

(2016) 01 MAD CK 0120

In the Madras High Court

Case No : W.P.(MD) No. 17940 of 2015, M.P.(MD) No. 1 of 2015, W.P.(MD) No. 19191 of 2015 and M.P.(MD) Nos. 1 to 3 of 2015

Saisiva

APPELLANT

Vs

The District Collector, Theni and Others

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Cable Television Networks (Regulation) Act, 1995 — Section 10, Section 11, Section 3, Section 4, Section 4-A, Section 5, Section 6, Section 8, Section 9

Citation : (2016) 01 MAD CK 0120

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

Bench : Division Bench

Advocate : G. Prabhu Rajadurai, for the Appellant; A.K. Baskarapandian, Special Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—1. These two writ petitions are filed by a person, who got registered as a Cable Operator in terms of the provisions of Section 4 of the Cable Television Networks (Regulation) Act, 1995, challenging the orders of the District Collector as well as the Special Tahsildar, Tamil Nadu Arasu Cable Television Corporation Limited, seizing the equipments and sealing the premises.

2. Heard Mr. G. Prabhu Rajadurai, learned Counsel for the writ petitioner, Mr. A.K. Baskarapandian, learned Special Government Pleader for the official respondents, Mr. A.K. Manickam, learned Counsel for the newly impleaded fourth respondent in W.P.(MD) No. 19191 of 2015 and Mr. M. Karuppasamy Pandian, learned Counsel for the newly impleaded fifth respondent in W.P.(MD) No. 19191 of 2015.

3. The newly impleaded fifth respondent in W.P.(MD) No. 19191 of 2015, was already made a party as fifth respondent in W.P.(MD) No. 17940 of 2015.

4. On 20.04.2010, the writ petitioner obtained a registration as a Cable Operator,

under Section 4 of the Cable Television Networks (Regulation) Act, 1995. Though Rule 3(1) of the Cable Television Networks Rules, 1994, stipulates that the application for registration should be renewed once in every twelve months, the original Certificate of Registration granted on 20.04.2010, was for a period of five years, upto 2015.

5. Therefore the said Certificate of Registration became the subject matter of challenge at the instance of a third party in W.P.(MD) No. 10751 of 2013. In order to avoid any unnecessary complication on account of the said writ petition, the petitioner made a fresh application for registration on 09.10.2014. The Post Master granted a fresh Certificate of Registration valid for a period from 09.10.2014 to 08.10.2015.

6. Challenging the Certificate of Registration granted on 09.10.2014, yet another rival Cable Operator filed a writ petition in W.P.(MD) No. 1039 of 2015.

7. In a knee jerk reaction, the Post Master issued an order dated 02.02.2015, rejecting the application for registration dated 09.10.2014, overlooking the fact that the application already resulted in the issue of a Certificate of Registration valid upto 08.10.2015.

8. Therefore challenging the order dated 02.02.2015, the petitioner filed a fresh writ petition. During its pendency, the registration granted on 09.10.2014 was coming to an end. Therefore the petitioner sent an application on 18.09.2015, but the Post Master returned the application with an endorsement "Refused". Therefore one more writ petition came to be filed.

9. In the meantime, the District Collector passed an order on 28.09.2015, directing seizure of the equipments in the control room maintained by the petitioner. Challenging the said order of the District Collector dated 28.09.2015, the petitioner has come up with one of the present writ petitions, namely, W.P. (MD) No. 17940 of 2015.

10. During the pendency of the writ petition challenging the seizure of the equipments, the Special Tahsildar cum Deputy Manager of Tamil Nadu Arasu Cable Television Corporation Limited, passed yet another order on 08.10.2015, directing sealing of the premises. This order was passed only as a consequence of the order of the District Collector dated 28.09.2015. Therefore challenging the order of the Special Tahsildar, dated 08.10.2015, the second writ petition, namely, W.P.(MD) No. 19191 of 2015 has been filed.

11. Since the order dated 08.10.2015 passed by the Special Tahsildar, directing sealing of the premises is only in consequence of the order of the District Collector dated 28.09.2015, it is enough to test the correctness of the order of the District Collector. If the order of the District Collector is valid, the question of testing the correctness of the consequential order may not arise. If the order of the District Collector is liable to go, the consequential order would also go.

