

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 4TH DAY OF APRIL 2023 / 14TH CHAITHRA, 1945

WP(C) NO. 193 OF 2023

PETITIONER/S:

- 1 ALL INDIA DIGITAL CABLE FEDERATION
236 OKHLA INDUSTRIAL ESTATE PHASE - III NEW DELHI – 110
020, INDIA REPRESENTED BY ITS SECRETARY GENERAL, MANOJ
PRAKASH CHHANGANI.
- 2 KERALA COMMUNICATORS CABLE LTD.
1ST FLOOR, 142-H1 AM COA BHAVAN, THOUNDAYIL ROAD,
PANAMPILLY NAGAR ERNAKULAM – 682 036, KERALA
REPRESENTED BY ITS MANAGING DIRECTOR,
MR. SURESH KUMAR P.P.
BY ADVS.
SRI. ABHISHEK MANU SINGHVI, (SR)
SRI. JAYANT MEHTA (SR.)
SRI. JAI MOHAN
SRI. M.GOPIKRISHNAN NAMBIAR
SRI. K.JOHN MATHAI
SRI. KURYAN THOMAS
SRI. JOSON MANAVALAN
SRI. RAJA KANNAN
SRI. PAULOSE C. ABRAHAM

RESPONDENT/S:

- 1 TELECOM REGULATORY AUTHORITY OF INDIA
MAHANAGAR DOORSANCHAR BHAWAN JAWAHARLAL NEHRU MARG
(OLD MINTO ROAD) NEW DELHI – 110 002, INDIA REPRESENTED
BY ITS SECRETARY.
- 2 UNION OF INDIA
THROUGH SECRETARY MINISTRY OF INFORMATION AND
BROADCASTING,
DR RAJENDRA PRASAD RD., SHASTRI BHAVAN NEW DELHI, DELHI
110 001.
- 3 **ADDL.R3. IMPLEADED:**

INDIAN BROADCASTING AND DIGITAL FOUNDATION
C-301, THIRD FLOOR, ANSAL PLAZA, KHELGAON MARG, NEW
DELHI 110 049. REPRESENTED BY ITS SECRETARY SHRI. C.
RADHAKRISHNAN

[ADDL. R3 IS IMPLEADED AS PER ORDER DATED 06.01.2023 IN
I.A.1/2023]

BY ADVS.

SRI. MANINDER M. SINGH (SR.)
SRI. MUKUL ROHATAGI (SR.)
SRI. AMIT SIBAL (SR.)
SRI. S. SREEKUMAR (SR.)
SRI. JAISHANKAR V.NAIR
SRI. RAKESH DWIVEDI
SRI. ANKOOR SOOD
SRI. SAKET SINGH
ARUN THOMAS
SRI. SANTHOSH MATHEW
SRI. SAIKRISHNA RAJAGOPAL
SRI. SIDHARTH CHOPRA
SMT. SNEHA JAIN
SRI. MATHEW NEVIN THOMAS
SRI. KURIAN ANTONY MATHEW
SRI. RANJEET SINGH SIDHU
SRI. SWIKRITI SINGHANIA
SRI. KUBER MAHAJAN
SRI. AKSHAY AGARWAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07.03.2023,
THE COURT ON 04.04.2023 DELIVERED THE FOLLOWING:

SHAJI P. CHALY, J.

W.P.(C). No. 193 of 2023

Dated this the 4th day of April, 2023.

JUDGMENT

The first petitioner is the apex body and association of Multi System Operators (MSO) providing cable television services to millions of subscribers across India and the second petitioner is an MSO operating with the State of Kerala. They have filed this writ petition *inter alia* seeking a declaration that the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Fourth Amendment) Regulations 2022 ('2022 Regulations' for short) and Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Third Amendment) Order 2022 ('2022 Tariff Order' for short) (collectively referred to as '2022 Regulations and the Tariff Order') are *ultra vires* the provisions of the Telecom Regulatory Authority of India Act, 1997 ('Act, 1997' for short) and violates Articles 14 and 19 (1) (g) of the Constitution of India.

2. According to the petitioners, the Telecom Regulatory Authority of India (TRAI), the first respondent, since 2006, has introduced Conditional Access System (CAS) in certain major metropolitan areas and thereby, respondent No.1 has routinely

fixed the ceiling price for Maximum Retail Price (MRP) of television channels charged from the customer by way of Telecommunication (Broadcasting and Cable Services) Interconnection (Second Amendment) Regulation, 2006. The Telecom Disputes Settlement and Appellate Tribunal (hereinafter referred to as 'TDSAT'), on 27.02.2007, in the matter of **Set Discovery Private Limited v. TRAI**, had upheld the power of the first respondent to set ceiling price for MRP of channels.

3. Gradually, the cable network in the country had transformed itself from analog to digital, and in order to keep pace with the same, the first respondent issued the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulation, 2012 ('the 2012 DAS Regulations' for short). It is submitted that at the time of 2012 DAS Regulations, the first respondent agreed to provide pricing freedom to the broadcasters on the condition that the prices would be non-discriminatory.

4. It is also submitted that with a view to secure the ends of non-discriminatory Interconnection Agreements in the market and also to have uniform regulations for all types of addressable systems and with increasing digitization, the first respondent sought to implement three regulations namely (1) Telecommunication

(Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulation 2017; (2) Telecommunication (Broadcasting and Cable) Services Standards of Quality of Services and Consumer Protection (Addressable Systems) Regulations 2017; and (3) Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017. [hereinafter referred as '2017 Regulations and the Tariff Order']

5. Under the aforementioned 2017 Regulations Framework, for the first time, since 2004, broadcasters were allowed to fix MRP of a pay channel for consumers. The concept of broadcasters giving channels to Distribution Platform Operator (DPO) on wholesale price and DPO retailing it to consumers was given a go by. Under the Regulations, every broadcaster was required to declare the uniform MRP of its pay channels on a-la-carte basis. Every broadcaster was required to enter into written interconnection agreements on the basis of the Reference Interconnection Offer (RIO) published by it for providing signals of pay channels to a distributor of television channels.

6. It is also submitted that subsequently, the first respondent issued two Consultation Papers viz. "Consultation Paper on Tariff Related for Broadcasting and Cable Services" and "Consultation Paper on Issues Related to Interconnection Regulations" on

16.08.2019 and on 25.09.2019 respectively. Those consultation papers were issued with the purported objective of overhauling the system once again.

7. On 01.01.2020, the first respondent notified the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulation 2020 and Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Second Amendment) Order 2020. (hereinafter referred to as '2020 Regulations and the Tariff Order') By way of the afore-mentioned 2020 Regulations, according to the petitioners, the first respondent had introduced protection from predatory bouquet pricing of broadcasters. It was provided that the channels priced more than INR 12/- shall not be allowed to include in a bouquet channel.

8. This was challenged before the High Court of Bombay by filing WP No. 680 of 2020 and the Bombay High Court, by judgment dated 30.06.2021 in ***Film and Television Producers Guild of India & anr v. Union of India*** upheld the order; but it had struck down the 15% ceiling imposed on the discount rate to broadcasters as arbitrary. The matter was taken up in appeal to the Supreme Court and later, it was withdrawn. Due to the pending litigation, the 2020 Regulations were not implemented.

9. On 23.12.2021, the first respondent convened a meeting of the broadcasters and representatives of All India Digital Cable Federation (AIDCF). It is the case of the petitioners that the minutes of the said meeting had incorrectly recorded that all stakeholders had agreed that the a-la-carte price ceiling needed to be addressed. The minutes of the meeting were circulated by the first respondent on 20th January, 2022. The first petitioner, vide Exhibit P8 email dated 29th January, 2022, informed that AIDCF was not agreeable to any consumer price increase.

