

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2016

DELIVERED ON : 14.06.2016

DATED : 14.06.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.21810 to 21815 of 2015 & 11476 & 11477 of 2015
M.P.Nos. 1 to 1, 2 to 2 & 3 to 3 of 2015 in
W.P.Nos.21810, 21812 & 21814 of 2015 and
M.P.No.1 of 2015 in W.P.No.11476 of 2015
M.P.Nos.1 & 2 of 2015 in W.P.No.11477 of 2015

M/s.Sun TV Network Ltd.,
Represented by its Managing Director
Mr.K.Vijayakumar
Murasoli Maran Towers
No.73, MRC Nagar Main Road
MRC Nagar, Chennai - 28 ...Petitioner in W.P.No.21810/2015

K.Vijayakumar ...Petitioner in W.P.No.21811/2015

M/s Kal Radio Ltd.,
Represented by its Managing Director
Mr.K.Shanmugam
Murasoli Maran Towers
No.73, MRC Nagar Main Road
MRC Nagar, Chennai - 28 ...Petitioner in W.P.No.21812/2015

K.Shanmugam ...Petitioner in W.P.No.21813/2015

M/s. South Asia FM Ltd.,
Represented by its Managing Director
Mr.K.Shanmugam
Murasoli Maran Towers
No.73, MRC Nagar Main Road
MRC Nagar,
Chennai - 28 ...Petitioner in W.P.No.21814/2015

K.Shanmugam ...Petitioner in W.P.No.21815/2015

M/s.Udaya FM Private Limited
Rep. By its Authoriised Signatory
Murasoli Maran Towers
No.73, MRC Nagar Main Road
MRC Nagar,
Chennai - 28 ...Petitioner in W.P.No.11476/2015

M/s.SUN TV Network Ltd.,
Rep. By its Authoriised Signatory
Murasoli Maran Towers
No.73, MRC Nagar Main Road
MRC Nagar,
Chennai - 28

...Petitioner in W.P.No.11477/2015

Vs.

1. Union of India
Rep. By the Secretary
Ministry of Information & Broadcasting
Government of India
Shastri Bhawan
New Delhi - 110 001.1st Respondent in all WPs
2. The Deputy Director (FM)
Ministry of Information & Broadcasting
Government of India, FM Cell
Shastri Bhawan
New Delhi - 110 0012nd Respondent in W.P.Nos.21810
to 21815/2015
3. The Director(FM)
Ministry of Information & Broadcasting,
Government of India, FM Cell,
Shastri Bhavan,
New Delhi - 110 001.2nd Respondent in W.P.Nos.11476
& 11477/2015
4. Union of India
Rep. By the Secretary
The Ministry of Home Affairs
Government of India
North Block, Central Secretariat
New Delhi - 110 0013rd Respondent in W.P.Nos.21810
to 21815/2015

W.P.No.21810 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in their order No.N-38014/10/2015-FM/596, dated 15th July, 2015 and quash the same and consequently direct the 1 & 2 respondents to permit the petitioner to migrate to FM Phase III Regime by allowing the petitioner to resubmit the bank guarantee and permitting the petitioner to participate in the forthcoming FM Station Phase III Auction pursuant to the Notice Inviting Application in No:N-38014/6/2013-FM, dated March 2nd 2015 for E-Auction of First batch of Private FM Radio Phase-III Channels.

<https://hcservices.ecourts.gov.in/hcservices/> W.P.No.21811 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the 2nd respondent in their order

No.N-38014/10/2015-FM/596, dated 15th July, 2015 and quash the same.

W.P.No.21812 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in their order No.N-38014/10/2015-FM/595, dated 15th July, 2015 and quash the same and consequently direct the 1 & 2 respondents to permit the petitioner to migrate to FM Phase III Regime by allowing the petitioner to resubmit the bank guarantee and permitting the petitioner to participate in the forthcoming FM Station Phase III Auction pursuant to the Notice Inviting Application in No:N-38014/6/2013-FM, dated March 2nd 2015 for E-Auction of First batch of Private FM Radio Phase-III Channels.

W.P.No.21813 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the 2nd respondent in their order No.N-38014/10/2015-FM/595, dated 15th July, 2015 and quash the same.

W.P.No.21814 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in their order No.N-38014/10/2015-FM/597, dated 15th July, 2015 and quash the same and consequently direct the 1 & 2 respondents to permit the petitioner to migrate to FM Phase III Regime by allowing the petitioner to resubmit the bank guarantee and permitting the petitioner to participate in the forthcoming FM Station Phase III Auction pursuant to the Notice Inviting Application in No:N-38014/6/2013-FM, dated March 2nd 2015 for E-Auction of First batch of Private FM Radio Phase-III Channels.

W.P.No.21815 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the 2nd respondent in their order No.N-38014/10/2015-FM/597, dated 15th July, 2015 and quash the same.

W.P.No.11476 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to permit the petitioner to move to Phase III policy for the FM Radio Station at Vishakapatnam by entering into GOPA agreement.

(Prayer amended as per order dated 26.4.2016 in WMP No.12168/2016)

W.P.No.11477 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to permit the petitioner to move to Phase III policy for the FM Radio Stations at Chennai, Coimbatore and Tirunelveli by entering into GOPA agreement.

(Prayer amended as per order dated 26.4.2016 in WMP No.12169/2016)

For Petitioners : Mr.P.S.Raman, Sr. Counsel
for Ms.M.Sneha
in W.P.Nos.21810 & 21811/2015

Mr.G.Masilamani, Sr. Counsel
for Mr.P.Muthukumar
in W.P.Nos.21812 & 21813/2015

Mr.AR.L.Sundaresan Sr. Counsel
for Mr.L.S.M.Hasan Fizal
in W.P.Nos.21814 & 21815/2015

Mr.Vijayanarayanan, Sr. Counsel
for Mr.J.Ravindran in W.P.11476/2015
for Ms.M.Sneha in W.P.11477/2015

For Respondents : Mr. G.Rajagopalan,
Additional Solicitor General
Assisted by Mr.Venkatasamy Babu,
Senior Panel Counsel for Govt. of India

COMMON ORDER

Since the issue involved in all these writ petitions are common, at the request of the learned Senior Counsel appearing on either side, the writ petitions were taken up together and disposed of by this common order.

2. W.P.Nos.21810, 21812 and 21814 of 2015 are filed by M/s.Sun TV Network Ltd., M/s Kal Radio Ltd., and M/s. South Asia FM Ltd., respectively to issue Writs of Certiorarified Mandamus to call for the records of the 2nd respondent in their order dated 15th July, 2015, to quash the same and consequently direct the respondents 1 & 2 to permit the petitioners to migrate to FM Phase-III Regime by allowing the petitioner companies to resubmit the bank guarantee and permitting the petitioners to participate in the forthcoming FM Station Phase-III Auction pursuant to the Notice Inviting Application dated March 2nd 2015 for E-Auction of First batch of Private FM Radio Phase-III Channels.

3. W.P.Nos.21811, 21813 and 21815 of 2015 are filed by the petitioners, who are shareholders of M/s.Sun TV Network Ltd., M/s Kal Radio Ltd., and M/s. South Asia FM Ltd., respectively, to issue Writs of Certiorari to call for the records on the file of the 2nd respondent in their order dated 15th July, 2015 and to quash the same.

4. W.P.Nos.11476 & 11477 of 2015 are filed by M/s.Udaya FM Private Limited and M/s.Sun TV Network Ltd., to issue Writs of Mandamus to direct the respondents 1 & 2 to permit the petitioners to move to Phase- III policy for the FM Radio

Station at Vishakapatnam (in W.P.No.11476/2015) and Chennai, Coimbatore and Tirunelveli (in W.P.No.11477/2015) by entering into Grant of Permission Agreement [GOPA].

5. The brief case of the petitioner companies in W.P.Nos.21810 to 21815 of 2015 is as follows:

(i) According to the petitioners, they are running FM Radio Channels and that the said companies are in existence for more than 10 years. In order to establish, operate and maintain FM Radio broadcasting stations, they obtained license under Section 4 of the Indian Telegraph Act, 1885 under Phase-II Policy. The Phase-II Policy licenses were issued for a period of 10 years. The 2nd respondent, by its notice dated 1.1.2015 addressed to all private FM Broadcasters to migrate to Phase-III policy and also to new entrants and requested to provide information along with supporting documents. Pursuant to the same, the petitioner companies by its letter dated 02.01.2015 had furnished all the details to the respondents as required by them. By notice dated 16.01.2015, the 2nd respondent once again requested all Private FM broadcasters to submit the details of their shareholders and the petitioner companies by their letter dated 20.1.2015, had submitted the details of all its shareholders. Thereafter, by letter dated 24.02.2015, the 2nd respondent had requested the existing operators of Phase-II like that of the petitioner companies opting to migrate to FM Phase-III to fulfill certain conditions. According to the petitioner companies, the conditions were fulfilled by them and furnished to the respondents on 17.03.2015.

(ii) Further, according to the petitioner companies, the respondents had invited application on 02.03.2015 for the first batch of private FM Radio Phase-III Channels. On 27.03.2015, the petitioner companies, who are operating 18 Radio Stations, in order to bid in the auction for further Stations, submitted the applications with all required documents and necessary fees for the same.

(iii) After the submission of the applications, the 2nd respondent published a list in its official website on 15.07.2015 listing the broadcasters, who are permitted to migrate from Phase-II to Phase-III. In the said list, the names of the petitioner companies did not find a place. The petitioner companies came to understand that the petitioner companies names did not figure in the said list for denial of "Security Clearance" from the Ministry of Home Affairs. On 16.07.2015, the petitioners were served with the communication from the 2nd respondent dated 15.07.2015, giving the reasons for the rejection of security clearance in respect of the petitioner companies. In these circumstances, the petitioner companies have filed W.P.Nos.21810 to 21815 of 2015.

<https://hcservices.ecourts.gov.in/hcservices/>

6. The brief case of the petitioner companies in W.P.Nos.11476 & 11477 of 2015 is as follows:

(i) The petitioner companies have stated that the 2nd respondent, by its notice dated 1.1.2015 addressed to all private FM Broadcasters to migrate to Phase-III policy and also to new entrants to provide information along with supporting documents. Pursuant to the same, the petitioner companies, by its letter dated 02.01.2015, had furnished all details to the respondents as required by them for extension of licenses. However, the 2nd respondent had neither replied nor extended the licenses for the petitioner companies. Therefore, the petitioner companies once again sent a detailed representation to the 2nd respondent on 10.04.2015 and subsequently sent a reminder on 16.04.2015. According to the petitioner companies, in spite of their letters, the 2nd respondent had neither replied nor extended the licenses of the petitioner companies. The petitioner companies have also stated that all other FM Radio Broadcasters of Phase-I policy, who migrated to Phase-II, have been granted provisional extension of their licenses for a period from 1st April 2015 or till migration to Phase-III whichever is earlier. However, the petitioner companies have not received any reply from the 2nd respondent for extending their licenses.

(ii) According to the petitioner companies, the refusal to extend the licenses for a period of 6 months to the petitioner companies from 1.4.2015 as done to the other FM broadcasters for no reason is violative and against the rights guaranteed under Article 14 of the Constitution of India. Further, the petitioner companies have stated that the act of the 2nd respondent is discriminatory, arbitrary, violative of principles of natural justice and against equality enshrined in the Constitution of India. In these circumstances, the petitioner companies have filed W.P.Nos.11476 &11477 of 2015 to issue a writs of mandamus.

7. The brief case of the respondents is as follows:-

(i) According to the respondents, as per clause 4.22.2 of Notice Inviting Application (NIA) writ petitions are not maintainable before the Madras High Court and the Delhi High Court alone has jurisdiction to try the cases. As per clause 3.2.1(b) of the NIA, any company controlled by a person convicted for an offence involving moral turpitude or money laundering/drug trafficking, terrorist activities or declared as insolvent or applied for being declared insolvent, is disqualified. As per clauses 3.8 of the NIA, the Company as well as all Directors on the Board shall be security cleared and the Ministry shall take security clearance of the company as well as its Directors from relevant Government authorities.

(ii) According to the respondents, As per clauses 3.2.1 (b) and 3.8 of the NIA, the persons or entities convicted for certain class of offences are ab initio barred from applying for the auction process. Further, according to the respondents, once this criterion is met, there is a further

process of security clearance to be obtained from relevant Ministries for the companies and its Directors. The Ministry of Information & Broadcasting sought security clearance from the Ministry of Home Affairs for entities/individuals, who were eligible to apply for the auction process. The knowledge that conviction in certain classes of offences is a complete bar to even apply and that there is a need for subsequent security clearance from the ministries concerned, is clear to the parties to the auction, since it is mentioned in the NIA itself. The applicant, who fails to fulfil the criteria under clause 3.2.1 is not allowed to apply and while an applicant, who is not cleared under clause 3.8 by the 3rd respondent, shall not be invited to the auction stage for bidding for specific channels in the city.

(iii) According to the respondents, procedure for granting security clearance is independent of clause 3.2.1. The Ministry of Home Affairs has its own policy to issue national security clearance in a few sensitive sectors of the economy, which includes principles encompassing a holistic definition of national security. The definition of national security includes:

(a) matters relating to preservation of nation's unity and territorial integrity and protection of the life and liberty of its citizens; and

(b) matters vital to economic security and integrity, protection of critical infrastructure and development and prosperity of the country and its citizens.

Under this umbrella, there are certain rating parameters which include both matters relating to unity and territorial integrity of India as well as matters vital to economic security, development and prosperity of the country and its citizens. Under the policy, the Ministry of Home Affairs has kept the threshold for rating parameter of security clearance to entities/individuals at the level of prosecution and not of conviction for serious offences like Corruption, money laundering, financial frauds etc., because of clear threats to national security emanating there from.

(iv) According to the respondents, in terms of national security clearance policy of Ministry of Home Affairs, prosecution for major financial frauds and corruption etc., is a ground for denial of security clearance. Further, the respondents have stated that the Ministry of Home Affairs had denied security clearance to M/s. Sun TV Network Ltd., M/s. Kal Radio Ltd., and M/s. South Asia FM Ltd. on the ground that:-

(a) Prosecution of Shri Dayanithi Maran and Shri Kalanithi Maran in Aircel-Maxis case by CBI with the allegation of receipt of Rs.549.96 crores as illegal gratification and other related charges;

(b) The Enforcement directorate has charged Shri Dayanithi Maran and Shri Kalanithi Maran under the Prevention of Money Laundering Act on the

allegation of laundering an amount of Rs.5.5 billion in the Aircel-Maxis matter; and

(c) The CBI has charged Shri Dayanithi Maran for setting up 300 illegal telephone lines at the residence of Shri Kalanithi Maran to facilitate the Sun TV Services, thereby gaining an illegal pecuniary advantage of Rs.443 crores.

(v) Further, the respondents have stated that Shri Dayanithi Maran and Shri Kalanithi Maran are currently being prosecuted for serious charges of corruption, the connected allegation of money laundering of more than Rs.5.5 billion and attachment of assets by the Enforcement Directorate thereof and the serious allegation of running an illegal telephone exchange to conduct the operations of SUN TV, constitutes a serious and unique mix of national security threats specific to them. Further, in the Aircel-Maxis case, an illegal gratification of Rs.549.96 crores was allegedly received by Shri Dayanithi Maran through his brother Shri Kalanithi Maran in the garb of share premium invested in Sun Direct TV by South Asia Entertainment Holding Limited. Further, in the alleged illegal telephone exchange matter, Shri Dayanithi Maran, during his tenure as Telecom Minister, is alleged to have installed 300 illegal high speed BSNL telephone connections at his residence and the lines were extended to his brother's Sun TV channel office. The three petitioner companies are part of the Sun group, promoted/controlled by Shri Kalanithi Maran, where he holds 75% of the share in the Sun TV Network Limited and holds 0.85% direct share and 59.15% shares through Sun TV Network Limited in South Asia FM Limited and also holds 2.22% direct share and 97.78% share through Sun TV Network Limited in Kal Radio Limited. According to the respondents, there is no sufficient evidence of the control exercised by Shri Kalanithi Maran over the petitioner companies and the nexus between the Sun Group/Shri Kalanithi Maran and the petitioner companies clearly emerges and it is for this credible reason that security clearance was denied to the petitioner companies.

(vi) By order dated 23.07.2015, this court, allowed the petitioner companies to participate in the FM e-auction, subject to the result of the writ petitions. However, this court has directed to keep the result of FM auction in a sealed cover and be produced before the court on the next date of hearing.

(vii) With regard to the extension of licenses of the petitioner companies, the respondents have stated that the licenses have already expired on 31.3.2015 and it was only due to pendency of the court cases before this court and by the interim order, the petitioner companies are allowed to continue in FM Broadcasting business. Since the petitioner companies were denied security clearance, they have lost eligibility to migrate to FM Phase-III and to continue FM Broadcasting. Further, the respondents have stated that the impugned order dated 15.07.2015 of the 2nd respondent is in

accordance with the provision of clause 2.7 of the FM Phase III policy guidelines as well as clause 3.8 of the NIA. The respondents have also stated that the stipulation of security clearance does not infringe upon any fundamental rights of the petitioner companies. The respondents have also stated that the Ministry of Home Affairs have given security clearance to other companies, including M/s. Reliance Broadcasting Network Limited after considering the inputs of security intelligence agencies under the framework of MHA policy on security clearance.

