

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

WPIL no. 15/2013
CMA no. 569/2013

Date of order: 21.02.2014

Rajeshwari Katoch

$$V_{\text{c}}$$

Union of India & ors.

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice.
Hon'ble Mr. Justice Hasnain Massodi, Judge.

Appearing counsel:

For the Petitioner(s) : Petitioner present in person.
For the Respondent(s) : Mr. R. S. Jamwal, CGSC.
Mr. Ravi Abrol, Advocate.

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| i) | Whether to be reported
Press/Media | : | Yes |
| ii) | Whether to be reported in
Digest/Journal | : | Yes |

M.M.Kumar, CJ

1. The petitioner is an Advocate of this Court and has apparent interest to ensure that public authorities act in accordance with the Constitution and law. Her endeavor to achieve general welfare of the people through implementation of various provisions of Statutes has been brought to forefront by filing numerous Public Interest Litigations.

2. The present Public Interest Litigation is inspired by the activities of the cable operators for digitalization of Cable Television Services. According to the allegations made in various paras of the petition, the cable operators are misusing the newly added Section 4A of the Cable Networks (Regulation)

Act, 1995 (for brevity 'the Act') by forcing their subscribers to switch over to Cable Digitalization by purchasing a Set-top box which is priced at Rs.1200/-. The amount of Rs. 500/- is to be deposited in advance by March 15, 2013. The balance amount is to be paid at the time of installation of Set-top box. In that regard, reliance has been placed on a notice issued by the cable operators Take One JK Media Ltd and Space Communication Network-respondent nos. 5 and 6 respectively (Annexure C).

3. The grievances set up by the petitioner can be summed up as follows. (i) As per Section 4A of the Act, the date specified in the notification must not be earlier than six months from the date of issuance of such notification. The date fixed for the Jammu and Kashmir except Srinagar is 30.09.2014 and 31.12.2014 (with respect to the area other than the Urban area). The cable operators could not have started installation of Set-top boxes to receive digitalize signal by the subscribers before the period of six months preceding notified dates in notification dated 11.11.2011. In other words, they could have proceeded with the programme only from the month of April, 2014 and therefore, the activities are illegal. (ii) The cable operators as per the provisions of Section 4 A (5) of the Act are required to publicize the prescribed information by offering the channel in the basic service tier on a *la carte* basis to the

subscriber at a tariff specified under sub section 3 of Section 4A.

4. In response to notice of motion, respondent no.2 has filed detailed objections and has highlighted that the writ petition proceeds from some misconception. In various paras of the objections, the basic difference between digitization of Cable Television Services and the digitization of terrestrial broadcasting service has been pointed out. The Gazette notification issued by the Central Government dated 11.11.2011 unfolded four phases of digitalization in the Cable Television Services. Respondent no.2 is Tele-communication Regulatory Authority of India (TRAI) and has denied any role with regard to installation of digitalization of Cable network services as referred in details in the notification dated 11.11.2011 issued under sub Section 1 of Section 4A of the Cable Television Networks (Regulation) Act, 1995 (as amended in 2011). The programme of digitization of Cable Television Services is to be implemented in four phases. The State of Jammu and Kashmir except City of Srinagar is covered by phase III and the date of completing digitalization given for Phase III is 30.09.2014 except Srinagar City which falls under Phase II. Under Phase IV area other than covered under phases I to III are to be digitalized by providing Cable Television Services which would comprise urban and rural

areas. According to the averments made in para 7 of the objections there is no obligation to issue a notification six months prior to the date of switching over as per the mandate of Proviso to Section 4A of the Act. The notification dated 11.11.2011 has already been issued by the Central Government as per the provisions of Section 4A of the Act. There is no other provision in the Act for issuance of any other notification. In other words, the stand taken by respondent no.2 is that the dates given in the notification provides outer limit and there is no obligation that notification is required to be issued giving a period of six months preceding the date of completion of digitalization of Cable Television Services.

5. In respect of issue covered under Head 'II', respondent no. 2 has made a reference to order dated 21.07.2010 issued under Section 11 of the Telecom Regulatory Authority of India Act, 1997 which is known as the Telecommunication (Broadcasting and Cable) Services (Fourth) Addressable System) Tariff Order, 2012, it was amended on 30.04.2012. The order after amendment made to Clause 6 of the Principal Tariff Order reads as under:

“.....(1) Every multi-system operator or DTH operator or IPTV operator or HITS operator providing broadcasting services or cable services to its subscribers using an addressable system shall, from the date of coming into force of this Order, offer or cause to offer all channels offered by it to its

subscribers on a-la-carte basis and shall specify the maximum retail price for each channel, as payable by the ordinary subscriber;

Provided that the a-la-carte rate of free to air channels shall be uniform.”

