

In the High Court of Judicature at Madras

Reserved on: 21.09.2015

Delivered on : 29.09.2015

Coram:

The Honourable Mr. Justice SATISH K. AGNIHOTRI
AND
The Honourable Mr. Justice K.K. SASIDHARAN

W.A.Nos.1253 to 1255 of 2015
& connected MPs

1. Union of India
Rep. by Secretary
Ministry of Information and Broadcasting
Government of India
Shastri Bhawan
New Delhi-110 001.
 2. The Deputy Director (FM)
Ministry of Information and Broadcasting
Government of India, FM Cell, Shastri Bhawan
New Delhi-110 001.
 3. Union of India
Rep. by Secretary
Ministry of Home Affairs
Government of India
North Block
Central Secretariat
New Delhi - 110 001.
- ...Appellants in all W.As./Respondents

-Vs.-

M/s. Sun TV Network Ltd.
Rep. by its Managing Director
K. Vijayakumar
Murasoli Maran Towers
No.73, MRC Nagar Main Road
MRC Nagar
Chennai-600 028.

...Respondent in W.A.No.1253/2015/Petitioner

M/s. Kal Radio Ltd.
Rep. by its Managing Director
K. Shanmugam
Murasoli Maran Towers
No.73, MRC Nagar Main Road
MRC Nagar
Chennai-600 028. ...Respondent in W.A.No.1254/2015/Petitioner

M/s. South Asia FM Ltd.
Rep. by its Managing Director
K. Shanmugam
Murasoli Maran Towers
No.73, MRC Nagar Main Road
MRC Nagar
Chennai-600 028. ...Respondent in W.A.No.1255/2015/Petitioner

PRAYER: Writ Appeals is filed under Clause 15 of the Letters Patent against the common order dated 23 July 2015 in M.P.No.4 of 2015 (3 nos.) in W.P.NOs.21810, 21812 and 21814 of 2015.

Writ Petition presented under Article 226 of the Constitution of India to issue a Writ of Certiorarified Manadamus to call for the records of the Second Respondent in their order (a) No.N-38014/10/2015-FM/596 dated 15th July 2015(b)No.N-38014/10/2015-fm/595 (c)NO.N.38014/10/2015-FM/597 and quash the same and consequently direct the 1 & 2 respondents to permit the petitioner to migrate to FM Phase III Regime by allowing the petitioner to resubmit the bank guarantee and permitting the petitioner to participate in the forthcoming FM Station Phase III Auction pursuant to the Notice inviting Application in NO:N-38014/6/2013-FM dated March 2nd 2015 for E-Auction of First batch of Private FM Radio Phase-III channels.

Mr. G. Rajagopalan
Addl. Solicitor General of India Asst.by
Mr.Venkatasamy Babu : For Appellants in all W.Ps.

Mr. P.S.Raman
Senior Counsel
for Ms. M. Sneha : For Respondent in
W.A.No.1253 of 2015

Mr. AR.L. Sundaresan
Senior Counsel
for Ms. M. Sneha : For Respondent in
W.A.Nos.1254 and 1255 of 2015

COMMON JUDGMENT

SATISH K. AGNIHOTRI AND K.K.SASIDHARAN, JJ

The interlocutory orders passed by the learned Single Judge

directing the Ministry of Information and Broadcasting to permit the respondent in the respective appeals to participate in the e-auction of First Batch of Private FM Radio Phase-III Channels, pursuant to the notice inviting applications dated 2 March 2015, pending disposal of writ petitions in W.P.Nos.21810, 21812 and 21814 of 2015 made the Central Government to file these intra court appeals.

2. The Ministry of Information and Broadcasting issued a notification in the nature of a notice inviting applications for e-auction of First Batch of Private FM Radio Phase-III Channels. The notification was issued on 2 March 2015. The respondent in the respective writ appeals (hereinafter referred to as "the applicants") submitted their applications to participate in the auction. The applications were rejected by the Ministry of Information and Broadcasting vide communication dated 15 July 2015 on the ground that the Ministry of Home Affairs has denied them security clearance. The decision communicated by the letters dated 15 July 2015 were challenged by the applicants before the Writ Court in W.P.Nos.21810, 21812 and 21814 of 2015. The applicants have also filed interlocutory applications to direct the Ministry of Information and Broadcasting to permit them to participate in the auction.

3. The learned Single Judge found that security clearance was denied only on account of the pendency of various proceedings against the promoters of the group. The interlocutory applications were allowed by the learned Single Judge meaning thereby the applicants were permitted to participate in the e-auction pursuant to the notice inviting applications. Feeling aggrieved, the Ministry of Information and Broadcasting along with the Ministry of Home Affairs have come up with these intra court appeals.

