



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
and
THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**

W.P(MD)No.20216 of 2015 and 15347 of 2016
and
MP(MD) .No.1 of 2015

W.P.No.20216/2015

SAISIVA @ SIVASUBRAMANIAN
S/O. GOVINDARAJ 19B SRI SHRIDI NIVAS
SIVAGAMY LAYOUT CHOKKANATHAPURAM
CHINNAMANUR & OFFICE AT SIVAGAMY CABLE TV
SYSTEM CHINNAMANUR. THENI DT.

.. Petitioner

Vs.

- 1 THE CHAIRMAN
TAMIL NADU ARASU CABLE TV CORPORATION 11/12
MANGADU SWAMY STREET NUNGAMPAKKAM
CHENNAI- 34.
- 2 THE MANAGING DIRECTOR
TAMIL NADU ARASU CABLE TV CORPORATION 11/12
MANGADU SWAMY STREET NUNGAMPAKKAM
CHENNAI- 34.
- 3 THE DEPUTY MANAGER/
SPECIAL TAHSILDAR TAMIL NADU ARASU CABLE TV
CORPORATION 15A FOREST ROAD SIVAJI NAGAR
THENI THENI DISTRICT.
- 4 M.NAGARAJ
S/O.MAYEE KOOZHKADAI 30/36
CHOKKANATHAPURAM CHINNAMANOOR
THENI DISTRICT.
- 5 C.M.CHELLAPANDY
S/O.MOKKAPANDI KOVILPATTI &
KEEZHAPOOLANANTHAPURAM UTHAMAPALAYAM TALUK
THENI DISTRICT.



6 M.S.PARAMASIVAM
S/O.SUNDARAM PILLAI W/4 V.O.C.NAGAR
CHINNAMANNOR THENI DISTRICT.

7 A.MUTHURAAJA
S/O.AYYANAVELU "SRI AMMAN CABLES" 117/264
MUTHALAMMAN KOVIL STREET CHINNAMANNUR
THENI DISTRICT.

8. K.SENTHILKUMAR .. Respondents

(R4 to R7 have been impleaded as per
the order of this Court in M.P.Nos.2 and 3/2015
vide order dated 04.12.2015.)

(R8 has been impleaded as per the
order of this Court in WMP No.16245/2016
dated 25.11.2016)

Writ Petition is filed under Article 226 of the
Constitution of India praying to issue a Writ of Mandamus
directing the respondents to grant authorization to anybody as Sub
MSO/TCO in Chinamanoor, Theni District, only by conducting public
auction under the provisions of Tamil Nadu Tender Transparency
Act.

For Petitioner	: Mr.Isaac Mohanlal for Mr.G.Prabhu Rajadurai
For Respondents	: Mr.R.Muthukumarasamy Advocate General assisted by Mr.Abdul Saleem Spl. Government Pleader assisted by Mr.S.Satheeshkumar Addl. Government Pleader Mr.A.Samaya Vasu for R4 to R6 Mr.A.K.Manickam for R7 Mr.P.H.Manoj Pandian for impleading petitioner

W.P.No.15347/2016

1 K.N.PALANICHAMY
S/O.NATARAJAN NO.32 TALUKA OFFICE ROAD
KAMUTHI 623 603 RAMANATHAPURAM DIST

2 R.KANAGASABABATHY
NO.7 NADAR BAZAR ROAD KAMUTHI 623 603
RAMANATHAPURAM DIST

3 P.KRISHNA KUMAR
NO.6 NADAR BAZAR ROAD KAMUTHI 623 603
RAMANATHAPURAM DIST

.. Petitioners



Vs.

1 THE MANAGING DIRECTOR
TAMIL NADU ARASU CABLE TV CORPORATION DUGAR
TOWERS NO.34/123 6TH FLOOR MARSHALLS ROAD
EGMORE CHENNAI 600 008

2 THE DEPUTY MANAGER/
THASILDHAR TAMIL NADU ARASU CABLE TV
CORPORATION LTD. PARAMAKUDI 623 707
RAMANATHAPURAM DIST

3 BALAMURUGAN
S/O.GURUNATHAN MIDDLE STREET
EDAICHIYOORANI PERUMAL THEVANPATTI (POST)
KAMUTHI TALUK 623 603 RAMANATHAPURAM DIST

4 ABBAS
S/O.MUSAGIR NO.2/154 RAMASAMY PATTI
RAMASAMY PATTI (POST) KAMUTHI TALUK 623 603
RAMANATHAPURAM DIST

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the Respondents 1 and 2 not to issue any order pertaining to appointment of Taluk Control Room or a District Cable Operator or a Sub MSO or MSO for Kamuthi Taluk or in Ramanathapuram District to any person without conducting a public auction under the provisions of Tamil Nadu Tender Transparency Act.

