

Presented : 10.03.2020

Subject : Public Interest Litigation - Cable Television Networks (Regulation) Act, 1995 – Challenging Constitutional validity of Rule 6(1) (a) and 6(1) (i) the Cable Television Networks Rules, 1994 – Challenging Exhibits P1 and P2 -

BEFORE THE HON'BLE HIGH COURT OF KERALA

W.P (C) No. 7487 of 2020

HARISH VASUDEVAN : PETITIONER

Versus

UNION OF INDIA : RESPONDENT

WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

P.A MOAHMMED SHAH (M-576) [K/150/2000]

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INDEX

Sl No.	Particulars	Page No.
1.	Synopsis	A – C
2.	Writ Petition (civil)	1 – 15
3.	Affidavit	16
4.	Exhibit P1: A true photocopy of the copy of the order dated 06.03.2020 issued by the respondent to Asianet News TV Channel	17 – 23
5.	Exhibit P2: A true photocopy of the copy of the order dated 06.03.2020 issued by the respondent to Media One TV Channel	24 – 30
6.	Exhibit P3: A true photocopy of the Policy Guidelines for Uplinking of Television Channels from India dated 05.12.2011 issued by the respondent	31 – 44
7.	Exhibit P4: A true photocopy of the Cable Television Networks Rules, 1994 issued by the Respondent.	45 - 63

Dated this the 7th day of March, 2020

COUNSEL FOR THE PETITIONER

BEFORE THE HON'BLE HIGH COURT OF KERALA

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SYNOPSIS

1. Knowing the actual truth, facts and happenings in this country, especially with respect to the dealing of violence by the Police, activities of the government, is a part of the Fundamental Rights of every citizen. No citizen of this Country can exercise his freedom of speech and expression fairly and effectively, without having factual knowledge. Press, and Visual media, commonly known as the 'fourth pillar of democracy' provide news and information to the Citizens upholding his 'Right to Know.' If such services of media are restricted unreasonably, unfairly and arbitrarily, the 'Right to know' is restricted to citizens. No democracy can function effectively, without upholding its citizen's right to know. Being critical towards RSS and Delhi Police is termed as a reason for prohibition of telecast of a News Channel for 48 hours in this Country. Where is this Country heading to?
2. The petitioner is a public spirited, law abiding citizen and a practicing lawyer in the High Court of Kerala. Petitioner is actively involved social, environmental, cultural movements in India for the past 15 years. Petitioner has bagged several awards for his social activities.
3. Petitioner is highly aggrieved by the arbitrary orders Exhibit P1 and P2 issued by the Respondent prohibiting two prominent News TV channels namely Asianet News and Media One, for reporting violence happened in Delhi. By misusing the provisions of Cable Television Networks (Regulation) Act, 1995 and thereby issuing Exhibit P1 and P2, the Respondent is denying and curtailing the 'Right to Know' of the petitioner, arbitrarily. These orders were issued only to create a fear factor amongst all the visual media in this country for criticizing RSS and the Central Government. Exhibit P1 and P2 were withdrawn within 24 hours of issuance of the same, and it clearly shows that the Respondent themselves knew that the arbitrariness of this

step.

4. Some provisions of the Cable Television Networks (Regulation) Act, 1995, Cable Television Networks Rules, 1994 and the Policy Guidelines for Uplinking of Television Channels are arbitrary, unfair and unconstitutional. It gives power to the Central Government to use such power arbitrarily, irrationally and unconstitutionally. The power given to the executive through such provisions to impose restriction / prohibition is not in rational nexus with the objects sought to be achieved by it. Excessive power delegation and arbitrariness through some laws, Rules and guidelines makes it violative of Article 14, 19 and 21 guaranteed by the Constitution of India to the petitioner.
5. Hence the petitioner most humbly submits this Writ Petition (civil) under Article 226 of the Constitution of India.

Chronological list of dates and events:

- 05.12.2011 – Issuance of Policy Guidelines for Uplinking of Television Channels from India
- 25.02.2020 – Asianet News Channel and Media One Channel covers the riots that occurred in North East Delhi
- 28.02.2020 – Show cause notices issued to Asianet News Channel and Media One Channel
- 03.03.2020 – Reply preferred by Asianet News Channel and Media One Channel before the respondent
- 06.03.2020 – Exhibits P1 and P2 orders issued by the respondent

Points to be Urged:

- Whether criticism against any individual or groups can be prohibited by law?
- Whether the powers conferred to the respondent under the Policy Guidelines for Uplinking of Television Channels is violative of the fundamental rights of the Citizen of India?

