

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.2176 of 2019 and W.M.P.No.2420 of 2019

V.Rama Rao

... Petitioner

v.

- 1.Union of India
Represented by the Secretary
Ministry of Information and Broadcasting
Room No.116, A-Wing, Shastri Bhavan
New Delhi - 110 001
- 2.The Telecom Regulatory Authority of India
Represented by the Secretary
Mahanagar Doorsanchar Bhavan
(Next to Zakir Hussain College)
Jawaharlal Nehru Marg (Old Minto Road)
New Delhi - 110 002
- 3.Star India Pvt. Ltd.
Represented by the Managing Director
Star TV Building
Star House, Urmi Estate
95, Ganpat Rao Kadam Marg
Lower Parel, West Mumbai
Maharashtra - 400 013
- 4.Sony Pictures Networks India Private Limited
Represented by the Managing Director
4th Floor, Interface Building No.7
Off Malad Link Road, Malad West
Mumbai - 400 064
- 5.Zee Entertainment Enterprises Limited
Represented by the Managing Director
18th Floor, A Wing, Marathon Futurex
N.M.Joshi Marg
Lower Parel, Mumbai
Maharashtra - 400 013

- 6.Sun TV Network Pvt. Ltd.
Represented by the Managing Director
Murasoli Maran Towers
73, MRC Nagar Main Road
Raja Annamalaipuram
Chennai 600 028
- 7.India Cast Media Distribution Pvt. Ltd.
Represented by the Managing Director
703, 7th Floor, HDIL-Kaledonia
Opp. Vijayanagar Society
Andheri East, Mumbai
Maharashtra - 400 013
- 8.Mavis Satcom Limited
Represented by the Managing Director
48, Jawaharlal Nehru Road
Ekkaduthangal
Chennai 600 097
- 9.Disney Broadcasting India Limited
Represented by the Managing Director
Solitaire Corporate Park Building
14, 2nd Floor, Guru Hargovindji Marg
Chakala, Andheri East, Mumbai
Maharashtra - 400 093
- 10.Tamil Nadu Arasu Cable TV Corporation Pvt. Ltd.
Dugar Towers, 34 (123) 6th Floor
Marshalls Road, Egmore
Chennai - 600 008
- 11.Tamizhaga Cable TV Communication Pvt. Ltd.
Old No.150, New No.48
Sami Naicken Street
Chintadripet, Chennai - 600 002
- 12.Crystal Transmission Pvt. Ltd.
No.34, First Main Road
New Colony, Chrompet
Chennai 600 044
- 13.Kal Cables Pvt. Ltd.
141, Prakash towers, Ground Floor
Old Mahabalipuram Road
Thiruvannamiyur, Chennai 600 041
- 14.JAK Communication Private Limited
J-4, 6th Avenue
Anna Nagar East
Chennai - 600 102

15.V K Digital Network Pvt. Ltd.
Old No.284, New No.204
Avvai Shanmugham Salai
Royapettah, Chennai - 600 014

16.Air Media Network Private Limited
No.86, Periyar EVR High Road
Vepery, Chennai 600 007

17.Cable Cast New Media Pvt. Ltd.
No.51, 4th Floor, Raja Rajeswari Towers
Dr.Radhakrishnan Salai, Mylapore
Chennai - 600 004

18.Akshaya Diginet Cable Vision Pvt Ltd
B-20 Industrial Estate, Mugappair East
Chennai 600 037

19.Aadhar Digital Vision Pvt. Ltd.
No.13, North Wall Road
Kondithope, Chennai - 600 079

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for a writ of declaration declaring the notification bearing F.No.21-4/2018-B&CS dated 27/12/2018 issued by the Telecom Regulatory Authority of India and the Telecommunications (Broadcasting and Cable) Service Standards of Quality of Service and Consumer Protection (Addressable Systems) (Amendment) Regulations, 2018 as invalid and ultra vires violating Articles 14 and 19(1) (a) of the Constitution of India.

For petitioner : Mr.V.Prakash, Senior Counsel
for M/s.Ramapriya Gopalakrishnan

O R D E R

SUBRAMONIMUM PRASAD, J.

Claiming himself to be a Secretary of various organisations, the petitioner has filed the instant writ public instant litigation to declare Notification bearing F.No.21-4/2018-B&CS dated 27/12/2018 issued by the Telecom Regulatory Authority of India and the Telecommunications (Broadcasting and Cable) Service Standards of Quality of Service and Consumer Protection (Addressable Systems) (Amendment) Regulations, 2018, (hereinafter called as Amendment Regulations) as invalid and ultra vires, violating Articles 14 and 19(1) (a) of the Constitution of India.

