

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.09.2015

DELIVERED ON : 29.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.NOS.818, 819 AND 895 TO 898 OF 2015
& CONNECTED MPS

W.A.No.818 and 819 of 2015

1. The Secretary
Ministry of Information and Broadcasting
Room No.116, "A" Wing
Shastri Bhawan
New Delhi - 110 001.
2. Secretary
Ministry of Home Affairs
North Block
Central Secretariat
New Delhi - 110 001.Appellants in W.A.Nos.818 and
819 of 2015

-Vs.-

M/s. Kal Cables Pvt. Ltd.
Rep. by its Managing Director
Mr. Vittal Sampath Kumaran
No.229, Kutchery Road
Mylapore
Chennai-600 004.
W.A.Nos.818 and

सत्यमेव जयते

...Respondent in

819 of 2015

W.A.Nos.895 to 898 of 2015

Dayanidhi Maran

..Appellant in W.A.Nos.895 & 896 of 2015

M/s. Sun TV Network Ltd.
rep. by its Authorised Signatory
Mr.M.Jothi Basu
Murasoli Maran Towers
73, MRC Nagar Main Road

WEB COPY

MRC Nagar
Chennai-600 028.

..Appellant in W.A.Nos.897 & 898 of 2015

-Vs.-

1.M/s. Kal Cables Pvt. Ltd.
Rep. by its Managing Director
Mr. Vittal Sampath Kumaran
No.229, Kutchery Road
Mylapore
Chennai-600 004.

2. The Secretary
Ministry of Information and Broadcasting
Room No.116, "A" Wing
Shastri Bhawan
New Delhi - 110 001.

3. Secretary
Ministry of Home Affairs
North Block
Central Secretariat
New Delhi - 110 001.

...Respondents in W.A.Nos.895 to 898
of 2015

PRAYER: Writ Appeals is filed under Clause 15 of the Letters Patent against the order dated 5 September 2014 in W.P. No.23444 and 23445 of 2014 on the file of this Court.

W.P.No.23444 of 2014: Petition Under article 226 of the constitution of India praying to issue a writ of certiorari to call for the records pertaining to the letter dated 20.8.2014 in No.9/128/2012-BP & L issued by the 1st respondent quash the same

W.P.No.23445 of 2014: Petition Under article 226 of the constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining to the letter dated 20.8.2014 in No.9/128/2012-BP & L issued by the 1st respondent quash the same and direct the respondent to grant permanent registration to the petitioner to operate as Multi System Operator pursuant to the provisional registration granted by the 1st respondent dated 7.3.2013 in Letter No.F.No.9/1282012 - BP & L

Mr. G. Rajagopalan
Addl. Solicitor General of India
for Mr.C.V. Ramachandramoorthy:

For Appellants in W.A.Nos.818
and 819 of 2015 & for
respondents 2 and 3 in
W.A.Nos.895 to 898 of 2015

Mr. Vijay Narayan
Senior Counsel
for Ms. Anitha

: For Appellant in W.A.Nos.895
and 896 of 2015

Mr. G. Masilamani
Senior Counsel
for Mr.L.S.M. Hasan Fizal

: For Appellant in W.A.No.897
and 898 of 2015

Mr. P.S.Raman
Senior Counsel
for Ms. M. Sneha

: For Respondent in W.A.No.818
of 2015 & for respondent No.1
in W.A.Nos.895 to 898 of 2015

Mr. AR.L. Sundaresan
Senior Counsel
for Ms. M. Sneha

: For Respondent in W.A.No.819
of 2015

COMMON JUDGMENT

SATISH K. AGNIHOTRI AND K.K.SASIDHARAN, JJ

The first batch of intra-court appeals (W.A.Nos.818 and 819 of 2015) are at the instance of the Central Government and the Challenge is to the common order dated 5 September 2014 in W.P.Nos.23444 and 23445 of 2014, setting aside the orders passed by the Ministry of Information and Broadcasting, cancelling the registrations given to M/s.Kal Cables Pvt. Ltd. to operate as Multi System Operators to provide Cable Television Network Services with Digital Addressable System in Chennai Metropolitan Area and other notified areas in phase II Cities.

