

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P. (C.) No. ____ of 2019
(IN THE MATTER OF A PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:-

Justice for Rights Foundation Petitioners
Vs.
Union of India & Anr. Respondents

MEMO OF PARTIES

1. Justice for Rights Foundation,

..... Petitioners

Versus

1. Union of India

(Ministry of Information & Broadcasting through its Secretary)

At Dr Rajendra Prasad Rd, Shastri Bhavan,

New Delhi, Delhi 110001

2. Telecom Regulatory Authority of India,

(through its Chairman),

At Mahanagar Doorsanchar Bhawan

Next To Zakir Hussain College,

Jawaharlal Nehru Marg, New Delhi, Delhi 110002

..... Respondents

Petitioner

through

Adv. Harpreet Singh Hora,
__address__

NEW DELHI

DATE :-

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SYNOPSIS AND LIST OF DATES

The present Petition is being filed by the Petitioners in Public Interest seeking implementation of s. 11 and 12 of the TRAI Act, 1997, calling of information as mandated under s. 12 of the TRAI Act and seeking the refund of thousands of crores of rupees of public money, requisitioning of the details of the separate accounts maintained by various pay TV broadcasters and their directly or indirectly aligned distribution platform operators in compliance of the order dated 29.05.2014 passed by Hon'ble TDSAT in Appeal No(s).1(C) and 2(C) of 2014 or in alternative, if the said details are not available with the Respondent- call upon these stakeholders to furnish the details to the Respondent of the amount kept in separate account with accrued interest till date

The writ Petition is filed bringing into the notice of this Court the deliberate inaction of the Respondents for aiding various stake-holders of the broadcasting and television content distribution industry with unjust enrichment of thousands of crores of rupees on the basis of the excess subscription fee collected by them with reference to the Eleventh and

Thirteenth T.A.O. from 01.04.2014 till the date of filing the present Petition and seeking refund of money kept illegally with the stakeholders despite the same being set aside by TDSAT and the said decision being confirmed by the Hon'ble Supreme Court of India.

The Petitioner has filed an RTI asking for the same wherein the Respondent NO. 2 has admitted that the said information is not available with them and thus, the Petitioner is seeking implementation of s. 12 of **TRAI Act** praying for a direction to the Respondent to conduct an investigation which is monitored by this Hon'ble Court.

DATE	EVENT
25.01.1997	The Telecom Regulatory Authority of India Act, 1997 (hereinafter called as "TRAI Act") came into force as Act No. 24 of 1997
01.04.2014	Telecommunication (Broadcasting & Cable) Services (Second) Tariff (Eleventh Amendment) Order, 2014 (hereinafter referred to as '11th T.A.O') came into effect allowing for 15% increase in tariff to be collected from subscribers as subscription fee.
29.05.2014	The Telecom Disputes Settlement and Appellate Tribunal (hereinafter called as "TDSAT") directed all the stake-holders to maintain a separate account with regard to the collection on the basis of the above mentioned T.A.O., so that the individual subscribers making an excess payment in terms of the T.A.O. could be entitled to adjust for the succeeding month(s).

01.01.2015	Telecommunication (Broadcasting & Cable) Services (Second) Tariff (Thirteenth Amendment) Order, 2014 (hereinafter referred to as '13th T.A.O') came into effect allowing for 12.5% increase in tariff to be collected from subscribers as subscription fee.
28.04.2015	The TDSAT set aside the amendments in the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2014 (herein after referred to as the 'Principal T.A.O. '), the Eleventh T.A.O and the Thirteenth T.A.O. having considered them untenable and remanded the matter to the Respondent No.2 to have a fresh look.
04.08.2015	The Hon'ble Supreme Court in Civil Appeal No. 5159 – 5164 of 2015, 5277-5282 of 2015, 5289-5294 of 2015, 5352-5357 of 2015 and 5283-5288 of 2015 refused to interfere with the order of remand dated 28.04.2015 passed by the TDSAT wherein the TDSAT had set aside the amendments in the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2014 (herein after referred to as the 'Principal T.A.O. '), the Eleventh T.A.O and the Thirteenth T.A.O., the Supreme Court also directed not to insist for the refund of the amount collected by the broadcasters till the matter is finally adjudicated.
	RTI filed by Petitioner seeking information about the separate accounts maintained by the broadcasters for the money collected from the subscribers on the basis of the Eleventh T.A.O and the Thirteenth T.A.O.
	Reply furnished by the Respondent No. 2 stating that the information is not available with the Respondent No. 2.

