

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 29.04.2016

Pronounced on : 22-07-2016

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THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition (MD) Nos. 1585 and 2729 of 2016

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WP No. 1585 of 2016:-

M. Senthil Vadivel

.. Petitioner

Versus

1. The Managing Director
Tamil Nadu Arasu Cable Corporation TV Ltd.,
34/123, 6th Floor, Durka Towers
Egmore, Chennai - 600 008

2. The District Collector
Sivagangai District
Sivagangai

3. The Deputy Manager/Special Tahsildar
Tamil Nadu Arasu Cable Corporation TV Ltd.,
Sivagangai, Sivagangai District.

.. Respondents

WP No. 2729 of 2016:-

M. Senthil Vadivel

.. Petitioner

Versus

1. The Managing Director
Tamil Nadu Arasu Cable Corporation TV Ltd.,
34/123, 6th Floor, Durka Towers
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3. The Deputy Manager/Special Tahsildar
Tamil Nadu Arasu Cable Corporation TV Ltd.,
Sivagangai, Sivagangai District.



South Extension
Karaikudi
Sivagangai District

(R4 impleaded as per order dated 24.03.2016
passed in WMP (MD) No. 2866 of 2016)

.. Respondents

WP No. 1585 of 2016:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records relating to the impugned order issued by the first respondent in his proceedings Se.Mu.Order No.3852/thu. mey.5(1)/2015 dated 13.01.2016 and quash the same as illegal.

WP No. 2729 of 2016:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the entire records in connection with the impugned proceedings of the first respondent dated 14.01.2016 in Chu.Mu.Order No.D12/145/2016 and the impugned proceedings of the third respondent dated 26.01.2016 in Na.Ka.3/2015, T.N.G.C.TV and quash the said proceedings and consequently direct the respondents to restore the licence to the petitioner for Cable TV Operator.

For Petitioner :Mr. Ajmal Khan, Senior Advocate
for Mr. S. Kameswaran in WP No. 1585 of 2016

Mr. M. Venkatachalapathy, Senior Advocate
for Mr. R. Devaraj in WP No. 2729 of 2016

For Respondents :Mr. S. Satheesh Kumar for RR1 and 3
in both the writ petitions

Mr. Mohammed Jinnah for R4 in WP 2729 of 2016

COMMON ORDER

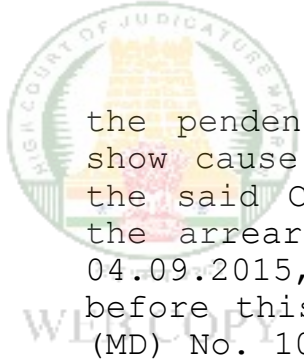
The petitioner and the respondents 1 to 3 in both the writ petition are one and the same. The issue involved in both the writ petitions are inter-connected with each other. Therefore, by consent of counsel for both sides, the writ petitions are taken up for hearing and are disposed of by this common order.

2. In the first writ petition, being WP No. 1585 of 2016, the challenge is to the order dated 13.01.2016 passed by the first respondent, by which the licence issued to the petitioner and another as Taluk Cable Television Operator (in short TCO) has been rescinded. The subsequent writ petition, being WP No. 2729 of 2016, has been filed by the petitioner challenging the orders passed by the first and third respondent therein whereby the fourth respondent was appointed as TCO and the 58 Decoder Set top boxes kept in the control room hitherto operated by the petitioner has been taken possession of by the respondent/Corporation.