Acts/Rules to be referred:

- Constitution of India
- Cable Television Networks (Regulation) Act, 1995
- Cable Television Networks Rules, 1994
- Policy Guidelines for Uplinking of Television Channels

Dated this the 7th day of March, 2020

COUNSEL FOR THE PETITIONER

BEFORE THE HON'BLE HIGH COURT OF KERALA

W.P (C) No. 7487 of 2020

PETITIONER:

Harish Vasudevan, aged 34 years, S/o V.N. Vasudevan Namboothiri,
residing at 'Haritham', Nileshwar, Kasargod, Kerala – 671314

Versus

RESPONDENT:

Union of India,
Represented by the Secretary,
Ministry of Information and Broadcasting,
'A' Wing, Shastri Bhavan,
New Delhi – 110 001

WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Address for service of all process to the petitioner is that of his counsel **P. A MOHAMMED SHAH & RAJAN VISHNURAJ**, Advocates **AMICUS ADVOCATES**, II Floor, Chundanal Monarch, K.K Padmanabhan Road, Kochi – 18 and address for service of all process/notice to the Respondents are as shown above.

STATEMENT OF FACTS

1. The petitioner herein is a law abiding citizen of India and a practicing lawyer before the Hon'ble High Court of Kerala. Petitioner is actively involved in the social and environmental activities upholding the Constitutional Principles, for the past 17 years. The Petitioner has bagged several awards from several organizations for his selfless social, environmental and cultural interventions. Second runner up in 'The Best Citizen Journalist' award from Amrita TV, 'Keerthimudra' Award in the Environmental category from Asianet News, 'Global Green Grants' scholarship are some of them. The petitioner is approaching this Hon'ble Court not only with the clean hands but also with the clean heart, clean mind and clean objectives¹.

¹ In the matter of **K. R. Srinivas v. R. M. Premchand and Others** reported in **1994 (6) SCC 620** (Coram: M. M. Punchhi; K. Jayachandra Reddy, JJ.) the Hon'ble Supreme Court of India was pleased to hold that "a writ petitioner who comes to the court for relief in public interest must come not only with clean hands, like any other writ petitioner, but must further come with a

2. The petitioner approaches this Hon'ble Court being highly aggrieved by some of the provisions in Cable Television Networks (Regulation) Act, 1995 and Policy Guidelines for Uplinking of Television Channels from India, and issuance of orders by the respondent wherein two news media channels viz. Asianet News TV and Media One TV have been prohibited transmission for 48 hours on any platform throughout India with effect from 19:30:00 hours on 06.03.2020 till 19:30:00 hours on 08.03.2020. It is relevant to note that the said order was issued on Friday after the normal working hours of the courts.
3. It is respectfully submitted that in response to the passage of the Citizenship (Amendment) Act, 2019, which allows fast-tracked naturalization for illegal immigrants from Pakistan, Bangladesh and Afghanistan belonging to six religions vis-à-vis Hindu, Sikh, Buddhist, Jain, Parsi and Christian, protests began all across India from December 2019 onwards. Peaceful protests were going all across the country for about 2 months criticizing the Central Government in making the religion a criteria for deciding the Citizenship of this Country, violating the fundamental principles of secularism enshrined in the Constitution of India. In the State of Delhi, a series of violent incidents that began in the Jaffrabad area of North East Delhi on the night of 23.02.2020 and has led to the deaths of more than 50 people, as reported by several media including the British Broadcasting Corporation (BBC) and The Hindu. It is alleged and reported by the International Media that the Delhi Police under the control of the Central Government was acting in favor of the mob who unleashed violence even by stone pelting. Allegations are to the effect that the miscreants were brought from the State of Madhya Pradesh.
4. On 25.02.2020, two media channels as mentioned earlier viz. Asianet News Channel and Media One TV Channel had covered these riots in the North East part of Delhi and had broadcasted them. Asianet News Channel had broadcasted the feed on 25.02.2020 from 18:58:34 to 19:09:19 and at 00:10:45 hours. As per the version of the respondent, Asianet News channel reported that:

"riots continued in Delhi and death toll had reached 10. Armed rioters were attacking people after asking their religion. Hundreds of shops, houses and vehicles were set on fire and 160 people were injured in the riots. It was also reported that rioters took over the streets as the Delhi Police remained as a mute spectator. Curfew was imposed in North

clean heart, clean mind and a clean objective."