<p>31.03.2019</p>	<p>The matter was finally settled / adjudicated first on 03.03.2017 when the Eighth T.O was notified by Respondent No. 2 on 03.03.2017 and on 31.03.2019 with the implementation of The Telecommunication (Broadcasting And Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 (No. 1 of 2017) thereby making all the consumers eligible for a refund/ adjustment of the excess money which was collected by the consumers/subscribers based on the said Eleventh and Thirteenth TAOs.</p>
<p>--.--.2019</p>	<p>The Petitioner learnt that Respondents have not initiated any process of seeking refund / adjustments from the Pay TV broadcasters and their Distribution platform operators and the Petitioner has raised the issue with the Respondent time and again to call for the records from the said Stakeholders</p>
<p>Date?</p>	<p>Representation by the Petitioner to the Respondent stating that the money collected by the Pay TV broadcasters from subscribers in regard to the collections on the basis of the 11th and 13th TAO coming into effect runs into thousands of crores and has been collected on the basis of an illegal tariff amendment orders and thus, be accounted and brought back into the system.</p>
	<p>Present Writ Petition</p>

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Vs.

Union of India & Anr. Respondents

WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA R/W S. 151 OF THE CODE OF CIVIL PROCEDURE TO ISSUE A WRIT OF MANDAMUS SEEKING IMPLEMENTATION OF S. 11 AND 12 OF THE TRAI ACT, 1997 TO THE RESPONDENTS AND WRITS/ ORDERS/DIRECTIONS TO CALL FOR INFORMATION UNDER SECTION 12 of TRAI ACT INTO NON-REFUND OF THOUSANDS OF CRORES OF PUBLIC MONEY COLLECTED BY CUSTOMERS ALL OVER INDIA IN THE NAME OF SUBSCRIPTION FEE AND ILLEGALLY RETAINED BY PAY TV BROADCASTERS AND DISTRIBUTION PLATFORM OPERATORS ON THE BASIS OF ILLEGAL T.A.O.s AND DIRECTIONS TO ENSURE TRANSPARENCY AS MANDATED U/S 11(4) R/W 12 OF TRAI ACT BY REQUISITIONING THE SEPARATE ACCOUNTS MAINTAINED BY SUCH STAKEHOLDERS AND DIRECTING THE REFUND/ADJUSTMENT OF THE EXCESS MONEY LYING IN SEPARATE ACCOUNTS MAINTAINED BY THESE STAKE HOLDERS TO THE CONSUMERS OF INDIA AND CONDUCT INVESTIGATIONS UNDER s. 12 OF TRAI ACT, 1997 FOR THE SAME MONITORED BY THIS HON'BLE COURT

TO

HON'BLE THE CHIEF JUSTICE AND HIS COMPANION HON'BLE
JUDGES OF THIS COURT

MAY IT PLEASE YOUR LORDSHIPS:-

THE PETITIONER MOST RESPECTFULLY SHOWETH:

1. That the Petitioner is a Non-Governmental Organization constituted as per the provision contained in the Societies Registration Act, 1860 with aim to serve for the welfare of the society with the objective of becoming a helping hand for the those in need. The Petitioner has taken up this issue affecting people at large. The Petitioner believes that it is its duty to set into motion the legal process when grave issues which affect the society at large are brought to his notice which, in its opinion, cause a miscarriage of justice. It is this duty that it seeks to perform in the instant case.