(viii) According to the respondents, the order of the 2nd respondent dated 15.07.2015 is not arbitrary, illegal and discriminatory, since Shri Kalanithi Maran is a Director in all the three petitioner companies. Therefore, the security clearance was rightly denied by the Ministry of Home Affairs. In these circumstances, the respondents prayed for dismissal of the writ petitions.

8. Heard Mr.P.S.Raman, learned Senior Counsel for the petitioners in W.P.Nos.21810 & 21811 of 2015, Mr.G.Masilamani, learned Senior Counsel for the petitioners in W.P.Nos.21812 & 21813 of 2015, Mr.AR.L.Sundaresan learned Senior Counsel for the petitioners in W.P.Nos.21814 & 21815 of 2015 and Mr.Vijayanarayanan, learned Senior Counsel for the petitioners in W.P.Nos.11476 and 11477 of 2015 and Mr.G.Rajagopalan, learned Additional Solicitor General appearing for the respondents.

9. The respective learned Senior Counsels appearing for the petitioners made the following submissions:-

9.1 The learned Senior Counsels submitted that this court is having jurisdiction to entertain the writ petitions since the registered office of all the petitioner companies are situated in Chennai and the impugned orders were served on the petitioner companies only at Chennai. It was also submitted by the learned Senior Counsels that the petitioners in W.P.Nos. 21810 and 21812 of 2015 are operating FM Radio Stations within the jurisdiction of this court and the petitioners in W.P.Nos. 21814 and 11476 of 2015 are group companies, who have registered office in Chennai and all its official activities are taking place in Chennai and the impugned orders were served on them in Chennai. Further, the learned Senior Counsels contended that in order to avoid multiplicity of proceedings and contradictory orders, the writ petitions are filed by Group Companies before this court, as forum convenience where the company's registered head office is situated and the impugned orders served.

9.2. According to the learned Senior Counsels, clauses 4.22.2 of the NIA is applicable only if there arises a dispute out of or in respect of the Notice Inviting Applications, e-auctions and its terms and conditions for award of FM Radio licenses under Phase-III. Since the petitioner companies have neither challenged the Notice Inviting Applications nor e-auctions and its terms and conditions for award of FM Radio

licenses under Phase-III, but have challenged only the orders dated 15.07.2015 denying security clearance, which are independent orders.

9.3 According to the learned Senior Counsels, the writ petitions are maintainable before this court. Further, the learned Senior Counsels contended that as per clause 26 of the Grant of Permission Agreement [GOPA] Arbitration is the remedy for any dispute and not the courts and the said clause becomes applicable only when the petitioner companies are permitted to migrate into phase-III policy of the new and the old stations by entering into GOPA and thereafter, if there arises any dispute with regard to the terms and conditions of the said agreement the Dispute Resolution is by way of Arbitration. The learned Senior Counsels submitted that in the present case, since the challenge is with regard to independent orders denying security clearance and not with regard to the terms and conditions of license as envisaged under GOPA which the petitioner companies till date are not permitted to sign, the writ petitions are maintainable.

9.4 With regard to denial of security clearance, the learned Senior Counsels submitted that the petitioner companies are not at all controlled by a person convicted of any of the offences mentioned in clause 3.2.1(b). Clause 3.2.1(b), should be read along with clause 3.8 which speaks about security clearance. Further, clause 3.8 cannot be independent of its own with regard to security clearance. It has to be read in consonance with clause 3.2.1(b) which clearly states the ground for disqualification. Under clause 10.8 of the NIA, the applicants are required to submit a form which is a format for security clearance and the said format does not require the applicants to submit the details of the pendency of the criminal case, which shows that the pendency of the criminal case was never a criteria for consideration for the purpose of security clearance. Further, the learned Senior Counsels submitted the cases cited in the impugned orders for denial of security clearance are pending in the investigation stage. Further, the impugned order dated 15.07.2015 alleges a loss of Rs.443 crores with regard to telephone exchange, whereas, the CBI, viz., the Investigating Authority, in the said case in their affidavit dated 16.07.2015, filed after passing of the impugned order before this court in Crl.O.P.No.18493 of 2015, had estimated the loss only to Rs.1,78,71,391/-. Moreover, the CBI filed an affidavit before the Hon'ble Supreme Court in S.L.P.(Criminal) No.6582-83 of 2015, wherein also the CBI had estimated the loss only to Rs.1,78,71,391/-. While the Investigating Authority itself filed an affidavit that investigation is still pending and the alleged loss is only Rs.1,78,71,391/-, the Ministry of Home affairs has come up with an imaginary amount of Rs.443 crores on its own. According to the learned Senior Counsels, this itself will clearly prove the mala fide, arbitrary and discriminatory nature of the impugned orders. Further, the learned Senior Counsels submitted that it

is for the first time in the said impugned order it is alleged by the Ministry of Home Affairs that telephone facilities were installed in the house of Shri Kalanithi Maran, which is not at all the case even according to the Investigating Authority. Further, the learned Senior Counsels submitted that in the present impugned orders, due to pressure from the external hands, the Ministry of Home Affairs have used their discretion for ulterior purposes, without any basis and justification.

9.5 The learned Senior Counsels submitted that clause 4.16 of the Notice Inviting Application speaks about national security and the said clause nowhere speaks or spells in clear words that economic threat is national security. Further, the learned Senior Counsels submitted that adverse remarks made by the learned Single Judge of this court in W.P.Nos. 23444 & 23445 of 2014 as against two individuals have been set aside by the division Bench of this court and the said obiter dictum of the said order no more stands. Therefore, the respondents cannot rely upon the remarks made by the learned Single Judge.

9.6 The learned Senior Counsels submitted that Shri Dayanithi Maran is not at all associated with the petitioner companies in any manner. He is neither a shareholder nor the Director of the petitioner companies and has nothing to do with the petitioner companies. Earlier, when similar situation arose with regard to grant of security clearance to one channel and dispute arose between Ministry of Home Affairs and Ministry of Information & Broadcasting, opinion of the Highest Law Officer of the nation was sought for, who had given similar opinion as in the present case that pendency of criminal case can be no bar for grant of security clearance. At that situation, the opinion was accepted and security clearance was rightly given to the said channel. But, in the present case, when similar situation arose and similar opinion was given by the Attorney General of India, Ministry of Home Affairs had rejected the same and refused security clearance for mala fide reasons. Security clearance is a matter of policy decision of the Ministry of Home Affairs and the same is subject to scrutiny of this court, since the said decision is violated with malice, arbitrariness, discrimination and violative of the Constitution of India. In W.P.Nos. 21813 to 21715 of 2015, viz., South Asia FM Limited & Kal Radio Limited are concerned, the alleged criminal proceedings are pending against one individual which is put against the petitioner companies for denial of security clearance, who is neither a Director nor the majority shareholder controlling the company. Therefore, denial of security clearance is malice.

9.7 The learned Senior Counsels submitted that the contentions of the respondents that though the alleged individual is neither a Director nor the majority shareholder, the lifting of corporate veil will reveal that the alleged individual is the controlling person. The same contentions were raised before the Division Bench of Delhi High Court in similar

matters in W.P.(C) No.6891 & 6892 of 2015 and the Delhi High Court negating the said contentions quashed the impugned order of denial of security clearance on the very same ground cited in the present impugned order by its order dated 26.07.2015 and permitted the petitioners therein to participate in the e-auction. In the present case, the petitioner companies are in existence from 2005 and the cases against Shri Dayanithi Maran and Shri Kalanithi Maran were registered only in the year 2011 and therefore, the petitioner companies were not floated to camouflage any wrong in order to pierce the corporate veil. Against the order passed by the Division Bench of Delhi High Court, the respondents have filed Special Leave Petition before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court also dismissed the Special Leave Petition by its order dated 29.01.2016. In support of their contention, the learned Senior Counsels appearing for the petitioner companies relied upon the following judgments:-

(i) AIR 2008 Allahabad 23 (M/s.P.R. Transport Agency v. Union of India), wherein a Division Bench of Allahabad High Court held as follows:-

"8. Anticipating the difficulties likely to arise from this, the Information Technology Act, 2000 in Section 13(3) provides as follows :-

"(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business."

9. Thus, the acceptance of the tender, communicated by the respondents to the petitioner by e-mail, will be deemed to be received by the petitioner at Varanasi/Chandauli, which are the only two places where the petitioner has his place of business.

10. In view of the facts mentioned in the supplementary affidavit, read with Information Technology Act, the acceptance having been received by the petitioner at Chandauli/Varanasi, the contract became complete by receipt of such acceptance at Varanasi/Chandauli, both of which places are within the territorial jurisdiction of this Court. Therefore, a part of the cause of action having arisen in U.P., this Court has territorial jurisdiction to entertain the writ petition. However, it has to be examined whether the "ouster" Clause(No. 10.5)of the tender agreement has the effect of excluding the writ jurisdiction of this Court.

11. Jurisdiction of civil courts is created by statute and cannot be created or conferred by the consent of the parties upon a court which has not been granted territorial or pecuniary or other (subject

matter related) jurisdiction by statute.

12. Under Section 28 of the Indian Contract Act, 1872, the parties by their agreement are not permitted to totally exclude the jurisdiction of civil courts which has been created by statute. However, where several civil courts have territorial jurisdiction in respect of a suit, parties may by agreement confine themselves to any one or more of such civil courts and such an agreement would not be violative of Section 28 of the Contract Act.

13. The above principles apply to civil suits and civil courts.

14. Generally, the courts are reluctant to accept ouster of the jurisdiction of the civil courts and, therefore, ouster clauses in agreement are construed strictly and jurisdiction is field to be excluded only when it is inevitable result of the agreement. In this light the Supreme-Court in the case of A.B.C. Laminart Pvt. Ltd and Anr. v. A.P. Agencies (AIR 1989 SC 1239), laid down that either the agreement ousting jurisdiction of some courts and confining the jurisdiction to one or more courts should use the words like 'alone', 'only', 'exclusive' etc. in the ouster clause with regard to the courts to which jurisdiction has been confined; or in the alternative where such isolating words have not been used, the maxim 'expressio unius est exclusio alterius' meaning 'expression of one is the exclusion of another' may be applied in appropriate cases where the facts so demand.

15. After considering the facts of the said case as well as the alleged ouster clause which said "any dispute arising out of this sale shall be subject to Kaira jurisdiction", the Supreme Court held that it would not oust the jurisdiction of other courts which had territorial jurisdiction under Section 20(c) of the Code of Civil Procedure.

16. But, more fundamental question needs to be examined, viz. whether the ouster clauses can exclude the jurisdiction of civil courts only or whether such clause can exclude the jurisdiction under Article 226 of the Constitution of India also-

17. Section 20 C.P.C. for the civil court and Article 226 of the Constitution of India for the High Courts permit the exercise of territorial jurisdiction where the cause of action wholly or in part arises within their territories. To that extent, the words used in the two provisions are similar.

18. But, there is one vital difference, namely, that while the jurisdiction to pass a decree accrues to the civil court only upon institution of suit by filing of a plaint and the civil court cannot act suo moto, but under Article 226 of the Constitution of India the power to issue writs, orders or directions is not necessarily dependant upon filing of a writ petition. The High Court has the power to act suo moto if an appropriate matter comes to its knowledge calling for intervention by it. Such knowledge may be received by the High Court by means of a writ petition or otherwise.

19. When the parties enter into an agreement confining themselves to the jurisdiction of one of the several civil courts having territorial jurisdiction in respect of a suit, basically the parties are placing a restraint upon themselves from approaching the other civil courts whose jurisdiction has been excluded by the agreement. In this manner the jurisdiction of the other civil courts gets ousted, subject only to one restriction which is provided in Section 28 of the Contract Act. However, the power of judicial review given to the High Courts by Article 226 of the Constitution of India, and being a basic feature of the Constitution, cannot be curtailed even by statute, as held by the Supreme Court in the case of L. Chandra Kumar v. Union of India and Ors. . Therefore, it is not possible, to accept the contention that the said constitutional power of the High Court to issue a writ suo moto can be curtailed by an agreement between litigants,

20. We, therefore, hold that the ouster clauses can oust a territorial jurisdiction only of civil courts and not of the High Court in respect of however under Article 226 of the Constitution of India, provided such power exists in the High Court on account of part of cause of action having arisen with its territorial jurisdiction."

(ii) (2007) 8 SCC 1 (Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd.,) wherein the Hon'ble Supreme Court held as follows:-

"36. We find merit in this civil appeal. Standards applied by courts in judicial review must be justified by constitutional principles which govern the proper exercise of public power in a democracy. Article 14 of the Constitution embodies the principle of "non-discrimination". However, it is not a free-standing provision. It has to be read in conjunction with rights conferred by other articles like Article 21 of the Constitution. The said Article 21 refers to "right to life". It includes "opportunity". In our view, as held

in the latest judgment of the Constitution Bench of nine Judges in *I.R. Coelho v. State of T.N.* [2007(2) SCC 1] Articles 21/14 are the heart of the chapter on fundamental rights. They cover various aspects of life. "Level playing field" is an important concept while construing Article 19(1)(g) of the Constitution. It is this doctrine which is invoked by REL/HDEC in the present case. When Article 19(1)(g) confers fundamental right to carry on business to a company, it is entitled to invoke the said doctrine of "level playing field". We may clarify that this doctrine is, however, subject to public interest. In the world of globalisation, competition is an important factor to be kept in mind. The doctrine of "level playing field" is an important doctrine which is embodied in Article 19(1)(g) of the Constitution. This is because the said doctrine provides space within which equally placed competitors are allowed to bid so as to subserve the larger public interest. "Globalisation", in essence, is liberalisation of trade. Today India has dismantled licence raj. The economic reforms introduced after 1992 have brought in the concept of "globalisation". Decisions or acts which result in unequal and discriminatory treatment, would violate the doctrine of "level playing field" embodied in Article 19(1)(g). Time has come, therefore, to say that Article 14 which refers to the principle of "equality" should not be read as a stand alone item but it should be read in conjunction with Article 21 which embodies several aspects of life. There is one more aspect which needs to be mentioned in the matter of implementation of the aforesaid doctrine of "level playing field". According to Lord Goldsmith, commitment to the "rule of law" is the heart of parliamentary democracy. One of the important elements of the "rule of law" is legal certainty. Article 14 applies to government policies and if the policy or act of the Government, even in contractual matters, fails to satisfy the test of "reasonableness", then such an act or decision would be unconstitutional.

37. In *Union of India v. International Trading Co.* [2003(5) SCC - 437], the Division Bench of this Court speaking through Pasayat, J. had held: (SCC p. 445, paras 14-15)

"14. It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of

Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualised than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness."

38. When tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. This "legal certainty" is an important aspect of the rule of law. If there is vagueness or subjectivity in the said norms it may result in unequal and discriminatory treatment. It may violate doctrine of "level playing field".

39. In *Reliance Airport Developers (P) Ltd. v. Airports Authority of India* [2006(10) SCC-1], the Division Bench of this Court has held that in matters of judicial review the basic test is to see whether there is any infirmity in the decision-making process and not in the decision itself. This means that the decision-maker must understand correctly the law that regulates his decision-making power and he must give effect to it otherwise it may result in illegality. The principle of "judicial review" cannot be denied even in contractual matters or matters in which the Government exercises its contractual powers, but judicial review is intended to prevent arbitrariness and it must be exercised in larger public interest. Expression of different views and opinions in exercise of contractual powers may be there, however, such difference of opinion must be based on specified norms. Those norms may be legal norms or accounting norms. As long as the norms are clear and properly understood by the decision-maker and the bidders and other stakeholders, uncertainty and thereby breach of the rule of law will not arise. The grounds

upon which administrative action is subjected to control by judicial review are classifiable broadly under three heads, namely, illegality, irrationality and procedural impropriety. In the said judgment it has been held that all errors of law are jurisdictional errors. One of the important principles laid down in the aforesaid judgment is that whenever a norm/benchmark is prescribed in the tender process in order to provide certainty that norm/standard should be clear. As stated above "certainty" is an important aspect of the rule of law. In Reliance Airport Developers⁵ the scoring system formed part of the evaluation process. The object of that system was to provide identification of factors, allocation of marks of each of the said factors and giving of marks at different stages. Objectivity was thus provided.

52. Lastly, in the PQ document, the referral years were three years. The criteria was that there should be NCP of not less than Rs 200 crores. However, the opinion of the consultants proceeds on the basis that if "add back" is allowed it may have future cash impact. In the evaluation process, the consultants were entitled to take into account future cash impact but in order to do so they had to say why the indirect method of "cash flow reporting" should not be accepted and if at all the impact of the provisioning was to be seen then there was no reason for not examining the audited accounts of 2004. There is a mix-up of two concepts here. The concept of non-compliance with financial criteria and the impact in future years on cash flow. As stated above, the very purpose of "cash flow reporting" is to find out the ability of HDEC to generate cash flow in future and if an important method of cash flow reporting is kept out, without any reason, then the decision to exclude REL/HDEC, is arbitrary, whimsical and unreasonable. In our view, for non-consideration of the reconciliation method, under cash flow reporting system, the impugned decision-making process stood vitiated."

(iii) (2007) 14 SCC 667, (State of Andhra Pradesh v. M. Krishna Mohan) wherein the Hon'ble Supreme Court held as follows:-

"39. For the views we have taken, the impugned judgment of the High Court cannot be sustained. We are not oblivious of the fact that presumption of innocence is a human right and when an accused is acquitted by a court, such presumption becomes stronger. We are furthermore not oblivious that a superior court, ordinarily, would not interfere with a finding of fact if two views are possible as has been held by this Court in State of Haryana v. Sher Singh [2002(9) SCC 356 = 2003 SCC Cr1.1188], Narendra Singh v. State of

M.P. [2004(10)SCC 699 = 2004 SCC CrI.1893] and Budh Singh v. State of U.P. [2006(9) SC 731 = 2006(3) SCC CrI.377] whereupon Mr Nageswara Rao has placed strong reliance."