10. On the other hand, on 18th January, 2022, the first petitioner, through Exhibit P9 letter, had requested the first respondent to place a pricing cap for channels genre wise with a maximum cap of INR 12/-. It is the contention of the petitioners that instead of addressing the abuse of pricing freedom by broadcasters, the first respondent is seeking an assurance from broadcasters that if the price of channel for inclusion in bouquet is increased, the broadcasters will voluntarily reduce their driver channel prices.

11. Thereafter, the first respondent introduced a proviso to Clause 2 of Regulation 7 by way of Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Fourth Amendment) Regulation 2022. According to the

petitioner, the proviso was introduced without any consultation. It allowed the broadcasters to give offers for discounts to distributors of television channels on the basis of the subscription of the channel, both in bouquets as well as in a-la-carte. In similar lines, the explanation to Regulation 10(12) of the Interconnection Regulations was also substituted to allow broadcasters to incorporate upheld discount provision in the Interconnection Agreement on the basis of the subscription rate of channels. It is the contention of the petitioners that such a provision was not consulted with the stakeholders by the first respondent in any of the meetings or Consultation Papers.

12. Further, by way of Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Third Amendment) Order 2022, clause 3 was amended to allow the broadcasters to include the channels priced upto INR 19/- (instead of an INR 12/-) in a bouquet channel.

13. It is further contended that such an increase in price would shift the loss upon the consumers, consequently, leading to severe loss of revenue for the distributors, and that the increase in the maximum cap of bouquet channels to INR 19/- is disadvantageous to the distributors. The broadcasters have priced in such a way that consumers prefer to opt for a bouquet instead of

opting for a high priced popular channel on a a-la-carte basis, thereby rendering a-la-carte choice of consumer meaningless. Therefore it is contented that the regulations and tariff 2022 are arbitrary, illegal and violative of Article 19 (1) (g) of the Constitution and accordingly seeks interference.

Contentions of Respondent No. 1- TRAI :-

14. That the Act, 1997 entrusts it, *inter alia*, with the functions to ensure technical compatibility and effective interconnection between different service providers, fix the terms and conditions of interconnectivity between the service providers, and regulate arrangements amongst service providers for sharing their revenue derived from providing Broadcasting and cable TV services.

15. In the digitalisation era of cable network, which was sought to be completed between 2012 and 2017, a lot of implementation issues emerged. It submitted that the flexibility granted to the DPOs were misused back in those times. In some cases, it was found that the DPOs were charging for the Free-To-Air Channels (hereinafter referred to as 'FTA Channels') and at times, the prices of FTA channels were higher than the pay channels. Similarly, the broadcasters too misused those provisions. The Broadcasters used to offer huge discounts ranging

upto 80-85% on RIO prices, in case the DPOs agreed to their terms and conditions which included forcing all channels of the broadcaster and its associates to the consumers. If the DPO did not agree to such terms and conditions, then DPO would be forced to buy the channels on RIO prices, which were exorbitantly high. Consequently, the DPOs which decide on the retail prices of the channels would shift this burden onto the consumers. Taking note of these concerns and after having consultations with the stakeholders, the first respondent issued the 2017 Regulations and the Tariff Order.

16. It is further submitted that the 2017 Regulations and the Tariff Order had made the consumer the real decision maker and gave complete freedom of what he/she views. For this reason, the MRP of the channels on a-la-carte basis and on bouquet was mandated to be published individually. It was also mandated that the FTA channels cannot be clubbed with Pay Channels and HD cannot be clubbed with the SD version of the same channel. Moreover, the broadcasters were granted the freedom to decide on the MRP. At the same time, the DPOs were granted an independent source of income in the form of Network Capacity Fee. The terms and conditions between the DPOs and the broadcasters in the RIO were mandated to be published on the

broadcaster's website. The discounts on the MRP of channels or bouquet of channels were capped at 15%. The 2017 Regulations and the Tariff Order were challenged in the Madras High Court and it went for appeal to the Supreme Court, but the Hon'ble Courts upheld the power of first respondent to implement these regulations. Therefore, even though the 2017 Tariff Order was notified in March 2017, it remained unenforced due to the ongoing legal challenge at Hon'ble Courts. Finally, the 2017 Regulations and the Tariff order were brought into effect via a press release dated 3rd July, 2018.

17. In the meanwhile, M/s Fastway Transmission Pvt. Ltd., filed an appeal before TDSAT against the non-enforcement of third proviso of clause 3(3) of the 2017 Tariff Order, which provides that bouquet shall not contain any pay channel for which MRP per month is more than INR 19/-. The Hon'ble TDSAT disposed of the matter on the assurance that the first respondent would take a decision on the matter. The first respondent then again, filed an SLP before the Apex Court for the clarification on the third proviso to clause 3(3) of the 2017 Tariff Order and the same was later withdrawn.

18. The power of fixation of tariffs was deliberated in the case of **Star India P. Ltd. v. TRAI [(2019) 2 SCC 104]**. The

Supreme Court had upheld the power of TRAI in fixation of tariffs. Thus, even in this case, the court did not dispute the validity of third proviso of clause 3(3) of the 2017 Tariff Order, which provided that bouquet shall not contain any pay channel for which MRP per month is more than INR 19/-.

19. It was further submitted by the respondents that a lot of issues arose on the implementation of the 2017 Regulations and the Tariff Order. Broadcasters were offering huge discounts in bouquets and making a-la-carte prices illusory for the subscribers. Very marginally priced channels were clubbed with high priced channels in a bouquet. Also, the DPOs were charging separate Network Capacity Fees for each of the multiple connections provided in a home. All these reasons resulted in the 2020 Amendment to the 2017 Interconnection Regulations and the Tariff Order.

20. The 2020 Amendment reduced the ceiling price of pay channel for inclusion in any bouquet from INR 19/- to INR 12/-. Nevertheless, respondent Nos. 1 and 3 and the petitioners admit that the said amendment could never be implemented due to the pending litigations (in *Indian Broadcasting and Digital Foundation and Ors. v. Telecom Regulatory Authority of India* filed in Bombay High Court as W.P.(L) No. 120 of 2020 and an SLP in this case was

filed bearing SLP(C) No. 10801 of 2021, which was later withdrawn). It was also noticed by the first respondent that this regulatory framework would cause a significant increase in the tariffs and will create unnecessary hassles for the consumers.

21. On 23.12.2021, the first respondent had constituted a committee to look into the implementation of the 2020 Regulatory framework. During the deliberations, the stakeholders suggested that restoring the MRP ceiling of INR 19/- for bouquet channels in accordance with 2017 Regulations would keep the existing bouquet structure intact and avoid inconvenience for the consumers. The committee also felt the need to address the ceiling on the discount rate offered on bouquet channels. On 29.01.2022, the petitioner also requested to allow additional fifteen (15%) percent incentive to DPOs for bouquet as well, as has been provided for a-la-carte channel. Thereafter, the first respondent issued a Consultation Paper titled as 'Issues related to New Regulatory Framework for Broadcasting and Cable Services' for seeking opinions of the stakeholders. This was followed by a web-casted (Virtual Conference) Open House Discussion in New Delhi on 8th September 2022.

22. It is, thus, submitted by the first respondent that the 2022 Regulations and the Tariff Order was issued by the first

respondent after an elaborate consultation process. The third respondent— Indian Broadcasting and Digital Foundation, Delhi, a broadcasters' Association, virtually supports the contentions advanced by the first respondent. But, it is specifically submitted that in Consultation Paper dated 07.05.2022, TRAI had invited comments on whether there should be any '*discount, in addition to distribution fee, on MRP of a-la-carte channels and bouquets of channels to be provided by broadcasters to DPOs*' and '*the amount and terms and conditions for providing such discount.*' Therefore, there is no basis in the argument that first respondent didn't consult on increasing the ceiling of discount rate to 45%; or on providing the linkage of discount to minimum subscription under 2022 Regulations.

