

File Number N-45006/1/2021-DAS
GOVERNMENT OF INDIA
Ministry of Information & Broadcasting

“A” Wing, Shastri Bhawan
New Delhi, Delhi – 110001

Dated the 30th May, 2022

ORDER

In compliance to the Hon'ble High Court of Bombay at Aurangabad order dated 04.04.2022 in the Writ Petition No. 1230 of 2022 filed by M/s Bhusawal Cable Network Private Limited (BCN), personal hearing was granted to BCN on 10.05.2022. Shri. Md. Salim, Director, BCN and Adv. Shri. Upendra Thakur appeared. The case was discussed and the earlier written submissions made during the original proceedings were reiterated. After considering the oral submissions made and also the written submissions made by BCN from time to time, the following order is passed.

Facts of the case

2. This Ministry vide its communication number 9/111/2014-BP&L dated 04.11.2015 had granted provisional registration of Multi-System Operator (MSO) to BCN for operating as MSO in Digital Addressable System in the State of Maharashtra and Madhya Pradesh as notified vide Notification Number 2534 (E) dated 11.11.2011 under Cable Television Networks (Amendment) Rules, 2021.
3. BCN was subsequently given PAN India registration of MSO vide this Ministry's Circular Number 2/108/2015-DAS dated 27.01.2017 and was thereafter treated to have a regular registration of MSO vide this Ministry's Office Memorandum Number 9/406/2016-DAS dated 06.03.2017.
4. The registration of MSO granted to BCN by this Ministry was subject to adherence and compliance of certain terms and conditions already cited in its registration.
5. Pursuant to a complaint received in this Ministry against BCN regarding taking feed from DD Free dish and re-transmitting on its network, the Ministry requested the authorized officer (AO) concerned prescribed under Section 2 of the Cable Television Networks (Regulation) Act, 1995 to inquire into the matter and submit his report to this Ministry.

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30/05/22

6. The AO in his report dated 20.09.2021 to the Ministry stated that feed from DD Free Dish was used by BCN for re-transmission of certain mandatory and private satellite channels.

7. The report from AO relied on supporting evidence in the form of Panchanama in the presence of two witnesses and corroborative video recording of the enquiry proceedings were also furnished.

8. On the basis of AO's report and analysis of supporting evidence, opportunities of being heard were provided to BCN by the Ministry vide its communications dated 24/09/2021 and 07/10/2021 and explanation for the non-compliance of the terms and conditions laid down in its MSO registration were sought.

9. After considering the submissions made by the BCN, Ministry vide its communication dated 23.11.2021 cancelled the MSO registration granted to BCN on 04.11.2015 while giving an opportunity to appeal to the Appellate Authority (AA).

10. BCN filed an appeal before the AA. However, AA vide its order dated 14.01.2022 upheld the earlier decision of OA/Registering Authority (RA) of cancelling the MSO registration of BCN.

11. Aggrieved by this, BCN filed Writ Petition No. 1230 of 2022 in Hon'ble High Court of Bombay, Bench at Aurangabad which was decided by the Court by reverting the matter to the Original Authority i.e. the Registering Authority for deciding the matter afresh on its own merits and in accordance with law while directing to provide an opportunity of personal hearing to the petitioner (BCN) without being influenced by the observations made and conclusions drawn in the orders dated 23.11.2021 and 14.01.2022.

12. Pursuant to the Hon'ble Court's order dated 04.04.2022, personal hearing by the OA/RA was tendered to BCN on 10.05.2022, and as indicated above, was attended in person by Director of BCN, Shri Md Salim Mahmood Kasim along with Advocate Shri Upendra Thakur.