(iv) (2010) 13 SCC 657 (Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra), wherein the Hon'ble Supreme Court held as follows:-

"39. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration. The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the trial court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference."

(v) (2010) 9 SCC 437 (Kalabharati Advertising v. Hemant Vimalnath) wherein the Hon'ble Supreme Court held as follows:-

"25. The State is under obligation to act fairly without ill will or malice- in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide ADM, Jabalpur v. Shivakant Shukla [1976(2) SCC 521 = AIR 1976 SC 1207], S.R. Venkataraman v. Union of India [1979(2) SCC 491 = 1979 SCC (L&S) 216 = AIR 1979 SC 49], State of A.P. v. Goverdhanlal Pitti [2003(4) SCC 739 = AIR 2003 SC 1941], BPL Ltd. v. S.P. Gururaja [2003(8) SCC 567] and W.B. SEB v. Dilip Kumar Ray [2007(14) SCC 568 = 2009(1) SCC (L&S) 860.]"

(vi) (2012) 4 SCC 407 (Ravi Yashwant Bhoir v. District Collector, Raigad and others) wherein the Hon'ble Supreme Court held as follows:- :

"47. This Court has consistently held that the

State is under an obligation to act fairly without ill will or malice in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. "Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite."

(vii) 2014(5) CTC 397 (Kollidam Aaru Pathukappu Nala Sangam Rep. By its President R.Subramanian v. Union of India, Rep. By its Secretary to Government, Ministry of Environment and Forests, New Delhi) wherein this Court held as follows:-

"31. Therefore, from all the above decisions, it is quite clear that the power of judicial review conferred upon this Court under Articles 226/227, is part of the basic structure of The Constitution, which cannot be taken away even by a law enacted by the Parliament. As a matter of fact, the National Green Tribunal Act, 2010 does not expressly exclude the jurisdiction of this Court under Articles 226/227. Though it excludes the jurisdiction of the normal civil courts under Section 29, there is no express exclusion of the jurisdiction of this Court. The respondents seek to read into Section 22 of the National Green Tribunal Act, 2010, an implied exclusion of the jurisdiction of this Court. As we have pointed out earlier, Section 22 provides for a remedy of appeal to the Supreme Court, to any person aggrieved by any award, decision or order of the Tribunal. As seen from the language of Section 22, the appeal is almost like a second appeal on a substantial question of law."

(viii) (2016) 1 SCC 724, (State of Punjab v. Bandheep Singh), wherein the Hon'ble Supreme Court held as follows:-

4. There can be no gainsaying that every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. If precedent is required for this proposition it can be found in the celebrated decision titled Mohinder Singh Gill v. Chief Election Commr. [1978(1) SC 405 = 1978(2) SLR 272] of which the following paragraph deserves extraction: (SCC p. 417, para 8)

"8. The second equally relevant matter is that

when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji* [AIR 1952 SC 16 = 1952 SCR 135]: (AIR p. 18, para 9)

9. ... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

7. The same principle was upheld more recently in *Ram Kishun v. State of U.P.* [2012(11) SCC 511 = 2013(1) SC (CIV) 382. However, we must hasten to clarify that the Government does not have a carte blanche to take any decision it chooses to; it cannot take a capricious, arbitrary or prejudiced decision. Its decision must be informed and impregnated with reasons. This has already been discussed threadbare in several decisions of this Court, including in *Sterling Computers Ltd. v. M & N Publications Ltd.* 1993(1) SCC 445, *Tata Cellular v. Union of India* [1994(6) SCC 651], *Air India Ltd. v. Cochin International Airport Ltd.* [2000(2) SCC 617], *B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.* [2006(11) SCC 548 and *Jagdish Mandal v. State of Orissa* [2007(14) SCC 517].

8. In the impugned judgment, the High Court has rightly concluded that no sustainable justification and rationalisation was recorded in writing at the relevant time for ordering the re-auction of only the two subject properties. However, we should not be understood to have opined that the Government is bound in every case to accept the highest bid above the reserve price. Needless to say, the presence of cartelisation or "pooling" could be a reason for the cancellation of an auction process. In addition, a challenge on the ground that the property has fetched too low a bid when compared to the prevailing market price, would also be valid and permissible provided this approach has been uniformly

adhered to. In the case at hand, however, while the latter was ostensibly the reason behind the decision for conducting a fresh auction, no evidence has been placed on the record to support this contention. The highest bids, marginally above the reserve price, have been accepted in the selfsame auction. The factual scenario before us is clearly within the mischief which was frowned upon in Mohinder Singh Gill [1978(1) SCC 405 = 1978(2) SCR 272]. We, therefore, uphold the impugned judgment for all the reasons contained therein. The assailed action of the appellant is not substantiated in the noting, which ought at least to have been conveyed to the respondents."

(ix) (2011) 10 SCC 86 (Asha Sharma v. Chandigarh Admn) wherein the Hon'ble Supreme Court held as follows:-

"12. Arbitrariness in State action can be demonstrated by existence of different circumstances. Whenever both the decision-making process and the decision taken are based on irrelevant facts, while ignoring relevant considerations, such an action can normally be termed as "arbitrary". Where the process of decision making is followed but proper reasoning is not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness. Of course, sufficiency or otherwise of the reasoning may not be a valid ground for consideration within the scope of judicial review. Rationality, reasonableness, objectivity and application of mind are some of the prerequisites of proper decision making. The concept of transparency in the decision-making process of the State has also become an essential part of our administrative law."

(x) (2015) 5 SCC 518 (Deepak Bhandari v. H.P. State Industrial Development Corpn. Ltd) wherein the Hon'ble Supreme Court held as follows:-

"20. We would like to refer to the law laid down by this Court in Oriental Insurance Co. Ltd. v. Raj Kumari [2007(12) SCC 768 = 2008(3) SCC Cr1.385. In the said case, well-known proposition, namely, it is ratio of a case which is applicable and not what logically flows there from is enunciated in a lucid manner. We would like to quote the following observations therefrom: (SCC pp. 771-72, para 12)

"12. '12. ... Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the

ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See *State of Orissa v. Sudhansu Sekhar Misra* [AIR 1968 SC 647 = 1970 (1) LLJ 662] and *Union of India v. Dhanwanti Devi* 1996 (6) SCC 44]) A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn v. Leatham* [1901 AC 495 = (1900-03) All ER Rep.1 (HL)] the Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides in 2006(1) SCC 275 @ p.282, para 2

13. '19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute [and that too taken out of their context]. These observations must be read in the context in which they appear [to have been stated]. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737 = (1951) 2 All ER.1 (HL) (AC p. 761)] Lord MacDermott observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by creating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is

not to detract from the great weight to be given to the language actually used by that most distinguished Judge..." [2006(1) SCC 275 @ 282, para 19]."

(xi) (2012) 6 SCC 228 (Army Headquarters v. CBI) wherein the Hon'ble Supreme Court held as follows:-

"26. According to the appellants, institution of prosecution is a stage prior to taking cognizance and, therefore, the word "institution" is different from the words "taking cognizance".

28. "Prosecution" means a criminal action before a court of law for the purpose of determining "guilt" or "innocence" of a person charged with a crime. "Civil suit" refers to a civil action instituted before a court of law for realisation of a right vested in a party by law.

44. There is a marked distinction in the stage of investigation and prosecution. The prosecution starts when the cognizance of offence is taken. It is also to be kept in mind that the cognizance is taken of the offence and not of the offender. The sanction of the appropriate authority is necessary to protect a public servant from unnecessary harassment or prosecution. Such a protection is necessary as an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the honest officer."

(xii) (2012) 5 SCC 1 (Ramlila Maidan Incident, In re,) wherein the Hon'ble Supreme Court held as follows:-

"30. No person can be divested of his fundamental rights. They are incapable of being taken away or abridged. All that the State can do, by exercise of its legislative power, is to regulate these rights by imposition of reasonable restrictions on them. Upon an analysis of the law, the following tests emerge:

(a) The restriction can be imposed only by or under the authority of law. It cannot be imposed by exercise of executive power without any law to back it up.

(b) Each restriction must be reasonable.

(c) A restriction must be related to the purpose mentioned in Article 19(2).

The questions before the Court, thus, are whether the restriction imposed was reasonable and whether the purported purpose of the same squarely fell within the relevant clauses discussed above.

expression in a democracy, there, on the other, it is also necessary to place reins on this freedom for the maintenance of social order. The term "social order" has a very wide ambit. It includes "law and order", "public order" as well as "the security of the State". The security of the State is the core subject and public order as well as law and order follow the same.

37. In *Romesh Thappar v. State of Madras* [AIR 1950 SC 124 = 1950(51) CrL.J. 1514] this Court took the view that local breaches of public order were no grounds for restricting the freedom of speech guaranteed by the Constitution. This led to the Constitution (First Amendment) Act, 1951 and consequently, this Court in *Ram Manohar Lohia v. State of Bihar* [AIR 1966 (CrL.J. 608)] stated that an activity which affects "law and order" may not necessarily affect "public order" and an activity which might be prejudicial to "public order" may not necessarily affect "security of the State". Absence of "public order" is an aggravated form of disturbance of public peace which affects the general current of public life. Any act which merely affects the security of others may not constitute a breach of "public order".

44. The distinction between "public order" and "law and order" is a fine one, but nevertheless clear. A restriction imposed with "law and order" in mind would be least intruding into the guaranteed freedom while "public order" may qualify for a greater degree of restriction since public order is a matter of even greater social concern. Out of all expressions used in this regard, as discussed in the earlier part of this judgment, "security of the State" is the paramount and the State can impose restrictions upon the freedom, which may comparatively be more stringent than those imposed in relation to maintenance of "public order" and "law and order". However stringent may these restrictions be, they must stand the test of "reasonability". The State would have to satisfy the court that the imposition of such restrictions is not only in the interest of the security of the State but is also within the framework of Articles 19(2) and 19(3) of the Constitution.

49. Section 144 CrPC is intended to serve public purpose and protect public order. This power vested in the executive is to be invoked after the satisfaction of the authority that there is need for immediate prevention or that speedy remedy is desirable and directions as contemplated are necessary to protect the interest of others or to prevent danger to human life, health or safety or disturbance of public tranquillity or a riot or an affray. These features

must coexist at a given point of time in order to enable the authority concerned to pass appropriate orders. The expression "law and order" is a comprehensive expression which may include not merely "public order" but also matters such as "public peace", "public tranquillity" and "orderliness" in a locality or a local area and perhaps some other matters of public concern too. "Public order" is something distinct from order or orderliness in a local area. Public order, if disturbed, must lead to public disorder whereas every breach of peace may not always lead to public disorder."

(xiii) (2014) 9 SCC 329 (Nawal Kishore Sharma v. Union of India) wherein the Hon'ble Supreme Court held as follows:-

7. The short question that falls for consideration in the facts of the present case is that as to whether the Patna High Court is correct in taking the view that it has no jurisdiction to entertain the writ petition. For answering the said question we would like to consider the provision of Article 226 of the Constitution as it stood prior to amendment. Originally, Article 226 of the Constitution reads as under:

"226. Power of High Courts to issue certain writs.—(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32."

8. While interpreting the aforesaid provision, the Constitution Bench of this Court in Election Commission v. Saka Venkata Rao [AIR 1953 SC 210], held that the writ court would not run beyond the territories subject to its jurisdiction and that the person or the authority affected by the writ must be amenable to court's jurisdiction either by residence or location within those territories. The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issued under Article 226 of the Constitution which makes no

reference to any cause of action or where it arises but insist on the presence of the person or authority within the territories in relation to which the High Court exercises jurisdiction. In another Constitution Bench judgment of this Court in K.S. Rashid & Son v. Income Tax Investigation Commission [AIR 1954 SC 207], this Court took the similar view and held that the writ court cannot exercise its power under Article 226 beyond its territorial jurisdiction. The Court was of the view that the exercise of power conferred by Article 226 was subject to a twofold limitation viz. firstly, the power is to be exercised in relation to which it exercises jurisdiction and secondly, the person or authority on whom the High Court is empowered to issue writ must be within those territories. These two Constitution Bench judgments came for consideration before a larger Bench of seven Judges of this Court in Lt. Col. Khajoor Singh v. Union of India [AIR 1961 SC 532]. The Bench approved the aforementioned two Constitution Bench judgments and opined that unless there are clear and compelling reasons, which cannot be denied, writ court cannot exercise jurisdiction under Article 226 of the Constitution beyond its territorial jurisdiction.

9. The interpretation given by this Court in the aforesaid decisions resulted in undue hardship and inconvenience to the citizens to invoke writ jurisdiction. As a result, clause (1-A) was inserted in Article 226 by the Constitution (Fifteenth) Amendment Act, 1963 and subsequently renumbered as clause (2) by the Constitution (Forty-second) Amendment Act, 1976. The amended clause (2) now reads as under:

"226. Power of High Courts to issue certain writs.-(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant³³⁵ and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3)-(4) * * *

On a plain reading of the amended provisions in clause (2), it is clear that now the High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court's territorial jurisdiction. Cause of action for the purpose of Article 226(2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. The expression cause of action has not been defined either in the Code of Civil Procedure or the Constitution. Cause of action is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed. The term "cause of action" as appearing in clause (2) came up for consideration time and again before this Court.

10. In *State of Rajasthan v. Swaika Properties* [1985 (3) SCC 217], the fact was that the respondent Company having its registered office in Calcutta owned certain land on the outskirts of Jaipur City, was served with notice for acquisition of land under the Rajasthan Urban Improvement Act, 1959. Notice was duly served on the Company at its registered office in Calcutta. The Company, first appeared before the Special Court and finally the Calcutta High Court by filing a writ petition challenging the notification of acquisition. The matter ultimately came before this Court to answer a question as to whether the service of notice under Section 52(2) of the Act at the registered office of the respondent in Calcutta was an integral part of cause of action and was it sufficient to invest the Calcutta High Court with a jurisdiction to entertain the petition challenging the impugned notification. Answering the question this Court held: (*Swaika Properties case*⁵, SCC pp. 222-23, paras 7-8)

"7. Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under sub-section (5) of Section 52 of the Act the appellants were entitled to require the respondents to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so,  take immediate steps to secure such possession under sub-section (6)

defined in Mulla's Code of Civil Procedure:

'The "cause of action" means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court.'

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The Notification dated 8-2-1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose."

17. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscle disease). As a result, the Shipping Department of the Government of India issued

an Order on 12-4-2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the district of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, the appellant was suffering from serious heart muscle disease (dilated cardiomyopathy) and breathing problem which forced him to stay in his native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation."

(xiv) AIR 1966 (1) SC 740 (Ram Manohar Lohia v. State of Bihar) wherein the Hon'ble Supreme Court held as follows:-

"8. It is common place that words in a statutory provision take their meaning from the context in which they are used. The context in the present case is the emergent situation created by external aggression. It would, therefore, be legitimate to hold that by maintenance of public order what was meant was prevention of disorder of a grave nature, a disorder which the authorities thought was necessary to prevent in view of the emergent situation. It is conceivable that the expression "maintenance of law and order" occurring in the detention order may not have been used in the sense of prevention of disorder of a grave nature. The expression may mean prevention of disorder of comparatively lesser gravity and of local significance only. To take an illustration, if people indulging in the Hindu religious festivity of Holi become rowdy, prevention of that disturbance may be called the maintenance of law and order. Such maintenance of law and order was obviously not in the contemplation of the Rules.

15. For these reasons, in my view, the detention

order if it had been based only on the ground of prevention of acts prejudicial to the maintenance of law and order, it would not have been in terms of Rule 30(1)(b) and would not have justified the detention. As I have earlier pointed out, however, it also mentions as another ground for detention, the prevention of acts prejudicial to public safety. Insofar as it does so, it is clearly within the rule. Without more, we have to accept an order made on that ground as a perfectly legal order. The result then is that the detention order mentions two grounds one of which is in terms of the rule while the other is not. What then is the effect of that? Does it cure the illegality, in the order that I have earlier noticed? This question is clearly settled by authorities. In *Shibban Lal Saksena v. State of Uttar Pradesh* [AIR 1954 SC 179] it was held that such an order would be a bad order, the reason being that it could not be said in what manner and to what extent the valid and invalid grounds operated on the mind of the authority concerned and contributed to the creation of his subjective satisfaction which formed the basis of the order. The order has, therefore, to be held illegal though it mentioned a ground on which a legal order of detention could have been based. I should also point out that the District Magistrate has not said in his affidavit that he would have been satisfied of the necessity of the detention order only for the reason that it was necessary to detain Dr Lohia to prevent him from acting in a manner prejudicial to public safety.

41. This brings us to the last contention of Dr Lohia and that is the most serious of all. He points out that the District Magistrate purports to detain him with a view to preventing him from acting in any manner prejudicial to the public safety and the maintenance of law and order and argues that the District Magistrate had misunderstood his own powers which were to prevent acts prejudicial to public order and, therefore, the detention is illegal. On the other side, Mr Verma contends that the Act and the Rules speak of public order which is a concept much wider in content than the concept of law and order and includes the latter, and whatever is done in furtherance of law and order must necessarily be in furtherance of public order. Much debate took place on the meaning of the two expressions. Alternatively, the State of Bihar contends that the order passed by the District Magistrate prior to the issue of the actual order of detention made use of the phrase "maintenance of public order" and the affidavit which the District Magistrate swore in support of the return also uses that phrase and, therefore, the District Magistrate was aware of what his powers were and did exercise them correctly and in

accordance with the Defence of India Act and the Rules. We shall now consider the rival contentions.