4. Thiru G. Rajagopalan, learned Additional Solicitor General contended that applications were submitted by the concerned applicants knowing very well the terms and conditions of the notification. Clause 3.8 of the notification provides that the Company as well as the Directors of the Board shall be security cleared. The applicants have submitted the required information as per the format given at Annexure 10.8. The Ministry of Home Affairs denied security clearance to the applicants on the ground of pending investigation in respect of cases relating to Prevention of Money Laundering, Aircel-Maxis and other related cases. The licence in question is in the nature of a Privilege as indicated in Section 4 of the Indian Telegraph Act, 1885. Since it is a privilege, it is open to the Central Government to impose conditions to be satisfied by the licensee. The applicants have therefore no vested right to take part in the e-auction. According to the learned Additional Solicitor General, the learned Single Judge without understanding the scope of the writ petitions, allowed the interim prayer notwithstanding the fact that the applicants are not eligible to take part in the e-auction. It was contended that the fact that the applicants were permitted to participate in the auction pursuant to interim orders

would not prevent the appellants from maintaining the intra court appeals. It was further contended that there are several proceedings pending against the promoters of the group initiated by the Central Bureau of Investigation and the Enforcement Directorate and these vital aspects were not taken note of by the learned Single Judge while granting interim orders.

5. Thiru P.S. Raman, learned Senior Counsel for the respondent in W.A.No.1253 of 2015 contended that the concerned applicant alone should obtain security clearance and not the other companies connected to the group. According to the learned Senior Counsel, the appellants rejected the application submitted by the applicant notwithstanding the fact that the applicant satisfied the eligibility criteria. It was the contention of the learned Senior Counsel that the only prohibition is contained in clause 3.2.1 (b) of the notification which provides that any Company controlled by a person convicted of an offence involving moral turpitude or money laundering/drug trafficking, terrorist activities or persons declared as insolvent or applied for being declared insolvent are not eligible to apply. According to the learned Senior Counsel, even according to the appellants, only investigation is pending against the promoters and none of the Directors or person in management were convicted so far. It is his further contention that only few days before the auction the applications were rejected by the Ministry of Information and Broadcasting and as such the learned Single Judge was correct in passing the interlocutory order by balancing the equities.

6. Thiru AR.L. Sundaresan, learned Senior Counsel for the respondents in W.A.Nos.1254 and 1255 of 2015 contended that the intention of issuing the notification is spelt out in clause 1.2 of the notification. The primary aim is to stimulate competition in the sector. According to the learned Senior Counsel on account of the participation of the applicants, the Government have received better offers. The learned Senior Counsel contended that the Ministry of Information and Broadcasting permitted tainted companies like Reliance to take part in the auction notwithstanding the pendency of case initiated against them in 2G scam. It was his further contention that pendency of criminal case would not amount to conviction within the meaning of clause 3.2.1 (b) of the auction notification and as such the Ministry of Home Affairs was not correct in denying security clearance.

7. The only question that arises for consideration is whether the learned Single Judge was justified in passing the interlocutory orders directing the Ministry of Information and Broadcasting to permit the applicants to participate in the FM Station Phase III auction pursuant to the notice inviting applications dated 2 March 2015.

8. The Indian Telegraph Act, 1995 (hereinafter referred to as "the Act") empowers the Central Government to part with the privilege

in respect of telegraphs and to grant licence to establish, maintain or work telegraphs within any part of India. Section 4 of the Act deals with the exclusive privilege in respect of telegraphs and power to grant licenses. The Central Government is empowered to grant a license on such terms and conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph.

9. The Ministry of Information and Broadcasting, Government of India, issued notice inviting applications for e-auction of First Batch Private FM Radio Phase III Channels on 2 March 2015.

10. Clause 1.2 of the notice inviting applications (hereinafter referred to as "notification") indicates the objectives of the auction. The Government wanted to stimulate competition in the sector and obtain a market determined price of FM Radio Channels through a transparent, fair and impartial process. Clause 3.1 deals with "eligibility". Clause 3.2 deals with "disqualifications". Clause 3.2.1(b) makes any company controlled by a person convicted of an offence involving moral turpitude or money laundering/drug trafficking, terrorist activities or declared as insolvent or applied for being declared insolvent ineligible to participate in the e-auction. Clause 3.8 provides that the company as well as all of its Directors on Board shall be security cleared. There is an indication that the Information and Broadcasting Ministry shall take security clearance of the company as well as its Directors from relevant Government Authorities. The applicants were expected to provide the required information for securing security clearance. The information should be provided in the Annexure at 10.8.

11. The applicants who are stated to be in the field of entertainment network and broadcasting submitted individual applications as per the prescribed proforma for pre-qualification for the e-auction of the First Batch of Private FM Radio Channel (Phase III). They have also given their share pattern in Annexure 10.8 for the purpose of security clearance.