Personal hearing dated 10.05.2022

13. During the personal hearing, Advocate Shri Upendra Thakur put forward arguments in support of BCN. No fresh written submission was filed at the time of personal hearing but submissions filed on 25.09.2021, 29.02.2021, 16.10.2021, 12.11.2021, 28.11.2021, 23.12.2021 were reiterated. The following arguments were specifically raised at the time of personal hearing:



- i) The Ministry has issued two different show cause notices dated 24.09.2021 and 07.10.2021. There is difference in charges raised in these two notices. The notice dated 24.09.2021 referred to the violation of Rule 6(6) and 9(a) of CTN Rules which were absent in notice dated 07.10.2021. Further, there is an additional charge of violation of Section 8 of the CTN Act, 1995 in the notice dated 07.10.2021.
- ii) The violation of Rule 6(3) of the CTN Rules, 1994 cannot be raised by the Ministry but by the copyright owner only;
- iii) The allegation of violation of Rule 9 (A) of the CTN Rules, 1994 in Show Cause Notice is irrelevant;
- iv) The allegation of violation of Rule 6(6) of the CTN Rules, 1994 mentioned in the notice is irrelevant;
- v) The report furnished by the District Magistrate, Jalgon is not proper with no linkages between findings and conclusions drawn upon them;
- vi) Copy of Video Recording was not furnished to the BCN but only shown to them. While showing the recording, it was on Mute;
- vii) The Video evidence is not as per the provisions of Evidence Act. There is a provision of attaching pen drive in set top box which may result in playing of the pre-recorded video on TV and hence there is an occasion to doubt the video recording; and
- viii) There were no independent witnesses during enquiry proceedings at the premise of BCN.

14. During the course of personal hearing, Shri Md Salim Mahmood Kasim was shown a portion of the video recording wherein he admitted it to be the control room of BCN and also identified Shri Anand Gaikwad (an employee) in the Video. Shri Md Salim Mahmood Kasim was also asked about the DD Free Dish logo superimposed upon the BCN's logo. The same was denied, though this denial was found to be unsatisfactory on account of seamless Video recording.

Overall grounds by BCN

15. From a perusal of the written submissions filed in the original proceedings, it is inferred that BCN has, on the basis of the written submissions filed during the earlier proceedings and the oral submissions made on 10.05.2022, raised the following grounds:

- i) That in the order/judgment dated 28.09.2021 passed by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in 1024 Writ Petition No. 10690/2021, the Authorised Officer concerned had



been found to be guilty of committing over-reach and improper sealing of the entire business premises of the Appellant in clear-cut violation of the Section 11 etc. of the Cable Television Network (Regulation) Act, 1995. There were no independent witnesses to the Panchnama drawn.

- ii) That BCN was made to run at the mercy of the office of the Collector, Jalgaon (AO in the instant case) from pillar to post for more than twenty days merely for showing the video recording made by it, thereby, putting it on its toes during the season of festivities of Durga Puja and Diwali. The added insult to the injury was that the video recordings were shown in a half-baked/perfunctory manner and, that too, without even furnishing true or legitimate copies thereof, if any, to it in utter violation of the mandatory requirements of the law of the land.
- iii) That during the course of BCN's operation, it was an admitted position that BCN had installed a twelve feet diameter dish in conformity with this Ministry's notification dated 05.09.2013. As a matter of fact, BCN had also been conferred with the certificate bearing No. DMC/BSL/25(1)/2015-16/256 dated 20.11.2015 by none other than the Prasar Bharti under the signature of Shri G.N. Khanzode, the then Assistant Engineer after physical inspection in recognition of the compliance of notification NO. 2082 and 1099 respectively by BCN. Accordingly, per BCN's submission it was evident that there is neither any reason nor any occasion to invoke the provision of Section 8 of the Cable Television Network (Regulation) Act, 1995 against it.
- iv) That invocation of Rules 6(3) of the Cable Television Network (Regulation) Rules, 1994 it is untenable on the grounds that there is no complaint whatsoever against the BCN by any copyright owners whatsoever.
- v) That BCN raised its objections to the admissibility and/or genuineness of the video/CD recordings made by or at the behest of AO concerned on following grounds.
 - As for the first recording, the same shows contents recorded in some mysterious room, the location or exact address thereof could not even be deciphered from the recording. BCN contended that the recording's only foundation was by means of camera's focus on the externally stuck logo of some STB (no inbuilt logo revealed) with superimposition of watermark showing



resemblance with Bhusawal Cable Network. BCN also reiterated that the mandatory procedure as laid down under section 65B of the Evidence Act and/or other legal provisions were not followed, as a copy of the certified video recordings was neither produced before Hon'ble Court nor was the same made available to it that showed highhandedness and callousness exercised against BCN.

- As for the other two recordings, their quality had been abysmally poor and were without any sound (on mute actually!) in the absence of arrangement for sound speakers.