For Petitioner	: Ms.A.Hafiza
For Respondents	: Mr.R.Muthukumarasamy Advocate General assisted by Mr.Abdul Saleem Spl. Government Pleader assisted by Mr.S.Satheeshkumar for R1 and R2 Addl. Government Pleader Mr.S.Sivaprakash for R3 & R4

COMMON ORDER

(Order of the Court was made by S.NAGAMUTHU, J.)

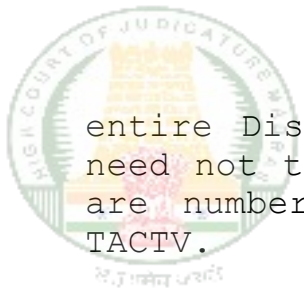
Since common issues have been raised in these writ petitions, they have been heard together and disposed of by means of a common order. For easy reference, let us referred to the averments made in W.P.(MD) No.20216/2015.



2. The Tamil Nadu Arasu Cable TV (in short "TACTV") Operation Limited is a Company fully owned by the Government. The said Company provides quality services at an affordable cost of Rs.70/- being the monthly subscription payable to the subscriber to the Cable TV operators of which, Rs.20/- is paid to TACTV per month per subscriber by the Cable Operators. Accordingly, TACTV is providing 90 - 100 channels of good quality at an affordable cost of Rs.70/- to the customers. It is further stated that before the advent of TACTV, the Cable TV sector in Tamil Nadu was totally unorganised with very few Multi System Operators (MSOs) in the field and the local cable operators as well as the public were forced to pay exorbitant amount as subscription fees. It was only to provide quality services, for an affordable cost, TACTV was established by the Government. At present TACTV has its own digital Head Ends at 5 places, at Chennai, Thanjavur, Tirunelveli, Coimbatore and Vellore. The Cable TV signals of TACTV have been transmitted from the five Head Ends. However, Optic Fiber Cable (OFC) network infrastructure has to be created on its own, which will be time consuming and also prohibitively expensive, in short time to the entire state through the LCOs registered with TACTV and also as a cost effective solution, as a stop gap measure, TACTV decided to take the control rooms of the existing big Cable TV Operators already in the field with the requisite OFC network, who have already provided cable TV to the cluster of smaller LCOs under them.

3. The Board of TACTV has approved the leasing of Control Rooms from the existing TV Operators initially in the 27 Districts, where TACTV does not have any Control Rooms and subsequently authorised the respondents to take on lease control rooms, wherever required for smooth operations of TACTV. Accordingly, while commencing the cable TV services all over Tamil Nadu on 02.09.2011, TACTV had taken 27 Control Rooms of Cable TV operators in 27 Districts excluding the 5 Districts where TACTV already has its own Head Ends. These 27 Cable TV Operators in the Districts were termed as District cable Operators (DCO). However, as it was found that in some Districts due to technical difficulties like non availability of OFC network from the DCOs to cover the entire District and also due to the topography of the area like forests, railway crossings etc, the existing DCO in 27 Districts could not cater to the entire State. Hence, in order to increase the subscriber based on TACTV and also to connect more LCOs, as per the approval given by the Board to take additional Control Rooms on lease, TACTV started taking on lease control rooms of major LCOs in the Taluks and accordingly, till now, 50 control rooms of TCOs are taken on lease by TACTV.

<https://hcservices.ecourts.gov.in/> The leasing of control rooms from the TCOs is based on the needs of TACTV and it is not mandatory to have control rooms in all Taluks. If the existing DCO or TCO is able to cover their

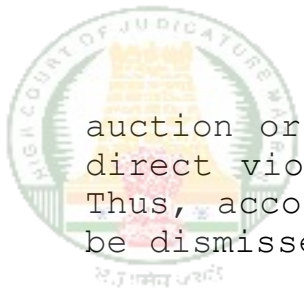


entire Districts with their control rooms and OFC network, TACTV need not take any control rooms on lease. Thus, as of now, there are number of DCOs and TCOs functioning as Cable Operators in TACTV.

5. The grievance of the petitioner is that for allotting this DCO and TCO, there was no norms prescribed and no procedure followed by TACTV. In other words, there is no transparency, as a result, TACTV has favoured only certain persons for getting these DCOs and TCOs and such favoured persons are operating DCOs and TCOs permanently. The petitioners have, therefore, come up with these writ petitions seeking a direction to the TACTV to auction the right to lease out DCO or TCO or MSO as provided under the Tamil Nadu Tender Transparency Act.

