

# VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

TUESDAY, THE 8<sup>TH</sup> DAY OF FEBRUARY 2022 / 19TH MAGHA, 1943

WP(C) NO. 3265 OF 2022

PETITIONER:

MADHYAMAM BROADCASTING LIMITED  
MEDIA ONE HEADQUARTERS, 15/594 C, VELLIPARAMBA  
P O, KOZHIKODE DISTRICT, PIN-673008,  
REPRESENTED BY ITS MANAGING DIRECTOR, YASEEN  
ASHARAF, KALLINGAL, S/O KALLINGAL ABU, AGED 70  
YEARS, RESIDING AT KALLINGAL HOUSE, KARAD ROAD,  
FAROOK COLLEGE P O, VAZHAYOOR,  
MALAPPURAM DISTRICT.

BY ADVS.  
K. RAKESH  
S. SREEKUMAR (SR.)

RESPONDENTS:

- 1 UNION OF INDIA  
REPRESENTED BY ITS SECRETARY, GOVERNMENT OF  
INDIA, MINISTRY OF INFORMATION AND BROADCASTING  
"A" WING, SHASTRI BHAVAN, NEW DELHI-110001.
- 2 THE SECRETARY TO THE GOVERNMENT  
MINISTRY OF HOME AFFAIRS, SHASTRI BHAVAN, NEW  
DELHI-110001.
- 3 PLANETCAST MEDIA SERVICES LIMITED  
C-34, SECTOR-62, ELECTRONIC CITY, NOIDA-201307,  
UTTAR PRADESH, REPRESENTED BY ITS AUTHORIZED  
OFFICER.

BY ADV MANU S., ASG OF INDIA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 08.02.2022, ALONG WITH WP(C).3663/2022,  
3670/2022, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

# VERDICTUM.IN

W.P.(C) Nos.3265, 3663 & 3670 of 2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

TUESDAY, THE 8<sup>TH</sup> DAY OF FEBRUARY 2022 / 19<sup>TH</sup> MAGHA, 1943

WP(C) NO. 3663 OF 2022

PETITIONERS :

- 1 PRAMOD RAMAN  
AGED 52 YEARS  
EDITOR, MEDIA ONE, MEDIA ONE HEADQUARTERS,  
15/594C, VELLIPPARAMBA P.O, KOZHIKODE - 673008.
- 2 SHARAFUDHEEN K.P  
SENIOR WEB DESIGNER, MEDIA ONE, MEDIA ONE  
HEADQUARTERS, 15/594C, VELLIPPARAMBA P.O,  
KOZHIKODE - 673008.
- 3 BIJU K.K.  
SENIOR CAMERA PERSON, MEDIA ONE, MEDIA ONE  
HEADQUARTERS, 15/594C, VELLIPPARAMBA P.O,  
KOZHIKODE - 673008.

BY ADVS.  
K. JAJU BABU (SR.)  
BRIJESH MOHAN  
SACHIN RAMESH  
M. U. VIJAYALAKSHMI

RESPONDENTS :

- 1 UNION OF INDIA  
REPRESENTED BY SECRETARY TO GOVERNMENT OF  
INDIA, MINISTRY OF INFORMATION AND  
BROADCASTING, A WING, SASTHRI BHAVAN,  
NEW DELHI - 110001.
- 2 THE SECRETARY TO GOVERNMENT OF INDIA  
MINISTRY OF HOME AFFAIRS, CENTRAL SECRETARIAT,  
NORTH BLOCK, NEW DELHI - 110001.

# VERDICTUM.IN

W.P.(C) Nos.3265, 3663 & 3670 of 2022

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3      MADHYAMAM BROADCASTING LIMITED.,  
         MEDIA ONE HEADQUARTERS, 15/594C, VELLIPPARAMBA  
         P.O, KOZHIKODE - 673008.  
         REPRESENTED BY ITS MANAGING DIRECTOR.

         BY ADV MANU S., ASG OF INDIA

         THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 08.02.2022, ALONG WITH WP(C).3265/2022 AND  
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

W.P.(C) Nos.3265, 3663 & 3670 of 2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 8<sup>TH</sup> DAY OF FEBRUARY 2022 / 19TH MAGHA, 1943

WP(C) NO. 3670 OF 2022

PETITIONERS:

- 1 KERALA UNION OF WORKING JOURNALISTS  
PUTHENCHANDAYIL, M.G.ROAD, THIRUVANANTHAPURAM-  
695 001, REPRESENTED BY ITS GENERAL SECRETARY
- 2 SHABEENA K.M @ SHABNA ZIAD.  
SECRETARY, KERALA UNION OF WORKING JOURNALISTS,  
PUTHENCHANDAYIL, M.G.ROAD, THIRUVANANTHAPURAM-  
695 001, & SPECIAL CORRESPONDENCE OF MEDIA ONE  
KOCHI.
- 3 SANOJ M.P,  
STATE COMMITTEE MEMBER KERALA UNION OF WORKING  
JOURNALISTS PUTHENCHANDAYIL, M.G.ROAD,  
THIRUVANANTHAPURAM-695 001, & SENIOR CAMERA  
PERSON LEVEL-1 OF MEDIA ONE KOCHI.