(vi) The Show Cause Notices served to BCN by this Ministry vide letter dated 24.09.2021 and 07.10.2021 and by District Collector's (Jalgaon) vide letter dated 20.09.2021 were based on different and false facts. There are different charges in different notices. Also, the allegations mentioned in District Collector's Show Cause Notice did not match his enquiry report dated 17.09.2021. The report furnished by the District Magistrate, Jalgon is not proper with no linkages between findings and conclusions drawn upon them.

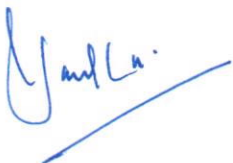
(vii) The onus of providing proof instead of being on authorities is shifted on shoulders of BCN which according to it was against principles of Natural Justice.

(viii) BCN has alleged of political and competitor's influence in the action of authorities in regard to sealing of premises. Also, at the time of spot enquiry large number of police personnel were deployed indicating malafide action of the Authorities.

(ix) The Allegation of violation of Rule 6(6) and Rule 9(A) of the CTN Rules, 1994 mentioned in the notice dated 24.09.2021 are irrelevant.

16. BCN also relied on judgments in four court cases citing them to be relevant to its case vide email dated 24.05.2022, which are mentioned below.

- i. Order dated 14/07/2020 in case number (2020)/7 Supreme Court Cases 1, Arjun Pandit Rao Khotkar v/s Kailash Khushanrao Gorantyal.
- ii. Order dated 11/01/2019 in case number 2019 SCC online Del 6568 in the High Court of Delhi, Novex Communications Pvt Ltd v/s Lemon Tree Hotels Ltd and Ors.



- iii. Order dated 29/10/2020 in W.P. No. 14825 /2016 in the High Court of Madras, R.Ramdas v/s The Joint Commissioner of Central Excise, Puducherry and Ors.
- iv. 2013(13) SCC 1 titled Yakub Abdul Vs. State of Maharashtra

Analysis of grounds raised by BCN

The grounds raised by CTN have been considered.

17. Provisions as per CTN Act and Rules

The section 4(7) of the Cable Television Networks (Regulation) Act, 1995 gives authority to the central government to suspend or revoke the registration granted to the cable operator and reads as follows:

“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 reasonable opportunity of being heard to the cable operator.”

The rule 11(7) of Cable Television Networks Rules, 1994 gives authority to the central government to suspend or revoke the registration granted to the MSO and reads as follows:

“In the event of a 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 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.”

Thus, the extant Act and Rules empower the Central Government to suspend or revoke the registration granted to an MSO. The grounds are being analysed on the basis of the above mentioned legal framework.



18. Ground No. 15(i)

That in the order/judgment dated 28.09.2021 passed by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in 1024 Writ Petition No. 10690/2021, the Authorised Officer concerned had been found to be guilty of committing over-reach and improper sealing of the entire business premises of the Appellant in clear-cut violation of the Section 11 etc. of the Cable Television Network (Regulation) Act, 1995. There were no independent witnesses to the Panchnama drawn.

18.1 On the examination of the material available on records, it is seen that the violations made by BCN were first brought to the notice of BCN vide this Ministry's letter dated 24.09.2021 and 07.10.2021. The Ministry's letter dated 07.10.2021 explained in clear terms the nature of violations made by BCN and advised to furnish its reply sticking to the facts and merits of the case. The fact of taking feed from DD free Dish of certain Free to Air (FTA) and pay channels and retransmitting them on network of BCN and consequent violation of Section 8 of the CTN Act, 1995 and Rule 6(3) of CTN Rules, 1994 were detailed in the notices issued. As per the Principal of Natural Justice, the opportunity to examine the video recordings at the office of AO concerned i.e. Collector, Jalgaon, the custodian and owner of the original video recordings was also provided and the same was availed by BCN on 09.11.2021.

18.2 From the record it is seen that the Panchnama of the enquiry proceeding dated 17.09.2021 was conducted in the presence of two witnesses namely Shri Sudam Laxman Nagre and Shri Amol Vikas Patil, Technician and Committee members consisting of senior officers of the District Administration. The proceedings were also video recorded. The Panchnama indicates that feed of DD Free Dish was used by BCN for transmission of Free to Air mandatory channels as well as Pay Channels. The video recording of the proceedings also corroborates the findings. There is nothing on record to suggest that the witnesses acted in a partial manner and hence there is no occasion to doubt their independence.

