

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Appeal No.844 of 2016

JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred by the State of Andhra Pradesh aggrieved by the interlocutory order passed by the learned Single Judge in W.P.M.P.No.28163 of 2016 in W.P.No.22900 of 2016 dated 16.08.2016. The 1st writ petitioner is a cable operator who transmits programmes of the 2nd petitioner, a multi system operator. After the writ petition was filed, an application was filed to withdraw the writ petition in so far as the 2nd petitioner is concerned. In effect, the sole petitioner in the writ petition is the 1st respondent herein.

The respondent-writ petitioner's premises was inspected on 10.07.2016 and, on the ground that it was telecasting "ARY channel" (a Pakistani TV channel) and it had earlier telecast Pakistani TV channels such as QTV, PEACE TV etc, the entire premises of the respondent-writ petitioner was sealed in exercise of the powers conferred under Section 11 of the Cable Television Networks (Regulation) Act, 1995 (for short "the Act") read with Rule 6(6) of the Cable Television Network Rules, 1994 (for short "the Rules").

In the order under appeal the learned Single Judge held that the respondent-writ petitioner was registered as a multi system cable operator with the office of the Post Master General of India; seizure of the equipment, used for operating cable television network, was on the ground that the petitioner was telecasting

banned channels notified under Rule 6(6) of the Rules by the Central Government for being viewed within the territory of India; respondents 3 to 6 were not entitled in law, in the absence of any provision of the Act or any Rule of the Rules made thereunder enabling them to do so, to seal the premises and get the electricity supply disconnected; no provision of law was pointed out to show that respondents 2 to 6 were authorised to seal the premises and get the electricity disconnected to the premises of the petitioner's cable television network; and, in such circumstances, there should be an interim direction to respondents 2 to 6 to release the seized equipment of the petitioner's cable television network, to remove the seal put to the premises, and to restore the electricity supply. The learned Single Judge made it clear that the order did not preclude the respondent-authorities from proceeding against the petitioner for contravention of any of the provisions of the Act, and Rule 6(6) of the Rules, under Section 16 of the Act, which provides for punishment for contravention of the provisions of the Act, in accordance with law. The learned Single Judge also directed the petitioner not to telecast channels banned by the Central Government, from time to time, for being viewed by the public.

Learned Government Pleader, appearing on behalf of the appellants, would fairly state that the power conferred under Section 11 of the Act is only to seize the equipment, and not to seal the premises. He would contend that the learned Single Judge erred in holding that the respondent-writ petitioner was a multi system cable operator; it is on this erroneous premise that the learned Single Judge had directed that the seal be removed, and the seized equipment be released; and, in terms of Section 11 read

with Section 5 of the Act and Rule 6(6) of the Rules, the appellants herein have the power to seize the entire equipment used by the respondent-writ petitioner to run his cable television network.

On the other hand Sri K.Jaganmohan Reddy, learned counsel for the respondent-writ petitioner, would submit that, since the respondent-writ petitioner is alleged to have contravened Section 5 of the Act, the power to seize the equipment under Section 11 of the Act is circumscribed by the proviso thereto; the proviso merely enables the appellants herein to seize the equipment limited to the programming service provided in the channel generated at the level of the cable operator; it is not even the case of the appellants that M/s. Siti Cable Network Limited was transmitting channels telecast by the Pakistan television network; seizure of the entire equipment is, therefore, in violation of the proviso to Section 11 of the Act; the respondent-writ petitioner has specifically denied having telecast any channels broadcast by the Pakistani television network, including the ARY channel; they have attributed malice to the 5th respondent contending that the entire seizure and sealing operations were orchestrated at his instance, to eliminate competition from other cable network operators; and, in such circumstances, the order of the learned Single Judge does not necessitate interference.

This appeal is against an interlocutory order passed by the learned Single Judge and as, in the order under appeal, the learned Single Judge has not considered the question of malice, it would be wholly inappropriate for us to examine this question in an intra-court appeal under Clause 15 of the Letters Patent. Sri K.Jaganmohan Reddy, learned counsel for the respondent-writ

petitioner, would fairly state that the respondent-writ petitioner is merely a cable television operator, and not a multi system operator. While he has put in issue the competence of the witnesses to record a panchanama on the ground that all of them are public servants, this again is not a matter which has been examined by the learned Single Judge in the order under appeal.