12. The order of the District Collector dated 28.09.2015, directing seizure of the

equipments in the control room of the petitioner has been passed citing three reasons:

"(i) that the petitioner did not hold a valid Certificate of Registration under the Cable Television Networks (Regulation) Act, 1995;

(ii) that the petitioner has not obtained a licence as a Multi System Operator; and

(iii) as per the statement of the Tamil Nadu Arasu Cable Television Corporation Limited, the petitioner is due to pay arrears to the extent of Rs. 77,00,000/- (Rupees Seventy Seven Lakhs only) to the said Corporation."

13. The order dated 28.09.2015 of the District Collector, has been passed in exercise of the power conferred under Section 11 of the Cable Television Networks (Regulation) Act, 1995. Section 11 reads as follows:

"11. Power to seize equipment used for operating the cable television network.- If any authorised officer has reason to believe that the provisions of section 3, section 4-A, section 5, section 6, section 8, section 9 or section 10 have been or are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network:

Provided that the seizure of equipment in case of contravention of section 5 and 6 shall be limited to the programming service provided on the channel generated at the level of the cable operator."

14. Therefore any order of seizure of equipments passed in exercise of the power conferred by Section 11 of the Act, should conform to the grounds on which the power could be exercised under Section 11. A look at Section 11 would show that the equipments of a Cable Operator could be seized by the authorised officer, if any of the following grounds exist:

"(i) A violation of the provisions of Section 3, which mandates registration as a Cable Operator;

(ii) A violation of the provisions of Section 4-A, in cases where the Central Government had issued a notification mandating every Cable Operator to transmit programmes in an encrypted form through a digital addressable system;

(iii) A violation of the provisions of Section 5 which mandates the transmission in conformity with the prescribed programme code;

(iv) A violation of the provisions of Section 6 which mandates conformity with advertisement code;

(v) A violation of the provisions of Section 8 which mandates compulsory transmission of certain channels, such as, Doordarshan, Rajyasabha, etc.

(vi) A violation of the provisions of Section 9 which mandates the use of standard equipments or digital addressable system; and

(vii) A violation of the provisions of Section 10 which mandates that the Cable Television Network should not interfere with any telecommunication system."

15. A careful look at Section 11 would show that it is a complete code in itself. It clearly defines violations for which an order of seizure of the equipments could be passed. There is no omnibus provision under Section 11 to enable the authorised officer to seize the equipments for any ground other than what is mentioned in Section 11.

16. Coming to the case on hand, it is seen that the order of the District Collector states three reasons. The first reason is that the petitioner is guilty of violation of Section 3. But the said ground is no more available to the respondents in view of the common order passed by us in a batch of writ petitions and writ appeal in W.A.(MD) No. 1340 of 2015 and W.P.(MD) No. 1039 of 2015, etc., on 05.01.2016.

17. Hence the first reason on account of which the District Collector passed the order dated 28.09.2015 goes.

18. The second reason stated by the District Collector in his order dated 28.09.2015 is that the petitioner has not obtained a licence as a Multi-System Operator. But unfortunately that is not one of the grounds traceable to Section 11.

19. Similarly the third reason that the petitioner is in arrears of amount to the Tamil Nadu Arasu Cable Television Corporation Limited, is also not a ground traceable to Section 11.

20. Therefore we find that the impugned order dated 28.09.2015 passed by the District Collector is wholly without jurisdiction and completely arbitrary. As a matter of fact, we have found in our order dated 05.01.2016, passed in W.A. (MD) No. 1340 of 2015 and batch, that the Post Master himself had acted in an arbitrary and malicious manner. Therefore we are of the view that the order dated 28.09.2015 of the District Collector should be set aside. Hence W.P.(MD) No. 17940 of 2015 is allowed and the order dated 28.09.2015 passed by the District Collector is set aside.

21. As a consequence, the order of the second respondent, in W.P.(MD) No. 19191 of 2015, dated 08.10.2015, is also set aside. The District Collector and the Special Tahsildar cum Deputy Manager, Tamil Nadu Arasu Cable Television Corporation Limited are directed to forthwith remove the seal from the premises of the petitioner and hand over the seized equipments in the same condition in which they were seized. The District Administration will be held responsible for any damage that had been caused to the equipments and we give liberty to the petitioner to work out his remedies if any damage is found.

22. Both the writ petitions are allowed on the above terms. The District Collector shall file a compliance report about the removal of the seal and handing over of the possession to the petitioner, by 11.01.2016, before this Court. No costs. Consequently, the connected miscellaneous petitions are closed.