

(2000) 03 MAD CK 0046

In the Madras High Court

Case No : W.P.Nos. 15527 to 15529, 18662 of 1998 14177, 20618 of 1999 544 and 3372 of 2000

M. Arumugham

APPELLANT

Vs

The Senior Post Master, Head Post Office, Karur and 4 others

RESPONDENT

Date of Decision : 16-03-2000

Acts Referred:

Cable Television Networks (Regulation) Act, 1995 — Section 22
Cable Television Networks Rules, 1994 — Rule 3(1), 6, 7
Constitution of India, 1950 — Article 19(1), 251, 301

Citation : (2000) 2 CTC 80

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : Mr. R. Subramaniam, Mr. N.R. Chandran, Mr. C. Chinnaswamy, for Mr. S. Haja Mohindeen Gisthi and Mr. V. Jeevagiridharan, for the Appellant; Mr. K. Sriraman, Additional Central Government Standing Counsel, Mrs. Meera Gupta, Additional Central Government Standing Counsel, Mr. J. Madanagopal Rao, M.T. Arunan, Additional Central Government Standing Counsels, Mr. C. Krishnan and Mr. R. Venkatesan, for the Respondent

Judgement

1. In Writ Petition No. 14177 of 1999, petitioner Association seeks for a direction to forbear the respondents from registering any person as a

Cable T.V, Operator and prevent person from commencing operation as Cable T.V. Operators except after obtaining licence under the Tamil

Nadu Exhibition of Films on Video Recorders (Regulation) Act, 1984. In Writ Petition No.541of 2000, petitioner seeks for the issue of a Writ of

Mandamus to direct respondents 1 and 2 to initiate penal action as provided for under the Cable Television Network (Regulation) Act, 1994

against the third respondent. Petitioners in all the other writ petitions seek for a Mandamus forbearing the respondents from issuing registration

certificate to any other Cable T.V. Operator in respective areas.

2. The State of Tamil Nadu introduced the Tamil Nadu Exhibition of Films on Television Screen Through Video Cassette. Records (Regulation)

Act, 1984. The said Act was subsequently amended to include cable television network by substituted Act 44 of 1991 (hereinafter referred to as

the Tamil Nadu Act). This amended Act was introduced for the regulation of exhibition of films on television screen through video cassette records

and through cable television network in the State of Tamil Nadu. The Union Government by a subsequent legislation, passed "The Cable Television

Network (Regulation) Act, 1995 (Central Act 7 of 1995) (hereinafter referred to as the Central Act). The statement of object and reasons of the

Central Act inter alia provided that it is to regulate the operation of cable television network in the entire country so as to bring about uniformity in

their operation.

3. The first question that arises for consideration in these writ petitions is whether the subject is taken over and regulated by the Central Act and

whether even now the regulation of the State Act regarding the licensing continues and operative. The contention of the learned senior counsel for

the petitioner in W.P. No.14199 of 1999 is that both the Acts are -in operation and the cable operators are obliged to take out the registration

under the Central Act and licence under the State Act, and therefore, cable operators without licence under the state Act should not be permitted

to operate cable television.

4. The contentions raised by the petitioners in the other writ petitions are that they are the registered operators in a particular area under the

Central Act, and therefore, their objections must be heard before permitting, any other operator in that area. Their further contention is that since

they have invested and operating in a particular area, no other person should be permitted to do the same operation in that area.

5. On behalf of the Union of India, a counter affidavit has been filed in W.P. No. 14177 of 1999. It is stated thereunder that the Central Act- takes

precedence over the State Act and the petitioner Association is virtually seeking monopoly over the cable "television operations by seeking for a

direction not to register further applications. According to them, restricting the number of operators Will deprive any healthy competition in the

trade and the subscribers will be denied the right of choosing the best operator in their locality in the absence of any competition. It will lead to a handful of operators having the last word in the business with the consumer subjected to fleecing by the operators. It is stated in their counter that the Central Act does not stipulate or restrict the number of individuals/associations/companies -who may be registered as cable television operators in a, City/Town/Special area so long as such individuals/associations/companies fulfill the conditions prescribed for registering as cable television operators, The registration is done., only after the authority is satisfied that the applicant is a cable operator and entitled to, be registered under the Act.

