

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT PETITION No.6059 of 2016

Date: 11.04.2016

Between:

M/s. Shirdi Sai Baba International Dish Antena
Jayanagar Colony, Yellanur Road, Tadipatri,
Ananthapur District, Andhra Pradesh, rep.by its
Sole Proprietor, A.M.Malleswarudu.

..... Petitioner

And

Telecom Disputes Settlement and Appellate Tribunal,
at New Delhi, rep. by the Registrar and another.

.....Respondents

The Court made the following:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO**

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PC: (Per the Hon'ble Sri Justice P.Naveen Rao)

Heard Sri B.Nalin Kumar, learned counsel for the petitioner and Sri B Narayana Reddy, learned Assistant Solicitor General for first respondent.

2. This writ petition is filed praying to grant the following relief:

“To issue a writ of certiorari or other appropriate order or direction in the nature of writ quashing the order dated 28.01.2016 passed by the 1st respondent in broadcasting petition No.534 (c) of 2014 as arbitrary, discriminatory, null and void and violative of Articles 14 of the Constitution of India and consequently set aside the same.”

3. The 2nd respondent is the Local Cable Operator in Tadipatri town of Ananthapur District in State of Andhra Pradesh. Petitioner is a Multi System Operator. The 2nd respondent receives the signals provided by the petitioner for the purpose of providing various television channels to his customers. The 2nd respondent filed petition before the Telecom Disputes Settlement and Appellate Tribunal, New Delhi (the Tribunal) complaining that the petitioner disconnected the signals without notice and affording due opportunity. On filing such application, Tribunal ordered notice to the petitioner directing him to appear on the date fixed. Notice sent by the Tribunal was refused. On 16.01.2015, as there was no appearance on behalf of petitioner, *ex parte* interim order was passed by the Tribunal. The Tribunal directed the petitioner to restore the signals to the 2nd respondent without any delay and at any rate, within one week from the date of the order. The Tribunal also made it clear that any violation of the directions issued would be viewed seriously and proceedings under Section 20 of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act) would be initiated.

4. On 09.02.2015, counsel engaged by petitioner appeared and requested time for filing counter affidavit. Having noticed that the order of the Tribunal was not complied, the Tribunal issued notice calling upon the petitioner to show cause why action should not be taken against him. On 13.02.2015, petitioner filed M.A.No.4 of 2015 to vacate the interim order dated 16.01.2015. The plea taken by the petitioner was that there was no relationship between the petitioner and the 2nd respondent. However, when the matter was taken up on 25.03.2015, the counsel on record informed the Tribunal that signals were restored on 24.03.2015, which statement was confronted by the counsel for the 2nd respondent. Having regard to the objection, the Tribunal directed petitioner to file an affidavit. On 07.04.2015, when the matter was taken up, no affidavit was filed and the counsel on record sought the leave of the Tribunal to discharge him from the case. Accordingly, fresh notices were issued.

5. Record discloses that the Tribunal initially called for the report of the District Judge on the number of subscribers of 2nd respondent and whether signals are being received. Since the Tribunal was not satisfied with the report, Tribunal appointed Advocate-Commissioner to visit Tadipatri and to file a report. The Tribunal considered the report of Advocate-Commissioner; held petitioner guilty of violating its orders and having regard to the conduct of the petitioner, imposed fine of Rs.11,75,000/-. Petitioner challenges the said order in this writ petition.

6. Learned counsel for the petitioner contended that Tribunal erred in imposing heavy penalty. Unless there is a willful default in complying with the directions of the Tribunal, the penalty clause as prescribed in Section 20 of the Act is not attracted. No finding is recorded by the Tribunal on willful and deliberate disobedience by the petitioner. Learned counsel sought to contend that appeal was not

maintainable as no relationship exists between appellant and petitioner and said contention was not considered. Though petitioner has explained in detail the reasons for the delay in restoration of signals, the Tribunal erred in not appreciating the same before imposing such heavy penalty on small Multi System Operator. Since the Tribunal is seized of the matter no opinion can be expressed on merits of the claim.

7. Section 20 of the TRAI Act reads as under:

Section 20: Penalty for wilful failure to comply with orders of Appellate Tribunal:

If any person wilfully fails to comply with the order of the Appellate Tribunal, he shall be punishable with fine which may extend to one lakh rupees and in case of a second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees everyday during which such default continues.”

8. A bare reading of the above provision would clearly disclose that ample powers are vested in the Tribunal, if the order passed by the Tribunal is not complied by the person responsible to comply the order. The Tribunal has validly exercised the discretion vested in it and assigned due reasons in support of its decision. In the facts of this case, it cannot be said that there was improper exercise of power.

9. It is seen from the record that even according to the petitioner's own admission, signals were restored only on 24.03.2015. It is thus clear that the order of the Tribunal was not complied within the time fixed. The explanation offered by the petitioner for inordinate delay in restoring the connection was considered by the Tribunal in detail. The order of the Tribunal would disclose that the Tribunal was not satisfied with the conduct of the petitioner and in the considered opinion of the Tribunal, not restoring the signals till 24.03.2015 was deliberate and wilful. The Tribunal chronicled events in detail leading to making the

impugned decision. As analysed by the Tribunal, the conduct of the petitioner made the Tribunal to impose the penalty by the order impugned herein. Petitioner has to blame himself for inviting the wrath of the Tribunal.

10. The principle of law is well settled that the scope of judicial review under Article 226 of the Constitution of India against the order of the Tribunal is very limited. Writ Court can entertain writ petition against order of statutory Tribunal if the same is perverse or the Tribunal lacks jurisdiction. It is not the case of the petitioner that the Tribunal lacks jurisdiction and competence to adjudicate the dispute and to pass orders impugned in the writ petition. In the facts of this case, it cannot be said, even remotely, that impugned decision is perverse. The order of the Tribunal which is alleged to have been disobeyed is not under challenge. As noticed above, petitioner was aware of the order passed by the Tribunal, at least on his own reckoning, on 03.02.2015, but failed to comply with the order till 24.03.2015. We are in respectful agreement with the decision arrived at by the Tribunal. No case is made out warranting interference by this Court. The writ petition merits no consideration and is accordingly dismissed.

Miscellaneous petitions if any pending shall stand closed.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date: 11.04.2016

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