

(2019) 02 DEL CK 0107

In the Delhi High Court

Case No : Letter Patent Appeal No. 92, 93 Of 2019, Civil Miscellaneous Nos. 6141, 6142, 6143, 6144, 6145, 6146 Of 2019

9X Media Pvt Ltd & Ors

APPELLANT

Vs

Prasar Bharati

RESPONDENT

Date of Decision : 08-02-2019

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)
Telecom Regulatory Authority of India Act, 1997 — Section 11(4)

Citation : (2019) 02 DEL CK 0107

Hon'ble Judges : Rajendra Menon, CJ;V. Kameswar Rao, J

Bench : Division Bench

Advocate : Amit Sibal, Kunal Tandon, Shashank Shekhar, Ambar Bhushan, Aishvary Vikram, Girdhar Singh, Rajeev Sharma, Rajat Krishna, Saket Chandra, Anmol Nag

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

CM. Nos. 6142/2019 and 6143/2019 (for exemption) in LPA 92/2019 CM. Nos. 6145/2019 and 6146/2019 (for exemption) in LPA 93/2019

Exemption is allowed subject to all just exceptions.

Applications stand disposed of.

LPA 92/2019 & LPA 93/2019

1. These two appeals have been filed by the appellants against a common order dated February 04, 2019 passed in three writ petitions including two writ petitions filed by the appellants herein being W.P.(C) No. 1029/2019 (9X Media Pvt. Ltd and Ors) and W.P.(C) No. 1030/2019 (B4U Broadband (India) Pvt. Ltd. and Anr.) whereby the learned Single Judge has dismissed the writ petitions.

2. The challenge of the appellants in the writ petitions was to the "Policy

Guidelines for Allotment of Slots of DD Free Dish Direct-To-Home Platform to Satellite TV Channels" dated January 15, 2019 of the respondent Prasar Bharati and the respective disconnection notices dated January 18, 2019 sent to the appellants informing that the respondent would conduct the 38th e-auction on February 11, 2019.

3. The appellants herein are broadcasters who own and operate television channels airing music of various genres and in various languages. From the impugned order, it is noted the primary grievance of the appellants was related to the reserve price fixed for the slots for music channels under the Impugned Guidelines.

4. In all, four submissions were made on behalf of the appellants, which are; (i) that the music channels were free to air channels and the appellants were not collecting any subscription amount, thus the appellants could not be classified in the same bucket as General Entertainment Channels (GEC) and other channels; (ii) that music channels were loss making channels and yet the reserve price of the prospective slots to such channels was higher than the reserve price for news channels; (iii) paragraph 2.3 of the impugned guidelines, which provided that differential pricing for genre (language) will be based on principle of higher reserve price for genre (language) with greater commercial potential, which principle was not followed, inasmuch as, the music channels have been placed in bucket "B" along with sports and GEC channels. It was also submitted that the commercial potential of sports channels is greater than music channels and, therefore, classifying the same in one category is arbitrary and unreasonable; (iv) that the commercial potential of music channels was much lower than the commercial potential of news channels and yet, the reserve price for news channels has been fixed at Rs. 7 crores and music channels have been fixed at Rs. 10 crores.

5. The learned Single Judge has, while dismissing the writ petitions, in paras 18 , 19 and 20 held as under:-

"18. In view of the aforesaid, this Court is unable to accept that the Impugned Guidelines or the reserve price fixed thereunder would amount to disabling an entrepreneur from carrying on the business of broadcasting a music channel. It is also relevant to note that the 'DD Free-Dish' is not the only platform for airing or broadcasting a TV Channel and there are multiple platforms, which are now available. Thus, even if it is accepted that the reserve price fixed by respondent is on the higher side, the same would not amount to excluding the petitioners from the business of broadcasting. It cannot, by any stretch, be construed as violative of Article 19(1)(g) of the Constitution of India.

19. Although, Prasar Bharti is a State within the meaning of Article 12 of the Constitution of India, nonetheless, it is fully entitled to carry its affairs on a commercial basis to fix the prices for its facilities. Prasar Bharti's commercial decision to fix the prices is not amenable to judicial review under Article 226 of

the Constitution of India, unless it is established that the same is so arbitrary or so unreasonable that no reasonable person could possibly take such a decision (Wednesbury Test).

20. The scope of judicial review of such policy decision has been explained by the Supreme Court in number of decisions. In *Census Commissioner & Ors v. R. Krishnamurthy*: (2015) 2 SCC 796, the Supreme Court clearly held that it would not be within the domain of the Courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. A similar view was also expressed by the Supreme Court in *Villianur Iyarkkai Padukappu Maiyam v. Union of India* : (2009) 7 SCC 561."

6. The reliance placed on behalf of the appellants on the judgment of the Supreme Court in the case of *Cellular Operators Association of India and Ors. v. Telecom Regulatory Authority of India and Ors.* (2016) 7 SCC 703 has been dealt with by the learned Single Judge in para 22, which reads as under:-

"22. The contention that the Impugned Guideline fall foul of the Article 14 of the Constitution of India, inasmuch as, the petitioners have not been consulted is also unpersuasive. The reliance placed by the petitioners on the decision of the Supreme Court in *Cellular Operators* (supra) is misplaced. In the said case, the Supreme Court was examining the scope of the expression "transparency". The Court examined the Regulations framed by the Telecom Regulatory Authority of India (TRAI) in exercise of powers under Section 11(4) of the Telecom Regulatory Authority of India Act, 1997. The said provision required the TRAI to ensure transparency whilst exercising its powers and discharging its functions. TRAI had held consultations with all the stakeholders and also allowed them to make submissions before it. The Court found that although the consultations have been held, there was no discussion or reasoning dealing with the arguments put forth by service providers with regard to the reasons for call drops. Since the conclusion was bereft of any reasoning in this regard, the Supreme Court set aside the same. However, in the present case, the Impugned Guidelines have been framed in exercise of administrative powers, and not under any Statute, which requires prior consultation for such an exercise."

7. Mr. Amit Sibal, learned Senior Counsel for the appellants has made similar submissions as were made for the appellants before the learned Single Judge. He had articulated his submission to mean that the appellants are not challenging the fixation of the reserve price in terms of the guidelines but the classification made by the respondents by grouping the appellants, which are the music channels in Bucket "B" along with sports channel. His submission is that the classification has to be made on the principle of higher reserve price with greater commercial potential and the fact that the music channels have been placed with sport channels, whose potential is greater than the music channels, therefore, classifying the same in one category is arbitrary and unreasonable.

8. We are not in agreement with the submission made by Mr. Amit Sibal. We

agree with the reasons given by the learned Single Judge in the paras, which have already been reproduced above. To reiterate, classification and the reserve price is a policy decision, which has a commercial basis and the Court does not have the expertise to go into the said aspect in exercise of its powers under Article 226 of the Constitution of India.

9. Insofar as the reliance placed by Mr. Amit Sibal in Centre for Public Interest Litigation and Others v. Union of India and Others and connected writ petition (2012) 3 SCC 1 on the issue that one can question a policy, is not disputed. But keeping in view the facts of this case, the learned Single Judge was right in dismissing the writ petitions. The appeals are without any merit and the same are dismissed. No costs.

CM. No. 6141/2019 (for stay) in LPA 92/2019

CM. No. 6144/2019 (for stay) in LPA 93/2019

Dismissed as infructuous.