23. It is further submitted that, the broadcasters were already complying with MRP ceiling price of INR 19/- as per 2017 Regulations and Tariff Order. The reduction of MRP ceiling price envisaged in the 2020 Amendment from INR 19/- to INR 12/- was never implemented to begin with. The 2017 regulations were only sought to be restored through the 2022 Amendment to Regulations and the Tariff Order. It is further submitted by the third respondent that the 2022 Regulations had come into effect on 01.02.2023. Most of the Broadcasters have already

implemented the 2022 Regulations and this petition has been filed at a belated stage.

24. The third respondent has further submitted that it is an admitted position that the telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Second Amendment) Regulations, 2020 ('2020 Regulations' for short) and the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Second Amendment Order, 2020 ('2020 Tariff Order' for short) (collectively referred to as '2020 Regulations and the Tariff Order') were never implemented on ground. The DPOs were operating under the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 ("2017 Regulations") and the Telecommunication (Broadcasting and Cable) Services (Eighth) Addressable Systems) Tariff Order, 2017 ("2017 Tariff Order") (collectively "2017 Regulations and the Tariff Order") which provided for a price cap of Rs.19/-.

25. It is further submitted that the 2022 Regulations and the Tariff Order have already come into effect and have been duly implemented effectively on 01.02.2023 and the TRAI had issued a Press Release dated 22.11.2022, under which the Broadcasters were required to publish their Reference Interconnection Offer (RIO)

by 16.12.2022 and the DPOs were required to publish their RIOs by 01.01.2023, evident from Exhibit R3(a). Subsequently, TRAI also issued directions on 19.01.2023 wherein DPOs who had not declared tariff as per the provisions of 2022 Regulations and the Tariff Order were directed to comply with the relevant provisions and report compliance to the authority, evident from Exhibit R3(b).

26. It is further submitted that in compliance with the press release, the Broadcasters have implemented the 2022 Regulations and the Tariff Order by filing their respective RIOs with TRAI and publishing the same on their respective websites. It is also stated that most of the DPOs have signed/confirmed to the Broadcasters, the new agreements that were shared by broadcasters pursuant to RIOs issued by them under 2022 Regulations and Tariff Order. Therefore, according to the third respondent, the petitioners have deliberately and *mala fide* challenged the 2022 Regulations and the Tariff Order on 03.01.2023 at a belated stage when the same was notified on 20.11.2022 itself.

27. It is further submitted that the third respondent had already issued a communication to the TRAI on 31.01.2023 informing about the status of interconnection agreements signed/confirmed or being processed by major broadcasters. It is also stated that the members of respondent No.3 have published

their Reference Interconnection Offers on their websites and thousands of RIOs have been signed/processed/confirmed by the DPOs. It is further stated that even the DTH service providers catering to 55% of the pay TV universe have published the new rates for the consumers and respondent No.3, vide its communication dated 31.01.2023, provided to TRAI the details with respect to the number of interconnection agreements signed/being processed/confirmed by DPOs.

28. The sum and substance of the contention advanced by the third respondent is that in compliance with the directions issued by the statutory authority, all steps are taken by the broadcasters to implement the 2022 Regulations. Various other contentions are also raised traversing through the legislative history of the provisions of the Act, 1997 made thereunder to contend that the authority has passed the 2022 Regulations in accordance with law and to protect the interest of all stakeholders, including the consumers; and in larger public interest.

29. It is further pointed out that even though the TRAI, vide 2022 Regulations and the Tariff Order, had proposed to bring down the price cap for channel to be included in a bouquet, from Rs.19 to Rs.12/-, the same was never implemented. It is further submitted that the third respondent along with other broadcasters had

challenged the vires of 2020 Regulations and the Tariff Order before the Hon'ble Bombay High Court by filing W.P.(L) No. 120 of 2020. However, the Bombay High Court, as per a judgment dated 30.06.2021, upheld the 2020 Regulations and the Tariff Order except a clause. It is further stated that even though the third respondent along with other broadcasters filed a Special Leave Petition before the Hon'ble Supreme Court, challenging the judgment dated 30.06.2021, it was eventually withdrawn on 15.02.2022 with questions of law being left open by the Hon'ble Supreme Court.

30. Therefore, it is submitted that in view of the pending writ petitions filed before the Hon'ble Bombay High Court and the Special Leave Petition, 2020 and various representations from DPOs for extending implementation, the 2020 Regulations and the Tariff Order could never be implemented. Therefore, the broadcasting industry continued to operate under the 2017 Regime i.e., the price cap of Rs.19 continued to be applicable upon the stakeholders of the industry with effect from 01.02.2019.

31. While so, on 07.05.2022, the TRAI brought in a new Consultation Paper and sought comments of the stakeholders *inter alia* for revising the price cap for the television channels and the discount cap. It is contended that the TRAI, after introducing 2020

Regulations and the Tariff Order, received several representations from the DPOs to defer the implementation of the 2020 Regulations and the Tariff Order. The TRAI, in its Consultation Paper dated 07.05.2022, has noted that "immediately after new tariffs were announced, TRAI received representations from Distribution Platform Operators (DPOs), Associations of Local Cable Operators (LCOs) and Consumer Organizations; DPOs also highlighted difficulties likely to be faced by them in implementing new rates in their IT systems and migrating the consumers in bulk to the new tariff regime through the informed exercise of options, impacting almost all bouquets, due to upward revision in the rates of pay channels and bouquets declared by broadcasters".

32. It is also submitted that in view of the representation received from the DPOs, TRAI issued various notifications, including Notification dated 01.06.2022, vide which the implementation of the 2020 Regulations and the Tariff Order was deferred till 30.11.2022, evident from Exhibit P16 notification issued by the TRAI. It is also contended that thereafter, the TRAI, after conducting a consultation process with the stakeholders, issued the new 2022 Regulations and the Tariff Order, and has *inter alia* restored the MRP ceiling for bouquet inclusion to an unamended Tariff Order level of Rs.19.

33. In fact, the third respondent has extracted its

explanatory Memorandum of 2022 Tariff Order to substantiate that the authority has considered the comments of the stakeholders for prescribing a ceiling on the MRP Of channels. Contentions are also advanced on the basis of the 2022 Regulations and the Tariff Order, which would be dealt with elaborately hereinafter.

34. The petitioners have also filed an additional affidavit reiterating the stand adopted in the writ petition and also produced several documents in order to substantiate the contentions advanced in the writ petition.

35. I have heard the learned Senior Counsel for the petitioners Sri. Abhishek Manu Singhvi and Sri. Jayant Mehta, assisted by Adv Sri. Jai Mohan; the learned counsel for the TRAI, Sri. Rakesh Dwivedi, assisted by Sri. Jaishankar V. Nair, Sri. Ankur Sood and Sri. Saket Singh; Sr. Adv. Sri. Maninder M. Singh, Sr. Adv. Sri. S. Sreekumar and Sri. Santhosh Mathew for the third respondent—Indian Broadcasting and Digital Foundation; Sr. Adv. Sri Mukul Rohatagi, and Sr. Adv. Sri. Amit Sibal for Star India Pvt. Ltd. and Zee Entertainment Enterprises Limited, who are members of the third respondent association, were heard exercising the powers conferred under Rule 152 of the Rules of the High Court of Kerala, 1971, and perused the pleadings and material on record.

36. The paramount contention advanced by the learned

counsel for the petitioners is that 2022 Regulations and the Tariff Order have led to artificially high and perverse pricing of driver channels; that deep discount on bouquet renders a-la-carte nullified; that when the above two mischiefs were combined, it meant that the consumer choice was nullified in a situation where the cost of the bouquet would be less than the cost of driver channels in a bouquet; that therefore, the dual mischief impacts the Broadcasting sector and consumer interest by:- (i) non-discovery of price of a channel in the market; (ii) pricing of non-driver channels also at a price higher than they may otherwise command; (iii) a-la-carte rate of driver Channels kept at ceiling price for inclusion in bouquet; (iv) public ends up paying for unwanted channels; and (v) blocking entry of newer TV channels.

