

(2015) 10 BOM CK 0170

In the Bombay High Court

Case No : Writ Petition Nos. 2459, 58 of 2015, Notice of Motion (L) No. 522 of 2015 in Writ Petition No. 58 of 2015 and Writ Petition (L) No. 1276 of 2015

SCOD 18 Networking Pvt. Ltd. and Others

APPELLANT

Vs

Ministry of Information & Broadcasting and Others

RESPONDENT

Date of Decision : 30-10-2015

Acts Referred:

Aircraft Act, 1934 — Section 5

Cable Television Networks (Regulation) Act, 1995 — Section 10, 10A, 2, 2(c), 2(h)

Constitution of India, 1950 — Article 19, 19(1), 19(1)(a), 19(1)(d), 19(2)

Penal Code, 1860 (IPC) — Section 124A

Citation : (2015) 10 BOM CK 0170

Hon'ble Judges : S.C. Dharmadhikari and B.P. Colabawalla, JJ.

Bench : Division Bench

Advocate : Shyam Mehta, Senior Advocate, Mayur Khandeparkar, Kirtida Cahndarana and Smiti Tewari i/b Mehernosh J. Humranwalla, for the Appellant; Vijay Kantharia and Dhanesh R. Shah, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Dharmadhikari, J.—Rule. Respondents waive service. By consent, Rule made returnable forthwith.

2. By these petitions under Article 226 of the Constitution of India, the petitioners are challenging orders revoking their registration as Multi System Operators. These registrations have been granted under the Cable Television Network Rules, 1944 (for short "the Rules"). The petitioners are engaged in the business of securing signals from television channels distributed to them through cable operators to the end users. Since the two petitioners carry on identical business, but the facts leading to the revocation of registration of their case are slightly different, we would set out the facts in Writ Petition No. 58 of 2015 firstly.

3. The petitioner is a private limited company incorporated under the Indian

Companies Act, 1956, and operating from the address mentioned in the cause title. It is engaged, inter-alia, in the business of cable distribution service as Multi System Operator. It is claimed that it has invested more than Rs. 1400 crores to create a Pan-India infrastructure to deliver state-of-the-art Digital Cable TV services to its subscribers, of which more than Rs. 1,000 crores was by way of Foreign Direct Investment.

4. It is then contended that the channels under the cable television network were distributed under a non-conditional access system or a non-addressable system wherein pay channels were sent in an unencrypted form making the end subscribers optionless to choose a paid channel of its choice and to pay for that channel alone. In order to provide freedom of choice to the end subscriber, the conditional access system or non addressable system was brought in by the Government of India where under normally pay channels are transmitted in an encrypted form and the subscriber is given an authorization depending upon his request to view one or more of such encrypted pay channels of his choice, making him liable for payment in respect of only those pay channels which he or she chooses to view in such a system. This gave rise to the Digital era. Under the erstwhile rule 11(1) of the Rules, a Multi System Operator (for short "MSO") providing cable television services with addressable systems in any notified area is required to take a valid licence from the respondent No. 1 under rule 11(3). The erstwhile rule 11(3) is then referred in the petition and the specific averment in paragraph 11 is that after considering the security clearance given by respondent No. 2 and other information, this Ministry used to grant permission to the MSO for providing cable television services with addressable systems in any notified area.

5. The erstwhile rule 11(7) is reproduced in the petition in paragraph 12 page 7 and it reads as under:

"(7) In the case of a violation by a multi-system operator or one or more of the terms and conditions of the permission granted under sub-rule (3), the Central Government may suspend or revoke such permission for such period and for such notified areas as deems fit:

Provided that no such order of suspension or revocation shall be made without a reasonable opportunity to the multi-system operator to explain its position."

6. It is then alleged that the Government decided to introduce Digital Addressable System (DAS) in place of Conditional Access System (CAS). That is how The Cable Television Networks (Regulation) Act, 1995, underwent sweeping changes. Vide Notification dated 28th April, 2012, the Cable Television Networks Rules, 1994 were also amended and it was made mandatory for an MSO to seek registration under rule 11-C of the rules, as amended, from respondent No. 1 for operation of the cable television network services with digital addressable system in a notified area.

7. It is then urged that after this new development and the changes brought in,

the petitioner made an application in Form-6 dated 11th May, 2012, which was presented to the third respondent for operating as MSO in DAS notified areas of National Capital Territory of Delhi, Municipal Council of Greater Mumbai and Kolkata Metropolitan area. Annexure-F is a copy of this application.

8. The third respondent on being satisfied that the petitioner has security clearance from respondent No. 2 and has complied with other conditions, issued certificate of permanent registration dated 12th June, 2012. Annexure-G is a copy of this certificate.

9. By an application dated 28th January, 2013, the petitioner applied to respondent No. 3 for registration under rule 11-C of the rules, as amended, for operating as MSO in the DAS in all 38 Phase-II cities notified in the Notification bearing Standing Order No. 2534(E) dated 11th November, 2011, issued by the respondent No. 1. Annexure-H is a copy of this application.

10. In respect of the application dated 28th January, 2013, pending the security clearance to be received from respondent No. 2, the third respondent issued certificate of provisional registration dated 28th March, 2013. Thus, the claim of the petitioner is that it had a permanent registration certificate for operating as MSO in the DAS notified cities of National Capital Territory of Delhi, Municipal Council of Greater Mumbai and Kolkata Metropolitan area. It was thus expecting to receive security clearance in respect of all notified 38 Phase-II cities. The petitioners are, therefore, contending that by the two impugned communications, both dated 3rd September, 2014, they were informed that their permanent registration certificate as also provisional registration certificate stood revoked/cancelled on the ground that the third respondent has denied security clearance for registration as MSO.

11. In this petition, we must note some further developments. A Notice of Motion has been filed in the petition and we proceed on the footing that it is to bring on record subsequent developments. The prayer in the Notice of Motion is that this Court should direct the respondents to produce the relevant files pertaining to the petitioners' case from the Ministry of Home Affairs and Ministry of Information & Broadcasting pertaining to the impugned communication whereby MSO licence came to be cancelled. There was an interim order sought in terms of prayer (b).

12. In the affidavit-in-support of one Yogesh Shah it has been stated that there are two companies one is Digi Navi Mumbai Network Private Limited referred to as Digi Navi Mumbai and Digi Cablecom Services Pvt. Ltd. known as Digi Cablecom. There is a third company Digi Space Pvt. Ltd. These are subsidiaries of Digi Cable Network. It is stated that Digi Cablecom are carrying on business as an MSO for more than seven years. The petitioner-applicant and Digi Cablecom have made applications in the requisite forms and on being satisfied with regard to compliance of the eligibility criteria and the security clearance that permanent registration for DAS-I and provisional licence for DAS-II came to be granted.

Similarly, M/s. Digi Space has also been granted MSO licence for DAS-I areas on 23rd May, 2014. The details of these registrations obtained till date and pending applications are set out in paragraph 8 and the same read as under :

13. Similarly Digi Navi Mumbai has also applied for grant of permanent MSO for DAS notified areas of Navi Mumbai in the State of Maharashtra vide application dated 7th August, 2014. Then the cancellation of these registrations as referred above have been once again pointed out and thereafter, interim order dated 17th September, 2014, and a copy thereof is annexed.

14. It is stated that the Writ Petition was placed on several occasions and the ad-interim order has been continued. In the meanwhile, the Deputy Secretary, Ministry of Information and Broadcasting by his communication dated 10th April, 2015, rejected the application for permanent MSO registration filed by Digi Navi Mumbai in view of the alleged denial of the security clearance by the Ministry of Home Affairs. The third petition, namely, Writ Petition (Lodg.) No. 1276 of 2015, challenges this rejection. Then, the order dated 29th April, 2015 is referred to insofar as that petition is concerned.

15. The affidavit-in-support states that with vested interests seeking to completely ruin the petitioner-applicant and its business, falsely implicated the petitioner-applicant and that is how they ensured the refusal of security clearance and consequent cancellation of the MSO licences. The petitioner has, in paragraph 18 of this affidavit-in-support stated that it is not involved in any anti-national activities. No action has been taken against it for alleged anti-national activities. It believes that the Intelligence Bureau (for short "IB") has given its clearance. None of the investigating agencies found any adverse material to deny security clearance for involvement of the petitioner in any anti-national activities. It is in these circumstances it is pointed out that the IB, Ministry of Home Affairs has submitted the report completely in favour of the petitioner and there is no impediment in granting security clearance. The report is stated to be pending with the Ministry of Home Affairs and is not forwarded to the Ministry of Information & Broadcasting and is kept on hold without any cogent reasons. It is such averments and to be found in paragraphs 21 and 22 of this affidavit that it is ultimately pressed that the respondent be directed to produce the relevant files from the Ministry of Home Affairs and Information of Information & Broadcasting, Government of India for perusal of this Court.

16. Then, the petitioner filed an additional affidavit, the contents of which have been already reproduced by us in a detailed order passed after hearing both sides on 21st September, 2015.

17. It is in the light of these averments that an affidavit-in-reply has been filed by Mr. Anil Kumar, Under Secretary of the Ministry of Information & Broadcasting, Government of India. In the affidavit-in-reply he states that it is true that as per Cable Television Networks Rules, 1994 of the Cable Television Networks (Regulation) Act, 1995, the MSO application is considered in terms of rule 11-C.

That rule enjoins mandatory security clearance from the Central Government i.e. Ministry of Home Affairs. However, keeping in view that a large number of MSO applications were pending for security clearance from the Ministry of Home Affairs and the target date 31st December, 2015 for Phase-III, it was decided by the Ministry to grant provisional registration to MSO applicants, subject to security clearance from the Ministry of Home Affairs as per the provisions of in terms of rule 11-E of the 1994 Rules. Accordingly, this Ministry had issued notice dated 11th June, 2015, on the website of this Ministry. That the notice stated that some applications and of the kind mentioned in paragraph 3(e) of the affidavit-in-reply to this Notice of Motion should not be considered for provisional registration under rule 11-E of the Rules.