2. That the present petition is filed under Article 226/227 of the Constitution of India and the petitioner has no malafide or personal interest in the litigation except bringing to the notice of the Court deliberate inaction of the Respondents for aiding various stake-holders of the broadcasting and television content distribution industry with unjust enrichment of thousands of crores of rupees on the basis of the excess subscription fee collected by them with reference to the Eleventh and Thirteenth T.A.O. from 01.04.2014 till the date of filing the present application and seeking refund of money kept illegally with the stakeholders despite the same being set aside by Hon'ble TDSAT and the said decision confirmed by the Hon'ble Supreme Court of

India. It is submitted the petition is not guided merely by self-gain and that there is no motive other than of public interest in filing the writ petition.

3. That the Respondent No. 1 is the licensor and administrator of the license to the broadcasters and other stake holders engaged in the content distribution value chain and is responsible for the enforcement of the license condition and is also sectoral regulator, which is under an obligation to regulate the market conditions and ensure fair play to protect the interest of Indian citizens w.r.t Policy Matters on the subjects being dealt in its BC-III section (except those requiring legislation).

That on 09.01.2004 the Government of India issued a Notification whereby “Telecommunication Services” were expanded to include Broadcasting and cable services. A true copy of the said notification as annexed and marked herewith as **ANNEXURE P1**.

4. That it is submitted that the present Petition is being filed by the Petitioner seeking a Writ in the nature of Mandamus for seeking implementation of s. 11 and 12 of the TRAI Act, 1997, calling of information as mandated under s. 12 of the TRAI Act and seeking the refund of thousands of crores of rupees of public money, requisitioning of the details of the separate accounts maintained by various pay TV broadcasters and their directly or indirectly aligned distribution platform operators in compliance of

the order dated 29.05.2014 passed by Hon'ble TDSAT in Appeal No(s).1(C) and 2(C) of 2014 or in alternative, if the said details are not available with the Respondent- call upon these stakeholders i.e. Pay TV broadcasters, Distribution platforms such as Multiple System Operators (hereinafter called as MSO), Direct-To-Home (hereinafter called as DTH Operators), Headend in the Sky (hereinafter called as HITS) and Internet Protocol television (hereinafter called as IPTV Operators) to furnish the details to the Respondent of the amount kept in separate account with accrued interest till date and directions to publish the same on the website of the Respondent No. 2.

5. That the source of information/ knowledge of the facts stated and alleged in the present Writ Petition are based on RTIs filed by the Petitioner, replies filed by the Respondents, the records of the Petitioner as well as the information procured from the public domain.

6. That the parties likely to be affected by the reliefs sought for in the present Public Interest Litigation has been already arrayed as Respondents herein. There are no persons/bodies/institutions to the best of knowledge of the Petitioner who are likely to be adversely affected by the Orders to be passed in the present Petition. However, the Petitioner herein craves leave of this Hon'ble Court to implead any such necessary party to the present Petition in case of change of circumstances or as directed by this Hon'ble Court.

7. That it is submitted that the Petitioner has sufficient means to pay costs (if any) to be imposed by this Hon'ble Court.

That the brief facts leading to the filing of the present Petition are as follows:

8. That the Respondent No. 2 brought Telecommunication (Broadcasting & Cable) Services (Second) Tariff (Eleventh Amendment) Order, 2014 (hereinafter referred to as 'Eleventh T.A.O'), allowing 27.5 per cent increase in subscription fee, which was allowed in two installments i.e. vide Eleventh Amendment, 15% increase was allowed w.e.f. 01.04.2014

The relevant part of the said tariff order is reproduced below:-

“2. In clause 3 of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) (hereinafter referred to as the principal tariff order), for the words and figures “prevalent as on 1st day of December, 2007, and increased by an amount not exceeding four per cent and further increased by an amount not exceeding seven percent of such increased amount shall be the ceiling,” the words and figures “prevalent before the coming into force of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eleventh Amendment) Order, 2014, and increased by an amount not exceeding fifteen per cent shall be the ceiling shall be substituted.