6. According to the counter affidavit filed by the Senior Post Master, Karur in W.P. No. 15527 of 1998, there is no provision in the Act to consider the objections of the existing operators. According to him, the installations are done in different places and there is no chance, at all for cross signals. It is further stated that cable television operators are not providing all the channels to the customers and if a new operator capable of providing all the channel is prevented, it may result in denial of all the channels to the consumers.

7. The Head Post Master has filed a counter affidavit in W.P. No.544 of 2000. According to him, the Act and the Rules do not provide for my restriction, regarding the number of cable television operators in a particular area. There is no restriction of registration of new cable television operators. However, it is stated that a cable television operator -can operate only within the postal division of the Head Post Master. It is further stated that since there is no prohibition to prevent the third respondent from operating in the nearby area, in the event, of clash of signals, the grievance of the petitioner cannot be remedied.

8. Learned senior counsel Mr. C. Krishnan, appearing on behalf of respondents 1 and 2 in W.P. No.544 of 2000, referring to the various provisions of the Act, submitted that cable operator and cable service have been defined in the said Act, and a system of cable network can be permitted by an order u/s of the Act. Form 1 of Rule 3 (1)" of the Cable Television Network Rules requires the particulars of the area in which" the cable television network is proposed to be set up. This is only for the purpose

of finding out the authority competent to issue the-registration or permission. Each Head Post Master of the Metro Division, after verifying the infrastructural facilities prescribed under the Act and Rules as well as the particulars provided in \the application form, shall issue the registration certificate. Learned counsel also submitted that there is absolutely no restriction on register in any number of cable operators in the same area. He further submitted that the petitioner cannot claim exclusive privilege or right to have his registration alone maintained in that area.

9. One of the contesting parties in W.P, No. 20618 of 1999 opposed the plea made on behalf of the petitioner for a hearing of their objections and the exclusive privilege in a particular area.

10. I have heard the counsel for the petitioners the contesting respondents and counsel on behalf of the Union of India.

11. Writ Petition No.544 of 2000, though initially filed on the premises that the third respondent did not obtain permission or registration, it is now conceded that the third respondent has been granted a registration on 8.2.2000, Therefore, the main relief sought for in the writ petitions does not survive. However, the learned senior counsel, by taking advantage of a reference made in the counter affidavit that there is a likelihood of clash of signals affecting the quality of picture, submits that the third respondent should not be permitted to operate adjoining the petitioner's place of operation.

12. In W.P. No.544of 2000, by referring to paragraph 12 of the counter affidavit that if transmissions are done side by side on the same frequency, there will be clash of signals affecting the quality of picture, and therefore, the area of operation should be fixed for one person. In the counter, it is conceded that since there is no prohibition to prevent the third respondent from operating in the nearby area, in the event of clash of signals affecting the quality cannot be helped. I am unable to understand as to how there will be a clash of signals. The petitioners also are not in a position to explain the position. The cable television operators receive the transmission through their dish antenna and re-transmit them through closed cable network. There is no scope for a re- transmission through air so as to cause clash in signals. There is no ban for individual citizens to have their own dish antennas in their homes. Nobody can complain about their

neighbours installing a dish antenna to receive signals. In the same way, a person operating a cable network system also cannot object to the establishment of a cable network by a neighbouring house owner provided he has got it registered. The counsel for the petitioner is not able to establish as to how it affects the transmission as well as the quality of the pictures. In any event, as set out in the counter, that cannot be a ground to refuse the registration of another person in the same locality.