18. Subsequently, the Ministry of Home Affairs issued a communication dated 16th July, 2015, informing the Ministry of Information & Broadcasting that they had taken a view that operations of MSOs need not be subjected to security clearance and that policy of dispensing with security clearance of MSO operators shall apply prospectively. Therefore, this affidavit asserts that since the Ministry of Home Affairs has denied security clearance to M/s. Digi Cable Network Private Limited prior to this decision and contained in the letters dated 11th June, 2015 and 16th July, 2015, these decisions are inapplicable to their case. Meaning thereby they have denied security clearance already and the respondents stand by that decision.

19. Thereafter, it is thought of informing this Court that the Ministry of Information & Broadcasting is considering necessary amendments to the relevant rule 11-C of the Cable Television Networks (CTN) Rules, 1994, keeping the Ministry of Home Affairs Rules in consideration. Till such time as the amendments are made, only provisional MSO registrations are issued and after obtaining an affidavit. Further, no applications of those MSOs, who have been denied registration or whose registration has been cancelled due to denial of security clearance of the Ministry of Home Affairs, are being entertained for such provisional registration. Also, Ministry of Information & Broadcasting has sought some further clarification in this regard from the Ministry of Home Affairs on 9th September, 2015, and the issue is under consideration of that Ministry. The amendments in cable rules would be made after getting clarifications from the Ministry of Home Affairs. This is the affidavit dated 26th October, 2015. After this affidavit was placed, we clarified to both the senior counsel Mr. J.J. Bhatt and Mr. Shyam Mehta appearing in the respective petitions that so long as the parliamentary statute has not been amended and the correspondence or communications cannot result in displacing the law, this Court will proceed on the footing that the requirement of security clearance is intact. If that is intact and still provided for in law, then, the matter would be governed by the legal provisions operating at the time of hearing of these petitions. We would, therefore, not take any notice of such communications from any Ministry or any statement made by the Minister of State for Home Affairs in answer to a question in the Parliament. Both senior counsel agreed to this position and that is how

they have addressed us on the legal questions.

20. We must now notice the facts in Writ Petition No. 2459 of 2015 which is filed by SCOD 18 Networking Pvt. Ltd. In that petition similar facts with regard to application for permanent registration are set out. The difference is that by virtue of the application dated 6th June, 2012, made by the petitioner (for short "SCOD") the first respondent, inter-alia, vide certificate of registration dated 29th June, 2012, granted permission to the petitioner under rule 11-C of the Cable Television Network Rules to operate as an MSO in the digital addressable system (DAS) for a period of 10 years on the terms and conditions more particularly set out in the said permission dated 29th June, 2012. A copy of this certificate is annexed as Annexure-C to the petition and it reads as under :

"F. No. 9/52/2012-BP&L Government of India Ministry of Information and Broadcasting "A" Wing, Shastri Bhavan, New Delhi - 110015. ***** New Delhi, dated the 29.06.2012

To,

M/s. SCOD 18 Networking Pvt. Ltd. Plot No. 97, Marol Co-operative Industrial Estate, Makwana, Andheri (E) Mumbai-400059.

SUBJECT: Grant of Multi System Operator (MSO) permission to M/s. SCOD 18 Networking Pvt. Ltd. under Rule 11C of the Cable Television Networks Rules, 1994 for operating in the areas notified under section 4-A of the Cable Television Networks (Regulation) Act, 1995 - regarding.

Sir,

I am directed to refer to your application dated 6.6.2012 on the above cited subject and to say that this Ministry has examined your application and decided to grant permission to you under Rule 11C of the Cable Television Networks Rules, 1994, for operating as a Multi System Operator (MSO) in the Digital Addressable System (DAS) in the cities/areas/towns of the State of Maharashtra of the notification No. S.O. 25349E) dated 11.11.11 Government of India in the Ministry of Information and Broadcasting. The permission is granted for a period of ten years from the date of issue subject to adherence and compliance of the following terms and conditions :

(i) MSO shall comply with all the provisions of the Cable Television Networks (Regulation) Act, 1995 and the Rules made thereunder, as amended.

(ii) MSO shall abide by the rules/regulations/orders/directions/guidelines etc. issued by the regulatory authority or by the Ministry from time to time.

(iii) MSO shall have the capacity to carry minimum number of Television Channels specified by the Authority.

(iv) MSO shall not carry programming service provided on the channel generated at the level of such Multi-System Operator which is in violation of the Programme

Code specified in Rule 6 and the Advertising Code specified I Rule 7 of the Cable Television Networks Rules, 1994.

(v) The permission granted above is not transferable.

(vi) The MSO shall comply with Foreign Investment Guidelines and conditions thereon for Cable TV Sector issued by the Central Government from time to time.

2. The MSO shall display the above terms and conditions in his office premises as well as in the office premises of the affiliated cable operators.

3. The MSO shall ensure its continued eligibility as applicable throughout the period of the permission and adhere to all the terms and conditions failing which this permission is liable to be terminated/cancelled forthwith without giving any notice.

Yours faithfully Sd/- (K.S. Rejimon) Deputy Secretary (BP&L) 2338 1246"

21. However, on 26th June, 2015, a letter was issued and addressed to the petitioner which was received on 6th July, 2015, copy of which is at Annexure-D, cancelling this registration and the contents thereof read as under :

"No.9/52/2012- BP&L Government of India Ministry of Information and Broadcasting Room No. 116, "A": Wing, Shastri Bhawan, New Delhi ***** Dated this 26th June, 2015

To

M/s. SCOD 18 Networking Pvt. Ltd. Plot No. 97, 1st Floor, Marol Co-operative Industrial Estate Makwana, Andheri (E), Mumbai - 400 059 Email: customercare.mum@outelecom.com

Subject: Cancellation of Registration to operate as Multi System Operator (MSO) to provide cable television network services with digital addressable system in the cities/areas/towns of the State of Maharashtra

Sir,

I am directed to refer to this Ministry's letter No. 9/52/2012-BP&L dated 29.06.2012 vide which MSO permission was granted to you for a period of ten years for operating in the DAS in the cities/areas/towns of the State of Maharashtra.

2. Vide para 3 of the above referred letter, it has been made clear that the MSO shall ensure its continued eligibility as applicable throughout the period of the permission and adhere to all the terms and conditions failing which this permission is liable to be terminated/cancelled forthwith without giving any notice.

3. Ministry of Home Affairs have now denied security clearance to M/s. SCOD 18 Networking Pvt. Ltd. for registration as Multi System Operator (MSO) under the

Cable Television Networks (Amendment) Rules, 2012.

4. In view of denial of security clearance by the Ministry of Home Affairs, certificate of registration cannot be granted to M/s. SCOD 18 Networking Pvt. Ltd. in terms of provisions contained in rule 11-C and accordingly the MSO permission granted to M/s. SCOD 18 Networking Pvt. Ltd. vide this Ministry's letter No. 9/52/2012-BP&L dated 29.06.2012 stands cancelled with immediate effect.

5. Protection of the interest of consumers is one of the mandate of the Ministry. Accordingly, considering the large subscriber base of M/s. SCOD 18 Networking Pvt. Ltd. MSO is hereby given a period of 15 days' time from the date of receipt of this cancellation order to wind up their operations and switch off signals with the condition that during this period they would :

i. Run a continuous scroll on the screen informing LCOs/consumers that their services would not be available after 15 days (specifying date) so that LCO/s/subscribers can shift to alternate operator(s).

ii. ACD of the cross message may be made available to this Ministry immediately.

6. M/s. SCOD 18 Networking Pvt. Ltd. is informed accordingly in terms of rule 11 C(2) of Cable Television Networks Rules, 1994.

7. This issue with the approval of the competent authority.

Yours faithfully (Anil Kumar) Under Secretary to Govt. of India

Copy to :

1. District Magistrate, Mumbai, for information in terms of Act 2 of Cable Television Networks (Regulation) Act, 1995. It is required that necessary instructions may please be issued to ensure that M/s. SCOD 18 Networking Pvt. Ltd. stops their MSO operation with immediate effect.

2. Nodal Officer, Mumbai.

3. Ministry of Home Affairs (US-IS-II), North Block, w.r.t. their O.M. No. 11/21021/174/2013-IS II dated 05/05/2015.

Copy also to :

i) TRAI;

ii) NBA and IBF for information.

iii) PMU (DAS) to inform the other registered MSOs in Mumbai.

iv) Joint Secretary (IS-II) - Ministry of Home Affairs, North Block, New Delhi."

22. It is this communication which is impugned in this petition on several grounds.

23. Mr. J.J. Bhatt, learned senior counsel appearing for the petitioners - Digi Cable submits that the orders impugned in its petition are contrary to The Cable Television Networks (Regulation) Act, 1995 and The Cable Television Networks Rules, 1994. Mr. Bhatt would submit that the scheme of the Act and the Rules is such that the parties like the petitioners can apply for registration as MSO. Transmission of programmes through digital addressable systems etc. is provided for in section 4-A of the Act. After referring to the provisions, Mr. Bhatt would submit that the procedure insofar as registration as cable operator is concerned is made applicable even to cases of Multi System Operator and registration in that behalf. Mr. Bhatt would invite our attention to the Act and to submit that it is to regulate the operation of cable TV network in the country and the matters connected therewith or incidental thereto. Mr. Bhatt would submit as to how this cable TV has evolved in the country and over the period of 20 years. He would submit that for the viewers and consumers they ought to be guided choice and freedom. The petitioners, according to Mr. Bhatt, were not broadcasting their programmes, but are only transmitting programmes of the broadcasters. Thus, there is a readymade or pre-prepared content received after being produced by the broadcasters and this programme is viewed through the mechanism provided by the petitioners and via the cable TV network. Mr. Bhatt would submit that the terms "authorised officer", "Broadcaster", "cable operator", "cable service", "cable television network" as defined in section 2 are relevant for the purpose. He would submit that Chapter- II of this Act entitled "Regulation of Cable Television Network" contains several measures so that no person operates a cable television network unless he is registered as a cable operator under the Act. Section 4 provides for registration as a cable operator. Inviting our attention to the subsections of section 4, Mr. Bhatt would submit that the registering authority has to satisfy itself that the applicant has furnished all the required information prescribed under sub-section (4) of section 4 and on being so satisfied, register the applicant as a cable operator and grant him a certificate of registration and renew its registration, as the case may be, subject to such terms and conditions as maybe prescribed under sub-section (6). Mr. Bhatt would submit that in the present case, the argument by the respondents that the petitioners have an alternate and equally efficacious remedy is without any substance. The petitioners' permanent registration and provisional registration have been cancelled not for the reasons set out in sub-section (5) of section 4. Mr. Bhatt would submit that by sub-section (6) of section 4, without prejudice to the compliance of eligibility criteria for registration of cable operators, it is open for the Central Government to prescribe such terms and conditions of registration, including additional criteria or conditions to be fulfilled by the cable operator. Mr. Bhatt would submit that the matters referred to in sub-section (6) are akin to the restrictions that are to be found in the Constitution of India on the freedom guaranteed by Article 19-1(a). Thus, if cable television network registration and to be obtained is covered by the guarantee enshrined by Article 19(1)(a) of the Constitution of India, then, the restrictions to which this freedom and right is subjected to would, ipso facto, apply. However, the argument of Mr.