9. That a second installment of further 12.5% increase was allowed w.e.f. 01.01.2015 vide the Telecommunication (Broadcasting & Cable) Services

(Second) Tariff (Thirteenth Amendment) Order 2014 (hereinafter referred to as 'Thirteenth T.A.O') dated 31.12.2014

10. That the above said increase vide the TAOs was challenged before the Telecom Disputes Settlement and Appellate Tribunal (hereinafter called as "TDSAT") and it directed all the stake-holders to maintain a separate account with regard to the collection on the basis of the above mentioned T.A.O., so that the individual subscribers making an excess payment in terms of the T.A.O. could be entitled to adjustment for the succeeding month(s) vide order dated 29.05.2014 and it was held as follows:

"At this stage, we are not inclined to pass any order of stay. However, we direct that all stake-holders must keep a separate account in regard to the collections on the basis of the impugned order. It is made clear that in case the Appeals succeed, the individual subscribers making any excess payment in terms of the impugned order will be entitled to adjustments for the succeeding month from the respective LCOs/MSOs. Similarly, the LCOs will be entitled to adjustments from the MSOs and the LCOs and the MSOs from the broadcasters."

A true copy of the order dated 29.05.2014 in Appeal No(s).1(C) and 2(C) of 2014 passed by the TDSAT is annexed and marked herewith as **ANNEXURE P2.**

11. That the TDSAT set aside the amendments in the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2014 (herein after

referred to as the 'Principal T.A.O. '), the Eleventh T.A.O and the Thirteenth T.A.O. having considered them untenable and remanded the matter to the Respondent No.2 to have a fresh look in a holistic manner and come out with a comprehensive tariff order in supersession of all the earlier tariff orders. vide order dated 28.04.2015. The relevant portion of the order is reproduced as follows:

“Before we conclude, we think that TRAI will be well advised to have a fresh look at the various tariff orders in a holistic manner and come out with a comprehensive tariff order in supersession of all the earlier tariff orders. While doing so, it may consider all the agreements and relevant data available with it. It may consider differentiating between content which is of a monopolistic nature as against that the like of which is shown by other channels also. It may also consider classifying the content into premium and basic tiers. It may identify the major cost components so that increase or decrease in such costs may be suitably factored while working out the inflationary hikes. Increase in costs of such components as may be available in indexes such as WPI, GDP deflator etc. can then be applied. While working out the tariffs, the effort should be to encourage a correct declaration of SLR. While carrying out the exercise, it may take the inputs from various stakeholders and give a reasoned order for accepting or rejecting the same. We want to be amply clear that the above are only some suggestions and

TRAI being an expert body may arrive at suitable tariffs independently; it is up to it to consider the above and/or any other factors.

48. In view of the aforesaid facts and circumstances of the case, we do not find the impugned amendments in the 'Principal Tariff Order' ['The Telecommunication (Broadcasting & Cable) Services (Second) Tariff (Eleventh Amendment) Order, 2014' and 'The Telecommunication (Broadcasting & Cable) Services (Second) Tariff (Thirteenth Amendment) Order, 2014'] as tenable and accordingly set aside the same.

A true copy of the order passed by the TDSAT dated 28.04.2015 is annexed and marked herewith as **ANNEXURE P3**.

12. That the said judgment of the TDSAT dated 28.04.2015 went up in challenge in the Hon'ble Supreme Court by an Association of pay TV Broadcasters known as Indian Broadcasting Foundation and the Hon'ble Supreme Court in Civil Appeal No. 5159 – 5164 of 2015, 5277-5282 of 2015, 5289-5294 of 2015, 5352-5357 of 2015 and 5283-5288 of 2015 refused to interfere with the order of remand dated 28.04.2015 passed by the TDSAT. A true copy of the order dated 04.08.2015 of the Hon'ble Supreme Court of India is annexed and marked herewith as **ANNEXURE P4**.