“.....(IA) Every multi-system operator providing cable services to the subscribers, using digital addressable cable TV system, directly or through its linked local cable operator, shall offer a package of a minimum of one hundred free to air channels as basic service tier including the channels of Prasar Bharati, namely DD-Bharati, DD-Malyalam, DD-Podhigai, DD-Odiya, DD-Bangla, DD-Saptagiri, DD-Chandana, DD-Sahyadri, DD-Girnar, DD-Kashir, DD-NE, DD-Punjabi.

(IB) It shall be open to the subscriber to choose any combination of free to air channels up to one hundred channels, in lieu of the basic service tier offered by the multi-system operator.

Provided that it shall be open to the multi-system operator to specify a minimum monthly subscription, not exceeding one hundred rupees (excluding taxes) per subscriber, towards the basic-service tier or the free to air channels chosen by the subscriber in lieu of the basic service tier.

(IC) The basic service tier offered by the multi-system operator shall include at least five channels of the each genre namely news and current affairs, infotainment, sports, kids, music, lifestyle, movies and generation entertainment in Hindi, English and regional language of the concerned region.

Provided that in case sufficient number of free to air channels of a particular genre is not available, the multi-system operator shall include in the basic service tier the channels of the other genres.

(ID) It shall be open to the subscriber of the digital addressable cable TV to subscribe to basic service tier

or basic service tier and one or more pay channel or only free to air channels or only pay channels or pay channels and free to air channels.

(IE) if a digital addressable cable TV subscriber subscribes to the pay channels, in a-la-carte or bouquet or a combination of a a-la-carte and bouquet, with or without free to air channels, it shall be open to the multi-system operator to specify a minimum monthly subscription, not exceeding one hundred and fifty rupees (exclusive of taxes) per month.....”

6. There are separate replies filed by respondent nos. 5 and 6. According to the objections filed by respondent no.5, it has been asserted that issuance of notice for digitalization of Cable Television Services by them did not violate any provisions of law. Even otherwise, respondent no.5 has taken a stand that notice dated 07.03.2013 is a simple notice suggesting subscriber to switch over to better services of viewing the Television channel by installing a set-top box. It is left to the sweet will of the subscriber to have such a box or not. The exercise has to be carried on or before September, 2014. They have prayed for dismissal of the writ petition.

7. Similar stand has been taken by respondent no. 6, stating that writ petition was result of personal vendetta against respondent no. 6 because the petitioner is a subscriber to their cable service known as Space Communication Network. The petition has emanated from an altercation between the petitioner and an agent of respondent no. 6 with regard to cost

of set-top box. Rejoinder has also been filed by the petitioner to the objections filed by the respondents.

8. We have heard learned counsel for the parties at considerable length and have perused the pleadings with their able assistance.

9. From the pleadings of the parties and the arguments raised by their learned counsel the following two issues would emerge for determination:

A- Whether Section 4A of the Act has been violated by issuance of notification dated 11.11.2011 inasmuch as it gives a period of more than six months to the Cable Operators to switch over to digitalization of Cable services?

B- Whether there is any breach of obligation on the part of the Cable Operators by ignoring the provisions of Section 4A (3) and (5) of the Act which require them to publicize the prescribed information by offering channels in the basic service tier on *a-la-carte* basis to the subscriber at a specified tariff?

10. **Re- Question 'A'.**

In order to appreciate the whole controversy, it would first be necessary to peruse the provisions of Section 4A of the Act which were introduced by amendment effected on

30.12.2011 enforced with effect from 25.10.2011. The same is set out below *in extenso*:

“4A. (1) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazettee, make it obligatory for every cable operator to transmit or re-transmit programmes of any channel in an encrypted form through a digital addressable system with effect from such date as may be specified in the notification and different dates may be specified for different States, Cities, towns, or areas as the case may be;

Provided that the date specified in the notification shall not be earlier than six months from the date of issue of such notification to enable the cable operators in different States, cities, towns or area to install the equipment required for the purposes of this sub-section.

(2) The Central Government may prescribe appropriate measures and take such steps as it may consider necessary for implementation of the notification issued under sub-section (1).”

11. A perusal of the Section 4A (1) and its proviso would show that the Central Government has been clothed with the power to make it obligatory for every cable operator to transmit or re-transmit programmes of any channel in encrypted form through a digital addressable system. The Central Government is also competent to announce the date by publishing the same in a gazette notification. There could be different dates for different States, cities, towns or areas. According to the proviso such dates are not to be earlier than six months because sufficient time has to be given to enable the cable operators to

install the equipment required for the purpose of sub-section (1). In other words a period of six months at least is required to be given to the Cable Operator.

