HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.47423 OF 2018

Date: 14.03.2019

Between:

C.Eshwar Raju S/o. C.E. Sri Sai Lam (late),
Aged 45 years, Proprietor: Vision Eye,
1-10-180, Stilt Venkata Sai Residency,
Bharathi Nagar Colony Temple, Alwal,
Secunderabad and others.

.....Petitioners

and

Union of India, rep.by its Secretary,
Ministry of Information and Broadcasting,
Room No.560, A-Wing, Shasthri Bhavan,
New Delhi and others.

.....Respondents

The Court made the following:

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ORDER:

Heard Sri Pavan Kumar Pujari, learned counsel for petitioners, Sri K.Lakshman, learned Assistant Solicitor General for respondents 1 and 2, and Sri A.Tulsi Raj Gokul, learned counsel for respondents 3 and 4.

2. This Writ Petition is filed praying to grant the following relief:

> "to issue an appropriate writ or order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 2nd respondent in issuing and implementing the impugned information note to the press (Press release No.121/2018) dated 18.12.2018 without giving any opportunity to submit representations covered in the impugned press release note to submit petitioners difficulties in practical manner, which is contrary and against natural justice, without giving any opportunity by benefiting the 3rd and 4th respondents is illegal, in violation of principals of natural justice, as such the petitioners are deeply aggrieved by the Second Proviso to Regulation 12 (3), Proviso to Regulation 12 (7) and the ratio of 55:45 specified in Clause 12.1 "Standard Interconnection Agreement" (SIA) in Schedule-VI of the Telecommunication (Broadcasting and Cable) Services Inter Connection (Addressable Systems) Regulations 2017 (No.1 of 2017) issued by the 2nd respondent by which a default revenue sharing ratio between the Multi System Operator (MSO) and Local Cable Operator (LCO) of 55:45 would be applicable in case the parties fail to execute "Model Interconnection Agreement" (MIA) in Schedule-V of the said Regulations which is arbitrary, against the nature justice, as a result by Articles 14, 19 (1) (g) and Article 21 & 300A of Indian Constitution, consequently may be remand the matter before the 2nd respondent for fresh disposal, with liberty to this petitioner to appear and produce documentary evidence along with

written arguments before the 2nd respondent, by setting aside the impugned information note to the press (Press Release No.121/2018) dated 18122018 and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case."

3. Petitioners claim to hold licence to operate and to provide Cable TV services in different areas in Medchal – Malkajgiri District and in Secunderabad by receiving Cable TV Channel signals from the respondents 3 and 4. Petitioners are Local Cable Operators (LOCs) and respondents 3 and 4 are Multi System Operators (MSOs). This Writ Petition is filed aggrieved by the information note to the Press (Press Release No.121/2018), dated 18.12.2018. In paragraph-2 of the affidavit filed in support of the Writ Petition, petitioners set out their grievance necessitating to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. Reading of the prayer itself would show that though petitioners claim to be aggrieved by the second proviso to Regulation 12 (3), proviso to Regulation 12 (7), prescribing the ratio of 55:45 specified in Clause-12.1 of Standard Interconnection Agreement (SIA) in Schedule-VI of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017, more particularly principle of default revenue sharing ratio between Multi System Operators and Local Cable Operators, but petitioners prayed to set aside the Press Release dated 18.12.2018 on the ground that it was issued without prior notice and therefore violates principle of natural justice, and seek to remand the matter to the Telecom Regulatory Authority of India (TRAI) for fresh disposal, with liberty to petitioners to appear and produce documentary evidence along with written arguments

and to afford opportunity before issuing such Press Release. Though grounds urged extensively point out their grievances on various aspects of regulations mentioned in the prayer, but relief is not sought against validity of those regulations. In other words, grievance is confined to the release of Press Note without prior notice.

4. As briefly noted above, though petitioners claim that they have grievance against the relevant regulations mentioned above, but those regulations are not under challenge, and what is under challenge is only a Press Release.