BY ADVS.  
K.JAJU BABU (SR.)  
M.U.VIJAYALAKSHMI  
BRIJESH MOHAN  
SACHIN RAMESH  
SIDHARTH O.

RESPONDENTS:

- 1 UNION OF INDIA  
REPRESENTED BY SECRETARY TO GOVERNMENT OF  
INDIA, MINISTRY OF INFORMATION AND  
BROADCASTING, A-WING, SASTHRI BHAVAN, NEW  
DELHI-110 001
- 2 THE SECRETARY TO GOVERNMENT OF INDIA,  
MINISTRY OF HOME AFFAIRS, CENTRAL SECRETARIAT,  
NORTH BLOCK, NEW DELHI-110 001

# VERDICTUM.IN

W.P.(C) Nos.3265, 3663 & 3670 of 2022

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3       MADHYAMAM BROADCASTING LIMITED,  
          MEDIA ONE HEADQUARTERS, 15/1594C, VELLIPPARAMBA  
          P.O.KOZHIKODE-673 008, REPRESENTED BY ITS  
          MANAGING DIRECTOR

          BY ADV MANU S., ASG OF INDIA

          THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 08.02.2022, ALONG WITH WP(C).3265/2022 AND  
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

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[CR]

**N. NAGARESH, J.**

.....  
W.P.(C) Nos.3265, 3663 and 3670 of 2022  
.....

*Dated this the 8<sup>th</sup> day of February, 2022*

**J U D G M E N T**

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W.P.(C) No.3265/2022 has been filed by a Company that owns Media One TV Channel. The petitioner-Company seeks to call for the records leading to Ext.P4 order whereby the permission granted to the petitioner-Company to uplink and downlink a News and Current Affairs TV Channel, namely Media One, is revoked with immediate effect. The petitioner seeks to direct respondents 1 and 2 to afford an opportunity of hearing to the petitioner before passing an order revoking the permission.

2. W.P.(C) No.3670/2022 has been filed by a Trade Union of Working Journalists. Petitioners 2 and 3 in the writ

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petition are Members and office bearers of the 1<sup>st</sup> petitioner-Trade Union. They are working in the 3<sup>rd</sup> respondent-Company, which is the petitioner in W.P.(C) No.3265/2022. W.P.(C) No.3663/2022 has been filed by Editor, Senior Web Designer and Senior Cameraman of the 3<sup>rd</sup> respondent-Company. The petitioners in both these writ petitions also challenge the order passed by the Ministry of Information and Broadcasting cancelling the licence granted to the 3<sup>rd</sup> respondent-Company. The parties and exhibits are referred in this judgment as they are arrayed/mentioned in W.P.(C) No.3265/2022.

3. The petitioner in W.P.(C) No.3265/2022 submits that on 05.01.2022, the 1<sup>st</sup> respondent-Union of India, Ministry of Information and Broadcasting issued Ext.P1 show-casue notice to the petitioner stating that in consideration of national security and public order, the Government intends to revoke the licence/permission granted to the petitioner-Company. The petitioner submitted Ext.P2 reply dated 18.01.2022. In Ext.P2, the petitioner

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stated that the petitioner is not informed of the reasons why security clearance is denied and there shall not be any order revoking the licence without affording an opportunity of hearing. The petitioner further submitted that the Channel is not involved in any sort of anti-national activity and therefore considering the fact that there is huge investment in the business, Ext.P1 may be withdrawn. However, on 31.01.2022, the 1<sup>st</sup> respondent, as per a cryptic order, Ext.P4, revoked the permission of the petitioner with immediate effect and ordered to remove the petitioner from the list of permitted Channels. Ext.P4 order is under challenge.

4. The petitioners in W.P.(C) No.3663/2022 submitted that they are professionals working in the 3<sup>rd</sup> respondent-Company (petitioner in W.P.(C) No.3265/2022) and there are about 320 employees who are working in the Channel in various capacities. If the licence granted to the Company is not renewed, the employees will be put to untold hardship. The Kerala Union of Working Journalists and others, who are



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the petitioners in W.P.(C) No.3670/2022, also made similar submissions.