12. The applications were processed by the Ministry of Information and Broadcasting. The applications were rejected primarily on the ground that the Ministry of Home Affairs denied them security clearance on the ground that the group is owned by Maran Family and that prosecution initiated against Thiru Dayanidhi Maran and Thiru Kalanidhi Maran in Aircel-Maxis case by the Central Bureau of Investigation and proceedings under the Money Laundering Act at the instance of Enforcement Directorate are now pending. Similarly, CBI investigation is pending against Thiru Dayanidhi Maran for setting up 300 illegal telephone lines at the residence of Thiru Kalanidhimaran to facilitate Sun TV services. The impugned decision was taken few days before the date of e-auction.

13. Before the learned Single Judge, the applicants contended

that the three cases mentioned in the impugned orders are either in FIR stage or at the stage of framing charges. The concerned companies are not accused in any of the cases. According to the applicants, on account of the involvement of the Directors of the Company in certain offences which are either in the FIR stage or at the stage of investigation, security clearance cannot be denied.

14. The learned Single Judge for the purpose of arriving at a prima facie case analysed the case of the applicants with reference to the adverse remarks indicated in the impugned orders. The learned Single Judge was of the prima facie view that pendency of investigation initiated under the provisions of Money Laundering Act or pendency of investigation by the CBI in the telephone line case would not be a valid ground to deny permission to participate in the e-auction. The learned Single Judge while directing the appellants to permit the applicants to participate in the e-auction safeguarded the interest of the Central Government also. The learned Single Judge directed the appellants to keep the bids in a sealed cover. In short, the participation of the applicants in the e-auction was made subject to the result of the writ petitions.

15. It is trite that interim orders are passed on the basis of prima facie findings. Such findings are tentative in nature.

16. The Supreme Court in *Zenit Mataplast (P) Ltd. v. State of Maharashtra*¹, indicated that grant of an interim relief with regard to the nature and extent thereof depends upon facts and circumstances of each case as no straitjacket formula can be laid down. The Supreme Court in the said decision indicated the basic principles with regard to interim orders in the following words:

" 30. Interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial."

31. Grant of temporary injunction is governed by three basic principles i.e. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper

1 (2009) 10 SCC 388

perspective in the facts and circumstances of a particular case. But it may not be appropriate for any Court to hold a mini-trial at the stage of grant of temporary injunction."

17. In *Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.*² the Supreme Court pointed out the considerations which ought to weigh with the Court while deciding the applications for interlocutory orders:

"24. (i) extent of damages being an adequate remedy;

(ii) protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor;

(iii) the court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;

(iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case—the relief being kept flexible;

(v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;

(vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise."

18. The Supreme Court in *Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group*³ observed that the Courts have to strike a balance between two extreme positions viz. whether the writ petition would itself become infructuous if interim order is refused, on the one hand, and the enormity of losses and hardships which may be suffered by others if an interim order is granted.

19. The interim orders ordinarily would precede finding of a prima facie case. When existence of a prima facie case is established, the Court shall consider the other relevant factors, namely, balance of convenience and irreparable injuries.

20. In the subject case the applicants have submitted

² AIR 1999 SC 3105

³ (2005) 5 SCC 61

individual applications for participating in the e-auction for First Batch of Private FM Radio Phase III Channels. Even though the clause relating to disqualifications only indicates that any Company controlled by a person convicted of an offence is not eligible to apply, the fact remains that the applicants were denied permission to participate in the auction solely on account of the involvement of two of the Directors of the Group companies in Money Laundering and other related cases.

21. The first appellant in the impugned orders indicated the pendency of proceedings against Thiru Dayanidhi Maran and Thiru Kalanidhi Maran as the primary ground to deny security clearance. The learned Single Judge was of the prima facie view that the pendency of criminal prosecution cannot be a reason to debar the Companies from participating in the auction.

22. The Supreme Court in Ram Lakhan Singh and others v. The State of U.P.⁴ observed that, "In our system of law, an accused starts with a presumption of innocence."

23. The Supreme Court in State v. M. Krishna Mohan⁵ observed that, "presumption of innocence is a human right".

24. The Supreme Court in Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra⁶ indicated the theory of innocence, which is the basis of our criminal jurisprudence in the following words:

"39. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India."

25. The Supreme Court in Rafiq Ahmad v. State of U.P.⁷ indicated the rights of the accused during investigation and trial. The Supreme Court said:

"35.With the development of law, Indian courts have accepted the following protections to and rights of the accused during investigation and trial:

(a) The accused has the freedom to maintain silence during investigation as well as before the court. The accused may choose to maintain silence or make complete denial even when his statement under Section 313 of the Code of Criminal Procedure is being recorded, of course, the court

4 AIR 1977 SC 1936

5 (2007) 14 SCC 667

6 (2010) 13 SCC 657

7 (2011) 8 SCC 300

would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law;

(b) Right to fair trial;

(c) Presumption of innocence (not guilty);

(d) Prosecution must prove its case beyond reasonable doubt.