18.3 The Order/Judgment dated 28.09.2021 passed by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in 1024 Writ Petition No. 10690/2021 has been duly perused. The Hon'ble High Court in its Judgment cancelled the order of Authorised officer sealing the premises of the BCN. But, the Hon'ble High Court has also made it clear in the order that authority could proceed with the Show Cause Notice issued to BCN and take decision as might be permissible under the law on its own merits. The Hon'ble High Court had also stated that its order would not preclude the authority to proceed ahead in accordance with law.



18.4 BCN has also relied on the Hon'ble Supreme Court Judgement dated 21.03.2013 in the case cited 2013(13) SCC 1 titled Yakub Abdul Vs. State of Maharashtra in claiming that the Panchnama is required to be attested by at least two independent and impartial witnesses in order to be of corroborative value under section 157 of the evidence Act, 1872. The case relied upon by BCN is related to criminal proceedings under various criminal laws whereas proceedings under the CTN Act and Rules for determining the status of MSO registration is not a criminal proceeding. These proceedings are to be governed through Principal of Natural Justice and Preponderance of Probability. Therefore, the reliance placed on the case law cited is misplaced.

18.5 In view of the above, argument No. 15(i) is rejected.

19. Ground No. 15 (ii)

That BCN was made to run at the mercy of the office of the Collector, Jalgaon (AO in the instant case) from pillar to post for more than twenty days merely for showing the video recording made by it, thereby, putting it on its toes during the season of festivities of Durga Puja and Diwali. The added insult to the injury was that the video recordings were shown in a half-baked/perfunctory manner and, that too, without even furnishing true or legitimate copies thereof, if any, to it in utter violation of the mandatory requirements of the law of the land.

19.1 It is seen from the record that BCN was provided by the Ministry with the copy of screenshots of video recordings of enquiry proceedings conducted by the AO which were incriminating in nature along with the showcause dated 07.10.2021. Also, BCN was given the opportunity of examining the video recordings of the proceeding by the office of Collector, Jalgaon on 22.10.2021. Thereafter, BCN vide its letter dated 26.10.2021 requested to Collector, Jalgaon to show them the video recordings after 08.11.2021. The available records reveal that delay, if any, for examining the video recordings was due to the suffering of Mr. Ashwin Khona, the technical representative of BCN, from pneumonia that was beyond control of any authority.

19.2 In any case, relevant screenshots of the incriminating video recordings were already provided to BCN on 7.10.2021 along with Show Cause to furnish its reply.

19.3 Further, no satisfactory explanation was made by the BCN with respect to the appearance of BCN logo superimposed on the logo of DD Free Dish of various Free to Air (FTA) and pay channels on its network despite furnishing of screenshots of the video recording provided to it.



19.4 In view of the above, ground No. 15 (ii) does not hold any substance.

20. Ground 15 (iii)

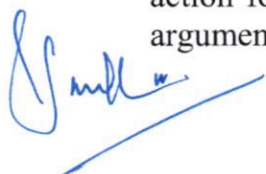
That during the course of BCN's operation, it was an admitted position that BCN had installed a twelve feet diameter dish in conformity with this Ministry's notification dated 05.09.2013. As a matter of fact, BCN had also been conferred with the certificate bearing No. DMC/BSL/25(1)/2015-16/256 dated 20.11.2015 by none other than the Prasar Bharti under the signature of Shri G.N. Khanzode, the then Assistant Engineer after physical inspection in recognition of the compliance of notification NO. 2082 and 1099 respectively by BCN. Accordingly, per BCN's submission it was evident that there is neither any reason nor any occasion to invoke the provision of Section 8 of the Cable Television Network (Regulation) Act, 1995 against it.

20.1 The para 6 of the registration letter issued to BCN, bearing File Number 9/111/2014-BP&L dated 24.09.2015 clearly states that the MSO (BCN) shall ensure its continued eligibility as applicable throughout the period of the permission and adhere to all the terms and conditions. BCN was fully aware that eligibility and compliance to the terms and conditions were not one-time affair and had to be maintained throughout. Therefore, BCN's claim of compliance, on the basis of a certificate bearing No DMC/BSL/25(1)/2015-16/256 dated 20.11.2015 could not be accepted in 2021. The Panchnama of enquiry proceedings and corroborative video recordings in 2021 indicate violations and thereby failure to ensure continued eligibility. Therefore, the Ground 15(iii) fails.

