BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos. 23702,23821,23823,23988 of 2016, 8392 of 2017,
15682,16122,7223,16687,18064,19947,20800,21447,21955,22445,
22829,22858 of 2017, 8,
970,1197,6424,7380,8139,8140,8141,17353,17893,18770,19639,
20211,20928 & 22194 of 2018 and
WMP(MD) Nos.17035,17162,17164,17307, of 2016,
6392,12407,12797,5691,13290,14518,16216,17085,17713,
18251,18760,19132,19162 of 2017,
7,1003,1265,6231,7057,7714,7715,7716,15258,15764,16611,17418,
17957,18702 & 20119 of 2018

W.P(MD)No.23702 of 2016:-

1.V.Kaliappan
2.K.Rajagopal
3.K.M.Anwar Ali
4.G.Sureshkumar
5.B.Vishnuvarthan
6.P.Palanisamy
7.V.Karikalan ... Petitioners

Vs

1.The Secretary,
Government of India,
Ministry of Information and Broadcasting,

'A' Wing Shastri Bhavan,
Dr.Rajendra Prasad Road,
New Delhi – 110 001.

2.M/s.Tamil Nadu Arasu Cable TV Corporation Limited,
Represented by General Manager,
"Dugar Towers", 6th Floor,
Old No.34, New No.123m,
Marshalls Road,
Egmore,
Chennai – 600 008. ...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent to forbear the second respondent from allotting new Local Cable TV Operator in existing Local Cable TV Operator area and allow the petitioners to provide Digital Addressable System Signal to their intending customers based on the representation of the Tamil Nadu Cable TV General Welfare Association, dated 23.09.2016, in which, the first respondent to take action on the second respondent and its erring officials for disturbing of implementation of Digital Addressable System.

For Petitioner	: Mr.B.Prasanna Vinoth
For R1	: No appearance
For R2	: Ms.Annie Abinaya Standing Counsel

COMMON ORDER

These writ petitions have been filed for the relief of Mandamus, directing the respondents to allow the petitioners to provide digital addressable system signal to their customers by considering their representations. Since the prayer sought for in all these writ petitions are one and the same, these writ petitions are taken up together and disposed of by this common order.

2.The learned counsel appearing for the petitioners submits that the petitioners are the private cable TV operators operating from the year 1989 and they are the members of Tamilaga Cable TV Operators General Welfare Association. They have registered with the Head Post Master concerned and obtained a Registration Certificate as per Section 4 of Cable Television Networks (Regulation) Act,1955. The Tamil Nadu Arasu Cable TV Corporation was established in the year 2007 and registered under the Companies Act, 1956. The grievance of the petitioners is that initially the petitioners were getting signals from the private Cable Multiple Systems Operators (MSO). However, after establishment of the Tamil Nadu Arasu Cable TV Corporation, the Corporation has threatened the private MSOs to stop providing signals to the Local Cable TV operators and compelled them to take signals from the respondent Corporation. Accordingly, the petitioners were started to function as LCOs under the respondent Corporation. Since the signals provided by the Corporation is not sufficient to cater the needs of the customers, the petitioners have submitted a representation to the corporation to provide Digital Addressable System Signal (DAS) to them.

2.1.The learned counsel further submits that in the year 2011, Section 4 A was inserted in the Cable Television Networks (Regulation) Act,1955. By this amendment, the entire cable service were to be digitalized within four phases and the cut off date for implementation of the last phase was on 31.12.2016. In accordance with the same, the respondent Corporation has granted DAS licence and MSO Licence to some private players, who were also the members of Tamilaga Cable TV Operators General Welfare Association. Having an agreement with the Private MSOs, the petitioners have provided digital signals to their customers. However, the respondent Corporation was intending to appoint new LCOs in the petitioners' respective areas and aggrieved over the same, the petitioners' Association has filed a writ petition in W.P.No. 19537 of 2016 before this Court and this Court, by order dated 06.10.2016 directed the Corporation not to allow any Local Cable TV Operators to supply signals to the subscribers in the list submitted by the existing local cable TV operators. The respondent Corporation has also filed a writ petition before this Court in WP No.40365 of 2015, sought for a direction to the Ministry of Information and Broadcasting to provide Digital Addressable System (DAS) to the Corporation. In that writ petition, this Court has granted an order of *status quo*. While so, the respondent Corporation keep on threatening the petitioners to use their set top boxes alone.