37. It is further pointed out that heavy bouquet discounts are anti-customer and that with 45% discount, the broadcasters are being able to price bouquets lower than the price of driver channels under the current Regulations as was predicted by TRAI in the Consultation Paper, 2022. It is also submitted that the 2022 Tariff Order clearly shows that the data used by TRAI in 2022 is the same as was submitted to TRAI prior to the 2020 Tariff Amendment Order and therefore, there is no basis for the TRAI to take a different view. It is also stated that the TRAI found that the discounts

prevailing in 2020 were perverse pricing which was considered by the Bombay High Court while considering the 2020 Regulations and the Tariff Order.

38. That apart, it is contended that there is failure of effective consultation and lack of transparency in the 45% discount cap by the TRAI. It is also contended that a 45% discount cap is introduced based on average discounts prevailing as per the 2020 Regulations and the Tariff Order and the same data was used to cap discount at 33.33%. That apart it is submitted that 2020 market practice qua discount on bouquet was found to be unacceptable by the TRAI and that no question was framed that should discount, cap be fixed at 45%,

39. It is also contended that in the Consultation Paper, 2022, there is no mention of consumer price index and therefore, with the effect of bouquet discount, in 2022 regime, with 45% cap on discount, the broadcasters are pricing bouquets cheaper than the price of driver channels in the bouquet and that the petitioners opposed any price increase and pointed out arbitrary conduct of broadcasters to nullify the benefit of 2020 Regulations. The sum and substance of the contentions advanced by the petitioners is that the lack of transparency is writ large on the part of the TRAI and therefore, the 2022 Regulations and the Tariff Order requires

interference insofar as the bouquet pricing and A-la Carte pricing are concerned. It is further submitted that there is clear arbitrariness, unfairness and illegality on the part of the TRAI in introducing the 2022 Regulations and the Tariff Order.

40. On the other hand, the learned Senior Counsel for the TRAI submitted that the petitioners have no *locus standi* to challenge the Regulations 7(4) and 10(2) of the 2022 Regulations and clauses 2 and 3 of the 2022 Tariff Order dated 22.11.2022 promulgated by TRAI as the petitioners are not affected parties. According to TRAI, the impugned Regulations are applicable to the broadcasters, distributors of television channels and level cable operators; whereas the petitioners will not come under any of these categories. It is also submitted that the petitioners have failed to show any direct or indirect impact that the impugned Regulations have on the petitioner; and therefore, the petitioners are not aggrieved parties and they lack *locus standi* to challenge the Regulations.

41. It is predominantly contended that the entire consultation process commenced at the behest of the petitioner and few other stakeholders and the petitioners wrote to TRAI, vide letter dated 02.11.2021, regarding the exponential increase in the price of driver channels, thereby resulting in the exclusion of such channels

from the bouquet. It is submitted that as per the petitioners' version, the changes would have only led to escalation in the costs borne by the customers and consequently lead to further erosion of the subscriber base of the regulated DPOs. Therefore, according to TRAI, based on the inputs received from the first petitioner, TRAI initiated discussions and consultations with the petitioners, broadcasters and other stakeholders regarding the measures to be taken in the interest of all stakeholders and the consumers, and to protect the public interest.

42. It is pointed out that a meeting with all the stakeholders, including the petitioners, was held on 23.12.2021, wherein a consensus was reached on various points, including restoring the MRP ceiling for bouquet inclusion to unamended tariff order level of Rs.19/- and the record of the discussion at the meeting was duly circulated by respondent No.1 to all the parties. It is also submitted that the first respondent, by email dated 29.01.2022, gave its consent to points covered in the record of proceedings, including that the existing price cap of Rs.19 would be appropriate.

43. To put it succinctly, it is the significant contention of TRAI, that the petitioners are barred by the principles of estoppel from challenging the impugned Regulations, and on that sole ground, the writ petition is liable to be dismissed. It is further

contended that TRAI is a statutory body established under Section 3 of the Act, 1997, which was promulgated to establish TRAI, to regulate telecommunication services and to protect the interests of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector and for matters connected therewith or incidental thereto. Therefore, according to TRAI, it is vested with the powers under Section 11 of the Act, 1997 to make recommendations while setting out the regulatory functions and the Act provides for tariff fixation function.

44. It is also submitted that Section 36 of the Act, 1997 confers powers on TRAI to make regulations. Therefore, the foundational contention advanced by the TRAI is that, it is with the noble intention to protect the interest of the service providers and consumers of the telecom sector, which includes the broadcasting sector and cable sector, to promote and ensure orderly growth of the telecom sector and for matters connected therewith or incidental thereto the new regulations and tariff orders were brought into force. In order to protect the interest of the stakeholders from time to time, TRAI makes appropriate regulations and issues appropriate directions, as and when the need arises, applicable to service providers providing broadcasting services and cable services.

45. It is further contended that consequent to the introduction of Section 2(1)(k) into the Act, 1997, the entire provisions of the Act, 1997, including all its recommendatory, regulatory and tariff fixations functions prescribed under the said Act, became applicable to broadcasting services and cable services. It is also contended that the TRAI has the duty, obligations and responsibility to ensure that the interest of the stakeholders are protected periodically, taking into account the multiple factors that bring changes in the telecom sector. It is also contended that taking into consideration the felt necessities of the time only the Regulations and the Tariff Orders were brought into force, and the prices are fixed taking into account the suggestions made by all the stakeholders in the meeting held for the purpose including the petitioners.

46. Therefore, it is contended that even though 2020 Regulations and the Tariff Order were brought into force, the same were never implemented consequent to the challenge made before the Bombay High Court, which was eventually dismissed, and that even though appeals were preferred by some of the stakeholders before the Supreme Court, the same was later withdrawn.

47. Anyhow, since the 2020 Regulations and the Tariff Order were not put into operations, the 2017 Regulations and the

Tariff Order were in force, which fixed the maximum price of Rs.19/- for driver channels, which continued to operate in the field during 2020 and continuously thereafter till the 2022 Regulations and the Tariff Orders were introduced.

48. The representations so submitted by the stakeholders reflected that the new RIOs would entail hardships on the distribution ecosystem, as service offering for every consumers will require obtaining of new choices and therefore, the petitioners and others wanted to have a re-visit and re-look into the provisions of the amended regulatory framework *vis-a-vis* sustainability aspect of the implementation of the framework in the light of the publication of the Reference Interconnection Offers by the broadcasters as the same in its current form is not possible to implement and to that extent, keep it in abeyance.

49. That apart, it is submitted that it is intended to put a cap on the channel prices for the overall benefit of the consumers at large as the rise in driver channel prices by broadcasters has defeated the purpose of the Tariff Order, 2020. It is also submitted that the consumer organization also raised the issue of impending rise in monthly bills and the DPOs also highlighted the difficulties likely to be faced by them in implementing new rates in their IT systems and migrating consumers in bulk to the new tariff regime.

50. Therefore, according to the TRAI and the third respondent, it was on the basis of the representations from the stakeholders that the TRAI extended the timelines for implementation of the 2020 framework and also started engaging with the stakeholders for facilitating smooth implementation of the pending provisions of the said framework. Therefore, the submission of TRAI, is that it impressed all the stakeholders that the migration to the amended Framework, 2022 should not cause disruption of services to the consumers.