42. The Defence of India Act and the Rules speak of the conditions under which preventive detention under the Act can be ordered. In its long title and the preamble the Defence of India Act speaks of the necessity to provide for special measures to ensure public safety and interest, the defence of India and civil defence. The expression public safety and interest between them indicate the range of action for maintaining security peace and tranquillity of India whereas the expressions defence of India and civil defence connote defence of India and its people against aggression from outside and action of persons within the country. These generic terms were used because the Act seeks to provide for a congeries of action of which preventive detention is just a small part. In conferring power to make rules, Section 3 of the Defence of India Act enlarges upon the terms of the preamble by specification of details. It speaks of defence of India and civil defence and public safety without change but it expands the idea of public interest into maintenance of public order, the efficient conduct of military operations and maintaining of supplies and services essential to the life of the community. Then it mentions by way of illustration in clause (15) of the same section the power of apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain (the authority empowered to detain not being lower in rank than that of a District Magistrate), suspects, on grounds appearing to that authority to be reasonable –

- (a) of being of hostile origin; or
- (b) of having acted, acting or being about to act or being likely to act in a manner prejudicial to –
 - (i) the defence of India and civil defence;
 - (ii) the security of the State;
 - (iii) the public safety or interest;
 - (iv) the maintenance of public order;
 - (v) India's relations with foreign states;
 - (vi) the maintenance of peaceful conditions in any part or area of India: or
 - (vii) the efficient conduct of military operations.

It will thus appear that security of the state, public safety or interest, maintenance of public order and the maintenance of peaceful conditions in any part or area of India may be viewed separately even though strictly one clause may have an effect or bearing on another. Then follows Rule 30, which repeats the above conditions and permits detention of any person with a view to preventing him from acting in any of the above ways. The argument of Dr Lohia that the conditions are

to be cumulatively applied is clearly untenable. It is not necessary to analyse Rule 30 which we quoted earlier and which follows the scheme of Section 3(15). The question is whether by taking power to prevent Dr Lohia from acting to the prejudice of "law and order" as against "public order" the District Magistrate went outside his powers.

51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

52. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public

order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.

(xv) (1972) 3 SCC 845, (Kishori Mohan Bera v. State of W.B), wherein the Hon'ble Supreme Court held as follows:-

"5. Section 3 of the Act empowers the authorities specified therein to detain a person on the specific grounds laid down therein, namely, preventing the person concerned from acting in a manner prejudicial to (i) the Defence of India, relations of India with foreign powers or the security of India, or (ii) the security of the State or the maintenance of public order, or (iii) the maintenance of supplies and services essential to the community. We are not concerned with a foreigner, to whom clause (b) of the section also would apply, and therefore, that clause need not detain us. Section 3 thus clearly lays down that the power of detention conferred thereunder can be exercised on any one or more of the said grounds. Obviously, therefore, if the power is exercised on a ground not enumerated there, or in respect of activities which are not germane to any one of those grounds, such exercise would be beyond the jurisdiction of the detaining authority, and therefore, invalid.

6. As aforesaid, the District Magistrate detained the petitioner, as the impugned order recited, on the ground of preventing him from acting in any manner prejudicial to "the maintenance of public order or the security of the State", here the State of West Bengal. He was satisfied of the necessity of detaining the petitioner from the activities alleged against him in the grounds of detention set out earlier. The Act nowhere defines the expressions "public order" and "the security of the State", but by a series of decisions, to some of which only we need recall attention, the connotation and the area of each of them has been defined and the meaning to be attached to each of them has by now been well crystallised. So that the authority passing an order of detention can very well know the danger, or the likely danger to any one or more of the objects set out in Section 3 from the activities of the person concerned.

7. In Dr Lohia v. State of Bihar [1966 SCR 709 = AIR 1966 SC 740 = 1966(2) SCJ 549 = 1969(1) SCC 10] this Court explained the difference between the three concepts of law and order, public order and the security of the State and fictionally drew three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every

infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. These observations clearly bring out the distinction between each of the three concepts and the three imaginary concentric circles help to delineate the respective areas of the three concepts. A similar distinction between law and order and public order was also drawn in *Pushkar Mukherjee v. State of West Bengal* [1969(2) SCR 635] and a caution was there expressed that the expression "public order" in Section 3(1) of the Preventive Detention Act, 1950 did not take in every infraction of law and that every disturbance of law and order leading to disorder would not be sufficient to invoke the extraordinary power under such a detention law, unless the act in question was such as endangered or was likely to endanger public order. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. (See *Arun Ghosh v. State West Bengal* 1970(3) SCR 288 = 1970(1) SCC 98], also *Nagendra Nath Mondal v. State of West Bengal* [1972(1) SCC 498] This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State. In such a case the power can be exercised on both the grounds, namely, disturbance of public order and danger to the security of the State.

(xvi) (2011) 10 SCC 86 (*Asha Sharma v. Chandigarh Admn*) wherein the Hon'ble Supreme Court held as follows:-

"12. Arbitrariness in State action can be demonstrated by existence of different circumstances. Whenever both the decision-making process and the decision taken are based on irrelevant facts, while ignoring relevant considerations, such an action can normally be termed as "arbitrary". Where the process of decision making is followed but proper reasoning is not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness. Of course, sufficiency or otherwise of the reasoning may not be a valid ground for consideration within the scope of judicial review. Rationality, reasonableness, objectivity and application of mind are some of the prerequisites of proper decision making. The concept of transparency in the decision-making process of the State has also become an essential part of our administrative law."

10. Countering the submissions made by the respective learned Senior Counsels appearing for the petitioner companies, Mr. G.Rajagopalan, learned Additional Solicitor General, appearing for the respondents made the following submissions:-

10.1. The learned Additional Solicitor General submitted that if the jurisdiction had not been restricted to High Court of Delhi, there would have been different writ petitions in different High Courts through out the country with regard to any dispute in connection with Notice Inviting Application. Therefore, the jurisdiction at Delhi was introduced as a condition of tender by the Government. Since the issue arises out of NIA dated 2.3.2015, clause 4.22.2 squarely applies to the facts of the case. Further, the learned Additional Solicitor General submitted that having submitted a tender, which includes clause 4.22.2, the petitioner companies subjected themselves to the jurisdiction of the Delhi High Court and having done so, they are precluded from wriggling out of the situation and trying to challenge in the High court of Madras invoking Article 226 (2) of the Constitution of India. Further, the learned Additional Solicitor General submitted that while the petitioner companies themselves with respect to the subject matter of NIA have applied for different cities throughout India, cannot choose any jurisdiction by their choice and file writ petitions at Madras High Court when the term of the tender provides for jurisdiction at Delhi. That apart, the learned Additional Solicitor General also submitted that petitioner companies are not entitled to invoke jurisdiction of this court simply on the ground that they have registered office at Chennai and the impugned orders were received at Chennai.

10.2 With regard to security clearance, the learned Additional Solicitor General submitted that clause 3.8 has to be read with Annexure 10.8, which deals with not only with regard to the Company and the Directors but also persons having more than 10% share in the company. Therefore, if security clearance is not obtained with regard to the Company, Directors or a Shareholder, by invoking the doctrine of piercing the corporate veil, the applicant suffers lack of eligibility and therefore cannot proceed with the tender. Further, the learned Additional Solicitor General submitted that clause 3.2.1 and clause 3.8 operate in different fields and if the submissions of the petitioner companies that clause 3.2.1 alone should be accepted then, there is no need to have clause 3.8 in the tender document. The persons who have been convicted or disqualified at the threshold, other categories of persons not convicted have to necessarily go through the process which includes security clearance and after going through the process which includes security clearance, if the security clearance is not granted, the question of qualifying the applicant does not arise. If the petitioner companies press clause 3.2.1, it implies that they are questioning the requirement of security clearance under clause 3.8 and if the petitioner companies contend that denial of security clearance is bad on merits then

they cannot press clause 3.2.1.

10.3 The learned Additional Solicitor General submitted that the petitioner companies are not entitled to challenge the requirement of security clearance. The question of petitioner companies contending that there is no need for security clearance in the absence of any conviction cannot be accepted. Since the promoters of the petitioner companies are facing serious corruption charges and the criminal cases are pending against them, the Ministry of Home Affairs is of the view that it is not desirable to grant security clearance to the applicants and it is essentially a matter of policy, which cannot be questioned before any court of law.

10.4 The learned Additional Solicitor General submitted that the petitioner companies are not privy to the Ministry of Home Affairs and it is not for them to dictate as what should constitute security threat. Though the learned Attorney General has opined that pendency of cases on economic offence is not a bar for grant of security clearance, the Government of India did not accept the opinion of the learned Attorney General. Further, the learned Additional Solicitor General submitted that views expressed by the Hon'ble Minister for Information & Broadcasting in an interview that the SUN Group should not be denied security clearance, may be the opinion of the Ministry of Information & Broadcasting. The decision to grant security clearance ultimately vests with the Ministry of Home Affairs and any decision by the Ministry of Home Affairs would be binding on other Ministries concerned. Further, the learned Additional Solicitor General submitted that there were deliberations amongst various departments and the Ministry of Home Affairs ultimately decided not to issue security clearance for the reasons stated by them in their communication and therefore, the said communication of the Ministry of Home Affairs cannot be subjected to judicial review as the courts are not experts in the issue of security. Where a person is accused of serious allegations of misuse of power, money laundering etc., he should not be allowed to participate in the tender for parting with the privilege of the State. The decision not to grant security clearance was taken in public interest and has to necessarily over-ride the private interests of the petitioner companies. Admittedly, Shri Kalanithi Maran owns 75% of the shares in M/s. Sun TV Network Limited and he has been shown as a Director in M/s. South Asia FM Ltd., Sun Direct TV Pvt. Ltd., Kal Media Services Pvt. Ltd and Sun TV Network Limited. In M/s. South Asia FM Ltd., M/s. Sun TV Network is having 59.15% shares as per the details furnished by them in the application and Shri Kalanithi Maran personally hold 0.85% shares. In the details furnished regarding M/s.Kal Radio Ltd., M/s. Sun TV Network Ltd. has been shown having 97.78% of the shares of M/s.Kal Radio Limited. According to the learned Additional Solicitor General, it is clear that all the companies are closely interlinked and connected to Shri Kalanithi Maran and Shri Dayanithi Maran, who is the brother of Shri Kalanithi

Maran.

10.5 The learned Additional Solicitor General submitted that the Division Bench of Delhi High Court held in favour of M/s.Digital Radio (Mumbai) Broadcasting only on the ground that Shri Kalanithi Maran owns only 21.5% share and has no managerial control over the company and therefore, there was no need to pierce the corporate veil. In view of the admitted share pattern by the petitioners before this court, the companies cannot be seen in isolation from either Shri Kalanithi Maran or Shri Dayanithi Maran. The petitioners cannot contend that security clearance is not required after having submitted the tender applications. The legislature has given sufficient power to the Central Government to impose such conditions as it thinks fit and the Government has imposed security clearance as one of the conditions and the petitioner companies have subjected themselves to security clearance from time to time during the earlier phase of license and therefore, now they cannot contend that security clearance is without authority of law under section 4 of the Indian Telegraph Act, 1885.

10.6 The learned Additional Solicitor General further submitted that Ministry of Home Affairs along with the inputs given by the Intelligence Bureau (IB) would show that there is an allegation of receipt of Rs.546.96 crores as illegal gratification and other related charges to the extent of about Rs.120 crores that the Enforcement Directorate charged Shri Kalanithi Maran and Shri Dayanithi Maran under the Prevention of Money Laundering Act and CBI charge-sheeted Shri Dayanithi Maran for setting up of illegal 300 telephone lines etc. The learned Additional Solicitor General submitted that the mentioning of Rs.1 crore in the First Information Report filed by the CBI is only the installation charges and the Intelligence Bureau had calculated the total loss at Rs.443 crores, since there was allegation that about 700 lines were provided to Shri Dayanithi Maran under service category and the said lines were used by Sun TV. The issue of security clearance is a complicated issue over which Ministry of Home Affairs alone has expertise and the petitioner companies cannot request this court to substitute its opinion over the opinion of the Home Ministry. In the Aircel-Maxis case, a detailed charge-sheet has been filed by the CBI before the Special Court and summons have been issued to the accused in the said case.

10.7 With regard to Prevention of Money Laundering case, the same were the subject matter of W.P.Nos. 12464 & 12664 of 2015 before this court and the same is now pending before the Hon'ble Supreme Court on appeal.

10.8 With regard to obtaining 700 odd lines by Shri Dayanithi Maran, the same was the subject matter of CrI.O.P.No.16152 of 2015 and the details of the allegations are available on the files of this court. Anticipatory Bail was

declined by this court, however, the Hon'ble Supreme Court granted bail to Shri Dayanithi Maran. In the absence of any mala fide action against the respondents, the impugned orders have to be held as bona fide and cannot be interfered with.

10.9 The issue of security clearance cannot be put in straight-jacketed formula and parameters to grant or deny security clearance would vary from case to case depending upon the nature of allegations made against the said person. The allegation of corruption and connected charges of alleged money laundering, allegation of running illegal telephone exchange to conduct the operations of Sun TV Network has been made against Shri Dayanithi Maran and Shri Kalanithi Maran which constitute a series of unique mix of national security issues specific to that, therefore, the petitioner companies cannot be compared at all with the case of others, who were granted security clearance. In support of his contentions, the learned Additional Solicitor General appearing for the respondents relied upon the following judgments:-

(i) (2014) 5 SCC 409 (Ex-Army men's Protection Services (P) Ltd. v. Union of India), wherein the Hon'ble Supreme Court held as follows:-

15. It is difficult to define in exact terms as to what is "national security". However, the same would generally include socio-political stability, territorial integrity, economic solidarity and strength, ecological balance, cultural cohesiveness, external peace, etc.

16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in Secy. of State for Home Deptt. v. Rehman [2003(1) AC 153 = 2001(3) WLR 877 = 2002(1) All ER 122 (HL) : (AC p. 192C)

"... [in the matter] of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive."

(ii) (2013) 4 SCC 642, (Niranjan Hemchandra Sashittal v. State of Maharashtra) wherein the Hon'ble Supreme Court held as follows:-

26. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved

ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a ⁶⁵⁵ country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality.

27. Therefore, the relief for quashing of a trial under the 1988 Act has to be considered in the above backdrop.

(iii) 2011 SCC Online Bom 727 (Narangs International Hotels Private Limited v. Union of India) wherein the Bombay High Court held as follows:-

13. In our opinion the present case is covered by Akbar Travels-I and II. We may quote the relevant portion of the judgment of this court in Akbar Travels-II from which support can be drawn by respondent 1.

"31. We cannot transgress the limits of writ jurisdiction by sitting in judgment over the actions of Intelligence Agencies. These agencies manned by experts, who are in the best position to judge the security interests. Ultimately, sensitive and vital installations have to be safeguarded and protected from entry of persons who are considered to be undesirable and a security risk.

Precisely, such are the inputs in the reports which have been received and if the Bureau has acted upon the AJN 17-OS-WP(L)1105.11J same, then, we cannot sit in judgment over their decision. The writ Court does not possess any expertise in such cases. The Court cannot indulge in guess work and hold that the inputs do not endanger the security of the Airport nor public interest demand that the ground handling operations of the petitioner be prohibited. These are matters which are better left to the authorities in charge of security of the vital installations as they are in-charge of laying down standards and norms for protecting and safeguarding them. They act in public interest and when no malafides are alleged, their actions ought not be interfered. "

(iv) Writ Petition No.2459 of 2015 (SCOD 18 Networking Pvtg. Ltd. v. Ministry of Information and Broadcasting, New Delhi and others), wherein the Bombay High Court held as follows:-

"50. Further, as the Hon'ble Supreme Court holds what is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the

interest of the State or not. It should be left to the Executive. In matters of this nature and in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the Court to read into and provide for statutory exclusion if not expressly provided in the rules governing the field. Thus, the Court's jurisdiction to satisfy itself whether parties are entitled to a reasonable opportunity of being heard is in no way controlled much less hampered or fettered in such matters. As the Hon'ble Supreme Court holds, the Court is entitled to call the the files and see whether it is a case where the interest of national security is involved. Precisely that course has been adopted by us. The files have been produced for our perusal in both cases. We have carefully perused them. After perusing the communications and marked as confidential and secret, we are of the view that there is definite material which would enable the Central Government to conclude that the Home Ministry has withdrawn the security clearance. That was withdrawn in the interest of security of the State. Once a security clearance was obtained, but later on withdrawn based on Intelligence Bureau's adverse opinion, then, without further adjudication, the Central Government can, in the given facts and circumstances, revoke or cancel the registration. We are not going as far as holding that in this backdrop an opportunity of being heard would necessarily be an empty formality. However, such opportunity being afforded would not enable the petitioner to probe the confidential or secret information. That cannot be disclosed at any cost. Once the Home Ministry opined and concluded that the security clearance issued to the petitioner needs to be withdrawn and is thus withdrawn, then, the Information & Broadcasting Ministry, namely, the Registering Authority, cannot go behind such a conclusion. Therefore, the petitioner's intent to do so at the hearing in terms of the proviso to section 4 (7) cannot be countenanced. If the purpose of seeking hearing is such an exercise, then, that cannot succeed or rather should not. We are not holding that in each and every case, the proviso to sub-section (7) of section 4 and the opportunity in terms thereof should be dispensed with. The requirement therein has to be satisfied but if that is not done, then, the impact or effect of the same must necessarily result in quashing the final decision of suspension or revocation would depend upon the facts and circumstances of each case. Whether the Court must interfere for violation or breach of the proviso or whether the Court should undertake some other corrective exercise and issue appropriate direction

would, therefore, depend on the facts and circumstances of each case. Once the parties have left the matter to the Court and the Court called for the relevant files and documents and has found that from the files notings in both cases there were materials and inputs concerning security of the state and those inputs and materials have gone in reaching the conclusion that the security clearance needs to be withdrawn, then nothing further was left to be done by the registering authority, namely, the Ministry of Information & Broadcasting in the Central Government. That grants the registration of the nature claimed by the petitioners, namely, Multi System Operator. That is the department in the Government which deals with the applications for permanent registration as sought by the petitioners. It is that department's obligation and duty to obtain the remarks from the Ministry of Home Affairs as that Ministry is concerned with security clearance. It is that Ministry which is competent to take the ultimate decision of withdrawing the security clearance and opines and comments that the permission as sought would be subversive to the security of the State. If it is that Ministry and comprising of competent officials and experts which obtains the inputs and materials from agencies involved in monitoring and supervising the activities of several persons, including business entities, then, all the more we do not see how in the face of such material any useful purpose will be served by interfering with the impugned orders and directing that the respondents must issue a notice to the petitioners and grant them a personal hearing and thereafter take such decision as is permissible in law. Once we have found and from the files in both cases that the notings are germane and relevant, there was definite material to arrive at the satisfaction that the security clearance needs to be withdrawn, then, as the Hon'ble Supreme Court holds those who are in-charge of protecting national security must be allowed to do their job. The courts should keep themselves away from such matters. It is this very principle and which we have applied to the facts and circumstances of the present case. This is a case squarely falling within the parameters laid down in the aforesaid decisions."

