

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 28732 of 2023

Tamal Biswas

Versus

Union of India & Ors.

For the petitioner : Mr. Soumava Ghosh
Mr. Soumalaya Ganguly
Mr. Himanshu Dhewan
Ms. Tiana Bhattacharya

For the respondent no. 4 : Mr. L. Vishal Kumar
Mr. Kunal Tandon

Heard on : 27.12.2023

Judgment on : 27.12.2023

Jay Sengupta, J:

1. This is an application challenging an order dated 14.12.2023 passed by the Telecom Disputes Settlement and Appellate Tribunal, New Delhi in M.A. No. 288 of 2023 in Broadcasting Petition No. 300 of 2023.

2. Affidavits of service are taken on record.

3. Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is a local cable T.V. Network having a large number of subscribers in the border areas of the State of West Bengal. The petitioner was granted a registration

by the respondent no. 1 under the Cable Television Networks (Regulation) Act, 1995. The petitioner and the respondent no. 4 has entered into an agreement for broadcasting and airing of the channels of the respondent no. 4 through its cable television network. The dispute arose between the parties regarding alleged under reporting of subscribers. An application became pending before the Tribunal. Despite the petitioner's protest, one K.P.M.G. was engaged as an auditor to audit the digital data for such purpose. Moreover, as they were not coming with proper identity cards, they were denied access to the subscribers' base or other records of the petitioner. This was used against the petitioner by the respondents. The impugned interlocutory order was passed without adverting to the actual facts in details and a blanket liberty was granted to the respondent no. 4 to decide whether to disconnect the signal of the petitioner or not. The same was quite obviously disconnected. In the main matter a date has been fixed for hearing by the Tribunal on 06.2.2024. By that time, irreparable harm would be caused and the petitioner would loose significant number of subscribers. The petitioner is now willing to allow the K.P.M.G. to audit.

4. Learned counsel appearing on behalf of the respondent no. 4 submits as follows. The allegations made in the writ petition are denied. Regulation 15(2) allows the respondent to appoint auditor. KPMG is an enlisted auditor under TRAI guidelines. There was rampant underreporting of subscribers, which led to the audit. In fact, TDSAT clearly stated that it could not go into the alleged biasness of the auditor. The petitioner tried his best to stall the audit even by raising flimsy grounds like identity cards of the auditors did not match. The Tribunal had to invoke its contempt jurisdiction. The petitioner was duly heard. A deactivation was done on 15.12.2023 although the petitioner has approached this Court now. The petitioner can fairly pray for an early date of hearing before the Tribunal.

5. It is also contended by the petitioner that while the deactivation had taken place on 15.12.2023, the Tribunal was open till 22.12.2023. It would again re-open after winter vacation on 03.01.2024.

6. It appears that the impugned order was passed after taking into consideration the issue of appointment of KPMG as auditor. It was only after some discussions about the facts of the case that such a discretion was granted to the respondent to discontinue with the supply signals.

7. It does not appear that there has been any violation of the principles of natural justice either.

8. Afterall, this Court is more concerned about the process and the manner in which an inference is arrived at and cannot sit in appeal over the impugned order.

9. Therefore, this Court does not find any apparent infirmity in order passed by the Tribunal.

10. However, the apprehension of the petitioner that with the passage of time, the petitioner might loose a number of subscribers is also quite genuine.

11. Therefore, the petitioner shall be at liberty to make a prayer before the Tribunal for an early hearing of the matter and for any other appropriate relief in this regard in accordance with law.

12. With these observations, the writ petition is disposed of.

13. As no affidavit was called for, the allegations made are deemed not to have been admitted.

14. Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

15. Parties shall act on server copy of the order duly downloaded from the official website of this Court.

(Jay Sengupta, J.)