21. Ground 15(iv)

That invocation of Rules 6(3) of the Cable Television Network (Regulation) Rules, 1994 it is untenable on the grounds that there is no complaint whatsoever against the BCN by any copyright owners whatsoever.

21.1 BCN has referred to case No. 2019 SCC Online Del 6568 in High Court of Delhi, Novex Communications Pvt Ltd v/s Lemon Tree Hotels Ltd and Ors and its order dated 11.01.2019 by mentioning that only owner can file complaint for the violation of its copyrights. It is the case of BCN that since Ministry is not the owner of copyright, rule 6(3) cannot be invoked by it until there is a complaint from copyright holder. The subject matter of the case referred and instant case has no similarity whatsoever. Ministry at no point of time claiming to be the owner of Copyright. The Ministry is only attempting to take lawful action for the violation of terms and conditions of granting registration. If the argument of BCN is accepted, then Ministry would be mute spectator to the



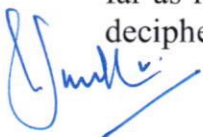
copyright violations brought to its notice by persons other than copyright owner, which is not the intention of legislature. The Ministry does not condone the practice of engaging in the violation of copyrights as it disturbs the level playing field for equally placed players in the sector. The action of the Ministry for copyright violations in no ways infringes upon the rights of Authorised Officer or copyright owners to take further action as per law. Rule 6(3) of the CTN Rules, 1994 clearly requires Cable service operators to abide by the Copyright Act. Violation of Copyright Act by a Cable operator is also violation of the Rule 6(3) of the CTN Rules and in turn violation of the conditions under which license was granted. Therefore, legal grounds referred to by BCN in this regard are not maintainable.

22. Ground 15 (v)

That BCN raised its objections to the admissibility and/or genuineness of the video/CD recordings made by or at the behest of AO concerned on following grounds.

- *As for the first recording, the same shows contents recorded in some mysterious room, the location or exact address thereof could not even be deciphered from the recording. BCN contended that the recording's only foundation was by means of camera's focus on the externally stuck logo of some STB (no inbuilt logo revealed) with superimposition of watermark showing resemblance with Bhusawal Cable Network. BCN also reiterated that the mandatory procedure as laid down under section 65B of the Evidence Act and/or other legal provisions were not followed, as a copy of the certified video recordings was neither produced before Hon'ble Court nor was the same made available to it that showed highhandedness and callousness exercised against BCN.*
- *As for the other two recordings, their quality had been abysmally poor and were without any sound (on mute actually!) in the absence of arrangement for sound speakers.*

22.1 BCN's allegation that the video recordings/CD were tainted was examined. The instances of violation of the license condition and the CTN Rules as also mentioned in the show cause notices. There exists a Panchnama of enquiry proceedings conducted by team of senior District officers with two witnesses. SDM, Bhusawal is also an Authorised Officer under the Cable TV Networks(Regulations) Act, 1995 and was himself part of the proceedings. The video recording of the proceedings corroborates the facts mentioned in the Panchnama. The undersigned himself ran the video recordings in question before BCN and found that the quality of video recordings was good enough so far as logos of TV channels and BCN on the TV screens could indisputably be deciphered. It was also seen that the logo of BCN was superimposed on the logo



of DD Free Dish. Moreover, the Director of BCN, Sh. Md. Salim, himself admitted that the control room shown in the video recordings is the premises of BCN.

22.2 BCN has put forward the argument that in the absence of certificate under section 65B of the Evidence Act, there is no evidentiary value of electronic evidence in the form of video recording of the enquiry proceedings. However, legislature has not bound the proceedings for granting, denying, revoking and suspending the registration to a Cable Operator to either Code of Criminal Procedure or Code of Civil Procedure. This is amply clear from the Section 14(2) of the Cable Television Networks (Regulations) Act, 1995 which clearly states that provisions of Code of Civil Procedure, 1908 (5 of 1908) shall, so far as may be, apply to every proceeding referred to in Section 14(1) of the Cable Television Networks (Regulations) Act, 1995. Also, chapter IV of the Cable Television Networks (Regulations) Act, 1995 implies that Code of Criminal Procedure 1973 (2 of 1974) will be applicable to the complained filed by the Authorised Officer in any court against a Cable Operator for Offences and Penalties.

