

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

Writ Petition No. 034 /2019

1. Awami Workers Party, a political party registered with the Election Commission of Pakistan, through its General Secretary, Mr. Akhtar Hussain, Senior Advocate Supreme Court of Pakistan, having its Islamabad office at House No. 90, Street No. 34, G-9/1, Islamabad

For Private Use

...PETITIONER

M. Abu Baker Siddique
STAMP VENDOR
G-10, Islamabad.

21 SEP 2019
versus
Examiner
Copy Supply Section
Islamabad High Court
Islamabad

1. Pakistan Telecommunication Authority, through its Chairman, having its offices at PTA Headquarters, Sector F- 5/1, Islamabad
2. Federal Government, through the Secretary, Information Technology and Telecommunication Division, Ministry of Information Technology and Telecom, having its offices at 4th Floor, Evacuee Trust Complex, Aga Khan Road, F-5/1, Islamabad

...RESPONDENTS

**PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC
REPUBLIC OF PAKISTAN, 1973**

Respectfully submitted:

PARTIES

File No.	2550
Date	15.02.19
Assistant Registrar (J.U.)	

1. That the names and addresses of the parties have been sufficiently provided in the title of the present petition for properly affecting the process of service upon them.

2037
6.2.19

Form No: HCJD/C-121.

ORDER SHEET

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT**

W.P.No. 634/2019

Awami Workers Party

Vs

PTA through Its Chairman, etc

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
------------------------------	----------------------------	---

05. 12-09-2019 M/s Umer Ijaz Gillani, Halder Imtiaz and Omer Imran Mallk, Advocates for the petitioner.
Mr. Nisar Ahmed, DG-CVD/PTA.
Mr. Khalid Wazir, AD-CVB, PTA.
Mr. M. Naeem Ashraf (Consultant Law-PTA).

The petitioner, which is a registered political party has sought the following prayers in the instant petition:-

"That in view of the facts and grounds stated above, it is most humbly submitted that this Hon'ble Court may kindly:

- i. *Direct the Respondent No.1 to unblock the official website of the petitioner;*
- ii. *Direct the Respondent No.1 to frame necessary rules for regulation of its powers under subsection (1) of Section 37 of PECA 2016, as is required under sub-section (2) of Section 37;*
- iii. *Direct the Respondent No.2 to issue appropriate directions for regulation of the powers of Respondent No.1 under sub-section (1) of Section 37, until rules are framed under sub-section (2) of Section 37;*

Certified to Be True Copy

21 SEP 2019

Examiner
Copy Supply Section
Authorised Under article-87 of
Qanoon-e-Shahadat Order 1984
Islamabad High Court
Islamabad

- iv. *Direct the Respondent No.1 to provide reasoned orders with regard to the actions and decisions taken by it in exercise of powers under Section 37, and to develop a framework for filing, hearing and decision of review applications under sub-section (4) of Section 37;*
- v. *Issue such other directions to the Respondent No.1 to ensure protection of the fundamental rights of citizens during exercise of powers under Section 37 of PECA 2016, including a direction to the Respondent No.1 to provide the concerned parties an opportunity of hearing before removing or blocking their online content, and to develop convenient mechanisms for this purpose;*
- vi. *Grant such other relief as may be deemed just and proper in the circumstances of the case."*

2. Pursuant to this Court's order, dated 28-08-2019 Mr. Nisar Ahmed, DG-CVD, Pakistan Telecommunication Authority has appeared and has stated that the appeal preferred by the petitioner party was allowed and consequently its official website was unblocked. The learned counsels for the petitioners have stated that the manner in which the official website had been blocked was in violation of the fundamental rights which are guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973. The official namely, Nisar Ahmed who has appeared on behalf of the Pakistan

Certified to Be True Copy

21 SEP 2019

Examiner
Copy Supply Section
Authorised Under Article-87 of
Qanoon-e-Shahadat Order 1984
Islamabad High Court
Islamabad

Telecommunication Authority has stated in response to the query of this Court that section 37 of the Prevention of Electronic Crimes Act, 2016 empowers the competent authority to block websites without notice or affording an opportunity of hearing to the person who could be adversely affected by an order or action of the Authority. This interpretation of section 37 of the Act of 2016 is in flagrant violation of the fundamental rights guaranteed under the Constitution as well as the settled law enunciated by the superior Courts. It is noted that the principles of natural justice are required to be read in every statute. Moreover, Article 10-A makes it mandatory to observe the requirements of due process before passing an order or taking any action whereby persons could be adversely affected. Pakistan Telecommunication Authority is definitely not empowered to pass an order or take action under section 37 of the Act of 2016 in derogation of the mandatory requirements of due process. It is further noted that it is a statutory duty of Pakistan Telecommunication Authority to prescribe and notify rules contemplated by the legislature under sub section 2 of section 37 of the Act of 2016. The legislature in its wisdom by using the expression "shall" has manifested its intention that it is mandatory for the Authority to prescribe rules for the purposes described under section 37(2) of the Act of 2016. The representative has informed that rules have not been prescribed as yet. It is ironic that the Act of 2016 was enforced and notified in the official gazette on 19.08.2016 but despite lapse of considerable time, the Authority has

Certified to Be True Copy

21 SEP 2019

**Examiner
Copy Supply Section
Authorised Under article-87 of
Qanoon-e-Shahadat Order 1984
Islamabad High Court
Islamabad**

failed to fulfill its statutory obligations by prescribing rules in the manner as has been provided under section 37(2) of the Act of 2016. The Authority is thus directed to fulfill its statutory obligations under section 37(2) of the Act of 2016 at the earliest, preferably within ninety days from the date of receiving a certified copy of this order.

3. In the case in hand, blocking the website of the petitioner was indeed in violation of the principles of natural justice and the fundamental right guaranteed under Article 10-A of the Constitution. The grievance of the petitioner party has been redressed because admittedly, the website has been unblocked.

4. The petition is, therefore, disposed of in the above terms.

^
-sd-
/ (CHIEF JUSTICE)

Asif Mughal

Certified to Be True Copy

21 SEP 2019

Examiner
Copy Section
Authorized Under Article-87 of
Constitution of Islamabad Order 1984
Islamabad High Court
Islamabad