



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.03.2019

Pronounced on : 11.06.2019

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD) Nos.3686 & 3889 of 2019

and

WMP (MD) Nos.2902, 3030 & 3031 of 2019

WP (MD) No.3686 of 2019 :

1.G.Asokan

2.M.Manikandan

3.V.Balaji

4.N.Sudanthiram

5.S.Sivakumar

6.T.Jagan

... Petitioners

Vs.

1.The Managing Director,
Tamil Nadu Arasu Cable TV Corporation,
No.11/12, Mangadu Swamy Street,
Nungambakkam, Chennai - 34.

2.The Deputy Manager / Special Tahsildar,
Tamil Nadu Arasu Cable TV Corporation,
Collector's Office, Koripalayam,
Madurai.

... Respondents

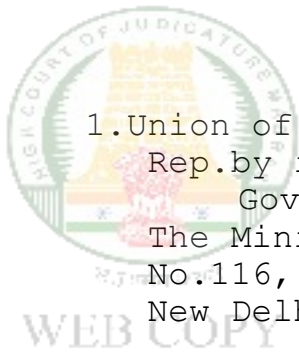
Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the impugned notification bearing Reg.No.TACTV/DSD/EoI/003/2019 dated 05.02.2019 of the first respondent, and quash the order.

WP (MD) No.3889 of 2019 :

Manikandan

... Petitioner

Vs.



1.Union of India,
Rep.by its Secretary to the
Government of India,
The Ministry of Information and Broadcasting,
No.116, A Wing, Shasthri Bawan,
New Delhi - 110 001.

2.The Managing Director,
Tamil Nadu Arasu Cable TV (TACTV),
Corporation Ltd,
Dugar Towers, 6th Floor,
123, Marshal Raod, Egmore,
Chennai - 600 008.

3.The Chairman,
Tamil Nadu Arasu Cable TV (TACTV),
Corporation Ltd,
Dugar Towers, 6th Floor,
123, Marshal Raod, Egmore,
Chennai - 600 008.

... Respondents

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the Impugned Notification issued by the 2nd respondent in Ref. No.TACTV/DSD/EoI/003/2019 dated 05.02.2019 and quash the same as illegal and consequently direct the 2nd respondent to call for Afresh Tender for appointing Digital Signal Distributors (DSD) for the entire Tamil Nadu as per the provisions of the Tamil Nadu Transparency in Tenders Act, 1998.

in WP(MD)No.3889 of 2019 :

For Petitioner : Mr.M.A.Hafiza

For Respondents : Mr.Chellapandian,
Additional Advocate General
assisted by Mr.S.Gunasekaran
for R2 & R3

Mr.A.Veluchamy for R1

in WP(MD)No.3686 of 2019 :

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.Yogesh Kanndadasan

For Respondents : Mr.Chellapandian,
Additional Advocate General
assisted by Mr.S.Gunasekaran
for R1 & R2

**COMMON ORDER**

The petitioners 1 to 4 in WP(MD)No.3686 of 2019 were originally District Cable Operators. Following the introduction of digital mode, they have been appointed as District Signal Distributors (DSDs). The fifth petitioner was appointed as Taluk Signal Distributor (TSD) while the 6th petitioner continues to work as a Local Cable Operator (LCO). The petitioner in WP(MD)No.3889 of 2019 is a Local Cable TV operator. The petitioners in both the writ petitions question the impugned tender notification bearing Ref.No.TACTV/DSD/EoI/003/2019 dated 05.02.2019 inviting applications from technically qualified experienced local cable operators who are having Optic Fibre Cable network for being appointed as District Signal Distributor.

2.Heard the learned Senior Counsel appearing for the petitioner in WP(MD)No.3686 of 2019 and the learned counsel appearing for the petitioners in WP(MD)No.3889 of 2019.

3.The learned Senior Counsel would contend that the writ petitioners have invested substantial sums of money for laying optic fibre cable network and that there is absolutely no need for issuing the impugned notification. The writ petitioners would be deprived of their existing business. They were not put on notice before the issuance of the impugned notification. They claim that their fundamental rights guaranteed under Article 19(1)(g) and 21 of the Constitution have been violated.

4.Their primary ground of attack is that no proper selection criteria has been laid down. Thus, the notification gives unfettered power to the authorities to choose the applicants on their whims and fancies. They would also point out that a substantial sum by way of incentive amount has to be paid to them and that till date it has not been cleared. The learned Senior Counsel also drew the attention of this Court to the fact that a similar notification was issued inviting applications in respect of the areas in which the respondent corporation has not appointed any distributor, it did not elicit any fruitful response. The writ petitioners fault the fairness of the decision making process in bringing new applicants in the existing areas where distributors have already been appointed. The petitioners also contend that imposing the restriction that the applicants can only apply for any one of the announced locations is arbitrary and violation of the Article 14 & 19(1)(g) of the Constitution of India. The respondents have filed a detailed counter affidavit. The writ petitioners in WP(MD)No.3686 of 2019 have also filed a rejoinder.