2.2.The main contention of the petitioners is that even though the respondent Corporation is having MSO licence, the Corporation did not have adequate set top boxes to cater the need of the subscribers. If local Cable TV Operators applied for 500 Set Top boxes as per the requirement, they were provided only with 200 set top boxes that too with some technical issues. The Corporation did not take any steps to rectify the fault in the set top boxes. Even during the year 2022, due to the technical fault in the set top boxes, signal provided by the Corporation was disconnected for nearly four months. Due to the irresponsible attitude of the Corporation, the active set top boxes provided by the Corporation were tremendously reduced from 35 Lakhs to 14 Lakhs. In such circumstances, the operators, who solely depending on the signals provided by the Corporation were severely affected, whereas, the Cable TV Operators, who have multiple options did not have any sufferings in their business. The respondent Corporation is the only Corporation has issued free set top boxes to its customers. Due to non-maintenance and poor signals, most of the customers were not using the set top boxes. Even though, most of the set top boxes were not used, the Corporation has not taken any action to recover the un-used set top boxes from the customers, thereby, the petitioners were in a position to pay the subscription fee for the un-used set top boxes as well.

2.3.Apart from the above mentioned issues, the learned counsel points out that even though the service quality of the signals provided by the respondent Corporation is not upto the satisfactory, the petitioners were forced to give the set top boxes of the respondent to their customers, due to which, certain complaints have been received from the customers. Therefore, the petitioners have provided private set top boxes to those customers. In view of the above, the respondent Corporation had started to appoint new LCOs in the petitioners' operating areas. Therefore, the petitioners have submitted a representation to the respondents not to appoint any new LCOs in their locality. Since the representations have not been considered, the petitioners have filed these writ petitions.

3.The learned Standing counsel appearing for the Corporation submits that there is no law prohibiting the appointment and functioning of more than one Local Cable Operator (LCO) in any area. The Corporation has made allotments in order to cater the needs of the customers, depending upon the demand. According to the learned Standing counsel, after digitization of Cable TV transmissions, the petitioners by retaining the licence granted by the Corporation had started to provide Digital Set top boxes of private multi-system operators to their customers. Therefore, the Corporation has taken measures to appoint new Local Cable Operators to augment the revenue for the Corporation. She further submits that in view of the interim order granted by this Court in some of these writ petitions, no new LCO allotment has been made.

3.1.According to the learned Standing Counsel, the petitioners were provided with free set top boxes by the respondent Corporation. However, the petitioners in order to earn more money had distributed set top boxes provided by the private MSOs. The Corporation was initially having 65 Lakhs subscribers through 26,000 LCOs during the Analog period. Even from the Analog period, 24,541 LCOs are having analog subscription due of Rs.299 Crores including penalty. In the digital cable services, the Corporation has subscriber base of 14,93,258 as on 20.08.2023 through 8000 LCOs. Since from the implementation of the DAS under the Act, the Corporation is providing only digital services to its customers. The only grievance of the petitioners is that no new LCOs can be appointed in their respective areas. However, based on the population in that particular locality, the Corporation is having every right to appoint new LCOs, based on the demand. She further submits that the petitioners are having huge amount of arrears to be paid to the Corporation towards subscription fee. However, without paying any penny, the petitioners are making false allegations as against the Corporation. The prayer in these writ petitions is to direct the Corporation to allow the petitioners to provide Digital Addressable System to their customers and not to appoint any new

Local Cable TV Operators. However, the Corporation is providing only digital signals to its customers. The petitioners are having the licence given by the Corporation and was providing private MSO signals to their customers, thereby, caused huge loss to the Corporation. The learned standing Counsel vehemently contend that in order to avoid the payment of huge arrears, the petitioners have filed these writ petitions with a malafide intention. The learned counsel has also produced the details of arrears amount due from the respective petitioners. Therefore, she prays for an appropriate order from this Court.