2. The Amendment Regulations, which is under challenge reads

as under:

F. No.21-4/2018-B&CS.-----In exercise of the powers conferred by section 36, read with sub-clause (v) of clause (b) of sub-section (1) of section 11, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Central Government, in the Ministry of Communication and Information Technology (Department of Telecommunications), No.39, -

(a) issued, in exercise of the powers conferred upon the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub section (1) of section 2 of the said Act, and

(b) published under notification No. S.O.44 (E) and 45 (E) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part II, Section 3,.....

the Telecom Regulatory Authority of India hereby makes the following regulations to amend the Telecommunications (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 (2 of 2017), namely:-

1. (1) These regulations may be called the Telecommunications (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) (Amendment) Regulations, 2018 (11of 2018).

(2) They shall come into force with effect from the date of their publication in the Official Gazette.

2. In regulation 45 of the Telecommunications (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 (hereinafter referred to as the principal regulations), for sub-regulation (3), the following shall be substituted, namely:-

“(3) Nothing contained in these regulations shall affect any packs, plans or bouquets on offer before the commencement of these regulations and all the distributors of television channels shall continue to offer the said packs, plans or bouquets to all the subscribers till 31st January, 2019.

Provided that it shall be mandatory for all the distributors of television channels to either discontinue or modify all their existing packs, plans or bouquets in compliance with the

provisions of these regulations after 31st January, 2019.

Provided further that all distributors of television channels shall offer and obtain the option for subscription of new packs, plans or bouquets from the subscribers in compliance with the provisions of these regulations on or before 31st January, 2019 and shall ensure that services to the subscribers are provided as per the new packs, plans or bouquets opted for subscription by the subscribers only after 31st January, 2019."

3. Instructions issued by the Telecom Regulatory Authority of India to all the Service Providers, Broadcasting and Cable TV Services, regarding implementation of the Regulatory Framework in pursuance to the amendment regulations, reads as under:

"F.No.21-4/2018-B&CS Dated:-27th December 2018

To

All the Service Providers
Broadcasting and Cable TV Services

Subject:- Implementation of New Regulatory Framework -

Schedule of activities regarding

Sir/Madam,

TRAI notified a New Regulatory Framework in March 2017 to ensure orderly growth of the broadcasting and cable services sector after due consideration. The framework comprises of the following:

i. The Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017. [The Tariff Order 2017]

ii. The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017. [The Interconnection Regulations 2017]

iii. The Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017. [The QoS Regulations 2017]

2. The said regulatory framework could not come into effect because of some pending litigations. Accordingly, all the timelines prescribed in the said framework commenced from 3rd July 2018 through a press release no.71/2018 issued by TRAI. The prescribed due date for

migration to new framework is 29th December 2018.

3. In order to have a smooth implementation of the new regulatory framework, TRAI held a series of meetings and consultations with all the stakeholders including Consumer Advocacy Groups (CAG) during last 4-6 weeks. A meeting of the Authority was held on 19th December 2018 with the CEOs of major service providers in the broadcasting and cable services sector. The issue of smooth migration from the old to new regulatory framework was specifically discussed and deliberated upon. Subsequently, to assess the preparedness for migration, the Authority held another meeting on 27th December 2018 with all broadcasters and leading DPOs (DTH/MSO/HITS/IPTV). It emerged from the discussions that by and large, most of the stakeholders are ready for implementation of new migration to new regulations is slow. Industry representatives emphasised that there are about 150 million TV subscribers in the country. In order to make the subscribers aware about the new framework and to seek fresh choice of TV channels from all subscribers requires some more time and resources.

4. It was requested that in order to have a smooth transition of subscribers from old to new framework, across the country, some more time may be given. Emphasis was laid that migration to new regulatory framework need to be interruption free and smooth to minimize the inconvenience to the subscribers. Therefore, a migration plan was deliberated and agreed upon by all the participants.

5. Accordingly, all service providers are required to adhere to the following schedule of activities to ensure smooth transition of subscribers from old to new regulatory framework:

- All existing packs/plans/bouquets to the subscribers will continue uninterrupted till 31st January 2019.
- No service provider to disconnect any signal/feed to any MSO/LCO/subscriber till 31st January 2019, on the pretext of implementation of new regulatory framework.
- Inter-service provider commercial settlement to continue as per their inter se agreements in force prior to 29th December 2018 till 31st January 2019.
- DPOs to devise their own mechanism to reach

out to all the subscribers and seek options from subscribers Data pertaining to consumers' choice etc. should be maintained in such a manner that it is easily verifiable, and should be reported to TRAI from time to time.

