IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.07.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.Nos.20715 and 20718 of 2023

& WMP.Nos.20081 and 20076 of 2023

1.Tamizhaga Cable TV Operators
General Welfare Association,
Reg No.6/2001,
Rep. by its Secretary Mr.Vellaisamy,
No.12/23, G1, Meyar Sathiyamoorthy Road,
Chetpet,
Chennai – 600 031.

... Petitioner in W.P.No.20715 of 2023

1.Tamizhaga Cable TV Operators
General Welfare Association,
Reg No.6/2001,
Rep. by its General Secretary Mr.Vellaisamy,
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Chetpet,
Chennai – 600 031.

... Petitioner in W.P.No.20718 of 2023

2.N.Sekar
3.K.Parthasarathi
4.P.Vinoth
5.Abdul Jaleel
6.K.Ponnurangan ... Petitioners in both W.P.'s

Vs.

1.Tamil Nadu Arasu Cable TV Corporation Limited,
No.807, 4th Floor,
PT Lee Chengalvarayan Naicker Building,
Anna Salai (Mount Road),
Chennai – 600 002.

2.Deputy Manager cum Special Tahsildar,
Tamil Nadu Government Cable TV Corporation,
Vellore District – 632001.

3.Deputy Manager cum Special Tahsildar,
Tamil Nadu Government Cable TV Corporation,
315, District Officer's Office,
Salem – 636001

4.District Revenue Officer cum General Manager (Administrative)
Tuticorin – 628101

5.Deputy Manager/Special Tahsildar,
Tamil Nadu Government Cable TV Corporation
Perambalur – 621212

6.Deputy Manager/Special Tahsildar,
Tamil Nadu Government Cable TV Corporation
Ariyalur District – 621704

7.Special Tahsildar,
Tamil Nadu Government Cable TV Corporation
Kanchipuram District - 631502 ... Respondents in both W.P.'s

PRAYER in W.P.No.20715 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring that all proceedings, seizure notices, forms and orders issued by the Respondents, their men, staff and officers under the Tamil Nadu Revenue Recovery Act, 1864 for attachment of properties to the 1st petitioner's members and petitioners 2 to 6 as illegal, void-ab-initio and non-est-in-law.

<u>PRAYER in W.P.No.20718 of 2023</u>: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of mandamus forbearing the respondents, their men, staff and officers from in anyway issuing, commencing, continuing or passing any proceedings, notices, forms and orders under the Tamil Nadu Revenue Recovery Act, 1864 to the 1st petitioner's members and petitioners 2 to 6 to recover alleged dues to the 1st respondent.

For Petitioners : Mr.Richardson Wilson
For M/s.Wilson Associates

For Respondents : Mr.J.Ravindran
Additional Advocate General
Assisted by Mr.David Sunder Singh
Standing Counsel – R1 to R7

C O M M O N O R D E R

The petitioners are the Tamizhaga Cable TV Operators General Welfare Association/P1, a registered organization and members of that organization.

They claim to espouse the interests of Local Cable TV Operators across the State of Tamil Nadu.

2. W.P.No.20715 of 2023 is filed seeking declaratory relief that all proceedings, seizure notices, forms and orders issued by the respondents, i.e., Tamil Nadu Arasu Cable TV Corporation Limited/R1 and other officials of R1 under the Tamil Nadu Revenue Recovery Act, 1864 (in short 'RR Act') to the members of P1 are illegal, void ab initio and non-est in law.

3. A cable television network in a State comprises of three tiers, viz., broadcaster, distributor and the consumer. Distributors are of two types, viz., Multi system Operators (MSO) and Local Cable TV Operator (LCO) and typically, the broadcaster beams signals that are received by the MSO and re-transmitted by the MSO through LCOs, that are last mile operators, to the consumers. R1 is an MSO.

4. Broadcasters and distributors are regulated per the provisions of the Cable Television Networks (Regulation) Act, 1995 (in short 'CTN Act'). Distributors are required to obtain registration under the CTN Act and MSOs and LCOs, are both licencees under the CTN Act. Disputes inter se MSOs and LCOs are admittedly subject to the jurisdiction of the Telecom Disputes and

Settlement Appellate Tribunal (in short 'TDSAT'), constituted under Section 14 of the TRAI Act, 1997.

5. P1 as well as P2 to P6 are aggrieved by the notices issued by the respondents seeking to recover dues from them. Sample notices, such as a demand notice dated 16th September, 2022 and a seizure notice dated 25.10.2022 are placed as part of the compilation. The notices have been issued in terms of the Telecom (Broadcasting and Cable Services) Interconnection Regulation Act, 2004 and call upon the noticee to remit all arrears along with penalty under threat of legal action under the RR Act.

6. In W.P.No.20718 of 2023, the petitioner seeks a Writ of Mandamus forbearing the respondents from taking any action under the proceedings of the RR Act to recover the dues to R1.