East Delhi for a month. It was further reported by the Channel Correspondent PR Soni that the violence continued at Jaffrabad like the previous day and rioters ruled the streets at Jaffrabad, Ashok Nagar and Maujpur. Delhi Police were mute spectators when rioters set ablaze mosques at Jaffrabad and Maujpur. Fire tenders reached after two hours to put the fire of the mosque. Rioters blocked the commuters and attacked them after questioning their religion. Houses of Muslims were attacked at Hindu majority areas and Muslims retaliated. Rioters were firing at each other in the streets. Violence erupted the previous day has turned into communal violence after a section of Hindus chanted 'Jai Sri Ram' and Muslims chanted 'Azadi' slogans. Hundreds of shops, houses and vehicles were burnt down. A petrol pump was set on fire and as the violence continued for the third day, no action was taken to contain the violence. The Central Government did not act to control the riots. Central forces reached the riot hit areas after long hours of the meeting of Union Minister Amit Shah. Delhi witnesses such a large riot after 1984 anti-Sikh riots. The violence continued and the fire on many vehicles has not been doused."

While Media One TV Channel had broadcasted the feed on 25.02.2020 from 06:10:02 to 06:47:07 and at 00:30:22 hours. As per the version of the respondent, Media One TV Channel while reporting on Delhi violence in its Bulletin carried a phone-in of its Delhi Correspondent Hassanul Banna saying that:

"Vandals fired at an anti-CAA protest site from a rooftop from 2 pm to 9 pm and around 5 anti-CAA protesters were injured. Police refused to visit the spot and nob the vandals. According to anti-CAA protesters, police were present there the previous day during the Bharat Bandh called by Bhim Army Chief Chandrashekar Azad. Vandals also set ablaze tents set up by anti-CAA protesters in Chand Bagh. Vandals have succeeded in pushing back anti-CAA protesters from three protest sites by unleashing violence. The police were seen supporting people who were in favour of CAA. The channel alleged that Delhi Police remained inactive during violence, vandalized the shops and fruit carts and set them ablaze. The channel also reported that violence took place mostly in Muslim dominated area of Chand Bagh, Delhi. While telecasting the news, the channel carried the news of stone pelting, arson and injured people being taken to hospital."

5. That, based on this, the respondent had issued show cause notices on 28.02.2020, to both the media houses for violation of Rules 6(1) (c) and 6(1) (e) of the Cable Television Network Rules, 1994 and as to why action as per the provisions of the Uplinking/ Downlinking Guidelines, the terms and conditions of the permission granted and the provisions of Section 20 of the Cable Act should not be initiated as disclosed from the final order. Both the media houses had furnished reply to the said notices on 03.03.2020 by stating that whatever they had broadcasted was factually correct and did not place attack on any particular religion or community or did not promote anti national activity as alleged by the respondent herein.
6. Thereafter, the respondent has issued an order on 06.03.2020 to Asianet News Channel by stating that "while reporting such critical incident, the channel should have taken utmost care and should have reported it in a balanced way. Such reporting could enhance the communal disharmony across the country when the situation is highly volatile. The Ministry has time and again issued Advisories to all News Channels to comply by the provisions of the Rules. Due care and responsibility is expected while reporting news based on such incidents. However, it is abundantly clear that the channel has not adhered to the Programme codes and has shown irresponsibility by not fully complying to them. The Ministry has come to the conclusion that Asianet News TV channel had violated Rule 6 (1) (c)& (e) of the Programme Code prescribed under the Cable Television Networks (Regulation) Act, 1995 and the rules framed thereunder by telecasting said news regarding the North East Delhi violence." Accordingly, the respondent had ordered prohibition of transmission or re-transmission of Asianet News TV Channel for 48 hours on any platform throughout India with effect from 19:30:00 hours on 06.03.2020 till 19:30:00 hours on 08.03.2020. A true photocopy of the copy of the order dated 06.03.2020 issued by the respondent to Asianet News TV Channel is produced herewith and marked as **Exhibit P1**.
7. The respondent also issued an order on 06.03.2020 to Media One TV Channel by stating that "WHEREAS it appeared that telecast of reports on North-East Delhi violence had been shown in a manner which highlighted the attack on places of worship and siding towards a particular community. Channel's reporting on Delhi violence seems to be biased as it is deliberately focusing on the vandalism of CAA supporters. It also questions RSS and alleges Delhi Police inaction. Channel seems to be critical towards Delhi Police and RSS." It also states that "Such reporting could enhance the communal disharmony

across the country when the situation is highly volatile. The Ministry has time and again issued Advisories to all News Channels to comply by the provisions of the rules. Due care and responsibility is expected while reporting news based on such incidents. However, it is abundantly clear that the channel has not adhered to the Programme codes and has shown irresponsibility by not fully complying to them. After careful consideration of the case on the whole, the Ministry has come to the conclusion that Media One TV channel had violated Rule 6 (1) (c) & (e) of the Programme Code prescribed under the Cable Television Networks (Regulation) Act, 1995 and the rules framed thereunder by telecasting said news regarding the North East Delhi violence."

