTA) has not played any role or committed any illegality, as alleged, giving the Petitioner any cause of action to file the titled Petition. Hence, the instant writ petition is non-maintainable on this ground alone.
5. That the relief sought in instant petition against the answering Respondent (PTA) amounts to restraining the answering Respondent (PTA) from performing its statutory duty which is not warranted under the law, hence the same liable to be dismissed.
6. That the Petition under reply is based upon misconception of law and facts even otherwise is fallacious and not maintainable under law. Hence, the instant petition is liable to be dismissed.

REPLY ON MERITS:

Without prejudice to the preliminary objections and submissions, unless expressly admitted, each and every averment made in the titled petition is denied, however, for the purpose of record a reply, in seriatim, is given herein below for consideration by this Hon'ble Court.

- 1-4. That the contents of these paragraphs are not denied being matter of record.
5. That the contents of this paragraph are not denied to the extent of entitlement of Petitioner's fundamental rights as enshrined under the Constitution of Islamic Republic of Pakistan. However, Petitioner's believe that the telecommunication is his fundamental right is based misconception. Furthermore, if it is considered that the telecommunication is fundamental right then it is also established principle of the law that all the fundamental rights are subject to legal exceptions.
- 6-11. That the contents of these paragraphs are a matter of record hence the same need not to reply.

12. That the contents of this paragraph are vehemently denied being incorrect as stated and self-contradictory. The answering Respondent (PTA) is bound to adhere to the directive issued by Respondent No.2 and accordingly telecommunication services were closed for certain period of time due to the security concerns. Furthermore, prior intimation with respect to the closure of telecom services, it is submitted that the time and duration of closure of telecom services cannot be disclosed as it may jeopardize the activity and may risk the national security. ||
13. That the contents of this paragraph are vehemently denied being misconceived. It is an established fact that the terrorists used telecommunication services for their ill founded activities. (That the contents of this paragraph are denied as stated. As mentioned above, the answering Respondent (PTA) is bound to adhere to the directive issued by Respondent No. 2 and accordingly telecommunication services were closed for certain period of time due to the security concerns.) ||
14. That the contents of these paragraphs are a matter of record hence the same need not to reply.
15. In response to the contents of this paragraph, it is submitted that the answering Respondent (PTA) is bound to adhere to the policy directive issued by Respondent No.2 and accordingly telecommunication services were closed for certain period of due to the security concerns, as detail submitted in paras supra.
16. That the contents of this paragraph are denied being misconceived and contradictory. The Petitioner himself has admitted in Para No. 8 of the petition that the telecommunication services remained excellent. The closure of telecommunication services were never frequent and prolonged as it always according to the requirements of the law enforcement agencies for a limited time period keeping in view the security concerns.

17. That the contents of this paragraph are vehemently denied as detail submitted in paras supra.
18. That the contents of this para are vehemently denied however, the Petitioner is put to strict proof of the assertion made therein.

Reply to Grounds

1. The contents of Grounds A to D are denied being false and misconceived. The provisions of law and the judgments of the superior courts as referred by the Petitioner are not applicable in the instant case in light of the preliminary submissions, preliminary objections and parawise replies on facts.

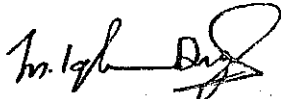
PRAYER

Under the reasons and circumstances mentioned above, it is most humbly prayed that the Writ Petition under reply may very kindly be dismissed with cost.

ALI ASGHAR
Director General (Law & Regulations)
Pakistan Telecommunication Authority
Islamabad

ANSWERING RESPONDENT NO.1 (PTA)

through


(Munawar Iqbal Duggal)
Barrister-at-Law

Muhammad Naeem Ashraf
Advocate High Court

State Life Building No. 7, Ground Floor
Jinnah Avenue, Blue Area,
F-6/4 Islamabad

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R/I
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Most Immediate
By Fax/Special Messenger

Government of Pakistan
Ministry of Information Technology
(IT & Telecom Division)

F. No.5-1/2009-DT

Islamabad, the 26th December 2009

Subject: POLICY DIRECTIVE UNDER SECTION 8 OF PAKISTAN TELECOMMUNICATION (RE-ORGANIZATION) ACT, 1996 REGARDING CLOSURE OF TELECOM SERVICES DUE TO NATIONAL SECURITY CONCERNS

Reference powers conferred in Pakistan Telecommunication (Re-Organization) Act, 1996 under Section 8(2) (c) and Section 54(2), the Federal Government is pleased to issue following Policy Directive to Pakistan Telecommunication Authority (PTA) for compliance:-

Policy Directive under Section 8 (2) (c) and 54(2) of the Act regarding closure of telecom services due to National Security concerns.