7. The submission on behalf of the petitioners are that the provisions of the RR Act are available only to the State, or in terms of Section 52-A of the RR Act, to notified State Corporations. R1 Corporation is a Government owned Corporation which does not fall within the ambit of 'State' and neither is it notified under the provisions of Section 52-A. Hence, the invocation of the recovery mechanism under the RR Act by the respondents, is illegal.

8. For this purpose, reliance has been placed on the following decisions:

1. *Steel Authority of India Limited V. Sutni Sangam and others*[1]
2. *Union of India V. TATA Teleservices (Maharashtra) Ltd.*[2]
3. *State Bank of India, rep., by its Manager, Gulbarga V. Thimmyya and another*[3]
4. *A.K.Bindal and another V. Union of India and others* [4]
5. *Andhra Pradesh State Road Transport Corporation by its Chief Executive Officer, Hyderadad V. Income Tax Officer, BIB ward, Hyderabad and another*[5]
6. *Sreedevi Digital Systems Pvt. Ltd., V.s Jallepalli Kurmanayakulu and sons and another*[6]
7. *State of T.N. V. G.N.Venkataswamy and others.*[7]

9. At this juncture, it is relevant to record the submission of the petitioners that none of the demands have been challenged by any of the Association members thus far. Moreover, the petitioners admit that such a challenge may be made only to the TDSAT.

10. Per contra, the stand of the respondents is that the Writ Petitions are not maintainable for several reasons. Firstly, they argue that similar relief as sought for in the present writ petition has also been sought by other LCOs before both the Principal as well as Madurai Bench of this Court. Those writ petitions are pending but none of the details have been disclosed in the present Writ

1 (2009) 16 Supreme Court Cases 1
2 (2007) 7 Supreme Court Cases 517
3 2014 SCC OnLine Kar 2338
4 (2003) 5 Supreme Court Cases 163
5 AIR 1964 SC 1486
6 2021 SCC OnLine TDSAT 94
7 (1994) 5 Supreme Court Cases 314

Petitions. Hence, these writ petitions are liable to be dismissed on the ground of suppression of relevant and necessary facts.

11. Secondly, P1 is an Association with a membership strength in excess of 15000. It is not known as to whether demands have been raised in the case of all the members, in how many cases coercive recovery action has been taken, how many member have complied and how many are in arrears, and what the level and stage of compliances are in those cases. Thus, blanket declaratory relief as sought for by the petitioner Association cannot be maintained. More importantly, the admitted position in fact is that the LCOs are not aggrieved by the demands as none of them have approached the TDSAT seeking quashing of the same thus far.

12. R1 is a Government of Tamil Nadu Undertaking, incorporated under the provisions of the Companies Act, 1956 on 04.10.2007 with the object of providing cable TV signals to the public. R1 repeatedly emphasizes that the activity engaged in, has been undertaken in public interest. In this context, R1 points out that the averments in the writ affidavit are very general in nature and no specifics or details of the demands have been furnished. The prayer is too wide, and seen in the context of the wide and generic nature of averments, is not liable to be granted.

13. Heard Mr.Richardson Wilson, learned counsel for the petitioner and Mr.J.Ravindran, learned Additional Advocate General, assisted by Mr.David Sunder Singh, learned counsel for the respondents.

14. Undoubtedly, an interesting legal issue arises in the matter as to whether the provisions of the RR Act may be invoked by R2 to R7 for recovery of alleged dues to R1, from the members of P1. The question is also as to whether at all the present writ petitions provide enough of a contextual framework, both factual and legal, for adjudication of the legal issue.

15. The Revenue Recovery Act 1864 states in the Preamble that the object is to consolidate and simplify all laws relating to public revenue. The term 'public revenue' has been interpreted in an inclusive manner along with *(a) assessment, quit rent, ground rent or other charge upon the land payable to the State Government, (aa) cesses or other dues payable to the State Government on account of water supplied for irrigation; and (b) pattom due on kandu krishi lands in the Kanyakumari district.* Though inclusive, public revenue shall thus comprise those dues payable to the State Government apart from the category mentioned in clause (b) above.

16. My attention has been drawn to Section 52A which deals with recovery of dues due to Tamil Nadu Agro Industries Corporation and other Corporations and reads thus:

> ***52-A. Recovery of dues due to the Tamil Nadu Agro-Industries Corporation and other Corporations etc.*** *Without prejudice to any other mode of recovery which is being taken or may be taken, all loans granted and all advances made to any person-*
>
> *(i) by the Tamil Nadu Agro-Industries Corporation Limited, Madras, or*
>
> *(ii) by such other Corporation (the shares of which have been contributed, underwritten or guaranteed by the State Government) as may be notified in this behalf by the State Government in the Tamil Nadu Government Gazette, or*
>
> *(iii) from out of the Amalgamated Tamil Nadu Shares of the Post War Services Re-construction Fund and the Special Fund for Re-construction and Rehabilitation of Ex-servicemen together with interest on such loans and advances, and all sums due to the Corporations mentioned in clauses (i) and (ii) may be recovered in the same manner as arrears of land revenue under the provisions of this Act.*

17. Prima facie, on a reading of Section 52-A, it appears that Corporations stand outside the ambit of 'State' for the purpose of the RR Act barring the Tamil Nadu Agro-Industries Corporation or any other Corporation, which is notified in this behalf by the State Government in the Tamil Nadu Government Gazette. Tamil Nadu Arasu Cable TV Corporation Limited has, admittedly, not been notified for this purpose.