3. Through this press release, TRAI indicates the framework, comprising of fixation of timelines in preparation for implementation of the new framework and the notification of Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order 2017; the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017; and the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017. It only alerts the consumers of broadcasting services of the new regime put in place to receive Television signals. To clear the apprehensions expressed by the Local Cable Operators, in paragraph-12 the authority reiterates that new framework is a comprehensive code that balances interests of service providers and consumers, and in paragraph-13 the Authority specified the Advisors whom can be contacted for any clarifications and details about the new framework. In other words, by this press

notification, the TRAI only highlights a new regime brought in place through regulatory framework, its obligations and necessity to implement the regulatory framework. Thus, by this press notification, no decision is taken by the TRAI offending a right already vested in petitioners nor new obligations are imposed on them. It only highlights salient features of regulatory framework put in place by TRAI, and indicates the road map on collection of charges from the consumers, on profit sharing framework by the MSOs and LCOs. It is a means to interact and enlighten the stake holders. It appears, TRAI has issued several press notes on various issues bringing forth decisions taken by it and placing them in public domain.

4. In the counter-affidavit filed on behalf of TRAI, the TRAI has narrated the development of the legal framework over a period of time culminating in issuing regulations in the year 2017, briefly referred to above, and the decision of various High Courts, Tribunal and the Hon'ble Supreme Court. TRAI has also raised objection on maintainability of writ petition by contending that petitioners have an efficacious legal remedy before duly constituted TDSAT. From the reading of the counter-affidavit, it appears that challenge made to the validity of the regulations were upheld by the High Courts and the Supreme Court.

5. However, Court is not elaborating on this aspect as validity of Regulations are not put in issue in the writ petition. Suffice to note that only the press release is under challenge and regulations are not under challenge. Without challenging the regulations, albeit the scope of the judicial review against statutory framework

is limited, petitioners cannot challenge the press release. The press release does not give a cause of auction necessitating institution of the Writ Petition.

6. At this stage, it is appropriate to extract the averments in paragraph-27 of the writ petition. It reads as under:

> "27. It is further submit that if the impugned information note to the press (Press release No.121/2018) dated 18.12.2018 if implemented the livelihood of petitioners' and their staff and their family survival will became in question, the revenue share in and between the broadcaster, MSO and the LCO recommended under the new tariff order is threat to the livelihood of the LCO's which requires re-consideration, the revenue sharing of the network capacity fee of 130/- in the ratio of 55:45 between the MSO and LCO is hit the livelihood of the petitioners."

7. It is not their contention that TRAI is not competent to apprise the consumers as well as service providers about the legal framework put in place. As a regulator it is the responsibility of the TRAI to enlighten all stake holders on statutory framework. The competence of TRAI to frame regulations, to determine the charges leviable for providing services by the cable operators or network service providers and also to regulate *inter se* relationship between the MSOs and LCOs, is not the issue raised in the Writ Petition. Thus, as regulations are not under challenge, the press release issued by the TRAI in exercise of powers vested in it by the Telecom Regulatory Authority of India Act, 1997 to create awareness on statutory environment cannot be faulted and the same cannot give rise to a cause of action to the petitioners to invoke extraordinary jurisdiction of this Court.

8. Further, under the Act a duty constituted Tribunal is put in place. It is competent to adjudicate any grievance brought before

it. If a stake holder has any grievance, he has to first avail the remedy provided under the Act. Writ Court ordinarily does not entertain writ petition if a person has statutorily engrafted legal remedy available.

9. For the aforesaid reasons, Writ Petition is dismissed, leaving it open to the petitioners to work out their remedies under the Act, if so advised, on any grievance arising out of the press note, impugned herein. It is also made clear that there is no expression of opinion on the merits of the grievance of petitioners against press notes issued by TRAI, and their *inter se* dispute with Multi-System Operators. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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