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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED **23.02.2023**

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.Nos. 663 & 659 of 2022

And

W.M.P.Nos. 714 , 715 & 711 of 2022

M/s. Star Channel
51/H, Palanigounder Complex
Gandhi Nagar
Goundampalayam,
Coimbatore – 641 030
Rep. by its Proprietor

... Petitioner in both W.Ps.

..Vs..

1. The Secretary to the Government
Department of Housing and Urban Development
Fort St. George
Chennai – 600 009.
2. The Managing Director
Tamil Nadu Arasu Cable TV Corporation Ltd.,
34 (123), 6th Floor, Durga Towers
Marshalls Road,
Egmore, Chennai – 600008.
3. The Special Thasildar/Deputy Manager
Tamil Nadu Arasu Cable TV Corporation Ltd.,
Dr.Radhakrishnan Street,



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Doctors Colony, Gandhipuram,
Coimbatore – 641 012.

4. The Executive Engineer
Tamil Nadu Housing Board,
Special Project Division – III,
Gowly Brown Road,
R.S.Puram,
Coimbatore – 641 002.

... Respondents in both W.Ps.

5. Mr.V.Prakash

... Respondent in W.P.No. 659 of 2022

PRAYER IN W.P.No. 663 of 2022: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the fourth respondent pertaining to his proceedings No. SPD-3/PLG/55/2019 and quash the order dated 22.12.2021 consequently, direct the fourth respondent permit the petitioner to deposit the annal fee for 1848 tenements in Koundampallayam Government Officials Housing Unit on basis of his earlier order dated 21.10.2019.

PRAYER IN W.P.No. 659 of 2022: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the fourth respondent pertaining to his proceedings No. SPD-3/PLG/55/2019 and quash the order dated 22.12.2021 consequently, direct the fourth respondent to permit the petitioner to deposit the annal fee for 1848 tenements in Koundampallayam Government Officials Housing Unit on basis of his earlier order dated 21.10.2019.



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For Petitioners in
both W.Ps.

:: Mr. R.Sivakumar

For RR 1 & 3 in
both W.Ps.

:: Mr. V.Arun
Additional Advocate General
Mr.T.Seenivasan
Special Government Pleader

For 2nd Respondent in
both W.Ps.

:: No appearance

For 4th Respondent in
both W.Ps.

: Mr.R.Bharath Kumar

For 5th Respondent in
W.P.No. 659 of 2022

: Mr.R.Balasubramanian

COMMON ORDER

Both the Writ Petitions have been filed by the same petitioner / M/s. Star Channel, Goundampalayam, Coimbatore and represented by its Proprietor.

2. W.P.No. 659 of 2022 had been filed in the nature of Certiorarified Mandamus seeking records relating to the proceedings of the fourth respondent / the Executive Engineer, Tamil Nadu Housing Board,



Special Project Division -III, Gowly Brown Road, R.S.Puram, Coimbatore

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in proceedings No. SPD-3/PLG/55/2019 and to quash the order dated 22.12.2021 and consequently, direct the said fourth respondent to permit the petitioner to deposit the annual fee for 1848 tenements in Koundampallayam Government Officials Housing Unit on the basis of an earlier order dated 21.10.2019.

3. W.P.No. 633 of 2022 had been filed again in the nature of certiorarified Mandamus again relating to the very same proceedings No. SPD-3/PLG/55/2019 and to quash the same and also consequently again direct the fourth respondent to permit the petitioner to deposit the annual fee for 1848 tenements in Goundampallayam Government Officials Housing Unit on the basis of an earlier order dated 21.10.2019.

4. The only semblance of a difference between W.P.Nos. 633 of 2022 and 659 of 2022 is that in W.P.No. 659 of 2022 the petitioner has also impleaded as fifth respondent Mr.V.Prakash, Lakshmi Cable, Coimbatore.



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5. The averment made in both the Writ Petitions are the same and the arguments advanced and the reply by the learned Additional Advocate General also overlapped. In view of that particular fact, bowing down to prudence, a common order is passed in both the Writ Petitions.

