IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.24730 of 2017
and
WMP.Nos.26090 & 26091 of 2017

K.Murugan,
Chairman,
Federation of Consumer Organisations,
Tamil Nadu & Pondicherry FEDCOT,
No.604, CTH Road,
Pattabiram,
Chennai - 600 072. .. Petitioner

vs

1.Union of India,
rep. by its Secretary,
Ministry of Information and Broadcasting,
Room No.655, A - Wing, Shastri Bhavan,
Dr.Rajendra Prasad Road,
New Delhi - 110 001.

2.Telecom Regulatory Authority of India,
rep. by its Chairman,
Mahanagar, Doorsanchar Bhavan,
Jawarharlal Nehru Marg (Old Mint Road),
Next to Zahir Hussain College,
New Delhi - 110 002.

3.State of Tamil Nadu,
rep. by its Secretary,
Fort St. George,
Chennai - 600 009.

4.Tamil Nadu Arasu Cable TV Corporation Limited,
rep. by its Managing Director,
22/11, Mangadu Samy Street,
Nungambakkam,
Chennai - 600 034. .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records on the file of the first respondent vide communication in No.9/67/2012-DAS dated 17.4.2017 pertaining to the grant of provisional license in favour of the fourth respondent and quash the same.

For Petitioner : Mr.V.T.Gopalan
Senior Counsel
for Mr.L.S.M.Hasan Fizal

For Respondents : Mr.M.K.Subramanian
Government Pleader
for 3rd respondent

Mr.AL.Somayaji
Senior Counsel
for Mr.Abdul Saleem
for 4th respondent

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition, purportedly by way of public interest litigation, has been filed seeking a writ of certiorari to quash the provisional license granted to respondent No.4 by a communication No.9/67/2012-DAS, dated 17th April, 2017, to operate as a Multi System Operator.

2. In the affidavit filed in support of the writ petition, it is pleaded that by a notification being G.O.Ms.No.22, dated 13th August 2007, the Government of Tamil Nadu had started Cable TV Operations. Accordingly, Arasu Cable TV Corporation Limited being the fourth respondent, was incorporated under the provisions of the Companies Act, 1956. Respondent No.4 started providing Cable TV services in 2008. It is alleged that the quality of the services provided by respondent No.4 was poor in comparison to the services provided by the other Cable TV operators. The fourth respondent, therefore, could not attract consumers and it became defunct.

3. However, as per the pleadings in the affidavit in support of the writ petition, after May 2011, the fourth respondent Company underwent massive changes and a senior IAS officer, who had headed respondent No.4 as Chairman, was replaced by a politician.

4. There is a vague allegation in the writ petition that the respondent No.4 has ensured that the erstwhile Multiple System Operators (MSOs) stop their local channels. The allegation does not appear to be supported by any materials. MSOs are still operating. There was no illegality in the announcement made by the respondent No.3 i.e., the State Government, that respondent No.4 would start its services from 2nd September 2011.

5. In paragraph 8, it is pleaded that when the announcement was made, the consumers were under the impression that the Cable TV service of respondent No.4 would be in addition to the services from the other service providers and would be available for a lower price. However, to the shock and dismay of the consumers, the previous Cable TV services were discontinued to promote the fourth respondent's service all over the State. Popular Tamil channels made available by the erstwhile Cable Service Providers (MSOs) were not made available by the Respondent No.4.

6. There does not appear to be any order or direction of the concerned authorities on MSOs to discontinue their services. If any MSO discontinued operations, that was possibly due to its inability to attract adequate number of consumers to make operations viable.

7. It is further pleaded that the alternative available to the consumers was to switch over to DTH (Direct to Home) platform. However, the DTH service providers were unable to cope with the demand. Further more, since the investment on DTH was more, the middle class and lower middle class consumers were badly affected. According to the petitioner, the petitioner made a representation in 2011 requesting the Central Government to intervene to ensure that the fourth respondent did not create monopoly in which the consumer's interest was badly affected.

8. It was alleged that the quality level of the signals of the channels of the Respondent No.4 was pathetic and the consumers were able to watch only 20 to 25 channels. On the other hand, they had the choice of viewing about 80 channels operated by the erstwhile private Multiple Service Operators. According to the petitioner, the representation made by the association to implement the recommendation of the second respondent made to the Central Government went unheeded.

9. It appears that a public interest litigation was filed by the petitioner before Madurai Bench of this Court being W.P.No.11649 of 2012 seeking a direction on the respondents to implement the recommendations of the Telecom Regulatory Authority of India (TRAI) dated 12th November 2008. The said writ petition was transferred to the Principal seat. It appears that Rule 11A to 11F have been inserted by amendment of the Cable Television Network Rules, 1994 with effect from 28th April 2012. As per the proviso to Rule 11F, the Multiple System Operators, who have been permitted to operate in areas notified prior to the coming into force of the Cable Television Networks (Regulation) Amendment Act, 2011 are to be deemed to have been registered under Rule 11C on fulfilling of certain conditions.

10. The Ministry of Information and Broadcasting issued a notification dated 11.11.2011 making it obligatory for every Cable Operator to transmit or re-transmit programmes of channel in an encrypted form through Digital Addressable System in such city, town or area, as might be notified by the Central Government. Chennai Metropolitan Area is one of the notified areas.