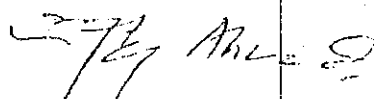
2. During war or hostilities against Pakistan by any foreign power or internal aggression or for the defence and security of Pakistan, there may be requirement to close down telecommunication services in certain specified areas. PTA shall follow following guidelines for closure of telecom services in any specified location within Pakistan, Azad Jammu and Kashmir (AJK) and Gilgit-Baltistan:

- (i) PTA shall designate a focal point to handle all requests for closure of telecom services from Law Enforcement Agencies (LEA), Inter-Services Intelligence (ISI) and Army for closure of telecom services.
- (ii) LEA and Army shall forward formal written request to PTA for closure of telecom services in specified area location through focal points mentioned in paras vi-viii below. Request shall be initiated only if LEAs and or Army feel that there is significant threat to National Security of the Country. Circumstances leading to initiation of such request may include:
 - (a) Declared war or hostilities against Pakistan by any foreign power.
 - (b) Internal aggression by terrorists/group (s) posing threat to national security.
 - (c) Closure is for the defence and security of Pakistan.
- (iii) Request for closure of telecom services will provide following information:-
 - a) Type of telecom services.

- b) Area where closure is required.
- c) Concerned Licensee(s).
- d) Time and duration of closure.

- (iv) Upon receipt of request, PTA would issue closure direction to the concerned licensee within 06 hours of receipt of request. However, in case of urgent closure requirement, Chairman PTA would implement the closure direction on receipt of request from the competent authority as declared in this policy directive.
- (vi) DG (Tech) Inter-Services Intelligence (ISI) shall be focal point for initiation of such requests from ISI, Agency administrations of federally and provincially administered tribal territories.
- (vii) Ministry of Interior shall be focal point for initiation of such requests from LEAs such as Police, Rangers, Federal Investigation Agency (FIA), Intelligence Bureau (IB) etc and Levies force.
- (viii) Director Telecommunication ex General Headquarters, Signals Directorate on the instructions of Military Operations Directorate shall be focal point of such requests from Army, ISI, LEAs etc for closure of telecom services in areas where Army is operating. ISI, Ministry of Interior etc should approach Military Operations Directorate for closure of telecom service in such areas.

3. This issues with the approval of Prime Minister as Minister In charge of IT & Telecom Division.


 °(Mushtaq Ahmad Bhatti)
 Member Telecom
 Tele: 9210244

✓The Chairman PTA,
 PTA HQs, F-5/1,
 Islamabad.

Copy for information to:

1. The Secretary, Interior Division, Islamabad.
2. The Secretary, Cabinet Division, Islamabad.
3. The Secretary, Ministry of Defence, Rawalpindi.
4. The Secretary, Ministry of Kashmir Affairs and Gilgit Baltistan, Islamabad.
5. The Secretary, Azad Jammu Kashmir (AJK) Council, Islamabad.
6. Signal Officer-in-Chief, Signal Directorate, Rawalpindi.
7. DG (Tech) ISI, Islamabad.

R/II

8

CONFIDENTIAL



Government of Pakistan
PAKISTAN TELECOMMUNICATION AUTHORITY

F-5/1, ISLAMABAD

Tel: 9221444

Fax: 2878139

http://www.pta.gov.pk

No. 6-135/2010/Enf/PTA

15 February, 2010

Subject: Standing Operating Procedure (SOP) - Closure of Telecommunication Services Due to National Security Concerns

1. In pursuant to the Ministry of Information Technology & Telecom, Policy Directive No. 5-1/2009-DT dated 26th December 2009, a Standing Operating Procedure (SOP) has been devised regarding "Closure of Telecommunication Services due to National Security Concerns". The same is enclosed for information and compliance. Please provide the local person contact details as required vide Para 3 (c) of the SOP within seven days of the issuance of this letter.

2. This issues with the approval of the Authority.

Yawar Yasin
Director General (Enforcement)

o/c

To:

- (1) All Operational Cellular Operators (List Attached)
- (2) All Operational WLL Operators (List Attached)
- (3) All Operational LDI Operators (List Attached)
- (4) All Operational Local Loop Operators (List Attached)
- (5) All Operational Internet Service Providers (List Attached)

Copy:

- (1) DG (G & EA), PTA HQs
- (2) PTA Zonal Directors

Confidential

Standing Operating Procedure

Closure of Telecommunication Services Due To National Security

Concernes

Background

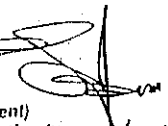
1. To ensure national security during war or hostilities by any foreign power or internal aggression at times telecommunications services are required to be blocked in selected areas within Pakistan, Azad Jammu & Kashmir and Gilgit-Baltistan. In PTA, Enforcement Division shall handle the issue. This Standing Operating Procedures (SOP) therefore is being formulated to ensure that the requirement is clearly understood and executed by all stake holders.

