



W.P(MD)No.2536 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.02.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2536 of 2020

K.Jinnah

... Petitioner

Vs.

- 1.The Secretary,
Ministry of Information and Broadcasting,
Government of India,
2, Krishna Menon Marg,
New Delhi – 110 001.
- 2.The Nodal Officer /
District Collector,
Tirunelveli, Tirunelveli District.
- 3.The Managing Director,
Tamil Nadu Arasu Cable TV Corporation Limited,
34/123, 6th Floor,
Dukar Tower, Marsal Salai,
Chennai – 600 008.
- 4.The Assistant Manager /
Special Tahsildar,
Tamil Nadu Arasu Cable TV Corporation Limited,
Tirunelveli District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned demand notice in Se.Order No.F2/017129/2019 dated 03.01.2020 and quash the same and consequently direct the respondents to return the security deposit made by the petitioner towards the set top boxes.

For Petitioner : Mr.B.Prasanna Vinoth

For Respondents : Mr.S.Sivakumar
Central Government Standing Counsel
for R.1

Mr.M.Lingadurai
Special Government Pleader for R.2

Ms.Annie Abinaya
Standing Counsel for R.3 & R.4

ORDER

Heard the learned counsel appearing for the writ petitioner, the learned Central Government Standing Counsel appearing for the first respondent, the learned Special Government Pleader appearing for the second respondent and the learned Standing Counsel appearing for the respondents 3 and 4.



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2.The writ petitioner is a Local Cable Operator (LCO). He was functioning under Tamil Nadu Arasu Cable TV Corporation Limited during the period 2011-2019. The petitioner has subsequently switched over to a private MSO. According to Arasu Cable TV Corporation Limited, the petitioner has to pay a sum of Rs.1,16,228.20/-. This amount was arrived at after adjusting the petitioner's STB deposit amount of Rs.96,200/-. Challenging the impugned proceedings dated 03.01.2020 issued by the third respondent, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned proceedings and grant relief as prayed for.

4.The fourth respondent had filed detailed counter affidavit and the learned Standing Counsel took me through its contents. The argument of the Corporation is that when the petitioner had availed signals from the Corporation, he is bound to pay for the same as per the agreement between the parties. She pressed for dismissal of the writ petition.



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5.I carefully considered the rival contentions and went through the materials on record. I called upon the learned Standing Counsel to clarify the period for which the petitioner was in arrears. The learned Standing Counsel replied that the petitioner had not paid his subscription arrears from November 2017 till July 2018 and for December 2018. It is beyond dispute that there was switch over of analog cable TV network to Digital Addressable System (DAS). The Ministry of Information and Broad Casting, Government of India had issued Circular dated 30.03.2017 forbidding transmission of analog signals after 31.03.2017. The said circular reads as follows:

“The Cable Television Networks (Regulation) Amendment Act, 2011 had made it mandatory for switch-over of the existing analogue cable TV networks to Digital Addressable System (DAS) in four phases. Digital switch-over has already taken place in Phase I, Phase II and Phase III.

2. Ministry of Information & Broadcasting vide Gazette Notification dated 23.12.2016 has extended the cut-off date for Phase IV of Cable TV Digitisation to 31st March, 2017.



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3. All the Broadcasters, Multi System Operators and Local Cable Operators are hereby instructed to ensure that no analogue signals are transmitted over the cable networks in Phase IV areas after 31.03.2017, failing which action would be taken against the defaulters as per the provisions in the Cable TV Act/Rules.”

The learned Standing Counsel claimed that due to certain procedural issues, Arasu Cable TV Corporation could effect switch over to Digital Addressable System (DAS) only in July 2017. In the case on hand, the demand for payment of subscription arrears is from November 2017 till July 2018 and for the month of December 2018. It is admitted that Arasu Cable TV Corporation had transmitted only through analog mode for the period from November 2017 till July 2018. This is clearly contrary to the mandate issued by the Information and Broadcasting Ministry. If the petitioner had availed analog signals from Arasu Cable TV Corporation and had collected subscription from the customers, then he is bound to make payment as per the existing terms and conditions to Arasu Cable TV Corporation.



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6.The learned counsel appearing for the petitioner categorically asserts that since Ministry of Information and Broad Casting had banned transmission through analog mode, the petitioner had not collected any subscription amount from his customers. But the affidavit filed in support of the writ petition is not clear on this point.

7.It is for this reason, I am inclined to remand the matter to the file of the third respondent. The third respondent will hold an enquiry in this regard. The third respondent will bear in mind that a person cannot be expected to prove the negative. However, the petitioner will have to produce his account books and also bank account statement. During enquiry, the Managing Director has to render a specific finding in this regard. He has to pass a speaking order. The liability of the petitioner to pay the Corporation for the period from November 2017 to July 2018 will depend on whether he has collected subscription amount from the customer. This issue is answered accordingly. The petitioner has to pay the subscription arrears for December 2018 because he had availed signal under Digital Addressable System (DAS). It is open to the respondents



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to adjust the subscription arrears for December 2018 against the STB deposit already made by the petitioner.

8.The third question that arises for consideration is regarding the petitioner's liability to return 20 set-top boxes received from the Corporation. The petitioner states that he is in a position to return 6 set-top boxes and that as regards remaining 14, he is willing to furnish the necessary particulars. Vide order dated 04.01.2024 made in W.P(MD)No. 3761 of 2020, I had observed as follows:

“5.The learned standing counsel complains that even though 100 set top boxes were given to the petitioner in the year 2017, all of them are inactive as on date. The petitioner's counsel would say that since the corporation had advised that the set top boxes are being given free, the customers, while shifting from the area or relocating, refuse to return the set top boxes. The petitioner's counsel states that since the Government has given them free, they are not obliged to return. I do not know how far the stand of the petitioner is justified. But then, he has to give a proper explanation to the respondent corporation by setting



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out the details. If the customers refuse to part with the set top boxes, of-course, LCO cannot be blamed. LCO does not have any coercive mechanism. But then, LCO must inform the corporation at the earliest opportunity as to what happened to the set top boxes given to him and it is for the corporation to take appropriate action as per law. I would suggest that the corporation should make it clear through public announcement that the set top boxes are given free only for subscription purposes and that once subscription ceases, they have to be returned to the LCO from whom they were obtained. This is a suggestion for consideration of the respondent corporation.”

If the petitioner is able to furnish all the particulars of the customers to whom he had given the remaining 14 set-top boxes and he is also willing to extend his co-operation for recovering the same, the petitioner will not be liable therefor. If he is unable to furnish proper particulars, the petitioner has to bear liability for the 14 set-top boxes. The third issue is also answered accordingly. The impugned demand is set aside. The matter is remanded to the file of the third respondent. The third respondent shall pass a revised proceedings on the lines indicated above.



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9.This writ petition is allowed accordingly. There shall be no order as to costs.

12.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To

- 1.The Secretary,
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2, Krishna Menon Marg,
New Delhi – 110 001.
- 2.The Nodal Officer /
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G.R.SWAMINATHAN, J.

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