- DPOs to migrate all the subscribers, who have exercised their choices, to new framework w.e.f. 1st February 2019.
- DPOs to adhere to following schedule for reaching out to the consumers:

Sl. No.	Activity	
1	Reach out to at least 30% of the average subscribers base by 7th January 2019	This information should be reported to TRAI as per the format which will be prescribed separately
2	Reach out to at least 60% of the average subscribers base by 14th January 2019	
3	Reach out to 100% of the average subscribers base by 21st January 2019	

6. The service providers are also advised to strictly comply with various regulatory provisions contained in the Interconnection Regulations 2017, the QoS Regulations 2017 and the Tariff Order 2017 while implementing the above-mentioned schedule.

4. The Hon'ble Supreme Court in Bharat Sanchar Nigam Limited vs. Telecom Regulatory Authority of India and Others reported in (2014) 3 SCC 222 has brought out the history as to how the Telecom Regulatory Authority of India Act and the Telecom Regulatory Authority which was constituted under the Telecom Regulatory Authority of India Act came into existence.

66. With the entry of private operators into telecom sector, proper regulation of the sector was considered appropriate. An important step in the institutional reform of Indian telecom sector was setting up of an independent regulatory authority, i.e., Telecom Regulatory Authority. Initially, it was proposed to set up the Authority as a non-statutory body and for that purpose, the Indian Telegraph (Amendment) Bill, 1995 was introduced and

was passed by Lok Sabha. However, when the matter was taken up in Rajya Sabha, the members expressed the view that the Authority should be set up as a statutory body. Keeping that in view as also the 22nd Report of the Standing Committee on Communications, the Telecom Authority of India Ordinance, 1996 was promulgated. In *Delhi Science Forum v. Union of India* (1996) 2 SCC 405, this Court took cognizance of some of the provisions contained in the Ordinance and observed:

"31....The existence of a Telecom Regulatory Authority with the appropriate powers is essential for introduction of plurality in the Telecom sector. The National Telecom Policy is a historic departure from the practice followed during the past century. Since the private sector will have to contribute more to the development of the telecom network than DoT/MTNL in the next few years, the role of an independent Telecom Regulatory Authority with appropriate powers need not be impressed, which can harness the individual appetite for private gains, for social ends. The Central Government and the Telecom Regulatory Authority have not to behave like sleeping trustees, but have to function as active trustees for the public good." (emphasis supplied)

67. The 1996 Ordinance was replaced by the Act. The main purpose of establishing the Authority as a statutory body was to ensure that the interest of consumers are protected and, at the same time, to create a climate for growth of telecommunications, broadcasting and cable services in such a manner which could enable India to play leading role in the emerging global information society. The goals and objectives of the Authority are as follows:

(i) Increasing tele-density and access to telecommunication services in the country at affordable prices.

(ii) Making available telecommunication services which in terms of range, price and quality are comparable to the best in the world.

(iii) Providing a fair and transparent policy environment which promotes a level playing field and facilitates fair competition.

(iv) Establishing an interconnection regime that allows fair, transparent, prompt and equitable interconnection.

(v) Re-balancing tariffs so that the objectives of affordability and operator viability are met in a consistent manner. (vi) Protecting the interest of consumers and addressing general consumer concerns relating to availability, pricing and quality of service and other matters.

(vii) Monitoring the quality of service provided by the various operators.

(viii) Providing a mechanism for funding of net cost areas/ public telephones so that Universal Service Obligations are discharged by telecom operators for spread of telecom facilities in remote and rural areas.

(ix) Preparing the grounds for smooth transition to an era of convergence of services and technologies.

(x) Promoting the growth of coverage of radio in India through commercial and noncommercial channels.

(xi) Increasing consumer choice in reception of TV channels and choosing the operator who would provide television and other related services.

69. With a view to overcome the difficulties experienced in the implementation of the Act, the Central Government constituted a Group on Telecom and IT Convergence under the Chairmanship of the Finance Minister. The recommendations made by the Group led to the issuance of the Telecom Regulatory Authority of India (Amendment) Ordinance, 2000, which was replaced by the Telecom Regulatory Authority of India (Amendment) Act, 2000. One of the important features of the Amendment Act was the establishment of a Tribunal known as the Telecom Disputes Settlement and Appellate Tribunal for adjudicating disputes between a licensor and a licensee, between two or more service providers, between a service provider and a group of consumers, and also to hear and dispose of any appeals from the direction, decision or order of the Authority.