13. That the matter was finally settled first on 03.03.2017 when the Respondent No.2 have notified the T.O on 03.03.2017 and then on 31.03.2019 with the successful implementation of The Telecommunication

(Broadcasting And Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 (No. 1 of 2017) thereby making all the consumers eligible for a refund/ adjustment of the excess money which was collected by the consumers/subscribers based on the said Eleventh and Thirteenth TAOs but no process of even maintaining the accounts has started despite the directions given to the pay TV broadcasters and other stake holders much less initiating the process of adjustments or refund to the consumers. A copy of the same dated 31.03.2019 is marked and annexed as **ANNEXURE P5**.

14. That the Respondent No.2 started a consultation process by issuing a consultation paper no. 1/2016 on Tariff Issues related to TV services on 29.01.2016 and notified on 03.03.2017 bringing out the 'Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017' and 'Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017' (hereinafter referred to as '2017 T.O') came into existence repealing the Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order, 2006.

15. That the Petitioner filed a representation dated --- with the respondent stating that the excess money collected by the broadcasters through their directly and indirectly aligned distributors DPOs (distribution platform operators) from the subscribers/ consumers of television services in regard to the collections on the basis of the 11th and 13th TAO coming into effect runs into thousands of crores and has been collected on the basis of illegal orders

and thus, be accounted and brought back into the system by giving refund/adjustment to the consumers.

16. That the Petitioner filed RTI applications dated 12.01.2019 and 18.01.2019 with the Respondent seeking information regarding the starting date of maintaining a separate account by the broadcasters and other stake holders, the amount of excess money (in INR) which was collected by the pay TV broadcasters and their various distributor of TV services. The representation, RTI applications dated 12.01.2019 and 18.01.2019 **al is** annexed and marked herewith as **ANNEXURE P6**(colly.)

17. That vide the above mentioned RTI dated 12.01.2019 and 18.01.2019, the Petitioner sought information about the action taken against those stakeholders who have not provided a separate account and if any refund or adjustment has been offered to the consumers in lieu of the excess money collected illegally by the Pay TV broadcasters and their distributor platforms.

18. That the respondent- TRAI vide reply dated 24.01.2019 have admitted that the said information is not available with the TRAI and it was transferred to Ministry of Information and Broadcasting whereas the ministry vide its reply dated 11.03.2019 states that the order was passed by the TDSAT dated 29.05.2014 and directions were passed to TRAI to take further necessary directions. The reply dated 24.01.2019 issued by TRAI and the reply dated 11.03.2019 is marked and annexed herewith as **ANNEXURE P7**.

19. That the present petition is filed on the Grounds mentioned as follows:

- A. BECAUSE the respondents have deliberately failed to ensure transparency and thus, violated the s. 11(4) of the Telecom Regulatory Authority of India Act, 1997 Act.
- B. BECAUSE Respondent has deliberately failed to take any action and provide the Applicant with details of the accounts despite being empowered by virtue of Section 12 of the TRAI Act, 1997 to call upon any service provider to furnish any information relating to its affairs.
- C. BECAUSE the Respondent is established under the TRAI Act, 1997 to protect the interests of consumers, and hence the respondent is duty bound to furnish the details of the amount with accrued interest as on 31.03.2019 on the excess amount collected on the basis of the Eleventh T.A.O and the Thirteenth T.A.O.
- D. BECAUSE the inaction of the Respondents is aiding the broadcasters and their affiliated distribution platforms in not furnishing the details and misappropriating the public money collected on the basis of those illegal TAOs.
- E. That the TRAI Act is an Act to protect the interests not only of service providers but also to protect the consumers of the telecom sector but the said non-action on part of the Respondents is aimed to defeat the purpose of the Act and is in direct confrontation with the intent of the Legislature.