4.This Court considered the rival submissions and also perused the materials placed on record.

5.All these writ petitions were entertained by this Court and a conditional order of interim stay was also granted in some of the writ petitions.

6.Admittedly, the petitioners are the private cable TV operators and also having licence issued by the Tamil Nadu Arasu Cable TV Corporation. Since they are having licence, they are operating as Local Cable TV Operators under the respondent Corporation. The grievance of the petitioners is that the service provided by the respondent Corporation is not satisfactory to their customers. Therefore, the petitioners have filed these writ petitions for a Mandamus, directing the respondent Corporation not to disturb the petitioners to provide Digital Addressable Signals to their customers, which may be received by any other private MSOs. On the other hand, the respondent Corporation has taken a stand that it is lawful for the Corporation to appoint any number of LCOs in any locality in order to cater the needs of the customers. The Local Cable TV operators/the petitioners having agreed to distribute the signals of the Corporation, obtained set top boxes, started to distribute other set top boxes provided by the private MSOs and thereby, causing huge revenue loss to the Corporation. The further stand of the Corporation is that every petitioner is having huge amount of arrears payable to the Corporation and in order to avoid the payment, the petitioners have filed these writ petitions with a malafide intention and some of the petitioners have managed to obtain interim orders from this Court. Now the Corporation is distributing only a digital signal and therefore, the prayer sought for in these writ petitions has become infructuous.

7.The Tamil Nadu Arasu Cable TV Corporation was incorporated on 04.10.2007 with a noble objective to provide high quality cable TV signals to the general public at an affordable cost. It has been reported that the Corporation is providing Cable TV services at an affordable cost of Rs.70/- per month, having around 100 channels. It is further reported that the subscriber base for TACTV as 4.94 Lakhs on 02.09.2011 and it has risen to 62.17 Lakhs on 01.09.2013 with an operator base of around 25,000, within a short span of two years. Initially, like other service providers, the Corporation was providing only analog services. As per Section 4 A of the Cable Television Networks (Regulation), Act 1995, dated

25.10.2011, it is mandatory for every cable operator to transmit programmes of any channel in an encrypted form through a Digital Addressable System (DAS). Section 4A (6) of the Act mandates that the cable TV Operator shall not require any subscriber to have a receiver set of a particular type to receive signals of cable television network.

8. The contention of the petitioners is that the respondent Corporation was forcing the petitioners to issue only their set top boxes to their subscribers, though the quality of signals provided by the Corporation is not upto the standard. Therefore, they want a direction to restrain the respondents from disturbing the petitioners to provide quality digital signals to their customers as preferred by the customers. It appears that the petitioners are the members of a Tamilaga Cable TV Operators General Welfare Association. This Association has earlier filed a writ petition before this Court in W.P.No.19537 of 2016 with a prayer to direct the respondent Corporation not to allot any new cable TV operators in the existing

Cable TV operating areas and this Court has allowed that writ petition and the relevant paragraph is extracted as under:-

> *“3.Learned Additional Government Pleader appearing for the second respondent submitted that at the time of appoint the Local Cable TV Operators a list of subscribers for whom the LCO is transmitting signal was submitted by them and the LCO may be permitted to transmit signal to such subscribers only. He further submit that second respondent will not allow any LCO to give signal to the person, who are all in the list of the existing LCO.*
>
> *4.In view of the submissions of learned counsel for the second respondent, the second respondent is directed not to allow any LCO to supply signals to the subscribers in the list submitted by the existing Local Cable TV operators.”*