5. The learned Assistant Solicitor General of India contested the writ petitions filing a statement. The ASGI submitted that the writ petitions filed by the employees of the media company and the Kerala Union of Working Journalists are not maintainable. The ASGI submitted that uplinking and downlinking of Private Satellite TV Channels in India are governed by the policy guidelines issued by the Ministry of Information and Broadcasting. The petitioner-Company had applied for permission for one news Channel "Media One" on 19.05.2010. By letter dated 30.09.2011, the Ministry of Information and Broadcasting has permitted the petitioner-Company to uplink and downlink News and Current Affairs TV Channel, namely "Media One", as per Annexure-R1(c). In the year 2012, the Company applied for licence to uplink and downlink a Non-News TV Channel "Media One Life" and News TV Channel "Media One Global". The documents submitted by the petitioner were forwarded to the Ministry of

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Home Affairs (MHA) on 07.01.2014. The Company applied for appointment of two new Directors.

6. Based on the Ministry of Home Affairs' clearance earlier received on 07.02.2011, the Ministry of Information and Broadcasting granted permission to M/s. Madhyamam Broadcasting Limited for a TV Channel, namely "Media One Life", on 26.08.2015, as per Annexure-R1(d). The MHA denied security clearance to the new proposals for additional TV Channels and appointment of Directors. Consequently, the Ministry of Information and Broadcasting issued Annexure-R1(e) show-cause notice to the petitioner-Company to clarify as to why the permission granted to the petitioner should not be revoked. The Company submitted reply which was examined by the Ministry of Information and Broadcasting. However, in view of the denial of the Security Clearance, the permission granted for uplinking and downlinking of TV Channel, namely "Media One Life", was cancelled on 11.09.2019.

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7. As the permission for news TV Channel “Media One” was expiring on 29.09.2021, the Company submitted an application dated 03.05.2021. The application was forwarded to the MHA for security clearance on 29.11.2021. By letter dated 29.12.2021, the MHA denied security clearance to the Company. Accordingly, Annexure-R1(h) show-cause notice was issued to the petitioner to which the petitioner submitted reply. The Ministry of Information and Broadcasting has rejected the application for renewal of licence based on the denial of security clearance by MHA. The MHA had sufficient grounds to deny the security clearance to the petitioner. Therefore, the impugned orders are amply justified, contended the learned ASGI.

8. The learned Senior Counsel Sri. S. Sreekumar assisted by the counsel for the petitioner in W.P.(C) No.3265/2022 argued that the petitioner-Company had applied for permission for 'Media One Channel' on 19.05.2010 and obtained the permission on 30.09.2011. Security clearance was given to the Channel. The

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downlinking permission granted to the petitioner remained valid till 29.09.2021 coterminous with the uplinking permission. Therefore, both the uplinking and downlinking have validity till 29.09.2021.

9. On the expiry of the licence, the application for renewal was submitted on 03.05.2021. The respondents issued Ext.P1 show-cause notice. The petitioner submitted reply to the show-cause notice. The petitioner was not made known of the reasons for denial of security clearance.

10. The learned Senior Counsel pointed out that on 28.02.2020, in connection with Delhi Riot reporting, a show-cause notice was issued to the petitioner. The petitioner submitted a prompt reply. However, a prohibitory order was issued on 06.03.2020 against the transmission or re-transmission of 'Media One' along with 'Asianet News Channel' for 48 hours. However, the prohibitory order was lifted on the very next day. The learned Senior Counsel submitted that the sinister motive and capricious prohibition of transmission and re-transmission of 'Media One' imposed

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on 06.03.2020 would show the vindictive attitude of the Government of India.

11. The right of the petitioner under Article 19(1)(a) of the Constitution is infringed, contended the learned Senior Counsel. The learned Senior Counsel submitted that the importance of Press is well established under Indian law. The Hon'ble Apex Court in **Anuradha Bhasin and another v. Union of India and others** [(2020) 3 SCC 637] held that the freedom of the Press is a requirement in any democratic society for its effective functioning. In **Channing Arnold v. The Emperor** [(1914) 16 Bom LR 544], the Privy Council has held that the freedom of the Journalist is an ordinary part of the freedom of the subject and to whatever length, the subject in general may go, so also may the journalist, but apart from the statute law his privilege is no other and no higher.

12. The learned Senior Counsel also submitted that as regards **Ex-Army men's Protection Services Private Limited v. Union of India and others** [(2014) 5 SCC 409]

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and ***Digi Cable Network (India) Private Limited v. Union of India and others*** [AIR 2019 SC 455], which are judgments relied on by the respondents, in the case of ***Ex-Armymen's Protection Services Private Limited*** (supra), the security clearance was issued to the company for 5 years and later, the company received an information that the security clearance is withdrawn in the national interest. It is in that context the Apex Court held that in a situation of national security, a party cannot insist for strict observance of the principles of natural justice. In the case of ***Digi Cable Network (India) Private Limited*** (supra), the permission earlier granted for the company was actually cancelled before the completion of its tenure.