12. In pursuance of the aforesaid mandate of Sub-Section (1) of Section 4A of the Act, the Central Government published a notification dated 11.11.2011 in the official gazette (Annexure R 2/3). The notification contemplates four Phases of digitalization for the whole country. In Ist Phase the States of Maharashtra, Delhi, West Bengal and Tamil Nadu are to be covered. The date fixed is 30.06.2012. It is patent that notification grants more than six months for completion of 1st Phase. In the IInd Phase various capital cities, including Srinagar, are to be covered by 31.03.2013. In the 3rd Phase all other urban areas covered by Municipal Corporations, Municipalities, except those which are covered in Phase I and II, are to switch over to digitalization of Cable Television services and the date fixed for them is 30.09.2014 and for rest of the leftover areas the date fixed is 31.12.2014. The argument of the petitioner is that a date prior to the one specified for digitalization of Cable Television Services could not be more than six months earlier to the target date.

13. Having perused the notification dated 11.11.2011 and the provisions of Section 4A (1) of the Act and its proviso, we are of the view that the argument of the petitioner does not emanate

either from the plain language of the provision nor from its intendment. Section 4A is manifestly clear that the Central Government is competent on recording its satisfaction and by issuing notification in the official gazette, making it obligatory on every Cable Operator to transmit or re-transmit programmes of any channel in an encrypted form through a digital addressable system with effect from such date as may be specified in the notification and different dates may be specified for different States, Cities, towns, or areas. The proviso put it beyond any doubt that the date specified in the notification shall not be earlier than six months from the date of issuance of such notification. In other words, in the notification dated 11.11.2011 the target date required to be fixed could not be earlier than six months; meaning thereby that a period of at least six months has to be afforded to enable the Cable Operators to install the equipment required for the purposes of transmitting or re-transmitting the programmes in a encrypted form through a digitalized addressable system. The object sought to be achieved by proviso to sub-section (1) of Section 4A of the Act is that adequate time should be available to the Cable Operators to switch over to digitalization of Cable Television Services. Therefore, the argument, interpreting the proviso to mean that it cannot commence prior to six months, has to be rejected as it emanates from complete misreading of the

provision. Therefore, question A is answered against the petitioner and in favour of the respondents.

14. **Re-Question -B**

In order to appreciate the controversy in Question-B, it would be necessary to read the other parts of Section 4A, which are set out below *in extenso*:-

“4A (1).....

(2).....

(3) If the Central Government is satisfied that it is necessary in the public interest so to do, and if not otherwise specified by the Authority, it may direct the Authority to specify, by notification in the Official Gazette, one or more free-to-air channels to be included in the package of channels forming basic service tier and any one or more such channels may be specified, in the notification, genre-wise for providing a programme mix of entertainment, information, education and such other programmes and fix the tariff for basic service tier which shall be offered by the cable operators to the consumers and the consumer shall have the option to subscribe to any such tier:

Provided that the cable operator shall also offer the channels in the basic service tier on a la carte basis to the subscriber at a tariff specified under this sub-section.

(4) The Central Government or the Authority may specify in the notification referred to in sub-section (3), the number of free-to-air channels to be included in the package of channels forming basic service tier for the purposes of that sub-section and different numbers may be specified for different States, cities, towns or areas, as the case may be.

(5) It shall be obligatory for every cable operator to publicize the prescribed information including but not limited to subscription rates, standards of quality of service and mechanism for redressal of subscribers grievances in such manner and at such periodic intervals as may be specified by the Central Government or the Authority for the benefit of the subscriber.

(6) The cable operator shall not require any subscriber to have a receiver set of a particular type to receive signals of cable television network;

Provided that the subscriber shall use a digital addressable system to be attached to his receiver set for receiving programmes transmitted on any channel.

(7) Every cable operator shall provide such information relating to its cable services and networks in such format and at such periodic intervals to the Central Government or the State Governments or the Authority or their authorized representatives, as may be specified by them from time to time.

(8) All actions taken by the Central Government or the Authority in pursuance of the provisions of this section as they stood immediately before the 25th day of October, 2011 shall continue to remain in force till such actions are modified as per the provisions of this Act.