5. Sections 11, 12, 13 and 36 of the Telecom Regulatory Authority of India Act, read as under:

11. Functions of Authority

(1) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the functions of the Authority shall be to-

(a) recommend the need and timing for introduction of new service provider;

(b) recommend the terms and conditions of licence to a service provider;

(c) ensure technical compatibility and effective inter-connection between different service providers;

(d) regulate arrangement amongst service providers of sharing their revenue deriving from providing telecommunication services;

(e) ensure compliance of terms and conditions of licence;

(f) recommend revocation of licence for non-compliance of terms and conditions of licence;

(g) lay down and ensure the time for providing local and long distance circuits of telecommunication between different service providers;

(h) facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(i) protect the interest of the consumers of telecommunication service;

(j) monitor the quality of service and conduct the periodical survey of such provided by the service providers;

(k) inspect the equipment used in the network and recommend the type of equipment to be used by the service providers;

(l) maintain register of interconnect agreements and of all such other matters as may be provided in the regulations;

(m) keep register maintained under clause (l) open for inspection to any member of public on payment of such fee and compliance of such other requirements as may be provided in the regulations;

(n) settle disputes between service providers;

(o) render advice to the Central Government in the matters relating to the development of telecommunication technology and any other matter relating to telecommunication industry in general;

(p) levy fees and other charges at such rates in respect of such services as may be determined by regulations;

(q) ensure effective compliance of universal service obligations;

(r) perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act.

(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885(13 of 1885), the Authority may, from time to time, by order, notify in the Official Gazette the rates at which the telecommunication services within India and outside India shall be provided under this Act including the rates at which messages shall be transmitted to any country outside India;

Provided that the Authority may notify different rates for different persons or class of persons for similar telecommunication services and where different rates are fixed as aforesaid the Authority shall record the reasons therefor.

(3) While discharging its functions under sub-section (1), the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions.

12. Powers of Authority to call for information, conduct investigations, etc

(1) Where the Authority considers it expedient so to do, it may, by order in writing, -

(a) call upon any service provider at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require; or

(b) appoint one or more person to make an inquiry in relation to the affairs of any service and

(c) direct of his officers or employees to inspect the books of account or other documents of any service provider.

(2) Where any inquiry in relation to the affairs of a service provider has been undertaken under sub-section (1), -

(a) every officer of the Government Department, if such service provider is a department of the Government;

(b) every director, manager, secretary or other officer, if such service provider is a company; or

(c) every partner, manager, secretary or other officer, if such service provider is a firm; or

(d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (b) and (c), shall be bound to produce before the Authority making the inquiry, all such books of account or other documents in his custody or power relating to, or having a bearing on the subject-matter of such inquiry and also to furnish to the Authority with any such statement or information relating thereto, as the case may be, required of him, within such time as may be specified.

(3) Every service provider shall maintain such books of account or other documents as may be prescribed.

(4) The Authority shall have the power to issue such directions to service providers as it may consider necessary to proper functioning by service providers.

13. Power of Authority to issue directions

The Authority may, for the discharge of its functions under sub-section (1) of section 11, issue such directions from time to time to the service providers, as it may consider necessary.

36. Power to make regulations

(1) The Authority may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:-

(a) the times and places of meetings of the Authority and the procedure to be followed at such meetings under sub-section (1) of section 8, including quorum necessary for the transaction of business;

(b) the transaction of business at the meetings of the Authority under sub-section (4) of section 8;

(c) the salaries and allowances payable to and the other conditions of service of officers and

other employees of the Authority under sub-section (2) of section 10;

(d) matters in respect of which register is to be maintained by the Authority under clause (1) of sub-section (1) of section 11;

(e) levy of fee and lay down such other requirements on fulfilment of which a copy of register may be obtained under clause (m) of sub-section (1) of section 11;

(f) levy of fees and other charges under clause (p) of sub-section (1) of section 11.

6. In exercise of powers under Section 36 of Telecom Regulatory Authority of India Act, Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 and The Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017, (both dated 3.3.2017) were framed. Certain clauses of the said regulations were challenged in this court by filing writ petition WP.No.13302 of 2012. This court upheld the validity of the Regulations. The same was taken up in appeal and the Hon'ble Supreme Court by judgment dated 30.10.2018 reported in 2018 (14) Scale 651 [Star India Private Limited vs. Department of Industrial Policy and Promotion and Ors.] upheld the judgment of this Court. Thereafter, Sub Regulation (3) of Regulation 45 of the Telecommunications (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017, was substituted to read as under:

"(3) Nothing contained in these regulations shall affect any packs, plans or bouquets on offer before the commencement of these regulations and all the distributors of television channels shall continue to offer the said packs, plans or bouquets to all the subscribers till 31st January, 2019."