2. The other batch of writ appeals (W.A.Nos.895 to 898 of 2015) are at the instance of Sun TV Network and Mr.Dayanidhi Maran and the prayer is to expunge the disparaging remarks made by the learned Single Judge without making them parties to the writ petitions or giving them an opportunity of hearing.

W.A.Nos.818 and 819 of 2015

3. The first respondent, M/s. Kal Cables Private Limited (hereinafter referred to as "Cable Operator") was granted permission to operate as Multi System Operator in respect of Chennai Metropolitan Area for a period of ten years with effect from 30 September 2006 vide order dated 19 June 2012. Similarly, the Cable Operator was given a provisional registration as Multi System Operator for operating in the area notified under Section 4-A of the Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as "Cable TV Act, 1995") vide order dated 7 March 2013.

4. The Ministry of Information and Broadcasting vide orders dated 20 August 2014 cancelled the permanent as well as provisional registrations without notice.

5. The Cable Operator challenged the impugned orders in W.P.Nos.23444 of 2014 and 23445 of 2014.

6. The learned Single Judge scanned the statutory provisions governing the field and having found that opportunity of hearing was not given before passing adverse orders, allowed the writ petitions. Feeling aggrieved, the Central Government has come with writ appeals in W.A.Nos.818 and 819 of 2015.

7. While allowing the writ petitions, the learned Single Judge made certain adverse remarks against Mr. Dayanidhi Maran who is not presently associated with the Cable Operator. Similar disparaging remarks were made against M/s. Sun TV Network Ltd. also. Since concerned parties were not heard before making such adverse comments and as there was no need or necessity to make such observation while deciding the legality and correctness of the impugned orders passed by the Ministry of Information and Broadcasting, third parties have filed intra court appeals in W.A.Nos.895 to 898 of 2015 primarily for the purpose of expunging the remarks.

8. Thiru G. Rajagopalan, learned Additional Solicitor General appearing on behalf of the Central Government made the following submissions:

(i) The impugned orders were passed on the basis of the order passed by the Ministry of Home Affairs denying security clearance. Notice in a case of this nature is an empty formality inasmuch as the Ministry of Information and Broadcasting would not be in a position to take a different decision in view of the denial of security clearance which is a mandatory requirement.

(ii) Since the Cable Operator has not complied with the essential conditions of registration, the order cancelling registration cannot be faulted.

(iii) The Cable Operator was given provisional permission vide order dated 30 September 2006 subject to security clearance. The Ministry of Information and Broadcasting was therefore perfectly correct in passing the impugned orders on account of the decision taken by the Ministry of Home Affairs denying security clearance.

(iv) M/s. Kal Cables Pvt. Ltd. is part of Sun TV Group. The Government have already initiated proceedings against the promoters under various provisions of law on account of certain illegal acts, which includes Money Laundering.

(v) The expression "security of the nation" would include even economic security and as such it cannot be said that merely on account of the pendency of certain criminal proceedings under the Money Laundering Act and investigation by Central Bureau of Investigation, the Ministry of Information and Broadcasting has no authority to cancel the registration of the Cable Operator as a Multi System Operator.

(vi) The Cable Operator has not challenged the denial of security clearance by the Ministry of Home Affairs and as such the writ petitions challenging the consequential decision is not maintainable.

9. Thiru P.S.Raman, learned Senior Counsel appearing for the respondent in W.A.No.818 of 2015 made the following submissions and justified the order quashing the decision:

(i) The Security Clearance was sought only by the Ministry of Information and Broadcasting. The order denying security clearance was not communicated to the Cable Operator. Therefore it would not be possible for the Cable Operator to challenge the decision taken by the Ministry of Home Affairs.

(ii) The provisions of the Cable TV Act, 1995 as amended by Amendment Act 21 of 2011 clearly provides for an opportunity of hearing before suspending or cancelling the registration. However, in the case on hand, no such notice was given to the Cable Operator.