Bhatt is by sub-section (7) of section 4 a power is conferred in the Central Government, which is discretionary, to suspend or reject the registration granted under sub-section (5) if the cable operator violates one or more of the terms and conditions of such registration. Then, in terms of the proviso to this sub-section, such order shall be made after giving reasonable opportunity of being heard to the cable operator. Mr. Bhatt specifically urged that it is not the case of the petitioners and in the instant matter that the source of the information, based on which a security clearance earlier granted, has now been withdrawn, should be disclosed to the petitioner. However, merely because such information cannot be disclosed does not mean that the requirement in the proviso can be dispensed with. Mr. Bhatt would submit that the requirement of giving reasonable opportunity of being heard to the cable operator has to be complied with even in such cases. Mr. Bhatt would submit that if the law provides that the cable operators must have a security clearance, then, that it not a requirement which has to be fulfilled by the cable operator. Mr. Bhatt would submit that there is a difficulty in the way of an MSO simply because he applies for registration to the Ministry of Information & Broadcasting of the Government of India. It is that Ministry which refers the application to the Ministry of Home Affairs and for purposes of security clearance. It is the distinct Ministry, namely, Ministry of Home Affairs, which then through such information and materials as are in its possession, forwards its opinion either granting a security clearance or denying it. Therefore, parties like the MSO have no control over these clearances or these procedures and formalities. In the circumstances, if the power vested in the Central Government is sought to be exercised in terms of this proviso, then, the requirement of giving reasonable opportunity of being heard should not be permitted to be dispensed with. Mr. Bhatt has submitted that if the relevant provisions are section 2(h) , section 4 , section 20 read with the 1994 Rules, then, what rules 2(c), 2(e)(ii) and 11-A to 11-E deal with and provide for is a procedure to enable the applicant to obtain registration as an MSO. If section 20(2) is referred to and which gives a power to the Central Government to regulate or prohibit the transmission or re-transmission of any channel or programme under the conditions mentioned therein, then, the reasonable opportunity of being heard is a mandate and which must be upheld.

24. Mr. Bhatt would refer to sub-section (6) of section 4 and section 20(2) to submit that the wordings thereof are identical to Article 19(2) of the Constitution of India. That Article also enables the curtailment of freedom of speech and expression. However, right to broadcast is a fundamental right as held by the Hon"ble Supreme Court in the case of Secretary, Ministry of Information and Broadcasting, Govt. of India and others Vs. Cricket Association of Bengal and others, .

25. Mr. Bhatt would submit that in the present case, the only reason for cancellation of the registration is that the Ministry of Home Affairs has now denied security clearance to the petitioners. No particulars or grounds or reasons for such denial have been mentioned. Therefore, the minimal that the petitioners

were entitled to was a notice containing the grounds on which security clearance was being denied, (including the disclosure of the material on the basis of such prima facie ground was being formulated) so as to enable the petitioner to make an effective representation and to avail of an opportunity of hearing. In the absence of such a notice and hearing, the impugned orders are liable to be struck down.

26. Mr. Bhatt was at pains to submit that in the affidavit-in-reply to the main petition, there is no statement that the activity of the petitioners by itself is a threat to the security of the State. There is no disclosure of the material either. There is also no averment that the disclosures was not being made for reasons of security or that the materials are sensitive and its disclosure would result in adverse impact on the security. In such circumstances, Mr. Bhatt would rely upon the judgment of the Hon''ble Supreme Court in the case of Kanwar Natwar Singh Vs. Director of Enforcement and Another, . Mr. Bhatt submits that merely relying upon the fact that the Ministry of Home Affairs has denied security clearance is not complying with the principles of natural justice nor the mandate of sub-section (7) of section 4 . Mr. Bhatt submitted that it is the Central Government which is the registering authority in respect of MSOs under rule 11 of the 1994 Rules. It is the same authority which revokes or cancels the registration. Thus, for one department of the Government to take shelter under the alleged cancellation of security clearance by another department is not sufficient. It is the Central Government, as a body, which is required to give a reasonable opportunity of being heard to the MSO, which opportunity included the requirement of informing the MSO the basis on which the registration is revoked and the security clearance is being denied. If the Information & Broadcasting Ministry is permitted merely to state that the registration is revoked because another Ministry has denied security clearance it will not be sufficient nor it will comply with the requirement of the provisions of sub-section (7) of section 4 . Mr. Bhatt submits that in the present case there is no emergent requirement to cancel the registration as the purported revocation itself gives thirty days'' time for it being effective. Now, by virtue of an interim order in this petition, the petitioners have continued their operations for a period of nearly twelve months. Thus, there is no urgency and, therefore, no basis for cancelling the security clearance or the registration.

27. Though such is the purport and thrust of the submissions canvassed orally and in the form of a written note, ultimately Mr. Bhatt submits that since the records and files have been called for and now produced before the Court by the Union of India, the petitioners would be satisfied if this Court peruses the files and without disclosing them to the petitioners, arrives at an appropriate conclusion. However, in the event there is any material produced before the Court, then, without disclosing its source, the Court may still direct the respondents to comply with the requirement of the proviso and the contours or ambit and scope of the hearing in terms thereof would depend on the notice that the petitioner would receive of such hearing and contents thereof.

28. Mr. Bhatt, while concluding his arguments, places heavy reliance on the judgment of a learned single Judge of the High Court of Judicature at Madras dated 5th September, 2014 in Writ Petition Nos. 23444 and 23445 of 2014. Mr. Bhatt would submit that an intra-court appeal against this judgment has also been dismissed by a Division Bench of that Court on 29th September, 2015. Mr. Bhatt has specifically invited our attention to the submissions of the Additional Solicitor General of India made before the Madras High Court. Mr. Bhatt would submit that the argument on behalf of the Central Government in that petition, and which is on similar lines that giving of an opportunity to parties like the petitioner would be an empty formality, should not be countenanced. Mr. Bhatt would submit that such an argument is not available to the Central Government or a party like it passing a drastic order with civil consequences. The useless opportunity or empty formality is an argument available to parties like the petitioners who could say in certain facts and circumstances that there is no point in sending them to authorities once these authorities have made up their mind or disclosed it to the parties. Thus, post decisional hearing is no compliance with the requirement set out in the proviso to section 4(7) of the Act is a plea which can be raised by a party aggrieved by non-compliance with the proviso and not the State. Therefore, the view taken by the Madras High Court should also commend to us is his submission.

29. Mr. Mehta, learned senior counsel appearing for the petitioners in the other petition, in adopting the submissions of Mr. Bhatt would also submit that the facts in that case disclose as to how the Central Government has proceeded. He would submit that the contents of the permission/registration which have been reproduced by us in the foregoing paragraphs would demonstrate that the permission is granted for a period of ten years from the date of issue subject to adherence and compliance of the terms and conditions stipulated therein. Mr. Mehta would emphasize on paragraph 3 of this letter. He would submit that the only obligation on the MSO is to ensure its continued eligibility. That must continue throughout the period of permission. Beyond that there is no other term and condition which can be prescribed and which is required to be fulfilled. Apart therefrom from the impugned order and which is also reproduced above, the Ministry of Home Affairs has now denied security clearance. That is referred to in the impugned communication dated 26th June, 2015. It is in view of the denial of the security clearance by the Ministry that the permission stood cancelled with immediate effect. Mr. Mehta would submit that there is a contradiction, therefore, in the permission granted and its terms and the impugned communication. There is no question of protection of interest of consumers. That is not something which the Central Government must concern itself. If the argument of the respondents is to be accepted, then, that would make a mockery of the provisions, according to Mr. Mehta, inasmuch as the requirement of sub-section (7) of section 4 will then never be fulfilled. Mr. Mehta invited our attention to all the rules and to submit that the Act enacts a code insofar as the registration is concerned. Mr. Mehta would submit that if the order in the present case is to be

tested on the touchstone of language of these rules, then, it would be evident that the registration to the Multi System Operator is to be issued only after security clearance has been granted. The question of denying security clearance to the petitioners three years after the grant of the certificate of registration hence cannot be a ground for cancellation. If that is a ground, then, what the Central Government is obliged to do in terms of rule 11-C cannot be expected from the parties like the petitioners. The security clearance has to be obtained by the Registering Authority as that is a requirement preceding issuance of certificate of registration. Therefore, if there is a withdrawal of that clearance in future, then, the requirement in the proviso cannot be dispensed with. It is in these circumstances, while adopting the argument of Mr. Bhatt, Mr. Mehta has made these additional submissions.