(v) 2001(3) WLR 877 (Secretary of State v. Rehman), wherein the Court of House of Lords held as follows:-

"50. I shall deal first with the separation of powers. Section 15(3) of the 1971 Act specifies "the interests of national security" as a ground on which the Home Secretary of State may consider a deportation

conducive to the public good. What is meant by "national security" is a question of construction and therefore a question of law within the jurisdiction of the Commission, subject to appeal. But there is no difficulty about what "national security" means. It is the security of the United Kingdom and its people. On the other hand, the question of whether something is "in the interests" of national security is not a question of law. It is a matter of judgment and policy. Under the constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive."

(vi) (1996) 4 SCC 622 (Delhi Development Authority v. Skipper Construction Co. (P) Ltd) wherein the Hon'ble Supreme Court held as follows:-

"28. In Attorney General for India v. Amratlal Prajivandas [1994(5) SCC 54] a Constitution Bench of this Court comprising nine Judges including one of us (B.P. Jeevan Reddy, J.) dealt with the challenge to the validity of the definition of "illegally acquired properties" in clause (c) of Section 3(1) of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA). The said Act provided that where a person earned properties by smuggling or other illegal activities, all such properties, whether standing in his name or in the name of his relations or associates will be forfeited to the State. While dealing with the justification for such a radical provision, this Court held: (SCC pp. 89-90, para 43)

"So far as justification of such a provision is concerned, there is enough and more. After all, all these illegally acquired properties are earned and acquired in ways illegal and corrupt – at the cost of the people and the State. The State is deprived of its legitimate revenue to that extent. These properties must justly go back where they belong – to the State. What we are saying is nothing new or heretical. Witness the facts and ratio of a recent decision of the Privy Council in Attorney General for Hong Kong v. Reid [1993(3) WLR 1143]. The respondent, Reid, was a Crown-prosecutor in Hong Kong. He took bribes as an inducement to suppress certain criminal prosecutions and with those monies, acquired properties in New Zealand, two of which were held in the name of himself and his wife and the third in the name of his solicitor. He was found guilty of the offence of bribe-taking and sentenced by a criminal court. The Administration of Hong Kong claimed that the said properties in

New Zealand were held by the owners thereof as constructive trustees for the Crown and must be made over to the Crown. The Privy Council upheld this claim overruling the New Zealand Court of Appeals. Lord Templeman, delivering the opinion of the Judicial Committee, based his conclusion on the simple ground that any benefit obtained by a fiduciary through a breach of duty belongs in equity to the beneficiary. It is held that a gift accepted by a person in a fiduciary position as an incentive for his breach of duty constituted a bribe and, although in law it belonged to the fiduciary, in equity he not only became a debtor for the amount of the bribe to the person to whom the duty was owed but he also held the bribe and any property acquired therewith on constructive trust for that person. It is held further that if the value of the property representing the bribe depreciated the fiduciary had to pay to the injured person the difference between that value and the initial amount of the bribe, and if the property increased in value the fiduciary was not entitled to retain the excess since equity would not allow him to make any profit from his breach of duty. Accordingly, it is held that to the extent that they represented bribes received by the first respondent, the New Zealand properties were held in trust for the Crown, and the Crown had an equitable interest therein. The learned Law Lord observed further that if the theory of constructive trust is not applied and properties interdicted when available, the properties 'can be sold and the proceeds whisked away to some Shangri La which hides bribes and other corrupt moneys in numbered bank accounts' - to which we are tempted to add - one can understand the immorality of the Bankers who maintained numbered accounts but it is difficult to understand the amorality of the Governments and their laws which sanction such practices - in effect encouraging them. The ratio of this decision applies equally where a person acquires properties by violating the law and at the expense of and to the detriment of the State and its revenues where an enactment provides for such a course, even if the fiduciary relationship referred to in Reid¹⁰ is not present. It may be seen that the concept employed in Reid was a common law concept, whereas here is a case of an express statutory provision providing for such forfeiture. May we say in conclusion that 'the interests of society are paramount to individual interests and must be brought into just and harmonious relation. A mere property career is not the final destiny of mankind, if progress is to be the law of

the future as it has been of the past.' (Lewis Henry Morgan: Ancient Society)."

(vii) (1995) 1 SCC 478 (New Horizons Ltd. v. Union of India) wherein the Hon'ble Supreme Court held as follows:-

"27. The conclusion would not be different even if the matter is approached purely from the legal standpoint. It cannot be disputed that, in law, a company is a legal entity distinct from its members. It was so laid down by the House of Lords in 1897 in the leading case of Salomon v. Salomon & Co. [1897 AC 22 = (1895-9) All ER.Rep.33] Ever since this decision has been followed by the courts in England as well as in this country. But there have been inroads in the doctrine of corporate personality propounded in the said decision by statutory provisions as well as by judicial pronouncements. By the process, commonly described as "lifting the veil", the law either goes behind the corporate personality to the individual members or ignores the separate personality of each company in favour of the economic entity constituted by a group of associated companies. This course is adopted when it is found that the principle of corporate personality is too flagrantly opposed to justice, convenience or the interest of the Revenue. (See : Gower's Principles of Modern Company Law, 4th Edn., p. 112.) This concept, which is described as "piercing the veil" in the United States, has been thus put by Sanborn, J. in US v. Milwaukee Refrigerator Transit Co. 1905(142) Fed. 247, 255:

"When the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons."

(viii) (2009) 6 SCC 171(Meerut Development Authority v. Assn. of Management Studies) wherein the Hon'ble Supreme Court held as follows:-

"27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the abovestated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations."

(ix) 1998 (1) MLJ 565 (Indital Construction Machinery v. Union Of India (Uoi) And Anr.) wherein this Court held as follows:-

"19. Thus, this Court will not interfere with the eligibility condition that is prescribed by the respondents 2 and 3 as it is within the specialised knowledge and it is for them to fix the eligibility condition for the tenderers. This is the law as laid down by the Apex Court in the decision in Ramana Dayaram Shetty's case , already referred to."

(x) (2004) 6 SCC 254 (Kusum Ingots & Alloys Ltd. v. Union of India) wherein the Hon'ble Supreme Court held as follows:

"16. In Union of India v. Adani Exports Ltd. [2002(1) SCC 567] it was held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute and the entire or a part of it arose within its jurisdiction.

18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court."

(xi) (1994) 4 SCC 711 (ONGC v. Utpal Kumar Basu) wherein the Hon'ble Supreme Court held as follows:-

"8. From the facts pleaded in the writ petition, it is clear that NICCO invoked the jurisdiction of the Calcutta High Court on the plea that a part of the cause of action had arisen within its territorial jurisdiction. According to NICCO, it became aware of the contract proposed to be given by ONGC on reading the advertisement which appeared in the Times of India at Calcutta. In response thereto, it submitted its bid or tender from its Calcutta office and revised the rates subsequently. When it learnt that it was considered ineligible it sent representations, including fax messages, to EIL, ONGC, etc., at New Delhi, demanding justice. As stated earlier, the Steering Committee finally rejected the offer of NICCO and awarded the contract to CIMMCO at New Delhi on 27-1-1993. Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding justice from Calcutta on

learning about the rejection of its offer. The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action. Besides the fax message of 15-1-1993, cannot be construed as conveying rejection of the offer as that fact occurred on 27-1-1993. We are, therefore, of the opinion that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court."

(xii) (2002) 1 SCC 567 (Union of India v. Adani Exports Ltd.) wherein the Hon'ble Supreme Court held as follows:-

"20. Mr Desai, however, placed reliance on a recent judgment of this Court in Navinchandra v. State of Maharashtra [2000(7) SCC 640 = 2001 SCC Cr1.215] wherein this Court had held that a part of the cause of action had arisen within the jurisdiction of the Bombay High Court. It is to be noted that in the said petition, among other reliefs, the writ petitioner had prayed for a writ of mandamus to the State of Meghalaya to transfer the investigation to Mumbai Police as also allegations of mala fides were made as to the filing of the complaint at Shillong. It was also averred in that case that the petitioner was primarily aggrieved by the criminal complaint filed at Meghalaya because the bulk of the investigation was carried on at Bombay. The said writ petition was dismissed by the Bombay High Court solely on the ground that since the complaint in question was filed in Shillong in the State of Meghalaya and the petitioner had sought for quashing of the said complaint, such a writ petition was not maintainable before the High Court of Bombay. According to this Court, that finding was given without taking into consideration the other alternative prayers in the writ petition to which we have made reference hereinabove, which prayers according to this Court, gave rise to a cause of action to move the High Court at Bombay for relief. Therefore, in our opinion, this judgment does not help the writ petitioner to justify its action in filing a writ petition before the Gujarat

High Court. That apart, we must notice that the said judgment is delivered in a matter involving criminal dispute and consequences of such dispute have a direct bearing on the personal freedom of a citizen guaranteed under Article 21 of the Constitution. Therefore, the consideration that arises in deciding the question of territorial jurisdiction in cases involving criminal offences may not always apply to cases involving civil disputes like the special civil applications with which we are concerned. Mr Desai then urged that since the High Court has elaborately dealt with the merits of the case and given a finding in favour of the respondents in the interest of justice, we should not interfere with the said finding and uphold the same. We are not inclined to accept this argument of the learned counsel because the appellants herein had taken objection to the entertainment of the special civil applications by the Gujarat High Court on the ground of lack of territorial jurisdiction in the first instance itself and the same was rejected, according to us, wholly on unsustainable grounds. As a matter of fact, the appellant on the entertainment of the civil application and grant of interim order, had challenged the said order on the ground of want of jurisdiction by way of a civil appeal in this Court which appeal is pending consideration by this Court, therefore, the objection having been taken at the first instance itself and the court having not proceeded to decide this question of territorial jurisdiction as contemplated under Order 14 Rule 2 CPC, we think we cannot deny relief to the appellant solely on the ground that the High Court has chosen to proceed to decide the case on merit. This being a judgment of a court having no territorial jurisdiction, the judgment has to be set aside. However, the special civil applications cannot be dismissed on this ground because it has been the contention of the appellants themselves in the objections filed by them before the High Court, that these applications ought to be transferred to the High Court at Chennai, in the interest of justice, we agree with this plea."

(xiii) 2016 (1) KLJ 720 (G.Madhav Nair v. Union of India & others) , wherein the Kerala High Court held as follows:-

"18. Herein, definitely it is an executive action which is challenged by the petitioner. Exhibit P1 is the report of a High Level Team, with respect to an agreement entered into between M/s.Antrix Corporation Limited, a subsidiary of ISRO, and M/s.DEVAS Multimedia Private Limited, which resulted in Exhibits P2 and P3. The agreement, which was the subject matter of the enquiry by the High Level Team, was not entered into within the jurisdiction of this High Court; nor did any

of the consequences of the agreement arise within this jurisdiction. The High Level Team concluded in Exhibit P1 that there have been serious administrative and procedural lapses and also there is a collusive behaviour on the part of certain individuals who were involved with the execution of the agreement. No part of the enquiry at any time extended to any incident which occurred within the State of Kerala and the enquiry was carried out, outside the jurisdiction of this Court. Exhibits P2 and P3 are identically dated and was, hence, issued on the same day. Exhibit P3, in fact, was the consequence of Exhibit P2. Exhibit P2 was the order which directed the petitioner, along with three others, to be divested of the current assignments with the Government, as a consequence of which Exhibit P3 was issued terminating the Professorship with the Department of Space. As was noticed at the outset, the Professorship was to be carried on in Bangalore under the Department of Space/ISRO and the order too was served on the petitioner at Bangalore. In such circumstance, definitely Exhibit P3 cannot be challenged before this Court, since none of the facts leading to conferment of a cause of action on the petitioner could be traced to anywhere within the territorial jurisdiction of this High court. The residence of the petitioner is inconsequential and is not a fact, if traversed, the petitioner would be liable to prove, to obtain a favourable judgment."

(xiv) (1994) 4 SCC 710 (Aligarh Muslim University v. Vinay Engineering Enterprises (P) Ltd.,) wherein the Hon'ble Supreme Court held as follows:-

"2. We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is a case of abuse of jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable."

(xv) (1985) 3 SCC 217 (State of Rajasthan v. Swaika Properties) wherein the Hon'ble Supreme Court held as follows:-
<https://hcservices.ecourts.gov.in/hcservices/>

"8. The expression "cause of action" is tersely defined in Mulla's Code of Civil Procedure:

"The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court."

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose."

(xvi) 2014(5) LW 225 (M/s. Kal Cables Pvt. Ltd. Rep. By its Managing Directors, Chennai v. The secretary Ministry of Information and Broadcasting, New Delhi and another) wherein this court held that abuse of official position by a person in power and the amassing of wealth of unimaginable proportions, is also an assault on security of the state.

In these circumstances, the learned Additional Solicitor General

prayed for dismissal of the writ petitions.

11. On a careful consideration of the materials available on record and the submissions made by the respective learned Senior Counsel appearing for the petitioners and the learned Additional Solicitor General, appearing for the respondents and also the judgments relied upon by the learned counsel on either side, it could be seen that the petitioners herein have filed two sets of writ petitions. The first batch of writ petitions are W.P.Nos. 11476 & 11477 of 2015 to issue writs of mandamus to direct the respondents to permit the petitioners to move to Phase III policy for the respective FM Radio Stations by entering into Grant of Permission Agreement [GOPA]. The second batch of writ petitions are W.P.Nos. 21810 to 21815 of 2015 filed by three companies and their shareholders to issue writs of Certiorarified Mandamus to call for the records of the 2nd respondent in their order dated 15th July, 2015, to quash the same and consequently direct the respondents 1 & 2 to permit the petitioners to migrate to FM Phase III Regime by allowing the petitioners to resubmit the bank guarantee and permitting the petitioners to participate in the forthcoming FM Station Phase III Auction pursuant to the Notice Inviting Application dated March 2nd 2015 for E-Auction of First batch of Private FM Radio Phase-III Channels.

12. It is not in dispute that the petitioners are running FM Radio Channels and the said companies are in existence for more than 10 years. The petitioners, in order to establish, operate and maintain FM Radio broadcasting stations, have obtained licenses under Section 4 of the Indian Telegraph Act, 1885 under Phase-II Policy. The Phase-II Policy licenses were issued for a period of 10 years. By notice dated 1.1.2015, the 2nd respondent, addressed to all private FM Broadcasters to migrate to Phase-III policy and also to new entrants requesting them to provide information along with supporting documents sought by it as per proforma annexed therein. Pursuant to the same, the petitioner companies by their letter dated 02.01.2015 had furnished the details to the respondents as required by them. Subsequently, by notice dated 16.01.2015, the 2nd respondent, once again requested all Private FM broadcasters to submit the details of shareholders. By letter dated 20.1.2015, the petitioner companies submitted the details of all its shareholders to the 2nd respondent. Thereafter, by letter dated 24.02.2015, the 2nd respondent had requested the existing operators of Phase-II, like that of the petitioner companies opting to migrate to FM Phase-III, to fulfill certain conditions. According to the petitioner companies, they furnished the details on 17.03.2015 to the respondents. On 02.03.2015, the respondents had invited application for e-auction of the first batch of private FM Radio Phase-III Channels. The petitioner companies, who are operating 18 Radio Stations, in order to bid in the auction for further Stations in Phase-III, submitted their applications with all required documents and necessary fees on 27.03.2015. After

the submission of the applications, on 15.07.2015, the 2nd respondent published a list of broadcasters, who are permitted to migrate from Phase-II to Phase-III in its official website. However, petitioner companies names did not find a place in the said list. The petitioners came to understand that their companies names did not figure in the said list for the reason that the Ministry of Home Affairs had denied security clearance to the petitioner companies. On the next day, i.e., on 16.07.2015, the petitioners were served with the communication from the 2nd respondent dated 15.07.2015, giving the reasons for the denial of security clearance in respect of the petitioner companies. Challenging the orders dated 15.07.2015 passed by the 2nd respondent, the petitioners have filed W.P.Nos.21810 to 21815 of 2015.