(iii) The orders impugned in the writ petitions would involve civil consequences to the Cable Operator. The learned Single Judge was therefore justified in setting aside the orders.

10. Thiru AR.L.Sundaresan, learned Senior Counsel for the respondent in W.A.No.819 of 2015 made the following submissions:

(i) The Cable Operator was not given the reasons which weighed with the Ministry of Home Affairs to deny security clearance. The inter-departmental communication cannot be the basis for challenge in a Court of law.

(ii) Since the Directors of the first respondent are not accused

in the alleged criminal cases, denial of security clearance is improper and illegal.

11. The core issue is whether the learned Single Judge was correct in setting aside the impugned orders passed by the Ministry of Information and Broadcasting.

12. M/s. Kal Cables Private Limited submitted an application dated 30 August 2006 seeking permission for operating as a Multi System Operator. The application made under Section 4 of Cable TV Act, 1995 was processed by the Registering Authority. The authority was expected to verify the application and satisfy as to whether the applicant has furnished all the relevant information necessary for granting registration. The prescribed authority granted provisional permission to the Cable Operator subject to security clearance by the Ministry of Home Affairs vide order dated 30 September 2006.

13. The Cable TV Act, 1995 was amended by Amendment Act 2 of 2003 and Section 4-A was inserted. Subsequently by Amendment Act 21 of 2011 certain vital amendments were made to the Act. Sub-Section (2) was introduced to prescribe the eligibility criteria for registration as an operator. Sub-Section (6) was introduced to enable the Central Government to prescribe additional conditions which are in the nature of eligibility criteria having regard to the Sovereignty and Integrity of India, Security of State and other similar relevant factors. Similarly, amendments were also made to Section 22 of the Act, empowering the Central Government to make Rules.

14. The Cable Television Network Rules, 1994 as amended by SO 940(E) dated 28 April 2012 contain the details regarding eligibility criteria for Cable Operators, Statutory Format of the application and matters incidental thereto. The existing Rule 11 was replaced by a set of new rules with effect from 28 April 2012. Rule 11-A provides for submission of application for registration as Multi System Operator. Rule 11-B deals with eligibility criteria. Rule 11-C empowers the Registering Authority to grant registration on being satisfied that the applicant fulfilled the eligibility criteria. Rule 11-E empowers the Registering Authority to grant provisional registration pending registration under Rule 11-C of the Rules. Though Rule 11-F contain a statutory prohibition against functioning as Multi System Operators without obtaining registration under Rule 11-C, the proviso to the said Rule (11-F) permits such operators who have been permitted to operate in areas notified prior to the coming into force of the Amendment Act, 2011 to continue to operate. This is in the nature of a deeming registration which will be in force till the expiry of the remaining period of the validity of earlier permission.

15. The Cable Operator was given a deemed registration within the meaning of the proviso to Rule 11-F of the Cable Television

Network (Amendment) Rules, 2012 for operating as a Multi System Operator in the Digital Addressable System notified area of Chennai Metropolitan Area for a period of ten years from 30 September 2006. The permission would be valid upto 29 September 2016. This permission was not made subject to security clearance.

16. The Cable Operator was granted another registration on provisional basis under Rule 11-E subject to security clearance to be received from the Ministry of Home Affairs. The provisional registration was granted by order dated 7 March 2013.

17. The Cable Operator has been operating as a Multi System Operator in the notified areas on the strength of the deemed Registration dated 19 June 2012 and Provisional Registration dated 7 March 2013.

18. While so, without even issuing a show cause notice the Registering Authority cancelled the registrations by way of two separate orders dated 20 August 2014.

19. When a challenge was made on the ground of violation of the principles of natural justice, the learned Single Judge set aside the orders.

20. The question therefore is whether show cause notice is necessary before cancelling the registration whether it be a new, deemed or provisional registration.

21. There is no dispute that Section 4 of the Act as it stood before the Amendment did not contain any provision for notice before suspending or cancelling the registration. However, the proviso to Rule 11(7) as it stood originally mandates notice before suspension/cancellation of registration.