Accordingly, the respondent had ordered prohibition of transmission or re-transmission of Media One TV Channel for 48 hours on any platform throughout India with effect from 19:30:00 hours on 06.03.2020 till 19:30:00 hours on 08.03.2020. A true photocopy of the copy of the order dated 06.03.2020 issued by the respondent to Media One TV Channel is produced herewith and marked as **Exhibit P2**.

8. Cable Televisions Networks Rules, 1994 framed by the Respondent imposes certain restrictions. Rule 6(1)(c) provides that no programme should be carried in the cable service which contains attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes; Rule 6(1)(e) provides that no programme should be carried in the cable service which is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote anti-national attitudes. RSS and Delhi Police are neither a religion nor a community. They are not even a religious group. There is no allegation in Exhibit P1 or P2 that their program has promoted communal attitudes or has encouraged or incited violence in any part of the country. To the knowledge of the petitioner, Rashtriya Swayamsevak Sangh, commonly known as RSS do not have a case that these media broadcasters have defamed them. They did not so far file any defamation case against such media houses till date. By issuing Exhibit P2, the Respondent is becoming more loyal than the King, it seems.
9. Exhibit P1 and P2 were withdrawn by the Respondent, within 24 hours of its issuance, and it clearly shows that the Respondent themselves knew that the arbitrariness of this step. From the above it is further evident that Exhibits-P1 and P2 orders were issued with a view to terrorize the print and visual media in the country by conveying a message that this power will be against any

media house as the Government may please. This action has therefore far reaching consequences. It is learnt that the highhandedness of the toppest officials of the respondent is behind the issuance of Exhibit P1 and P2, due to lack of proper evidence to prove the same, petitioner is not making any specific pleadings to that effect.

10. It is respectfully submitted that the respondent has tactfully issued Exhibits P1 and P2 orders on 06.03.2020 i.e., on a Friday at about 7pm, to rule out the scope of judicial review/ intervention in the present case. Exhibit P1 and P2 were issued after 8 days of the incident. It is very much evident that the very object sought to be achieved by this act and the restriction imposed have no rational or reasonable nexus. The same is nothing but arm wrenching and pressure tactics adopted by the respondent to induce fear psychosis into the media houses of the country and thereby curtailing the Right to Know of the Citizens to avoid critical view of their governance.
11. It is respectfully submitted that respondent herein had issued Policy Guidelines for uplinking of Television Channels from India on 5th December 2011. The Respondent has relied on Para 5.2, 8.1 and 8.2 of the Policy Guidelines for Uplinking of Television Channels from India and Sub Section (2) and Sub Section (3) of Section 20 of the Cable Television Networks (Regulation) Act, 1995 while issuing Exhibits P1 and P2 orders. It is to be noted that the term 'decency' used in Sub Section (2) of Section 20 of the Cable Television Networks (Regulation) Act, 1995 and the Rule 6 (1)(a), (6(1) (i) is cast so widely that virtually any broadcast on any issue or subject by any broadcaster would be covered to be infringing decency and such is the reach of the Section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total and is thus liable to be struck down.
12. Similarly, the petitioner submits that the term 'objectionable unauthorized content, messages or communication inconsistent with public interest' used in 8.1 of the Policy Guidelines for Uplinking of Television Channels from India meets the same fate and virtually casts excessive delegation on the respondent and is arbitrary and is liable to be struck down. A truthful content, message or communication may be objectionable to some of the officials of the Central Government or men in governance and may be termed as against public interest. There is no criteria laid down by the respondent to its officials as to decide how a content can be objectionable, unauthorized and against public interest. In the absence of a specific provision for deciding such criteria,

the words 'objectionable unauthorized content, messages or communication inconsistent with public interest' in Policy Guidelines for Uplinking of Television Channels from India dated 05.12.2011 is arbitrary, unfair, illegal and against Article 14 of the Constitution of India. A true photocopy of the Policy Guidelines for Uplinking of Television Channels from India dated 05.12.2011 issued by the respondent is produced herewith and marked as **Exhibit P3**.

13. It is respectfully submitted that Clause 5.9 of the general Terms and Conditions in para 5 of Exhibit P3 states that the Government of India, ministry of Information & Broadcasting shall have the right to suspend the permission of the company for a specified period in public interest or in the interest of national security to prevent its misuse. It is also stated that the company shall immediately comply with any directives issued in this regard. Clause 8.1 in para 8 of Exhibit P3 states that in the event of a channel/teleport/SNG/DSNG found to have been/been failing to comply with the directions as per para 5.9 above, the permission granted shall be revoked and the company shall be disqualified to hold any such permission for a period of 5 years, apart from liability for punishment for other applicable laws. This is irrational, arbitrary, issued without any authority or power, and violative of fundamental rights.

14. The source of power for issuing a guideline like Exhibit-P3 is not discernable either from the plenary legislation or from the Rules made thereunder. Therefore, Exhibit-P3 can only be considered as an executive aberration though it appears that the said guideline was issued in the year 2011. The power thus conferred through the guideline was never used or abused by any Government thereafter in office. Therefore, there was no cause of action to challenge the validity of the said guideline in a process of judicial review challenging the irrationality of the said guideline and the resultant misuse. Issuance of Exhibit-P1 and P2 has demonstrated that the power conferred through the guideline is capable of being misused and abused to silence the media curtailing the fundamentals of freedom and speech of expulsion.

15. Rule 6 of the Cable Television Network Rules, 1994 states as follows :-

No programme should be carried in the cable service which:-

(a) Offends against good taste or decency;

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i) *Criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country ;*

(j)

(k)

(l)

(m) ..;

(n)

A true photocopy of the Cable Television Networks Rules, 1994 issued by the Respondent is produced herewith and marked as **Exhibit P4**. If Exhibit P4 is followed, no person or broadcaster can criticize any individual in person or certain groups, segments of social, public and moral life of the country. Fair and truthful criticism against any individual or groups is part of the fundamental right of any citizen of India as guaranteed by the Constitution. The provision 6 (1) (a) and the word "Criticises" in 6(1) (i) of the programme Code issued by the Respondent is highly arbitrary exercise of power and ultravires to the parent Act. This will not stand the test of "chilling effect" in the eye of law. This is excessive power delegation. It is violative of Article 19(1) (a) and Article 14 of the Constitution.

16. It is respectfully submitted that the respondent has not been able to bring up a case that the reporting done by the two media houses were not factual in nature. It is an admitted fact by the respondent itself that there were riots going on which were communal in nature. The respondent states that the reporting ought to have been done in a more 'balanced manner'. It is to be noted that nowhere in the Act, has it been stated that the reporting ought to be done in a balanced manner. The aforesaid media houses were only reporting the details of the riots which were being committed by some persons and if by trying to report the same in a 'balanced manner', is the

respondent suggesting that the media house should encourage another community to also carry out riots to do balanced reporting?

17. The petitioner herein raises the very fundamental question as to how the Rule issued under the Act can curtail reporting of the Truth. By issuance of Exhibits P1 and P2, it is very much clear that the respondent is sending out a clear message that reporting of Truth on the Delhi riots or in fact on any matters across the country will be dealt with harsh penal consequences. There is no case for the respondent that broadcast made by either of the two media houses in the present case had been transmitting objectionable material inconsistent with public order or was violative of decency. The petitioner submits that every citizen of India has a right to fairly criticize of the act of political party like the RSS, BJP, Congress or police official or political figure or even the Prime Minister or President of India. Even judiciary is not immune from criticism and in fact healthy criticism is welcomed by judiciary. It is to be noted that despite certain persons and public figures waging attack publicly on certain communities, the Central Government has chosen not to take any action such people. However, truthfully reporting of the same by media houses would attract penalties in the nature of Exhibits P1 and P2. The petitioner also submits that the public's right to information flows from the right of the media/ press under Article 19(1)(a) of the Constitution of India to perform their duty without penal consequences for reporting fact. Reporting of the truth of the affairs of the country such as that of the Delhi riots in a truthful and unbiased manner serves larger public purpose and discourages misconduct and abuse of power by the prosecuting agencies. The petitioner thus challenges the constitutionality of Sub Section (2) of Section 20 of the Cable Television Networks (Regulation) Act, 1995 being violative of his fundamental right to information and thus unconstitutional and ultravires. The cause of action to challenge the vires of the Act and Rules therein, had occasioned now on issuance of Exhibits P1 and P2.

Under these circumstances, left with no other efficacious or alternative remedy than to approach this Hon'ble court, for the redressal of grievances, the petitioner most humbly prefer this writ petition (civil) under Article 226 of the Constitution of India with following among other

GROUND

- A. Petitioner has a fundamental right under the Constitution of India to know the truth and factual scenario happening in this country. Reporting of truth

and facts as itself by the visual and print media is an integral part of the Right to Know of every Indian Citizen. Exhibit P1 and P2 are violative of the fundamental right guaranteed by the Constitution of India.

- B. Sub Section (2) of Section 20 of the Cable Television Networks (Regulation) Act, 1995, wherein the term 'decency' is cast so widely that virtually any broadcast on any issue or subject would be covered to be infringing decency and such is the reach of the Section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total. This is excessive delegation of power to the executive. Thus the same is violative of Article 19(1) (a) and Article 14 of the Constitution of India to the extent that it contains the term 'decency' and liable to be struck down.

- C. The truthful and factual reporting of any incident shall not invite the term 'decency' in Section.20 of the Act. A broadcasting person or company cannot decide whether the truthful reporting of an incident will tantamount to the violation of Section.20(2) of the Act on that ground that it is indecent. Decency varies from persons to persons and unless a clear distinction is drawn between what is decent and what is indecent, through a guidelines, the power delegated by the Parliament to the Executive through Section.20 (2) have to be considered as an excessive delegation and therefore unconstitutional.

- D. The term 'objectionable unauthorized content, messages or communication inconsistent with public interest' used in Paragraph 8.1 of the Policy Guidelines for Uplinking of Television Channels from India is also violative of the Article 19(1)(a) and Article 14 of the Constitution of India and ultravires to the parent Act and is liable to be struck down.

- E. The petitioner has an unbridled right to information and right to know which flows from Article 19(1)(a) of the Constitution of India. Curtailing the same through Exhibits P1 and P2 which have been issued under Sub Section (2) of Section 20 of the Cable Television Networks (Regulation) Act, 1995 and Paragraph 8.1 of the Policy Guidelines for Uplinking of Television Channels

from India is directly infringing the petitioner's fundamental rights.

- F. It is to be noted that the respondent has no case whatsoever that both the media houses had broadcasted material which contained attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitude. Thus, the respondent was not able to show that both media houses had violated Rule 6(1)(c) of the Cable Television Network Rules, 1994. Hence, issuance of Exhibits P1 and P2 is patently arbitrary, illegal and is liable to be set aside.
- G. The respondent did not also have a case that the broadcast contained material which is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote anti-national attitudes. Thus, the respondent was not able to show that both media houses had violated Rule 6(1)(e) of the Cable Television Network Rules, 1994. Hence, issuance of Exhibits P1 and P2 is patently arbitrary, illegal and is liable to be set aside.
- H. Going by the dictum laid down by the Hon'ble Supreme Court of India in the matter of **Shreya Singhal Vs Union of India and Ors** reported AIR 2015 SC 1523, it is clear that Sub Section (2) of Section 20 of the Cable Television Networks (Regulation) Act, 1995 as well as Paragraph 8.1 of the Policy Guidelines for Uplinking of Television Channels from India will not withstand the test of constitutionality and would be clearly curtail the freedom of speech enshrined under Article 19(1)(a) of the Constitution of India.
- I. It is to be noted that both the media houses had stated in their replies as well as vehemently held that their broadcast were factual in nature and did not attract the provisions of Rule 6(1)(c) and 6(1)(e) of the Cable Television Network Rules, 1994. The respondent has miserably failed to establish a case under the said provisions against the media houses while issuing Exhibit P1 and P2.

- J. A mere perusal of Exhibits P1 would show that the respondent has stated that the media reporting/ broadcast ought to have been in a 'balanced manner' and that such reporting could enhance the communal harmony of the country when the situation is highly volatile. This is per se absurd and arbitrary. While reporting a particular issue or live incident or a fact in an unbiased manner, truthfully, the media houses or persons cannot go to either sides hunting for news creation and maintain news reporting in a 'balanced manner' and thus allegedly maintain communal harmony. In Exhibit P2, it is alleged that the Channel's reporting on the Delhi violence seems to be biased focusing vandalism of CAA supporters and criticizes inaction of the Delhi Police. However, the respondent does not have a case that the broadcast was factually incorrect, inaccurate or misleading or that there was no violence being done by the CAA supporters in North East Delhi.
- K. It is to be noted that Section 20 of the Cable Television Network Act, 1995 provides power to prohibit operation of cable television network in public interest, in certain circumstances. Section 20 states as follows :-

Power to prohibit operation of cable television network in public interest.— [1] Where the Central Government thinks it necessary or expedient so to do in public interest, it may prohibit the operation of any cable television network in such areas as it may, by notification in the Official Gazette, specify in this behalf.

(2) Where the Central Government thinks it necessary or expedient so to do in the interest of the — (i) sovereignty or integrity of India; or (ii) security of India; or (iii) friendly relations of India with any foreign State; or (iv) public order, decency or morality, it may, by order, regulate or prohibit the transmission or re-transmission of any channel or programme.

(3) Where the Central Government considers that any programme of any channel is not in conformity with the prescribed programme code referred to in section 5 or the prescribed advertisement code referred to in section 6, it may by order, regulate or prohibit the transmission or re-transmission of such programme.

There is a clear distinction of power in Sub Section (2) and (3) of Section 20 Cable Television Network Act, 1995. Exhibit P1 and P2 doesn't allege any grounds in Sub Section 2 of Section 20 of the A mere perusal of Exhibits P1 and P2 would reveal that the respondent has exercised beyond its jurisdiction and has prohibited the media houses to prohibit the transmission or re-transmission for 48 hours on any platform throughout India. Exhibit P1 or P2 was not published in the official Gazette also. Area of prohibition was also not specified in the orders. Exhibit P1 and P2 suffers from lack of any jurisdiction or authority and is liable to be set aside.

- L. It is to be noted that issuance of Exhibits P1 and P2 is nothing but arm wrenching and pressure tactics adopted by the respondent to induce fear psychosis into the media houses of the country. It is also to be noted that one of the media houses viz. Asianet News channel as already tendered an unconditional apology. Such practice sends out a bad message to all the media houses across the Country that anyone who tries to report a news truthfully would have to face the wrath of the ruling Government. This directly hinders the right of the petitioner's right to have access to information which flows through from the right of the media/ press.
- M. Para 5.9 and the term "or failing to comply with the directions as per para 5.9 above" in para 8 of Exhibit P3 are arbitrary, irrational, issued without authority or power, ultravires to the parent act and unconstitutional. Hence it is liable to be struck down.
- N. Rashtreeya Swayamsevak Sangh commonly known as RSS is neither a religion nor a community. It is not a religious group also. Questioning RSS and alleging Delhi Police inaction is not a punishable offence under any law in force. Being critical towards Delhi Police and RSS is not prohibited or regulated by any of the laws in this country. One of the grounds raised Exhibit P2 is therefore illegal, arbitrary and against the fundamental rights guaranteed by the Constitution of India.
- O. A mere perusal of Exhibits P1 and P2 would clearly indicate that the very object sought to be achieved in and restriction imposed have no rational

nexus. As per the relevant provisions of the Act, the in the event of any broadcast which has been made in violation of Rules 6(1)(c) and 6(1)(e), the invocation of Section 20 would come into force so as to immediately stop the broadcast so as to prevent disruption of communal harmony. However, in the present case, though the incident had occurred as early as 25.02.2020, Exhibits P1 and P2 have been issued only on 06.03.2020. This shows that the same has been issued in malafide interests.

- P. The leaders of the ruling party are having close connection with RSS. Criticizing RSS happened to be one of the grounds in Exhibit P2 is a classic example of abuse of power by the Respondent for meeting their political interests and nothing more.
- Q. Fair and truthful criticism against RSS, Delhi Police or any other person or entity in this Country, unless expressly prohibited by any law, is a part of the Fundamental Right guaranteed by the Constitution of India.
- R. The petitioner has no other efficacious or alternative remedy than to approach this Hon'ble Court for the redressal of his grievances.
- S. Hence, the urgent intervention of this Hon'ble Court by invoking the wide powers under Article 226 of the Constitution of India is highly inevitable in this case, unless irreparable injuries and hardship may be caused to the poor petitioner.

Having regard to the above mentioned grounds and also such other grounds that may be urged at the time of hearing, it is most humbly prayed that this Hon'ble court may be pleased to:

PRAYERS

- (i) Declare that being critical towards Delhi Police and RSS is a part of the fundamental right of every Citizen of India and it cannot constitute an offence as envisaged in any law;
- (ii) Declare that the reporting of any truthful or factual incident will not invite any offence under sub-section 2 of Section.20 of the Cable Television Networks (Regulation) Act, 1995 and any penal action by invoking the said

provision is unconstitutional and opposed to public interest;

- (iii) Declare that the Rule 6(1) (a) and Rule 6 (1) (i) of Cable Television Network Rules 1994, is violative of the Article 19(1) (a) and Article 14 of the Constitution of India and ultravires to the parent Act.
- (iv) Declare that paragraph 5.9 of the Policy Guidelines for Uplinking of Television Channels from India is arbitrary and violative of the Article 19(1)(a) of the Constitution of India and ultravires to the parent Act;
- (v) Declare that 'objectionable unauthorized content, messages or communication inconsistent with public interest' used in Paragraph 8.1 of the Policy Guidelines for Uplinking of Television Channels from India is violative of the fundamental rights guaranteed under the Constitution of India and ultravires to the parent Act and that the issuance of the guidelines is beyond the powers conferred under the Act and the Rules and therefore bad in law;
- (vi) Declare that Exhibits P1 and P2 have been issued arbitrarily and without any jurisdiction.
- (vii) Issue a writ of certiorari or any other appropriate writ or direction to quash Exhibits P1 and P2.
- (viii) Pass such any other order, direction or reliefs as this Hon'ble Court may deem fit in the interest of justice, equity and good conscience.

INTERIM RELIEF SOUGHT FOR:

For the reasons stated in the memorandum of writ petition (civil) and its accompanying affidavit it is most humbly requested and prayed that this Hon'ble court may be pleased to stay the operation of Rule 6(1) (a) and 6 (1) (i) of Exhibit P4, without any further delay, pending final disposal of this writ petition (civil).

Dated this the 7th day of March, 2020

PETITIONER

COUNSEL FOR THE PETITIONER

BEFORE THE HON'BLE HIGH COURT OF KERALA

W.P (C) No. 7487 of 2020

HARISH VASUDEVAN : PETITIONER

Versus

UNION OF INDIA : RESPONDENT

AFFIDAVIT

I, Harish Vasudevan, Advocate, aged 34 years, S/o Vasudevan Namboothiri, residing at 'Haritham', Nileshtar, Kasargod, Kerala - 671314, do hereby solemnly affirm and state as follows:

1. I am the petitioner in the above writ petition (civil). I know the facts of the case and I am competent to swear this affidavit.
2. The exhibits produced the writ petition (civil) are the true copies of the original documents.
3. That, I have no private or personal interest in the subject matter of this case.
4. That, there is no authoritative pronouncement by the Hon'ble Supreme Court or the High Court on the question raised and the result of the litigation shall not lead to any undue gain to myself or to anyone associated with me.
5. That, I have not filed any earlier petitions seeking similar reliefs in respect of the subject matter of this case.
6. That, I have not filed any Public Interest Litigations till date or any other Public Interest Litigations similar reliefs in respect of the subject matter of this case.

All the above stated facts are true to the best of my knowledge, information and belief.

Dated this the 7th day of March, 2020

DEPONENT

Solemnly affirmed and signed by the deponent before me this the 7th day of March, 2020, in my office at Ernakulam.

Rajan Vishnuraj
ADVOCATE

APPENDIX

Petitioner's Exhibits

Exhibit P1: A true photocopy of the copy of the order dated 06.03.2020 issued by the respondent to Asianet News TV Channel

Exhibit P2: A true photocopy of the copy of the order dated 06.03.2020 issued by the respondent to Media One TV Channel

Exhibit P3: A true photocopy of the Policy Guidelines for Uplinking of Television Channels from India dated 05.12.2011 issued by the respondent.

Exhibit P4: A true photocopy of the Cable Television Networks Rules, 1994 issued by the Respondent.

Form 1A

(Rule 19(6))

BEFORE THE HIGH COURT OF KERALA

Number of the proceedings : WPC of 2020

Name of the parties filing Vakalath : HARISH VASUDEVAN

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Signature of Advocate

In a democratic polity, no executive Government can expect subordination or intolerance of criticism and when such subordination is insisted democracy will lose its fundamental essence. This is what is other source, to be achieved for Rule clause of the guideline.

Dissent is the essence of democracy and criticism will only strengthen the democratic process. Legislation curtailing criticism or actions of the executive Government to silence criticism will only lead to authoritarian form of Government, which is against the basic features of Indian Constitution.