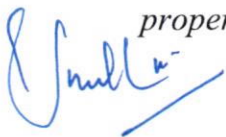
22.3 The legislature has, however, cast the requirement of granting reasonable opportunity of being heard before cancelling or suspending the registration to a Cable Operator. Therefore, the proceeding to decide upon the violation of the terms and conditions by a Cable Operator is not on the same pedestal as proceedings in a court of law. The rigours of Indian Evidence Act, 1872 is also not applicable in such proceedings. These proceedings to be governed by the Principal of Natural Justice and Preponderance of Probability.

22.4 Therefore, the Panchnama and Corroborative Video recording are acceptable evidence before an Administrative Authority. In the instant matter, video recordings corroborate the spot enquiry conducted in the presence of two witnesses as also evidenced by Panchnama duly affirmed by the witnesses.

22.5 In view of the above, the above stated ground is also rejected.

23. Ground 15 (vi)

The Show Cause Notices served to BCN by this Ministry vide letter dated 24.09.2021 and 07.10.2021 and by District Collector's (Jalgaon) vide letter dated 20.09.2021 were based on different and false facts. There are different charges in different notices. Also, the allegations mentioned in District Collector's Show Cause Notice did not match his enquiry report dated 17.09.2021. The report furnished by the District Magistrate, Jalgon is not proper with no linkages between findings and conclusions drawn upon them.



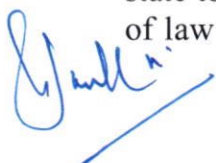
23.1 In the present scheme of administration of CTN Act 1995 and CTN Rules 1994, Ministry has role of granting, cancelling and suspending of registration to the MSOs whereas Authorised officer exercises powers under the various sections including filing of complaint before the court of law and seizure of equipment etc. Therefore, the scope and focus of notices issued due to same action may not be the same. Therefore, the Show cause notices issued by Ministry has no linkage with the independent proceedings instituted against any MSO by the Authorised officer. Therefore, a comparison between notices issued by Ministry and Authorised officer is not proper.

23.2 The CTN Act and CTN rules also do not use word “Show Cause Notice”. As far as proceedings related to registration of MSOs are concerned, the phrase used is “reasonable opportunity of being heard”. This implies that the coercive action to be taken with regards to registration only when charges are brought to the notice of MSOs and they are granted opportunity of being heard. The Show Cause Notices issued in this context is not a statutory notice but an instrument to provide opportunity of being heard to an MSO.

23.3 The report and material provided by the Authorised officer, in the instant case was perused along with the conclusion drawn by the Authorised officer. On the basis of this, opportunity was provided through communications dated 24.09.2021 and 07.10.2021 to refute the charges identified by the Authorised officer in its report as well as by the Ministry. Also, in compliance to the Hon’ble High Court Order, personal hearing was granted on 10.05.2022. Hence, sufficient and reasonable opportunities of being heard have been provided to the MSO before taking any decision in the matter.

23.4 BCN has also relied upon Order dated 29/10/2020 in W.P. No. 14825/2016 in the Hon’ble High Court of Madras, R. Ramdas v/s The Joint Commissioner of Central Excise, Puducherry and Ors to support his grounds that this Ministry has issued different show cause notices with add-on/missing and mutually inconsistent allegations. However, from the perusal of the order relied upon by the BCN it is found that the matter in that case was concerned to taxation, wherein statutory show cause notice was issued to the petitioner. The demand raised in the case was beyond the scope of the show cause notice.

23.5 There is no reason for comparing the matters related to Revenue with proceedings related to determining violation of terms and conditions of registration granted to an MSO. The collection of taxes places responsibility on state to exercise the Authority as per the mandate of law. This is settled position of law that taxation laws to be interpreted narrowly. There are no other parties



involved and the matter is between state and tax payer. Contrary to this, the onus is on an MSO, in this case on BCN to maintain its eligibility and follow the terms and conditions all the time.