3. The case of the petitioner, as culled out from the affidavit filed in support of the writ petitions, is that he was appointed as TCO by the Tamil Nadu Arasu Cable TV Corporation Limited, hereinafter referred to as Corporation, along with one Chandramohan, son of Karuppiyah and a licence thereof was issued on 01.04.2013. As per the terms of the licence, the licence holder has to maintain a control room, pay the rent and electricity bill for maintenance of such control room etc., The licence was issued with respect to supervising the Local Cable Operators (in short LCO) within Thirupathur, Karaikudi and Devakottai Taluks. According to the petitioner, even though the Licence was issued in the joint name of the petitioner as well as one Chandramohan, the said Chandramohan did not participate in the business right from the date of issuance of the licence and also did not operate the control room etc., as required under the licence. Therefore, it is the petitioner who is operating the control room, paying the rent, electricity, maintenance charges, salary to technicians etc., It is further stated that the rental agreement relating to the control room stands in the name of the petitioner. According to the petitioner, as per the TCO licence, the licensee has to collect the subscription amount from the LCOs and to remit it in the name of the first respondent periodically. According to the petitioner, his partner Mr. Chandramohan has forged a letter to make it as if the subscription amount has to be paid to him. Believing such representation to be true, the petitioner has paid all the subscription amount collected from the LCOs to the said Chandramohan and he has swindled the entire amount. Therefore, according to the petitioner, he is in no way responsible for non-payment of the collection amount to the first respondent and it is the said Chandramohan who failed to remit the amount. In this context, the petitioner has also given a complaint to the respondents and a copy was addressed to the Superintendent of Police, Sivagangai however, no action was taken thereof. In the above circumstances, at the instance of the petitioner, the second respondent, by proceedings dated 11.04.2015, recommended to first respondent to delete the name of Chandramohan from the TCO licence and to give incentives and other benefits to the petitioner. It is the claim of the petitioner that the third respondent also made similar recommendation to the first respondent in favour of the petitioner.

4. According to the petitioner, while the facts are so as stated above, on 14.06.2015, a first information report came to be registered against Chandramohan by the Inspector of Police, Karaikudi North Police Station which would indicate that it is the said Chandramohan who has misappropriated the subscription amount collected from the LCOs. According to the petitioner, even after registration of first information report against the said Chandramohan, the corporation did not renew the licence in favour of the petitioner alone. In such circumstance, the petitioner has filed WP No. 10031 of 2015 before this Court for issuance of a mandamus to direct the first respondent in these writ petitions to implement the recommendation made by the second respondent. During

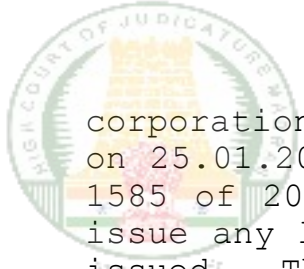


the pendency of the writ petition, the first respondent issued a show cause notice dated 04.09.2015 calling upon the petitioner and the said Chandramohan to remit a sum of Rs.2,49,03,212/- towards the arrears of subscription amount. Challenging the order dated 04.09.2015, the petitioner filed another WP (MD) No. 17768 of 2015 before this Court. By common order dated 02.12.2015, passed in WP (MD) No. 10031 and 17768 of 2015, this Court directed the petitioner to submit his explanation to the show cause notice dated 04.09.2015 and on receipt of the same, the corporation shall consider it in the light of the recommendation made by the District Collector on 11.04.2015 and pass orders on merits and in accordance with law. As directed by this Court, the petitioner submitted his reply dated 22.12.2015 to the show cause notice dated 04.09.2015. However, the corporation, without considering the same, has passed an order dated 13.01.2016 which is challenged in WP No. 1585 of 2016. When WP No. 1585 of 2016 was taken up for hearing on 25.01.2016, this Court granted interim injunction restraining the corporation not to issue any licence to any third party, if such licence is not so far issued.

5. Pending WP No. 1585 of 2016, the third respondent has passed the order dated 26.01.2016 intimating the petitioner that one Mr. Palanisamy has been appointed as TCO and therefore 58 Decoder Set Top Box have been taken possession in the presence of the petitioner from the control room on the same day viz., 26.01.2016. It is this order dated 26.01.2016 which is challenged in WP (MD) No. 2729 of 2016.

6. The learned Senior counsel appearing for the petitioner in WP No. 1585 of 2016 would contend that the impugned order passed by the respondents is a cryptic order without any justifiable reason for rejecting the TCO licence issued to the petitioner. According to the learned Senior counsel for the petitioner, the corporation did not take into account any of the points raised by the petitioner in his explanation and summarily cancelled the licence issued to the petitioner and another. According to the learned Senior counsel for the petitioner, the petitioner has produced very many material evidence to show that the said Chandramohan is instrumental and responsible for swindling the subscription amount received from the LCOs and the petitioner has no role in non-remittance of the subscription amount. This is also evident from the criminal case registered in 344 of 2015 registered against the said Chandramohan. Therefore, in the absence of any justifiable reasons for cancelling the licence issued to the petitioner, the order impugned in WP No. 1585 of 2016 is legally not sustainable.

