

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.02.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.20170 of 2014 &
M.P.No.1 of 2014

Chandra Ammal Educational and
Charitable Trust rep. By its
Authorised Signatory and Trustee
Mrs.Manjula Kumaraguru ... Petitioner

Vs.

Bharat Sanchar Nigam Limited
rep. By its Deputy General Manager
No.79, GST Road, Chrompet
Chennai 600 047. ... Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus, to call for the records relating to the proceedings passed by the respondent in DGM/CHR/EXGE Corr/2014-15 dated 17.6.2014 and quash the same and consequently to direct the respondent to accept the petitioner's application and grant the new land line Telephone connection in the name and style of "Chandra Ammal Educational and Charitable Trust" situated at No.428/1, Munu Adhi Road, Samathuvaperiyar Nagar, Kishkinta Main Road, Perungalathur, Chennai 600 063.

For Petitioner : Mr.M.P.Saravanan

For Respondent : Mr.Y.Bhuvanesh Kumar

ORDER

By consent of the learned counsels on either side, the writ petition is taken up for final disposal.

2.Heard Mr.M.P.Saravanan, learned counsel appearing for the petitioner and Mr.Y.Bhuvanesh Kumar, learned counsel appearing for the respondent.

3.The petitioner Trust has come forward with this Writ Petition

for quashing the order passed by the respondent viz. BSNL dated 17.6.2014, wherein the petitioner's application for grant of land line connection was rejected on the ground that the area is not feasible and returned the application form along with cheque amount of Rs.500/-, which was remitted by the petitioner.

4.The petitioner would state that they have established International School and about 650 students are studying and on account of the place where the School is located, the mobile phone signals are not strong enough to be received by the mobile users including the Teachers. Therefore, the petitioner seeks for land line connection. However, the respondent BSNL, by the impugned proceedings rejected the application only on the ground that the area is not feasible.

5.The respondent has filed a counter affidavit inter alia stating that non feasible location is taken up for making it feasible in a phased manner depending upon the potential demand, availability of equipments and cable and hence rejected the petitioner's application. Further, it is stated that they have already drawn a Plan to make the location feasible and has initiated process. In the counter affidavit, it has also been stated that as per clause 7 B of Indian Telegraph Act and also as per the decision of the Hon'ble Supreme Court and the subsequent decisions of this Court, the petitioner has to initiate Arbitration proceedings, if he has got any grievance.

6.Firstly, it has to be noted that the reasons assigned in the counter affidavit do not find place in the impugned order. It is a settled legal position that the impugned order cannot be improved by way of counter and the only reason in the impugned order is that the area is not feasible. It is not known how it is non-feasible. But, in the counter affidavit it has been stated that BSNL has already drawn a Plan to make the location feasible and initiated the process. The averments appears to be so vague and it is not known as to whether it was processed/ has been initiated and the stage of process .

7.Be that as it may, the petitioner is running an Educational Institution, said to be an International School with 650 students. For the safety of the students, the land line connection is essential and the respondent organisation being the limb of the Government should extend all supports to enable persons more particularly Schools and Educational Institutions to take land line connections. The petitioner being International School should bear the cost of cable connection charges. Therefore, the respondent should approach the matter in a pragmatic way so that they can extend the land line connection to the said Educational Institution at the earliest. Further, the reference to clause 7 B of Indian Telegraph

Act by the respondent, that the petitioner has to refer to Arbitration, is thoroughly misconceived, as section 7 B of the Act would be permitted only in case of dispute between the subscriber and the BSNL/service provider. In the instant case, the connection is yet to be provided and no agreement has been entered and therefore the petitioner need not be driven to refer to arbitration proceedings.

8. In the light of the above, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The respondent shall take effective steps to make the area feasible and draw the line so as to enable the petitioner to obtain land line connection, within a period of three months from the date of receipt of a copy of this order. In the process of doing so, if there is any transit expenses to be incurred exclusively for the purpose of petitioner Institution, the petitioner Institution is directed to share 25% of the expenses. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

To

The Deputy General Manager
Bharat Sanchar Nigam Limited
No.79, GST Road, Chrompet
Chennai 600 047.

1 cc to Mr.M.P.Saravanan ,Advocate, SR.No.10140/15

1 cc to Mr. Y.Bhuvaneshkumar,Advocate, SR.No.10165/15

W.P. No.20170 of 2014

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pmk.12.3.2015