23.6 Though the Judgement relied on by the BCN is materially different but even in the above Judgement para 13 reads as:

“13. For the reasons stated above, the Order-in-Original No.07/2016-ST dated 25.02.2016 is quashed. However, the first respondent is granted liberty to issue a fresh show cause notice giving details of the proposed demand for the respective services, at least within a period of 30 days from the date of receipt of a copy of this order. With such a liberty, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.”

23.7 The above para clearly indicates that the requirement of law was fulfilled if decision was taken only after the charges were brought to the notice of the defaulter seeking explanation. In this case, BCN was clearly conveyed the charges vide this Ministry's letters dated 24.09.2021 and 07.10.2021.

23.8 BCN had already been provided reasonable opportunities of being heard as mandated in section 4(7) of the Cable Television Networks (Regulation) Act, 1995 and Rule 11(7) of Cable Television Networks Rules, 1994 vide this Ministry's communications dated 24.09.2021 and 07.10.2021. It was made aware of all the charges and evidences against it before taking any action. Therefore, there is no merit on the grounds taken by BCN. However, as per the direction of Hon'ble Court another personal hearing before the undersigned was taken on 10.05.2022.

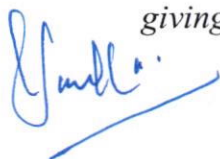
23.9 In view of above, this ground is also rejected.

24. Ground 15 (vii)

The onus of providing proof instead of being on authorities is shifted on shoulders of BCN which according to it was against principles of Natural Justice.

24.1 Para 6 of the letter containing terms and conditions of the registration granted to BCN clearly states 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 the permission is liable to be terminated/cancelled forthwith without giving any notice.”



24.1 It was amply made clear vide the above mentioned condition that the onus of ensuring eligibility lies with BCN. Mere fact that that BCN was asked to provide documentary evidence such as interconnection agreements with parties, etc. can not be construed as the contravention to the principles of natural justice.

24.2 The charges levelled against BCN were on the basis of the evidences collected as per the enquiry report of DC, Jalgaon dated 17.09.2021 and supported by video recordings of the inspection which clearly showed retransmission of Free to Air channels of DD Free Dish and pay channels and it was for the BCN to establish that the facts mentioned in the report and supporting evidences are not true.

24.3 In view of above, this ground is also rejected.

25. Ground 15 (viii)

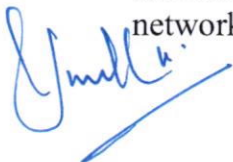
BCN has alleged of political and competitor's influence in the action of authorities in regard to sealing of premises. Also, at the time of spot enquiry large number of police personnel were deployed indicating malafide action of the Authorities.

25.1 The ground raised by BCN that the move of this Ministry and action of DC, Jalgaon in sealing of its premises and initiation of enquiry was politically motivated does not appear to be true. The use of the appropriate police force for conducting any enquiry in the field is to be decided to the satisfaction of field authorities and need not be questioned until and unless any evidence of malafide action is available. The point that the Authorised officer has made the video recording of proceedings clearly establishes that the intention of enquiry was bonafide and transparent and not shrouded in secrecy.

26. Ground 15 (ix)

The Allegation of violation of Rule 6(6) and Rule 9(A) of the CTN Rules, 1994 mentioned in the notice dated 24.09.2021 are irrelevant.

26.1 The Authorised Officer in its enquiry report dated 20/09/2021 informed this Ministry about the irregularities observed during the inspection of the premises of BCN. AO reported violation of Rule 9(A) due to non-furnishing of inter connection agreements at the time of enquiry and Rule 6(6) for not furnishing registration documents of local channels being transmitted in the network of BCN.



26.2 This Ministry, vide its letter dated 24.09.2021, sought clarification from BCN in relation to violation of Rule 9(A) and 6(6) of the CTN Rules, 1994. This may be treated as an opportunity of being heard which is as per the law. Just because further queries were not raised or any adverse inference is being drawn does not invalidate the need of raising these points.

