

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (PIL) No. 67 of 2016**

- Dilip Kumar Bhandari S/o Late Shri Ratan Prakash Bhandari, Aged About 61 Years Occupation Social Worker, R/o 32/7, Bhandari Bhavan, Tikrapara, Bilaspur, P.S. City Kotwali, Tahsil District Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. Union Of India Through Secretary, Department Of Telecommunication, Sanchar Bhawan 20 Ashok Road New Delhi, 110001
2. Telecom Regulatory Authority Of India, Through Secretary, Mahanagar Doorsanchar Bhawan, Jawahar Lal Nehru Marg, Old Minto Road, New Delhi 110002
3. Deputy Director General (Telecom Enforcement, Resource And Monitoring) 2nd Floor, C.T.O. Building G.E. Road, Jai Stambh Chowk Raipur, Chhattigarh 492001
4. Bharat Sanchar Nigam Limited (B.S.N.L.), Through The Chairman Cum Managing Director, Bharat Sanchar Nigam Limited, Opposite Janpat Hotel, Bhawan Harish Chand Mathur Lane, Cannaught Place New Delhi 110001.

---- Respondents

For Petitioner	: Shri Palash Tiwari & Shri Prasoon Agrawal, Advocates
For Respondents No.1 & 3	: Shri N.K. Vyas, Assistant Solicitor General
For Respondent No.2	: Shri R.K. Gupta, Advocate
For Respondent No.4	: Shri Sandeep Dubey, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

Order On Board

Per Thottathil B. Radhakrishnan, Chief Justice

13.07.2017

1. We have learned counsel for the Petitioner, the learned Assistant Solicitor General, the learned Counsel for the Telecom Regulatory Authority of India (*for short 'TRAI'*) and the learned Counsel for the Bharat Sanchar Nigam Limited (*for short 'BSNL'*).
2. The Petitioner, through this Writ Petition instituted as Public Interest Litigation, pleaded that the Department of Telecommunication and the authorities under it are failing in their official and public duties to give effect to the National Telecom Policy, 2012 (*for short 'NTP, 2012'*). It is pointed out that the said policy is intended, among other things, to revive the existing broadband download speed of 256 Kbps to 512 Kbps and subsequently to 2 Mbps by 2015 and higher speed of at least 100 Mbps thereafter.
3. The Petitioner relies on, among other things, the recommendations of TRAI, *inter alia* to the effect that the definition of broadband connection has to be that “ A data connection using any technology that is able to support interactive services including Internet access and support a minimum download speed of 512 Kilo bits per second (Kbps)” and that the upload speed will atleast be half the download speed. This definition given for the term broadband (both Wireline and Wireless) was recommended to be effective from 1st January 2011 and the stipulated download speed of 3 Mbps was to be effective from 1st January 2015.

4. The plea of the Petitioner is that the department of Telecommunication and the officials of that department, including the Deputy Director General (Telecom Enforcement, Resource And Monitoring), have failed to give effect to the recommendation of TRAI in relation to the implementation of NTP, 2012 by upgrading the speed of 512 Kbps to 2 Mbps. The Petitioner accordingly seeks a direction to the Union of India and the Deputy Director General (Telecom Enforcement, Resource And Monitoring) to implement the policy contained in NTP, 2012, particularly, that mentioned in point No. 1.5 of part IV (Strategies) and that the facilities should be provided at the same price at which the current minimum broadband speed is provided.
5. We have perused the pleading placed on record on behalf of the Central Government. While the Petitioner pleads that there may be a time bound direction to comply with the recommended changes so that the milestones can be achieved at least now, the learned counsel for the Respondent pointed out that the Government is anxiously carrying forward its obligation to give effect to NTP, 2012.
6. The learned counsel for the Petitioner pointed out that by the time this the Writ Petition was instituted in August, 2016, the time schedule within which the recommendations could have been operated to achieve the end result, was lagging behind by at least 19 months and there is no reason why the Central Government does not carry forward its obligation through the Department of Telecommunication and officials under it including the third Respondent, Deputy Director General (Telecom Enforcement, Resource And Monitoring) and thereby give effect to the recommendations of TRAI.
7. The learned counsel for the Petitioner persuasively makes reference

to the Judgment of the Apex Court in **Comptroller And Auditor General Of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan & Another [1987 AIR SC 537]** to contend that when the authorities fail to implement a particular policy or to exercise discretionary power in accordance with rule or policy, the High Court would be well within authority under Article 226 of the Constitution of India to issue a writ. The learned Counsel for the Petitioner makes reference to the passage in that judgment, which reads as follows:-

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

8. The drafting of a policy in matters relating to governance, including those which are relatable to issues like the one in hand, cannot be treated as one where there could be a mandamus to perform a particular duty through which that policy could be effectuated in a particular manner. As is discernible from the counter affidavit of the department, the Government is in the process of considering different aspects and making efforts to effectuate the contents of the aforementioned policy document relating to the Telecom sector. They are

not oblivious of the advice given by TRAI. Nor are they shown to have in any manner against the interest of effectuating the policy in the larger interest. We are therefore of the view that the ratio of the precedent cited on behalf of the Petitioner does not persuade us grant any direction as sought for in the Writ Petition.

9. Having regard to the substance of the matter involved in NTP, 2012 and the extent of jurisdiction that could be exercised in terms of the Article 226 of the Constitution of India, we are of the view with the case in hand, all that could be done is to require the respondents to bring the issue raised by the Petitioner to the notice of the first Respondent so that requisite directions, as may be found necessary, could be considered for issuance to the third Respondent for appropriate implementation of the contents of NTP, 2012. We direct so. Let this direction be treated as one which obliges the officials concerned to place the matter appropriately for consideration at the requisite level of governance in the first Respondent, in particular, the Department of Telecommunication.

10. This Writ Petition is ordered accordingly.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge