

**BEFORE THE HONOURABLE HIGH COURT OF KERALA  
AT ERNAKULAM**

WP(C) No. 3265 OF 2022

Madhyamam Broadcasting Limited : Petitioners

Vs.

Union of India & others : Respondents

**STATEMENT FILED BY ASSISTANT SOLICITOR GENERAL OF INDIA  
ON BEHALF OF THE RESPONDENTS 1 & 2**

1. This statement is filed on the basis of instructions received from the Under Secretary to Government of India, Ministry of Information and Broadcasting, A-Wing, Shastri Bhavan, New Delhi, as per letter No. 1404132(ii)I 2010 -TV(1) Vol.I dated 01.02.2022. This statement is being filed based on preliminary facts only and without prejudice to the right of the respondents 1 & 2 to file a detailed counter affidavit in the matter.

2. The above Writ Petition has been filed by the petitioner seeking to issue a writ of mandamus or any other appropriate writ, orders or directions directing 1<sup>st</sup> and 2<sup>nd</sup> respondents to afford opportunity of hearing of the petitioner before passing an order revoking the permission and for other reliefs.

3. It is submitted that Uplinking and Downlinking of Private Satellite Television Channels in India are governed by the policy guidelines issued by Ministry of Information & Broadcasting from time to time. The policy guidelines of 2005 were amended by the Ministry of Information and Broadcasting keeping in view the fast evolving electronic media and thus consolidated guidelines were notified on 5.12.2011 in supersession of all

previous guidelines. True copies of the guidelines for up-linking and downlinking are produced herewith and marked as **Annexure R1(a)** and **Annexure R1(b)** respectively.

4. The company applied for the permission for one news channel "Media One" on 19.5.2010. After verification of the various eligibility conditions and obtaining security clearance from Ministry of Home Affairs (MHA) by their Office Memorandum dated 07-02-2011, the Ministry by letter dated 30.09.2011 granted permission to M/s. Madhyamam Broadcasting Limited to uplink and downlink a News and Current Affairs TV Channel namely, "Media One". The permission was valid for 10 years which was upto 29.09.2021. True copy of Permission Letter dated 30.09.2011 is produced herewith and marked as **Annexure R1(c)**.

5. In the year 2012, the Company applied for uplink and downlink of a Non-News TV channel "Media One Life" and News TV Channel "Media One Global". The documents were forwarded to MHA by the Ministry's letter dated 07.01.2014. Further, the company applied for appointment of two Directors namely, Musliyarakath Mehaboob and Rahmathunnissa Abdul Razack by letter dated 31.03.2015. The proposal was forwarded to MHA on 05.05.2015. In the meantime the company withdrew the application for news channel "Media One Global".

6. Based on the previous Ministry of Home Affairs' clearance received on 07.02.2011, which was valid for 10 years, the Ministry granted permission to M/s. Madhyamam Broadcasting Limited for a TV

Channel namely, "Media One Life" on 26.08.2015. True copy of permission letter is produced herewith and marked as **Annexure R1(d)**

7. The Ministry of Home Affairs as per OM dated 27.01.2016 denied the security clearance to both the proposals i.e. permission of additional TV channels namely, "Media One Life" and "Media One Global" and appointment of two Directors namely, Musliyarakath Mehaboob and Rahmathunnissa Abdul Razack of the company. Hence, the Ministry of Information and Broadcasting issued a Show Cause Notice dated 12.02.2016 to the company to clarify as to why the permission granted to the company should not be revoked. True copy of Show Cause dated 12.02.2016 issued by the Ministry of Information and Broadcasting is produced herewith and marked as **Annexure R1(e)**.

8. The company submitted its reply wherein they mentioned that as the Show Cause Notice (SCN) was issued on the basis of denial of security clearance by MHA, they are unaware of the grounds of denial of security clearance since the same was never communicated to them nor they were a party in these proceedings. The reply was examined by the Ministry of Information and Broadcasting. However, in view of the denial of the Security Clearance, the permission for uplinking and downlinking of TV Channel namely, "Media One Life" granted was cancelled on 11.09.2019. True copy of Order dated 11.09.2019 is produced herewith and marked as **Annexure R1(f)**.

9. As the permission for news TV Channel "Media One" of the company was expiring on 29.09.2021, the Company by application dated

03.05.2021 applied for renewal of permission for the said TV Channel "Media One" for further period of 10 years.

10. That clause 9.2 of the up-linking Guidelines provides as under:

*"9.2 On the basis of information furnished in the application form, if the applicant is found eligible, its application will be sent for security clearance to the Ministry of Home Affairs and for clearance of satellite use to the Department of Space (wherever required)."*

11. The application of new channel 'Media One' was forwarded to MHA by the Ministry of Information and Broadcasting on 29.11.2021. A true copy of the letter is produced herewith and marked as **Annexure R1(g).**

12. By letter dated 29.12.2021 MHA has denied security clearance to the company in respect of instant proposal i.e. renewal of Uplinking & Downlinking permission for further period of 10 years in r/o non-news TV channel "Media One". The Ministry by letter dated 05.01.2022 asked the company to Show Cause as to why their application for renewal of permission shall not be closed in view of the denial of security clearance by MHA. True copy of the letter dated 05.01.2022 is produced herewith and marked as **Annexure R1(h).**

13. The company by e-mail dated 19.01.2022 replied to the Show Cause Notice dated 05.01.2022. The company has mentioned that the Show Cause Notice (SCN) was issued on the basis of denial of security clearance by MHA, however, they are unaware of the grounds of denial of security clearance since the same was not communicated to them and

they were never granted an opportunity being heard while denying the clearance. Further, the company also mentioned that on similar allegation the Ministry had earlier also issued a SCN to the company on 12.02.2016 but subsequently renewed the license by letter dated 11.07.2019. Hence, they requested the Ministry to withdraw the Show Cause Notice dated 05.01.2022 and grant them renewal license for "Media One" TV channel.

14. Based on the Show Cause Notice dated 05.01.2022, reply to Show cause notice submitted by the Company and keeping in view the denial of security clearance by Ministry of Home Affairs, after due application of mind in all relevant aspects the Ministry passed the Impugned Order dated 31.01.2022 denying permission for renewal of uplinking and downlinking for further period of 10 years. True copy of the order is produced herewith and marked as **Annexure R1(i)**.

15. It is submitted that the Hon'ble Supreme Court in Ex-Armymen's Protection Services P. Ltd Vs. Union of India and others (AIR 2014 SC 1376) wherein the Hon'ble Apex Court while disposing the Appeal on the matter of national security held as follows:

*17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases it is the duty of the Court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue*

*involves national security, the court shall not disclose the reasons to the affected party.*

16. In the similarly placed case as the present writ petition, the Hon'ble Supreme Court in Digi Cable Network (India) Pvt. Ltd Vs. Union of India and Others (AIR 2019 SC 455) while relying on the above judgement observed and held as under:

11. *In our considered opinion, the impugned order of cancellation was passed in conformity with the requirements of Rule 1 IC of the Rules and hence it was rightly upheld by the High Court in impugned order.*

12. *Rule 11C was inserted in the Rules with effect from 28.04.2012. Rule 11C(1) reads as under:*

*"11C. (1) Registration as multisystem operator-!*

*1) being satisfied that the applicant fulfils the eligibility criteria specified under rule 11B and the requirements of rule 11 A, the registering authority shall, subject to the terms and conditions specified in rule 1 ID and the security clearance from the Central Government, issue certificate of registration."*

13. *It is clear from mere reading of the Rule 11C (1) that grant permission is subject to issue of security clearance from the Central Government to the applicant (appellant in this case).*

14. *In this case, admittedly the appellant failed to obtain the security clearance as provided under Rule 11C of the Rules. It was a mandatory requirement as provided under Rule 11C of the Rules. Since the grant of permission was subject to obtaining of the security clearance from the concerned Ministry, the competent authority was justified in cancelling the conditional permission for want of security clearance.*

15. *Learned counsel for the appellant, however, argued that the appellant was not afforded any opportunity of hearing before cancelling the permission and, therefore, the impugned cancellation order is rendered bad in law having been passed without following the principle of natural justice and fair play. We find no merit in this submission.*

16. *In somewhat similar circumstances, this Court while repelling this submission laid down the following principles of law in the case of ExArmy men's Protection Services Private Limited vs. Union of India And Others (2014) 5 SCC 409 in para 16 and 17 which read as under:*

*"16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in Secy. Of State for Home Deptt.v. Rehman: (AC p. 192C)*

*"... [in the matter] of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive."*

17. *Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national*

*security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party. ”*

17. *Having perused the note filed by the Union of India, which resulted in cancellation of permission, we are of the considered opinion that in the facts of this case, the appellant was not entitled to claim any prior notice before passing of the cancellation order in question.*

18. *In other words, we are of the view that the principles of natural justice were not violated in this case in the light of the law laid down by this Court in the case of Ex-Army men's Protection Services Private Limited (supra) inasmuch as the appellant was not entitled to claim any prior notice before cancellation of permission.*

19. *In view of the foregoing discussion, the appeal is found to be devoid of any merit. It is accordingly dismissed. ”*

17. This Hon'ble Court in the first para of the interim order dated 31.01.2022 observed as under:

*“Ext.P-1 show-cause notice states that, the security clearance has been denied in the past to the proposals of the company and the security clearance may be considered as denied in the present case also. The learned counsel for the petitioner submits that in the past though Show Cause Notice was issued, the explanation of the petitioner was accepted”*

18. It is submitted that the above submission by the counsel of the petitioner is misleading and contrary to the facts. In this regard it is mentioned that in the year 2012, the Company applied for uplink and downlink of one Non-News TV channel “Media One Life” and one News

TV Channel "Media One Global". The documents were forwarded to MHA by the Ministry 's letter dated 07.01.2014. Subsequently, the company applied for appointment of two Directors namely, Musliyarakath Mehaboob and Rahmathunnissa Abdul Razack vide letter dated 31.03.2015. The proposal was forwarded to MHA on 05.05.2015. In the meantime the company withdrew the application for one news channel "Media One Global".