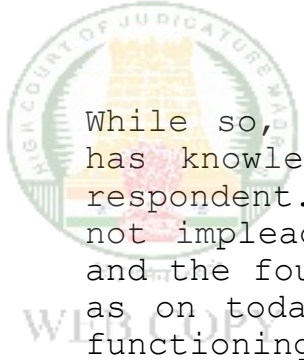
7. The learned Senior counsel appearing for the petitioner in WP No. 2729 of 2016 would contend that the impugned orders passed by the respective respondent are in violation of the order of interim stay granted by this Court on 25.01.2016. According to the learned Senior counsel for the petitioner in WP No.2729 of 2016, the petitioner has challenged the order dated 13.01.2016 of the



corporation cancelling his TCO licence and obtained an interim stay on 25.01.2016. This Court, in the order dated 25.01.2016 in WP No. 1585 of 2016, specifically observed that the corporation shall not issue any licence to any third party, if such licence is not so far issued. The said order was passed in the presence of the standing counsel of the Corporation. While so, the corporation is not justified in passing the consequential orders which are challenged in WP (MD) No. 2729 of 2016. According to the learned Senior counsel for the petitioner in WP No. 2729 of 2016, the orders which are impugned in WP No. 2729 of 2016 have been deliberately passed by the corporation to nullify the interim order passed by this Court. Even in the order dated 26.01.2016, which is challenged in WP No. 2729 of 2016, there is no reference to the order dated 25.01.2016 passed in WP No. 1585 of 2016. When this Court granted interim stay on 25.01.2016 in WP No. 1585 of 2016, the subsequent order passed on 26.01.2016, which is impugned in WP No. 2729 of 2016 is legally not sustainable and it is contrary to the interim order granted by this Court.

8. The learned standing counsel appearing for the Corporation would vehemently oppose the writ petitions. According to the learned Standing counsel for the corporation, in the orders which are impugned in these writ petitions, the corporation has not only given details about the non-remittance of the subscription fee by the licence holder but also the loss caused to the corporation by reason of such non-remittance of the subscription amount. As per the conditions of the licence, it is the responsibility of the licence holders to remit the subscription amount periodically but the petitioner failed to do so. The petitioner simply shifts the blame on Mr. Chandramohan when the licence was issued in the name of the petitioner and the said Chandramohan. The petitioner therefore cannot simply shirk his responsibility towards non-remittance of the subscription amount. When the licence was issued in the name of the petitioner as well as Chandramohan, the petitioner has a responsibility for remittance of the subscription amount with the corporation. When the petitioner failed to remit the amount and caused huge loss to the corporation, the cancellation of licence is inevitable. Further, the licence was cancelled after issuing a show cause notice and on receipt of explanation from the petitioner. The objections raised by the petitioner was met by the corporation in detail before cancelling his licence. Therefore, it cannot be said that the orders which are impugned in these writ petition are non-speaking orders. As regards the interim stay granted by this Court on 25.01.2016 in WP No. 1585 of 2016 on 25.01.2016, the learned counsel would contend that the order dated 26.01.2016 was passed before receipt of the copy of the order dated 25.01.2016 by the Corporation.

9. Above all, the learned counsel for the corporation would mainly contend that in the order dated 26.01.2016, which is impugned in WP No. 2729 of 2016, it was clearly indicated that the fourth respondent was appointed as TCO in the place of the petitioner.



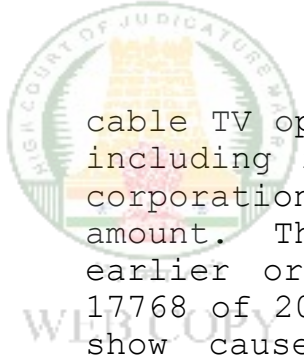
While so, at the time of filing the writ petition, the petitioner has knowledge about the licence granted in favour of the fourth respondent. However, for the reasons best known, the petitioner did not implead the fourth respondent as a party to the writ petition and the fourth respondent was impleaded subsequently. In any event, as on today, the fourth respondent is a licence holder and he is functioning as such. Further, in the order which is impugned in WP No. 2729 of 2016, it is clearly stated that the 59 Decoder Set top boxes have been recovered in the presence of the petitioner and the Inspector of Police concerned. While so, the relief sought for in WP No. 2729 of 2016 has become infructuous by reason of appointment of the fourth respondent as a licence holder. Therefore, the learned counsel seek for dismissal of both the writ petitions.