51. That apart, it is contended that at the request of the stakeholders, to deliberate on the issues related to the pending implementation Regulatory Framework 2020 and to suggest a way forward, the TRAI constituted a committee consisting of members from Indian Broadcasting & Digital Foundations (IBDF), All India Digital Cable Federation (AIDCF) and DTH Association and the broad terms of reference of the committee were (i) to look into the process of smooth implementation of New Regulatory Framework 2020 keeping in view consumers convenience in exercising informed choices and suggest measures thereof (if any); and (ii) to identify issues of concern and suggest measures for overall growth of the broadcasting sector.

52. It is further stated that the said committee held

discussions on 23.12.2021 with all the stakeholders and during deliberation of the above mentioned committee, the stakeholders suggested that restoring the MRP ceiling of Rs.19/- for inclusion of a channel in a bouquet as provided for in 2017 frame work would be appropriate and it would help in maintaining the then existing bouquet structure which will also create bare minimum hassles to consumers in exercising their choice under new tariff in 2020, as most of the tariffs may continue in their current form.

53. The Committee, after elaborate discussion, identified two issues for appraising i.e., (i) the a-la-carte price ceiling of pay channels for inclusion of the channel in bouquet; and (ii) the ceiling on discount as prescribed by the second twin condition. It is further submitted that the first petitioner association, as per its letter dated 29.01.2022, requested for inclusion of the issue allowing additional fifteen (15%) percent incentive to DPOs for bouquets as well as for a-la-carte channel. Therefore, in order to address the critical issues as identified by the stakeholders and on the basis of the consensus arrived among themselves, TRAI issued a Consultation Paper titled as "Issues related to New-regulatory Framework for Broadcasting and Cable Services for seeking stakeholders comments on points/issues. It is submitted that comments and counter comments received from stakeholders were placed on TRAI's website, which

was followed by a web-casted Open House Discussion in New Delhi on 8th September, 2022.

54. In the said Consultation Paper, four issues were raised for consultation, namely:- (a) Ceiling on MRP of TV channels; (b) Condition(s) for inclusion of a television channel in a bouquet; (c) Discount structure on bouquet pricing; and (d) additional discount offered by broadcasters to DPOs. It is further submitted that a detailed issue wise analysis, including the stakeholders' views' comments and their analysis on the above four issues has been made in paragraphs 22 to 89 of the Explanatory Memorandum (E.M) attached with the impugned Tariff Order, 2022.

55. Therefore, it is contended that on the issue of ceiling on MRP of TV channels, in paragraph 37 of the Explanatory Memorandum of the impugned Tariff Order, 2022, it has been mentioned that the TRAI has decided not to prescribe ceiling on the MRP of pay channels as of now; that on the issue condition(s) for inclusion of a television channel in a bouquet in paragraph 63 of the Explanatory Memorandum of the tariff Order, 2022, it has been mentioned that balancing the interest of the service providers, broadcasters and DPOs and consumers, the TRAI has decided that the ceiling of Rs.19 on the MRP of a channel to be part of a bouquet will be in order; that on the issue of discount structure of bouquet

pricing, in paragraph 87 of the Explanatory Memorandum of the impugned Tariff Order, 2022, it has been mentioned that the authority, after due consideration of all the factors, has prescribed a maximum discount of 45% on the sum of a-la-carte channels for arriving at the bouquet prices; that careful analysis of existing bouquets reflects that the prescribed maximum discount will cover almost 70% of existing bouquet offerings; and that on the issue of additional discount offered by the broadcasters to DPOs, in paragraph 89 of the Explanatory Memorandum of the impugned Tariff Order, 2022, it has been mentioned that the matter is covered by Interconnection Regulations, 2017 and the decision of the authority on the issue is being dealt with separately through the amendments to the respective regulations.

56. Therefore, from the above undisputed aspects, it can be easily inferred that an open, exhaustive and transparent consultation process was undertaken by the TRAI prior to making the Regulations, 2022 and therefore, it is contended that every conceivable transparent system in due compliance of the provisions of Section 11(4) of the Act, 1997 has been complied with by the TRAI signed 2022 Regulations and the Tariff Order are made in accordance with the powers conferred on TRAI as per the provisions of the Act, 1997, and therefore, there is a strong presumption of

the validity and constitutionality of every legislation which is made by following the normal law-making process. Accordingly, it is contended that the petitioners have not made out any case that the present impugned Regulations and the Tariff Order, which are undoubtedly a legislative act, is *ultra vires* the Constitution of India or the Act 1997.

57. The third respondent has also addressed arguments elaborately relying upon the provisions of the Act, 1977 and the efforts made by TRAI before introducing Regulations and the Tariff Order, 2022.

58. The learned Senior counsel appearing for the Star India Private Limited as well as the Zee Entertainment Enterprises Limited have contended that the impugned amendments are in the nature of statutory legislation framed by the regulators in exercise of the powers conferred under Section 11 r/w Section 36 of the Act, 1997 and therefore, the challenge to the impugned amendments can be made only on the ground of lack of jurisdiction or arbitrariness or upon violation of the fundamental rights. Learned Senior Counsel have also submitted that the price fixation by TRAI on the MRP of pay channels is only the function of the regulator and the court may not venture to deliberate on the correctness of it. Learned Counsel further argued that the TRAI had conducted appropriate

consultation in all these issues in the Consultation Paper dated 07.05.2022.

59. That apart, it is contended that the petitioners are not espousing any public interest and their attempt is only to increase their Network Capacity Fee (NCF). It is also submitted that the petitioners are only intermediaries and they have no say in the pricing of channels and that the amendments have already come into force with effect from 01.02.2023 and all the distributors have signed the revised interconnection agreement in connection with the 2022 Amendments and that therefore, it is submitted that the claim of the petitioners are belated.

60. It is contended by the learned counsel appearing for the third respondent as well as the broadcasters that the petitioners are resorting to forum shopping by filing multiple petitions in the Punjab and Haryana High Court, Telengana High Court, Karnataka High Court and this Court. Nevertheless, no relief has been granted to them from any of these jurisdictional courts.

61. I have evaluated the rival submissions made across the Bar. As pointed out previously, the power to make Regulations and the Tariff Order for the TRAI emanates from Section 36 of the Act, 1997. Sub-section (1) thereto clearly specifies that the authority

may, by notification, make regulations consistent with the Act and Rules made thereunder to carry out the purposes of the Act. Sub-Section (2) states that, in particular and without prejudice to the generality of the foregoing power, such regulations may provide for:-- (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; (d) matters in respect of which register is to be maintained by the Authority [under sub-clause (vii) of clause (b)] of sub-Section (1) of Section 11; (e) levy of fee and lay down such other requirements on fulfillment of which a copy of register may be obtained 5[under sub-clause (viii) of clause (b)] of sub-section (1) of Section 11; (f) levy of fees and other charges [under clause (c)] of sub-Section (1) of Section 11. [Clause (c) was omitted by Act, 2 of 2000, S.14 on and with effect from 24.01.2000].

62. Section 37 of the Act, 1997 stipulates that every rule and every regulation made under the Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before

the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

63. Therefore, on an analysis of the above-said provisions, it is unequivocal that there is a clear cut procedure prescribed for making the Regulations and validating the same. The petitioners do not have a case that the procedure, in contemplation of Sections 36 and 37, is not followed by the authority under the Act, 1997 in the matter of 2022 Regulations and the Tariff Order. Section 11 of the Act, 1997 deals with the power of the authority and sub-Section (1) thereto specifies that notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to — (a) make recommendations, either *suo motu* or on a request from the licensor, on the following matters, namely:—

- (i) need and timing for introduction of new service provider;
- (ii) terms and conditions of licence to a service provider;
- (iii) revocation of license for non-compliance of terms and conditions of

licence;

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

(v) technological improvements in the services provided by the service providers;

(vi) type of equipment to be used by the service providers after inspection of equipment used in the network;

(vii) measures for the development of telecommunication technology and any other matter relatable to telecommunication industry in general;

(viii) efficient management of available spectrum.”