30. The respondents in these petitions have filed their affidavits-in-reply and Mr. Kantharia and Mr. Mishra have canvassed oral submissions on their behalf. Our attention is invited to the counter affidavit in the case of SCOD 18 Networking Pvt. Ltd. It is submitted that the rules require obtaining of a security clearance. If that security clearance has been obtained, then, so long as that clearance continues to operate, the registration would survive and continue. Since the clearance has been obtained but later on withdrawn, the Central Government is obliged to act in terms thereof. It is in these circumstances that it will not be proper to urge that a hearing has to be given to the petitioners. So long as there is a security clearance to be obtained, in cases of certain applicants and as the clearance was taking time, the provisional registrations were granted. The provisional registrations cannot continue after the clearance has been denied. By their very nature these registrations were provisional. Mr. Kantharia went a step further and would urge that even a permanent registration is subject to the security clearance. This security clearance once granted does not mean that it cannot be withdrawn and that is not the argument either. If that is capable of being withdrawn at a later stage or in future, then, the registration cannot be continued by the Ministry of Information & Broadcasting for that would not be in the interest of the security of the State. The term "security clearance" has a clear nexus with the reasonable restrictions which are placed on the exercise of right or guarantee of freedom of speech and expression. Therefore, it is futile to urge that the security clearance having once been granted and a ground now raised of it being withdrawn that requirement of hearing the petitioners must be fulfilled. If a fresh security clearance had to be obtained because of some changes in the composition of the Board of Directors in the petitioner SCOD, then, the files were sent again to the Ministry of Home Affairs on 2nd May, 2013, for obtaining security clearance. The Ministry of Home Affairs vide its office Memo dated 5th May, 2015, denied the security clearance to M/s. SCOD 18 Networking Pvt. Ltd. for registration as MSO. Since the security clearance has been denied they will not be eligible for MSO registration. That is a mandatory condition. Mr. Kantharia has invited our attention to the language of the rules to submit that fulfillment of eligibility criteria is one requirement which has to be complied with. That is not to

be confused with the terms and conditions and which can be prescribed or additionally prescribed by the Central Government. So long as there is a fulfillment of eligibility criteria the continuance of the registration for the period specified in the case of M/s. SCOD is guaranteed. However, with regard to other conditions and which could be validly prescribed by the Central Government the clause of the nature set out in paragraph 3 of the letter relied upon by Mr. Mehta will be of no assistance. Therefore, it is contended by Mr. Kantharia that so long as the law is not amended but the registration is subject to compliance with the terms and conditions specified in rule 11-D and that is not the only requirement and in addition to that the continued security clearance from the Central Government is also mandatory, then, such clauses or paras in the registration certificate will not be of any assistance to the petitioners. Our attention is invited to the grant of permission of Multi System Operators to provide cable service with addressable systems in the notified areas which is contemplated by rule 11 and our attention is then invited to rule 11-A providing for an application for registration as Multi System Operator and which application shall be accompanied by processing fee of Rs. 1 lakh and the declaration in Form-2. Then our attention is invited to rule 11B setting out the eligibility criteria for Multi System Operator. Our attention is thereafter invited to rules 11-C, 11-D and 11-E to urge that once the provisional registration confers no right to claim regular registration then all the arguments of the senior counsel for the petitioners be rejected.

31. Mr. Mishra appearing on behalf of the respondents in the other petition adopted the arguments of Mr. Kantharia and in addition relied upon a judgment of the Honorable Supreme Court of India reported in the case of Ex. Armymen's Protection Services P. Ltd. Vs. Union of India (UOI) and Others, .

32. For properly considering the rival contentions a reference to the Cable Television Networks (Regulation) Act, 1995, is necessary. That Act seeks to regulate the operation of cable television networks in the country and matters connected therewith or incidental thereto. In the Statement of Objects and Reasons while making the initial enactment it has been set out that there has been a haphazard mushrooming of cable television networks all over the country during the last few years as a result of the availability of signals of foreign television networks via satellites. This has been perceived as a "cultural invasion" in many quarters since the programmes available on these satellite channels are predominantly western and totally alien to our culture and way of life. Since there is no regulation of these cable television networks, lot of undesirable programmes and advertisements are becoming available to the viewers without any kind of censorship. The concerned Ministry while moving the bill in the Parliament further stated that the subscribers of these cable television networks, the programmers and the cable operators themselves are not aware of their rights, responsibilities and obligations in respect of the quality of service, technical as well as content-wise, use of material protected by copyright, exhibition of uncertified films, protection of subscribers from anti-national

broadcasts from sources inimical to our national interest, responsiveness to the genuine grievances of the subscribers and a perceived willingness to operate within the broad framework of the laws of land, more particularly mentioned as Cinematograph Act, 1952, the Copyright Act, 1957, and the Indecent Representation of Women (Prohibition) Act, 1986. It was, therefore, considered necessary to regulate the operation of cable television networks in the entire country so as to bring about uniformity in their operation. It will thus enable the optimal exploitation of technology which has the potential of making available to the subscribers a vast pool of information and entertainment. Thereafter, the Act was amended and the Amendment Act 36 of 2000 was necessitated so as to bring a regulation in the form of prescription of code for programmes and advertisements. Pertinently, the Statement of Objects and Reasons accompanying the bill to this amendment Act in clause 3(v) states that the source of the power of the Central Government be adequately modified so as to take immediate corrective measures in the interest of security, sovereignty and integrity of India, public order, decency, morality etc. Then, there is an amendment vide Act 2 of 2003 and that took care of several aspects, particularly the interest of the subscribers. The subscribers also should not access such networks and which contain programmes violating the rights of others. It is in these circumstances that Amendment Act, 2003 came to be enacted. Then, there is a further amendment and which we have found has brought in the regime of registration. Thus, what one finds is that the Act contains regulatory measures and provisions. The definitions would indicate as to how the terms "authorised officer", "Broadcaster", "cable operator", "cable service", "cable television network" "registering authority" have been defined. The broadcaster means a person or group of persons or body corporate or any organisation or body providing programming services and includes his or its authorised distribution agencies. The cable operator means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network and fulfills the prescribed eligibility criteria and conditions. Cable service means the transmission by cables of programmes including the transmission by cables of any broadcast television signals. The term "cable television network" is defined in section 2(c) and the definition of the term "registering authority" is to be found in section 2(h) . Both these definitions read as under :

"2(c) "cable television network" means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to provide cable service for reception by multiple subscribers;

... ..

2(h) "registering authority" means such authority as the Central Government may, by notification in the Official Gazette, specify to perform the functions of the registering authority under this Act within such local limits of jurisdiction as

may be determined by that Government."

33. A perusal thereof would enable us to understand as to how Chapter II titled Regulation of Cable Television Network deals with operation of cable television network, registration as cable operator, the programme code, the advertisement code etc.

34. Sections 3 and 4 falling in this Chapter read as under :

"3. Cable television network not to be operated except after registration.--No person shall operate a cable television network unless he is registered as a cable operator under this Act.

4. Registration as cable operator.--(1) Any person who is desirous of operating or is operating a cable television network may apply for registration or renewal of registration, as a cable operator to the registering authority.

(2) The cable operator shall fulfill such eligibility criteria and conditions as may be prescribed and different eligibility criteria may be prescribed for different categories of cable operators.

(3) On and from the date of issue of notification under section 4-A , no new registration in a State, city or town or area notified under that section shall be granted to any cable operator who does not undertake to transmit or re-transmit channels in an encrypted form through a digital addressable system.

(4) An application under sub-section (1) shall be made in such form and be accompanied with such documents and fees as may be prescribed.

(5) On receipt of the application, the registering authority shall satisfy itself that the applicant has furnished all the required information prescribed under sub-section (4) and on being so satisfied, register the applicant as a cable operator and grant him a certificate of registration or renew its registration, as the case may be, subject to such terms and conditions as may be prescribed under sub-section (6).

Provided that the registering authority may, if it is satisfied that the applicant does not fulfill the eligibility criteria and conditions prescribed under sub-section (2) or the application is not accompanied with necessary documents or fees prescribed under sub-section (4), and for reasons to be recorded in writing, by order, refuse to grant its registration or renewal and communicate the same to the applicant.

Provided further that the applicant may prefer an appeal against the order of the registering authority refusing grant or renewal of registration to the Central Government.

(6) Without prejudice to the compliance of eligibility criteria for registration of cable operators, the Central Government may prescribe, having regard to the interests of the sovereignty and integrity of India, the security of the State,

friendly relations with foreign State, public order, decency or morality, foreign relation or contempt of Court, defamation or incitement to an offence, such terms and conditions of registration including additional criteria or conditions to be fulfilled by the cable operator.

(7) The Central Government may suspend or revoke the registration granted under sub-section (5) if the cable operator violates one or more of the terms and conditions of such registration.

Provided that no such order of suspension or revocation shall be made without giving a reasonable opportunity of being heard to the cable operator. "

35. A perusal of these sections would indicate that registration as cable operator can be obtained by making an application for registration. The procedure is identical for renewal of registration. The cable operator - Applicant must fulfill the eligibility criteria and conditions as may be prescribed and different eligibility criteria may be prescribed for different categories of cable operators. Thereafter, by sub-section (3), it is stated that on and from the date of issue of Notification under section 4A , no new registration in the State, city, town or area notified under that section shall be granted to any cable operator who does not undertake to transmit or re-transmit channels in an encrypted form to a digital addressable system. Then by subsection (4) of section 4 , the application under sub-section (1) and to be made in the form and accompanied by such documents and fees as are prescribed, is contemplated. What would happen after the receipt of this application is that the registering authority shall satisfy itself that the applicant has furnished all the required information prescribed under sub-section (4) and on being satisfied, register the applicant as a cable operator and grant him a certificate of registration or renew its registration, as the case may be, subject to such terms and conditions as prescribed under sub-section (6). By the proviso to this section, the refusal of the registration or renewal is contemplated but that must be for reasons in writing. The further proviso gives a remedy to the aggrieved applicant of an appeal against the order of the registering authority refusing grant or renewal of registration to the Central Government.

36. We are of the opinion that in this case, the objection to the maintainability of the writ petition of Digicable cannot be accepted. This is not a case and in either matters of a refusal of registration or renewal of the registration. This is a case where the Central Government is exercising its power to suspend or revoke the registration granted under sub-section (5) of section 4 and when the operator violates one or more terms and conditions of the registration. The power in terms of the proviso to sub-section (7) is exercised in this case and before that a reasonable opportunity of being heard is to be granted to the cable operator. It is this hearing which has not been given in this case. Therefore, we do not think that the preliminary objection can be accepted. That is overruled. Both petitions are held to be maintainable.