13. The FM Radio Broadcasting Stations were launched at Chennai, Coimbatore, Tirunelveli and Vishakapatnam in the year 2003 and the said licenses were for a period of 10 years. By notice dated 24.2.2015, the 2nd respondent had requested the existing operators of Phase-II like that of the petitioners in W.P.Nos.11476 & 11477 of 2015 opting to migrate to FM Phase-III to fulfill certain conditions, which according to the petitioners were fulfilled and furnished to the respondents on 06.03.2015. Pursuant to the fulfillment of the conditions to enable the petitioners to migrate from Phase-II to Phase-III, the 2nd respondent, by letter dated 26.03.2015, had stated that the Government had decided to provisionally extend the license period of the petitioners' channels at Chennai, Coimbatore, Tirunelveli and Vishakapatnam on conditions, as prescribed in migration Grant of Permission Agreement under Phase-II, for a period of six months or migration to FM Phase-III, whichever is earlier to pay the non-refundable one time migration fee with effect from 1.4.2015. The petitioner companies, as per the requirement, furnished bank guarantee and undertaking to the respondents on 30.03.2015. The petitioners came to understand that the licenses of all other private FM broadcasters of Phase-I operating in Phase-II were extended for a further period of 6 months from 04.04.2015, however, the petitioners have not received any reply from the respondents extending the period of license. Thereafter, the petitioner companies sent a letter dated 02.04.2015 requesting the respondents to issue the permission for extension of licenses. In spite of the said letter dated 2.4.2015, the respondents did not send any reply. Thereafter, on 10.04.2015, the petitioner companies sent another representation to the respondents and a reminder on 16.04.2015. In spite of receiving the letters, the respondents have not extended the licenses of the petitioner companies. In these circumstances, the petitioner companies have filed W.P.Nos.11476 & 11477 of 2015 to issue writs of mandamus.

14. The first issue that arise for consideration in these writ petitions is with regard to jurisdiction of the Madras High Court in entertaining the writ petitions. The learned Additional

Solicitor General submitted that as per clause 4.22.2 of Notice Inviting Application (NIA) only the Delhi High Court has got jurisdiction and the Madras High Court has got no jurisdiction to entertain the writ petitions. The learned Senior Counsels appearing for the petitioners submitted that clause 4.22.2 of NIA is applicable only if there arises a dispute out of or in respect of the Notice Inviting Applications, e-auctions and its terms and conditions for award of FM Radio licenses under Phase-III and in the present writ petitions, the petitioners have neither challenged the Notice Inviting Applications nor e-auctions and its terms and conditions for award of FM Radio licenses under Phase-III, but have challenged only the orders dated 15.07.2015 passed by the second respondent denying security clearance, which are independent orders on arbitrary, illegal grounds violating Articles 14, 19 and 21 of the Constitution of India. Hence, it would be appropriate to extract 4.22 of NIA, which reads as follows:-

4.22 Dispute Resolution and Jurisdiction

4.22.1 Dispute resolution shall be as per the provisions of Telecom Regulatory Authority of India Act, 1997 as amended from time to time or such other laws applicable to resolution of such dispute.

4.22.2 Subject to Clause 4.22.1, the High Court of Delhi at New Delhi shall alone have the jurisdiction over all disputes arising out of or in respect of the Notice Inviting Applications, e-auctions and its terms and conditions for award of FM Radio Licenses under Phase-III

15. On a reading of clause 4.22.2, it could be seen that the High Court of Delhi at New Delhi shall alone have the jurisdiction over all disputes arising out of or in respect of the Notice Inviting Applications, e-auctions and its terms and conditions for award of FM Radio Licenses under Phase-III. In the present case, the petitioners have neither challenged the Notice Inviting Applications or e-auctions and its terms and conditions for award of FM Radio Licenses under Phase-III nor they have questioned the terms and conditions of the Notice Inviting Applications or e-auctions. They have submitted their applications fully accepting the terms and conditions. The only grievance of the petitioners is that the order denying security clearance is arbitrary, illegal, discriminatory, which is violative of Articles 14, 19 and 21 of the Constitution of India. It is also pertinent to extract Article 226 (2) of the Constitution of India, which reads as follows:-

"226 (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within

those territories."

As per, Article 226 (2) of the Constitution of India, the power conferred by clause (1) to issue directions, orders or writs to any Government, Authority or Person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or Authority or the residence of such person is not within those territories. Further, the petitioners have stated that their companies are having their registered office in Chennai and the impugned orders were also communicated to them in Chennai and they are carrying on business in Chennai, therefore, the major part of cause of action arose within the jurisdiction of this court.

16. As rightly contend by the learned Senior counsel for the petitioners, as per clause 26 of the Grant of Permission Agreement [GOPA], Arbitration is the remedy for any dispute but, the said clause becomes applicable only when the petitioners are permitted to migrate into phase-III policy for the new and the old stations by entering into GOPA and thereafter, if there arises any dispute with regard to the terms and conditions of the said agreement, the dispute resolution is by way of Arbitration.

17. The respective learned Senior Counsels appearing on behalf of the petitioners specifically stated that the petitioners have not challenged the terms and conditions of the NIA viz., clause 3.2.1 and 3.8 of the NIA and that they have only challenged the orders dated 15.7.2015 denying the security clearance to the petitioner companies. Since the petitioners are not challenging any one of the clause in the NIA, they cannot be prevented from challenging the impugned orders dated 15.7.2015 before this court.

18. It is also not the case of the respondents that no part of cause of action arose within the territorial jurisdiction of this court. The respondents only relied upon class 4.22.2 of the NIA for ousting the jurisdiction of this court. The ratio laid down by the Hon'ble Supreme Court in the judgment reported in 2014 (9) SCC 329 (cited supra) squarely applies to the facts and circumstances of the present case.

19. In the present writ petitions, since the petitioners have challenged only the independent orders denying security clearance and not the terms and conditions of licenses as envisaged under GOPA which the petitioner companies are not permitted to sign till this date, the said Arbitration clause is also not applicable to the petitioners. Moreover, the jurisdiction clause viz., clause 4.22.2 of the NIA shall not oust the writ jurisdiction of this court under Article 226(2) of the Constitution of India. When the petitioner companies are having their registered office in Chennai and all its

official activities are taking place in Chennai and the impugned orders were also served on the petitioners in Chennai, this court has got jurisdiction to entertain the writ petitions.

20. According to the petitioner in W.P.No.21810 of 2015, viz.,M/s.Sun TV Network Ltd., it is a public limited company incorporated in the year 1985 and its shareholders are from India as well as from foreign countries. The petitioner claims that it is a largest television broadcaster in the South Asian States of Tamil Nadu, Kerala, Andhra Pradesh, Telangana and Karnataka and the Board of Directors comprises of 8 Directors out of which, 4 are independent Directors. The petitioner company further stated that it offers 33 television channels in 4 languages, including the flagship channel, Sun TV, which was launched in 1993 and was one of India's first regional satellite television channels. The petitioner company also launched Tamil FM Radio Stations in Chennai, Coimbatore and Tirunelveli under the name of Suryan FM.

21. According to the petitioner in W.P.No.21812 of 2015, viz.,M/s.Kal Radio Ltd., it is engaged in the business of broadcasting FM Radio under the brand name Kal Radio and is in existence from 07.10.2005 and claims to be one of the leading entertainment channel in South India having invested an amount of Rs.150.22 crores and is also offering employment to 348 direct persons in the said channels and is in operation from 2006. The petitioner further stated that it contributed Rs.45.31 crores to the State Exchequer towards license fee, incidental fees and share of gross revenue, etc. and also made a payment of Rs.55.95 crores towards service tax, TDS and income tax and it has also been awarded with 15 awards.

22. According to the petitioner in W.P.No.21814 of 2015, viz.,M/s.South Asia FM Ltd., it is engaged in the business of broadcasting FM Radio under the brand name South Asia FM and is in existence from 09.11.2005 and it has invested an amount of Rs.140.80 crores and is also offering employment to 395 direct persons in the said channels apart from providing employment to hundreds of persons indirectly. The petitioner company further stated that it made payment of Rs.49.76 crores to the State Exchequer towards license fee, incidental fees and share of gross revenue, etc. and also made a payment of Rs.60.35 crores towards service tax and TDS and income tax and it has also been awarded with 38 awards. The petitioner company would further state that they have obtained license under section 4 of the Indian Telegraph Act, 1885 under Phase-II Policy from the 1st respondent and are maintaining and operating FM radio broadcasting station and the said license was for a period of 10 years.

23. The next issue that arise for consideration is with regard to correctness of the order passed by the 2nd respondent denying security clearance of the petitioner companies.

24. The petitioner companies contended that the Indian Telegraph Act, does not deal with the security clearance and the petitioner companies did not commit any act with regard to breach of security of the nation and they did not broadcast anything which affected the security of nation. The learned counsel on either side placed reliance on 3.2, 3.8, 4.16, 4.18 and 10.8 of the Notice Inviting Applications. Therefore, it would be appropriate to extract the above said clauses, which reads as follows:-

3.2 Disqualifications:

3.2.1 The following types of companies shall not be eligible to apply:-

- a) Companies not incorporated in India
- b) Any company controlled by a person convicted of an offence involving moral turpitude or money laundering/drug trafficking, terrorist activities or declared as insolvent or applied for being declared insolvent.
- c) A company which is an associate of or controlled by a Trust, Society or Non Profit Organization;
- d) A company controlled by or associated with a religious body;
- e) A company controlled by or associated with a political body;
- f) Any company which is functioning as an advertising agency or is an associate of an advertising agency or is controlled by an advertising agency or person associated with an advertising agency;
- g) Subsidiary company of any applicant in the same city;
- h) Holding company of any applicant in the same city;
- i) Companies with the same management as that of an applicant in the same city;
- j) More than one Inter-connected undertaking in the same city;
- k) A company that has been debarred from taking part in the bidding process or its holding company or subsidiary or a company with the same management or an interconnected undertaking;
- i) The defaulters of conditions under Phase-I &

Phase II, who have contested the revocation of their Letters of Intent/License Agreements/Bank Guarantees, and thereby continue to be debarred from participating in any future bidding process.

Note 1: For the purpose of sub clause (d) above a religious body shall be:

(i) A body whose objectives are wholly or mainly of a religious nature

(ii) A body which is controlled by a religious body or an associate of religious body

Note 2: For the purpose of sub clause (e) above a political body shall be:

(i) A body whose objects are wholly or mainly of a political nature;

(ii) A body affiliated to a political body;

(iii) A body corporate, which is an associate of a body corporate controlled, held by, operating in association or controlling a body of political as referred above

Note 3: For the purpose of clause (f) an Advertising Agency shall mean an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an advertising agent and any reference to an advertising agency includes a reference to an individual who-

(i) Is a director or officer of any body corporate which carries on such a business, or

(ii) Is employed by any person who carries on such a business.

Note 4: The terms "Same Management", "Subsidiary Company" and "Holding Company" shall have the same meaning as assigned to them under section 4 of the companies Act, 1956 and Section 2 of the Companies Act, 2013.

Note 5: The terms "Inter-Connected Undertakings" shall have the same meaning as assigned to it as per the prevalent laws in India

Note 6: If the applicant and the subsidiary company/holding company/company with the same management/Inter-Connected Undertaking submit more than one bid for the same City, all such bids shall be rejected.

Note 7: For the purpose of sub clause (1) above, the defaulter of phase-I who had accepted revocation of their LOI and exercised the option to participate in Phase-II bidding and who were subsequently permitted to

participate in Phase-II bidding, shall be permitted to participate in Phase-III bidding also.

3.8 Security Clearance

The company as well as all Directors on the Board shall be security cleared. Ministry shall take security clearance of the company as well its Directors from relevant Government Authorities. The information to be provided by prospective bidders for security clearance along with the Application is given at Annexure 10.8. the company shall take prior permission of the Government before effecting any change in the Board of Directors.

4.16 National Security and Other Conditions

4.16.1 The Government of India, Ministry of Information & Broadcasting shall have the right to temporarily suspend the permission of the permission holder in public interest or for national security for such period or periods as it may direct. The company shall immediately comply with any directives issued in this regard failing which the permission issued shall be revoked and the company disqualified to hold any such permission in further for a period of five years

4.16.2 The company shall not use any equipment, which are identified as unlawful and/or render network security vulnerable.

4.16.3 The permission holder shall be required to obtain security security clearance of all foreign personnel likely to be deployed for more than 60 days in a year by way of appointment, contract and consultancy or in any other capacity for installation, maintenance, operation or any other services prior to their deployment.

4.16.4 The permission shall be subject to permission holder remaining security cleared throughout the currency of permission. In case the security clearance is withdrawn the permission granted is liable to be terminated forthwith.

4.16.5 In the event of security clearance of any of the persons associated with the permission holder or foreign personnel is denied or withdrawn for any reasons whatsoever, the permission holder will ensure that the concerned persons resigns or his services terminated forthwith after receiving such directives from the Government failing which the permission granted shall be revoked and the company shall be disqualified to hold any such permission in future for a period of five years.

4.18 Penalties

4.18.1 In case there is any violation of conditions cited in Clause 4.5.1, 4.5.2 and 4.6.1, Government may suo motto or on basis of complaints take cognizance and place the matter before the Inter- ministerial Committees on Programme and Advertising Codes for recommending appropriate penalties on the recommendation of the Committee a decision to impose penalties shall be taken. However, before the imposition of a penalty the Permission Holder shall be given an opportunity to represent its case. The Ministry shall however be at liberty to specify any other mechanism to take action for such violations.

4.18.2 Except wherever provided otherwise, in the event of a permission holder violating any of the terms and conditions of permission, or any other provisions of the FM Radio policy, the Ministry of Information and Broadcasting shall have the right to impose the following penalties.

4.18.2.1 In the event of first violation, suspension of the permission and prohibition of broadcast up to a period of 30 days.

4.18.2.2 In the event of second violation, suspension of the permission and prohibition of broadcast up to a period of 90 days.

4.18.2.3 In the event of third violation, revocation of the permission and prohibition of broadcast up to the remaining period of the permission.

4.18.2.4 In the event of any violation as mentioned in Clause 4.18.2, the Ministry of Information and Broadcasting shall be well within its right to award a lesser penalty which may include issuance of an advisory or a warning or a direction to run an apology on the channel or in any other manner depending on the gravity of the violation.

4.18.2.5 In the event of the failure of the permission holder to comply with the penalties imposed within the prescribed time, revocation of permission and prohibition to broadcast for the remaining period of the permission and disqualification to hold any fresh permission in future for a period of five years.

4.18.3 In the event of suspension of permission the permission holder will continue to discharge its obligations under the terms and conditions of permission including the payment of fee.

4.18.4 In the event of revocation of permission, the

Government shall not be responsible for any investment towards the operationalisation of the channel, not limited to capital and operating expenditure, in case of imposition of any penalty referred above.

4.18.5 The Performance Bank Guarantee deposited by the permission holder for the channel may also be forfeited for failure to comply with any of the terms and conditions of GOPA.

4.18.6 All the penalties mentioned above shall be imposed only after giving a written notice to the permission holder to fully rectify the violation within a period of 15 days, failing which he shall be liable for the proposed penalty.

10.8 Format for security Clearance

(i) In respect of Company/Firm (Indian/Foreign)

Sl. No.	Full Name of Company and its Foreign collaborator if any, including the details of Board of Directors as (ii) below	Date of Registration	Permanent Address of Head Office, Regional Offices and Registered Office	Joint Venture with other business owned	Activities and other business owned	Name of CEOs/ Partners (with details as in (ii) below)	Share holding pattern of applicant company, if applicable)	Ultimate ownership of share holding companies (and the investigating company if applicable) along with detailed particulars of owners as in (ii) below

Foreign investee/partner company self-declaration regarding presence/operation in China & Pakistan (If any)

<https://hcservices.ecourts.gov.in/hcservices/>

(ii) Details in respect of Directors/Key Executives

Sl. No.	Full Name of Board of Directors / Key executive (CEO, Head of Finance & Head of Marketing)	Present Position held with Date (Since when)	Date of Birth	Parent age	Complete Present & permanent addresses	Nationality	Passport Nos. and issue date, if any	Contact Address & telephone number if any

(iii) Details of Shareholders (All firms/companies/entities to be included. Also, individuals having shareholding more than 10%)

Sl.No.	Full Name	Parent age Father /M other	Date of Birth	Permanent Address	Complete Present addresses	Present position held	Nationality if (if hold dual nationality, both must be clearly mentioned)	% of shares held in other company (if any) then name of company & complete address may be provided

25. It is also appropriate to extract the impugned order passed against the petitioner in W.P.No.21810 of 2015.

"No.N-38014/10/2015-FM/594

Government of India

Ministry of Information and Broadcasting

(FM Cell)

issued in this

<https://hcservices.ecourts.gov.in/hcservices/>

Shastri Bhavan, New Delhi

Dated the 15 July, 2015

To
Mr.K.Shanmugam,
Authorised Signatory,
M/s.Sun TV Network Ltd.,
Murasoli Maran Towers
73, MRC Nagar Main Road
MRC Nagar, Chennai - 600 028

Subject: Application for e-Auction of 135 Private FM Radio
Channels in

First Batch (Phase-III)-regarding.