6. Though W.P.No. 663 of 2022 had been filed later, arguments were first advanced with respect to the averments stated in the said Writ Petition.

7. The writ petitioner M/s. Star Channel at Goundampalayam at Coimbatore, in the affidavit had stated that they are a registered Cable Operator registered under the provisions of the Cable Television Networks (Regulation) Act 1995 and had been operating from the year 1993. They had the benefit of an order dated 13.09.2002 which had crystallised in to G.O.(2D) No. 333 passed by the first respondent/ Secretary to Government, Department of Housing and Urban Development at Chennai, whereby they had been granted permission to lay television cable to the Goundampallayam Government Officials Housing Unit, at that time consisting of 532 flats. Thereafter, the said housing flats were all



demolished in the year 2012 and fresh flats were put up. The flats now consisted of 1848 tenements.

8. The petitioner naturally was under the impression that they would again be offered the very same permission to lay television cable for the new tenements also. Frustrated at not being chosen, the two Writ Petitions have been filed.

9. It had been further stated in the affidavit filed in support of the Writ Petitions that a representation had been given by the petitioner on 07.02.2019 seeking permission to lay television cable for the newly constructed tenements. They had also enclosed necessary documents including a solvency certificate for Rs.2/- lakhs, dated 08.02.2019 and issued by the Lakshmi Vilas Bank, Goundampalayam Branch. It had been further stated that the fourth respondent was insistent that a bank guarantee must also be obtained from a Nationalised Bank. The petitioner had therefore deposited another sum of Rs.2/- lakhs with State Bank of India, Thudiyalur Branch and a Bank Guarantee dated 02.05.2019 was produced. There were some issues regarding the format of the said Bank Guarantee.

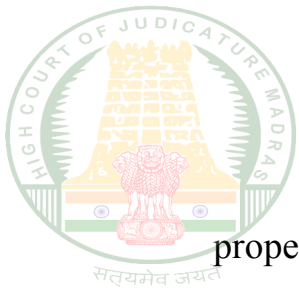


The petitioner claims that they had complied the said requirements. The

WEB COPY Bank Guarantee was for a period of 2 years till 02.05.2021. It was however stated that if at all the respondents wanted to lay a claim on the Bank Guarantee for any reasons whatsoever, they could lay a claim till 02.05.2022. These facts are not disputed. They cannot be denied. They are facts.

10. Thereafter, the petitioner has relied on a series of letters issued by the respondents herein.

11. The petitioner first relied on a letter dated 11.03.2019 issued by the Executive Engineer, Tamil Nadu Housing Board, Special Project Division – III, wherein it had been stated that the petitioner's application for providing Tamil Nadu Arasu Cable television connections to 1848 tenements of Goundampallayam Government Officials Housing Unit had been scrutinised and there were certain requirements to be complied. Among the requirements were the aforementioned, solvency certificate for Rs.2/- lakhs and the Bank Guarantee for Rs.2/- lakhs. It was also stated that quite apart from that, an indemnity bond should also be executed in the



proper format as per the Tamil Nadu Housing Board Circular dated

11.10.2018 in a stamp paper of value of Rs.50/- and should be attested by a

notary public with two witnesses. The said letter is self explanatory giving about 9 conditions which the petitioner should satisfy.

12. The petitioner then relied on another letter issued by the Executive Engineer on 21.10.2019. By this letter it had been stated that the application of the petitioner had been examined and it had been further stated that the construction of the 1848 tenements were at the final stage and it was stated that after that had been completed and when the contract or hand over possession to the Housing Board, permission would be granted to the petitioner to provide television cable lines to the tenements.

13. Thereafter, the impugned order came to be passed. The impugned order was dated 22.12.2021. It was again issued by the Executive Engineer. By the impugned order, it had been pointed out that the performance guarantee which was in force till 02.05.2021 had not been extended or renewed by the petitioner. Neither was a fresh guarantee obtained and therefore, it was stated that the petitioner cannot be granted the right to provide television cable connections to the 1848 tenements.



