

(2001) 08 MAD CK 0107
In the Madras High Court

Mrs. K. Chandra and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 02-08-2001

Acts Referred:

Citation : (2001) 3 MLJ 504

Hon'ble Judges : N.K. Jain, C.J

Bench : Division Bench

Judgement

N.K. Jain, C.J.—These two writ petitions along with writ miscellaneous petitions came up for hearing before us.

2. This Court on 6.7.2001 in W.M.P. Nos. 17235 and 17236 of 2001 in W.P.No. 11819 of 2001 which was placed before us, as per the order

of the learned single Judge, passed the following order:

Learned single Judge directed to maintain the status quo as on 27.6.2001 and referred the matter to the Chief Justice to place the matter before the

Division Bench in view of pending PIL and accordingly, it is before us. Learned Senior Counsel Mr. C.A. Sundaram submits that granting

permission to allow the fixed operators to provide mobile service is illegal and wrongly relied on the recommendations, which is against the policy

itself. So also, the allotment of frequency spectrum to them free of charge as separate allocation of frequency is required after following due

procedure including following of a details tendering process and such allotment will deprive the exchequer in crores. The decision of NTP 99 have

been circumvented by the Guidelines dated 25.1.2001. Counsel submits that he has filed statutory appeal to decide the dispute before coming to

this Court. Since it was objected earlier that it is not maintainable, the petitioner

has filed the writ petition to quash some of the relevant clauses and not to permit or to give licence to the fixed LOI operators and other non-mobile licensees. To this, Additional Solicitor General submits that now the Government have foregone the matter. So, till the matter is disposed of, this Court cannot pass any order. Admittedly, the matter is posed on 17.7.2001 before Tribunal. He also submits that it is under process and no licence has been issued. As agreed by the petitioner and the Additional Solicitor General, the pendency of this writ petition will not preclude the Tribunal to consider the maintainability issue alone without going into the merits. Since no licence has been issued as stated by the Additional Solicitor General, status quo to be maintained to the extent not to implement the letters of intent till further orders.. Post on 24.7.2001.

3. The Telecom Disputes Settlement and Appellate Tribunal, New Delhi, considered the matter on 17.7.2001 granted one week time to Union of India to file its written arguments on jurisdiction and to complete the pleadings. The matter is posted to 4th September, 2001.

4. Earlier W.P.No. 10718 of 2001 (PIL), was listed on 8.6.2001, wherein after hearing the counsel, the following order was passed.

The learned Senior Counsel for the petitioner submits that the respondents have not considered and followed the objectives of the New Telecom

Policy 1999 (NTP-99) in its letter and spirit and by not charging licence fee in the form of a revenue share for the proportionate frequency

spectrum utilisation, they have deprived the country's exchequer to the tune of Rs. 11,000 crores. Further, the services, which were made

available to the common masses at Rs. 1.20 per 3 minutes local call is affected and monthly fixed deposit at Rs. 250.00 has been increased to Rs.

615. It is further submitted that allotment to some persons on the basis of first come first served in such public contracts, without any public

auction, is bad. Thus, giving benefit of free Frequency Spectrum to some chosen operators is against the policy. The Guidelines dated 25.1.2001

are arbitrary, with no transparency.

Admit, Issue Notice.

5. In W.M.P.Nos. 15509 and 15510 of 2001 in W.R.No. 10718 of 2001, the following order was passed:

Heard. The respondents are directed to implement the New Telecom Policy

(NTP-99) in its letter and spirit. Further, status quo as on today, is to be maintained for four weeks. Notice returnable by three weeks.

6. When the matter came up before the Tribunal, the Central Government made objections as to maintainability, on jurisdiction. Once the case is filed here, it raised the jurisdiction issue here. However, now the Government has filed counter and the matter is to be heard before the Tribunal on

4.9.2001.

7. Mr. C.A. Sundran, learned senior counsel (W.P.No. 11819 of 2001) submits that though the Government filed counter affidavit and for the purpose of this petition, the Union of India, does not question the jurisdiction of the Tribunal to entertain and try the present petition, and they sought time to suitably amend the counter by deleting the averment of question of jurisdiction, and the case was adjourned to 4th September, 2001

for disposal on merits.

8. We could have passed the order remitting the matter to decide the issue on merits, even propounding the date, as agreed, though it is within the competence of the Tribunal to prepone the date, but since it was argued at length, we feel it necessary to note the averments.

9. Mr. Sundram, learned senior counsel, reiterating the averments made in the affidavit, submitted that who requires Wireless in Local Loop

(WLL), in addition to normal entry fee, must procure a separate licence for the services reserved for the said other operator in order to ensure

level playing field and the Guidelines are ultra vires the policy and it has led to ambiguities and uncertainties. He submits that when the policy

expressly prohibits fixed operators from providing mobile service, the concession given in the garb of liberalising the policy without collecting entry

fee and without adopting tendering process, is clear loss to exchequer and the matter can be considered by this Court.

