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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7643/2016

V.D. MOORTHY

..... Petitioner

Through: Mr. Harish Vaidyanathan Shankar &
Ms. Nisha Mohandas, Advs.

Versus

UNION OF INDIA THROUGH MINISTRY OF FINANCE & ANR.

..... Respondents

Through: Mr. Sanjay Jain, ASG with
Mr. Kirtiman Singh, CGSC, Ms. Ruchi Jain,
Mr. Sarfaraz Ahmad & Ms. Karnika Singh, Advs.
for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

% **05.09.2016**

CM No.31487/2016 (exemption)

Allowed, subject to all just exceptions.

W.P.(C) No.7643/2016

1. This petition by way of Public Interest Litigation has been filed raising certain issues regarding the functioning of "Facebook" and "Watsapp" which provide Voice Over Internet Protocol/Internet Telephony Services and seeking a direction to the respondents to bring the same and other similar applications in India under the regulatory framework as the

TSPs/ISPs.

2. The petitioner had earlier filed W.P.(C) No.4774/2016 and the same was disposed of by order dated 23.05.2016 which reads as under:

"In terms of liberty granted by us in W.P.(C) No.1918/2016, it is stated that the petitioner made a representation dated 31.03.2016 which is filed along with the present petition as Annexure P-4. Since the said representation is yet to be considered, we deem it appropriate to dispose of the writ petition with a direction to the respondent Nos.1 and 2 to consider the petitioner's representation dated 31.03.2016 and pass an appropriate order regarding the issues raised by the petitioner. Such order be passed within eight weeks from today.

Writ petition is accordingly disposed of."

3. Alleging that the respondents failed to consider his representation dated 31.03.2016 and no order has been passed in terms of the directions in W.P.(C) No.4774/2016, the present petition has been filed.

4. When the matter is taken up for consideration, it is represented by Shri Sanjay Jain, the learned ASG, assisted by Shri Kirtiman Singh, CGSC, who appeared on behalf of the respondents on advance notice, that in terms of the order in the earlier writ petition the petitioner was informed by the Ministry of Communication and IT by letter dated 25.07.2016 as under:

"Kindly refer to your letter dated 31st March 2016 on above mentioned subject. While thanking you for the concerns raised by you, you may understand that efforts are underway to address the multi-dimensional complexities of the issues. In this regard it is brought to your notice that, to address the issue of the OTT players, TRAI had issued a consultation paper on "Regulatory Framework for Over-the-top (OTT) services" on 27th March, 2015. The views on the framework are under

consideration by the Authority. Further, a pre-consultation paper on the net neutrality has also been issued by TRAI on 30th May, 2016 and responses had been sought till 5th July, 2016. In addition, a Consultation Paper on Internet Telephony (VoIP) was issued on 22/06/2016. This consultation is currently open and to be closed on 05/09/2016. You may also consider participating in the TRAI consultation.

As is evident, the government is seized of the matter and working towards appropriate decisions and actions for addressing the relevant issues."

5. Having regard to the fact that the TRAI has issued a Consultation Paper on "Regulatory Framework for Over-the-top (OTT) services" on 27.03.2015 and a Pre-Consultation Paper has also been issued on 30.05.2016 and the consultation is under progress, we are of the view that it would be appropriate to leave it open to TRAI to take an appropriate decision/action addressing all the relevant issues.

6. Though it is submitted by the learned ASG that since the consultation is still in progress, the petitioner is also at liberty to participate, having regard to the fact that the petitioner made a representation raising all the issues on 31.03.2016 itself and there was a direction by this Court in W.P.(C) No.4774/2016 that the said representation shall be considered by the Union of India, we direct that the respondents herein shall forward the representation of the petitioner dated 31.03.2016 to TRAI forthwith, in which event, the TRAI shall take into consideration all the issues raised by the petitioner in his representation dated 31.03.2016 while finalizing the Consultation Paper.

Writ petition is accordingly disposed of.

The petitioner is at liberty to file a fresh petition in case necessity thereof arises.

Dasti under the signatures of the Court Master.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 05, 2016
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