



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD

**Decision of the Authority on Application dated 20th November, 2021 filed by
Muhammad Azeem against Pakistan Telecommunication Mobile Limited**

File No: PTA/Law and Regulations/1997/2021/ **51**

Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 8th March, 2022

Panel of Hearing

Maj. Gen. Amir Azeem Bajwa (R):	Chairman
Dr. Khawar Siddique Khokhar:	Member (Compliance & Enforcement)
Muhammad Naveed:	Member (Finance)

Issue

“Termination of franchisee agreement”

Decision of the Authority

1. This order will dispose of the application dated 20th November, 2021 filed by Mr. Muhammad Azeem (the “**Applicant**”) to the Pakistan Telecommunication Authority (PTA) regarding termination of franchise agreement by Pakistan Telecommunication Mobile Limited (PTML). The relevant facts of the case are that the Applicant on 1st July, 2020 executed franchise agreement (“**Franchise Agreement**”) with PTML. After executing agreement, the Applicant through various emails addressed to PTML pointed out various irregularities during the business activities. Due to such irregularities, the Applicant suffered huge business loss almost amounting to Rs.4955000/- but PTML did not redress the genuine grievances.
2. As per application, the Applicant further stated that on 23rd September, 2020, PTML with *malafide* intention, without serving any notice and contrary to terms and condition of the Franchise Agreement cancelled his franchise situated at Sadar Bazar, Mian Channu. The Applicant further asserted that PTML wanted to create new franchise with Mr. Muhammad Sufyan for providing the business losses to the Applicant after complete ignoring the terms and conditions settled between the Applicant and PTML.
3. The Applicant further alleged that Regional Retail Manager and Area Retail Manager of PTML with the connivance of Chief Customer Operation Officer, Regional General

Manager and Sales Distribution of PTML compelled him for using illegal way of activating SIMs to meet the so called targets. The Applicant refused to do the same and he has reserved his right to avail the legal remedy against PTML. The Applicant prayed that the application may be accepted and PTML may kindly be directed to restore the franchise of the Applicant and PTML may be restrained to establish new franchise with Mr. Muhammad Sufyan and other person in the area of Tehsil Mian Channu. The Applicant further prayed that PTML may also be directed to provide the business losses amounting to Rs.4955000/- with reasonable compensation for the larger interest of justice.

4. The Applicant also filed a Writ Petition No. 19007 of 2021 titled Muhammad Azeem vs. PTA & Others before the Honorable Lahore High Court, Multan Bench. The Honorable Court vide order dated 6th December, 2021 passed the following order:

“ 2. *Let copy of the Writ Petition along with all annexures be transmitted to respondent No.1, who while adhering to the voice agitated herein will decide afore-referred complaint, (if still pending) in either side under the law/ policy, per available record obviously after extending right of audience to all the concerned. The task so assigned shall positively be culminated within next sixty days. The petitioner to appear before the Authority on 13.12.2021 for further proceedings. Disposed of.*”

5. In light of the said court order, the Applicant appeared on 13th December, 2021. In order to proceed further in the matter, PTA vide letter dated 16th December 2022 transmitted the copy of petition along with all annexures to PTML for comments / input to be provided within seven working days from the date of receipt of this matter. However, PTML vide letter dated 16th February, 2022 provided comments. For ready reference comments provide by the PTML are reproduced below:

- “i. *That from the available facts and complaint, nothing can be construed as a contravention of any provision(s) of the Pakistan Telecommunication (Re-organization) Act, 1996 and related rules, regulations, license conditions, and guidelines (“PTA Law”).*
- ii. *That the alleged dispute between PTML and its franchisee is purely to be a commercial / contractual in nature, and the remedies for the complainant, if any, would lies else.*
- iii. *That any dispute between PTML (as PTA’s license) and its franchisee, including termination, falls outside the purview of functions and powers of PTA. Nonetheless, the complainant may purse its case, if any, before the appropriate forum.*
- iv. *That PTA doesn’t seem to assume the authority and / or jurisdiction on such matters, despite the fact that the matter has been referred to it by the Honorable High Court.*

In view of the afore-stated facts, PTA is humbly requested to please dismiss the complaint of the franchisee. This is without prejudice to the rights and remedies available to PTA under its telecom licenses and the prevailing laws."