11. The Telecom Regulatory Authority of India issued a notification dated 30.04.2012 in exercise of the power conferred under Section 36 framing the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulation, 2012. Sub-clause 2 to Clause 4 of Chapter III provides that no broadcaster shall directly or indirectly prohibit any digital addressable cable TV system operator from providing its services to any subscriber. Notification dated 11.11.2011 was amended extending the date specified for transmission or re-transmission of programmes in an encrypted form through Digital Addressable System in major cities, including Chennai.

12. It is the case of the petitioner that respondent No.4 had not been granted permission to operate as Multiple System Operator through the Digital Addressable System even though the entire nation had started operating cable TV services under the Digital Addressable System.

13. The mere fact that the Respondent No.4, had for long not been granted provisional license to operate as MSO did not debar the Respondent No.4 from being granted such license subsequently.

14. The Respondent No.4 filed writ petitions for permission to operate as Multiple System Operator through the Digital

Addressable System. It is the case of the petitioner that all of a sudden, by a communication dated 17.04.2017, respondent No.4 has been granted provisional license to operate as Multiple System Operator in the Digital Addressable System notified area which is, according to the petitioner, against the recommendations of the second respondent dated 12.11.2008. It is this communication which is impugned by way of this public interest litigation.

15. We are unable to appreciate how the communication can be challenged by way of a public interest litigation. The granting of a provisional licence to the fourth respondent does not infringe any right of the consumers and/or viewers who have the option to choose their Multi System Operator.

16. It is well settled that intervention of Courts cannot be invoked by busy bodies and meddlesome interlopers. It is the person who is aggrieved by any specific action and/or in other words whose legal right has been violated can approach the Court.

17. Public interest litigation is an exception to the rule of locus standi of a person to initiate proceedings in a Court of law. The object of public interest litigation is to make justice available to the public at large. It was often found that the underprivileged, the deprived, the illiterate denied of literacy and denied of adequate funds had no access to justice. To ensure that such persons were not denied their legitimate rights, a new branch of litigation known as public interest litigation and/or social interest litigation evolved. The Courts have also often suo motu initiated proceedings.

18. In pro bono publico proceedings, the Courts intervene when the Courts find that there has been callous neglect on the part of the State, a lack of probity in public life, abuse of power. Pro bono public interest litigation gives way to substantive concern for deprivation of rights. The rule of locus standi has been diluted. In public interest litigation, the Court is not simply a disinterested and dispassionate adjudicator, but an active participant in the dispensation of justice. The key factors in public interest litigation are deprivation of rights and the need to secure the rights of a deprived class.

19. However, of late, in the guise of public interest litigations, frivolous litigations are often filed for ulterior reasons. Many of the litigations styled as public interest litigations are filed for publicity, for private reasons, including elimination of competition or even sheer vindictiveness, political reasons, etc.

20. If public interest litigation is permitted to be misused, the very purpose for which public interest litigation was conceived of, that is, to come to the assistance of the marginalized and/or disadvantaged groups unable to fight for their rights, would be defeated. The Courts would necessarily have to discourage frivolous litigations at the initial stage itself. Persons who misuse the forum of public interest litigation should also be made accountable and even subjected to costs.

21. As observed by the Supreme Court in Raunaq International Ltd. v. I.V.R.Constructions Ltd. and others, reported in AIR 1999 SC 393, public interest litigation should not be a mere cloak. The Court must be satisfied that there is an element of public interest before entertaining a petition.

22. It is true that even though the petitioner might have moved the Court due to some private interest, the Court might interfere in public interest, where there is some patent illegality and/or contravention of the rights of the public at large and/or a group and/or section of people.

23. In State of H.P. v. A Parent of a Student of Medical College, Simla, reported in (1985) 3 SCR 676, the Supreme Court held that public interest litigation is a weapon which has to be used with great care and circumspection. The Courts must be extremely careful to ensure that under the guise of redressing a public grievance, the Court does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. For the same reason, in a public interest litigation, the Court cannot interfere in matters of Government policy, except those patently against public interest and/or in violation of fundamental and/or legal rights.

24. This Court cannot allow meddlesome interlopers to clog the Court with a frivolous litigation filed with some ulterior motive in the garb of agitation of public grievances. The petitioner has made allegations with regard to infringement and/or contravention of some Telecom Regulatory Authority of India's recommendations. However, there is not a whisper in the writ petition of how the public at large have been affected.

25. Admittedly on the face of the averments in the writ petition, the viewers/consumers have the option to subscribe or not to subscribe to the programmes hosted by respondent No.4. There are other Multiple System Operators and it is for the viewers to choose their service providers.

26. We are not inclined to entertain this writ petition. The writ petition is, therefore, dismissed. No costs. Consequently, W.M.P.Nos.26090 & 26091 of 2017 are closed.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

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To:

1.The Secretary,
Union of India
Ministry of Information and Broadcasting,
Room No.655, A - Wing, Shastri Bhavan,
Dr.Rajendra Prasad Road,
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2.The Chairman,
Telecom Regulatory Authority of India,
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3.The Chief Secretary,
State of Tamil Nadu,
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4.The Managing Director,
Tamil Nadu Arasu Cable TV Corporation Limited,
22/11, Mangadu Samy Street,
Nungambakkam,
Chennai - 600 034.

1 cc to Mr.L.S.M.Hasan Fizal, Advocate, Sr. 71062
1 cc to Mr.Abdul Saleem, Advocate, Sr. 70002
1 cc to Government Pleader, Sr. 70594

W.P.No.24730 of 2017

GR (CO)
kk 20/11