
(2016) 01 MAD CK 0212
In the Madras High Court
Case No : W.A. (MD) No. 1340 of 2015

Saisiva and Others

APPELLANT

Vs

District Collector, Theni District and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Cable Television Networks (Regulation) Act, 1995 — Section 11, Section 2(a)(iii),
Section 3, Section 4, Section 4(2)

Citation : (2016) 1 MLJ 769

Hon'ble Judges : V. Ramasubramanian and N. Kirubakaran, JJ.

Bench : Division Bench

Advocate : G. Prabhu Rajadurai and A.K. Manickam, for the Appellant; A.K. Baskarapandian, Special Govt. Pleader, G.R. Swaminathan, Assistant Solicitor General of India assisted by R. Murugappan, G. Prabhu Rajadurai, A.K. Manickam and M. Karuppasamy Pandian, for the

Final Decision : Disposed off

Judgement

V. Ramasubramanian, J.—1. The appellant in W.A.(MD) No. 1340 of 2015 and the petitioner in W.P.(MD) Nos. 1479, 17941, 20376 and 21396 of 2015, are one and the same. The petitioner obtained a Certificate of Registration under Rule 5 of the Cable Television Networks Rules, 1994, in Form-3, for a period of 60 months with effect from 03.02.2010 to 02.02.2015. Contending that the grant of such Certificate of Registration for a period of five years is unheard of, a person by name Alagurajan came up with a writ petition in W.P.(M-D) No. 10751 of 2013.

2. The main ground of challenge in the said writ petition was that the Certificate of Registration is actually renewable after every 12 months, under Rule 3(1) of the Cable Television Networks Rules, 1994 and that therefore the grant of a registration for a period of 60 months was illegal.

3. During the pendency of the said writ petition in W.P.(MD) No. 10751 of 2013, the licensee namely, Saisiva @ Sivasubramanian who is the petitioner in W.P. (MD) Nos. 1479, 17941, 20376 and 21396 of 2015, made a fresh application by

way of abundant caution. Therefore a fresh Certificate of Registration under Rule 5 in Form-1 was granted on 09.10.2014 for a period of one year from 09.10.2014 upto 08.10.2015.

4. After the grant of the fresh Certificate of Registration for a period of one year from 09.10.2014 to 08.10.2015, one Mr. Muthuraaja, came up with a writ petition in W.P-(MD) No. 1039 of 2015, challenging the said Certificate of Registration dated 09.10.2014.

5. Thereafter, the Head Post Master of Bodinayakkanur Head Post Office issued a communication in Form-4 in terms of Rule 5(3), on 02.02.2015. Interestingly, this communication was with reference to the application of the writ petitioner dated 09.10.2014 for the grant of a fresh Certificate of Registration for one year. This communication was issued despite the fact that on the application dated 09.10.2014, the Certificate of Registration had already been issued on 09.10.2014 for a period of one year valid upto 08.10.2015.

6. The contents of the communication in Form-4 under Rule 5(3) required to be extracted. Hence, it is extracted as follows:

"Sir,

Reference your application dated 9.10.2014 (Renewal) for registration as a cable operator. The necessary registration cannot be granted to you for the following reason(s):--

(i) Application is incomplete for the following reasons:

a.

b.

c.

(ii) Registration fee has not been tendered.

(iii) Applicant is not a citizen of India.

(iv) Any other reason:--

You have got 5 year registration certificate on 02/02/2010 the same is wrong under the Cable TV network rules, 1994 Section 3. The question of the validity of a/m certificate is under the case of madras high court Madurai bench; Hence the renewal on 09/10/2014 will not be considered as a valid one. Your cable TV license expired on 02/02/2015; Hence you must apply for registration immediately.

Head Post Master Bodinayakanur HO Postmaster HSG-1 Bodinayakanur-625513."

7. Since the application for the fresh Certificate of Registration dated 09.10.2014, had already been disposed of with the issue of a Certificate of Registration and also since that Certificate was not sought to be cancelled by the

communication dated 02.02.2015, the writ petitioner came up with one writ petition in W.P.(MD) No. 1479 of 2015 challenging the communication dated 02.02.2015 in Form-4.

8. The writ petitioner filed an application for renewal of registration on 18.09.2015. But the same was returned with an endorsement "Refused". Therefore the writ petitioner filed a writ petition in W.P.(MD) No. 17941 of 2015.

9. In the meantime, the District Collector of Theni, passed an order dated 28.09.2015, directing seizure of all the equipments used by the writ petitioner as Cable Operator under Section 11 of the Cable Television Networks (Regulation) Act, 1995. Interestingly, the said order dated 28.09.2015, was passed on the basis of the orders passed on 26.03.2015 in two writ petitions by this Court and on the basis of the report of the Tahsildar as well as the letter of the Tamil Nadu Arasu Cable Television Corporation Limited. But insofar as the order dated 26.03.2015 passed by this Court in W.P.(MD) No. 10751 of 2013 is concerned, it was an order of dismissal of the earlier writ petition, challenging the grant of Certificate of Registration for five years. The writ petition had been dismissed as having become infructuous, but the same was cited in the first reference in the communication dated 28.09.2015.