22. The Act after amendment did not contain any distinction between violation of General terms and conditions stipulated in Sub-Section (2) of Section 20 and the Additional criteria stipulated in Sub-Section (6) of Section 4. Therefore it is clear that the procedure contemplated under Sub-Section (7) of Section 4 would apply equally for violation of the General Terms and Conditions and the Additional Criteria stipulated in Sub-Section (6) of the said provision. The proviso to sub-section (7) of Section 4 mandates an opportunity of hearing before passing adverse orders. The Registering Authority in the subject case has not given such an opportunity to the Cable Operator. The learned Single Judge was therefore correct in setting aside the orders on the ground of violation of the principles of natural justice.

23. The learned Additional Solicitor General placed reliance on the decision of the Supreme Court in Ex-Armymen's Protection Services

(P) Ltd., v. Union of India¹ in support of his contention that in situations of national security, party cannot insist on strict observance of principles of natural justice. The Supreme Court after holding that in case the matter involves national security, it is not open to a party to insist on strict observance of principles of natural justice further observed in the said case that it is open to the Court to satisfy itself whether there were justifiable facts and as to whether interest of national security was involved. It was held that once the State takes the stand that the issue involves national security, the Court shall not disclose reasons to the affected party.

24. The learned Additional Solicitor General has raised the following two contentions:

(a) The denial of security clearance has not been challenged by the Cable Operator.

(b) Security Clearance was declined by the Ministry of Home Affairs. Therefore issuance of notice would be an empty formality.

25. Thiru AR.L. Sundaresan, learned Senior Counsel for the respondent in W.A.No.819 of 2015 submitted that the Ministry of Information and Broadcasting rejected the applications of two Companies by name Digital Radio (Mumbai) Broadcasting Ltd. and Digital Radio (Delhi) Broadcasting Ltd., for pre-qualification for the e-auction of the First Batch of Private FM Radio Channels Phase III by letter dated 15 July 2015 on the ground that security clearance was denied by the Ministry of Home Affairs. According to the learned Senior Counsel, like the present case, order denying security clearance was not specifically challenged. It was only the decision rejecting the application on the ground of denial of security clearance alone was challenged. Even then the Division Bench of the High Court of Delhi entertained the writ petitions and quashed the decision communicated by the Ministry of Information and Broadcasting by letter dated 15 July 2015 denying security clearance. According to the learned Senior Counsel there is no need to challenge specifically the decision taken by the Ministry of Home Affairs which was not communicated to the Cable Operator.

26. We have perused the judgment delivered by the Delhi High Court dated 26 July 2015 in W.P.(C) Nos.6891 and 6892 of 2015. The Delhi High Court observed that the petitioner companies themselves have not been alleged to be vehicles of any transgression of law. The Division Bench quashed the decision communicated by letters dated 15 July 2015 denying security clearance to the petitioner companies and declared that those two companies shall be entitled to participate in the e-auction subject to fulfilment of other conditions.

27. We do not find any merit in the submissions made by the

1 (2014) 5 SCC 409

learned Additional Solicitor General with regard to the failure to challenge the decision denying security clearance and theory of useless formality for the following reasons:

(a) There is no provision in the Cable TV Act or Rules made thereunder for making an application for security clearance to the Ministry of Home Affairs directly by the applicant. It is the responsibility of the Ministry of Information and Broadcasting to refer the matter to the Home Ministry for security clearance. This is clear from the notice inviting applications for e-auction of First Batch of Private FM Radio - Phase III Channel, issued by the Ministry of Information and Broadcasting on 2 March 2015, which is the subject matter in the related writ appeals in W.A.No.1253 of 2013 etc. batch. The notice of e-auction provides that the company as well as its Directors on the Board shall be security cleared and the Ministry shall take security clearance from the relevant authorities. Annexure 10.8 of the said notification contain the statutory format for furnishing information for obtaining security clearance. This would make the position clear that the Cable Operator is not in any way concerned or connected with the process of obtaining security clearance. The order declining security clearance is not in the public domain. It would not be communicated to the applicant. It would be revealed only through the order declining registration or suspending the existing registration. The learned Senior Counsel for the Cable Operator is therefore justified in his contention that it would not be possible for the Cable Operator to challenge the decision taken by the Ministry of Home Affairs by way of inter-departmental correspondence.