64. Clauses (i) to (vii) of Section 11(1)(b) imbibe a duty on the authority to discharge certain functions, namely:— (i) ensure compliance of terms and conditions of licence; (ii) notwithstanding anything contained in the terms and conditions of the licence granted before the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, fix the terms and conditions of inter-connectivity between the service providers; (iii) ensure technical compatibility and effective inter-connection between different service providers; (iv) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services; (v) lay-down the standards of quality of service to be provided by the service providers and

ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication service; (vi) lay-down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers; and (vii) maintain register of interconnection agreements and of all such other matters as may be provided in the regulations.

65. Clauses (c) and (d) of Section 11(1) of the Act, 1997 empower the authority to levy fees and other charges at such rates and in respect of such services as may be determined by regulations; and to 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 the Act, 1997.

66. Apart from the said powers, sub-Section (2) of Section 11 clearly specifies that notwithstanding anything contained in the Indian Telegraph Act, 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 the Act including the rates at which messages shall be transmitted to any country outside India. The proviso thereto makes it explicit 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. Sub-Section (4) of Section 11 makes it clear that the authority shall ensure transparency while exercising its powers and discharging its functions.

67. Therefore, on a reading of Section 11, it is clear that the powers and functions of the authority are clearly delineated by the Parliament and therefore, the authority was vested with ample powers to make the Regulations and publish Tariff Orders in order to regulate, control and transmit telecommunication network in accordance with the power conferred on the authority. It is clear from the pleadings put forth by the rival parties that the authority was issuing Regulations and publishing the Tariff Orders during the past several years; and in fact, as per 2017 Regulations and the Tariff Order, the maximum price of a driver channel was fixed at Rs.19/- and pricing of the bouquet channels were also published. It was while the 2017 Regulations and the Tariff Order were in force, 2020 Regulations were introduced with a maximum price cap of Rs.12 for the driver channel and discount rates for bouquet.

68. The said Regulations and the Tariff order were under challenge before the Bombay High Court and the challenge never

sustained except a clause in the regulation; and even though some of the broadcasters preferred Special Leave petitions before the Supreme Court, later the same was withdrawn. Anyhow, fact remains, the 2020 Tariff Order was never put into force which is an undisputed and admitted fact. Therefore, for all practical and legal purposes, 2017 Regulations and the Tariff Order were in force all throughout. It was at that point of time, on the basis of the representation made by various stakeholders, the authority convened a meeting of the stakeholders, including the petitioners, and held discussions with all the stakeholders by constituting a committee. The Committee submitted a report and it was on the basis of the same and after arriving at a consensus between all the stakeholders that the 2022 Regulations and the Tariff Order were brought into force by TRAI.

69. Even though the petitioners have a contention that going by the Consultation Paper, there was no effective discussion by the authority; it is clear that each and every aspect was discussed with the stakeholders and arrived at the conclusions. It is also clear that after receiving the report from the committee, discussions were held and it was thereafter that the 2022 Regulations and the Tariff Order were brought into force.

70. Therefore, in my considered opinion, the Regulations

being a legislation empowered under the Act 1997, what is to be looked into by this Court is only whether there is any arbitrariness or illegality or malafides on the part of the authority in making the Regulations. As pointed out above, the power vested with the authority is clearly delineated in Section 11 read with Sections 36 and 37 of the Act 1997. In fact, accordingly, discussions were effectively made with all the stakeholders and arrived at the conclusions before introducing the Regulations, 2022 and publishing the Tariff Order, 2022. When there was effective discussions among the stakeholders and the power was exercised by the authority in terms of the powers conferred under Section 11 r/w Sections 36 and 37 of the Act, 1997, it cannot be said that there was arbitrariness or illegality or any other legal infirmities on the part of the authority in introducing the 2022 Regulations and the Tariff Order.

71. Therefore, I do not think, there is any violation of the fundamental rights guaranteed under the Constitution of India. Moreover, the petitioners are, in no way, affected by the pricing of the driver channel and the fixation of the bouquet price by the authority, because it is for the end users to pay the charges so fixed by the authority. The broadcasters as well as the other intermediaries are entitled to get their due share fixed by the

authority concerned, and therefore, it can never be said that the petitioners are aggrieved by the 2022 Regulations and the Tariff Order. I am also of the opinion that the petitioners are even estopped from raising a challenge on the pricing, because it was existing from the year 2017 and continuously thereafter for multiple reasons specified above, without any objection from any of the stakeholders, much less the petitioners. Above all, it is significant to note that none of the end users have challenged the amendments 2022. The Regulations and the Tariff Orders are made by the authority for the purpose of protecting the public interest and regulating and controlling the telecommunication services for public good.

72. When the motive behind the enactment is to protect the public interest, the sole question to be considered by this Court is whether the authority exercised any unbridled or excessive power while introducing the Regulations and the Tariff order. After going through the generations on the consultation papers and the Regulations and the Tariff Order, I am of the considered opinion that the petitioners have failed to establish any arbitrariness or illegality or any other legal infirmities on the part of the authority in exercising the powers conferred under the Act, 1997. Moreover, there is a clear check and balances on TRAI consequent to the

prevalence of Section 37 of the Act, 1997, by which every Regulations made under the Act, 1997 is to be laid before each house of Parliament and the Parliament is vested with the powers to modify the Regulations if required.

73. When such a measure was undertaken by the Parliament, it can only be legally presumed that the Parliament has also evaluated the pros and cons of the Regulations before publishing it for effective implementation of the regulations. It is well settled in law that there is always a presumption in favour of the constitutionality or validity of a subordinate legislation and therefore, the burden is always upon the person who alleges that subordinate legislation suffers from the vice of arbitrariness or illegality. Above all, from the facts and figures it is easily gatherable that the legislation in question, in effect, is in the public interest, and a reasonable and eloquent restriction to regulate and modulate the pricing, to bring in healthy competition, and to avoid unhealthy practices.

74. So also, once it is found that the fundamental principles under law were followed by the authority before the powers are exercised to make regulations and the tariff orders, the writ court need not delve into the deeper intricacies of the reasons for the new legislations; because it is a specialised and technical field handled

by the experts, and the court has no expertise to substitute the same with its own findings and conclusions. That apart in my view, TRAI had followed the transparency required under law substantially and effectively by holding discussion with the stakeholders after serving consultation papers with sufficient material on its agenda which is well reflected from the material on board, which stands undisputed, effectively.

75. The issue with respect to interference with the subordinate legislation *vis-a-vis* the constitutional rights was considered by the Apex Court in ***Khoday Distilleries Ltd. v. State of Karnataka*** [1996] 10 SCC 304] and it is held as follows:

“13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In the case of *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* [(1985) 1 SCC 641 : 1985 SCC (Tax) 121 : (1985) 2 SCR 287] (SCR at p. 243)

this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; “unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary”. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, “Parliament never intended the authority to make such Rules; they are unreasonable and ultra vires”. In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.”

76. In ***Rustom Cavasjee Cooper (Banks Nationalisation) v. Union of India, (1970) 1 SCC 248*** [(1985) 1 SCC 641], it is held as follows:

“ 49. We have carefully considered the weighty pronouncements of the eminent Judges who gave shape to the concept that the extent of protection of important guarantees, such as the liberty of person, and right to property, depends upon the form and object of the State action, and not upon its direct operation upon the individual's freedom. But it is not the object of the authority making the law impairing the right of a citizen, nor the form of action taken that determines the protection he can claim: it is the effect of the law and of the action upon the right which attracts the jurisdiction of the Court to grant relief. If this be the true view and we think it is, in determining the impact of

State action upon constitutional guarantees which are fundamental, it follows that the extent of protection against impairment of a fundamental right is determined not by the object of the Legislature nor by the form of the action, but by its direct operation upon the individual's rights.”

