

ORDER SHEET
IN THE COMPETITION APPELLATE TRIBUNAL,
ISLAMABAD

Case No: Appeal No. 85 of 2022

NFC Employees Cooperative Housing Society Limited
.....APPELLANT

Versus
Competition Commission of Pakistan
.....RESPONDENT

Present: Justice Mazhar Alam Khan Miankhel, Chairperson.
Muhammad Asghar Ch. Member Technical.
Raja Saad Sultan, Member Technical.

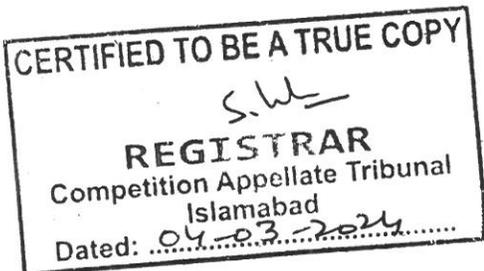
For the Appellant: Mr. Rashid Mehmood Sindhu Advocate.
For the Respondent: Mr. Dawood Iqbal, Law Officer, for the CCP.
Date of hearing: 11.01.2022, 09.03.2022, 07.06.2022, 04.10.2022,
19.10.2022, 16.11.2022, 14.12.2022,
01.02.2023, 18.04.2023, 17.05.2023,
13.06.2023, 25.01.2024, 13.02.2024.

JUDGMENT

Muhammad Asghar Ch. Member Technical.

NFC Employees Housing Society, the Appellant through this Appeal has challenged the Order (impugned order) of the Competition Commission of Pakistan (the Commission) dated 26.11.2018. Vide this impugned order, the Appellant is to pay a penalty of Rs. One million, on account of contravention of Sections 4(2)(a), 4(2)(b), 4(2)(d), read with Section 4(1) of the Competition Commission of Pakistan Act, 2010 (the Act).

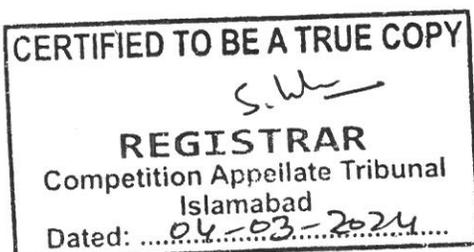
2. The facts of the case are that in September 2016, the Commission received a complaint by a resident of NFC Employees Cooperative Housing Society Ltd, Lahore, alleging that, the Appellants were being forced to subscribe to a sole Cable network provider i.e MC Networks and were deprived of the choice of any alternate or competing service provider in the locality. The residents were also being forced to



pay whatever subscription amount MC Networks would charge regardless of the quality of service provided.

3. The Commission through formal communication sought information from the Appellant, wherein it was confirmed that only MC Network was allowed to carry on Cable TV business in Phase I of the Society. Thereafter, in pursuance of section 37 (1) of the Act the Commission constituted an Enquiry Committee to conduct further investigation into the allegations and possible violations of the Act. The Enquiry Committee in its report concluded that by virtue of exclusivity agreement, prima facie, contravention of Section 4(2)(a) and 4(2)(d) read with Section 4(1) of the Act was done by the Appellant and MC Networks. A show Cause Notice dated 18.04.2017 was issued to both the Appellant and MC Networks by the Commission and proceedings were initiated under the said provision of the Act. The Commission examined the agreement of the Appellant with the MC Networks and found contravention of section 4 in exclusive terms. During the proceedings the Appellant however, tendered un-conditional apology and submitted commitment to amend its agreement with MC Networks to the satisfaction of the Commission. In the meanwhile, the process of re-tendering for authorization the second such service provider was carried out through an open market Competition and was completed before the final order of the Commission (impugned order) dated 26. 11.2018 was issued.

4. The learned counsel for the Appellant in the ground of the memorandum of appeal and through verbal arguments before the bar submits that the Impugned Order of the Commission is without



jurisdiction and the imposing of penalties also is without lawful authority. The Commission decided to take lenient approach under section 39 of the Act but the order itself is contradiction as no such view was taken when imposing the penalty. The Commission ignored the fact that the Appellant was not a habitual violator of the provision of the Act and it has already complied with the instructions, as per-provision of the law to amend its agreement during the proceeding in the Commission. Retendering process was completed and permission for providing Cable TV and Internet services was authorized to another competitor bidder, through open competitive process on 27.10.2018. The agreement with the new service provider was signed on 01.11.2018, and rights for provision of Internet Services in NFC Employees Cooperative Housing Ltd Lahore were granted. However, the Commission did not consider the compliance but imposed the unjustified and unlawful penalty of Rs One million. The Appellant concluding his arguments prayed that the Impugned order of the Commission dated 26.11.2018 be set-aside with no penalty at all.

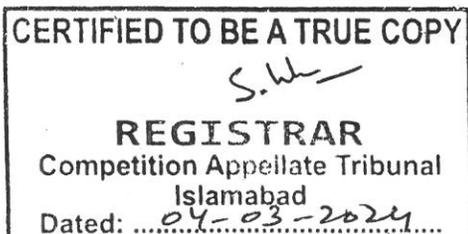
5. The learned law officer of the Commission agreed to the assertion of the Appellant that the Appellant has been compliant throughout the Enquiry and Commission's proceedings. During the Enquiry process and proceedings in the Commission the Appellant re-tendered the Cable TV and Internet services, through open market Competition basis and finally allocated the business to the successful bidder. However the appellant had earlier committed the violations of provision of prohibited agreement, under the Act and continued doing so, before the complaint was lodged and Enquiry proceedings were held.

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Islamabad
Dated: 04-03-2024

Therefore, he was penalized to pay only Rs.1 Million, taking lenient view. The Law officer for the CCP submits that the compliance report, was submitted in the Competition Appellant Tribunal but it was not submitted to the Registrar of the Commission. Although the copy of the said compliance report was provided to the Law Officer of the Commission in the Bar.

6. We consider that the grounds taken by the Appellant were valid, the NFC Employees Cooperative Housing Society Ltd complied with the Orders of the Commission during proceeding process and made corrections in their prohibited agreement, through advertising the provision of Cable TV Networks and Internet services and selected the service provider through open competitive basis, before the Impugned order of the Commission was issued. This compliance was also regularly reported to the Commission during the proceeding process. The Commission, however, keeping in view the earlier Contravention of Section 4, which were later on corrected imposed the penalty of Rs. One million, although taking a lenient view under section 39 of the Act. We consider that the leniency view was not properly exercised. The Appellant was fully compliant and acted truthfully on the advice of the Commission. He could not have been aware of such contraventions of law when the original contact was signed with MS Networks. Keeping in view the compliant behaviour of the Appellant we are inclined to reduce the penalty to Rs. 500,000/- (Five Hundred Thousand), from Rs. One million.

7. The appeal is, therefore, partially allowed in the above terms reducing the penalty to Rs. Five Hundred Thousand, only. As there has



been no default regarding Compliance by the Appellant, the directions passed under para 38 of Impugned Order become infructuous and are set aside.

Announced in open Court on
13.02.2024

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Justice Mazhar Alam Khan Miankhal,
Chairman

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Muhammad Asghar Ch.,
Member Technical

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Raja Saad Sultan,
Member Technical

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