F. BECAUSE the case in hand is a fit case for the Respondents to consider it expedient and the Respondent under section 12(1) of the Telecom Regulatory Authority of India Act, 1997 must be directed to call upon the service provider at to furnish in writing the requisite information or explanation relating to its affairs w.r.t to the excess money collected and deposited in separate accounts maintained as the said collection is made based on illegal TAOs which have been set aside and the said decision of the TDSAT has been affirmed by the Hon'ble Supreme Court of India.

G. BECAUSE the stakeholders i.e. Broadcasters of Private Satellite channels, Distribution Platform Operators such as MSOs, DTH operators and HITS operators are operating under a license / registration granted by the Respondent No. 1 and they are beneficiaries of the state largess and are indulging into abuse and misuse of the said state largess.

H. BECAUSE the respondents have stashed thousands of crores of rupees with the broadcasters whereas the said money is public money and the subscribers are entitled for a refund or adjustment as the matter has attained finality by the orders of the Hon'ble Supreme Court of India and the fresh comprehensive T.O of 2017 have finally been successfully implemented as on 31.03.2019.

- I. BECAUSE the airwaves/frequencies are a public property as held by the Hon'ble Supreme Court of India in Secretary, Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal, (1995) 2 SCC 161 and the stake holders utilizing the same also owe a duty to the public at large.
- J. BECAUSE the licenses / Registrations granted by Respondent No. 1 is an executive action of the State and it has all cloth and color of the State and is amenable to the writ jurisdiction of this Court.
- K. BECAUSE the required information is necessary expedient to be disclosed in public interest as intended by the Legislature in framing of The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulations, 2004 and The Telecom Regulatory Authority of India (Access to Information) Regulations, 2005
- L. BECAUSE the TRAI Act lays down under s. 12 (3) that the service provider shall maintain such books of account or other documents as may be prescribed and in the interest of justice, they must be issued directions by the Respondents to maintain such books of account or other documents in order to furnish the details of the public money stashed with them on the basis of the TAOs which have also been set aside by the Hon'ble Supreme Court of India.

20. That it is submitted that it is duty of the Respondents which it cannot disown its liability to call for records, requisition the accounts and make the adjustment/refund of thousands of crores of rupees to the public and by keeping this larger interest in view, the Petitioner, by way of the present Public Interest Litigation Petition, seeks the indulgence of this Hon'ble Court.

21. That the Petitioner has not filed any writ petition in any other court or any other petition of similar nature in any court of law apart from the instant writ petition before this Hon'ble Court.

22. That the present Petition under Article 226 / 227 of the Constitution of India is the appropriate remedy and no other equally efficacious remedy is available to the Petitioner given the far-reaching consequences of the present Petition.

PRAYER:

It is, therefore, most respectfully, prayed that this Hon'ble Court may kindly be pleased to:-

1. Issue Writ(s) or Order(s) in the nature of Mandamus to call for information under s. 12 of the TRAI Act in relation to the money collected on the basis of illegal TAOs from the consumers by the companies/broadcasters and requisition the accounts;
2. Issue a Writ of Mandamus and/or any other appropriate Writ/ Order/ Direction of like nature thereby directing the Respondents to conduct

investigation under s. 12 of the TRAI Act monitored by this Hon'ble Court in relation to the money collected on the basis of illegal TAOs from the consumers by the companies/broadcasters, and;

3. Issue Writ(s) or Order(s) in the nature of Mandamus to take action against the service providers indulging in illegal practices of stashing public money and not furnishing the information, and;
4. Issue Writ(s) or Order(s) in the nature of Mandamus to the respondents to initiate process of refund and/or adjustment to the subscribers/consumers;

Or in the alternative,

direct the restitution along with accrued interest to be deposited in the Consumer Welfare fund established by the Central Government or any authority as deemed fit by this Hon'ble Court.

5. Pass any other order as deem fit in the interest of justice.

Petitioner

through

Adv. Harpreet Singh Hora,
____address____

NEW DELHI

DATE :-