37. As far as section 4A is concerned, that provides for transmission of the

programmes through digital addressable systems. The digital addressable system is what is now prevalent and within the provisions the arrangements have to be made for the same by the operator. By section 4B , there is a right of way for cable operators and permission by public authority. Thus, there are facilities given to the cable operators and every endeavour is made by this parliamentary statute to assist them. By sections 5 and 6 the programme code and advertisement code are set out and no person shall transmit or retransmit through a cable service any programme which is not in conformity with these codes. There is a maintenance of register contemplated by section 7 and by section 8 there is a compulsion to transmit certain channels. By section 9 the use of standard equipment or digital addressable system in cable television network is provided. Then, by section 10 , the cable television network should not interfere with any telecommunication system. The inspection of cable network and services is provided for in section 10A and thereafter by Chapters III, IV and V such of the regulatory measures as are envisaged and contemplated in the substantive Chapter II have been carried forward and given effect by enacting penal provisions.

38. By section 20 which falls in Chapter V there is a power conferred in the Central Government to prohibit operation of cable television network in public interest. This section reads as under :

"20. 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 foreign State; or

(iv) public order, decency or morality, it may be, 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."

39. A bare perusal thereof would indicate as to how the Central Government on being satisfied that it is necessary or expedient so to do in public interest, prohibit the operation of any cable television network in such areas as may by notification in the Official Gazette specify in this behalf. Sub-section (2) has been inserted by Act 36 of 2000 so as to enable the Central Government to pass the

requisite prohibitory order in the event it is of the opinion that the interest of sovereignty or integrity of India or security of India or friendly relations of India with foreign State or public order, decency or morality necessitate passing of a regulatory or prohibitory order so as to regulate or prohibit the transmission or re-transmission of any channel or programme. Thus the power to prohibit transmission of certain programmes in public interest so as not to promote hatred or ill-will amongst communities on the grounds of religion, race, language, caste etc. is contemplated. That is to sub-serve a different purpose but the underlying theme is evident throughout. That is the cable television operators and network as a whole shall not transgress and cross certain limits. The regulatory or prohibitory provisions aim at preventing any damage to paramount national interests so also the Constitutional morals. The legislature intervened and by enacting sub-sections (3) to section 20 sought to protect our composite culture. The programme and advertising codes are comprehensive. The power to enact a law of this nature so also the codes is not questioned at all. The programmes should not result in creating feelings of enmity and disharmony, hatred or ill-will between different religions, race and linguistic or regional groups or castes or communities. Thus public tranquility is not to be disturbed. It is common ground that when the system or the network falls in the hands of merchants and traders who are concerned with profits and pure business, then, the programme broadcasters and transmitters are likely to poison the susceptible. Considering that in a country like India where the Constitution seeks to achieve unity in diversity, where on account of social consciousness or lack of education there is a definite divide, then, to promote harmony and to preserve peace it is necessary to regulate such networks.

40. Such provisions do not take away any freedom or rights but checks them to protect overriding national interests, encourage secular ideals and preserve a all-pervasive culture. Those working to achieve petty commercial gains, earn profits and make money at the cost of above alone are controlled, monitored and regulated with a view to ensure that the lot of vulnerable viewers receive pure entertainment, gain awareness and knowledge by the content. They should not be provoked, titillated, corrupted by what is shown 24 X 7 on the cable television through the networks. If viewers are incited by sustained exhibition of objectionable content, they may resort to violence. The content can be so provocative that all the cherished values and principles, the institutions working to preserve democracy, sovereignty and unity of India with a guarantee of a secular atmosphere aimed to assure justice, social and economical, would collapse.

41. Such regulatory provisions are also necessary in order to protect the sovereignty or integrity of India, security of State, India's relations with foreign States and which are to remain friendly and equally public order, decency or morality. We have found from the Statement of Objects and Reasons that the Act is enacted because there was a concern that a culture totally alien to our way of life would pollute the atmosphere as a whole. There could be programmes which

will create disharmony, hatred or ill-will. Further, there could be broadcasts from sources inimical to our national interest. Therefore, legally permissible regulatory measures under the umbrella of one Act or law have been enacted. We have to give such meaning to these provisions as would sub-serve the object and purpose of the Act. The interpretation which suppresses the mischief and advances the remedy deserves to be placed on these provisions.

42. That is how the rules carry the mandate further. Though the rules originally made in the year 1994 were applied when the Act was enacted, several changes and modifications or amendments have been brought in. We are concerned in this case with the definition of the term "Multi System Operator". That definition appears in rule 2(c). That definition shows as to how cable operator is included in the definition. Multi System Operator means a cable operator who has been granted registration under rule 11-C and who receives a programming service from a broadcaster or its authorised agencies to re-transmit the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more local cable operators and includes his authorised distribution agencies by whatever name called. Thus, this operator retransmits the programme received from the broadcaster or its authorised agencies. He can transmit his own programme and create a service for that and such transmission can be simultaneously received by multiple subscribers directly or through one or more cable operators and includes his authorised distribution agencies by whatever name called. The Multi System Operator, therefore, is not just a cable operator and receiving programmes from a broadcaster and re-transmitting the same, but transmitting one's own programme or creates a service for that purpose. There could be a chain of the broadcaster, such systems operator and down the line to the cable television operator. If the Multi System Operator can re-transmit the content received from the broadcaster or create his own transmission, then, the regulatory measures noted above and sought to be applied should be applied and the provisions in that regard must be given full force and effect. The definition of the term "notified area" appears in rule 2(d) and the definition of the term "registering authority" is to be found in rule 2(e). In relation to a Multi System Operator registered under rule 11-C it is the Central Government, which is designated as a Registering Authority. For the first time and by way of an amendment, the rules brought in a eligibility criteria for cable operators, in rule 2-A. By rule 3, application for registration as a cable television network in India is contemplated. Then, the rules contemplate the registration of cable operator. The terms and conditions of registration are to be found in rule 5-A. Rule 5-B provides for deemed registration for transmission in encrypted in certain cases and after providing for the programme codes and advertisement codes, the standard interconnection agreements, tariffs and the obligation to furnish information, what is important for our purpose is that even broadcaster, Multi System Operator and cable operator shall comply with the regulations, guidelines and orders as may be made or issued by the authorities. Rule 11 provides for grant

of permission to Multi System Operators to provide cable service with addressable systems in the notified areas. Rule 11, 11-A, 11-B, 11-C, 11-D, 11-E and 11-F read as under :

"11. Grant of permission to multi-system operators to provide cable services with addressable systems in the notified areas.--(1) No multi-system operator shall provide cable television network services with addressable systems in any one or more notified areas without a valid permission from the Central Government under sub-rule (3) of rule 11.

(2) Every multi-system operator who desires to provide cable television network services with addressable systems in any of the notified areas, shall, within thirty days of the issue of the notifications under section 4A of the Act by the Central Government, apply for permission to the Ministry of Information and Broadcasting in Form 6 annexed to these rules, alongwith processing fee of rupees ten thousand.

(3) The Ministry of Information and Broadcasting in the Government of India shall, within thirty days of the receipt of the application, grant, or refuse, permission to the applicant to provide addressable systems in the notified areas after considering its suitability or otherwise on the basis of information given in respect of its existing operational area, actual number of subscribers and addresses of its local cable operators in each of the notified areas, commercial arrangements with the broadcasters and local cable operators, if any, financial strength, management capability, security clearance and preparedness to supply and maintain adequate number of set top boxes for its subscribers, installation of its subscriber management system and compliance with all other quality of service standards as maybe specified by the Authority.

(4) The Central Government may lay down such terms and conditions of permission under sub-rule (3) as may be deemed necessary and desirable to ensure compliance with the provisions of this Act and the regulations, directions and orders made by the Authority.

(5) No multi-system operator shall continue to provide any cable television network services in the notified areas after the date notified therein without obtaining prior permission from the Central Government.

(6) In the event of a multi-system operator who fails or refuses to enter into an interconnection agreement with a broadcaster of a pay channel or an adequate number of local cable operators in the notified areas or who violate the terms and conditions of the permission granted to it under sub-rule (3), within the time limit as prescribed by the Authority, the Authority may, so as to protect the interests of the subscribers, take interim measures to ensure supply of signals.

(7) In the event of violation by a multi-system operator of one or more of the terms and conditions of the permission granted under sub-rule (3) the Central Government may suspend or revoke such permission for such period and for

such notified areas as it deems fit.

Provided that no such order of suspension or revocation shall be made without giving a reasonable opportunity to the multi-system operator to explain its position.

11-A. Application for grant of registration as a multi-system operator.--(1) For the purpose of operation of cable television network services with digital addressable system in a notified area, a person who desires to provide such service shall make an application for registration as multi-system operator to the registering authority in Form 6.

(2) Every application under sub-rule (1) shall be accompanied by-
a processing fee of rupees one lakh;
declaration in Form 2.

11-B. Eligibility criteria for multi-system operator.--(1) The following criteria shall be fulfilled by an applicant who makes an application under rule 11-A namely:--

(a) where the applicant is a person, he shall be a citizen of India and not less than eighteen years of age;

(b) where the applicant is an association of individuals or body of individuals, whether incorporated or not, the members of such an association or body shall be citizens of India and not less than eighteen years of age.

(c) where the applicant is a company, such company shall be a company registered under the Companies Act, 1956 (1 of 1956) and shall be subject to such conditions relating to foreign direct investment as may be decided by the Central Government.

(d) the applicant shall not be an un-discharged insolvent;

(e) the applicant shall not be a person of unsound mind as declared by a competent Court.

(f) the applicant shall not be convicted of any criminal offence.

11-C. Registration as multi-system operator.--(1) On being satisfied that the applicant fulfills the eligibility criteria specified under rule 11-B and the requirements of rule 11-A, the registering authority shall, subject to the terms and conditions specified in rule 11-D and the security clearance from the Central Government, issue certificate of registration.

(2) Where the registering authority is satisfied that registration cannot be granted, it shall inform the applicant in writing giving reasons for such refusal.

11-D. Terms and conditions for registration as multi-systems operator.--(1) A person has been granted certificate under rule 11-C shall comply with the following terms and conditions, namely:--

(a) such person shall comply with all the provisions of the Act and the rules made thereunder;

(b) such person shall comply with the regulations, orders, directions or guidelines made or issued by the Authority;

(c) such person shall have the capacity to carry minimum number of television channels specified by the Authority;

(d) such person shall not carry programming service provided on the channel generated at the level of such multi-system operator which is in violation of the Programme Code specified in rule 6 and the Advertising Code specified in rule 7.

