

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 705-11-2020

Pervez Said

Vs

Ministry of Information and Technology

Date: .23.8.2021

Fawad Malik: Information Commissioner

A. APPEAL.

1. Mr. Pervez Said, a citizen of Pakistan preferred an application dated 02.10.2020 to the Secretary, Ministry of Information and Technology Islamabad invoking his right under the Right of Access to Information Act, 2017 read with Article 19A of the Constitution of Pakistan 1973. He requested the following information/record:
 - i. *“What are the rules that have been enacted under PECA to allow its provisions to be used by state authorities within the limits of the Constitution and in a manner that does not breach Fundamental Rights including Article 10A and 19?”*
 - ii. *What measures have been taken by the Ministry and PTA to protect the rights of women generally, and women journalists specifically under the provisions of PECA and otherwise? How have their grievance against online harassment been addressed and what action has been taken against alleged offenders?*
 - iii. *What process and due diligence measures are taken by PTA when blocking online content? Are any reasons given to content owners when online content is blocked?”*
2. The respondent organization didn't respond within the limitation provided in the Act, hence the appeal before the Pakistan Information Commission, Islamabad.

B. PROCEEDINGS.

3. The notice of the Commission was replied by the Head, Legal Cell, Ministry of Information & Technology. The relevant part is reproduced as under:

PRELIMINARY SUBMISSIONS AND REPORT:

- *“That the Ministry of Information Technology & Telecom Division (MoIT&T) is the national focal ministry and enabling arm of the Government of Pakistan for planning, coordinating and directing efforts to initiate and launch information technology and telecommunication programs and projects aimed at economic development of the country. In November 2002 MOIT&T was created, and the IT & Telecommunications*

Division of the Government of Pakistan became a part of the MoIT&T. MoIT&T is working on national agenda to have around and sustainable Information Technology and Telecommunications base which will result in socio-economic development of the country and attainment of the vision for a better Pakistan. MoIT&T is maintaining consistency of policies as is evident from achievements made in IT & Telecommunication sector since its inception. MoIT&T strives to cope with challenges in meeting the evolving requirements of the IT and telecommunications.

- *The Prevention of Electronic Crimes Act, 2016 (PECA) provides a complete framework for dealing with electronic crimes including removing or blocking of unlawful online content and powers of the Pakistan Telecommunication Authority (PTA) with respect to un-lawful online content management (Section 37 of PECA). A copy of the PECA is at Annex-I. Under section 37 of PECA, PTA is empowered to block or remove unlawful online content. Under section 37 read with clause (h) of sub-section (2) of section 51 of PECA, PTA is empowered to prescribe rules, with the approval of the Federal Government, for blocking/ removal of unlawful online content and for enforcing national security measures in the telecommunication sector with the cooperation of law enforcement agencies.*

REPLY ON FACTS:

- *That right to information is not absolute one. There are certain reasonable restrictions have been imposed in Article 19 and 19-A of the Constitution of Islamic Republic of Pakistan, 1973, Nevertheless, Ministry of Information Technology & Telecommunication (MoIT&T) is not the custodian of the requested information rather the custodian of the relevant law. i.e Prevention of Electronic Crimes Act, 2016 (PECA, 2016). However, Federal Investigation Agency (FIA) has been designated as an investigation agency by virtue of section 29 L PECA 2016. Further, Pakistan Telecommunication Authority is empowered to remove or block or issue directions for removal or blocking of access to an information thorough any information system if it consider necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court of commission of or incitement to an offence under this Act.”*

4. The appellant feeling dissatisfied with the response and reply submitted by the Ministry of Information Technology, has filed objections before the Commission. The relevant part is reproduced as under:

1. *“That while it is admitted that the Prevention of Electronic Crimes Act, 2006 (PECA) empowers the Pakistan Telecommunication Authority (PTA) to prescribe rules for the removal or blocking of access to information "if it considers it necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan....., public order, decency or morality.....", it is submitted that under section 37 (2) of PECA the same is to be done with the approval of the Federal Government through the Ministry of IT&T. The Federal Government cannot, therefore, absolve itself of responsibility from approving the Removal and Blocking of*

Unlawful Online Content (Procedure, Oversight and Safeguard) Rules 2020 ("the 2020 Rules) and place all responsibility before the PTA.