Sir,

The undersigned is directed to refer to M/s Sun TV Network Limited' application dated 20.03.2015, received by this office on 27.03.2015 at 02.40 PM, on the subject cited above and to state as follows:

Whereas, the Government issued a Notice Inviting Applications (NIA) on March 2, 2015, for pre-qualification for e-auction of first Batch of Private FM Radio Phase-III channels, wherein the last date for receipt of applications was prescribed as 5 P.M. on 27.03.2015;

Whereas, clause 3.8 of the NIA stipulates that "The Company as well as all Directors on the Board shall be security cleared. Ministry shall take security clearance of the company as well its Directors from relevant Government Authorities. The information to be provided by prospective bidders for security clearance along with the Application is given at Annexure 10.8. The company shall take prior permission of the Government before effecting any change in the Board of Directors".

Whereas Ministry of Home Affairs has denied security clearance to Sun TV Network Ltd., for the following reasons:

M/s Sun TV Network Ltd., is owned by Maran family. The security clearance is denied on the basis of the following inputs against Shri Dayanidhi Maran, Shri Kalanithi Maran and Sun TV:-

i. Prosecution of Shri Dayanidhi Maran and Shri Kalanithi Maran in Aircel-Maxis case by CBI with the allegation of receipt of Rs.549.96 cr. as illegal gratification and other related charges.

ii. The Enforcement Directorate has charged Shri Dayanidhi Maran and Shri Kalanithi Maran under the PMLA on the allegation of laundering and an amount of Rs.5.5

billion in the Aircel-Maxis matter.

iii. The CBI has charged Shri Dayanidhi Maran for setting up 300 illegal telephone lines at the residence of Shri Kalanithi Maran to facilitate Sun TV services, thereby gaining an illegal pecuniary advantage of Rs. 443 cr. MHA has stated that the aforementioned economic offences are of serious nature adversely impinging upon economic integrity of the country.

2. In view of the denial of Security Clearance, the application of M/s Sun TV Network Limited is rejected as it has failed to comply with the requirements of clause 3.8 of the NIA.

3. As per clause 5.2.4.5 of the NIA "The EMD will be returned following failure to pre-qualify, or following the end of the Auctions and after meeting all the necessary obligations under the Auction Rules, as applicable". Therefore the EMD amounting to Rs.3,83,43,750/- submitted by M/s Sun TV Network Ltd., through Bank Guarantee No.0003615FBG005468 dt. 20.03.2015 issued by Citi Union Bank Ltd., Mandaveli, Chennai is returned herewith in original. Encl: As above.

Yours faithfully, Sd/-
Yogendra Trihan
Deputy Director(FM)

26. It is pertinent to note that identical orders were passed against the other petitioner companies also by the 2nd respondent on 15.07.2015.

27. Clause 3.2 of the NIA speaks about the disqualifications and as per 3.2.1, the following types of companies shall not be eligible to apply and as per sub clause (b) any company controlled by a person convicted of an offence involving moral turpitude or money laundering/drug trafficking, terrorist activities or declared as insolvent or applied for being declared insolvent is ineligible to apply. As per clause 3.8 of the NIA, the company as well as all Directors on the Board shall be security cleared. Ministry shall take security clearance of the company as well its Directors from relevant Government Authorities. The information to be provided by prospective bidders for security clearance along with the Application is given at Annexure 10.8.

28. It is also pertinent to note that the company shall take prior permission of the Government before effecting any change in the Board of Directors. Clauses 4.16 and 4.18 deals with the provisions to safeguard the interest of the Government. As per clause 4.16.1, the Government of India, Ministry of Information & Broadcasting shall have the right to temporarily suspend the permission of the permission holder in public

interest or for national security for such period or periods as it may direct. The company shall immediately comply with any directives issued in this regard, failing which, the permission issued shall be revoked and the company disqualified to hold any such permission in further for a period of five years. As per clause 4.16.4, the permission shall be subject to permission holder remaining security cleared throughout the currency of permission. In case the security clearance is withdrawn, the permission granted is liable to be terminated forthwith. As per clause 4.16.5, in the event of security clearance of any of the persons associated with the permission holder or foreign personnel is denied or withdrawn for any reasons whatsoever, the permission holder will ensure that the concerned persons resigns or his services terminated forthwith after receiving such directives from the Government, failing which, the permission granted shall be revoked and the company shall be disqualified to hold any such permission in future for a period of five years.

29. Clause 4.18 speaks about the penalties in case of any violation of conditions cited in the Clauses in the NIA and the Government may suo moto or on basis of complaints take cognizance and place the matter before the Interministerial Committees on Programme and Advertising Codes for recommending appropriate penalties. However, before the imposition of a penalty the Permission Holder shall be given an opportunity to represent his case. The Ministry shall, however, be at liberty to specify any other mechanism to take action for such violations. The penalties mentioned in the clause 4.18 shall be imposed only after giving a written notice to the permission holder to fully rectify the violation within a period of 15 days, failing which, he shall be liable for the proposed penalty.

30. Clause 10.8 of the NIA is the format for security clearance. As per the NIA, the applicants are required to submit a form as per clause 10.8 for security clearance. On a perusal of the said format, it is clear that it does not require the applicants to submit the details of the pendency of criminal case which itself would establish that the pendency of the criminal case, was never considered as a criteria for granting security clearance. If the contention of the respondents that pendency of the criminal cases would endanger the security, in that case, the respondents would have definitely asked the applicants to give the details of the pendency of criminal cases, which was not done by the respondents in clause 10.8. of the NIA.

31. On a reading of the clause 3.2.1(b) any company controlled by a person convicted of an offence involving moral turpitude or money laundering/drug trafficking, terrorist activities or declared as insolvent or applied for being declared insolvent, are not eligible to apply. From clause 3.2.1(b), it is clear that only a person convicted of an offence involving moral turpitude or money laundering/drug

trafficking, terrorist activities are not eligible to apply for the tender. In the cases on hand, admittedly, the petitioners are not convicted in any of the offence stated in clause 3.2.1(b).

32. Admittedly, the petitioner companies are in operation for more than 10 years and so far no complaint has emanated with regard to breach of national security or broadcasting anything impinging the national security either in TV channels or in Radio Channels. The Government had every right to suspend their licenses, in the absence of any such complaint made against the petitioner companies, however, no such action was contemplated against the petitioner companies. This would clearly establish that the petitioner companies are free from any such complaint by any one so far.

33. The other part of clause 3.2.1(b) deals with insolvency of the person. If a person is declared as insolvent, he shall not be eligible to apply for the tender. Similarly, if a person had applied for being declared as insolvent is also not eligible to apply for the tender. Therefore, 3.2.1(b) clearly states that even if a person had applied for being declared as insolvent, shall not be eligible to apply for the tender. Whereas, in the case of criminal offence, the said clause stipulates a person should be convicted of an offence stated in clause 3.2.1(b) are not eligible to apply for the tender. When clause 3.2.1(b) clearly distinguishes between the insolvency proceedings and the criminal offences, the contention raised by the respondent that the pendency of the criminal case would work against the petitioner companies for the grant of security clearance, cannot be accepted.

34. Admittedly, in the case on hand, none of the petitioners were convicted for any of the offence mentioned in clause 3.2.1(b). In the impugned order dated 15.07.2015, the second respondent had stated that:-

(i) Prosecution of Shri Dayanidhi Maran and Shri Kalanithi Maran in Aircel-Maxis case by CBI with the allegation of receipt of Rs.549.96 crores as illegal gratification and other related charges.

(ii) The Enforcement Directorate has charged Shri Dayanidhi Maran and Shri Kalanithi Maran under the Prevention of Money Laundering Act on the allegation of laundering and an amount of Rs.5.5 billion in the Aircel-Maxis matter.

(iii) The CBI has charged Shri Dayanidhi Maran for setting up 300 illegal telephone lines at the residence of Shri Kalanithi Maran to facilitate Sun TV services, thereby gaining an illegal pecuniary advantage of Rs. 443 crores.

On the above three grounds, the second respondent had denied

security clearance to the petitioners.

35. Admittedly, in none of the above mentioned cases, the petitioners were convicted. Even according to the respondents, the above referred cases are still pending. It was submitted before this court that the prosecution had filed charge sheet in Aircel-Maxis case, however, the charges are yet to be framed. In the telephone line case, even the investigation is not yet been completed. In the case under the Prevention of Money Laundering Act, in which First Information Report was registered in the year 2011, charge sheet was filed in the year 2014 and the charges are yet to be framed. In the impugned order, the second respondent has stated the above mentioned economic offences are of serious nature, adversely impinging upon economic integrity of the country. So far as economic integrity is concerned, this expression has not been defined anywhere in the Notice Inviting Applications. This expression has been mentioned for the first time in the impugned order and sought to be explained in the counter filed by the respondents.

36. At this juncture, it is also pertinent to note that the common counter affidavit dated 21.8.2015 and the additional common counter affidavit dated 29.10.2015 were filed by the Deputy Secretary, Ministry of Information and Broadcasting, New Delhi, defending the impugned order passed by the second respondent. Since the petitioners are challenging the denial of security clearance by the third respondent, it would have been appropriate for the third respondent to have filed a counter affidavit stating the reasons for the denial of security clearance. Though the Deputy Secretary, Information and Broadcasting, has stated in his counter that he is filing the counter affidavit based on the inputs from the Ministry of Home Affairs, the third respondent would have been in a better position to explain the stand taken by them for denial of security clearance. The third respondent has not filed any separate counter affidavit in the writ petitions.

37. Having mentioned the disqualifications for applying for the tender in clause 3.2.1(b), clause 3.8 cannot be independent on its own with regard to the security clearance. It has to be read in consonance with clause 3.2.1(b) which clearly states the ground for disqualification. That apart, the applicants are required to submit a form as per clause 10.8 of the NIA which is a format for security clearance and the said format does not require the applicants to submit the details of the pendency of the criminal cases, which shows that pending criminal case was never a criteria for consideration for the purpose of security clearance.

38. Admittedly, during the operation of the petitioners' FM Radio stations, the petitioners have not received any adverse notice with regard to its operation and the petitioner companies are carrying on business strictly in accordance with law.

39. It is also not the case of the respondents that the petitioner companies have misused their licenses granted to FM Radio Stations for the alleged criminal activities mentioned in the impugned orders or that they have violated the terms and conditions of the licenses. In the impugned orders dated 15.7.2015, with regard to telephone line case, it has been stated that there is an alleged loss of Rs.443 crores caused by Shri Dayanithi Maran by setting up 300 illegal telephone lines at the residence of Shri Kalanithi Maran to facilitate Sun TV services. Whereas, on a perusal of the First Information Report dated 23.7.2013, registered by the CBI, it has been stated that there was a wrongful loss to the tune of Rs.1,20,87,769/- caused to the BSNL by Shri Dayanithi Maran. Even in the counter filed by the CBI before this court in Cr.I.O.P.No.18493 of 2015 in Cr.O.P.No.16152 of 2015-07-16 in FIR No.RC DST/2013/A/0019/CBI/STF.DLI on the file of the Deputy Superintendent of Police, CBI, STF, New Delhi, it has been stated in paragraph No.18, that during the investigation, an estimated loss amounting to Rs.1,78,71,391/- was arrived at, towards the wrongful loss caused to the Government exchequer and corresponding gain to the accused persons viz., Shri Dayanithi Maran. That apart, in the counter affidavit filed by the CBI before the Hon'ble Supreme Court in S.L.P.(Criminal) No.6582-6583 of 2015, in paragraph No.16, it has been stated that the estimated loss was only Rs.1,78,71,391/- and nowhere it has been stated by the Investigating Authority, viz., CBI that there was a loss of Rs.443 crores. When the Investigating Authority themselves say that the estimated loss was only Rs.1,78,71,391/-, as rightly contended by the learned Senior Counsels for the petitioners, the alleged loss of Rs.443 crores, in the absence of any materials to substantiate the same, can only be an imaginary amount.

40. Further, it has been alleged in the impugned orders that 300 telephone lines were installed at the residence of Shri Kalanithi Maran to facilitate SUN TV Services. However, on a perusal of the First information Report filed by the CBI, viz., the Investigating Authority, it is clear that there is no such allegation made by the CBI. It has not been stated that the telephone lines were set up at the residence of Shri Kalanithi Maran and it is also not the case of the CBI that the telephone lines were set up at the residence of Shri Kalanithi Maran. The stand taken by the Ministry of Home Affairs is contrary to the First Information Report filed by the CBI.

41. Though the Ministry of Home Affairs has got right to deny security clearance to the petitioner companies, it has to be done on well-founded grounds and within the four corners of law. Clause 4.16 of the Notice Inviting application speaks about the National Security and the said clause nowhere speaks or spells in clear words the economic threat is national security. What is not spelt out in the NIA cannot be improved by the respondents subsequently by way of counter affidavits.

42. In (2014) 5 SCC 409 (cited supra), the Hon'ble Supreme Court held that what is in the interest of national security is not a question of law. It is a matter of policy and it is not for the court to decide whether something is in the interest of the State or not. Further, the Apex Court held that the court can satisfy itself whether there are justifiable facts and in that regard, the court is entitled to call the files and see whether it is a case where the interest of national security is involved and once the State is of the stand that the issue involved national security, the court shall not disclose the reasons to the affected the party.

43. Keeping in mind the ratio laid down by the Hon'ble Supreme Court, this court called for the file from the Ministry of Home Affairs and the learned Additional Solicitor General produced the file before this court.

44. Though I would not disclose factual details contained in the file, on a perusal of the file, I can indicate the conclusions drawn in the form of notings by the officials concerned on the basis of materials on record. The Intelligence Bureau (Ministry of Home Affairs) has stated that there are no adverse report against the Directors/Key Executives of the petitioner companies from the security point of view and that enquires are in progress against Shri Dayanithi Maran and Shri Kalanithi Maran in respect of Aircel-Maxis case, money laundering case and setting up of 300 telephone lines at the residence of Shri Kalanithi Maran. In spite of the report of the Intelligence Bureau, the third respondent had denied security clearance to the petitioner companies by Office Memorandum dated 30.3.2015. In the said Memorandum, the third respondent had given security clearance to 17 other companies and denied security clearance to the petitioner companies viz., (i) M/s.Sun TV Network Ltd., (ii) M/s.Udaya FM Private Limited, (iii) M/s Kal Radio Ltd., and (iv) M/s. South Asia FM Ltd. After the denial of security clearance by the third respondent, which was communicated to the Ministry of Information and Broadcasting, the Hon'ble Minister of Information & Broadcasting, by his letter dated 1.4.2015 to the Hon'ble Minister of Home Affairs had requested the Hon'ble Minister of Home Affairs to reconsider the decision conveyed in the Official Memorandum dated 30.3.2015. However, the request made by the Hon'ble Minister of Information and Broadcasting was negatived by the Hon'ble Minister of Home Affairs.

45. From the contents of the file of the Ministry of Home Affairs produced by the learned Additional Solicitor General, it is clear that the petitioner companies or its Directors/Key Executives have not come to any adverse notice from the security point of view. In these circumstances, the third respondent should not have denied security clearance to the petitioner companies.

46. Admittedly, the three cases referred in the impugned order dated 15.7.2015 are pending till today. It is well settled position of law that the accused is presumed to be innocent, unless the guilt is proved beyond reasonable doubt/beyond all probabilities and therefore, the said presumption for the accused operates in favour of the said accused. If the alleged offences are not proved, the denial of security clearance would result in the petitioner companies being punished even before the trial, which would greatly prejudice the petitioners.

47. In the counter affidavit filed by the respondents before this court, they relied upon the adverse remarks made by the learned Single Judge of this court in W.P.Nos.23444 & 23445 of 2014 as against two individuals. However, on an appeal filed by the petitioners therein against the order of the learned Single Judge dated 5.9.2014, the Division Bench of this court in W.A.Nos. 1253 to 1255 of 2014, by judgment dated 29.9.2015, set aside the adverse remarks made against the two individuals in W.P.Nos.23444 & 23445 of 2014. The relevant portion of the judgement is extracted below:-

"44. In view of the limited issue involved in the writ petitions, we are of the considered view that remarks as indicated herein before 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 stands expunged accordingly."

48. Since the adverse remarks made in the writ petitions were expunged by the Division Bench of this court, the respondents cannot rely upon the said remarks now. Further, three criminal cases were cited in the impugned orders as the reasons for refusal to grant security clearance. As already stated, all the three criminal cases are at the prosecution stage and have not yet been completed. The reasons cited for the denial of security clearance are the criminal cases pending against Shri Dayanithi Maran. It has been clearly demonstrated by the petitioners that Shri Dayanithi Maran has nothing to do with the petitioner companies and he is neither a Director nor a Shareholder of the companies. His alleged misdemeanour has no bearing on the petitioner companies since he is no way connected with the petitioner companies. Merely because Shri Kalanithi Maran is the brother of Shri Dayanithi Maran, the security clearance cannot be denied to petitioner companies in which Shri Kalanithi Maran is a Director. When it is clearly established by the petitioners that denial of security clearance to the petitioners on the ground that Shri Dayanithi Maran caused loss to the Government exchequer to the tune of Rs.443 crores by setting up 300 telephone lines at the residence of Shri Kalanithi Maran is incorrect, the impugned orders passed by the second respondent cannot be held to be correct orders.