7. The Telecom Regulatory Authority of India, also started taking steps for implementing Regulations, 2017. As per the decision, all the service providers are required to adhere a schedule of activity to initiate smooth transmission of subscribers from old to the new regulatory framework. It was decided that all the existing packs, plans or bouquets to the subscribers will continue uninterrupted till 31.1.2019 and the signals will not be disconnected till that date. The subscribers have to make their choice regarding the channels and bouquets, etc. before that date and the new framework would be in operation from 1.2.2019. According to the petitioner, the decision to implement the Regulations, 2017 is completely unworkable.

8. The petitioner contends that in Tamil Nadu, analog system of transmitting signals was in vogue from 1990. In 2003, Conditional Access System (CAS) was introduced, which necessitated installation of Set Top Boxes for viewing pay channels. In 2011, the Digital Addressable System (DAS) was introduced which made installation of Set Top Boxes mandatory for viewing all TV Channels including free to air channels. According to the petitioner, though it was directed by the Ministry of Information and Broadcasting that the complete digitization was to be completed in the entire country by December 2016, the same was not done in Tamil Nadu because of writ petitions filed in the High Court in which interim directions were passed. This Hon'ble Court has been giving time to shift from the erstwhile analog system, which was vogue in 1990 to the Digital Addressable System (DAS), which makes it mandatory to have Set Top Boxes for viewing all channels. According to the petitioner, the process of digitization has not been completed in the State of Tamil Nadu. According to the petitioner, if the impugned Regulation is implemented, then the Digital Platform Operators would leave out substantial amount of consumers. According to the petitioner, only 46,00,000 households in the State of Tamil Nadu have Set Top Boxes, whereas 1.11 Crore TV viewers in the State and therefore, if the new Regulation and the plan to implement the new Regulation is not stopped, majority of the households in the State of Tamil Nadu would not be able to watch television.

9. The petitioner also contends that majority of the consumers in Tamil Nadu has not exercised their choice in respect of TV channels which they wish to view at the enhanced rate from 1.2.2019, because of lack of awareness about the new regulatory framework and lack of clarity about the framework and the failure of the service providers to sufficiently explain the new Regulatory Framework. According to the petitioner, it is not possible for all the subscribers to make an informed choice about the television channels they wish to view within the prescribed timeline of 31st January 2019. The petitioner, therefore, challenges the Notification bearing F.No.21-4/2018-B&CS dated 27/12/2018 issued by the Telecom Regulatory Authority of India and the Telecommunications (Broadcasting and Cable) Service Standards of Quality of Service and Consumer Protection (Addressable Systems) (Amendment) Regulations, 2018.

10. Heard Mr.V.Prakash, learned senior counsel for the petitioner and perused the materials available on record.

11. Mr.V.Prakash, learned senior counsel, at the outset, very fairly submitted that after 2017 Regulations have been upheld, it may not now open to challenge the cost to be passed for viewing various channels. But according to him, the cut-off

date of 31.1.2019 is not reasonable. Mr. Prakash would lay emphasis on newspaper cuttings and more particularly, the article which was published in Times of India on January 14, 2019, which says that only 35% of 165 million pay TV subscribers have expressed their choice to migrate out of the old system. He would further submit that the subscribers have not been consulted and their views have not been taken. He would therefore state that the Telecom Regulatory Authority of India is trying to implement the regime in a hurried manner. He would further state that there is no power under the Telecom Regulatory Authority of India Act, to disconnect the services if a choice is not made by the viewer. According to him, as per Section 12(4) of the Act the authority has power to issue directions to service providers as it may consider necessary for proper functioning by service providers, but the directions can only be issued for matters specified in clause (b) of sub section (1) of Section 11, and this does not grant power to disconnect.

12. The Hon'ble Supreme Court in *Bharat Sanchar Nigam Limited vs. Telecom Regulatory Authority of India and Others* reported in (2014) 3 SCC 222, has held that TRAI exercises a broad jurisdiction. Its jurisdiction is not only fixed to regulate operations, but also extends to laying terms and conditions for providing services. They can fix norms and the mode and the manner in which consumers would get services.

13. A perusal of the letter F.No.21-4/2018-B&CS dated 27th December 2018 issued to all service providers would show that in order to have smooth transmission of the subscribers from old to new framework, across the country, sufficient time was given. Emphasis was laid that migration to new regulatory framework need to be interruption free and smooth to minimise the inconvenience to the subscribers. The instructions reveal that migration plan was deliberated and agreed upon by all the participants. The interest of every stakeholder has been kept in mind before the dates were fixed.