11-E. Provisional registration.--(1) Where an application has been made under rule 11-A and the registering authority considers that pending registration, it is necessary to grant provisional registration, it may, after preliminary scrutiny of such application, grant a provisional registration:

Provided that such provisional registration shall not confer any right to the applicant to claim regular registration.

Provided further that where regular registration is refused to be granted by the registering authority, the provisional registration so granted shall stand cancelled.

11-F. Deemed registration of multi-system operation in certain cases.--No multi-system operator providing cable television network services in areas as on the date when such areas are notified under sub-section (1) of section 4-A shall, with effect from the date specified in that notification, continue to provide such services in such areas unless such operator is granted registration under section 11-C.

Provided that a multi-system operator who has been permitted to operate in areas notified prior to the coming into force of the Cable Television Networks (Regulation) Amendment Act, 2011 (21 of 2011) shall be deemed to have been registered under rule 11-C in respect of such areas for the remaining period of the validity of such permission:

Provided further that such operator shall be required to furnish an undertaking to the registering authority at least thirty days prior to the notified date for operation of Digital Addressable System, namely:--

(a) such operator shall transmit or re-transmit channels only in an encrypted form through a digital addressable system in the notified areas;

(b) such operator shall comply with the provisions of the Act and the rules made there under and the regulations, orders, directions or guidelines made or issued by the Authority; and

(c) such operator shall deposit the processing fee with the registering authority as prescribed in rule 11-A:

Provided also that where such operator fails to do so, the permission which is deemed to have been valid, shall, with effect from the date when such area is notified, stand cancelled."

43. A perusal of these rules together and harmoniously with the Act would indicate that a registration as Multi System Operator can be obtained only on fulfillment of the eligibility criteria specified in rule 11-B and the requirement of rule 11-A, so also subject to the terms and conditions specified in rule 11-D and the security clearance from the Central Government. We are in agreement with Mr. Kantharia that so long as giving of security clearance is a requirement in terms of these rules, the registering authority and the parties like the petitioners have to abide by that stipulation. The security clearance may have to be obtained by the registering authority by forwarding the application for registration to the Ministry of Home Affairs and inviting its remarks on the same. However, security clearance is a vital requirement. The national security or security of the State cannot be compromised. There is an obligation and duty of the registering authority to ensure that only such applicants who have a security clearance operate as Multi System Operators. The larger public interest and which has to be sub-served by not creating an environment and atmosphere endangering and threatening the interests of security then all the more the Central Government is obliged not only to consider all applications from this angle, but to insist on security clearance. If the security clearance is a requirement which has to be adhered to, then, it is futile to suggest that once such clearance is obtained or granted, it would continue and would enable the Multi System Operators to transmit his own programmes or re-transmit the content received from the broadcasters. It is not the plea of the petitioners that a security clearance once granted cannot be reviewed and must be treated as final. In matters of security clearance, one cannot be rigid or hyper-technical. The activities of the cable operators are watched and monitored consistently. If such continued surveillance is mandated to sub-serve the security of the State or security interests, then, the Central Government is bound to review the clearances already granted or obtained by the Multi System Operator. If on account of certain activities not only of the operating agency, but of the persons associated with it, financing or assisting it in any manner are found to be objectionable and endangering the security of the State or jeopardizing it, then, the security clearance can be withdrawn. Pertinently, there is no argument canvassed before us that the Ministry of Home Affairs to whom the applications are forwarded and who is in charge of granting security clearance is prevented or prohibited by law from reviewing the clearance once granted or withdrawing it completely. That power and authority in the Ministry of Home Affairs is absolute. The Ministry of Home Affairs may be assisted by several wings and branches. The Intelligence Bureau established by the Central Government would provide the inputs and materials from time to time. These materials and inputs have to be considered seriously as they pertain to national safety and security. The Intelligence Bureau or other intelligence agencies in-charge of securing vital information and providing their

inputs on the security of the State perform the task with the assistance of experts. Such experts and who are familiar with everything pertaining to national security, security of the State, therefore, would provide valuable inputs and materials, then, on the basis of the same, the Ministry of Home Affairs can take an informed and rational decision. The information provided by these agencies on crucial and important facets of national security and safety of all merit serious consideration. The advice given by them can be ignored at our own peril and risk. The involvement of promoters, financiers, business associates residing in India and abroad, their commercial business interests in India might pose a grave security risk. If such persons for their gains are associated with outfits and groups involved in serious and heinous crimes locally and globally, then, their joint operations together with Indian and foreign companies and firms would cause immense harm and damage to us. The caution and alarm sounded by the Intelligence and security agencies must guide us while issuing licences, permissions and registrations even in economic and commercial matters.

44. In the present case, what we have found is that the security clearance which was once obtained has now been withdrawn. The counsel for parties have consented to this Court calling for the records and files and perusing them in order to satisfy itself whether there was any material and concerning the above aspects and that is why the registration certificate came to be cancelled or revoked. That is a power conferred in the Central Government. Whether that power should be exercised after reasonable opportunity of being heard is given to the petitioners or the Multi System Operators is the only question before us.

45. Both counsel have seriously urged that this opportunity cannot be denied and such an act in the present case vitiates the final decision. A reasonable opportunity could, according to them, be a personal or oral hearing to the affected parties. They would submit that even when the security clearance has been withdrawn, if the Central Government is of the opinion that the registration certificate deserves to be cancelled or revoked, it is obliged to grant a personal hearing to the petitioners and preceded by issuance of a notice setting out the allegations and the supporting material in that behalf.

46. We do not think that in matters of this nature, such absolute propositions can be accepted.

47. Mr. Mishra is right in placing reliance on the judgment of the Hon'ble Supreme Court in the case of Ex. Armymen's Protection Services P. Ltd. Vs. Union of India (UOI) and Others, . In matters concerning national security and interpreting *pari materia* provisions in the Aircraft Rules 1937, which are traceable to section 5 of the Aircraft Act, 1934, the Hon'ble Supreme Court construed rule 92 to mean that there is no mandate of giving an opportunity of hearing. The paragraphs and which are extremely relevant to this case are reproduced from this judgment :

"Leave granted. Natural justice is a principle of universal application. It requires

that persons whose interests are to be affected by decisions, adjudicative and administrative, receive a fair and unbiased hearing before the decisions are made. The principle is traceable to the fundamental rights under Part III of the Constitution of India. Whether any reasonable restriction or limitation or exception to this principle is permissible in the interest of national security, is the issue we are called upon to consider in this case.

2. The appellant was granted business of ground-handling services on behalf of various airlines at different airports in the country. The ground-handling service is subject to security clearance from the Central Government. Section 5 of the Aircraft Act, 1934 empowers the Government to make rules providing for licensing, inspection and regulation of aerodromes and, thus, the Aircraft Rules, 1937 have been framed. Rule 92 provides for ground-handling services. The Rule reads as follows:

"92. Ground-Handling Services.--The licensee shall, while providing ground-handling service by itself, ensure a competitive environment by allowing the airline operator at the airport to engage, without any restriction, any of the ground-handling service provider who is permitted by the Central Government to provide such services: Provided that such ground-handling service provider shall be subject to the security clearance of the Central Government."

(emphasis supplied)

... ..

11. It is now settled law that there are some special exceptions to the principles of natural justice though according to Sir William Wade, any restriction, limitation or exception on principles of natural justice is "only an arbitrary boundary". To quote further:

"The right to a fair hearing may have to yield to overriding considerations of national security. The House of Lords recognised this necessity where civil servants at the government communications headquarters, who had to handle secret information vital to national security, were abruptly put under new conditions of service which prohibited membership of national trade unions. Neither they nor their unions were consulted, in disregard of an established practice, and their complaint to the courts would have been upheld on ground of natural justice, had there not been a threat to national security. The factor which ultimately prevailed was the danger that the process of consultation itself would have precipitated further strikes, walkouts, overtime bans and disruption generally of a kind which had plagued the communications headquarters shortly beforehand and which were a threat to national security. Since national security must be paramount, natural justice must then give way.

The Crown must, however, satisfy the court that national security is at risk. Despite the constantly repeated dictum that "those who are responsible for the national security must be the sole Judges of what the national security requires",

the court will insist upon evidence that an issue of national security arises, and only then will it accept the opinion of the Crown that it should prevail over some legal right."

(emphasis supplied)

12. In *Council of Civil Service Unions v. Minister for Civil Service* the House of Lords had an occasion to consider the question. At AC p. 402 C-D, it has been held as follows:

"... The decision on whether the requirements of national security outweigh the duty of fairness in any particular case is for the Government and not for the courts; the Government alone has access to the necessary information, and in any event the judicial process is unsuitable for reaching decisions on national security. But if the decision is successfully challenged, on the ground that it has been reached by a process which is unfair, then the Government is under an obligation to produce evidence that the decision was in fact based on grounds of national security."

(emphasis supplied)

13. The Privy Council in *Zamora*, held as follows at AC p. 107:

"... Those who are responsible for the national security must be the sole Judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a court of law or otherwise discussed in public."

(emphasis supplied)

14. According to Lord Cross in *Crompton Alfred Amusement Machines v. Customs and Excise Commissioners (No. 2)*: (AC p. 434 F-G):

"... In a case where the considerations for and against disclosure appear to be fairly evenly balanced the courts should, I think, uphold a claim to privilege on the grounds of public interest and trust to the head of the department concerned to do whatever he can to mitigate the ill effects of nondisclosure."

15. It is difficult to define in exact terms as to what is "national security". However, the same would generally include socio-political stability, territorial integrity, economic solidarity and strength, ecological balance, cultural cohesiveness, external peace, etc.

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."