13. In the case of the petitioner herein, the context is totally different. The issue in respect of the petitioner-Company should be decided with reference to the judgment of the Apex Court in ***Manohar Lal Sharma v. Union of India*** [2021 Supreme (SC) 628]. In the said judgment, the Hon'ble Apex Court observed that it is a settled position of law that in

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the matters pertaining to national security, the scope of judicial review is limited. However, this does not mean that the State gets a free pass every time the specter of 'national security' is raised. National security cannot be the bugbear that the judiciary shies away from, by virtue of its mere mentioning. Though the court should be circumspect in encroaching upon the domain of national security, no omnibus prohibition can be called for against judicial review.

14. The learned Senior Counsel pointed out that the respondent-Union of India may decline to provide information when constitutional considerations exist such as those pertaining to the security of the State, or when there is a specific immunity under a specific statute. However, it is incumbent on the State to not only specifically plead such constitutional concern or statutory immunity but they must also prove and justify the same in Court on affidavit. The respondent-Union of India must necessarily plead and prove the facts which indicate that the information sought must be kept secret as their divulgence would affect national security

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concerns. They must justify the stand that they take before a court. The mere invocation of national security by the State does not render the Court a mute spectator. In the case of the petitioners, apart from alleging national security concerns, the respondents have not brought forth any material to establish the circumstances warranting cancellation of the licence.

15. The learned Senior Counsel Sri. Jaju Babu, representing the counsel for the petitioners in W.P.(C) Nos.3663/2022 and 3670/2022, urged that rejecting the permission granted for uplinking and downlinking of Media One Channel without affording an opportunity of hearing to the Company and to any of its employees, is highly arbitrary and violative of the principles of natural justice. At the time of considering the renewal of permission of the existing permission holders, the eligibility criteria of net worth of the company and experience of the top management will not apply. Therefore, insistence of security clearance at the time of renewal of licence is wrong. As far as the renewal



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application is concerned, the conditions in Clause 5 of the Policy Guidelines for Uplinking of TV Channels alone will apply.

16. The learned Senior Counsel further submitted that Ext.P5 order of non renewal has no legal backing. The respondents have not alleged any violation of permit conditions. The learned Senior Counsel further argued that the respondents have failed to take into consideration the Dispute Resolution Mechanism under Clause 7 of Ext.P2(a) Policy Guidelines for Downlinking the TV Channels. The respondents ought to have resorted to Dispute Resolution Mechanism before taking any punitive action against the Company.

17. Going by Clause 10.4 of Ext.P2 Policy Guidelines for Uplinking of TV Channels from India, only the terms and conditions in Ext.P2 would be applicable for renewal of permission. Clause 9 specifies the procedure for obtaining permission and not renewal. The learned Senior Counsel pointed out that in 2016, when renewal of permission was

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sought in respect of Media One, the same allegations were raised. The Company submitted a reply. The Government accepted the reply and the extension applied for by the Company was not cancelled. In the totality of the circumstances, the rejection of the present application for renewal cannot be sustained.

18. The learned Senior Counsel further pointed out that the actions evidenced by the show-cause notice and cancellation, are illegal and unconstitutional and are in violation of the fundamental principles of natural justice. It has affected the source of livelihood of the petitioners and other journalists and employees of a News Channel. This offends their right under Articles 14 and 21 of the Constitution. The learned Senior Counsel submitted that without any statutory backing, if the Government of India cancels the licence already granted to the Company, that would be violative of the fundamental rights of the petitioners. It would offend the freedom of Press, which is protected by Part III of the Constitution of India.

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19. The learned ASGI Sri. S. Manu, on the other hand, relied on the judgment of the Apex Court in ***In Re Harijai Singh*** [(1996) 6 SCC 466]. In the said judgment, the Hon'ble Apex Court observed that freedom of Press is not absolute, unlimited and unfettered at all times and that in all circumstances giving an unrestricted freedom of the speech and expression would amount to an uncontrolled licence. If it were wholly free even from reasonable restraints, it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. The element of responsibility must be present in the conscience of the journalists. In an organised society, the rights of the Press have to be recognised with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded.

20. As regards the allegation of violations of principles of natural justice, the learned ASGI relied on the judgment of the Apex Court in ***Ex. Armymen's Protection Services***

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**Private Limited** (supra), wherein the Hon'ble Apex Court held that in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. Relying on the judgment of the Apex Court in **Digi Cable Network (India) Private Limited** (supra), the learned ASGI argued that the grant of permission to the petitioner in W.P.(C) No.3265/2022 is subject to issue of security clearance from the Central Government. Since the grant of permission was subject to obtaining of security clearance from the concerned Ministry, the Competent Authority is justified in not renewing the permission granted to the petitioner-Company. The learned ASGI pointed out that the Apex Court categorically has held that what is in the interest of national security is not a question of law, it is a question of policy. Whether something is in the interest of the State or not, should be left to the Executive.