13. The State Act falls under Entry 33 of List 2 of Schedule VII to the Constitution of India namely theatre and dramatic performances; cinemas

subject to the provision of Entry 60 of List 1. sports entertainment and amusements. The Central Act is enacted under item 31 of the Union List

namely Posts and Telegraphs, Telephones, wireless Broadcasting and other like forms of communication. The providing of cable television

network receiving transmission from satellite channels and communicating to the individual customer would come under wireless and other like

forms of communication under the Union List. The Preamble of the Central Act states that it is to regulate the operation of cable television network

in the country and for matters connected therewith or incidental thereto. The statement of object and reasons for the Act makes it abundantly clear

that the Parliament has expressed its intention in clear terms to take over the control of the regulation of operation of cable television. It was found

that there is a haphazard mushrooming of cable television network all over the country as a result of the availability of signals of foreign television

networks via satellite, and in order to protect the subscribers, the Union of India has decided and though it necessary to regulate the operation of

cable television network in the entire country so "as to bring about uniformity in their operation. This according to them, will enable the optimal

exploitation of the technology which has the potential of making available to the subscribers a vast pool of information and entertainment, The Act

defines cable operator, cable service and cable television network. The regulation under Chapter II provides for registration, maintenance of

register, compulsory transmission of Doordarshan channels and other provisions. Chapter III deals with the seizure, and confiscation of equipments

and the Miscellaneous Chapter provides for the transmission of certain programs. The Cable Television Network Rules, 1994 framed u/s 22 of the

Central Act provides for a Programme Code under Rule 6 and Advertising Code under Rule 7. The prescribed" forms achieve these purposes.

Thus, it is seen that the whole gamut of cable television network and its operation is completely regulated by the Central Act. There is no scope left

for the State Act to deal with cable television operation. Assuming for the sake of any inconsistency, Article 251 of the Constitution clearly states

that the law made by the Parliament shall prevail in case of repugnance.

14. The Constitution Bench of the Supreme Court, in *India Cements Ltd. v. State of Tamil Nadu*, AIR 1985 S.C. 85 , has held that it is well

settled that various entries in the three Lists are not powers but fields of legislation. These demarcate the area over which appropriate legislature

can operate. It is well settled that Widest amplitude should be given to the language of these Entries, but some of these Entries in different Lists or

in the same List may overlap and some times may also appear to be in direct conflict with each other. Then, it is the duty of the Court to find out its

true intent and purpose and examine a particular legislation in its pith and substance to determine whether it fits in one or the other Lists. or

subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an Entry, it. would not be reasonable to import any

limitation by comparing or contrasting that Entry with any other one in the same, List.

15. Earlier, another constitution Bench of the Supreme Court, in *Baijnath Radio Vs. State of Bihar and Others*, , held that by enacting Section 15

of Act 67 of 1957, the Union has taken all the powers to itself. By the declaration "and the enactment of Section 14, the whole of the field relating

to minor minerals came within the Jurisdiction of Parliament and no scope was left for the enactment to the Bihar Legislature", and therefore, the

enactment of the Proviso was without Jurisdiction. It was further held in that case that when the whole of the legislative field was covered by, the

Parliamentary declaration to that extent cuts down the entry in the State list. The Central Act does not give any scope for legislation to make rules

at the State level. Therefore, the argument that both the Acts can co-exist and the cable operators are to get licence under the State Act or that the

authorised officers under the Central Act are to be guided by the provisions of the State Act has no basis and cannot be sustained.

16. The State Act was initially made in reference to exhibition of films through video cassette recorders and the running of video libraries. The said

Act was modelled on the Cinematography Act to issue licence for the video libraries and for exhibition of films on television screen through video

cassette recorders. This was the period between 1984 to 1991 during which lots of places like Mini Theatres were started provided with television

and video cassette recorders. To regulate the exhibition of films on television screen, the State Act was enacted. Only in the year 1991 after the-

advent of cable television network, where customers are provided satellite channels through cables, the Act was substituted with the words "'Cable

Television Network'". The object of the amendment was to regulate the exhibition of films on television through cable network. The power was

(placed to Entry 33 of List 2 namely Entertainment and Amusements. "Now that regulation of cable television network has been specifically made

by the Central Act by exercising legislative power under Entry 31 of List 1 namely Wireless Broadcasting and other like forms of Communication.

The cable television network squarely comes under this Entry. The operators are receiving transmission through wireless and broadcasting or

communicating it through cable to the customers. So, the pith and substance of the matter comes squarely under Entry 31 of List 1. There is no

scope for any provision for the State to continue to regulate when the Centre had made an enactment.