10. The learned counsel for the fourth respondent in WP No. 2729 of 2016 would contend that the fourth respondent was validly issued with a licence and he is also functioning as on date. The appointment of the fourth respondent was duly approved by the corporation and therefore, at the instance of the petitioner, the licence issued to him need not be cancelled.

11. I heard the learned Senior counsel appearing for the petitioner in both the writ petitions, the learned Standing counsel for the respondent/corporation and the learned counsel for the fourth respondent in WP No. 2729 of 2016. I had perused the entire materials placed on record.

12. The main argument advanced on behalf of the petitioner is that earlier, the petitioner has filed WP Nos. 10031 and 17768 of 2015. Among the said writ petitions, WP No. 17768 of 2015 has been filed challenging the order dated 04.09.2015, being a show cause notice issued by the corporation. This Court, by order dated 02.12.2015 refused to interfere with the show cause notice issued by the corporation and directed the petitioner to submit his explanation. As directed, the petitioner submitted his explanation on 22.12.2015. According to the petitioner, the corporation has rejected his explanation dated 22.12.2015 and passed the order dated 13.01.2016, which is impugned in WP No. 1585 of 2016. According to the petitioner, the order dated 13.01.2016 has been passed without assigning any justifiable reasons and it is a cryptic order. It is further stated that several objections raised by the petitioner has not been considered by the corporation in the proper perspective besides the corporation has not given an opportunity of hearing to the petitioner before passing the order dated 13.01.2016. The corporation failed to discuss about the details of the accounts furnished by the petitioner in the explanation dated 22.12.2015. Therefore, the order dated 13.01.2016 is bereft of any material particulars and on this ground, the order dated 13.01.2016 has to be set aside.

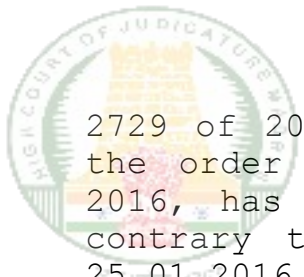
13. The learned counsel for the corporation would contend that the petitioner was appointed as TCO and issued with a licence for



cable TV operation. The licence is attached with certain conditions, including remittance of subscription amount to the account of the corporation. However, the petitioner never remitted the subscription amount. This was also discussed by this Court in thread bare in the earlier order dated 02.12.2015 passed in WP (MD) Nos. 10031 and 17768 of 2015. Ultimately, this Court refused to interfere with the show cause notice issued by the corporation and directed the petitioner to submit his explanation. Thereafter, the petitioner submitted his explanation and it was duly considered by the corporation. Thus, according to the learned counsel for the corporation, the orders which are impugned in these writ petitions does not deserve interference by this Court.

14. I had examined the explanation dated 02.12.2015 of the petitioner and the order dated 13.01.2016 passed by the Corporation, cancelling the licence issued to the petitioner, which is impugned in WP (MD) No. 1585 of 2016. A perusal of the order dated 13.01.2016 would indicate that the corporation has taken note of the conditions attached with the licence, the non-remittance of huge amount by the petitioner and the explanation offered by the petitioner for non-remittance of the amount. The corporation has categorically stated that the petitioner has simply stated in his explanation that Chandramohan with whom he had been carrying on the Cable TV operation business has swindled the money and therefore he cannot be mulcted with any responsibility. This submission of the petitioner cannot be countenanced. As rightly pointed out by the corporation, when the licence was issued jointly in the name of the petitioner and Chandramohan, the petitioner cannot be permitted to shift the entire blame on his partner Chandramohan for non-remittance of the subscription amount. In fact, reference was made in the order dated 13.01.2016 about the appearance of the petitioner and the statement given by him before the corporation. Therefore, it is evident that besides giving a show cause notice to the petitioner, the petitioner was also given an opportunity of hearing and his statement was recorded. After considering such statement of the petitioner, it was stated in the order dated 13.01.2016 that the petitioner did not cooperate with the corporation in the matter of remittance of the subscription amount which resulted in huge loss to the corporation. In any event, the petitioner cannot be permitted to simply shift the blame on Chandramohan with whom he has carried on the business for non-remittance of the subscription amount to the credit of the corporation. Thus, the corporation has duly considered each and every one of the objections raised by the petitioner and thereafter passed the order dated 13.01.2016 which is impugned in WP No. 1585 of 2016.

