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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MRS.JUSTICE S.KANNAMMAL

W.A.Nos.1689,1699,1700,1715 & 1721 of 2021
and
C.M.P.Nos.10777,10843,10808,10826 & 10810 of 2021

M/s.ABT Ltd
Rep. By its Executive Director
M.Hariharasudhan

..Appellant
in all cases

Vs.

1. Union of India
Through the Secretary,
Ministry of Communications and IT
Department of Telecommunications
(Access Service Cell),
Sanchar Bhavan 20, Ashoka Road,
New Delhi - 110 001.
2. The Assistant Director General (LR),
Ministry of Communications,
Department of Telecommunications,
Sanchar Bhavan,
20, Ashoka Road,
New Delhi - 110 001.
3. The Joint Controller of Communication
Accounts (LF),
O/o. PCCA, TN Circle, Chennai - 28
238, RK Mutt Road,
RK Nagar Telephone Exchange,
7th Floor, Mandaveli,
Chennai - 28.

..Respondents
in all cases

Appeals filed under Clause 15 of Letters Patent against the common order dated 26.04.2021 passed in W.M.P.Nos.11018, 11023, 11015, 11026 and 11012 of 2021 in W.P.Nos.10422, 10424, 10418, 10430 and 10414 of 2021.



Prayers in W.P.Nos.10422, 10424, 10418, 10430 and 10414 of 2021: Writ petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other Writ, order or Direction in the nature of a Writ of Certiorari calling for the records of the 3rd respondent comprised in the demand Notice No. PCCA / TN / LF -I / ISP-C /2015-16 / ABT-CBE / 12622 dated 25.1.2021 Notice No.PCCA / TN / LF -I / ISP-C / 2016 -17 / ABT - CBE / 11655 dated 3.12.2020 Notice No.PCCA / TN / LF -I / 2014 -15 / ISP-C / ABT - LTD / 12133 dated 22.12.2020 No.PCCA / TN / LF -I / ISP-C / 2017-18 / ABT - CBE/12397 dated 11.01.2021 and No.PCCA / TN / LF -I / ISP-C / 2013 -14 / ABT - CBE / 8768 dated 14.05.2020 and quash same as contrary to law illegal arbitrary and unconstitutional violation of the principles of natural justice.

Prayers in W.M.P.Nos.11018,11023,11015,11026 and 11012 of 2021: The Writ Miscellaneous Petitions to issue an order of Interim stay of the operation of the demand Notice Nos.PCCA / TN / LF -I / ISP-C /2015-16 / ABT-CBE / 12622 dated 25.1.2021 No.PCCA / TN / LF -I / ISP-C / 2016-17 / ABT - CBE / 11655 dated 3.12.2020 No.PCCA / TN / LF -I /2014-15/ISP-C/ABT-LTD /12133 dated 22.12.2020 PCCA / TN / LF -I / ISP-C / 2017-18 / ABT - CBE / 12397 dated 11.01.2021 No.PCCA / TN / LF -I / ISP-C / 2013 -14 / ABT - CBE / 8768 dated 14.05.2020 issued by the 3rd respondent and all further proceedings pursuant thereto pending disposal of the writ petition.

For Appellant	:	Mr.Sathish Parasaran, Sr.Counsel for Mr.Subhang P. Nair (in all cases)
For Respondents	:	Mr.R.Sankaranarayanan, ASGI assisted by Mr.P.G.Santhosh Kumar for R1 (in all cases)

COMMON JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

These appeals lie in a very short compass. These appeals are filed aggrieved over the conditional order passed by the learned Single Judge while granting stay.

2. Learned Senior Counsel appearing for the appellant contended that the license fee is only Re.1 per annum at least till 2006. The appellant is not a Telecom Operator. There is no



subscriber for the appellant. The Apex Court in In Re Mandar Deshpande dated 11.06.2020 has clarified that the levy cannot be sustained to the activities similar to Internet Service Provider (ISP). Therefore, the order requires interference.

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3. Learned Additional Solicitor General appearing for the first respondent submitted that the order of Apex Court will apply to the case on hand. The appellant has been asked to give a reasonable amount while granting stay. Since discretion has been exercised, no interference is required.

4. The issues sought to be raised will have to be decided in the main writ appeals. Certainly, there are issues to be decided both on facts and law. Taking into consideration the over all facts of the case, we are of the view that the conditional order imposed by the learned Single Judge is obviously onerous. The very case of the appellant is that it is the pure Internet Service Provider. Therefore, the impugned demand cannot be sustained.

5. Thus, in the light of the above, particularly taking note of the fact that the licence fee earlier fixed was very minimum we are inclined to modify the order passed by the learned Single Judge to Rs.1 crore to be paid to the respondents, without prejudice to the contentions in the appeals, within a period of four weeks from the date of receipt of a copy of this judgment. On such terms, there shall be an order of interim stay pending disposal of the writ petition. We believe, deposit of money would not benefit any one and in any case it can be ordered to be returned, in the event of the writ petition being allowed.

6. The writ appeals stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

7. Considering the issues involved, we request the learned Single Judge dealing with the Roster to make an endeavour to dispose of the writ petitions on or before 27.10.2021.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mmi/ssm



To

1. The Secretary,
Union of India
Ministry of Communications and
IT Department of Telecommunications
(Access Service Cell),
Sanchar Bhavan 20, Ashoka Road,
New Delhi - 110 001.
2. The Assistant Director General (LR),
Ministry of Communications,
Department of Telecommunications,
Sanchar Bhavan, 20, Ashoka Road,
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O/o. PCCA, TN Circle, Chennai - 28
238, RK Mutt Road,
RK Nagar Telephone Exchange,
7th Floor, Mandaveli, Chennai - 28.

Copy To

The Section Officer,
Writ Section
High Court
Madras.

W.A.Nos.1689,1699,
1700,1715 & 1721 of 2021

JP-II (CO)
RGA(21/09/2021)