37. Right to fair trial, presumption of innocence until pronouncement of guilt and the standards of proof i.e. the prosecution must prove its case beyond reasonable doubt are the basic and crucial tenets of our criminal jurisprudence."

26. In view of the legal position that the accused is presumed to be innocent, unless the guilt is proved beyond probabilities, the learned Judge was correct in taking a prima facie view that pendency of enquiry/investigation would not amount to conviction within the meaning of sub-clause (b) of clause 3.2.1 of the notice inviting applications for e-auction. We are therefore in agreement with the views expressed by the learned Single Judge in paragraph 11 of the common order dated 22 July 2015.

27. The learned Judge has also recorded the observation made by the Honourable Union Minister for Information and Broadcasting, supporting the stand taken by the applicants besides the opinion given by the Attorney General against denial of security clearance on the ground of pendency of investigation.

28. The learned Additional Solicitor General by placing reliance on the declaration given by M/s.Sun TV Network Limited indicating the names of its Subsidiary Companies, Holding Companies, Inter Connected Companies and Companies having same management contended that two of the named companies viz., Digital Radio (Mumbai) Broadcasting Ltd., and Digital Radio (Delhi) Broadcasting Ltd., filed writ petitions before the Delhi High Court in W.P.(C) Nos.6891 and 6892 of 2015. According to the learned Additional Solicitor General, the applicants/writ petitioners without disclosing the pendency of identical matter before the Delhi High Court filed the subject writ petitions just few days before the e-auction.

29. We have perused the judgment delivered by the Delhi High Court dated 26 July 2015 in W.P.(C) Nos.6891 and 6892 of 2015. The Delhi High Court in the said judgment observed that the petitioner companies themselves have not been alleged to be vehicles of any transgression of law. The Division Bench quashed the decision communicated by letters dated 15 July 2015 denying security clearance to the petitioner companies and declared that those two companies shall be entitled to participate in the e-auction subject to fulfilment of other conditions. Similar decision communicated by letters dated 15 July 2015 are the subject matter in W.P.Nos.21810, 21812 and 21814 of 2015.

30. Thiru AR.L. Sundaresan, learned Senior Counsel submitted that the petitioners in W.P.(C) Nos.6891 and 6892 of 2015 before the Delhi High Court were permitted to take part in the auction. The appellants have not challenged the said judgment till date. According to the learned Senior Counsel, the applicants are similarly situated.

31. The prayer in the writ petitions before the Writ Court is to quash the decision communicated by letters dated 15 July 2015 rejecting the applications on account of the denial of security clearance. In case interim direction is not given and the Ministry of Information and Broadcasting is permitted to proceed with the e-auction and if the applicants succeeded ultimately in the writ petitions, it would not be possible to give them relief at that point of time. There is a likelihood of creation of third party interest in case auction is conducted during the pendency of writ petitions without permitting the applicants to take part. On the other hand, no prejudice would be caused to the first appellant by permitting the applicants to participate in the e-auction and keep the bid in a sealed cover and to open it depending upon the orders to be passed in the writ petitions. The learned Judge therefore protected the interest of both the parties during the currency of writ petitions.

32. When the intra-court appeals were taken up for final disposal, the learned Additional Solicitor General made a request to call for the writ petitions and decide the issue once for all. We declined the said prayer and heard the intra-court appeals. In view of the urgency expressed by the learned Additional Solicitor General, we give liberty to both the parties to move the Registry for listing the writ petitions early for final disposal.

33. The intra-court appeals are dismissed with no order as to costs. Consequently the connected MPs are closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

WEB COPY

Tr/
To

1. The Secretary to Government
Ministry of Information and Broadcasting
Government of India
Room No.116, "A" Wing
Shastri Bhawan
New Delhi - 110 001.

2. The Secretary to Government
Ministry of Home Affairs
Government of India
North Block
Central Secretariat
New Delhi - 110 001.

3. The Deputy Director (FM)
Ministry of Information and Broadcasting
Government of India, FM Cell, Shastri Bhawan
New Delhi-110 001.

4. The Section Officer,
Judicial Department,
High Court, Madras

3 cc to Ms.M,Sneha , Advocate Sr.No.52783
1 cc to Mr.Venkatasamy Babu(Sr.Panel Counsel of GOI),
Advocate Sr.No.52767

W.A.Nos.1253 to 1255 of 2015

tej(co)
pmk.30.9.2015



WEB COPY