15. The petitioner has filed WP No. 1585 of 2016 before this Court challenging the order dated 13.01.2016 passed by the corporation rescinding the licence issued to him. In the said writ petition, this Court granted interim injunction on 25.01.2016. According to the petitioner, inspite of such interim order, on the next day i.e., 26.01.2016, the order, which is impugned in WP No.

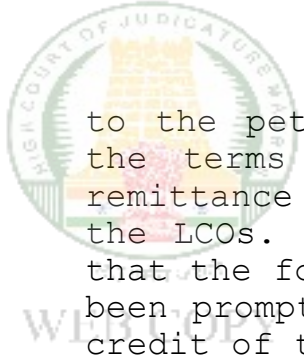


2729 of 2016 has been passed. Thus, according to the petitioner, the order dated 26.01.2016, which is impugned in WP No. 2729 of 2016, has been passed to circumvent the legal process and it is contrary to the order of interim stay passed by this Court on 25.01.2016.

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16. In this context, it is necessary to mention that in the order dated 25.01.2016 in WP No. 1585 of 2016, this Court granted interim injunction by specifically observing that the respondents are directed not to issue any licence to any third party, if such licence is not so far issued. Thus, the order of injunction was not a blanket order and it is subject to condition that it will be operative unless a licence is issued already by the corporation. The copy of the order dated 25.01.2016 was issued on 27.01.2016 and thereafter it was served on the corporation. In the meantime, even on 26.01.2016, the corporation has passed the order dated 26.01.2016 appointing the fourth respondent in WP No. 2729 of 2016 as TCO. Thus, even before the order dated 25.01.2016 could be served on the corporation, the order dated 26.01.2016 was passed appointing the fourth respondent. Therefore, there is no reason to contend that the order dated 26.01.2016 has been passed in violation of the interim order dated 25.01.2016 granted by this Court in WP No. 1585 of 2016. In any event, even in the order dated 25.01.2016, this Court only observed that the corporation shall not appoint any third party by issuing licence if a licence has not so far been issued by them. However, even before the copy of the order dated 25.01.2016 could reach the corporation, on 26.01.2016, the corporation has passed an order, which is impugned in WP (MD) No. 2729 of 2016. Therefore, on this ground, I am not inclined to interfere with the order passed by the Corporation.

17. The petitioner has filed WP (MD) No. 2729 of 2016 challenging the order dated 26.01.2016 passed by the Corporation. By the said order, the corporation has appointed the fourth respondent as TCO. The petitioner has filed WP (MD) No. 2729 of 2016 on 05.02.2016. When the order dated 26.01.2016 was passed appointing the fourth respondent as TCO in the place of the petitioner, the petitioner is expected to implead the fourth respondent also as a party to WP (MD) No. 2729 of 2016. However, for the reasons best known, the petitioner did not implead the fourth respondent at the time of filing the writ petition. Rather, the fourth respondent was subsequently impleaded on 24.03.2016 in WP (MD) No. 2729 of 2016. Even in the order dated 26.01.2016, the corporation has recovered the 59 Decoder Set top box from the control room operated by the petitioner in his presence. Further, from the date of order of appointment, according to the corporation, the fourth respondent has been functioning as TCO till date. The petitioner has not filed WP (MD) No. 2729 of 2016 questioning the appointment of the fourth respondent as TCO at the first instance and later impleaded him as a party to WP (MD) No. 2729 of 2016. By the time when the fourth respondent was impleaded, he has commenced the cable TV Operation business. In any event, the licence issued



to the petitioner and Chandramohan was rescinded for violation of the terms and conditions of the licence, particularly for non-remittance of huge amount towards subscription amount collected from the LCOs. Further, the corporation has produced documents to show that the fourth respondent, from the date of appointment as TCO, has been promptly and properly remitting the subscription amount to the credit of the corporation. In such circumstances, I do not find any reason to interfere with the orders, which are impugned in these writ petitions.

18. In the result, both the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1. The Managing Director
Tamil Nadu Arasu Cable Corporation TV Ltd.,
34/123, 6th Floor, Durka Towers
Egmore, Chennai - 600 008
2. The District Collector
Sivagangai District
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Tamil Nadu Arasu Cable Corporation TV Ltd.,
Sivagangai, Sivagangai District.

+1 CC to M/s.R.DEVARAJ, Advocate, SR No.38974

Common Order in
WP (MD) Nos. 1585 & 2729/2016
22-07-2016

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