6. In order to proceed further, the matter was fixed for hearing on 8th March, 2020 before the Authority. Mr. Jawad Habib (Head of Public Affairs), PTML and Mr. Arshad Javed, PTML attended the hearing on the said date. Whereas Mr. Muhammad Azeem, the Applicant attended the hearing through online link. The Applicant and PTML reiterated the same as mentioned in the application and reply respectively.

7. After hearing the parties in detail, the Authority required the following information from the Applicant and PTML.

- a. Applicant was required to provide evidence in order to substantiate his claim to achieve targets as well as asked to provide detail of court case pending adjudication before civil court.
- b. PTML was required to provide reasons on the basis of which agreement was terminated.

8. **Finding of the Authority:**

Both the parties provided relevant record. After careful examination of the record and hearing the parties at length followings are the findings of the Authority:

8.1 Pakistan Telecommunication Authority has been established under section 3 of Pakistan Telecommunication (Re-organization) Act, 1996 (the "Act") with the mandate to regulate the establishment, maintenance of telecommunication systems and provision of telecommunication service in Pakistan. By virtue of section 5 read with sections 20 and 21 of the Act, PTA grants licenses. Accordingly, a license was also granted to PTML. Being a licensee, PTML has to provide telecomm services to subscribers.

8.2 As far as the instant matter is concerned, it is clarified that both the parties i.e., the **Applicant** and **PTML** has entered into agreement whereby both the parties agreed with terms and conditions. As per agreement the purpose of the arrangement between the parties has been agreed in the following manner:

"WHEREAS:

1.

2. *PTML desires to appoint independent contractors who shall solicit potential customer for PTML's Mobile Services and PTML's Product, and shall provide certain services to PTML's Customer; and*
3. *The Franchisee has represented to PTML that it is able and willing to solicit customer of PTML's Mobile Services and PTML's products and to provide Customer Services to PTML's Customer subject to the prevailing SOP and terms and condition set out herein"*

8.3 With regard to relationship between the parties, condition No.2.1 of the **Franchise Agreement** provides as under:

"2.1 PTML hereby appoints Franchise to solicit persons as Customers for their utilization of PTML's Mobile Services, to provide Consumer Services, to distribute and provide PTML Products in the market, whether through the Outlet Premises or through its Retailers at the Retailer Premises. The Franchisee agrees to act as a distributor with respect to PTML Products to be made available to its Retailers in accordance with this Agreement and as directed by PTML from time to time. In case the Franchisee hires additional personal for distribution purpose, then such personnel shall be deemed to be employees of the Franchisee at all times and all obligations of Franchisee shall be deemed to be equally imposed on such personnel; however, the Franchisee agrees to submit its list of such personnel for approval in writing to PTML. Once approved, a distributor shall not be removed from his position unless such removal is also approved by PTML."

8.4 The condition No.20 of the **Franchise Agreement** further provides that if any question or difference or dispute regarding the terms of this agreement shall arise between the parties which cannot be settled amicably, then, in all such cases, the same shall be referred to arbitrator by one Arbitrator to be appointed by the mutual consent of the parties and failing such mutual consent to be appointed by the court. The provisions of Arbitration Act, 1940 shall apply to such arbitration which shall be held in Lahore. The award under such arbitration shall be final and binding on the parties.

8.5 With regard to the Applicants' contention pertaining to giving targets by the licensee, the Authority is of the view that unfeasible targets for sale of SIMs

are not encouraged and it is noted that the licensee seems to be irrational in dealing with franchisee / Applicant. However, in light of mandate of PTA as provided under the Act, it is concluded that the **Franchise Agreement** is a bilateral commercial arrangement between the parties and PTA has no jurisdiction to interfere in commercial agreement made between PTML and the Applicant. In addition, as far as the Applicant's contention with regard to using illegal means of activating SIMs is concerned, the same will be dealt with separately in accordance with applicable law for time being in force.

8.6 It is also relevant to point out that the Applicant has already filed a civil suit for declaration with permanent injunction and recovery of fixed and monthly damages/ losses of Rs.9,955,000/- which is pending adjudication. Since PTA has no jurisdiction to entertain such nature of issues and matter is also pending adjudication before the court, therefore, in such circumstance the application dated 20th November, 2021 is hereby disposed of.

~~Maj. Gen. Amir Azeem Bajwa (R)~~
Chairman

~~Muhammad Naveed~~
Member (Finance)

~~Dr. Khawar Siddique Khokhar~~
Member (Compliance & Enforcement)

Signed on 7th day of April, 2022 and comprises of (05) pages only.