

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 3028 of 2020

Muhammad Ashfaq Jutt
Vs
Federation of Pakistan, etc.

S. No. of order/proceedings	Date of order/proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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01) 15-10-2020. Mr Usama Khawar Advocate, for the petitioner.

ATHAR MINALLAH, C.J.- The petitioner asserts that he is a well known athlete and that he had, inter-alia, won the "World Championship of Kickboxing" in 2016 while representing the Islamic Republic of Pakistan. The petitioner is aggrieved on account of actions taken by Pakistan Telecommunication Authority [hereinafter referred to as the "**Authority**"] which has led to banning the internet based application namely, "TikTok". It is the case of the petitioner that "TikTok" app provides a platform to talented Pakistani citizens to exercise the right of expression and to demonstrate creativity.

2. The learned counsel has, inter-alia, contended that the actions of the Authority are in violation of section 37 of the Prevention of Electronic Crimes Act, 2016 [hereinafter referred to as the "**Act of 2016**"]. It has been argued that despite this Court's directions vide order, dated 12.09.2019, passed in W.P. No. 634/2019, titled "Awami Worker Party v. PTA, etc.", the Authority and the Federal Government have failed to fulfill their respective statutory obligations under sub section (2) of section

37 of the Act of 2016 and thus the powers conferred under sub section (1) *ibid* are being abused. The "TikTok" app has been banned by the Republic of India on the ground of security concerns because it is owned by a Chinese company. The learned counsel has contended that another judgment, dated 24.07.2020, of this Court passed in W.P. No. 1788/2020, titled "*M/s Proxima Beta Pte. Ltd. v. Federation of Pakistan, through the Secretary, Ministry of Information Technology and Telecommunication, Islamabad and 02 others*" has also been consistently violated by the Authority. The learned counsel has stressed that Articles 19 and 19-A of the Constitution of the Islamic Republic of Pakistan, 1973 [hereinafter referred to as the "**Constitution**"] guarantee the fundamental right of free speech and access to information. The learned counsel has stated that the petitioner is not against regulating the application but is aggrieved on account of prohibition imposed by the Authority and that too in violation of the provisions of the Act of 2016. He has stated that the app "TikTok" provides a source of income to many talented citizens, particularly belonging to marginalized classes and that the abuse of the platform by a few does not justify imposing a ban.

3. The questions raised need consideration. Admit. Notice.
4. Keeping in view the importance of the questions raised, the President of Pakistan Federal Union of Journalists, Mr Mazhar Abbas, former president, Vice Chairman, Pakistan Bar Council, and Mr Javed Jabbar, former Federal Minister are

appointed to assist this Court as *amici*, particularly regarding the question of alleged abuse of powers by the Authority vested under the Act of 2016 which consequently violates the fundamental rights guaranteed under Articles 19 and 19-A of the Constitution. Copies of this order alongwith memorandum of petition, are directed to be sent to the *amici*.

5. The Authority is directed to nominate a senior officer to appear before this Court on the next date fixed and explain why proceedings may not be initiated for violating the directions given by this Court in the aforementioned judgments and why the order of banning "TikTok" app may not be suspended.

6. Relist, on 23.10.2020. The petition will be taken up at 10:30 a.m.

C.M. No.02/2020.

Notice.

C.M. No. 01/2020.

Exemption sought for is allowed, subject to all just and legal exceptions.

(CHIEF JUSTICE)