10. Mr. M. Ravindran, learned senior Counsel (W.P.No. 10718 of 2001 -PIL) submitted that allotment of frequency spectrum without any

additional entry fee, vide guideline dated 25.1.2001, is nothing but circumventing the main policy, and thus the matter can be interfered by this

Court, and this Court can issue direction to have invitations as per NTP-99 policy, and fixed service providers cannot provide mobile service

without obtaining licence fee, and all persons should be given an opportunity in a

public auction, and allotment of the same to persons on the first come first served basis is illegal. Any such public contracts without any public auction is not only bad but also would deprive other companies or persons and has been deprecated by Supreme Court. In this way, they are giving the benefit to some chosen operators against the policy, arbitrarily with no transparency. He submits that he cannot agitate the issue before the Tribunal, and can challenge before this Court and this Court can give suitable directions. He relied on the judgment of the Supreme Court in Navinchandra N. Majithia Vs. State of Maharashtra and Others,

11. Mr. Rao, learned Counsel reiterated the arguments of Mr. Ravindran. He also contended that everybody is talking about the consumer interest in the garb of policy, but by not charging extra fees and other fees and liberalising, they are losing the exchequer.

12. Mr. V.T. Gopalan, learned Additional Solicitor General, submits that so far as the argument of Mr. Sundaram is concerned, the case is already

pending to decide on merit. He also submitted that the NTP concerned is not able to meet, and the income is not sufficient and so revenue sharing

was started so as to give benefit to solve the problems in rural areas, and rent has been charged much less. Learned Additional Solicitor General

submits that the circulars/ guidelines are not over riding the NTP-99, rather it is in public interest and on the basis of the recommendations of the

TRAI the High power Committee, consisting of cabinet ministers and other experts in the filed approved the recommendations. Therefore, it

cannot be interfered and they cannot challenge the same. It is submitted that any interference at this stage would not further any public interest, but

would put it in peril. It is also stated that while the matter was pending before the Tribunal, the Government constituted a high power committee

and the Tribunal will take into consideration the views of the committee placed before it and observed that the result will be subject to the final

order of the Tribunal and therefore, the same cannot be challenged in the High Court more particularly when the case is to be decided on merit on

4.9.2001. Learned Additional Solicitor General relied on the decisions in Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others,

and Ranji Thomas v. Union of India, 2000 (2) SCC 81 .

13. Mr. K.M. Vijayan, learned senior Counsel, (W.M.P.Nos. 17328 to 17330 of

2001 in W.P.No. 10718 of 2001) submitted that the main

prayer is for writ of mandamus to implement the NTP but by status quo, it curtailed the implementation of the policy in respect of issuing licence for

basic telephone services and letter of intent also was issued and he prayed that Federation of Rural Youth Upliftment may be impleaded and the

status quo order may be vacated.

14. The matter was posted for being mentioned on 31.7.2001 and as prayed, it was posted on 1.8.2001. The parties have agreed to move the

application before the Tribunal for propounding the date.

15. So far as the legal position, it is well settled that it is within the domain of the Government and Government is always competent and free to

make policies and also change it any time, as per the needs, and prevailing circumstances. It is also well settled that any circular/ notification can

supplement the Policy/ Act/ Rules but it cannot over ride the Policy/ Act/ Rules. It is also true that policy decisions cannot be gone into or

interfered with by this Court.

16. It is also settled that PIL cannot be used for espousing the personal cause or cause of some one else in whom the petitioner is obviously

interested or for publicity. It is also settled that this Court should not interfere with the policy decision.

17. The jurisdiction rests with TRAI, which is the competent authority to recommend and the appeal remedy on the decision of the Tribunal is only

to Supreme Court is not disputed. This Court is also aware that commercial transactions could not be entertained and also not interfered as also on

contractual matters unless tested on the touchstone of Article 14. But at the same time, this Court in an appropriate case can issue a direction in

P.I.L., if it is found that there is a gross violation of fundamental rights or the issue involved touches the conscience of the Court and what is to be

seen is whether the TRAI can go into the question of framing the policy and whether the policy decision can be circumvented by the guidelines

issued based on the recommendations of the so called high power committee and its effect on consumer and public exchequer.

18. On an overall consideration, we feel that it is not necessary to allow the implead petition more particularly when the Union of India is

represented and heard. However, we have heard Mr. K.M. Vijayan, learned senior

counsel.

19. This Court has jurisdiction under Article 226 of the Constitution through out the territory, which is also not disputed by learned Additional

Solicitor General. But it has to be exercised considering the facts and the circumstances of the case. In the instant case, as discussed, sufficient

materials are placed to go into the issue and what will be the effect on the exchequer if separate licence fees as required under the main policy is

levied and collected and the benefit to the consumers, as stated. The facts of not giving public auction and the consequence of the same along with

the recommendation have also to be seen. These are all questions of facts to be decided on interpretation. Since the matter is pending before the

Tribunal, we refrain from going into the questions and merits of the case at this stage. The Tribunal will consider all the submissions of the

respective parties before it. We also give liberty to the Tribunal to consider any application from the parties who are here, if necessary, without

making a precedent, though we are aware that the jurisdiction of the Tribunal is to adjudicate the disputes inter se between the service provider or

group of consumers and however, it is within the discretion of the Tribunal to consider or to allow as intervenor. Learned Additional Solicitor

General and Mr. Sundaram, learned senior Counsel (W.P.No. 11819 of 2001) have agreed to move the Tribunal for preparing the date even

before 8.8.2001). In the facts and circumstances of the case, it is expected the Tribunal will decide the case at the earliest. However, the status

quo order will be up to 8.8.2001 and thereafter, parties in the pending appeal are free to get appropriate order from the Tribunal. The writ

petitions are disposed of accordingly. Consequently, W.M.Ps.Nos. 15509, 15510 and 17328 to 17330 of 2001 in W.P.No. 10718 of 2001 and

W.M.P.No. 17235 of 2001 in W.P.No. 11819 of 2001 are dismissed.