21. I have heard the learned Senior Counsel assisted by the counsel appearing for the petitioners in the writ petitions and the learned ASGI representing the Union of

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India.

22. The broadcasting in India is considered as an integral part of the freedom of speech and expression. The broadcasting is regulated by the Ministry of Information and Broadcasting. The Uplinking and Downlinking of Private Satellite TV Channels are governed by the Policy Guidelines issued by the Ministry of Information and Broadcasting.

23. Annexure-R1(c) Policy Guidelines for Uplinking of TV Channels in India, in its Clauses 9 and 10 provide, as follows:-

9. PROCEDURE FOR OBTAINING PERMISSION

9.1. The applicant company can apply to the Secretary, Ministry of Information & Broadcasting. In triplicate, In the prescribed format "Form 1 along with all over documents including a demand draft for an amount equal to processing fee wherever prescribed, payable at par at New Delhi, In favour of the Pay & Accounts Officer, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi.

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

9.3 As soon as these clearances are received, the applicant would be asked to furnish a demand draft for an amount equal to the permission fee and

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Performance B Quarantee as applicable, payable at New Delhi, In favour of Pay & Accounts Of Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi, Further applicant company in respect of Para 1, 2 or 3 above would be required to sign agreement Bed as "Grant of Permission Agreement. In the format "Form Z. which being prescribed separately,

9.4. Thereafter, the Company would be issued a formal permission to enable it to o requisite license/ clearances from the WPC Wing, Ministry of Communications & T approach a teleport service provider in case of TV channels/ uplinking by a indian ne agency.

9.5. The applicant will pay the licence fee and royalty, as proscribed by WPC Wing from time to time, annually, for the total amount of spectrum assigned to Hub/Teleport station, as per norms & rules of the WPC Wing. Besides, the Hub/Teleport station owner will inform WPC Wing the full technical and operations details of TV channels proposed to be uplinked through his/her Hub/Teleport In prescribed format. (This clause is applicable for teleports/uplinking by a Indian News Agency.)

## 10. RENEWAL OF EXISTING PERMISSIONS

10.1. The existing permission holders as on the date of issuance of the amended Guidelines on 05.12.2011 will continue to be governed by the terms and conditions of permission as they existed prior to the issuance of amendments on 05.12.2011 till the expiry of such permission.

10.2 Renewal of permission will be considered for a period of 10 years at a time, subject t the condition that the channel should not have been found guilty of violating the terms and conditions of permission Including violations of the programme and advertisement code on five occasions or more. What would constitute a violation would be

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determined In consultation with the established self-regulating mechanisms.

10.3 The renewal will also be subject to the permission holder's acceptance of all of the terms and conditions of permission as the Government may prescribe by way of policy pronouncements from time to time.

10.4 At the time of considering the renewal of permission of the existing permission holders, the eligibility criteria of net worth of the company and experience of the top management will not apply. However, other terms and conditions would be applicable as per modified terms and conditions of the permission.

From the above provision, it is clear that on the basis of information furnished in the application form, if the applicant is found eligible, its application will be sent for security clearance to MHA and for clearance of satellite use to the Department of Space. Clause 10.4 would make it clear that at the time of considering the renewal of permission of the existing permission holders, the eligibility criteria of net worth of the company and experience of the top management will not apply. However, other terms and conditions would be applicable as per modified terms and conditions of the permission. The provision that the other terms and

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conditions would be applicable would only indicate that the security clearance is a factor to be considered at the time of renewal of existing permission also.

24. Annexure-R1(b) Policy Guidelines for Downlinking of TV Channels, in Clauses 8 and 9 provide as follows:-

#### 8. PROCEDURE FOR GRANT OF PERMISSION OF CHANNELS

8.1. The applicant company shall apply to the Secretary, Ministry of Information and Broadcasting in the prescribed Performa along with full details and documentation relevant for evaluating its eligibility for grant of permission to downlink Television Channels in India. Each application form shall be accompanied by a demand draft of Rs. Ten Thousand towards non-refundable processing fee.

8.2. The applicant company shall also submit full details of each channel being/proposed to be downlinked along with all other documents as prescribed in the guidelines.

8.3. After scrutiny of the application if the applicant company is found eligible, the same will be sent for security clearance to the Ministry of Home Affairs. In the meanwhile, the Ministry of Information and Broadcasting will evaluate the suitability of the proposed channel for downlinking into India for public viewing.

8.4. In the event of the applicant company and the proposed channel being found suitable, the Ministry of Information and Broadcasting will register the channel and the applicant company to enter into a grant of permission agreement with the Ministry of Information



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and Broadcasting. Government of India.