(b) The other contention is based on the theory of empty formality. In the subject case the learned Single Judge verified the original file and recorded that there are no adverse reports against the Directors/Key Executives of the Cable Operator, from the security point of view. The findings recorded by the learned Single Judge would show that pendency of investigations/enquiries against two individuals namely, Maran brothers made the Home Ministry to deny security clearance. The learned counsel for the Cable Operator has taken up a contention that those two individuals have nothing to do with M/s. Kal Cable Private Limited and in case notices were issued before cancelling the registration, Cable Operator would have represented those basic facts before the Registering Authority. It was further contended by placing reliance on the decision of the Delhi High Court in A.K. Shama v. Director General of Civil Aviation² that in the event of issuing notices, the operator would have cited the attention of the Registering Authority that misdemeanours, irregular financial transactions and pendency of criminal cases cannot be a reason for denial of security clearance. We see considerable force in the said submission.

(c) The impugned orders would involve civil consequences to the Cable Operator and therefore it is all the more necessary to issue notice before taking such a drastic action.

(d) The Supreme Court in *Mohinder Singh Gill v. Chief Election Commr.*³ explained the expression "Civil Consequences" in the following words:

"66. ... 'Civil consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence."

(e) The Supreme Court in *Uma Nath Pandey v. State of U.P.*,⁴ observed that even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The

Supreme Court said:

"14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

"Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of

3 (1978) 1 SCC 405

4 (2009) 12 SCC 40

justice."

(f) Most recently, in *Dharampal Satyapal Ltd., v. Dy. Commr. of Central Excise, Gauhati*⁵ the Supreme Court indicated the aspect of procedural fairness namely, right to a fair hearing in the following words:

"25..... Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide great humanising factor intended to invest law with fairness to secure justice and to 4 (1978) 1 SCC 405 : AIR 1978 SC 851 Civil Appeal Nos. 4458-4459 of 2015 Page 17 of 38 (arising out of SLP (C) Nos. 37108-37109 of 2012) Page 18 prevent miscarriage of justice. The principles are extended even to those who have to take administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision making that decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong.

27. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the Court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary. It was, thus, observed in *A.K. Kraipak's case* (supra) that if the purpose of rules of natural justice is to prevent miscarriage of justice, one fails to see how these rules should not be made available to administrative inquiries....."

(g) We are therefore of the considered view that issuance of notice is not an empty formality in a matter of this nature.

28. We concur with the views expressed by the learned Single Judge with respect to violation of principles of natural justice. We are also of the view that there is no merit in the intra court

appeals filed by the Central Government.

W.A.Nos.895 to 898 of 2015

29. The adverse remarks made by the learned Single Judge against the appellants, without giving an opportunity to submit their version, made them to file these intra court appeals.

30. Thiru Vijay Narayan, learned Senior Counsel for the appellant in W.A.Nos.895 and 896 of 2015 contended that the appellant was not a party to the writ petitions. However sweeping remarks were made against him without providing an opportunity of hearing. According to the learned Senior Counsel, the learned Single Judge while setting aside the impugned orders on the ground of violation of principles of natural justice, denied the appellant of an opportunity to submit his case and the same would also be a violation of the principles of natural justice. It was further contended that the appellant was not a Minister incharge of Information and Broadcasting and as such the indication given in the order to the effect that the file was not referred to the Home Ministry for security clearance at the instance of the appellant has no basis. The learned Senior Counsel placed reliance on the judgments of the Supreme Court in State of Maharashtra v. Public Concern for Governance Trust ⁶ and Om Prakash Chautala v. Kanwar Bhan⁷.