2. The objective of this Standing Operating Procedure (SOP) is to implement the Policy Directive No. 5-1/2009-DT dated 26th December, 2009 of the Federal Government issued under Section 8 (2) (c) and 54 (2) of the Act regarding closure of telecom services due to National Security concerns and have high level of coordination between all the stakeholders in order to execute the activity within specified time.

3. Pre-Requisites

a. Closure Details. Request for closure of Telecom Services shall include following information:-

- (1) Type of Telecom Services
- (2) Area where closure is required
- (3) Concerned Licensee(s)
- (4) Time and duration of closure


YAWAR YASIN
 Director General (Enforcement)
 Pakistan Telecommunication Authority
 Headquarters, F-5/1, Islamabad

15/2/10

b. Closure Requesting Authorities. PTA shall close telecom services in particular area upon receipt of requests from following:-

- (1) Director General (Technical) from Inter-Services Intelligence.
- (2) Agency Administrations of federally and provincially administrated tribal territories.
- (3) Ministry of Interior on behalf of LEAs such as Police, Rangers, Federal Investigation Agency (FIA), Intelligence Bureau (IB) and Levies forces.
- (4) Director Telecommunication ex General Headquarters, Signal Directorate on the instructions of Military Operations Directorate in areas where army is operating.

c. Nomination of Focal Persons

- (1) Director General (Enforcement), PTA shall be the focal point to handel requests for closure of telecom services
- (2) Service Providers shall nominate two (02) points of contact. Out of these, one point of contact shall act as the focal person and the second nominee shall act as a backup in case focal person is not available.
- (3) Contact person's name, designation, landline number, mobile number, fax number and email shall be communicated within 7 days of issuance of this SOP.

d. Common Map. In order to ensure that the area/place is clearly understood, a common map identified/shared by PTA shall be the basic document.

4. Procedure. Following procedure shall be adopted for closure/restoration of services:-

[Signature]
 15/2/10

11

a. Closure Instructions

- (1) DG (Enforcement) PTA or an officer of Enforcement designated by him not below the rank of Assistant Director (AD) shall pass the instructions regarding closure of services through SMS/Email/Telephonically within 02 hours of receipt of formal written request from designated organization with intimation to Authority.
- (2) Since the closing of services can take place at odd hours i.e. late night/early morning, therefore, designated contact persons of all service providers shall ensure prompt response of instructions by attending SMS/Email/Phone.

b. Closure of Services

- (1) Service providers shall be given 3 hours of early warning before closure. All service providers shall be required to close the communication services in the identified locations 30 minutes prior to the actual time of closure.
- (2) Each focal person will confirm the closure of communication through SMS or email followed by a telephone call to the PTA nominated officer.
- (3) Spillover to the closure areas shall also be ensured to be restricted/blocked from nearby BTSs.
- (4) Service providers shall ensure closure/restoration on 24x7 bases.

15/2/10

c. Restoration of Services

- (1) The directive for restoration of services will also be first sent through SMS or email followed by a telephone call to the operator's focal person by PTA nominated officer with intimation to Authority.
- (2) Restoration shall only be made once instruction received from PTA and companies shall not restore the services at their own.

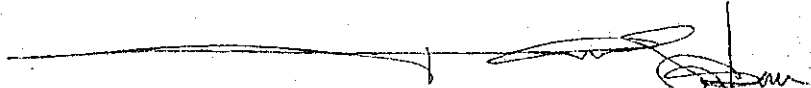
d. Miscellaneous

- (1) After closure of the services in a particular area, if a number is apparently found operational in the same area, the concerned mobile company shall provide its current location within shortest possible time span not exceeding two hours after inquiring the same through SMS/Call/Email.
- (2) Once the current location of the BTS is identified as in the area where services have been blocked or its signals are spillover to the blocked area, the serving BTS of that particular number shall also be immediately blocked on direction of PTA.
- (3) A report containing time, total number of BTS closed alongwith address of each BTS shall be reported to PTA soon after closure via email.
- (4) The Enforcement Division shall also keep informed the respective Zonal Director(s) about the closure/restoration of services in their areas of jurisdiction.

15/2/10

(5) Confidentiality of information shall be maintained at each level.

5. Conclusion. The whole activity is carried out on the request of Law Enforcement Agencies in the best interest of national security, therefore, service providers to ensure compliance in true letter and spirit.


YAWAR YASIN 15/2/10
Director General (Enforcement)
Pakistan Telecommunication Authority
Headquarters, F-5/1, Islamabad