



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 20.01.2022
PRONOUNCED ON : 25.01.2022
CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**
W.P.(MD)No.11048 of 2021

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R.Manikandan

... Petitioner

vs.

1.The Managing Director,
Tamil Nadu Arasu Cable TV Corporation Limited,
No.11/22, Mangadu Samy Street,
Nungambakkam, Chennai - 600 034.

2.The District Collector,
Office of Collectorate, Karur.

3.The Special Tahsildar (Cable TV),
Tamil Nadu Arasu Cable TV Corporation Limited,
Karur, Karur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the third respondent to resume the broadcasting of the petitioner's Private Local Channel, namely, "Rainbow TV" at the 1st slot till the petitioner's licence period by considering his representation, dated 18.05.2021 within a time frame that may be fixed by this Court.

For Petitioner : Mr.I.Abrar Mohamed Abdulla
For Respondents : Mr.D.Ghandiraj
Special Government Pleader

O R D E R

This Writ Petition has been filed in the nature of a Mandamus seeking a direction to the 3rd respondent to resume the broadcasting of the petitioner's private local channel 'Rainbow TV' at the 1st slot till the license period of the petitioner, by considering the representation dated 18.05.2021 given by the petitioner.

2.In the affidavit filed by the petitioner, it had been stated that the petitioner is the proprietor of 'Rainbow TV', a private local channel telecasting in and around Karur town from 2016 onwards. It is claimed that the petitioner has a subsisting registered license No.1517 to operate Cable TV issued by the Head Post Office, Karur. The 1st respondent had allocated Enrolment No. DPLCKAR1 03 to the petitioner. It is claimed that a relative of the petitioner, K.Kavinraj is a Multi-System Operator and the petitioner is eligible for free private local channel, which he is running in the name of "Rainbow TV". It is claimed that without granting an



opportunity of being heard, the 3rd respondent had disconnected the local channel on 16.05.2021. The petitioner had given a representation on 18.05.2021. Claiming that disconnection without notice is violative of principles of natural justice, the petitioner has filed the present Writ Petition.

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3.The 3rd respondent had filed a counter affidavit, claiming that he has no power to resume the broadcasting. It was claimed that the 3rd respondent had not granted license to the petitioner, rather, it had been granted by the Head Post Office, Karur. The 3rd respondent further stated that the petitioner had not fulfilled the eligibility criteria and was also a willful defaulter in paying the arrears amount and hence the signal had been automatically disconnected. It was urged that the Writ Petition should be dismissed.

4.Heard arguments advanced by Mr.I.Abrar Mohamed Abdullah, learned Counsel for the petitioner and Mr.D.Gandhiraj, learned Special Government Pleader for the respondents.

5.It would be worthwhile to examine a few provisions of the **Cable Television Networks (Regulation) Act, 1995.**

Section 2 (1) (aiii) defines a "cable operator" as "any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network and fulfils the prescribed eligibility criteria and conditions".

Section 3: Cable television network not to be operated except after registration.—No person shall operate a cable television network unless he is registered as a cable operator under this Act.

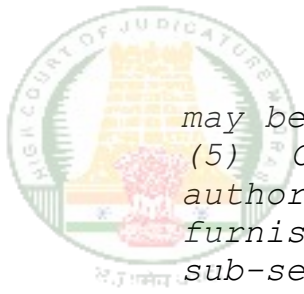
Section 4 : Registration as cable operator.—

(1) Any person who is desirous of operating or is operating a cable television network may apply for registration or renewal of registration, as a cable operator to the registering authority.

(2) The cable operator shall fulfil such eligibility criteria and conditions as may be prescribed and different eligibility criteria may be prescribed for different categories of cable operators.

(3) On and from the date of issue of notification under section 4A, no new registration in a State, city, town or area notified under that section shall be granted to any cable operator who does not undertake to transmit or re-transmit channels in an encrypted form through a digital addressable system.

(4) An application under sub-section (1) shall be made in such form and be accompanied by such documents and fees as



may be prescribed.

(5) On receipt of the application, the registering authority shall satisfy itself that the applicant has furnished all the required information prescribed under sub-section (4) and on being so satisfied, register the applicant as a cable operator and grant him a certificate of registration or renew its registration, as the case may be, subject to such terms and conditions as may be prescribed under sub-section (6):

Provided that the registering authority may, if it is satisfied that the applicant does not fulfil the eligibility criteria and conditions prescribed under sub-section (2) or the application is not accompanied by necessary documents or fees as prescribed under sub-section (4), and for reasons to be recorded in writing, by order, refuse to grant its registration or renewal, as the case may be, and communicate the same to the applicant: Provided further that the applicant may prefer an appeal against the order of the registering authority refusing grant or renewal of registration to the Central Government.

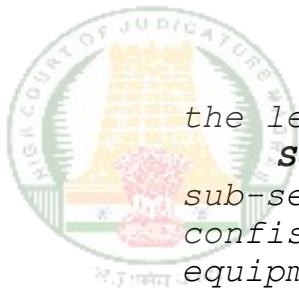
(6) Without prejudice to the compliance of eligibility criteria for registration of cable operators, the Central Government may prescribe, having regard to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, foreign relation or contempt of court, defamation or incitement to an offence, such terms and conditions of registration including additional criteria or conditions to be fulfilled by the cable operator.

(7) The Central Government may suspend or revoke the registration granted under sub-section (5) if the cable operator violates one or more of the terms and conditions of such registration:

Provided that no such order of suspension or revocation shall be made without giving reasonable opportunity of being heard to the cable operator.