48. We are not shown anything contrary to this dictum which binds us. While it is true that the exact definition of the term "national security" or "security of the State" is not possible as the Supreme Court holds, but what encompasses the same is always discernible. In a decision in the case of Santokh Singh Vs. Delhi Administration, , the Hon"ble Supreme Court has this to observe with regard to the expression "security of the State":

"4. Section 9 of the Act reads :

"9. Dissemination of rumours, etc.--

Whoever

(a) makes any speech, or

(b) by words, whether spoken or written, or by signs or by visible or audible representations or otherwise publishes any statement, rumour or report, shall, if such speech, statement, rumour or report undermines the security of the State, friendly relations with foreign States, public order, decency or morality, or amounts to contempt of Court, defamation or incitement to an offence prejudicial to the security of the State or the maintenance of public order, or tends to overthrow the State, be punishable with imprisonment which may extend to three years or with fine or with both." This section on its own plain reading takes within its fold all the objectionable matters which had been taken by sub-Art. (2) of Art. 19 out of the guaranteed freedom of speech and expression protected by cl. (a) of Art. 19(1) . In order to fully understand the freedom of speech and expression guaranteed by the Constitution it is necessary to reproduce Art. 19(1) (a) and (2) :

"Right to Freedom

19 (1) All citizens shall have the right -

(a) to freedom of speech and expression;

... ..

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any

existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence".

It may appropriately be pointed out here that sub-Art. (2) was amended in 1963 so as to include in the limitation contained therein reasonable restrictions in the interest of the sovereignty and integrity of India. This limitation was not in this sub-Article in 1963 but as it does not affect the question raised in this case we need say nothing more about it.

5. Reading Section 9 of the Act and Art. 19(2) of the Constitution it is obvious that the only matter specifically contained in Section 9 in addition to those stated in Art. 19(2) relate to the offending speech, words or other publications which "tends to overthrow the State". Now this matter would clearly also fall within the sweep of the expression "incitement to an offence prejudicial to the security of the State" contained in S. 9 and within Art. 19(2) where it speaks of "reasonable restrictions..... in the interest of..... the security of the State". Anything tending to overthrow the State must necessarily be prejudicial to the security of the State and, therefore, a law can be made placing reasonable restrictions on the right of freedom of speech and expression in this respect in the interests of security of State. Prima facie, therefore, S. 9 clearly falls within the express language of Art. 19(2) .

... ..

7. In our opinion, the principle governing the construction of Art. 19(1)(a) read with Art. 19(2) is well crystallised by now in various decisions of this Court and it is unnecessary to cover the whole ground over again by going through them extensively.

8. We of course agree with Shri Agarwal that the fundamental right guaranteed by Art. 19(1)(a) and the interest of public protected by Art. 19(2) must be properly adjusted and reasonable balance struck between the two. There can be no dispute that there is no such thing as absolute or unrestricted freedom of speech and expression wholly free from restraints for that would amount to uncontrolled licence which would tend to lead to disorder and anarchy. The right to freedom of speech and expression is undoubtedly a valuable and cherished right possessed by a citizen in our Republic. Our governmental set up being elected, limited and responsible we need requisite freedom of animadversion for our social interest ordinarily demands free propagation of views. Freedom to think as one likes, and to speak as one thinks are, as a rule, indispensable to the discovery and spread of truth and without free speech discussion may well be futile. But at the same time we can only ignore at our peril the vital importance of our social interest in, inter alia, public order and security of our State. It is for

this reason that our Constitution has rightly attempted to strike a proper balance between the various competing social interests. It has permitted imposition of reasonable restrictions on the citizen's right of freedom of speech and expression in the interests of, inter alia, public order, security of State, decency or morality and impartial justice, to serve the larger collective interest of the nation as a whole. Reasonable restriction in respect of matters specified in Art. 19(2) are essential for integrated development on egalitarian, progressive lines of any peace-loving, civilised society. Article 19(2) thus saves the constitutional validity of S. 9 of the Act. The analogy between S. 124A, I.P.C. and S. 9 of the Act is wholly misconceived and in view of the comprehensive sweep of Art. 19(2) we are unable to restrict S. 9 of the Act only to those speeches and expressions which incite or tend to incite violence."

49. One of us (S.C. Dharmadhikari) had an occasion to consider somewhat identical controversy. As part of a Division Bench presided over by the Hon'ble Chief Justice Swatanter Kumar in Writ Petition (Lodg) No. 656 of 2009, decided on 10th June, 2009. It was held as under :

"28. Even in law, the order of the Division Bench could not be construed as a direction to disclose the contents of the report or disclose the remarks of the Security Agency, which have been forwarded to the Bureau. Principles of natural justice cannot be put or embodied in a straight jacket formulae. There is no prescribed formulae and which principles of natural justice would apply depends upon the facts and circumstances of each case. When it comes to facts of this case, it is apparent to us that if any disclosure is sought of such classified and secret information, then, the whole purpose of forwarding it would be frustrated and defeated. In a given case, it can endanger the life of the Reporting or Investigating Officer. More so, once it is not possible even for this Court to scrutinise the report of the Intelligence agencies or sit in judgement over their contents, as if it is an Appellate Authority, then, the petitioner cannot insist upon the copy of the report being furnished or its contents disclosed otherwise. Even the limited request to furnish gist of the conclusions is not and cannot be said to be a necessary ingredient of the principles of natural justice, in this case. It is well settled that it is not possible to lay down any general principle on the question as to whether the report of investigating body or of any Inspector appointed by Administrative Officer should be made available to the person concerned in any given case before the Authority takes a decision on that report.

29. That apart, we have ourselves perused the report. The petitioner has no objection to the report being perused by the Court without it being shown to it or a copy thereof being furnished to it. Even in the earlier round, this course was adopted by the Court without any objection from either side. The petitioner has been informed categorically that the security verification has been found adverse and, therefore, the firm cannot be granted security clearance.

30. Such matters which are in public interest and are emergent in

nature cannot be stretched to such an extent so as to compromise with security at vital Installations like an Airport. It is common ground that an Airport is used by passengers and crew and the staff of Airlines. There are several persons seeking permit to enter sensitive areas and such permits are granted only after the Authority is satisfied about the security aspects and bearing in mind the interest of State. Ultimately, if there is a power to withdraw the pass without assigning any reasons in public interest and in the instant case, we are satisfied that public interest demands that the pass be withdrawn, then, nothing further needs to be observed.

31. We cannot transgress the limits of writ jurisdiction by sitting in judgement over the actions of Intelligence Agencies. These agencies are manned by experts, who are in the best position to judge the security interests. Ultimately, sensitive and vital installations have to be safeguarded and protected from entry of persons who are considered to be undesirable and a security risk. Precisely, such are the inputs in the reports which have been received and if the Bureau has acted upon the same, then, we cannot sit in judgement over their decision. The writ Court does not possess any expertise in such cases. The Court cannot indulge in guess work and hold that the inputs do not endanger the security of the Airport nor public interest demand that the ground handling operations of the petitioner be prohibited. These are matters which are better left to the authorities in charge of security of the vital installations as they are in-charge of laying down standards and norms for protecting and safeguarding them. They act in public interest and when no malafides are alleged, their actions ought not be interfered.

32. In this behalf a reference can usefully be made to the observations of the Supreme Court in a decision reported in *Malak Singh and Others Vs. State of P and H and Others*, . While dealing with somewhat identical situation, this is what the Supreme Court observed:--

"3. Shri V.M. Tarkunde, learned Counsel, who appeared as Amicus Curiae for the appellants urged that there were no grounds on the basis of which the respondents could entertain a reasonable belief that the appellants were habitual offenders or receivers of stolen property and therefore, there was no justification for including the names of the appellants in the surveillance register. He further submitted that an order for surveillance was a serious encroachment on the liberty of the citizen and, therefore, it was necessary that a person should be given an opportunity to show cause before his name was included in the surveillance register. As this was not done, the inclusion of the names of the appellants in the register was bad. We may add that the vires of the Punjab Police Rules which provide for the maintenance of a surveillance register was not questioned before us."

... ..

"6. Prevention of crime is one of the prime purposes of the constitution of a

police force. The preamble to the Police Act, 1861 says:--

"Whereas it is expedient to reorganise the police and to make it a more efficient instrument for the prevention and detection of crime."".

"Section 23 of the Police Act prescribes it as the duty of police officers "to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances." In connection with these duties it will be necessary to keep discreet surveillance over reputed bad characters, habitual offenders and other potential offenders. Organised crime cannot be successfully fought without close watch of suspects. But, surveillance may be intrusive and it may so seriously encroach on the privacy of a citizen as to infringe his fundamental right to personal liberty guaranteed by Article 21 of the Constitution and freedom of movement guaranteed by Article 19(1)(d) . That cannot be permitted. This is recognised by the Punjab Police Rules themselves. Rule 23.7 which prescribes the mode of surveillance, permits the close watch over the movements of the person under surveillance but without any illegal interference. Permissible surveillance is only to the extent of a close watch over the movements of the person under surveillance and no more. So long as surveillance is for the purpose of preventing crime and is confined to the limits prescribed by Rule 23.7 we do not think a person whose name is included in the surveillance register can have a genuine cause for complaint. We may notice here that interference in accordance with law and for the prevention of disorder and crime is an exception recognised even by European Convention of Human Rights to the right to respect for a person's private and family life. Article 8 of the Convention reads as follows:--

(1) Everyone's right to respect for his private and family life, his home and his correspondence shall be recognised.

(2) There shall be no interference by a public authority with the exercise of this right, except such as is in interference with law and is necessary in a democratic society in the interests of national security, public safety, for the prevention of disorder and crime or for the protection of health or morals".

"7. As we said discreet surveillance of suspects, habitual and potential offenders, may be necessary and so the maintenance of history sheet and surveillance register may be necessary too, for the purpose of prevention of crime. History sheets and surveillance registers have to be and are confidential documents. Neither the person whose name is entered in the register nor any other member of the public can have access to the surveillance register. The nature and character of the function involved in the making of an entry in the surveillance register is so utterly administrative and non-judicial that it difficult to conceive of the application of the rule of audi alteram partem. Such enquiry as may be made has necessarily to be confidential and it appears to us to necessarily exclude the application of that principle. In fact observance of the principles of natural justice may defeat the very object of the rule providing for surveillance. There is every

possibility of the ends of justice being defeated instead of being served. It was well observed in *Re. K (Infants)*, 1965 SC 201 at p.238:--

"But a principle of judicial inquiry whether fundamental or not, is only a means to an end. If it can be shown in any particular class of case that the observance of a principle of this sort does not serve the ends of justice, it must be dismissed; otherwise it would become the master instead of the servant of justice."