5.The first contention of the writ petitioners that the impugned notification has to be quashed in as much as it adversely affects their vested interests has to be rejected. As rightly contended by the learned Additional Advocate General appearing for the respondent corporation, the impugned notification has been issued only pursuant to the order passed by the Hon'ble Division



Bench in WP(MD)No.20216 of 2015 and 15347 of 2016 on 25.11.2016. While disposing of the said writ petitions, the following directions were issued :

"In view of the above, both the writ petitions are disposed of in the following terms:

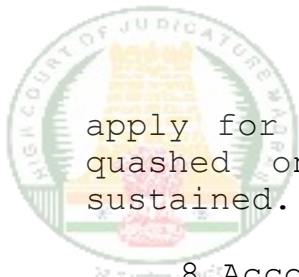
1.The lessees, who have entered into lease agreement with TACTV providing Analog Control Rooms (DCO and TCO), could be so engaged only upto 31.12.2016 and thereafter, the TACTV may provide digital mode.

2.For any reason, if TACTV continues to have Analog Cable TV transmission beyond 31.12.2016, then, the existing lease will be valid only till the date of expiry of the respective individual lease. After the expiry of any existing lease, if TACTV wants to engage DCO/TCO on lease, the same shall be done by calling for applications in the open market prescribing essential qualifications and other norms.

3.Post 31.12.2016, if the TACTV decides to engage DCO and TCO even for digital mode of transmission, that shall also be done only by calling for applications from open market and by prescribing essential qualifications and other norms."

6. Therefore, the respondent corporation cannot be faulted for issuing the impugned notification. It has only acted in compliance of the order passed by the Hon'ble Division Bench. The writ petitioners would claim that the eligibility criteria has not been set out. That may not be correct. Clause 3 of the impugned notification sets out the parameters. There is nothing vague about the eligibility qualifications. Clause 7 of the notification reads that the applicants who are already performing as DSDs for the respondent corporation will be given preferential treatment based on their qualifications. Of course, by insisting that consent letters must be obtained from local cable operators of TACTV, the applicants may have to kowtow to their demands. Such a condition will apply to all the applicants and therefore, the writ petitioners cannot complain of any discrimination. But then, the restriction imposed vide Clause 5 of the impugned notification is on the face of it unreasonable. The corporation vide Annexure-I has announced the list of required locations. But, there is no justification in insisting that an applicant can apply for only one location. There is something called economy of scale. If an applicant fulfils all the eligibility requirements laid down in the impugned notification, there should be no difficulty for the respondent corporation to appoint him as the Digital Signal Distributor (DSD) for the location or locations for which the application has been submitted.

7. I therefore find only this restriction in the impugned notification to be offending the constitutional rights of the applicants guaranteed under Article 14 & 19(1)(g) of the Constitution of India. Any eligible applicant should be free to



apply for any number of locations. The impugned notification is quashed only to this extent. In all other respects, it is sustained.

8. Accordingly, these writ petitions are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Managing Director,
Tamil Nadu Arasu Cable TV Corporation,
No.11/12, Mangadu Swamy Street,
Nungambakkam, Chennai - 34.
2. The Deputy Manager / Special Tahsildar,
Tamil Nadu Arasu Cable TV Corporation,
Collector's Office, Koripalayam, Madurai.
3. the Secretary to Government of India,
Union of India,
The Ministry of Information and Broadcasting,
No.116, A Wing, Shasthri Bawan,
New Delhi - 110 001.
4. The Managing Director,
Tamil Nadu Arasu Cable TV (TACTV),
Corporation Ltd,
Dugar Towers, 6th Floor,
123, Marshal Raod, Egmore,
Chennai - 600 008.
5. The Chairman,
Tamil Nadu Arasu Cable TV (TACTV),
Corporation Ltd,
Dugar Towers, 6th Floor,
123, Marshal Raod, Egmore,
Chennai - 600 008.

+1 CC to Mr.S.Gunasekaran, Advocate SR.No.68088.

+3 CC to Mr.P.M.Vishnuvarthanan, Advocate SR.No.68192.

WP (MD) Nos.3686 & 3889 of 2019

and

WMP (MD) Nos.2902, 3030 & 3031 of 2019

11.06.2019