

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

WRIT APPEAL NO.1969 OF 2021

&

C.M.P.NO.12707 OF 2021

M/s.Skyvision Master Channel,
Rep. by its Proprietor,
Dantuluri Venkateswara Raju.

... Appellant/Petitioner

.Vs.

1. The Union of India,
Rep. by its Chief Secretary,
Chief Secretariat, Goubert,
Avenue, Puducherry - 1.

2. The Secretary to Government of Puducherry,
Local Administration Department,
Goubert Avenue,
Puducherry - 1.

3. The Commissioner,
Yanam Municipality,
Yanam - 533464.

... Respondents/Respondents

PRAYER:-

APPEAL under Clause 15 of the Letters Patent against the order dated 14.6.2021 made in W.P.No.29076 of 2018.

PRAYER IN W.P.NO.29076 OF 2018:-

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the third respondent vide its order dated 16/01/2018 in so far it relates to demanding of entertainment tax from the Multi Signal Operators and Local Cable Operators of Puducherry region and to quash the same.

For Appellant : Mr.R.Sreedhar
For M/s.Pondy Law Firm

For Respondents : Mrs.N.Mala
Government Pleader
(Puducherry)

Judgment was delivered by T.S.SIVAGNANAM, J

We have elaborately heard Mr.R.Sreedhar, learned counsel appearing on behalf of the appellant and Mrs.N.Mala, learned Government Pleader (Puducherry) accepting notice to the respondents.

2. This appeal is directed against the order dated 14.6.2021 made in W.P.No.29076 of 2018, which was dismissed along with five other writ petitions

3. The appellant is aggrieved by the said order by contending that the appellant was an individual, that the prayer sought for in the said writ petition was different from the prayer sought for in the other writ petitions, which were dismissed by a common order dated 14.6.2021 and that there was no adjudication into the contentions raised by the appellant in his writ petition, in the impugned order.

4. As rightly pointed out by the learned counsel appearing for the appellant, we find that in the impugned order, there is no discussion as to the relief sought for by the appellant in W.P.No.29076 of 2018, which has also been dismissed by the common order. The prayer sought for in the said writ petition was to quash the notice issued by the third respondent dated 24.10.2018. By the said notice, the appellant was informed that they have 9000 cable connections approximately on the date of issuance of notice and that a sum of Rs.1,30,500/- is liable to be paid as entertainment tax every month. The third respondent has drawn his power under Section 161A(1) of the Pondicherry Municipalities Act, 1973. Therefore, the appellant was directed to pay entertainment tax within 48 hours, failing which, legal action was threatened to be taken against the appellant.

5. The appellant's grievance is that no opportunity was granted to the appellant to dispute the correctness of the demand made in the said notice dated 24.10.2018, which was impugned in the said writ petition. The appellant would further contend that the multi system operators and local cable operators are paying monthly rent to various paid channels, in

which, 18% GST is also collected, which is shared by both the Central and the State Governments at 9% each and the further demand of 10% entertainment tax amounts to double taxation. The appellant would also contend that the Government, by G.O.Ms.No. 38 dated 19.3.2013, directed a committee to be formed for the purpose of regulating the collection of entertainment tax from cable operators and such a committee has not been constituted despite the said Government Order having been issued in the year 2013. On the above grounds, the appellant has sought to question the correctness of the notice dated 24.10.2018.

6. As observed earlier, the contentions advanced by the appellant has not been dealt with in the impugned common order dated 14.6.2021. Nevertheless, we find that what was impugned in the said writ petition is a show cause notice, which is undoubtedly a demand notice. If the appellant has a valid objection, then an opportunity can be granted to them to put forth their objections, which can be considered by the third respondent and thereafter, a final demand can be issued. Therefore, in our considered view, the appropriate procedure that should have been adopted by the appellant is to place their objections to the third respondent on the demand dated 24.10.2018 and if those objections are placed and if they merit consideration, then the third respondent can consider the same or else, the same can be disposed of by passing a speaking order coupled with a demand. At that juncture, it will be well open to the appellant to comply with the demand or work out their remedies in a manner known to law.

7. For all the above reasons, the writ appeal is disposed of by directing the appellant to treat the notice dated 24.10.2018 as a show cause notice and submit their objections within 15 days from the date of receipt of a copy of this judgment. On receipt of the objections, the third respondent shall consider the same and pass a speaking order on merits and in accordance with law within a period of 15 days therefrom and the order shall be communicated to the appellant by RPAD. Till then, the demand in the notice dated 24.10.2018 shall be kept in abeyance. No costs. Consequently, the connected CMP is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Chief Secretary to Union of India,
Chief Secretariat,
Puducherry - 1.
2. The Secretary to the Government of Puducherry,
Local Administration Department,
Chief Secretariat,
Pudhucherry - 1.
3. The Commissioner,
Yanam Municipality,
Yanam - 533 464.

W.A.NO.1969 OF 2021 &
C.M.P.NO.12707 OF 2021

SR(CO)
PBS/30/12/2021