2. *That under the Pakistan Telecommunication Re-organization Act, 1996 (PTRA), section 8 authorizes the Federal Government through the Ministry of IT&T to issue policy directives to the PTA on, inter alia, the "framework for telecommunication sector development....". Hence, the Ministry is empowered to issue policy directive son the regulation of online content and, under the authority granted under the 1996Act, must review the 2020 Rules and issue a policy directive to PTA accordingly."*
3. *That the 2020 Rules impinge upon important Fundamental Rights safeguarded by the Constitution. Specifically, freedom of expression (Article 19), the right to information (Article 19A), the right to a fair trial (Article 10A) and the freedom of trade, business or profession (Article 18). It is, therefore, essential that the same be reviewed by the Federal Government at the earliest."*

C. COMMISSION'S VIEW

4. The appellant has asked for the rules that have been enacted under PECA to be used by state authorities, measures that have been taken by the Ministry and PTA to protect the rights of women generally, and women journalists specifically under the provisions of PECA and how their grievance against online harassment been addressed and what action has been taken against the alleged and what process and due diligence measures are taken by PTA when blocking online content and whether any reasons are given to content owners when online content is blocked.

The legal cell of MoIT&T has filed reply without touching and answering the queries asked by the appellant. In the reply it is stated that the Prevention of Electronic Crimes Act, 2016 provides a complete framework for dealing with electronic crimes including removing or blocking of unlawful online content and powers of the Pakistan Telecommunication Authority with respect to un-lawful online content management. It is further stated that the Federal Investigation Agency has been designated as an investigative agency under section 29 of the PECA and that PTA is empowered to remove/ block or issue directions for removal or blocking of access to a piece of information through any information system if it considers necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality or about contempt of court or commission of or incitement to an offence under PECA.

The reply is not specifically to the point and does not substantially address the questions asked by the appellant, particularly regarding the protection of the women rights in general, and women journalists in particular under the provisions of PECA and further that how their grievances against the online harassment is being addressed and what action so far has been taken against the alleged. The public body instead has countered the queries collectively

in a general manner. Each and every question of the request must be construed and addressed to the satisfaction of the appellant and the Commission.

5. The bare reading of the request depicts that the appellant has raised specific questions of public importance pertaining to the women rights that need to be addressed specifically by providing the desired information. The respondent in the reply has not claimed the exemption of the requested information provided under the Act. The Commission is of the view that the information sought by the appellant is the category of record that ought to have been displayed proactively to the access of the public at large as mandated in the section 5 of the Act.
6. It would not be out of place to mention here that the respondent body has categorically admitted in the reply that Pakistan Telecommunication Authority is empowered to remove/ block or issue directions for removal or blocking of access to an information through any information system if it consider necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court of commission of or incitement to an offence under this Act. The stance of the respondent is in contradiction to the reply.
7. Article 19-A of the Constitution and the RTI Act 2017 has empowered the citizens to have access to the record held by the public body. Disclosure of the requested record will improve the participation of the people in public affairs which will be helpful in reducing corruption and inefficiency in the department and promote the good governance.
8. It is noticed that the respondent organization has not notified the designated officer as mandated in section 9 of the Act.

D. ORDER

9. The appeal is allowed. The Secretary, Ministry of Information and Technology is directed to provide the appellant the requested information mentioned in para 1 of this order, forthwith but not later than ten days of the receipt of this order. The response should be based on record available indicating measures taken or not taken as per legal obligations of the respondent.
He is further directed to implement mandatory sections 5 & 9 of the Act in letter and spirit within one month of the receipt of this order, under intimation to this Commission.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on 23.9.2021

Certified that this order consists of four (4) pages, each page has been read and signed.