10. The reasons stated in the letter dated 28.09.2015, need not be gone into in the present order, as we are addressing a different issue in this order.

11. The order of the District Collector dated 28.09.2015, became subject matter of challenge in another writ petition in W.P.(MD) No. 17940 of 2015. In this writ petition, a learned Judge has granted an order of status quo. However it was made clear by the learned Judge that the status quo order will not give any right to the writ petitioner to run the Cable Television Network without any licence.

12. Thereafter the writ petitioner made a fresh application under Rule 3(1) for the renewal of the registration as a Cable Operator, since the registration granted by the Certificate dated 09.10.2014 was to expire on 08.10.2015. Therefore the fresh application was made on 08.10.2015. Since that application was not disposed of, the petitioner came up with a writ petition in W.P.(MD) No. 18785 of 2015 for a Mandamus. This writ petition was disposed of by a learned Judge by an order dated 15.10.2015 directing the Post Master to consider the application for renewal and hold an enquiry and pass an order within four weeks.

13. Pursuant to the said order, the Post Master passed a speaking order dated 12.11.2015, stating that the application for Registration could not be renewed as the earlier registration expired on 02.02.2015.

14. Challenging the said order dated 12.11.2015, the writ petitioner came up with a writ petition in W.P.(MD) No. 20376 of 2015. Apart from filing a writ petition challenging the order dated 12.11.2015, the writ petitioner also made a fresh application for a new registration on 13.11.2015.

15. On the said application, the Post Master passed an order dated 26.11.2015

informing the petitioner that the Inspecting Authority attempted to inspect the premises on 16.11.2015 and 19.11.2015 and that since the Control Room was in a sealed condition, no inspection could take place. Therefore the petitioner came up with another writ petition in W.P.(MD) No. 21396 of 2015 seeking a Mandamus to remove the lock and seal of the appellant's Control Room to enable the Postal authorities to conduct an inspection. In the said writ petition in W.P.(MD) No. 21396 of 2015, the learned Judge did not pass any order, but adjourned to 17.12.2015. As against the said adjournment, the writ petitioner filed a writ appeal in W.A.(MD) No. 1340 of 2015.

16. Since all the writ petitions revolve around the grant, refusal to grant, refusal to renew, or cancellation of renewal of registration by the Post Master, all of them are taken up together for disposal.

17. We have heard Mr. G. Prabhu Rajadurai, learned Counsel for the appellant in W.A.(MD) No. 1340 of 2015 and the writ petitioner in W.P.(MD) Nos. 1479, 17941, 20376 and 21396 of 2015, Mr. G.R. Swaminathan, learned Assistant Solicitor General of India appearing for the Union of India and Mr. A.K. Baskarapandian, learned Special Government Pleader appearing for the State.

18. The short question that arises in all these petitions is as to whether the Post Master is entitled to cancel the registration already granted, or as to whether he is entitled to impose conditions for the grant of renewal of registration.

19. A Cable Operator is defined in Section 2(a)(iii) of the Cable Television Networks (Regulation) Act, 1995, to mean a person who provides a cable service through a Cable Television Network or otherwise controls or responsible for the management and operation of a Cable Television Network and fulfilled the prescribed eligibility criteria and conditions.

20. The procedure for registration as a Cable Operator is prescribed in Section 4.

21. Since Section 4(2) does not indicate the eligibility criteria or the conditions subject to which registration as a Cable Operator could be granted, the Cable Television Networks Rules 1994, seeks to fill up this gap. Rule 2-A of the Rules lays down the eligibility criteria. There is no dispute about the fact that the writ petitioner fulfils the eligibility criteria as per Rule 2-A.

22. The procedure for registration is prescribed in Rule 3 of the aforesaid Rules. The fact that the petitioner complied with the procedure as per Rule 3 is also not in dispute.

23. The question as to whether the first Certificate of Registration granted on 23.04.2010 for a period of five years, is valid or not, has become one of academic importance since the writ petitioner himself applied on 09.10.2014 for a fresh Certificate of Registration. Therefore we do not want to go into the question as to whether the renewal clause contained in Rule 3(i) is an indication to the effect that the Certificate cannot be valid for a period beyond 12 months or not. Normally, if a Certificate is renewable after expiry of a particular period,

the presumption is that the original Certificate cannot have a period longer than the period after which renewal becomes mandatory. In any case, the writ petitioner is not now agitating the question whether he is entitled to licence for a period longer than one year or not.