19. Based on the Ministry of Home Affairs' clearance received on 07.02.2011, which was valid for 10 years, the Ministry granted permission to M/s. Madhyamam Broadcasting Limited for a TV Channel namely, "Media One Life" on 26.08.2015.

20. The MHA by OM dated 27.01.2016 denied the security clearance to both the proposals i.e. permission of additional TV channels namely, "Media One Life" and "Media One Global" and appointment of two Directors namely, Musliyarakath Mehaboob and Rahmathunnissa Abdul Razack of the company. Hence, the Ministry issued a Show Cause Notice dated 12.02.2016 to the company to clarify as to why the permission granted to the company should not be revoked.

21. The company submitted its reply wherein they mentioned that as the Show Cause Notice (SCN) was issued on the basis of denial of security clearance by MHA, however, they are unaware of the grounds of denial of security clearance since the same was never communicated to them nor they were a party in these proceedings. Due to denial of Security Clearance, the permission for uplinking and downlinking of TV

Channel namely, "Media One Life" granted by the Ministry 's letter dated 26.08.2015 was cancelled on 11.09.2019. The denial of the permission for appointment of the two director's was communicated to the company by the Ministry's letter dated 11.08.2017.

22. The above cancellation and denial for permission to appointment of Directors in the company has not been challenged by the company. The submission made before the Hon'ble Court by the companies counsel is incorrect as the Government had not accepted the submission of the Company.

23. The petitioner argued that it had given a request to MHA for security clearance and the same is not replied so far. In this connection it is clarified that the applications for renewal is first examined in the Ministry of Information and Broadcasting and then Ministry sends the proposal to the MHA for security clearance. Thus, the contention of the petitioner that their request to MHA for security clearance is not replied is of no significance. MHA does not accept any direct communication from the companies.

24. The MHA has informed that denial of security clearance in the case on hand are based on intelligence inputs, which are sensitive and secret in nature, therefore, as a matter of policy and in the interest of national security, MHA does not disclose reasons for denial.

25. It is submitted that the interim order passed by this Hon'ble Court if continued is defeating the purpose of the relevant guidelines and objective of obtaining the security clearance of MHA. Such requirements

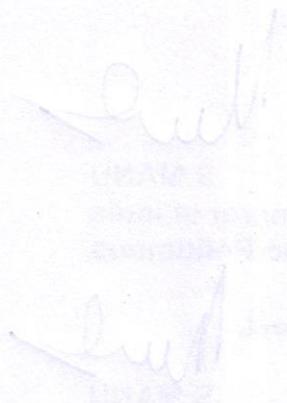
are only reasonable restrictions aimed at greater concerns like national security.

26. Moreover admittedly the period of license of the petitioner has expired. Above all no interim relief can be granted in a Writ Petition which will virtually amount to granting of the final reliefs. Hence in any view of the matter the interim relief granted by order dated 31.01.2022 may not be extended further.

In view of the facts stated above, the writ petitioner is not entitled for any relief sought for in the Writ Petition as against the respondents 1 & 2 and the same may be dismissed.

Dated this the 2<sup>nd</sup> day of February, 2022

**S.MANU**  
**Assistant Solicitor General of India**  
**for the Respondents 1 & 2**



**BEFORE THE HONOURABLE HIGH COURT OF KERALA  
AT ERNAKULAM**

I.A. No. \_\_\_\_\_ of 2022  
in

WP(C) No. 3265 of 2022

Union of India & another : Petitioners/R1 & R2

Vs.

Madhyamam Broadcasting Limited  
and another : Respondents/Petitioner & R3

**VERIFIED PETITION FILED UNDER RULE 84 OF THE RULES OF THE  
HIGH COURT OF KERALA**

This statement is filed on the basis of instructions received from the Under Secretary to Government of India, Ministry of Information and Broadcasting, A-Wing, Shastri Bhavan, New Delhi, as per letter No. 1404132(ii)| 2010-TV(1) Vol. I dated 01.02.2022. This statement is being filed based on preliminary facts only and without prejudice to the right of the respondents 1 & 2 to file a detailed counter affidavit in the matter.

**PRAYER**

It is therefore most respectfully prayed that this Hon'ble Court may be pleased to accept the accompanying Statement as forming part of the records in the above Writ Petition, in the interest of justice.

Dated this the 2<sup>nd</sup> day of February 2022.

**S.MANU**  
**Assistant Solicitor General of India**  
**for the Petitioners**

All the facts stated above are true and correct.

**S.MANU**  
**Assistant Solicitor General of India**  
**for the Petitioners**