8.5. On receipt of the signed agreement, the Ministry of Information and Broadcasting will issue a registration certificate for the concerned channels and grant permission to the applicant company to downlink the relevant channels in India for the prescribed period.

8.6. On receipt of the permission and upon registration of the channel, the applicant company will be entitled to approach the MSOs/Cable head end operators/DTH Operators for receiving/downlinking its channel's signal, for further transmission/ retransmission/ distribution.

#### 9. [RENEWAL OF EXISTING PERMISSIONS/REGISTRATION

9.1. The existing permission holders as on the date of issuance of the amended Guidelines on 05.12.2011 will continue to be governed by the terms and conditions of permission as they existed prior to the Issuance of amendments on 05.12.2011 till the expiry of such permission.

9.2. Renewal of permission/ registration will be considered for a period of 10 years at a time, subject to the condition that the company/ channel should not have been found guilty of violating the terms and conditions of permission Including violations of the programme and advertisement code on five occasions or more. What would constitute a violation would be determined in consultation with the established self-regulating mechanisms.

9.3. The renewal will also be subject to the permission registration holder's acceptance of terms and conditions of permission as the Government may prescribe by way of policy pronouncements from time to time.

9.4 At the time of considering the renewal of

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permission/ registration of the existing permission holders, the eligibility criteria of net worth of the company and experience of the top management will not apply. However, other terms and conditions would be applicable as per modified terms and conditions of the permission.

Clause 9.4 would make it clear that at the time of considering the renewal of permission/registration of the existing permission holders, other terms and conditions would be applicable as per modified terms and conditions of the permission. Therefore, in the case of the renewal of application for downlinking also, the security clearance is made mandatory. The contention of the petitioners that the security clearance is a one time affair and is not required at the time of renewal of licence, therefore, cannot be accepted.

25. The learned counsel for the petitioners urged that the impugned orders are bad for not following the principles of natural justice. In the judgment in ***In Re Harijai Singh*** (supra), the Hon'ble Apex Court held that freedom of Press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of the

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speech and expression would amount to an uncontrolled licence. The Hon'ble Apex Court held that public order, decency, morality and such other things must be safeguarded.

26. The learned counsel for the petitioners relying on the judgment in ***Anuradha Bhasin and another*** (supra), urged that the importance of the Press is well established under Indian law and the freedom of the press is a requirement in any democratic society for its effective functioning. There is no doubt that the freedom of Press is a valuable and sacred right enshrined under Article 19(1)(a) of the Constitution. This right is required in any modern democracy without which there cannot be transfer of information or requisite discussion for a functional democratic society. However, this Court is of the view that the rights provided under Article 19(1) of the Constitution have certain exceptions, which empower the State to impose reasonable restrictions.

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27. With respect to the freedom of speech and expression under Article 19(1)(a), restrictions are provided under Article 19(2) of the Constitution. The ingredients of Article 19(2) are that the action of the State must be sanctioned by law; the proposed action must be a reasonable restriction; such restriction must be in furtherance of 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. The imposition of restriction is qualified by the term 'reasonable' and is limited to situation such as interests of the sovereignty, integrity, security, friendly relations with foreign States, public order, decency or morality or contempt of court, defamation or incitement to an offence. Reasonability of a restriction is used in qualitative, quantitative and relative sense.

28. The petitioners relied on the judgment of the Apex Court in ***Manohar Lal Sharma*** (supra). This Court finds that the said judgment was delivered in the context of right to

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privacy and may not be of much help to the petitioners in these cases, where the freedom of speech and expression is the subject matter.

29. Sir William Wade in Administrative Law 10<sup>th</sup> Edition observed that any restriction, limitation or exception on principles of natural justice is 'only an arbitrary boundary'. 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,

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overtime bans and disruption generally of a kind which had plagued the communications headquarters shortly beforehand and which were a threat of 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 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.

30. In the Council of Civil Service Union and others v. Minister for the Civil service, 1985 AC 374, the House of Lords had occasion to consider the question. The House of Lords held that-

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

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necessary information, and in any even 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 ground of national security.

31. In ***Ex-Armymen's Protection Services Private Limited*** (supra), the Apex Court analysed the law and held as follows:

15. It is difficult to define in exact terms as 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 State or not. It should be left to the Executive. To quote Lord Hoffman in *Secretary of State for the Home Department v. Rehman*, 2003 (1) AC 153:

“... 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 interest 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

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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.