As the learned Government Pleader has fairly stated that the appellants lack the power to seal the premises, the only question which necessitates examination is whether they have the power to seize the entire equipment lying in the premises of the respondent-writ petitioner. Section 11 of the Act stipulates that if any authorised officer has reason to believe that the provisions referred to therein, including Section 5, have been or are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network. The power of seizure is conferred for contravention by the cable operator of Section 5 of the Act whereunder no person shall transmit or re-transmit, through a cable service, any programme unless such programme is in conformity with the prescribed programme code. Rule 6 of the Rules relates to the programme code and, under sub-Rule (6) thereof, no cable operator shall carry, or include in his cable service, any television broadcast, or a channel which has not been registered by the Central Government for being viewed within the territory of India.

It is not even the case of the respondent-writ petitioner that ARY channel has been registered by the Central Government for being viewed within the territory of India for it is their specific case that they have not telecast "ARY channel" at all. On a conjoint

reading of Section 5 and Rule 6(6) of the Rules, it is evident that broadcast of “ARY channel”, by a cable operator, would attract the provisions of Section 11 of the Act. The power under Section 11 of the Act is, however, circumscribed by the proviso thereto. Under the proviso to Section 11 of the Act, seizure of equipment, in case of contravention of Sections 5 and 6, shall be limited to the programming service provided on the channel generated at the level of the cable operator.

It is not even the case of the appellants herein that all the television channels relayed by the respondent-writ petitioner, a cable operator, are banned. On the other hand, it is their specific case that the channels transmitted by the cable operator from M/s. Siti Cable Network Limited, a multi system operator, do not include any prohibited channels. If that be so, the proviso to Section 11 of the Act would disable the authorities from seizing the equipment whereby the respondent-writ petitioner, as a cable operator, is transmitting programmes received from M/s. Siti Cable Network Limited, a multi system operator. The proviso to Section 11 of the Act limits the power of seizure of equipment only to the “*programming service*” provided on the channel generated at the level of the cable operator. It appears to be the case of the appellants that the respondent-writ petitioner uses additional equipment to transmit advertisements, and that the “ARY channel programmes” are being telecast using such equipment. If that be so, the power conferred under the proviso is only to seize such equipment, and nothing more.

Suffice it, therefore, if the order of the learned Single Judge is modified to the limited extent that the appellants herein shall be

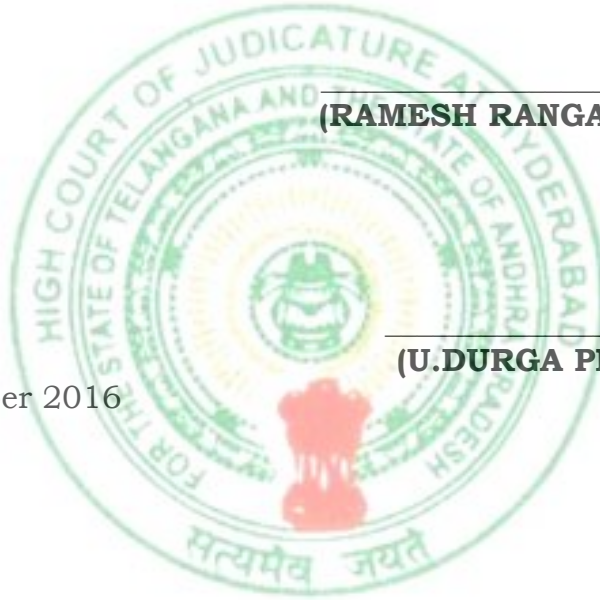
entitled to seize such equipment through which “*programming service of ARY or any other prohibited channel*” is provided by the respondent-writ petitioner. In all other respects, we see no reason to interfere with the order of the learned Single Judge. Needless to state that the writ petition will be heard on its merits, uninfluenced by any observations made in this order.

The Writ Petition is, accordingly, disposed of. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

20th September 2016
JSU



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AND
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Date: 20.09.2016

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