31. Mr.G. Masilamani, learned Senior Counsel for the appellant in W.A.Nos.897 and 898 of 2015 supplemented the arguments advanced by the learned Senior Counsel for the appellant in W.A.Nos.895 and 896 of 2015. According to the learned Senior Counsel, the issue regarding conduct of the appellant was not before the learned Single Judge for adjudication. The learned Single Judge exceeded the brief and passed disparaging remarks against the appellant. The file was not shown even to the Cable Operator who filed the writ petitions. The appellant has nothing to do with the issue raised by the Cable Operator and as such its conduct was unnecessarily made the subject matter of discussion. It was further contended that the observation made by the learned Single Judge would result in civil and criminal consequences to the appellant and as such all such disparaging remarks should be expunged.

32. Thiru G. Rajagopalan, learned Additional Solicitor General in his reply submitted that the appellants are part of a group by name Sun TV Group. The promoter of the group was a Union Minister. It was only during the term of his Ministership, licence was granted to the Cable Operator. The learned Single Judge on verification of the records found that the file was not sent to the Ministry of Home Affairs for security clearance and it was only under such circumstances the observation in question was made. The learned

6 (2007) 3 SCC 587

7 (2014) 5 SCC 417

Additional Solicitor General fairly submitted that the file was produced in a sealed cover and it was not given for perusal to any of the parties to the writ petitions.

33. There is no dispute that the appellants were not parties to the writ petitions filed by the Cable TV Operator. It is the contention of the appellants that even after observing in the opening remarks that the Court would not disclose the factual details contained in the file, the learned Single Judge disclosed the text of the notings made by the officers and the conclusions reached by the officers concerned and even issued a Mandamus to the Central Government to initiate action against their television channels and enquiry into the conduct of the appellant in W.A.Nos.895 and 896 of 2015.

34. The relevant observations made by the learned Single Judge as pointed out by the learned Senior Counsels for the appellants reads thus:

37. Though I have decided not to disclose the factual contents of the file produced before me, I should point out that the information contained therein is already there in the public domain in the form of Press Reports. The information available in the file is also available in Wikipedia upto this moment. The entire information contained in the file, revolve around allegations of gross abuse of official position, adoption of corrupt practices of incomprehensible nature to make unlawful pecuniary gains of unprecedented proportions, amassing of wealth of unimaginable scales and the registration of regular criminal cases against the promoters of the company. May be a time has come to hold that the abuse of official position by a person in power and the amassing of wealth of unimaginable proportions, is also an assault on the Security of the State. Economic aggression may soon become more dangerous than military aggression. But as pointed out by the Supreme court, what constitutes "security" is a matter of policy for the Government to decide and not for the court to define. Therefore, the Government should spell out clearly whether such acts as revealed in the file would constitute security and if so, the same yardstick would apply at all levels, not only against Multi System Operators but also against the Television channels. There cannot be two different security standards, one for Multi System

Operators and another for TV Channels.

39.....According to the respondents, the promoters of the petitioner-company are also the promoters of a group of several Satellite Commercial Television Channels known as the SUN TV group. If security clearance cannot be given to the petitioner, on account of the adverse information available with the 2nd respondent against the promoters of the petitioner, the same logic would extend to those Television Channels, whose role and importance in society is much more than that of a mere Multi System Operator. But no action has been taken against those TV channels, in terms of Section 20 (2) (ii) of the Act on the ground that due to the acts of omission and commission on the part of the very same duo, who are the promoters, the security of India is threatened.

42. The sequence of events that unfolded from the beginning of the year 2004, appears to have changed the destiny of the petitioner company. As per the affidavit filed by the petitioner, Mr.Dhayanithi Maran resigned from the Directorship of the petitioner company on 16.01.2004. In the Elections to the Lok Sabha, held in May 2004, he got elected and was appointed as the Union Minister of Communications and Information Technology. Till the year 2007, he held the said post. In or about May 2007, he resigned. But again in 2009, he was appointed as Union Minister of Textiles. He continued to hold the post till 2011.