32. The Hon'ble Apex Court considered the issue of refusal of licence in the context of Cable Television Networks (Regulation) Act, 1995 in ***Digi Cable Network (India) Private Limited*** (supra). The Hon'ble Apex Court held as follows:

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

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

16. In somewhat similar circumstances, this Court while repelling this submission laid down the following principles of law in the case of Ex



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Armyemen's Protection Services Private Limited vs. Union of India And Others 2014 (5) SCC 409 in para 16 and 17 which read as under:

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

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

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

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

18. In other words, we are of the view that the principles of natural justice were not violated in this case in the light of the law laid down by this Court in the case of Ex-Armyemen's Protection Services

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Private Limited (supra) inasmuch as the appellant was not entitled to claim any prior notice before cancellation of permission.

From the law laid down by the Hon'ble Apex Court, it is clear that the principles of natural justice and interference by courts in the matter of national security, have very limited role.

33. The national security is considered as one of the most important sovereign function of any State/Government for long. In 'Atrisamhita', an ancient Indian Text dating back to Rigveda period, the contours of sovereign functions are described as follows:

*Dushtasya danda sujanasya pooja*  
*Nyayena koshasya cha sampravridhi*  
*Apakshapathorthishu rashtra raksha*  
*Panchaiva yagnya kathitaa nrupanaam*

To punish the criminals, to protect the good, to enrich the treasury by just methods, to be impartial to all and **to protect the Nation** – these are five fundamental duties to be performed by the State. The concept of good governance would take in within its ambit, a secured State. Ensuring

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national security involves avoiding any possibility that may threaten national security. The national security is an executive responsibility, where Legislature and Judiciary have only complementary roles.

34. While considering the issue involved in these writ petitions, this Court is of the view that Rule 6 of the Cable Television Networks Rules providing for the Program Code parameters are relevant. Rule 6 provides that no programme should be carried in the cable service, which contains criticism of friendly countries, contents likely to encourage or incite violence or anything against maintenance of law and order or which promote anti-national attitudes, contains aspersions against the integrity of the President and Judiciary, etc.

35. The Hon'ble Apex Court in the judgment in ***Ex-Armyemen's Protection Services Private Limited*** (supra) held that depending on the facts of any particular case, it will be pen to the court to satisfy itself whether there were justifiable facts and in that regard, the court is entitled

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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.

36. When these writ petitions came up for hearing, the learned ASGI was required to produce the files relating to the application submitted by the petitioner in W.P.(C) No.3265/2022 for renewal of licence. The MHA made available the relevant files. I have perused the files. It emerges from the files that the MHA had called for inputs from intelligence agencies. The files contained paginated documents, conclusions of the Committee of Officers and other responsible officers of the MHA and the Guidelines for assessment of proposal received in the MHA for National Security Clearances. National Security covers preservation of nations unity, territorial integrity, sovereignty and protection of life and liberty of individuals. The Information and Broadcasting is a sensitive sector.

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37. From the files produced before this Court, it is discernible that the Committee of Officers took note of the inputs given by the intelligence agencies as regards the petitioner-Company, and found that the inputs are of a serious nature and falls under the security rating parameters. In the circumstances, the Committee of Officers advised not to renew the licence. This Court finds that the recommendations of the Committee of Officers as finally accepted by the MHA, are justified by supporting materials.

In the facts and circumstances of the case, this Court is not inclined to interfere with the denial of renewal of licence to the petitioner-Company in W.P.(C) No.3265/2022. The writ petitions fail and they are accordingly dismissed.

Sd/-

**N. NAGARESH, JUDGE**

aks/08.02.2022

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APPENDIX OF WP(C) 3265/2022

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 5.1.2022 ISSUED BY THE 1ST RESPONDENT.

Exhibit P2 TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER TO EXHIBIT P 1 SHOW CAUSE NOTICE, DATED 18.01.2022.

Exhibit P3 TRUE COPY OF THE REPLY SENT THROUGH E-MAIL BY THE PETITIONER TO THE 1ST RESPONDENT DATED 19.01.2022.

Exhibit P4 TRUE COPY OF THE ORDER DATED, 31.01.2022 PASSED BY THE FIRST RESPONDENT REVOKING THE PERMISSION OF THE PETITIONER.

P5 COPY OF JUDGMENT DT 23.4.2021 IN ST.28/2016.

RESPONDENT'S EXT:

R1(a) COPY OF GUIDELINES FOR UPLINKING .

R1(b) COPY OF GUIDELINES FOR UPLINKING

R1(c) .COPY OF PERMISSION LETTER DT 30.9.2011.

R1(d) COPY OF PERMISSION LETTER

R1(e) COPY OF SHOW-CAUSE NOTIE DT 12.2.2016.

R1(f) COPY OF ORDER DT 11.9.2019

R1(g) COPY OF LETTER DT 29.11.2021

R1(h) COPY OF LETTER DT 5.1.2022

R1(i) COPY OF ORDER DT 31.1.2022

# VERDICTUM.IN

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## APPENDIX OF WP(C) 3663/2022

### PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE ORDER NO. 1404/32 (II)/2010-TV(I) DATED 30.09.2011 ISSUED BY THE 1ST RESPONDENT.

