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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 22.11.2016

+ W.P.(C) 11004/2016 & CM Nos.43047/2016 (stay)

ENTERTAINMENT TELEVISION NETWORK LTD AND ANR.

..... Petitioners

versus

UNION OF INDIA AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner :

Mr. Parag Tripathi, Sr. Advocate and Mr. Sudhir Nandrajog,
Sr. Advocate with Mr. Vikram Mehta, Mr. Siddhartha Jain,
Mr. Gaurav Choudhary and Ms. Raka Chatterjee, Advocates.

For the Respondents :

Mr. Anil Soni, CGSC for respondent No.1.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
22.11.2016

SANJEEV SACHDEVA, J. (ORAL)

1. With the consent of the parties the Writ Petition is taken up for disposal today itself.

2. The petitioners seek quashing of order dated 04.11.2016, whereby, the respondent No.1 has proceeded ex-parte against the petitioners and has declined to renew the permission granted to the petitioners for setting up Teleport at Mumbai and for permission to uplink and downlink two Non-News and Current Affairs TV Channels

namely “M Tunes HD Hindi” and “Bhakti Sagar”. The respondent No.1 has further directed removal of the names of the said Teleports from the list of Teleports and TV channels.

3. It is contended by the petitioners that they were never served with the show cause notice, consequent to which, the impugned order had been passed. It is contended that, from the impugned order, the petitioners had become aware that a show cause notice dated 17.02.2016 was sent to the petitioners requiring the petitioners to file a response thereto and on the alleged failure of the petitioners to file a reply to the show cause notice, the respondent No.1 has proceeded ex-parte and passed the impugned order.

4. It is contended that no such show cause notice has been received either physically or electronically through any e-mail. It is contended that the e-mail address mentioned in the impugned order i.e. ‘nikhil1967@gmail.com’ is not the e-mail address which was submitted by the petitioners with the respondent No.1 for the purposes of correspondence.

5. Learned counsel for the respondent No.1 has produced the relevant files for perusal of the court.

6. It is contended by learned counsel for the Respondent that the show cause notice was duly sent to the two addresses mentioned by the petitioners and also on the e-mail address (‘nikhil1967@gmail.com’) obtained by the respondent No.1 from the

record of the Ministry of Corporate Affairs (MCA).

7. It is further contended that hard copy of the notice has been served on the petitioners by speed post. It is contended that since the petitioners had failed to file any response to the show cause notice, the respondent No.1 was constrained to proceed ex-parte and pass the impugned order on account of denial of security clearances by the Ministry of Home Affairs.

8. Perusal of the record produced by respondent No.1 shows that the petitioners, in addition to their address for correspondence had also stated an e-mail address i.e. 'sanjay_sachdeva@rediffmail.com'.

9. Admittedly, the show cause notice sent through e-mail was not sent to the said e-mail address. Further, the hard copy of the show cause notice is purported to have been sent by speed post to the address of the petitioners at 7-B, Shah Industrial Estate, Off Veera Desai Road, Andheri (West), Mumbai – 400 053.

10. The respondent No.1 relies on a photocopy of extract of the dispatch register of 18.02.2016, wherein, the letter number and the name of the petitioner have been mentioned.

11. It is observed that in the dispatch register, against the various entries of dispatch, there is no mention of any tracking number issued by the postal authorities. However, in front of the entry of the despatch to the petitioner, a tracking number has been mentioned in

ink. No such entry is present in front of any other entry. This clearly establishes that the tracking number has been added after a photocopy has been taken of the dispatch register.

12. The tracking report of the tracking number, qua the petitioner, shows that the article had been delivered on 22.02.2016, however, in the columns 'Booked At', 'Booked On', 'Destination', 'Pin Code', 'Tariff', 'Article' categories, the endorsement is "Not Available". In my view, the said report is of no help to the respondent to establish that the show cause notice was ever served upon the petitioner.

13. Further, it may be observed that even on 15.11.2016, an officer of the respondent No.1 has sent an e-mail, though not connected with the issue at hand, at the e-mail address 'sanjay_sachdeva@rediffmail.com', in addition to the same being also addressed to 'nikhil1967@gmail.com', which establishes that the Respondent No. 1 had the said email address of the petitioner in their records.

14. In view of the fact, that there is insufficient proof available on record to conclusively establish that the show cause notice was served on the petitioner, the action of the respondent No.1, proceeding ex-parte against the petitioners and passing the impugned order, cannot be sustained, the impugned order dated 04.11.2016 is quashed.

15. A copy of the show cause notice has been handed over to the counsel for the petitioners in Court today. The petitioners are given

liberty to respond to the said show cause notice within a period of one week from today. After the expiry of one week, the respondent No.1 would be at liberty to adjudicate the show cause notice afresh in accordance with law.

16. The writ petition is, accordingly, disposed of.

17. *Dasti* under the signatures of the Court Master.

NOVEMBER 22, 2016
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SANJEEV SACHDEVA, J