24. The cancellation of the registration granted to the petitioner on 09.10.2014, by the order dated 02.02.2015, appears to be wholly illegal. The cancellation was made by the order dated 02.02.2015, which we have extracted above, on an application dated 09.10.2014, which had already been disposed of. Therefore apart from the fact that it was in violation of principles of natural justice, the said order could not have been passed on an application which had already resulted in the grant of the Certificate of Registration. Hence, W.P.(MD) No. 1479 of 2015 is liable to be allowed and the order dated 02.02.2015 is liable to be set aside.

25. The application for renewal of registration sent on 08.10.2015 should not have been returned by the Post Master with an endorsement "Refused". Therefore the writ petition in W.P.(MD) No. 17941 of 2015 challenging the return of the application is liable to be allowed. However the application has been subsequently entertained and hence, W.P.(M-D) No. 17941 of 2015 is liable to be closed in view of the subsequent developments. However the conduct of the Post Master in refusing to receive a registered post, is wholly unacceptable. Private parties can refuse to receive a registered letter. The Post Master cannot.

26. The application for renewal dated 08.10.2015 was rejected by an order dated 12.11.2015. This rejection is only on the ground that the registration expired on 02.02.2015. Since we have set aside the order dated 02.02.2015, the order dated 12.11.2015 should automatically go. Hence the writ petition in W.P.(MD) No. 20376 of 2015, challenging the order dated 12.11.2015 is liable to be allowed.

27. On the next application dated 16.11.2015, the Postal authorities wanted to make an inspection. They have taken a stand that without any inspection, it is not possible to grant a Certificate of Registration.

28. But, even in the paragraph 4 of the counter affidavit filed by the Post Master, a categorical stand is taken that there is no necessity to inspect the premises. Rule 3 of the Rules which speaks about the application for registration, reads as follows:

"3. Application for registration as a cable television network in India.--

(1) Every application for registration as a cable television network in India shall be made in writing in Form I and shall be renewable after every twelve months.

(2) The application shall be addressed to the Registering Authority and delivered to his office in Form I.

(3) (a) Every application for registration or renewal of registration shall be accompanied by-

(i) a fee of rupees five hundred only; and

(ii) the requisite documents mentioned in Forms 1 and 2.

(b) Every application for issue of duplicate certificate of registration shall be accompanied by -

(i) a fee of rupees two hundred and fifty only; and

(ii) the requisite documents mentioned in Form 1.

(4) The amount of fee shall be deposited in the Head Post Office where the application for registration or renewal of registration or issue of duplicate certificate of registration is being made.

(5) The amount of the fees shall be deposited under the Head Un-Classified Receipts (U.C.R.)".

29. In paragraph 4 of the counter affidavit filed in W.P.(MD) No. 10751 of 2013, the Post Master has indicated the requirements as follows:

"4. I submit that, at the time of registration, the applicant is required to fill Form I (Annex A) and Form 2 (Annex B) and enclose the requisite documents specified in Form 1 and 2. The applicant is required to remit the prescribed fee along with the application form. The registering authority i.e., Head Postmaster will issue registration certificate in Form 3, if he is satisfied that the applicant fulfils the conditions as mentioned in the Cable TV (Regulation) Ordinance, 1994. The Head Postmaster can reject the application in the following cases in accordance to provision of Rule 5 of the Cable TV Network (Regulation) Ordinance, 1994.

i. The application is incomplete.

ii. Registration Fee has not be tendered.

iii. Applicant is not a citizen of India.

iv. Less than 51% of the paid up share capital of the applicant company held by citizens of India.

There is no column provided in the Form 1 that to mention the details of electronic device or devices installed by the operators and so there is no necessity to inspect and scrutiny the above particulars by the Postmasters concerned. The certificate is being granted on the basis of declaration furnished by the applicant in the Form 1. Hence the onus in respect of the veracity of facts stated in the application squarely lies on the Cable Operators."

30. Therefore the repeated attempts made to inspect the premises is unwarranted. Moreover this is a case where the writ petitioner has already had registration for several years. Therefore the question of inspection does not arise. Therefore all these writ petitions and the writ appeal are disposed of, to the following effect:

"(i) The order dated 02.02.2015 passed by the Post Master is set aside and the writ petition in W.P.(MD) No. 1479 of 2015 challenging the same, is allowed;

(ii) W.P.(MD) No. 1039 of 2015 challenging the Certificate of Registration dated 09.10.2014, is dismissed;

(iii) W.P.(MD) No. 17941 of 2015 is closed as it arises out of a return of the application with an endorsement "Refused";

(iv) W.P.(MD) No. 20376 of 2015 is allowed and the order dated 12.11.2015 is set aside as a consequence of the order dated 02.02.2015 being set aside;

(v) W.P.(MD) No. 21396 of 2015 is closed since there is no necessity for extension;

(vi) As a consequence, the writ appeal in W.A.(MD) No. 1340 of 2015 is also disposed of.

(vii) The Post Master is directed to grant a Certificate of Registration to the writ petitioner with effect from 08.10.2015 for a period of one year.

(viii) There shall be no order as to costs in all the matters."

Consequently, all the connected miscellaneous petitions are closed.