Section 11. Power to seize equipment used for operating cable television network.—If any authorised officer has reason to believe that the provisions of section 3, section 4A, section 5, section 6, section 8, section 9 or section 10 have been or are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network:

Provided that the seizure of equipment in case of contravention of sections 5 and 6 shall be limited to the programming service provided on the channel generated at



the level of the cable operator.

Section 12. Confiscation.—The equipment seized under sub-section (1) of section 11 shall be liable to confiscation unless the cable operator from whom the equipment has been seized registers himself as a cable operator under section 4 within a period of thirty days from the date of seizure of the said equipment.

Section 13. Seizure or confiscation of equipment not to interfere with other punishment.—No seizure or confiscation of equipment referred to in section 11 or section 12 shall prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of this Act.

Section 14. Giving of opportunity to the cable operator of seized equipment.

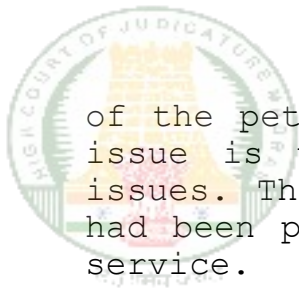
(1) No order adjudicating confiscation of the equipment referred to in section 12 shall be made unless the cable operator has been given a notice in writing informing him of the grounds on which it is proposed to confiscate such equipment and giving him a reasonable opportunity of making a representation in writing, within such reasonable time as may be specified in the notice against the confiscation and if he so desires of being heard in the matter: Provided that where no such notice is given within a period of ten days from the date of the seizure of the equipment, such equipment shall be returned after the expiry of that period to the cable operator from whose possession it was seized.

(2) Save as otherwise provided in sub-section (1), the provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, so far as may be, apply to every proceeding referred to in sub-section (1)"

6. Under **Rule 2 (1) (ee)** of the **The Cable Television Networks Rules, 1994**, "**Multi-System Operator (MSO)**" means a cable operator who receives a programming service from a broadcaster and/or his authorized agencies and re-transmits the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more local cable operators (LCOs), and includes his authorized distribution agencies by whatever name called."

7. The petitioner claims that he has been registered under the competent authority, the Head Post Office, Karur, and claims privilege of to run a free private local channel since his relative K. Kavinraj is a Multi-System Operator. He has also produced documents to evidence subsisting registration.

8. These aspects are issues of fact and veracity of the claims



of the petitioner have to be examined only by the respondents. The issue is whether the respondents were inclined to examine these issues. The issues could have been examined only if the petitioner had been put on notice and given the reasons for disconnecting the service.

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9. It is evident that the respondents had severed the connection of the petitioner without giving him notice, without affording an opportunity of being heard, without hearing the petitioner. Worse, the respondents had also not bestowed attention to reply to the representation given by the petitioner.

10. I would reject the claim of the 3rd respondent that he is not the appropriate authority to examine the grievances raised by the petitioner as having been stated only to avoid culpability and responsibility for not having issued notice prior to disconnecting the service to the petitioner.

11. Let me go back to one of the earliest decisions where adherence to the principles of natural justice had been held to be sacrosanct.

12. In **Maneka Gandhi v. Union of India**, reported in (1978) 1 SCC 248 at page 290, the Hon'ble Supreme Court held as follows :

"14. Now, as already pointed out, the doctrine of natural justice consists principally of two rules, namely, *nemo debet esse judex in propria causa* : no one shall be a judge in his own cause, and *audi alteram partem* : no decision shall be given against a party without affording him a reasonable hearing. We are concerned here with the second rule and hence we shall confine ourselves only to a discussion of that rule....The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The *audi alteram partem* rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that **the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.**"

(Emphasis supplied)

13. Section 14 of the **Cable Television Networks (Regulation) Act, 1995** may be reiterated :

"No order adjudicating confiscation of the equipment referred to in section 12 **shall be made unless the cable**



operator has been given a notice in writing informing him of the grounds on which it is proposed to confiscate such equipment **and giving him a reasonable opportunity of making a representation in writing**, within such reasonable time as may be specified in the notice against the confiscation and if he so desires of being heard in the matter..”

(Emphasis supplied)

14.The provision of law is clear. It is simple. It is straightforward. It conforms to the safeguards expected by the Hon'ble Supreme Court in the decision referred supra.

15.The respondents have not put the petitioner on notice. They have not heard him. They have violated the law which governs and regulates them and their own responsibility to cable operators like the petitioner.

16.The Constitution also guarantees a fundamental right to carry on any lawful trade or business. Article 19(1)(g) of the Constitution of India reads as follows:

"19. Protection of certain rights regarding freedom of speech etc.

(1)All citizens shall have the right.

.....

(g) to practise any profession, or to carry on any occupation, trade or business."

17.A fundamental right cannot be infringed or frustrated without following the procedure established by law.

18.A Mandamus naturally issues, and the 3rd respondent is directed to restore the service connection of the petitioner within a period of 5 working days from the date of receipt of a copy of this order, and further invite the petitioner for a personal hearing, hear the petitioner and then take a decision in manner known to law.

19.The Writ Petition is allowed. No Costs.

Sd/-

Assistant Registrar(Records)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The District Collector,
Office of Collectorate, Karur.

2.The Special Tahsildar (Cable TV),
Tamil Nadu Arasu Cable TV Corporation Limited,
Karur, Karur District.

3.The Managing Director,
Tamil Nadu Arasu Cable TV Corporation Limited,
No.11/22, Mangadu Samy Street,
Nungambakkam, Chennai - 600 034.

+1 CC to M/s.J.SENTHIL KUMARAI AH, Advocate (SR-2487[F] dated
25/01/2022)

Order made in
W.P. (MD) No.11048 of 2021
25.01.2022

sk(CO)
TR(04.02.2022) 7P 5C