17. It is noted that they have brought about a uniform law throughout India in reference to cable television. The operation has been simplified and

the least regulation is made with the object of optimal exploitation of technology which has the potential of making available to the subscribers a

vast pool" of information and entertainment. The petitioners, contrary to this intention, want. to create a monopoly or an exclusive right to operate

in a particular area. The Central Act or the Rules do not provide for such a special right to any particular cable operator. By making available

hundreds of channels to the customers, the subscribers are given a vast pool of information from throughout the world. That cannot be dictated to

by a single individual to the customers. In other words, a particular cable operator cannot claim that he alone can provide this facility to the

customers. That will lead to creation of monopoly or an exclusiveness in favour of a single individual over an area. When the legislature has

provided freedom of receipt of these hundreds of channels, that cannot be taken away by this form of claim -of exclusiveness in the hands of one

person. This will also, in my view, take away the freedom to practice any profession or trade guaranteed under Article 19(1)(g) of the Constitution.

No restriction has been on this freedom except registration of a cable operator, provided he satisfies the requirement. Such a restriction cannot be

inferred so as to nullify the freedom of trade. The counsel for the petitioners want a restriction of the freedom of trade in favour of one individual as

against others to come in and operate. Unless the Central Act has provided for such a restriction on that freedom, there cannot be inference of a

restriction of a fundamental right.

18. S.S. Subramani J., in W.P. No.6716 of 1998, did not have the advantage of a counter affidavit and the argument, of the counsel for the Union

of India.. The learned Judge also did not go into the provisions of Section 3 of the Act. Ultimately, the learned Judge directed that the existing

licence holders may be heard before granting the licence. The judgment proceeds on the basis of an allotment of area. There is no reference, to the

provisions which empower registration only without providing for any exclusive right of area of operation. The area, as referred to in the form, is

referable to the "jurisdiction of the authority to grant the registration. In W.P. Nos.2918 to 2924 of 1998, K. Govindarajan ,J., in his order dated

6.4.1999, has held that there is no restriction on the number cable television operators in a particular town or city and hence dismissed the writ

petitions seeking a relief against the allotment of registration to other persons.

19. In W.P. No.1285 of 2000, by an order dated 31.1.2000, on a similar question raised, I have held as to follows:

When broadcasting through various channels is permitted like the Star TV, CNN, BBC, Zee TV, Sun TV, Raj TV, etc., there cannot, be any

monopoly in favour (of a particular cable operator for connection of the various channels. In other words, the right of the viewers cannot be

restricted by giving a permission only to one cable operator. That will be affecting the freedom of the citizens to have their choice of cable

connection and will be illegal. Further, the petitioner, in "that process, Cannot claim a monopoly of serving citizen of a particular locality. That will

be violating the fundamental right" guaranteed under Article 19(1)(g) of the

Constitution. Article 301 of the Constitution provides for free trade and commerce throughout the territory of India. The restriction of this freedom can be made only by an Act of Parliament. The Government also has not imposed any restriction in the freedom of cable operators so as to bring it within the reasonable restriction clause of Article 19. Therefore, the petitioner cannot imagine conferment of a Special or exclusive privilege of running a cable network in a particular locality. Any such exclusive privilege would put the customs at the mercy of a single operator without any competition. With the result the cable operator will be able to decide the subscription amount, the number of channels allowed, the timings, the advertisements etc. There is absolutely no scope for making any complaint to any other authority or a provision for looking into the complaints of the customers. Therefore, unless the citizens are given the freedom to choose their own cable operator, there will be a tendency of monopolising the business and restricting the freedom of the citizens namely the viewers of television. If really the intention of the Parliament is to confer such an exclusive privilege, definitely that would have been spelt out in the Central Act. In the absence of specific provision which enables the cable operator for an exclusive right of operation in a particular locality, they cannot claim that privilege. "

20. For all these reasons, the relief sought for by the petitioners in these writ petitions cannot be granted. The writ petitions therefore fail and are accordingly dismissed. No costs. Consequently, the connected W.M.Ps are also dismissed.