9.Even after the amendment, the Corporation was not provided with Digital Addressable System licence by the Ministry of Information and Broadcasting. Aggrieved over the same, the respondent Corporation filed a writ petition before this Court in WP No.40365 of 2015 and this Court, by order dated 15.11.2019 has closed that writ petition based on the submission of the Corporation that the DAS licence has been granted to them and the relevant portion is extracted as under:-

> *“2.The learned counsel for the petitioner states that the provisional licence has been granted to this petitioners. Hence, no further adjudication is required in this writ petition.”*

10. A cable TV operator means any person, who provide cable service television network or responsible for the management and operation of the cable TV network. Any person can be the cable TV Operator, if he fulfills the conditions stipulated under Rule 2A of Cable Television Network Rules, 1994 and the same is extracted as under:-

> 2-A. Eligibility criteria for cable operators.-
> The following criteria shall be fulfilled by an applicant who who makes an application under rule 3, namely:-
> (a) where the applicant is a person, he shall be a citizen of India and not less than eighteen years of age;
>
> (b) where the applicant is an . association of individuals

or body of individuals, whether incorporated or not, the members of such an association or body shall be citizens of India and not less than eighteen years of age;

(c) where the applicant is a company, such company shall be a company registered under the Companies Act, 1956 (1 of 1956) and shall be subject to such conditions relating to ,foreign direct investment as may be decided by the Central Government;

(d) the applicant shall not be an un-discharged insolvent;

(e) the applicant shall not be a person of unsound mind as declared by a competent Court;

(f) the applicant shall not be convicted of any criminal offence.

And the mode of application for registration has given under Rule 3 and the same is extracted as under:-

3. Application for registration as a cable television network in India.-

(1) Every application for registration as a cable television network in India shall be made in writing in Form I and shall be renewable after every twelve months.

(2) The application shall be addressed to the Registering

Authority and delivered to his office in Form I.

(3)(a) Every application for registration or renewal of registration shall be accompanied by-

(i) a fee of rupees five hundred only; and

(ii) the requisite documents mentioned in Forms 1 and 2.

(b) Every application for issue of duplicate certificate of registration shall be accompanied by-

(i) a fee of rupees two hundred and fifty only; and

(ii) the requisite documents mentioned in Form 1.

If these conditions are followed, the registering authority can register the applicant as a cable TV operator and grant him a certificate under Section 4(5) of the Cable Television Networks (Regulation) Act, 1995. Admittedly, the certificate of cable TV operator licence is valid only for twelve months and after expiry, it can be renewed.

11.Admittedly, the petitioners are the local Cable TV operators and registered as Cable TV operators under the Act. It is now known whether they have renewed the licence in subsequent years. These cable TV operators are getting signals from the MSOs and distributing to their subscribers. It appears that now the entire system has been digitalized and signals are provided to the subscribers only through the set top boxes issued by the MSOs concerned. Tamil Nadu Arasu Cable TV Corporation is one of the MSOs.

12.As per 2(c) of the Rules, Multi System operator means "a cable operator who has been granted registration under rule 11-C and who receives a programming service from a broadcaster or its authorised 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 and includes his authorised distribution agencies, by whatever name called".

13.Therefore, MSO is a cable TV Organization that operates multiple cable Television systems. These MSOs are the main foundations for broadband service offerings in many countries. Once MSO is registered under the Cable Television Network Rules, it is valid for ten years subject to renewal. As per the report of the Telecom Authority of India, for the month of June 2023, there are 1737 MSOs operating in India. There are 903 satellite channels are permitted by the Ministry of Information and Broadcasting. There are more than 65 million active subscribers with pay DTH operators in India. The Ministry has also issued subscriber base of some MSOs. In this report, GTPL Hathway MSO having the highest subscriber base of 9,097,013, which is in the first place, whereas, Tamil Nadu Arasu Cable TV was placed in the tenth place having subscriber base of 1,663,460. The report is extracted hereunder:-

