

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 635/2023

ANSHUL GUPTA

PETITIONER (S)

VERSUS

PRIME MINISTER OFFICE

RESPONDENT (S)

O R D E R

This Writ Petition filed under Article 32 of the Constitution of India is stated to be in public interest, seeking the following prayers:

"1) Issue a writ in the nature of mandamus, order, direction or any other appropriate writ seeking cancellation of Cabinet decision dated September 15' 2021.

2) Orders of the Hon'ble court dated September 1' 2020 should be implemented.

3) Create a court monitored Special Task Force to comply with point 38 (vi) of the order of the Hon'ble court, identify the offenders/violators of law and punish them accordingly.

4) Any other relief/order(s) which this Hon'ble court deems fit and proper may also be passed in the interest of justice."

2. It is averred that the petitioner holds a Masters Degree in Computer Science and therefore, is competent to move this writ petition. By filing this petition, the petitioner has sought to assail the Cabinet decision of the Union Government and essentially seeks implementation of the judgment of this Court in M.A.(D) No. 9887 of 2020 in Civil Appeal Nos. 6328-6399 of 2015 (*Union of India vs. Association of Unified Telecom Service Providers of India etc. etc.*). In the said judgment dated 01.09.2020, the following

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direction were issued:

"38. Resultantly, we issue following directions:

(i) That for the demand raised by the Department of Telecom in respect of the AGR dues based on the judgment of this Court, there shall not be any dispute raised by any of the Telecom Operators and that there shall not be any re-assessment.

(ii) That, at the first instance, the respective Telecom Operators shall make the payment of 10% of the total dues as demanded by DoT by 31.3.2021.

(iii) TSPs. have to make payment in yearly instalments commencing from 1.4.2021 up to 31.3.2031 payable by 31st March of every succeeding financial year.

(iv) Various companies through Managing Director/ Chairman or other authorised officer, to furnish an undertaking within four weeks, to make payment of arrears as per the order.

(v) The existing bank guarantees that have been submitted regarding the spectrum shall be kept alive by TSPs. until the payment is made.

(vi) In the event of any default in making payment of annual instalments, interest would become payable as per the agreement along with penalty and interest on penalty automatically without reference to Court. Besides, it would be punishable for contempt of Court.

(vii) Let compliance of order be reported by all TSPs. and DoT every year by 7th April of each succeeding year."

3. However, on 15.09.2021 the Cabinet of the Union of India approved certain structural and procedural reforms in the telecom sector with a view to protect and generate employment opportunities, promote healthy competition, protect interests of consumers, infuse liquidity, encourage investment and reduce regulatory burden on Telecom Service Providers (TSPs). These reforms were in the backdrop of the outstanding performance of the

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telecom sector in meeting the COVID-19 pandemic challenges and the reforms were to boost the proliferation and penetration of broadband and telecom connectivity. The package is also expected to boost 4G proliferation, infuse liquidity and create an enabling environment for investment in 5G networks. Nine structural reforms and five procedural reforms, plus relief measures for the telecom service providers were approved which are extracted as under:

"Structural Reforms

1. Rationalization of Adjusted Gross Revenue: Non-telecom revenue will be excluded on prospective basis from the definition of AGR.

2. Bank Guarantees (BGs) rationalized: Huge reduction in BG requirements (80%) against License Fee (LF) and other similar Levies. No requirements for multiple BGs in different Licenced Service Areas (LSAs) regions in the country. Instead, One BG will be enough.

3. Interest rates rationalized/ Penalties removed: From 1st October, 2021, Delayed payments of License Fee (LF)/Spectrum Usage Charge (SUC) will attract interest rate of SBI's MCLR plus 2% instead of MCLR plus 4%; interest compounded annually instead of monthly; penalty and interest on penalty removed.

4. For Auctions held henceforth, no BGs will be required to secure instalment payments. Industry has matured and the past practice of BG is no longer required.

5. Spectrum Tenure: In future Auctions, tenure of spectrum increased from 20 to 30 years.

6. Surrender of spectrum will be permitted after 10 years for spectrum acquired in the future auctions.

7. No Spectrum Usage Charge (SUC) for spectrum acquired in future spectrum auctions.

8. Spectrum sharing encouraged- additional SUC of 0.5% for spectrum sharing removed.

9. To encourage investment, 100% Foreign Direct Investment (FDI) under automatic route permitted in Telecom Sector.

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All safeguards will apply.

Procedural Reforms

1. Auction calendar fixed - Spectrum auctions to be normally held in the last quarter of every financial year.
 2. Ease of doing business promoted - cumbersome requirement of licenses under 1953 Customs Notification for wireless equipment removed. Replaced with self-declaration.
 3. Know Your Customers (KYC) reforms: Self-KYC (App based) permitted. E-KYC rate revised to only One Rupee. Shifting from Prepaid to Post-paid and vice-versa will not require fresh KYC.
 4. Paper Customer Acquisition Forms (CAF) will be replaced by digital storage of data. Nearly 300-400 crore paper CAFs lying in various warehouses of TSPs will not be required. Warehouse audit of CAF will not be required.
 5. SACFA clearance for telecom towers eased. DOT will accept data on a portal based on self-declaration basis. Portals of other Agencies (such as Civil Aviation) will be linked with DOT Portal."
4. The above reforms were applicable to all TSPs to provide relief for enabling issuing liquidity and cash flow. This was to help also various Banks having substantial exposure to the telecom sector.

The petitioner has now objected to the following three aspects of the reforms-

(a) Moratorium given to Telecom Service Providers (TSP's). It is against the schedule fixed by the Respected Supreme Court vide order dated Sept 1' 2020. No such facility is available for common man.

(b) Conversion of AGR payments to Equity.