14. The word 'regulation' which is one of the functions of the TRAI has been interpreted by the Hon'ble Supreme Court and has been explained in the context of Telecom Regulatory Authority of India in *Bharat Sanchar Nigam Limited vs. Telecom Regulatory Authority of India and Others* reported in (2014) 3 SCC 222, wherein the Hon'ble Supreme Court has observed as under:

81. The terms 'regulate' and 'regulation' have been interpreted in large number of judgments. We may notice few of them. In *V.S. Rice & Oil Mills v. State of A.P.* AIR 1964 SC 1781, agreements for a period of ten years had been executed for supply of electricity and the same

did not contain any provision authorising the Government to increase the rates during their operation. However, in exercise of power under Section 3(1) of the Madras Essential Articles Control and Requisitioning (Temporary Powers) Act, 1949, the State Government issued order enhancing the agreed rates. The same was challenged on the ground that any increase in agreed tariff was out of the purview of Section 3(1). Chief Justice Gajendragadkar, speaking for the Constitution Bench, observed as under:

"The word regulate is wide enough to confer power on the State to regulate either by increasing the rate, or decreasing the rate, the test being what is it that is necessary or expedient to be done to maintain, increase, or secure supply of the essential articles in question and to arrange for its equitable distribution and its availability at fair prices. The concept of fair prices to which Section 3(1) expressly refers does not mean that the price once fixed must either remain stationary, or must be reduced in order to attract the power to regulate. The power to regulate can be exercised for ensuring the payment of a fair price, and the fixation of a fair price would inevitably depend upon a consideration of all relevant and economic factors which contribute to the determination of such a fair price. If the fair price indicated on a dispassionate consideration of all relevant factors turns out to be higher than the price fixed and prevailing, then the power to regulate the price must necessarily include the power to increase so as to make it fair. Hence the challenge to the validity of orders increasing the agreed tariff rate on the ground that they are outside the purview of Section 3(1) cannot be sustained."

82. In *State of Tamil Nadu v. Hind Stone* (1981) 2 SCC 205, this Court held that the word 'regulate' must be interpreted to include 'prohibition' within its fold. Some of the observations made in that judgment (paragraph 10) are extracted below:

"We do not think that 'regulation' has that rigidity of meaning as never to take in 'prohibition'. Much depends on the context in which the expression is used in the statute and

the object sought to be achieved by the contemplated regulation. It was observed by Mathew, J. in *G.K. Krishnan v. State of T.N.* (1975) 1 SCC 375:

'The word "regulation" has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied.' In modern statutes concerned as they are with economic and social activities, 'regulation' must, of necessity, receive so wide an interpretation that in certain situations, it must exclude competition to the public sector from the private sector. More so in a welfare State. It was pointed out by the Privy Council in *Commonwealth of Australia v. Bank of New South Wales* (1949) 2 All ER — and we agree with what was stated therein — that the problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, not so much legal as political, social or economic consideration and that it could not be laid down that in no circumstances could the exclusion of competition so as to create a monopoly, either in a State or Commonwealth agency, be justified. Each case, it was said, must be judged on its own facts and in its own setting of time and circumstances and it might be that in regard to some economic activities and at some stage of social development, prohibition with a view to State monopoly was the only practical and reasonable manner of regulation. The statute with which we are concerned, the *Mines and Minerals (Regulation and Development) Act*, is aimed, as we have already said more than once, at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act."

83. In *K. Ramanathan v. State of Tamil Nadu* (1985) 2 SCC 116, this Court interpreted the word 'regulation' appearing in Section 3(2)(d) of the *Essential Commodities Act, 1955* and observed:

"The word "regulation" cannot have any rigid or inflexible meaning as to exclude "prohibition". The word "regulate" is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning, and is very comprehensive in scope. There is a diversity of opinion as to its meaning and its application to a particular state of facts, some courts giving to the term a somewhat restricted, and others giving to it a liberal, construction. The different shades of meaning are brought out in Corpus Juris Secundum, Vol. 76 at p. 611:

"'Regulate' is variously defined as meaning to adjust; to adjust, order, or govern by rule, method, or established mode; to adjust or control by rule, method, or established mode, or governing principles or laws; to govern; to govern by rule; to govern by, or subject to, certain rules or restrictions; to govern or direct according to rule; to control, govern, or direct by rule or regulations.

'Regulate' is also defined as meaning to direct; to direct by rule or restriction; to direct or manage according to certain standards, laws, or rules; to rule; to conduct; to fix or establish; to restrain; to restrict."

See also: Webster's Third New International Dictionary, Vol. II, p. 1913 and Shorter Oxford Dictionary, Vol. II, 3rd Edn., p. 1784.

It has often been said that the power to regulate does not necessarily include the power to prohibit, and ordinarily the word "regulate" is not synonymous with the word "prohibit". This is true in a general sense and in the sense that mere regulation is not the same as absolute prohibition. At the same time, the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated. The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where

the best or only efficacious regulation consists of suppression. It would therefore appear that the word "regulation" cannot have any inflexible meaning as to exclude "prohibition". It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the legislature seeks to remedy.