Exhibit P1(a) TRUE COPY OF THE REGISTRATION CERTIFICATE FOR DONLINKING OF TELEVISION CHANNEL INTO INDIA TO THE CHANNEL BY NAME "MEDIA ONE" DATED 30.09.2011.

Exhibit P1(b) TRUE COPY OF THE RENEWED LICENSE FOR DOWNLINKING PERMISSION IN RESPECT OF A NEWS & CURRENT AFFAIRS TV CHANNEL DATED 11.07.2019.

Exhibit P2 TRUE COPY OF THE POLICY GUIDELINES FOR UPLINKING OF TELEVISION CHANNELS FROM INDIA PUBLISHED BY THE 1ST RESPONDENT ON 05.12.2011.

Exhibit P2(a) TRUE COPY OF THE 1ST RESPONDENT HAS ALSO PUBLISHED POLICY GUIDANCE FOR DOWNLINKING THE TELEVISION CHANNELS FROM INDIA PUBLISHED BY THE 1ST RESPONDENT ON 05.12.2011.

Exhibit P3 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 05.01.2022 ISSUEDBY THE 1ST RESPONDENT.

Exhibit P4 TRUE COPY OF THE REPLY GIVEN BY THE COMPANY TO EXT.P3 ON 19.01.2022.

Exhibit P5 TRUE COPY OF THE ORDER NO.1404/32 (II)/2010-TV(I)VOL.I DATED 31.01.2022 ISSUED BY THE 1ST RESPONDENT.

Exhibit P5(a) TRUE COPY OF THE APPLICATION NO. MBL/MIB/102/2021 DATED 03.05.2021 (WITHOUT ANNEXURES) OF MEDIA ONE.

Exhibit P6 TRUE COPY OF THE ORDER NO. 1404/32 (II)/2010-TV(I) DATED 11.09.2019 ISSUED BY THE 1ST RESPONDENT.





# VERDICTUM.IN

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## APPENDIX OF WP(C) 3670/2022

### PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE ORDER NO 1404/32(11)/2010-TV(1) DATED 30.9.2011 ISSUED BY THE 1ST RESPONDENT
Exhibit P1(A)	TRUE COPY OF THE REGISTRATION CERTIFICATE FOR DOWNLINKING OF TELEVISION CHANNEL INTO INDIA TO THE CHANNEL BY NAME MEDIA ONE DATED 30.9.2011
Exhibit P1(B)	TRUE COPY OF THE RENEWED LICENSE FOR DOWNLINKING PERMISSION IN RESPECT OF A NEWS & CURRENT AFFAIRS TV CHANNEL DATED 11.7.2019
Exhibit P2	TRUE COPY OF THE POLICY GUIDELINES FOR UPLINKING OF TELEVISION CHANNELS FORM INDIA PUBLISHED BY THE 1ST RESPONDENT ON 5.12.2011
Exhibit P2(a)	TRUE COPY OF THE 1ST RESPONDENT HAS ALSO PUBLISHED POLICY GUIDANCE FOR DOWNLINKING THE TELEVISION CHANNELS FROM INDIA PUBLISHED BY THE 1ST RESPONDENT ON 5.12.2011
Exhibit P3	TRUE COPY OF THE SHOW CAUSE NOTICE DATED 5.1.2022 ISSUED BY THE 1ST RESPONDENT
Exhibit P4	TRUE COPY OF THE REPLY GIVEN BY THE COMPANY TO EXT P3 ON 19.1.2022
Exhibit P5	TRUE COPY OF THE ORDER NO 1404/32/(11)/2010-TV(10VOL.1 DATED 31.1.2022 ISSUED BY THE 1ST RESPONDENT
Exhibit P5(A)	TRUE COPY OF THE APPLICATION NO MBL/MIB/102/2021 DATED 3.5.2021 (WITHOUT ANNEXURES) OF MEDIA ONE
Exhibit P6	TRUE COPY OF THE ORDER NO 1404/42(11)/2012 TV(10 DATED 11.9.2019 ISSUED BY THE 1ST RESPONDENT
Exhibit P7	TRUE COPY OF THE ORDER NO 41014/2/2020-BC-111 DATED 7.3.2020 ISSUED BY THE 1ST RESPONDENT TO THE 3RD RESPONDENT

# VERDICTUM.IN

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**Exhibit P8**

**TRUE COPY OF THE COMMUNICATION DATED  
11.4.2015 ISSUED BY THE 1ST RESPONDENT  
INSISTING ON PRODUCTION OF CERTAIN  
DOCUMENTS FOR SEEKING SECURITY  
CLEARANCE**