6. In the counter filed by the General Manager of TACTV, it is stated that TACTV reserves the right to take the control rooms on lease basis on its needs only and as TACTV has to pay monthly equipment lease amount, Electricity charges etc. for the leased Control Rooms, more number of leased control rooms will increase the expenses of TACTV. Moreover, as the existing DCO/TCO are taking the responsibility of creation and maintenance of the OFC network, any new leasing of control room will only create confusion in the field. It is also stated that all the DCO/TCO are being operated by the Technical Assistant and Assistant Technical Assistant of TACTV and supervised by Special Tahsildar, TACTV. It is further stated that now the Ministry of Information & Broadcasting, Government of India, has directed in Phase IV, the entire cable TV operation has to be in digital mode by 31.12.2016 and from midnight of 31.12.2016, analog transmission of Cable TV transmission is prohibited. In fact, TACTV has applied for DAS license vide application dated 05.07.2012 and 23.11.2012 with the Ministry of I&B, the Government of India and the issue is still pending. TACTV has been persistently following the issue and has filed several cases before this Court in this regard, which are all still pending.

7. The entire Cable TV operations in the Country should be in digital mode post 31.12.2016 and there will be no more Analog cable TV transmission in the Country. Further as the DAS licence of TACTV is pending with Ministry of Information and Broadcasting, there is an uncertainty in the Analog Cable TV operations and as and when TACTV obtain the DAS licence from Ministry of Information and Broadcasting, TACTV will transmit only digital Cable TV signals from its own 5 digital head ends and cover the entire State and all the present leased Analog Control Rooms of TACTV both DCO and TCO will be redundant and no longer required. Hence, the leased Analog Control Rooms are only a stop gap measure till the DAS licence is obtained. TACTV cannot perpetuate the Analog transmission by taking more Analog Control Rooms on lease. Any move by TACTV to institutionalize the Analog Cable TV by going for



auction or tender for leasing the Analog Control Rooms will be in direct violation of the DAS notification of Government of India. Thus, according to the respondents, the writ petition deserves to be dismissed.

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8. We have considered the above submissions.

9. From the narration of facts as stated herein above culled out from the rival contentions, it is crystal clear that as of now, there are number of DCOs and TCOs engaged by TACTV on lease basis. It is also seen that post 31.12.2016, there can be no Analog Control Rooms. The present lessees, who have provided DCO and TCO Control Rooms to the TACTV, have got only Analog Control Rooms. After 31.12.2016, they would be certainly redundant and they would not be required by TACTV. So far as the existing lease in favour of these lessees, who have provided DCOs and TCOs are concerned, in our considered view, if the Analog Control Rooms system is continued for any reason beyond 31.12.2016, after the expiry of the individual lessees, if the TACTV wants to engage Analog Control Rooms at District Level and Taluk Level on lease, in our considered view, in order to maintain transparency, the same should be made by calling for applications from the eligible candidates and by prescribing norms. If any lease already granted is either extended or fresh lease is given to anyone for DCO/TCO without calling for applications and without prescribing norms, in our considered view, it would be illegal.

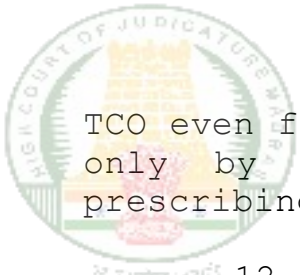
10. A level playing field could be provided for those who are all in the field to compete for lease. As directed by the Union Government, if the Analog Control Rooms are abandoned post 31.12.2016 and digital mode is introduced, then, the DCO and TCO digital mode control rooms, if required, shall be engaged on lease only by following the above transparent procedure by calling for applications and by prescribing the essential qualifications and other norms.

11. In view of the above, both the writ petitions are disposed of in the following terms:

1. The lessees, who have entered into lease agreement with TACTV providing Analog Control Rooms (DCO and TCO), could be so engaged only upto 31.12.2016 and thereafter, the TACTV may provide digital mode.

2. For any reason, if TACTV continues to have Analog Cable TV transmission beyond 31.12.2016, then, the existing lease will be valid only till the date of expiry of the respective individual lease. After the expiry of any existing lease, if TACTV wants to engage DCO/TCO on lease, the same shall be done by calling for applications in the open market prescribing essential qualifications and other norms.

3. Post 31.12.2016, if the TACTV decides to engage DCO and



TCO even for digital mode of transmission, that shall also be done only by calling for applications from open market and by prescribing essential qualifications and other norms.

12. With the above directions, these writ petitions are disposed of. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

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TAMIL NADU ARASU CABLE TV CORPORATION 11/12
MANGADU SWAMY STREET NUNGAMPAKKAM
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RAMANATHAPURAM DISTRICT

+1 CC TO M/S.A.HAFIZA, ADVOCATE SR.NO.73106
+1 CC TO M/S.ABDUL SALEEM, ADVOCATE SR.NO.73314
+1 CC TO MR.S.SIVAPRAKASH, ADVOCATE SR.NO.73621

ORDER MADE IN
W.P(MD) Nos.20216 of 2015
and M.P.No.1 of 2015
and W.P.No.15347/2016
25.11.2016