45. In other words, it is the contention of the learned Additional Solicitor General (1) that the petitioner got permission from the Ministry of Information and Broadcasting, when one of the promoters of the petitioner company was the Union Minister of Communications and (2) that somehow it was managed that the file was not sent for security clearance to the Ministry of Home Affairs from 2006 to 2013. Even according to the additional affidavit filed before me, by the petitioner, Mr.Kalanithi Maran resigned from the Directorship only on 28.09.2010.

61.....However, this order will not preclude the Central Government from taking any

action in accordance with law, if on the basis of information available with them, it is of the opinion that any action is to be initiated either (i) against the petitioner and/or (ii) against the Television channels which form part of the same group and/or (iii) about the manner in which permission was granted to the petitioner to be a Multi System Operator on 30-9-2006, when one of the promoters was the Union Minister and/or (iv) about the circumstances under which the file relating to the permission granted to the petitioner was kept back for 7 years from 2006 till 2013 without being forwarded to the Ministry of Home Affairs.

35. The Supreme Court in *State of U.P. v. Mohd. Naim*⁸ indicated the following tests to be applied while considering the question of expunction of disparaging remarks against a person whose conduct comes in for consideration before a Court.

" (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(b) whether there is evidence on record bearing on that conduct justifying the remarks; and

(c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct."

36. The Supreme Court in *State of Bihar v. Lal Krishna Advani*⁹ while considering the report submitted by the Commission of Enquiry indicting a third party observed that strictures cannot be passed against a person without giving him reasonable opportunity to put forth his case.

37. In *State of Maharashtra v. Public Concern for Governance Trust* cited supra, the Supreme Court indicted the scope of judicial review in case an authority travels into the realm of personal reputation without giving chance to offer his remarks. The Supreme Court said:

" 41. It is thus amply clear that one is entitled to have and preserve one's reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened

⁸ AIR 1964 SC 703

⁹ (2003) 8 SCC 361

upon it under the law, travels into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon is statutorily recognised and violation of the same will have to bear the scrutiny of judicial review."

38. We deem it fit and proper to reproduce the prefatory note made by the Supreme Court in *Om Prakash Chautala* cited supra.

"Reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on posterity. It is a nobility in itself for which a conscientious man would never barter it with all the tea of China or for that matter all the pearls of the sea. The said virtue has both horizontal and vertical qualities. When reputation is hurt, a man is half-dead. It is an honour which deserves to be equally preserved by the downtrodden and the privileged. The aroma of reputation is an excellence which cannot be allowed to be sullied with the passage of time. The memory of nobility no one would like to lose; none would conceive of it being atrophied. It is dear to life and on some occasions it is dearer than life. And that is why it has become an inseparable facet of Article 21 of the Constitution. No one would like to have his reputation dented. One would like to perceive it as an honour rather than popularity. When a court deals with a matter that has something likely to affect a person's reputation, the normative principles of law are to be cautiously and carefully adhered to. The advertence has to be sans emotion and sans populist perception, and absolutely in accord with the doctrine of *audi alteram partem* before anything adverse is said."

39. The Supreme Court in *Om Prakash Chautala* after quoting with approval, the earlier decisions in *State of Bihar v. P.P. Sharma*¹⁰; *Dilip Kumar Deka v. State of Assam*¹¹ and *Testa Setalvad v. State of Gujarat*¹² held that no one should be condemned unheard. The relevant observation reads thus:

10 (1992) Supp.(1) SCC 222

11 (1996) 6 SCC 234

12 (2004) 10 SCC 88

" 15. On a studied scrutiny of the judgment in entirety we have no hesitation in holding that the observations made by the learned Single Judge were really not necessary as an integral part for the decision of the case as stated in Mohd. Naim case. Needless to say, once the observations are not justified, as a natural corollary, the directions have to be treated as sensitively susceptible.