(c) Freebies (Revdi) like No AGR on Non - Telco revenue, reduction in Bank Guarantees, reduction in interest, waiving off of spectrum sharing charges etc. Lucrative sops (Freebies / Revdi) given to Telecom Companies over common man. A compromise to "State Exchequer". No such facility is available for common man.

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(d) Can respondent act against common man and court of law?

5. According to the petitioner, the decision taken by the Union Cabinet *vis-a-vis* the telecom sector is an instance of clear interference in the payment schedule decided by this Court and is directly benefiting the Annual Gross Revenue defaulters. The petitioner has questioned the Cabinet decision with regard to the aforesaid structural and procedural reforms in the context of there being discrimination as against private individuals and against the common man. According to the petitioner, the Cabinet decision is in favour of the 'super rich' and to benefit certain entities. Hence, this writ petition.

6. We have heard the petitioner, who has appeared in person and perused the material on record.

7. At the outset, we wish to refer to a judgment of this Court in the case of *State of Uttaranchal vs. Balwant Singh Chauhal, (2010) 3 SCC 402*, wherein this Court has considered the question as to the manner of entertaining and considering Public Interest Litigation and in paragraph 181 thereof has issued the following guidelines:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

8. In the aforesaid backdrop, we have considered the submissions of petitioner, who has appeared in person. On hearing the petitioner who has appeared in person, we wish to cite the decision of this Court in the case of Federation of Railway Officers Association vs. Union of India, (2003) 4 SCC 289, in which the formation of seven railway zones by the Railways was assailed. While dismissing the Special Leave Petition, this Court observed that in matters affecting policy and requiring technical expertise, the court should leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or is arbitrary or

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irrational or an abuse of power, Courts will not interfere with such matters.

9. No doubt, this Court by its judgment dated 01.09.2020 had issued certain directions, extracted above, with regard to the telecom sector. However, as already noted, in the backdrop of the COVID-19 challenges, with huge surge in data consumption, online education, work from home, inter-personal connect through social media, virtual meetings, etc., reform measures were found necessary to boost the proliferation and penetration of broadband and telecom connectivity. In order to provide competition and consumer choice and for inclusive development and bringing the marginalised areas into the mainstream and universal broadband access to connect the unconnected, nine structural reforms and five procedural reforms plus relief measures for the telecom service providers were provided. It may appear in a first blush that the Cabinet decision to initiate structural and procedural reforms and provide relief measures for the TSPs are contrary to the directions issued by this Court on 01.09.2020. It would have been more appropriate for the Central Government to have filed an application in this regard. But what is to be borne in mind is emerging situations in light of the COVID-19 pandemic that engulfed the world including India in the years 2020-2021 and the lifestyle of the people drastically changing on account of the precautions and preventive measures that had to be taken in order to save themselves from being afflicted by the pandemic which resulted not only in deaths but also post COVID-19 disabilities and ill health. As a result, the people depended

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heavily on the telecom sector and particularly on the TSPs in order to keep in touch with one another as there were lockdowns declared in the country in March, 2020 and for successive periods thereafter, in several places owing to the COVID-19 pandemic which necessitated what may be called "social distancing" and as a result there was "distant socialising". In schools and educational institutions, and offices there was virtual study and work from home respectively. Offices were shut and classrooms were being conducted virtually. Even the Governments were run on virtual mode and we could emphasise that video conferencing facility and virtual mode was adapted quickly not only by various stakeholders such as Government offices, schools, other private organisations but most significantly by law Courts which did not cease to function during the COVID-19 pandemic. Huge investments were made for establishment and expansion of the infrastructure as there was need for online education, work from home, inter-personal connect, virtual meetings and virtual courts. Since there was a heavy surge of online facilities being put to use and data consumption, the Governments, Courts, education system and corporate sector in the country depended heavily on the telecom sector and TSPs, in particular, for their various activities and for keeping their systems intact.

10. Despite the order passed by this Court on 01.09.2020, the need was felt by the Central Government for bringing measures and reforms in the telecom sector and in order to make available pertinent reliefs for the said sector, the impugned Cabinet decision was taken. Therefore, taking an overall view of the

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matter, we feel that it would not be justified on our part to interfere with a well calibrated decision of the Cabinet solely on the ground that this Court had earlier passed certain orders on 01.09.2020.

11. In our view, these are all matters of policy and decision-making which is on the basis of experts' opinion and on emerging situations and exigencies, to be made in the interest of the welfare of the people of India having serious technical and financial implications and, therefore, have to be in public interest. Hence, we do not think such Cabinet decisions could be lightly interfered with by a Court of law in the absence of there being any particulars or materials brought to the notice of the Court assailing the Cabinet decisions, as being unconstitutional or arbitrary in nature or contrary to law.

12. We thus find that this writ petition is without merit. Any interference by this Court at this stage would not only create uncertainty in the implementation of the policy but also jeopardise the policy itself. Moreover, the other stakeholders, namely, the Telecom Service Providers are not arraigned as parties to this Writ Petition. Therefore, at this stage, we do not think it proper to entertain this petition.

The writ petition is hence dismissed.

.....J.
[B.V. NAGARATHNA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
SEPTEMBER 01, 2023.

ITEM NO.27

COURT NO.14

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 635/2023

ANSHUL GUPTA

Petitioner(s)

VERSUS

PRIME MINISTER OFFICE

Respondent(s)

(FOR ADMISSION and IA No.117472/2023-PERMISSION TO APPEAR AND ARGUE
IN PERSON)

Date : 01-09-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) Petitioner-in-person

For Respondent(s)

UPON hearing Petitioner-in-person the Court made the following
O R D E R

The writ petition is dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(NEETU SACHDEVA)
Assistant Registrar-cum-PS

(MALEKAR NAGARAJ)
Court Master (NSH)

(signed order is placed on the file)