77. In ***Cellular Operators Assn. of India v. TRAI***, [(2016) 7 SCC 703], It was held that subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution. It was also held therein that the product of consultation must be conscientiously taken into account when the ultimate decision is taken.

78. Therefore I am of the view that the petitioners have failed to establish any illegality, arbitrariness, unbridled exercise of power, *mala fides* or any other legal infirmities of similar nature in the 2022 Regulations and the Tariff Order so as to interfere with the same, exercising the power conferred under Article 226 of the Constitution of India.

Needless to say, writ petition fails and accordingly, it is dismissed.

sd/- **SHAJI P. CHALY, JUDGE.**

Rv

APPENDIX OF WP(C) 193/2023**PETITIONERS' EXHIBITS:**

- EXHIBIT P1 TRUE COPY OF THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES INTERCONNECTION (ADDRESSABLE SYSTEMS) (FOURTH AMENDMENT) REGULATIONS, 2022 (2 OF 2022) DATED 22.11.2022 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT2 TRUE COPY OF TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES (EIGHTH) (ADDRESSABLE SYSTEMS) TARIFF (THIRD AMENDMENT) ORDER, 2022 (4 OF 2022) DATED 22.11.2022 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P3 TRUE COPY OF THE CERTIFICATE OF INCORPORATION DATED 13.06.2014 ISSUED BY THE MINISTRY OF CORPORATE AFFAIRS, GOVT. OF INDIA TO THE 1ST PETITIONER.
- EXHIBIT4 TRUE COPY OF THE LIST OF MEMBERS OF THE 1ST PETITIONER.
- EXHIBIT P5 TRUE COPY OF THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (SECOND AMENDMENT) REGULATION, 2006 (9 OF 2006) DATED 24.08.2006 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES (THIRD) (CAS AREAS) TARIFF (THIRD) ORDER, 2006, (6 OF 2006) DATED 31.08.2006 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P6(A) TRUE COPY OF TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES (THIRD) (CAS AREAS) TARIFF (THIRD AMENDMENT) ORDER, 2008, DATED 26.12.2008 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES STANDARDS OF QUALITY OF SERVICE AND CONSUMER PROTECTION (ADDRESSABLE SYSTEMS) REGULATIONS, 2017 (NO. 2 OF 2017) DATED 03.03.2017 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P8 TRUE COPY OF THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES (EIGHTH) (ADDRESSABLE SYSTEMS) TARIFF ORDER, 2017 (NO. 1 OF 2017) DATED 03.03.2017 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P9 TRUE COPY OF THE CONSULTATION PAPER ON TARIFF RELATED ISSUES FOR BROADCASTING AND CABLE SERVICES ISSUED BY THE 1ST RESPONDENT DATED 16.08.2019.
- EXHIBIT P10 TRUE COPY OF THE CONSULTATION PAPER ON ISSUES

- RELATED TO INTERCONNECTION REGULATIONS, 2017 ISSUED BY THE 1ST RESPONDENT DATED 25.09.2019.
- EXHIBIT P11 TRUE COPY OF THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES INTERCONNECTION (ADDRESSABLE SYSTEMS) (SECOND AMENDMENT) REGULATIONS, 2020 (1 OF 2020) DATED 01.01.2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P12 TRUE COPY OF THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES (EIGHTH) (ADDRESSABLE SYSTEMS) TARIFF (SECOND AMENDMENT) ORDER, (NO. 1 OF 2020) 2020 DATED 01.01.2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P13 TRUE COPY OF THE JUDGMENT DATED 12 JULY 2021 OF THIS HON'BLE COURT IN WRIT PETITION (CIVIL) NO. 2879 OF 2021.
- EXHIBIT P14 TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF BOMBAY DATED 30.06.2021 IN WRIT PETITION NO. 680 OF 2020 AND OTHER CONNECTED CASES.
- EXHIBIT P15 TRUE COPY OF THE AFFIDAVIT IN REPLY FILED BY THE RESPONDENT NO.1 BEFORE HON'BLE HIGH COURT OF BOMBAY IN WP (L) NO. 120 OF 2020 ALONG WITH THE INDEX AND EXHIBITS/ ANNEXURES.
- EXHIBIT P16 TRUE COPY OF THE COMMUNICATION ISSUED BY THE 1ST RESPONDENT DATED 10.11.2022.
- EXHIBIT P16(A) TRUE COPY OF THE COMMUNICATION ISSUED BY THE 1ST RESPONDENT DATED 03.02.2022.
- EXHIBIT P16(B) TRUE COPY OF THE COMMUNICATION DATED 01.06.2022 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P17 TRUE COPY OF THE LETTER DATED 02.11.2021 SENT BY THE 1ST PETITIONER TO THE 1ST RESPONDENT ALONG WITH THE TABLE WITH CALCULATION OF CHANNEL PRICES.
- EXHIBIT P18 TRUE COPY OF EMAIL DATED 29.01.2022 SENT BY THE 1ST PETITIONER TO 1ST RESPONDENT.
- EXHIBIT P19 TRUE COPY OF THE LETTER DATED 18.01.2022 SENT BY THE 1ST PETITIONER TO THE 1ST RESPONDENT.
- EXHIBIT P20 TRUE COPY OF THE CONSULTATION PAPER DATED 07.05.2022 ISSUED BY THE 1ST RESPONDENT ON ISSUES RELATED TO NEW REGULATORY FRAMEWORK FOR BROADCASTING AND CABLE SERVICES.
- EXHIBIT P21 TRUE COPY OF THE LETTER DATED 06.06.2022 ISSUED BY THE 1ST PETITIONER TO THE 1ST RESPONDENT.
- EXHIBIT P22 TRUE COPY OF WRIT PETITION, BEING WP 680 OF 2020, FILED BEFORE THE HON'BLE HIGH COURT OF BOMBAY ALONG WITH THE LIST OF DATES BUT WITH ANNEXURES.
- EXHIBIT P23 TRUE COPY OF THE TABLES SHOWING THE IMPACT OF

	NEW PRICING NEW PACKS ON THE CONSUMERS AS DECLARED BY BROADCASTERS.
EXHIBIT P24	TRUE COPY OF THE TABLE SHOWING AN ANALYSIS OF A-LA-CARTE PRICE INCREASE OF CHANNELS.
EXHIBIT P25	TRUE COPY OF THE LETTER DATED 19.01.2023 ISSUED BY RESPONDENT NO. 1
EXHIBIT P26	TRUE COPY OF THE LETTER DATED 25.01.2023 ISSUED BY THE PETITIONER NO. 1 TO THE 1ST RESPONDENT
EXHIBIT P27	TRUE COPY OF THE NOTICES DATED 15.02.2023 ISSUED BY VARIOUS BROADCASTERS TO THE MEMBERS OF THE 1ST PETITIONER THREATENING DISCONNECTION.
EXHIBIT P28	TRUE COPY OF THE TABLE SHOWING THE IMPACT OF PRICE INCREASE AND IMPACT ON CONSUMERS.
EXHIBIT P29	TRUE COPY OF THE TABLE SHOWING THE INCREASE IN THE PRICES OF STAR PRIVATE LTD. CHANNELS.
EXHIBIT P30	TRUE COPY OF THE LETTER DATED 01.09.2022 ISSUED BY THE RESPONDENT NO. 1 REGARDING IMPLEMENTATION PLAN OF THE NEW REGULATORY FRAMEWORK 2020.
EXHIBIT P31	TRUE COPY OF THE REFERENCE INTERCONNECT OFFER (RIO) OF STAR INDIA PVT. LTD. (ADDRESSABLE SYSTEMS) DATED NIL.
EXHIBIT P32	TRUE COPY OF THE REFERENCE INTERCONNECT OFFER (RIO) OF SONY PICTURES NETWORKS INDIA PVT. LTD. DATED NIL.
EXHIBIT P33	TRUE COPY OF THE DIRECTION DATED 24.07.2020 ISSUED BY THE 1ST RESPONDENT TRAI TO ALL BROADCASTERS.
EXHIBIT P34	TRUE COPY OF THE LETTER DATED 01.07.2020 FROM SONY PICTURES NETWORK TO GTPL HATHWAY LTD. SEEKING TO CHANGE ITS BOUQUET.
EXHIBIT P35	TRUE COPY OF THE LETTER DATED 29.07.2020 FROM SONY PICTURES NETWORK TO GTPL HATHWAY LTD. REGARDING CONTINUATION OF CERTAIN BOUQUETS.
EXHIBIT P36	TRUE COPY OF THE AGREEMENT DATED 17.10.2020 BETWEEN STAR INDIA PVT. LTD. AND TRANS TELE DATA PVT. LTD.
EXHIBIT P37	TRUE COPY OF THE COMMUNICATION FROM ZEE ENTERTAINMENT ENTERPRISES LTD. DATED 31.12.2020 TO HATHWAY DIGITAL LTD. SEEKING EXTENSION.
EXHIBIT P38	TRUE COPY OF THE LETTER DATED 25.11.2022 FROM SONY PICTURES NETWORKS TO HATHWAY DIGITAL LTD. SEEKING EXTENSION.
EXHIBIT P39	TRUE COPY OF AGREEMENT DATED 23.02.2023 EXECUTED BETWEEN SONY PICTURES NETWORKS INDIA PVT. LTD. AND HATHWAY DIGITAL LTD.

