THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.33260 of 2017

ORDER:

This writ petition is filed to issue a writ, order or direction more in the nature of writ of mandamus by modifying the order dated 04-09-2017 passed in Broadcasting Petition No. 359 of 2017 of the 1st respondent, by directing the 2nd respondent not to insist for any payment during the pendency of the Broadcasting Petition No. 359 of 2017 pending before the 1st respondent as it is violative of Articles 14 & 19 of the Constitution of India and also violative of well settled principles of law and also in violation of the orders in Star India Pvt. Ltd. Vs. Hathway Cables.

2. The petitioner is a Multi System Operator (MSO) operating in the states of Andhra Pradesh and Telangana. It operates in both DAS II & DAS III areas (Digital Addressable System). The petitioner holds permanent registration in its name as per the provisions of the Rule 11 C of the Cable and Television Networks (Network Rules 1994 as notified under the Cable Television Network (Regulation) Act 1995) for operating in the DAS notified areas. It has a Conditional Access System (CAS) and Subscriber Management System (SMS) of Digital Cable Television Services. Its head end for all the territories of the petitioner is located in Visakhapatnam. The second respondent entered into a centralized agreement on 19-03-2016 with the petitioner and the agreement pertains to supply of 35 channels comprising of the general entertainment as well as sports programme and the license fee fixed is as follows:

"a) Fixed License fee of Rs.12 laksh per month (including taxes) for the period of 01-05-2016 to 30-12-2016 for DAS II arrears.

(b) Fixed License fee of Rs.63.76 lakhs per month (including taxes) for the period of 01-04-2016 to 30-06-2016 and 01-07-2016 to 30-12-2016 for DAS III areas."

3. Now the petitioner states that the agreement was being operated under mistake of fact as well as law. The agreement expired on 31-12-2016 and in spite of the request of the petitioner, the second respondent did not renew the agreement. Thereafter, a fresh agreement was entered with the petitioner on 18-05-2017 with effect from 01-01-2017 valid up to 31-12-2017. As per the said agreement, the payment of license fee is as follows:

"i. Rs.1.10 Crore for January, 2017
ii. Rs.99.62 Lakhs for February and March, 2017
iii. Rs.1.03 Crore for March to December, 2017"

In spite of the said agreement, the petitioner states that the said agreement was virtually thrust upon on the petitioner. The petitioner states that the second respondent has been applying a discriminatory rate against the petitioner. The petitioner states that M/s.Sky Vision Master Channel is paying a sum of Rs.7.47 per STB/Month (excluding taxes), whereas the petitioner is accepted to pay a sum of Rs.13.44 per STB/Month (excluding taxes) even though both the operators are located in the same geographical area. Challenging the said discrimination, the petitioner approached the first respondent in Broadcasting Petition No.359 of 2017 and the Tribunal passed an order on 04-09-2017 in the following manner:

"In that view of the matter, in order to get resupply of signals from the respondent under the interconnect agreement, the petitioner must pay to the respondent not only its current

liability every month but must also ensure that entire amount of arrears, as noted above, is cleared in the following manner:

> *On payment of Rs.Two crores, respondent shall restore the connections to the petitioner forthwith.*
>
> *From the date of such payment and restoration of connection, the petitioner must deposit a further amount of Rs.2.35 crores within four weeks. Within the same time, the petitioner shall furnish bank guarantee for the balance amount of dues and deposit it in the Registry of this Tribunal. The bank guarantee shall be in favaour of the respondent but it shall be deposited with the Tribunal for the purpose of ensuring that the amount covered by the bank guarantee is also deposited by the petitioner first in the account of the Tribunal in the following manner:*
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> *50% of the bank guarantee amount shall be deposited within one month from the date of furnishing of the bank guarantee and upon that, bank guarantee amount shall stand reduced to that extent. The balance amount covered by the bank guarantee shall also be replaced by the petitioner with deposit in the Tribunal within two months from the date of furnishing of the bank guarantee.*
>
> *Any default on the part of the petitioner shall entitle the respondent to effect disconnection after obtaining permission of the Tribunal.*
>
> *The respondent shall file its detailed reply within six weeks. Rejoinder, if any, may be filed after two weeks thereafter.*
>
> *Post the matter before the Registrar's Court on 1.11.2017 to ensure that the case is made ready for hearing."*

Seeking modification of the said order in the facts and circumstances of the case, the writ present petition was filed.

4. This Court directed the petitioner to issue notice to the second respondent and accordingly, the second respondent appeared before this Court.

5. Heard the learned counsel Sri D. Prakash Reddy for the petitioner and Sri T. Srinivas for the second respondent.

6. Learned counsel appearing for the second respondent submitted that a similar application, seeking modification of the said order, was filed in MA No.319 of 2017 and when the Tribunal was not inclined to modify the said order, the petitioner sought withdrawal of the said application on 21-09-2017 and accordingly, the petitioner was permitted to withdraw the same.

7. The learned counsel for the petitioner submits that the order works out harshly on the petitioner though it is an interlocutory order and petitioner has already complied with a part of the order by paying an amount of Rs.2.0 crores. He further submits that the main matter is unlikely to be disposed of by 01-11-2017 on which date, the case is posted and hence in the interest of justice, the order should be modified.

8. The learned counsel for the second respondent submits that there is no threat of disconnection as the order itself speaks out applying for permission from the Tribunal for disconnection of the service and since this is an interlocutory order, this Court should not interfere with the said order.

9. It is an admitted fact that the Tribunal consists of three members and they passed the interlocutory order in a pending dispute between the petitioner and the second respondent taking the overall facts and circumstances of the case. The petitioner complied with a part of the order by depositing two crores of amount and the connection was restored on 12-09-2017, and from

the date of such reconnection, the petitioner has to deposit further amount of Rs.3.25 crores, within four weeks and shall also furnish a bank guaranty for the balance amount of dues and deposit in the Registry of the Tribunal. Since the restoration of connection took place on 12-09-2017, the petitioner has to deposit the said amount of Rs.3.25 crores and furnish a bank guarantee before 11-10-2017. In those circumstances, he filed the present writ petition, but since it is an interlocutory order passed, keeping in view the balance of convenience of the parties, this Court is not inclined to entertain the present writ petition more so when the matter is going to be listed in the first week of November, 2017 and the second respondent is given liberty to bring it to the notice of the Tribunal with regard to the compliance or action proposed to be taken by the second respondent on non-compliance if any. In view of the same, this Court sees no ground to entertain the present Writ Petition.

10. The writ petition is accordingly dismissed at the admission stage. No costs.

11. Miscellaneous petitions pending consideration, if any, in this writ petition, shall stand closed in consequence.

JUSTICE A. RAMALINGESWARA RAO

Date:10-10-2017
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