19. It needs no special emphasis to state that a Judge is not to be guided by any kind of notion. The decision-making process expects a Judge or an adjudicator to apply restraint, ostracise perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately. He is expected to be guided by the established norms of judicial process and decorum. A judgment may have rhetorics but the said rhetoric has to be dressed with reason and must be in accord with the legal principles. Otherwise mere rhetoric, especially in a judgment, may likely to cause prejudice to a person and courts are not expected to give any kind of prejudicial remarks against a person, especially so, when he is not a party before it. In that context, the rhetoric becomes sans reason, and without root. It is likely to blinden the thinking process. A Judge is required to remember that humility and respect for temperance and chastity of thought are at the bedrock of apposite expression. In this regard, we may profitably refer to a passage from Frankfurter, Felix, in Clark, Tom C.,

"For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians—those impersonal convictions that make a society a civilized community, and not the victims of personal rule."

The said learned Judge had said:

"What becomes decisive to a Justice's functioning on the Court in the large area within which his individuality moves is his general attitude towards law, the habits of mind that he has formed or is capable of unforming, his capacity for detachment, his temperament or training for putting his passion behind his

judgment instead of in front of it."

20. Thus, a Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics."

40. The learned Senior Counsels for the appellants are therefore correct in their submissions that for deciding the question regarding the legality and correctness of the orders passed by the Ministry of Information and Broadcasting, it was not necessary to consider the conduct of the appellant in W.A.Nos.895 and 896 of 2015 or the business activities of the appellant in W.A.Nos.897 and 898 of 2015.

41. Thiru Vijay Narayan, learned Senior Counsel for the appellant in W.A.Nos.895 and 896 of 2015 by providing details with regard to the functioning of the said appellant as a Union Minister contended that he was not a Minister for Information and Broadcasting at any point of time and by pointing out that the file relating to the permission granted to M/s. Kal Cables Private Limited was kept back for seven years from 2006 to 2013 without being forwarded to the Ministry of Home Affairs, the learned Judge even made disparaging remarks indirectly against the concerned Union Minister incharge of the Ministry of Information and Broadcasting during the material time. According to the learned Senior Counsel, opinion expressed by the Officers concerned by way of notings in the file were used extensively to make disparaging remarks against the appellants and the same is evident by the observation made by the learned Judge in paragraph 36 of the order.

42. The Supreme Court in *Shanti Sports Club v. Union of India*¹³, observed that notings recorded in the official files by the officers of the Government at different levels and even the Ministers do not become decision of the Government unless the same is sanctified and acted upon by issuing a formal order. The Supreme Court said:

"43. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent

authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review."

43. In *Sethi Auto Service Station & Anr. v. Delhi Development Authority and Ors*¹⁴ the Supreme Court held that inter-departmental communications and notings in departmental files do not have the sanction of law, creating a legally enforceable right.

"Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

44. In view of the limited issue involved in the writ petitions, we are of the considered view that remarks as indicated hereinbefore were not really necessary for arriving at the decision rendered by the learned Single Judge. The observations in respect of the appellants herein are nothing but obiter dictum and the same stand expunged accordingly.

45. In the result, the intra court appeals in W.A.Nos.818 and

14 (1983) 3 SCC 401

819 of 2015 are dismissed. The appeals in W.A.Nos.895 to 898 of 2015 are allowed as indicated above. Consequently, the connected MPs are closed. No costs.

Sd/-d/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Secretary
Ministry of Information and Broadcasting
Room No.116, "A"Wing
Shastri Bhawan
New Delhi - 110 001.

2. Secretary
Ministry of Home Affairs
North Block
Central Secretariat
New Delhi - 110 001.

+3cc to M/s.Venkataswamy Babu, Advocate Sr.52765,52768 & 52769
+3cc to M/s.M.Sneha, Advocate Sr. 52784,52786/15 and 52785
+2cc to M/s.R.Anitha, Advocate sr.52788
+2cc to M/s.L.S.M.Hassan Fizal, Advocate sr.52787
+1 cc to C.V.Ramachandramurthy, Advocate, sr.53573 (16/10/2015)
+1 cc Mr.C.V.Ramachandramurthy, Advocate (sr.53574) 28/10/2015

W.A.Nos.818, 819 and 895 to
898 of 2015

gp[col]
srg 30.09.2015

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