The question essentially is one of degree and it is impossible to fix any definite point at which "regulation" ends and "prohibition" begins. We may illustrate how different minds have differently reacted as to the meaning of the word "regulate" depending on the context in which it is used and the purpose and object of the legislation. In *Slattery v. Nalyor* LR (1888) 13 AC 446 the question arose before the Judicial Committee of the Privy Council whether a Bye-law by reason of its prohibiting internment altogether in a particular cemetery, was ultra vires because the Municipal Council had only power of regulating internments whereas the Bye-law totally prohibited them in the cemetery in question, and it was said by Lord Hobhouse, delivering the judgment of the Privy Council:

"A rule or Bye-law cannot be Held as ultra vires merely because it prohibits where empowered to regulate, as regulation often involved prohibition."

84. In *Jiyajeerao Cotton Mills Ltd. v. M.P. Electricity Board* 1989 Supp (2) SCC 52, the validity of the orders providing for higher charges/tariff for electricity consumed beyond legally fixed limit was upheld in view of Section 22(b) of the Electricity Act, which permits the State Government to issue an appropriate order for regulating the supply, distribution and consumption of electricity. It was held that the Court while interpreting the expression "regulate" must necessarily keep in view the object to be achieved and the mischief sought to be remedied. The necessity for issuing the orders arose out of the scarcity of electricity available to the Board for supplying to its customers and, therefore, in this background the demand for higher charges/tariff was held to be a part of a

regulatory measure.

85. In *Deepak Theatre v. State of Punjab* 1992 Supp (1) SCC 684, this Court upheld classification of seats and fixation of rates of admission according to the paying capacity of a cinegoer by observing that the same is an integral part of the power to make regulation and fixation of rates of admission became a legitimate ancillary or incidental power in furtherance of the regulation under the Act.

86. The term 'regulation' was also interpreted in *Quarry Owners' Association v. State of Bihar* (2000) 8 SCC 655 in the context of the provisions contained in the Mines and Minerals (Regulation Development) Act, 1957 and it was held:

"Returning to the present case we find that the words "regulation of mines and mineral development" are incorporated both in the Preamble and the Statement of Objects and Reasons of this Act. Before that we find that the Preamble of our Constitution in unequivocal words expresses to secure for our citizens social, economic and political justice. It is in this background and in the context of the provisions of the Act, we have to give the meaning of the word "regulation". The word "regulation" may have a different meaning in a different context but considering it in relation to the economic and social activities including the development and excavation of mines, ecological and environmental factors including States' contribution in developing, manning and controlling such activities, including parting with its wealth, viz., the minerals, the fixation of the rate of royalties would also be included within its meaning."

87. Reference in this connection can also be made to the judgment in *U.P. Coop. Cane Unions Federation v. West U.P. Sugar Mills Association* (2004) 5 SCC 430. In that case, the Court interpreted the word 'regulation' appearing in U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 and observed:

"Regulate" means to control or to adjust by rule or to subject to governing principles. It is a word of broad impact having wide meaning comprehending all facets not only specifically

enumerated in the Act, but also embraces within its fold the powers incidental to the regulation envisaged in good faith and its meaning has to be ascertained in the context in which it has been used and the purpose of the statute."

88. It is thus evident that the term 'regulate' is elastic enough to include the power to issue directions or to make regulations and the mere fact that the expression "as may be provided in the regulations" appearing in clauses (vii) and (viii) of Section 11(1)(b) has not been used in other clauses of that sub-section does not mean that the regulations cannot be framed under Section 36(1) on the subjects specified in clauses (i) to (vi) of Section 11(1)(b). In fact, by framing regulations under Section 36, the Authority can facilitate the exercise of functions under various clauses of Section 11(1)(b) including clauses (i) to (vi).

89. We may now advert to Section 36. Under sub-Section (1) thereof the Authority can make regulations to carry out the purposes of the Act specified in various provisions of the Act including Sections 11, 12 and 13. The exercise of power under Section 36(1) is hedged with the condition that the regulations must be consistent with the Act and the Rules made thereunder. There is no other restriction on the power of the Authority to make regulations. In terms of Section 37, the regulations are required to be laid before Parliament which can either approve, modify or annul the same. Section 36(2), which begins with the words "without prejudice to the generality of the power under sub-section (1)" specifies various topics on which regulations can be made by the Authority. Three of these topics relate to meetings of the Authority, the procedure to be followed at such meetings, the transaction of business at the meetings and the register to be maintained by the Authority. The remaining two topics specified in Clauses (e) and (f) of Section 36(2) are directly referable to Section 11(1)(b) (viii) and 11(1)(c). These are substantive functions of the Authority. However, there is nothing in the language of Section 36(2) from which it can be inferred that the provisions contained therein control the exercise of power by the Authority under Section 36(1) or that Section 36(2) restricts the scope of Section 36(1).