Explanation___ For the purposes of this Section,___

(a) “addressable system” means an electronic device (which includes hardware and its associated software) or more than one electronic device put in an integrated system through which signals of cable television network can be sent in encrypted form, which can be decoded by the device or devices, having an activated Conditional Access System at the premises of the subscriber within the limits of authorization made, through the Conditional Access System and the subscriber management system, on the

explicit choice and request of such subscriber, by the cable operator to the subscriber;

- (b) *“basic service tier” means a package of free-to-air channels to be offered by a cable operator to a subscriber with an option to subscribe, for a single price to subscribers of the area in which his cable television network is providing service;*
- (c) *“encrypted” in respect of a signal of cable television network, means the changing of such signal in a systematic way so that the signal would be unintelligible without use of an addressable system and the expression “unencrypted” shall be construed accordingly;*
- (d) *“free-to-air channel”, in respect of a cable television network, means a channel for which no subscription fee is to be paid by the cable operator to the broadcaster for its re-transmission on cable;*
- (e) *“pay channel”, in respect of a cable television network, means a channel for which subscription fee is to be paid to the broadcaster by the cable operator and due authorization needs to be taken from the broadcaster for its re-transmission on cable;*
- (f) *“subscriber management system” means a system or device which stores the subscriber records and details with respect to name, address and other information regarding the hardware being utilized by the subscriber, channels or bouquets and channels subscribed to by the subscriber, price of such channels or bouquets of channels as defined in the system, the activation or deactivation dates and time for any channel or bouquets of channels, a log of all actions performed on a subscriber’s record, invoices raised on each subscriber and the*

amounts paid or discount allowed to the subscriber for each billing period.”

15. The above extracted Sub-Sections (3) to (8) are aimed at ensuring service to the subscriber of the Cable Television Services. The Central Government is empowered to issue directions to TRAI to specify by notification in the official gazette, one or more free-to-air channels to be included in the package of channels forming basic service tier and any one or more such channels may be specified, in the notification, genre-wise for providing a programme mix of entertainment, information, education and such other programmes and fix the tariff for basic service tier.

16. In pursuance of the aforesaid provisions the TRAI has issued order dated 30.04.2012, which is known as “the Telecommunication (Broadcasting and Cable) Services (Fourth Addressable System) Tariff Order, 2012. The same has already been set out *in extenso* in the preceding para 5 of this judgment. Clause I of the order imposes an obligation on Cable Operators to offer all channels to its subscribers on *a-la-carte* basis and it is also obligatory for him to specify the maximum retail price for each channel. It also makes it obligatory that *a-la-carte* rate of free to air channels must be uniform. Clause 6, as amended on 30.04.2012, further imposes obligation to offer a package of a minimum of one hundred free to air channels as

basic service tier including the channels of Prasar Bharati. It is option given to the subscriber to choose any combination of free to air channels up to one hundred channels, in lieu of the basic service tier offered by the Cable Operator. The Cable Operators are also required to specify a minimum monthly subscription, not exceeding one hundred rupees (excluding taxes) per subscriber, towards the basic-service tier or free to air channels in lieu of the basic service tier. The other details as per the provisions of the order are also required to be followed.

17. It appears that the Cable Operators, including respondent nos. 5 and 6 have not complied with the directions issued by the TRAI. There are specific averments made in para 11 of the petition which are to the effect that the Cable Operators have to offer channels on the basic-service-tier and *a-la-carte* basis at a tariff specified by the TRAI. In para 12 the petitioner has asserted that the Cable Operators have also an obligation to publicize the information including the rates prescribed, standard of quality of service and mechanism for redressal of subscribers grievances. In the corresponding para of the written statement filed by respondent nos. 5 and 6, averments have been made to show that these provisions have been complied with. All that has been said is that the question of specifying one or more free to air channels would arise when appropriate notification by the Central Government under Section 4A of the

Act is issued. The aforesaid stand emanates from complete ignorance of the notification issued by the TRAI under Section 11 of the TRAI Act, 1997. All the obligations specified in the aforesaid order have to be complied with by respondent nos. 5 and 6 and the other Cable Operators operating the Cable Television Services in their respective areas. Therefore, the designated officer, namely, the Deputy Commissioner and the Additional Deputy Commissioner is directed to ensure that the provisions of order dated 30.04.2012 issued by the TRAI must be complied with in letter and spirit. The Designated officers shall also ask multi-system Operator providing Cable services to the general public, to comply with various provisions of the aforesaid order.

18. In view of the above, Question no. B is answered in favour of the petitioner.

19. As a sequel to the above discussion, respondent nos. 3 and 4 are directed to ensure that the provisions of order dated 30.04.2012 are complied with in letter and spirit by asking the multi-system operators providing Cable services, known as Cable Operators that Digitalized Cable Television Services be provided to the general public on specified subscription and in the manner provided in the order issued by TRAI. The needful shall be done within a period of six weeks from the date of receipt of copy of this order.

20. The petition stands disposed of in the above term.

(Hasnain Massodi)
Judge

(M. M. Kumar)
Chief Justice

Jammu,
21.02.2014
Anil Raina, Secy