

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.16712 of 2021(O&M)
Date of Decision:24.03.2022

M/s Surya Telecom Pvt. Ltd.

...Petitioner

Versus

Union of India and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Pardeep Bajaj, Advocate
for the petitioner.

Mr. Shobit Phutela, Advocate
for respondents No.1 to 3.

Mr. Pankaj Kundra, Advocate for
Mr. Deepak Sabherwal, Advocate
for respondent No.4.

JAISHREE THAKUR, J. (ORAL)

Reply on behalf of respondents No. 1 to 3 has been filed and the same is taken on record. A copy of the reply has been handed over to the counsel for the petitioner.

The instant petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the order dated 23.10.2019 (Annexure P-7) passed by respondent No.3 being illegal, arbitrary, discriminatory and without jurisdiction.

In brief, the facts are that the petitioner is a company incorporated under the provisions of the Companies Act 1956 and is engaged in the business of selling and dealing with communication equipments. It is also a strategic supplier of communication devices/equipment to Police, Paramilitary and Defence Establishments for the last 20 years. In fact, the petitioner is a valid licence holder called Dealers Possession Licence (DPL) as issued by the

Government of India, Department of Telecommunication under the Indian Wireless Telegraphy Act, 1933. Pursuant to the said licence, wireless sets were provided to the Karnataka Police in terms of their Invoice No. 689 dated 28.01.2003 and Invoice No.140 dated 25.03.2005. Subsequent to the invoices, wireless sets were handed over to the Karnataka Police. However, by impugned letter dated 23.10.2019, the DPL licence of the petitioner has been cancelled. It is contended that the only ground for cancellation of the said licence is that the petitioner violated Rule 3(2) of the Indian Wireless Telegraphy (Possession) Rules, 1965. It is further contended that the said cancellation is a mechanical one and that the petitioner herein had supplied wireless to a person i.e. Karnataka Police, who duly held the licence to hold such wireless sets, therefore, cancellation by invoking Rule 3(2) of the Indian Wireless Telegraphy (Possession) Rules, 1965, would not be sustainable. It is argued that at best, the petitioner herein could have been imposed with a fine of Rs.100/- as envisaged under Rule 17 pertaining to Offences and Penalties. The licence can only be cancelled under Rule 18, if a person stands convicted under Section 6 of the Indian Wireless Telegraphy Act, 1933, which is not applicable in the instant case.

Learned counsel appearing on behalf of the Karnataka Police i.e. respondent No.4 has filed written statement in which it is categorically stated that the answering respondent held a valid licence to receive and possess the wireless sets.

Learned counsel appearing on behalf of the Licensing Authority having passed impugned order, would submit that holding of this licence was not brought to their knowledge which was incumbent upon the petitioner.

I have heard learned counsel for the parties and have perused the

law applicable thereto.

There is no dispute about the fact that the petitioner hold DPL licence and had provided wireless sets to Karnataka Police in terms of invoices raised. The impugned notice dated 23.10.2019 as issued by the Ministry of Communications, Department of Telecommunications, Wireless Monitoring Organization terminated the licence with immediate effect, however, no reason has been given for the said termination. A perusal of the reply filed would reflect that the termination has been done on account of violation of Clause 3 of the Indian Wireless Telegraphy (Possession) Rules, 1965, therefore, there is no infirmity in the said cancellation order.

Respondents No. 1 to 3 have cancelled the licence merely on the ground that the petitioner sold wireless sets to Karnataka Police i.e. respondent No.4, who did not hold a due licence to receive the same. However, cancelling the licence invoking Rule 3(2) of the Indian Wireless Telegraphy (Possession) Rules, 1965 would not be sustainable as respondent No.4 holds the necessary licence to receive the wireless sets. Moreover, cancellation of licence can be ordered, only if the person concerned stands convicted under Section 6 of the Indian Wireless Telegraphy Act or a breach of the rules. The petitioner, being a company, is neither convicted nor is in breach of Rule 3 of 1965 Rules and therefore, the cancellation order would not be sustainable.

Consequently, this writ petition is allowed and the cancellation order dated 23.10.2019 (Annexure P-7) is hereby set aside.

March 24, 2022
P.Bhatt

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No