15. The power to regulate would therefore take in its ambit to laydown deadline and the consequences which can also result in the disconnection of service. The deadline of 31.1.2019 has been fixed by the Telecom Regulatory Authority of India under its powers conferred under Section 36 of the TRAI Act and taking into consideration all the facts and circumstances and therefore it cannot be said that TRAI has been acting hastily or it is time to implement its directions in a hurried manner without taking into account the interests of all the participants. It is not for this court to interfere with the deadline, unless it shows that such a decision is completely perverse. The letter F.No.21-4/2018-B&CS dated 27.12.2018 issued by TRAI, would show that the entire matter has been well considered and a decision fixing the deadline of 31.1.2019 has been taken after deliberation. The same cannot be said to be arbitrary. It is not for the court to fix deadline, which is a matter of policy.

16. The Hon'ble Supreme Court in Centre for Public Interest Litigation Versus Union of India & Others reported in 2016 (6) SCC 408 has held that a policy decision, when not found to be arbitrary or based on irrelevant consideration or malafide or against any statutory provision, does not call for any interference by court in exercise of power of judicial review. The Hon'ble Supreme in the said judgment at paragraph Nos.20, 21 and 27, has held as under:

20. From the aforesaid, it follows that a policy decision was taken by the Government not only with regard to introduction of Unified Licensing regime but it also including allowing migration to UL from UASL as well as ISP to UL regime. This meant that those having UAS license which permitted data services only were allowed to migrate to Unified License enabling them to provide both data service as well as voice telephony. This was a pure policy decision after due deliberations by the experts in the fields and even TRAI had recommended allowing such migration.

21. Such a policy decision, when not found to be arbitrary or based on irrelevant considerations or mala fide or against any statutory provisions, does not call for any interference by the Courts in exercise of power of judicial review. This principle of law is ingrained in stone which is stated and restated time and again by this Court on numerous occasions. In Jal Mahal Resorts (P) Ltd. v. K.P. Sharma, (2014) 8 SCC 804, the Court underlined the principle in the following manner:

116. From this, it is clear that although the courts are expected very often to enter into the

technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State authorities, specially if it is based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra-judicial ombudsmen questioning the entire exercise undertaken by an extensive body which include administrators, technocrats and financial experts. In our considered view, this might lead to a friction if not collision among the three organs of the State and would affect the principle of governance ingrained in the theory of separation of powers. In fact, this Court in *M.P. Oil Extraction v. State of M.P.*, (1997) 7 SCC 592 at p. 611 has unequivocally observed that:

"41. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields."

117. However, we hasten to add and do not wish to be misunderstood so as to infer that howsoever gross or abusive may be an administrative action or a decision which is writ large on a particular activity at the instance of the State or any other authority connected with it, the Court should remain a passive, inactive and a silent spectator.

What is sought to be emphasised is that there has to be a boundary line or the proverbial "laxman rekha" while examining the correctness of an administrative decision taken by the State or a central authority after due deliberation and diligence which do not reflect arbitrariness or illegality in its decision and execution. If such equilibrium in the matter of governance gets disturbed, development is bound to be slowed down and disturbed specially in an age of economic liberalisation wherein global players are also involved as per policy decision."

27. The *raison d'etre* of discretionary power is that it promotes decision maker to respond appropriately to the demands of particular situation. When the decision making is policy based judicial approach to interfere with such decision making becomes narrower. In such cases, in the first instance, it is to be examined as to whether policy in question is contrary to any statutory provisions or is discriminatory/arbitrary or based on irrelevant considerations. If the particular policy satisfies these parameters and is held to be valid, then the only question to be examined is as to whether the decision in question is in conformity with the said policy.

In the light of the above discussions and decisions, the writ petition fails. Accordingly dismissed. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

asr

To

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

2.The Secretary,
The Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhavan
(Next to Zakir Hussain College)
Jawaharlal Nehru Marg (Old Minto Road)
New Delhi - 110 002

3.Tamil Nadu Arasu Cable TV Corporation Pvt. Ltd.
Dugar Towers, 34 (123) 6th Floor
Marshalls Road, Egmore
Chennai - 600 008

+lcc to Mr.Ramapriya Gopalakrishnan, Advocate SR.No.7286

W.P.No.2176 of 2019

AK(CO)
GMY(13/02/2019)



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