

(2005) 09 JH CK 0011

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3489 of 2005

Md. Arshad Ali @ Md. Ashad Ali

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-09-2005

Acts Referred:

Citation : AIR 2006 Jhar 34 : (2006) 1 JLJR 265 : (2006) 1 JCR 12

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Ritu Kumar, for the Appellant; Neeraj Rai, JC to A.G. and P.K. Sinha, for the Respondent

Judgement

M.Y. Eqbal, J.—In the writ application the petitioner has prayed for quashing the order as contained in Memo No. 304. dated 4.5.2005 issued by the Commandant, Jharkhand Armed Police, Ranchi cancelling the business of the petitioner and allotting the same to respondent No. 3 and also for quashing the order as contained in the letter No. 3565, dated 19.5.2005 directing the petitioner to pay the outstanding dues to respondent No. 3. These letters have been annexed as Annexures 6 and 8 to the writ petition.

2. The facts of the case lie in a narrow compass. The petitioner is the proprietor of A.A. Star Vision, Doranda and was registered as Cable operator by the Registering Authority for running cable television network. Registration was earlier granted for a period of one year which was, time to time, extended up to 2006. The petitioner has been running his cable business at BMP-1 premises, Doranda. Petitioner's case is that since the BMP-1 premises is a colony and, as such, in the year, 1989 itself it was decided that instead of collecting money from door to door the subscription amount will be deducted from the salary of the consumers and the same will be paid to the petitioner in one lump sum. Petitioner's further case is that he entered into a partnership business with respondent No. 3 for running cable business and he was never paid any amount from respondent No. 3. To the utter surprise of the petitioner he received the

impugned order dated 4.5.2005 issued by the Commandant directing that the business will be run by respondent No. 3 without any partnership.

3. Respondent No. 2 has filed counter affidavit in which it is stated that the Commandant has full authority to supervise and decide upon the desirability of allowing persons of his choice inside the premises keeping in view the factors like discipline, obedience, integrity and the like. For the purpose of amenities and other entertainment for daily life of the residents of the area, it is the Commandant's pleasure to make such arrangement which is available to an ordinary citizen of the country and such amenities include the transmission of national programmes etc. Case of respondent No. 2 is that in the matter relating to cable service within the premises of the Commandant a contractual relationship existed between the petitioner, respondent No. 3 and respondent No. 2 according to which payment of subscription money was to be made by the petitioner and, therefore, to respondent No. 3 who is the main operator of the area having licence/authority granted by various channels. So respondent No. 3 made payment to the Channels.

4. Respondent No. 3 in his counter affidavit has stated that he obtained licence under the Act of 1995 from the Post Master General in the prescribed form and got permission initially for Anandpur area, but subsequently the same was extended for whole of the city of Ranchi. It is stated that the petitioner entered into a quasi-contract with him to operate as a sub-contractor or sub-cable operator in the Doranda area including JAP area. The respondent No. 2-Commandant has full knowledge that respondent No. 3 was providing a facility of pay channel.

5. Mrs. Ritu Kumar, learned Counsel appearing on behalf of the petitioner, assailed the impugned order of the Commandant as being illegal and wholly without jurisdiction. Learned Counsel submitted that the Commandant is neither the Registering Authority nor has been empowered under Cable Television Networks (Regulation) Act, 1995 to interfere with the cable business of the petitioner. According to the learned Counsel the impugned order passed by the Commandant is wholly without jurisdiction.

6. Mr. P.K. Sinha, learned senior counsel appearing for respondent No. 3, on the other hand, submitted that respondent No. 2-Commandant has full authority to issue the impugned orders relating to cable facilities in the JAP-1 area. According to the learned Counsel, respondent No. 3 is entitled to recover the amount from the petitioner.

7. Mr. Niraj Rai, learned Counsel appearing for respondent No. 2, submitted that there was a contractual agreement between the petitioner, respondent No. 2 the Commandant and the respondent No. 3. In terms of the said contract, the respondent No. 2 -has rightly issued direction by passing the impugned orders.

8. There is no dispute that under the Cable Television Network (Regulation) Act, 1995, the Licencing Authority is Post Master General. Both the petitioner and the

respondent No. 3 were granted licence by the Post Master General under the said Act for carrying on a cable operation in different areas mentioned in the licence. It has not been disputed that ? initially the petitioner was providing cable connection in the BMP area, but later on the petitioner and respondent No. 3 entered into some sort of agreement. On the allegation of breach of conditions by the petitioner, the respondent No. 2-Commandant by the impugned order dated 4.5.2005 (Annexure-6) stopped taking any cable facility from the petitioner and ordered for carrying on cable operation in his area by respondent No. 3. So far this order is concerned, I am of the opinion that the Commandant has power and authority at least to allow or disallow any cable operator to any on cable operation within the area under his command and supervision. The petitioner cannot force respondent No. 2 to take cable facility from him. However, so far the subsequent order dated 19.5.2005, issued by the Commandant directing the petitioner and respondent No. 3 to resolve the dispute with regard to the arrears payable to them so that the amount which has been collected from the consumers could be paid to them, is concerned, this Court simply directs the Commandant not to disburse the amount either to the petitioner or respondent No. 3 unless they resolve and settle their disputes either amicably or through the Court.

9. So far the grievance of the petitioner that the licence was granted by the Post Master General for carrying on business in the BMP area has been illegally stopped by the Commandant is concerned, the petitioner has got liberty to approach the Licencing Authority for the redressal of his grievances.

With the aforesaid directions, this writ petition is disposed of.