18. Moving on, P1 Association has a membership of more than 15000 members. In addition to the Association, 5 individual members are arrayed as P2 to P6 by way of abundant caution, and to secure the maintainability of the writ petition. It is an admitted position that demands of outstanding dues to R1 have been raised qua several members of P1 Association over the years.

19. I now advert to the cases cited by the petitioner. The case of *Sreedevi Digital Systems Pvt. Ltd.*[8]*(TDSAT),* involving a dispute between an MSO and LCO has been cited only to illustrate that it is the TDSAT that would hold jurisdiction to decide disputes arising between the various parties in a multi-tier cable TV system. There is no dispute on this position and at this juncture, it is apposite to reiterate that the members of the petitioner Association, despite being faced with demands from R1, have not chosen to challenge the same before the appropriate authority, being the TDSAT.

20. No reference has been made to the decision of *Andhra Pradesh State Road Transport Corporation by its Chief Executive Officer, Hyderabad*[9] though placed in the compilation. In *State Bank of India, rep., by its Manager, Gulbarga*[10], my attention was drawn to the observations at paragraph 7 where

8 Foot Note Supra 6

9 Foot Note supra 5

10 Foot Note Supra 3

the Karnataka High Court draws a distinction between the services rendered by Public Sector Banks on the one hand and the Central Government on the other.

21. The State Bank of India is constituted under a Parliamentary enactment and is managed by a Board of Directors guided by the Central Government. However, there is a legal distinction between the Bank itself and the Government and the services offered by one cannot be equated by the services offered by the other. The conclusion drawn is that the Government, on the one hand, and Government owned companies on the other, are not the same in law and hence the provisions of the Revenue Recovery Act that would provide for a remedy for enforcing dues due to the Government cannot be invoked by Government owned Corporations.

22. The same proposition has been considered by the Hon'ble Supreme Court in the case of *A.K.Bindal*[11] in the context of Labour law, where, at paragraph 17, the Bench says that the identity of a Government company remains distinct from the Government. That distinction was made in the context of a Voluntary Retirement Scheme (VRS) that provided for certain benefits to those employees who had opted for the Scheme.

11 Foot Note Supra 4

23. Parity had been sought by the employees of a Government company on the ground that they too are entitled to opt for VRS under the Scheme. This was denied by the Bench making a distinction between the identity of the employees in a Government company and those serving the Government itself. Paragraph 17, to which my attention is drawn, highlights the position that merely because the entire shareholding in a Government Corporation is owned by the Central Government, the Corporation cannot be equated to the Government itself.

24. The aforesaid two judgments are relied upon in support of the legal proposition raised. However and in my considered view, this is not an appropriate case to examine the repercussions of the legal issue canvassed by the petitioners. It would have been a different matter had the petitioner, in fact, challenged the demands before the TDSAT. In such an event, the prayer for relief that is now made could well have been made before the TDSAT itself, which, being seized of the appeals, would have been the appropriate authority to consider such a prayer.

25. Having not pursued any appellate remedy as against the demands and in fact acceding to the position that the demands, if at all challenged, would only have to be challenged before the TDSAT, it is inappropriate for the petitioners to

challenge the recovery alone before this Court, as recovery is an adjunct to, and a consequence of the demand itself.

26. Challenging merely the mode of demand while consciously abstaining from challenging the demand itself is not a modus operandi that finds favour with the Court. Hence, and to reiterate, recovery mechanism cannot itself be challenged in a vacuum, and in the absence of the demand itself having been challenged in a manner known to law as it is merely academic.

27. Then again, and separately, the Court is also of the view that an omnibus direction seeking mandamus as against the respondents from invoking the provisions of the RR Act cannot be sought by an Association which is stated to be 15000 members strong, in the absence of any clinching material to show that recovery action has been initiated as against a substantial number of its members. The few random instances cited would hardly qualify to maintain such a wide and all-pervasive prayer as sought in this writ petition.

28. This Court is unconvinced as to the maintainability of the prayer, despite the arrayal of 5 individuals as petitioners. To establish maintainability would require more than arraying of a few individual members as petitioners, particularly when the membership of the Association is stated to be in the region of 15000 members.

29. Hence, while reserving the legal issue for decision in an appropriate case, the prayer for mandamus is rejected as being pre-mature. Liberty is always available to the petitioner to approach the appropriate Fora for relief, in accordance with law. This writ petition is dismissed, though with liberty, as aforesaid. Connected Miscellaneous Petitions are closed. No costs.

31.07.2024

Index : Yes
Speaking Order
Neutral citation:Yes
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DR.ANITA SUMANTH,J.

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