49. The contention raised by the learned Additional Solicitor General that the amount mentioned in the First Information Report and in the counter affidavit of the CBI represents only the service charges and not the actual loss sustained by the Government, cannot be accepted for the reason that both in the FIR as well as in the counter affidavit filed by the CBI, they have fixed the loss only at Rs.1,20,877,769/- and Rs.1,78,71,391/- respectively. When the impugned order says that there was a loss of Rs.443 crores, the respondents should have explained the reasons for not mentioning the said amount both in the FIR as well as in the counter affidavit. When the Investigating Authority has stated only Rs.1,78,71,391/- in the counter affidavit filed before this court, as well as before the Hon'ble Supreme Court, the learned Senior Counsel appearing on behalf of the petitioners submitted that when the Government decides to grant licenses to the companies accused in the Official Secrets Act and other scams and to companies, who have pending criminal cases, refusing to grant license for ulterior reasons to the petitioner companies and terming the same as policy decision, is nothing, but violative of Articles, 14, 19 and 21 of the Constitution of India. Since the materials with regard to the other companies were not placed before this court, I am not giving any finding with regard to the said contention.

50. The contention of the learned Additional Solicitor General that clause 3.2.1 and clause 3.8 operate in different fields and that if 3.2.1 alone is accepted then, there is no need to have clause 3.8 in the tender document, cannot be accepted for the reason that both clause 3.2 and clause 3.8 find place under one caption, viz., III. Eligibility Criteria. Both, disqualification under clause 3.2 and security clearance under clause 3.8 comes under the heading Eligibility Criteria. If the contention of the learned Additional Solicitor General is accepted, then there will be no necessity for having 3.2.1(b) in the Eligibility Criteria in the NIA as a disqualification.

51. The learned Additional Solicitor general submitted that even if the applicants are held to be qualified to participate in the tender, the eligible candidates are subject to security clearance under clause 3.8. However, clause 3.8 of the NIA does not say that even if an applicant is eligible to participate in the tender under clause 3.2 of the NIA, the participation of the applicants is subject to the security clearance under clause 3.8. In the absence of any specific provision to the effect that the eligibility contemplated under clause 3.2 is subject to the security clearance under clause 3.8, the contention of the respondents cannot be accepted.

52. The query and response to the Notice Inviting Applications dated 2.3.2015, which is enclosed by the learned Counsel for the respondents along with their reply dated 9.5.2015 is the answers given by the Ministry of Information & Broadcasting. Since this court is considering the clauses 3.2,

3.8 and 10.8 in this order, the answers given by the respondents 1 and 2 with regard to the clauses mentioned in the NIA have no relevance.

53. In the reply filed by the respondents it has been stated that the judgment of the Bombay High Court dated 30.10.2015 was not stayed by the Hon'ble Supreme Court and therefore, it is good law and that the Bombay High Court has considered the issue of security clearance and by implication upheld the need to take security clearance even in the cases where there is no conviction. However, on a reading of the judgment of the Division Bench of the Bombay High Court it could be seen that in paragraph No.55, the Division Bench held that the arguments made before the learned Single Judge and before the Division Bench of the Madras High Court were slightly different and that the issue of withdrawal of security clearance was not raised directly as before the Bombay High Court. That apart, the Division Bench of the Bombay High Court also held that the notice and hearing was insisted upon and that was denied by the Information & Broadcasting Ministry. Further, it has been held that though there was no adverse remarks in the file from the security point of view, the security clearance was denied. In these circumstances, the Division Bench of the Bombay High Court distinguished the judgments of the Madras High Court made by the learned Single Judge in W.P.Nos.23444 and 23445 of 2015, dated 5.9.2014 and by the Division Bench of this court in the judgment dated 29.9.2015 in W.A.Nos.1253 to 1255 of 2015.

54. When the Division Bench of Bombay High Court itself has stated that the facts in the said case is different from the facts of the cases disposed of by the Madras High Court, the ratio laid down by the Bombay High Court is not applicable to the facts and circumstances of the present case.

55. In the reply it has been stated by the respondents that Shri Kalanithi Maran is presently an NRI residing in a foreign country and the radio waves are extremely powerful and sensitive media. Further, they have stated that the State of Tamil Nadu is a sensitive State where the former Prime Minister was assassinated. In the rejoinder dated 25.5.2016 filed by the petitioners they have stated that Shri Kalanithi Maran is an Indian citizen and a permanent resident of Chennai. The petitioners have also produced the voter ID card issued by the Election Commission of India in the additional typed set of papers.

56. With regard to assassination of former Prime Minister, the petitioners have stated that it has nothing to do with the radio licenses case at hand. The petitioners in their rejoinder have stated that assassination of former Prime Minister and the present issue has no relevance at all and the said facts are also known to the respondents, but, with an ulterior intention to mislead the court, this type of unethical

defamatory allegations are made by the respondents. Further, the petitioners have stated that the former Prime Minister of India was assassinated in the year 1991, however, by then, none of the petitioner companies was in existence and there is no relevance to mention about the said assassination in the present case. When the petitioners are in no way connected or involved in the case of assassination of the former Prime Minister, mentioning about the assassination of the former Prime Minister in the reply dated 09.05.2016 by the respondents is totally unwarranted and unnecessary. The respondents should have avoided such an argument in the reply, which has nothing to do with the radio licenses case at hand.

57. The contention of the respondents that Shri Kalanithi Maran is an NRI and residing in foreign country is also not supported by any evidence whatsoever. The said contention is also disproved by the petitioners by producing voter ID card issued by the Election Commission of India.

58. In the case on hand, the alleged criminal proceedings are pending against Shri Dayanithi Maran, which is put against the petitioner companies for denial of security clearance, who is neither a Director nor a majority shareholder controlling the companies. The contention of the respondents that though the said individual is neither a Director nor a majority shareholder, the lifting of corporate veil will reveal that the alleged individual is the controlling person.

59. By order dated 15.7.2015, the respondents also denied security clearance to M/s.Digital Radio (Mumbai) Broadcasting Limited. The said order was challenged before the Delhi High Court in W.P.(C) No.6891 & 6892 of 2015 and the Division Bench of Delhi High Court set aside the impugned order by its judgment dated 26.7.2015 and held as follows:

"22. Mr Mehta had argued that if the shareholders are not roped in then it would amount to ascribing a very narrow meaning to clause 3.8 of the NIA which would defeat the very purpose of having a security clearance particularly in this very sensitive field of radio waves. We are afraid, we cannot agree with this submission. Dr Singhvi was right in submitting that the clause has serious ramifications extending far beyond the present e- auction. If security clearance were to be denied to a company, as has happened in the two cases before us, that would a blot on that company - a badge of dishonour - as Dr Singhvi put it. When such serious penal consequences are to follow then the provisions of clause 3.8 would require a strict interpretation and if there were any doubt, an interpretation against the maker of the clause would have to be adopted. The latter situation does not arise in the present case as there is no doubt that the plain and simple meaning of clause 3.8 has reference only to

the company and its directors. There is no mention of its shareholders.

23. Wherever the respondent wanted to bring in a shareholder or refer to the concept of control over the company it has done so specifically as would be evident from clauses 3.2.1(b), 3.6 and 3.9 as pointed out earlier in this judgment. It therefore follows that there is no explicit reference to shareholders of the company in clause 3.8 of the NIA. But, this does not mean that the respondent is prevented from looking behind the corporate identity of the applicant company.

24. That would take us to the argument raised by the respondent that the corporate veil can be pierced to find who in fact is running or controlling the company. In the recent decision of the Supreme Court in *Balwant Rai Saluja* (supra) the concept of piercing the corporate veil was considered in detail and after examining several decisions including those of courts in England it was concluded that the doctrine of piercing the veil allows the court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. But, the Supreme Court cautioned that this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. It was also held that the intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company and, therefore, the application of the doctrine would depend upon the peculiar facts and circumstances of each case.

25. There is no allegation that the petitioner companies were created as a camouflage to shield the persons exercising control over them from any liability. There is also no allegation that the petitioner companies themselves have indulged in any activities which could raise security concerns. In fact, both the petitioner companies have been operating their licenses under Phases I and II since 2002/2003. Even when the cases against the Marans were registered in 2011, the petitioner companies have continued to operate their respective radio channels without any objection concerning security issues. As pointed out by Mr Sibal, both these companies got extensions of their licenses by six months as recently as on 31.03.2015. Even then, no security concerns were raised in respect of the two companies.

26. The Supreme Court, in Saluja (supra), held that the purpose or intent behind piercing the corporate veil must be such that would seek to remedy a wrong done by the "persons controlling the company". As per the counter affidavit filed on behalf of the respondent, Shri Dayanidhi Maran and/or Shri Kalanithi Maran do not hold any shares in the two petitioner companies. Though it is stated that Shri Kalanithi Maran has an indirect interest in the shareholding of the two companies to the extent of 21.6%. It is not alleged that Shri Dayanidhi Maran has any interest (direct or indirect) in the shares (ownership) of the two petitioner companies. None of these two individuals is a director in the petitioner companies. In fact, as per the shareholding pattern indicated in Annexure 10.8 of the petitioners applications as also the counter affidavit submitted on behalf of the respondent, the interest of the Rao-Reddy group in the petitioner companies is to the extent of 51.11% in each company. Clearly, though Shri Kalanithi Maran may have an indirect interest in the shareholding of the two companies to the extent of 21.6% (in each), the controlling interest vests with the Rao-Reddy group against whom there are no allegations. As such, the pre-conditions for piercing the corporate veil are not satisfied.

27. We also note that the petitioner companies themselves have not been alleged to be vehicles of any transgression of law. They have been functioning since 2002 / 2003 without there being any allegation regarding their functioning resulting in any security concerns.

28. In these circumstances, we quash the impugned decision communicated by the letters dated 15.07.2015 denying security clearance to the petitioner companies. The said petitioner companies shall be entitled to participate in the e-auction subject to other conditions being fulfilled. The writ petitions are allowed in terms of prayer (c) to the aforesaid extent. The parties shall bear their own costs."

60. Challenging the order of the Delhi High Court, the respondents preferred an appeal before the Hon'ble Supreme Court in S.L.P. (C) No.34468-34469/2015 and the Hon'ble Supreme Court dismissed the SLP by order dated 29.01.2015 finding that no ground for interference was made out in exercise of the jurisdiction under Article 136 of the Constitution of India.

61. The findings of the Division Bench of Delhi High Court, which was confirmed by the Hon'ble Supreme Court, squarely applies to the facts and circumstances of the present case.

62. In the present case also the petitioner companies are in existence from 2005 and the cases against Shri Dayanithi Maran and Shri Kalanithi Maran were registered only in the year 2011 and therefore, the petitioner companies were not floated to camouflage any wrong in order to pierce the corporate veil. The purpose or intent behind piercing the corporate veil must be such that would seek to remedy a wrong done by the persons controlling the company. The petitioner companies are not alleged to be vehicles of any transgression of law and they have been functioning since 2005 without there being any allegation regarding their functioning resulting in any security concerns. As already stated, petitioner companies, which were incorporated more than 10 years ago, even before the alleged offences were committed and till date have not come to any adverse remarks by any of the authority, the question of piercing the corporate veil will not arise. In fact, the petitioner companies have been operating their licences under Phase-I and Phase-II for more than 10 years. Though the cases were registered against Shri Dayanithi Maran and Shri Kalanithi Maran in the year 2011, the petitioner companies have continued to operate their respective radio channels without any objection concerning security clearance issues. In the absence of any evidence to show that the operation of radio channels by the petitioner companies would create security concerns, the denial of security clearance by the second respondent cannot be accepted.

63. The ownership and control of a company were not enough to justify piercing the corporate veil. The court cannot pierce the corporate veil, even in the absence of third-party interests in the company, merely because it is thought to be necessary in the interests of justice. The corporate veil can be pierced only if there is some impropriety. The impropriety in question must be linked to the use of the company structure to avoid or conceal liability. To justify piercing the corporate veil, there must be both control of the company by the wrongdoers and impropriety, that is, use or misuse of the company by them as a device or facade to conceal their wrongdoing. However, the court would pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done.

64. In these circumstances, the contention of the learned Additional Solicitor General in respect of piercing the corporate veil cannot be accepted.

65. By order dated 23.7.2015, in M.P.Nos.4,4 and 4 of 2015 in W.P.Nos. 21810, 21812 and 21814 of 2015, this court permitted the petitioner companies to resubmit the bank guarantee and to participate in the forthcoming FM Radio Stations phase-III auction pursuant to the Notice Inviting Application dated 23.7.2015 for e-auction of the I-phase of Private FM Radio Phase-III Channels, however, it was made clear that the result of the bid made/participation by the petitioners in pursuant to

these interim orders, shall be kept in a sealed cover and be produced before this court and the participation of the petitioners in the e-auction is subject to the result of the writ petitions.

66. For the reasons stated above, the impugned orders passed on 15.7.2015 based on denial of security clearance by the Ministry of Home Affairs are liable to be set aside. Accordingly, the same are set aside. The petitioner companies in W.P.Nos.11476 & 11477 of 2015 are entitled to move to Phase-III policy for the FM Radio Stations at Chennai, Coimbatore, Tirunelveli and Vishakapatnam by entering into Grant of Permission Agreement [GOPA].

67. Pursuant to the interim orders passed by this court, the petitioner companies participated in the tender and submitted their bids. The learned Additional Solicitor General produced the bids made by the applicants in a sealed cover before this court. Since this court is setting side the impugned orders dated 15.7.2015, the details of the bids made by the applicants, which were produced in the sealed cover, is returned back to the learned Senior Panel Counsel along with the original files today. The respondents 1 and 2 are directed to announce the name of the successful bidders subject to the other conditions being fulfilled by the applicants.

In the result, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Secretary
Union of India
Ministry of Information & Broadcasting
Government of India
Shastri Bhawan
New Delhi - 110 001

2. The Deputy Director (FM)
Ministry of Information & Broadcasting
Government of India, FM Cell
Shastri Bhawan
New Delhi - 110 001

3. The Secretary
Union of India
Ministry of Home Affairs
Government of India
North Block, Central Secretariat
New Delhi - 110 001.

4. The Director(FM)
Ministry of Information & Broadcasting,
Government of India, FM Cell,
Shastri Bhavan,
New Delhi - 110 001.

+3cc's to Ms.M.Sneha, Advocate, S.R.Nos.32204, 32205 & 32211

+8cc's to Mr.Venkatasamy Babu, Advocate,
S.R.Nos.32192 to 32194 & 32213 to 32217

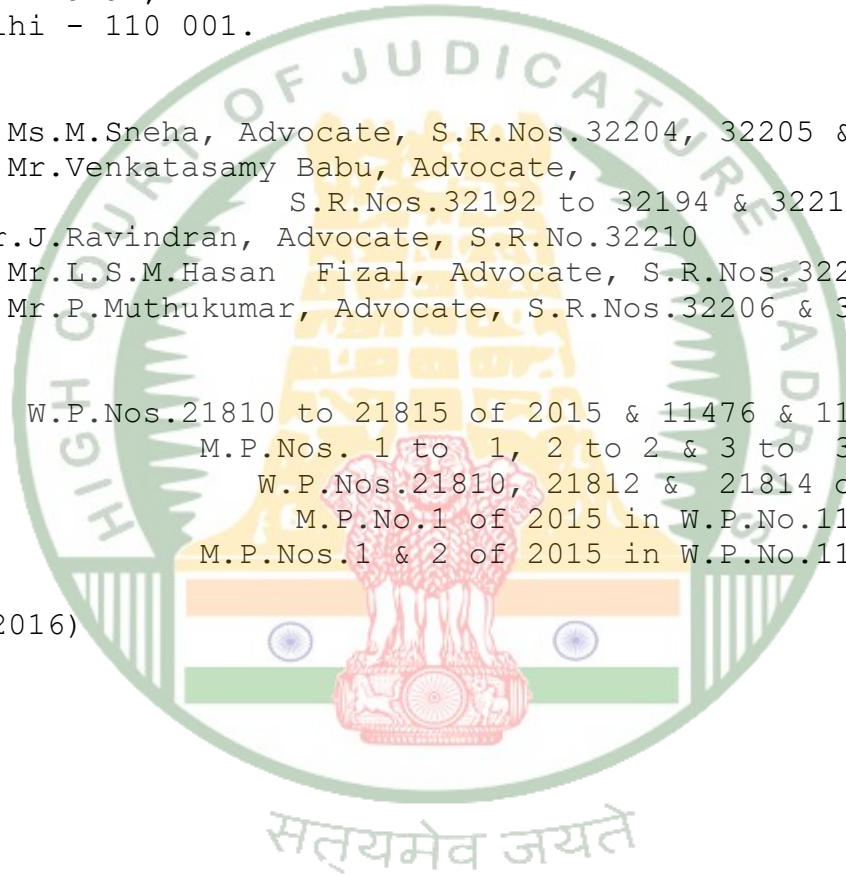
+1cc to Mr.J.Ravindran, Advocate, S.R.No.32210

+2cc's to Mr.L.S.M.Hasan Fizal, Advocate, S.R.Nos.32208 & 32209

+2cc's to Mr.P.Muthukumar, Advocate, S.R.Nos.32206 & 32207

W.P.Nos.21810 to 21815 of 2015 & 11476 & 11477 of 2015
M.P.Nos. 1 to 1, 2 to 2 & 3 to 3 of 2015 in
W.P.Nos.21810, 21812 & 21814 of 2015 and
M.P.No.1 of 2015 in W.P.No.11476 of 2015
M.P.Nos.1 & 2 of 2015 in W.P.No.11477 of 2015

RSK (CO)
CA(17/06/2016)



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