EXHIBIT P40	TRUE COPY OF THE ORDER OF THE HON'BLE SUPREME COURT DATED 15.02.2022 IN SLP (C) NO. 10801/2021.
EXHIBIT P41	TRUE COPY OF THE CHART ILLUSTRATING THE PRICE OF CHANNELS.

RESPONDENTS' EXHIBITS:

EXHIBIT R3(a)	A COPY OF THE PRESS RELEASE AND NOTIFICATIONS DATED 22.11.2022 ISSUED BY TRAI.
EXHIBIT R3(b)	COPY OF THE TRAI DIRECTIONS DATED 19.01.2023.
EXHIBIT R3(c)	A COPY OF THE COMMUNICATION DATED 31.01.2023 BY THE ANSWERING RESPONDENT TO THE RESPONDENT NO. 1 / TRAI.
EXHIBIT R3(d)	A DIAGRAMMATIC REPRESENTATION OF THE MEDIA AND ENTERTAINMENT ECOSYSTEM AND ITS VALUE CHAIN.
EXHIBIT R3(e)	A COPY OF THE 2017 REGULATIONS AND TARIFF ORDER ISSUED ON 03.03.2017.
EXHIBIT R3(f)	COPY OF THE FIRST JUDGMENT (SEQUENTIALLY) OF THE SPLIT VERDICT ISSUED BY THE HONOURABLE MADRAS HIGH COURT ON 02.03.2018.
EXHIBIT R3(g)	COPY OF THE SECOND JUDGMENT (SEQUENTIALLY) OF THE SPLIT VERDICT ISSUED BY THE HONOURABLE MADRAS HIGH COURT ON 02.03.2018.
EXHIBIT R3(h)	COPY OF THE JUDGMENT DATED 23.05.2018 PASSED BY THE THIRD JUDGE OF THE HONOURABLE MADRAS HIGH COURT.
EXHIBIT R3(i)	COPY OF THE JUDGMENT OF THE HONOURABLE SUPREME COURT DATED 30.10.2018 AS REPORTED IN (2019) 2 SCC 104.
EXHIBIT R3(j)	COPY OF THE 2020 REGULATIONS AND TARIFF ORDER ISSUED BY THE TRAI ON 01.01.2020.
EXHIBIT R3(k)	COPY OF THE JUDGMENT DATED 30.06.2021 PASSED BY THE HONOURABLE BOMBAY HIGH COURT IN W.P. (L) NO. 120 OF 2020.
EXHIBIT R3(l)	COPY OF THE ORDER DATED 15.02.2022 PASSED BY THE HONOURABLE SUPREME COURT IN SLP(C) NO. 10801 OF 2021.
EXHIBIT R3 (m)	COPY OF THE TRAI CONSULTATION PAPER DATED 07.05.2022.
EXHIBIT R3(n)	A COPY OF THE ANSWERING RESPONDENT'S COMMUNICATION DATED 30.05.2022.
EXHIBIT R3(o)	ADDITIONAL COMMUNICATION OF THE ANSWERING RESPONDENT DATED 13.09.2022
EXHIBIT R3(p)	A COPY OF THE 2022 REGULATIONS DATED 22.11.2022.
EXHIBIT R3(q)	A COPY OF THE 2022 TARIFF ORDER DATED 22.11.2022.
EXHIBIT R3(r)	A COPY OF THE PETITIONER NO. 1'S / AIDCF'S

COUNTER AFFIDAVIT FILED BEFORE THE HON'BLE
SUPREME COURT DATED 17.08.2018

RESPONDENTS' ANNEXURES:

ANNEXURE A	TRUE COPY OF THE ORDER DATED 20.08.2020 OF THE HIGH COURT OF BOMBAY
ANNEXURE B	TRUE COPY OF THE ORDER DATED 09.10.2020 OF THE HIGH COURT OF BOMBAY
ANNEXURE C	TRUE COPY OF THE IA DATED 14.02.2022 FILED BY IBDF BEFORE THE SUPREME COURT OF INDIA
ANNEXURE D	TRUE COPY OF THE ORDER DATED 15.02.2022 OF THE HON'BLE SUPREME COURT OF INDIA
ANNEXURE E	TRUE COPY OF THE LETTER DATED 10.11.2021 OF THE TELECOM REGULATORY AUTHORITY FOR IMPLEMENTATION PLAN - NEW REGULATORY FRAME WORK, 2020
ANNEXURE F	TRUE COPY OF THE LETTER DATED 29.01.2022 FROM ALL INDIA INDEPENDENT MSO FEDERATION.
ANNEXURE G	TRUE COPY OF THE LETTER DATED 28.01.2022 FROM TCCL
ANNEXURE H	TRUE COPY OF THE LETTER DATED 28.01.2022 FROM TAKE ONE MEDIA
ANNEXURE I	TRUE COPY OF THE EXTENSION LETTER DATED 03.02.2022 ISSUED BY TRAI
ANNEXURE J	TRUE COPY OF THE LETTER DATED 31.05.2022 FROM AIDCF
ANNEXURE K	TRUE COPY OF THE LETTER DATED 31.05.2022 FROM GTPL
ANNEXURE L	TRUE COPY OF THE EXTENSION LETTER DATED 01.06.2022 ISSUED BY TRAI
ANNEXURE M	TRUE COPY OF THE LETTER DATED 29.08.2022 FROM AIDCF
ANNEXURE N	TRUE COPY OF THE EXTENSION LETTER DATED 01.09.2022 ISSUED BY TRAI.

PETITIONERS' ANNEXURES:

ANNEXURE P1(A)	TRUE COPY OF THE DIRECTIONS ISSUED BY TRAI DATED 24.07.2020
ANNEXURE P1(B)	TRUE COPY OF THE LETTER DATED 22.02.2023 ISSUED BY KERALA COMMUNICATORS CABLE LTD. TO SECRETARY GENERAL, AIDCF.
ANNEXURE P1(C)	TRUE COPY OF THE ORDER DATED 15.02.2022 PASSED IN SLP (C) 10801 OF 2021 BY THE HONBLE SUPREME COURT.

True Copy

PS To Judge.