SL.No.	Name of the operator	Total Active Subscriber Base (includes subscribers who have been inactive or temporarily suspended for not more than last 90 days)
1.	GTPL Hathway	9,097,013
2.	Siti Networks Ltd.	6,566,255
3.	Hathway Digital Ltd	5,517,129
4.	Den Networks Ltd.	4,016,963

5.	Thamigzha Cable TV Communication Ltd. (TCCL)	3,937,770
6.	Kerala Communicators Cable Ltd (KCCL)	3,235,809
7.	NXT Digital Ltd. (HITS)	2,268,989
8.	KAL Cables	2,048,395
9.	VK Digital	1,791,852
10.	Tamil Nadu Arasu Cable TV (TACTV)	1,663,460
11.	Fastway Transmission Pvt. Ltd	1,646,956
12.	NXT Digital Ltd. (CATV)	1,133,338
13.	Asianet Digital Network	1,016,797

As per the stand taken by the learned standing counsel, the Corporation was having 65 Lakhs subscribers initially and even during the analog period. Now, the subscribers have been reduced to 16 Lakhs. It is an admitted fact that the Corporation is charging only Rs.70/- from the subscribers, which is a minimal amount compared to other MSOs. From day to affairs, this Court has witnessed that other MSOs are charging minimum Rs.150/-. However, even though other MSOs are charging more than double the amount, which is charged by respondent Corporation, the subscriber base of the other MSOs are increasing and the subscriber base of the respondent

Corporation is keep on decreasing. It shows, the manner in which, the administration of the Corporation is functioning. Having the Digital Addressable System as like other MSOs, charging very meagre amount, the respondent Corporation is not justified in loosing subscribers year after year.

14.As far as the present cases are concerned, petitioners filed these writ petitions only to direct the respondents to forbear them not to disturb the petitioners to provide DAS signals to their subscribers. The subscribers, being the common public cannot be forced to use signals, if the service is not satisfactory. The petitioners being the Local Cable TV Operators are also expected to provide quality signals to their subscribers. As far as the petitioners are concerned, there are some other MSOs, who are providing better signals. If that is so, the petitioners can very well made an agreement with other MSOs and provide their signals to their subscribers. However, the petitioners are not justified in providing signals of other MSOs, by keeping the set top boxes provided by the respondent Corporation. The respondent Corporation being the separate entity having every right to appoint many number of Cable TV Operators to distribute their signals to augment more revenue. Yet another contention of the respondent corporation is that the petitioners have failed to pay huge arrears of amount to the respondent Corporation. In some of the writ petitions, a conditional stay was granted on payment of arrears amount. It is not known, whether the amount has been paid to the Corporation or not.

15.In view of the above, these writ petitions are disposed of in the following terms:-

i. If the petitioners are not satisfied with the signals provided by the respondent Corporation, they can very well move on to other MSOs.
ii. The Tamil Nadu Arasu Cable TV Corporation Ltd shall collect the arrears, if any, from the respective petitioners.
iii. The respondent Corporation is also having a liberty to appoint new cable TV Operators depending upon the

demand in the respective areas.

iv. The respondent Corporation shall take necessary action to increase the subscriber base with quality service.

v. The Administrators of the Tamil Nadu Arrasu Cable TV Corporation have to take necessary steps to achieve the object for which the Corporation was established.

No costs. Consequently, connected Miscellaneous petitions are closed.

21.12.2023

NCC :Yes/No
Index :Yes/No
Internet:Yes
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To

1.The Secretary,
Government of India,
Ministry of Information and Broadcasting,
'A' Wing Shastri Bhavan,
Dr.Rajendra Prasad Road,
New Delhi – 110 001.

2.M/s.Tamil Nadu Arasu Cable TV Corporation Limited,
Represented by General Manager,
"Dugar Towers", 6th Floor,
Old No.34, New No.123m,
Marshalls Road,
Egmore,
Chennai – 600 008.

B.PUGALENDHI, J.

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Common Order made in
W.P(MD)Nos.23702,23821 etc., batch

21.12.2023