

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2840 OF 2014

ABS Entertainment Private Limited

..Petitioner

Vs.

Union of India through the Ministry
of Information and Broadcasting

..Respondent

Mr. Abhishek Bharti i/b M/s MZD Legal Consultancy, for the
Petitioner.

Mr. H. V. Mehta, for the Respondent-UOI.

CORAM :- **S.C. DHARMADHIKARI &**
B.P.COLABAWALLA, JJ.
DATE :- **SEPTEMBER 22, 2016.**

P. C.:

By this Petition under Article 226 of the Constitution of India, the Petitioner seeks quashing and setting aside of two orders, copies of which are Annexures "D" and "E" to the Writ Petition.

2 The Petitioner claims that it is a Private Company incorporated under the provisions of the Indian Companies Act, 1956.

3 The Respondent is the Union of India and the Department / Ministry of Information and Broadcasting.

4 The Petitioner states that on 18th June, 2012 it made an application in accordance with Form-6 of Rule 11(1) of the Cable Television Networks Rules, 1994 (“Rules”). The Petitioner applied for grant of registration as a Multi System Operator for operating areas notified under Section 4-A of the Cable Television Networks (Regulation) Act, 1995. That application, copy of which is at Annexure-A, was duly acknowledged. The Petitioner was directed on receipt of this application to submit an affidavit and an undertaking as required under Rule 11(F) of the Rules in order to enable the Respondent to process the application. The Petitioner in compliance of the letter dated 2nd July 2012, on 7th July, 2012 provided to the Respondent a duly attested affidavit. Thereafter, the Petitioner was granted a provisional registration / licence under Rule 11(E) of the said Rules for operating as a Multi System Operator in the digital addressable system in the cities/towns/ areas occurring against Phase-I, Phase-II, Phase-III and Phase-IV as notified in the Notification of the Government of India dated 11th November, 2011.

5 The Petitioner is aware of the Notification issued by the Government of India on 11th November, 2011. The Petitioner states that it has been operating in furtherance of this provisional registration/licence since 30th July, 2012. The Petitioner further states that during the course of its business, there are no complaints by the Respondent or anybody.

6 The Petitioner states that on 30th May, 2014, it was granted a permanent registration. However, to the utter shock and dismay of the Petitioner, the Respondent granted permanent registration to the Petitioner for operating as a Multi System Operator only in the digital addressable system notified area of Mumbai of Phase-I and all cities/towns of Phase-III and Phase-IV.

7 The provisional registration granted to the Petitioner vide letter dated 30th July, 2012 stood cancelled for Phase-I and Phase-II cities except for Mumbai.

8 That is how on 16th August, 2014, the Petitioner requested the Respondent to immediately withdraw the impugned order, copy of which is Annexure-F to the extent of the cancellation of provisional registration and to issue a fresh letter granting

permanent registration across Phase-I to Phase-IV. The Petitioner also requested for a meaningful and fair hearing. Thus, the Petitioner is aggrieved and dissatisfied with the non-grant of registration to the extent indicated above.

9 Upon such a Petition, the learned counsel for the Petitioner would urge that this Court can entertain the Writ Petition despite the Petitioner being provided with an alternate and efficacious remedy. We invite the attention of the learned counsel to Chapter-II of the Cable Television Networks (Regulation) Act, 1995. Section-3 thereof opens with a mandatory provision, whereunder no person shall operate a cable television network unless he is registered as a cable operator under the Act. Section-4 provides for registration as Cable Operator. The application has to be made and if eligibility criteria is fulfilled, then, the same can be considered. By sub-section (5) of Section- 4, the satisfaction of the registering authority is contemplated and if it passes an order refusing to grant registration or renewal, then, it should communicate same to the Applicant. The second proviso to Sub-section (5) provides for an appeal against the order of the registering authority refusing grant or renewal of registration and such Appeal lies or can be preferred to the Central Government.

10 We are not concerned with the rest of the provisions but we invited the attention of the learned counsel for the Petitioner to Rule 11 (E) of the Rules which provides for a provisional registration. The proviso to this Rule clarifies that such provisional registration as has been obtained by the Petitioner does not confer any right on the Applicant to claim regular registration and if regular registration is refused, then, the provisional registration granted shall stand cancelled.

11 We do not go into the merits or reasons or grounds for the rejection. The complaint of the Petitioner is that the order is unreasoned and therefore the Writ Petition is maintainable.

12 After considering the argument of the Petitioner's counsel on the maintainability, we are of the view that the provisional registration was granted to the Petitioner, which was for all phases. However, the Petitioner applied for a regular registration and which has been granted to him but partially. Therefore, for Phase-I and Phase-II cities except for Mumbai provisional registration could not fructify into a regular registration. To that extent, the Petitioner can proceed on the footing that his application for regular registration has been

refused or rejected. Upon that basis the Petitioner can prefer an Appeal to the Central Government. In that Appeal, it can complain that the order passed by the registering authority is unreasoned and contravenes the fundamental principles of rule of law. That also violates the principles of natural justice in as much as every such order has to be reasoned. He can also rely upon the judgment of the Hon'ble Supreme Court of India in the case of **S. N. Mukherjee v/s reported in AIR 1990 SC page 1984.**

13 We have no doubt that if such an Appeal is preferred and pointing out the defects and deficiencies in the order refusing registration and impugned before us, the Central Government would duly consider the said Appeal and pass a reasoned order thereon as expeditiously as possible. The Petitioner can also highlight that its application seeking regular registration was compliant with all procedural aspects. The Petitioner can also point out that the requirement under the Rule has been fulfilled in as much as the equipment to operate as a Multi System Operator is available with it. It can also point out that all safety and security measures have been taken and there are no complaints against it. We keep open all such contentions open but do not entertain this Writ Petition simply because going into the above matters would require us to consider a

factual dispute. It will not be possible for us in our limited jurisdiction to find out as to which Rule or which part of it had been complied with by the Petitioner and the Petitioner's applications have to be granted bearing in mind its assertion that there are no complaints against it. The records have to be verified and it would be the business of the authorities under the Act to do so. We cannot displace this alternate, efficacious mechanism and entertain such Petition. The Writ Petition is therefore dismissed.

14 If the Petitioner prefers an Appeal within a period of eight weeks from today, then, the Central Government/Appellate Authority shall duly consider it on its own merits and in accordance with law. We keep open all the contentions of the Petitioner on merits.

15 If the Petitioner's Appeal is preferred within the time aforesaid, then, the Central Government shall dispose it off as expeditiously as possible and within a period of 12 weeks from the date of its receipt.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)