"8. The entry in the surveillance register is to be made on the basis of the material provided by the history sheet whose contents, by their very nature have to be confidential. It would be contrary to the public interest to reveal the information in the history sheet, particularly the source of information. Revelation of the source of information may put the informant in jeopardy. The observance of the principle of natural justice, apart from not serving the ends of justice may thus lead to undesirable results. We accordingly hold that the rule *audi alteram partem* is not attracted."

In *State Bank of Patiala and others Vs. S.K. Sharma*, , similar view has been taken by the Hon"ble Supreme Court. [See paras 29, 32 and 33(6)and (7)]. This view is taken after making a reference to all earlier decisions of the Supreme Court.

33. Thus, even at a post-decisional hearing, the petitioner could not have claimed furnishing of the details or gist of the conclusion, as a matter of right. The Intelligence Input or Information from a source like IB (Intelligence Bureau) cannot be directed to be disclosed in public interest and for reasons of confidentiality and secrecy. In a given case and more particularly that of the present nature insistence on disclosure of the Information or Report or gist of the conclusions therein would not be in public interest and would also defeat the ends of justice. Ultimately, rules of natural justice are not embodied rules. They are means to an end and not an end in themselves. The principles are evolved to serve the ends of justice and if in their application to a case they do not serve this purpose, then, they need not be applied. Thus, their applicability depends upon facts and circumstances in each case. Therefore, the impugned order is not vitiated on the grounds of non-disclosure of the gist of the conclusions, as contended by the petitioner."

50. Further, as the Hon"ble Supreme Court holds 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. In matters of this nature and 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. Thus, the Court's jurisdiction to satisfy itself whether parties are entitled to a reasonable opportunity of being heard is in no way controlled much less hampered or fettered in such matters. As the Hon"ble Supreme Court holds, the

Court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Precisely that course has been adopted by us. The files have been produced for our perusal in both cases. We have carefully perused them. After perusing the communications and marked as confidential and secret, we are of the view that there is definite material which would enable the Central Government to conclude that the Home Ministry has withdrawn the security clearance. That was withdrawn in the interest of security of the State. Once a security clearance was obtained, but later on withdrawn based on Intelligence Bureau's adverse opinion, then, without further adjudication, the Central Government can, in the given facts and circumstances, revoke or cancel the registration. We are not going as far as holding that in this backdrop an opportunity of being heard would necessarily be an empty formality. However, such opportunity being afforded would not enable the petitioner to probe the confidential or secret information. That cannot be disclosed at any cost. Once the Home Ministry opined and concluded that the security clearance issued to the petitioner needs to be withdrawn and is thus withdrawn, then, the Information & Broadcasting Ministry, namely, the Registering Authority, cannot go behind such a conclusion. Therefore, the petitioners' intent to do so at the hearing in terms of the proviso to section 4(7) cannot be countenanced. If the purpose of seeking hearing is such an exercise, then, that cannot succeed or rather should not. We are not holding that in each and every case, the proviso to sub-section (7) of section 4 and the opportunity in terms thereof should be dispensed with. The requirement therein has to be satisfied but if that is not done, then, the impact or effect of the same must necessarily result in quashing the final decision of suspension or revocation would depend upon the facts and circumstances of each case. Whether the Court must interfere for violation or breach of the proviso or whether the Court should undertake some other corrective exercise and issue appropriate directions would, therefore, depend on the facts and circumstances of each case. Once the parties have left the matter to the Court and the Court called for the relevant files and documents and has found that from the file notings in both cases there were materials and inputs concerning security of the State and those inputs and materials have gone in reaching the conclusion that the security clearance needs to be withdrawn, then, nothing further was left to be done by the registering authority, namely, the Ministry of Information & Broadcasting in the Central Government. That grants the registration of the nature claimed by the petitioners, namely, Multi System Operator. That is the department in the Government which deals with the applications for permanent registration as sought by the petitioners. It is that department's obligation and duty to obtain the remarks from the Ministry of Home Affairs as that Ministry is concerned with security clearance. It is that Ministry which is competent to take the ultimate decision of withdrawing the security clearance and opines and comments that the permission as sought would be subversive to the security of the State. If it is that Ministry and comprising of competent officials and experts which obtains the inputs and materials from agencies involved in monitoring and supervising the activities of

several persons, including business entities, then, all the more we do not see how in the face of such material any useful purpose will be served by interfering with the impugned orders and directing that the respondents must issue a notice to the petitioners and grant them a personal hearing and thereafter take such decision as is permissible in law. Once we have found and from the files in both cases that the notings are germane and relevant, there was definite material to arrive at the satisfaction that the security clearance needs to be withdrawn, then, as the Hon'ble Supreme Court holds those who are in-charge of protecting national security must be allowed to do their job. The courts should keep themselves away from such matters. It is this very principle and which we have applied to the facts and circumstances of the present case. This is a case squarely falling within the parameters laid down in the aforesaid decisions.

51. We are not agreeable to the suggestion of the learned senior counsel that a brief notice should be directed to be addressed referring to the materials and the source of it and thereafter petitioners must be allowed an opportunity to meet the same. We have outlined the nature of the duties and obligations to be discharged by each of the Ministries. The petitioners have never questioned the authority, power and jurisdiction of the Ministry of Home Affairs and in matters concerning national security or security of the State. If it is that Ministry's primary job and it is obliged to protect and preserve all security interests, then, its remarks and observations so also comments cannot be allowed to be probed in the manner sought by the petitioners. None can sit in judgment over their views. It is not for anybody, much less courts, to substitute their view with that of such authorities. If parties like the petitioners are allowed to appear before the registering authority and seek above details, that would definitely expose all concerned. It would be a matter of their own safety. They should not be brought before and exposed to parties like the petitioners or those who would thereafter pursue them. Such a course would not be in the interest of justice but would rather subvert the course of justice.

52. In these circumstances, we are not inclined to accept the submissions of the learned senior counsel. We are also not inclined to accept their arguments based on the interpretation of the legal provisions in the peculiar facts and circumstances of this case.

53. We are of the view that the decisions cited by Mr. Bhatt would not have any application to the present facts and circumstances. We are aware that principles of natural justice are salutary. They are part and parcel of the rule of law and administration of justice. However, they are not to be applied in a straitjacket formula. They are not rigid or statutory rules in that sense. Their application would depend on facts and circumstances of each case. Therefore, in the case of Gorkha Security Services Vs. Govt. of NCT of Delhi, , the court while dealing with a matter of blacklisting of the contractor found that in that case, the principles of natural justice were violated and breached. The show-cause notice dated 6th February, 2013, addressed to the appellant before the Hon'ble

Supreme Court made no reference to the proposed blacklisting and, therefore, the appellant had no opportunity to make a representation in this regard. No opportunity of personal hearing was given to the appellant before passing the impugned order and there was no ground for blacklisting the appellant since no term of the agreement was breached by it. It is in dealing with such a case that the Hon''ble Supreme Court emphasized the observance of the principles of natural justice and even in cases of blacklisting. We are aware of the legal principles and the purpose of a show cause notice as envisaged in paragraphs 21 and 22. However, as we have held above, everything depends on facts and circumstances of each case. The Supreme court itself has clarified that natural justice is no unruly horse, no lurking landmine nor a judicial cure-all. Once unnatural expansion of justice without reference to the administrative realities and other factors of a given case would result in justice itself being denied or the course of justice being subverted, then, undue emphasis on the same cannot be justified.

54. Therefore, the above decision is distinguishable on facts. In the case of Kanwar Natwar Singh Vs. Director of Enforcement and Another, , the Supreme Court reiterated that extent of applicability of principles of natural justice and concept of fairness depends upon the circumstances of the case, the statutory framework, the subject-matter to be dealt with, the nature of inquiry fallout of the decision pursuant to such inquiry and so forth. It is in these circumstances and when complaint was made by an officer against the appellant of violation and containing a serious allegation that the Supreme Court found that the adjudicating authority's refusal to supply all the documents as demanded by the appellant led to the principles of natural justice being violated in that case. Far from assisting the learned senior counsel before us, the paragraphs from this judgment and relied upon would support the conclusions reached by us.

55. As far as the judgments of the learned single Judge and Division Bench of the High Court of Judicature at Madras, there the arguments were slightly different. The issue of withdrawal of security clearance was not raised directly as before us. Secondly, the notice and hearing was insisted upon for that was denied by the Information & Broadcasting Ministry. That was denied though there were no adverse remarks in the file from the security point of view. Hence, the Court held that grant of a reasonable opportunity being heard will not be an empty formality. Hence the decision is distinguishable on facts. The role of intelligence agencies cannot be undermined. Their remarks and opinion must not be lightly and casually brushed aside in every case.

56. As a result of the above detailed discussion, we are of the view that both the Writ Petitions deserve to be dismissed. Rule is discharged in both of them. There will be no order as to costs.

57. At this stage, counsel for the petitioners seek continuation of the ad-interim order for a period of two months so as to enable them to challenge this order in a higher court. This request is opposed by the respondents.

58. Having found that the security of the State and security interests are involved and those cannot be compromised, we refuse this request. The ad-interim orders are vacated forthwith.

59. In the view that we have taken and pertaining to the Digi Cable Network, which is based on the materials which are found to be germane and relevant so also pertaining to security of the State or security interests as a whole, no useful purpose will be served by directing that the application of the petitioners - Digi Navi Mumbai Network (Private) Limited be considered for grant of permanent registration by the registering authority. For the reasons assigned in the two Writ Petitions and the detailed judgment delivered, Writ Petition (L) No. 1276 of 2015 is also dismissed.

60. After the above noted request was refused, the petitioners' counsel apprehended that without a copy of this judgment being made available, they may be jeopardized if the impugned orders are sought to be enforced and executed. Purely to take care of such apprehensions, we expect the registering/competent authority not to precipitate the matter by resorting to any coercive measures till a copy of this judgment is made available to the parties.