26.3 In view of above, this ground is also rejected.

Decision

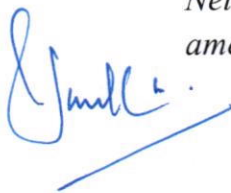
27. In compliance to the Hon'ble High Court of Bombay at Aurangabad order dated 04.04.2022 in the Writ Petition No. 1230 of 2022 filed by M/s Bhusawal Cable Network Private Limited (BCN), personal hearing was granted to BCN on 10.05.2022. Shri. Md. Salim, Director, BCN and Adv. Shri. Upendra Thakur appeared. The case was discussed and the earlier written submission made during the original proceedings were reiterated. After examination of the facts on record, considering the oral submissions made and also the written submissions made by BCN from time to time; the findings are as under.

28. This Ministry vide its communication number 9/111/2014-BP&L dated 04.11.2015 had granted provisional registration of MSO to BCN for operating as MSO in Digital Addressable System in the State of Maharashtra and Madhya Pradesh as notified vide Notification Number 2534 (E) dated 11.11.2011 under Cable Television Networks (Amendment) Rules, 2021. BCN was subsequently given PAN India registration of MSO vide this Ministry's Circular Number 2/108/2015-DAS dated 27.01.2017 and was thereafter treated to have a regular registration of MSO vide this Ministry's Office Memorandum Number 9/406/2016-DAS dated 06.03.2017.

29. The registration of MSO granted to BCN by this Ministry was subject to adherence and compliance of certain terms and conditions already cited in its registration. The relevant terms and conditions of registration are reproduced below:

“permission is granted subject to further adherence and compliance of the following terms and conditions:

(i) MSO shall comply with all the provision 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 this 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 in Rules 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.

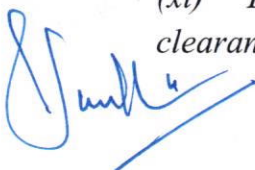
(vii) The MSO shall have an independent digital head-end of his own and provide digital addressable cable services from his headend.

(viii) In Phase I & II areas where DAS has been implemented, the MSO shall operationalize their services with necessary condition access system (CAS) and digital addressable system (DAS) within six months from the date of issuance of this MSO registration, failing which the registration shall be liable to be revoked/ suspended for those cities where it is no implemented.

(ix) In phase III areas, the MSO shall operationalize their service with necessary condition access system (CAS) and digital addressable system (DAS) in all the district (s)/area(s) for which this registration is granted within 6 months from the date of issuing of this registration and in Phase IV areas by notified cutting date, failing which the registration so granted shall be liable to be revoked/ suspended for those areas/ district where it is not implemented.

(x) Any change in the Board of Directors, foreign direct investment and criminal cases would be intimated to the Ministry of Information and Broadcasting.

(xi) The permission will be cancelled in the event of denial of security clearance by MHA.



(xii) Registered MSO has to ensure that no analogue signals are transmitted on his/her cables network in any of the DAS notified areas after notified cut-off date.

5. 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.

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

30. Pursuant to a complaint received in this Ministry against BCN regarding taking feed from DD Free dish and re-transmitting on its network, the Ministry requested the authorized officer (AO) concerned prescribed under Section 2 of the Cable Television Networks (Regulation) Act, 1995, namely District Collector, Jalgaon, to inquire into the matter and submit his report to this Ministry. **The relevant portions of the complaint are reproduced below:**

"Bhusawal Cable Network operating in the area of four to five block from Loksabha Constituency Raver in Jalgaon District of Maharashtra state under the brand name of BCN having established office & control room at Bhusawal District Jalgaon in Maharashtra State.

The official operating Cable network from this area has many time launched complaint that BCN has installed the Free Dish Athena (this has one-time installation charges and then FTA channels can be seen without paying any further charges per month/year) and the free programme displayed on the free dish installed like ABP News, Ganga, Shamroo, Dangal, Mask up India which are FTA channels are pirated and made available on their cable network for onward customer subscribed their Cable.

This is the violation of the rule as the Free DISH ATENA installed whihc can be used only by the one who has installed for himself and no one can commercialised these through onward display or pirating the clips/shows/movies. You may investigate this matter through Central Vigilance team or though the vigilance mechanism established without leaking the information as there are many staff involved from Central Government deputed at State & District levels and even from State Government there by evasion of huge taxed and minting money out of it.

I request you to recommend vigilance check form the team without any knowledge to the local TRAI officer and even the local Revenue State Government staff as all of them are managed by the owner of this BCN