WEB COPY 14. Aggrieved by this communication, the petitioner had come to Court seeking a certiorarified Mandamus to quash the said order. Simultaneously it was also informed that the fifth respondent in W.P.No. 659 of 2022 had been granted the said permission to provide television cable connections to the aforementioned tenements. Aggrieved by that particular order, the petitioner had filed W.P.No. 659 of 2022.

15. Arguments went on winding around the same facts.

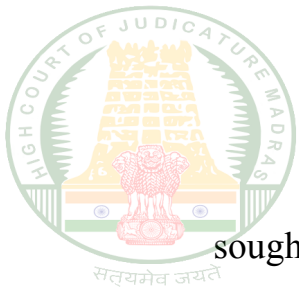
16. The learned counsel for the petitioner took the Court through all the facts and as a matter of fact reiterated that the Bank Guarantee, though had expired on 02.05.2021 could still be enforced by the respondents till 02.05.2022. He stated that since the respondents had a claim to enforce the Bank Guarantee till 02.05.2022, the reason that the permission was not granted since the Bank Guarantee was not renewed cannot withstand judicial security.



17. The learned counsel for the petitioner, therefore urged that the order should be interfered on that one ground alone. It was further stated that a representation was given to the respondents but was not properly addressed by the respondents herein.

18. In so far as the grant of permission to the fifth respondent, it had been alleged that the fifth respondent did not qualify to be so granted any such permission. In this connection, the provisions of Sections 3 and 4 of the Cable Television Networks (Regulation) Act 1995 were pointed out, as also the format under which registration of a Cable Television Operator should be done. It was contended that the fifth respondent did not satisfy any of the conditions stated in the said provisions or the rules therein.

19. The learned counsel further stated that by the order dated 21.10.2019, a promise had been held out and the respondents if they are to avoid such promise, should give sustainable reasons. The learned counsel also forwarded two other documents, namely, replies received under the Right to Information Act on 02.11.2021 and 11.11.2021 wherein, the fourth respondent had held out to the other prospective candidates, who had



sought permission to provide television cable connections that the petitioner's application had already been considered and had been granted necessary permission. It was therefore stated that denial of that particular opportunity to the petitioner was *mala fide* in nature. It was stated that the order in favour of the fifth respondent was passed with ulterior motives and that the petitioner stood prejudiced by that particular order.

20. Counter affidavit had been filed by the fourth respondent. In the counter affidavit, it had been specifically stated that they had considered the representation given by the petitioner and had rejected it. It was also stated that it was the privilege of the fourth respondent to grant permission to a cable operator whom they considered fit. It was also stated that the performance guarantee had not been extended or renewed. A fresh guarantee had also not been produced by the petitioner herein and hence, the petitioner could not be granted permission to provide television cable connections to the tenements.

21. It had also been stated during the course of arguments that the petitioner had not provided the indemnity bond as required and therefore, it was stated that the petitioner stood disqualified to seek connection.



WEB COPY 22. The learned Additional Advocate General argued on behalf of the respondents herein. He was insistent that proper procedure had been followed and that the petitioner had not given or extended the performance guarantee. He stated that it was well within the rights of the respondents not to give permission to the petitioner herein. With respect to the letter dated 21.10.2019, the learned Additional Advocate General contended that it was conditional subject to satisfaction of the pre-conditions imposed and it was therefore argued that since the petitioner had also not provided the indemnity bond, the petitioner cannot be considered for grant of the permission.

23. The learned counsel for the fifth respondent washed his hand away from the fifth respondent stating that the fifth respondent had not responded to his call.

24. A Counter affidavit had however been filed on behalf of the fifth respondent and it had been stated that they had submitted necessary required documents along with Bank Guarantee. It had also stated that they



had deposited an amount of Rs.1,31,100/- by way of bankers cheque on

23.12.2021. In effect though the counsel had not taken up the responsibility to address the Court on behalf of the fifth respondent, still a perusal of the counter reveals that the fifth respondent had complied with the required conditions.

25. A further perusal of the records show that during the course of earlier hearing, an Advocate Commissioner Mr.Francis Cedric D'Cruz, Advocate had also been appointed to inspect the subject property and ascertain as to how many television cable connections had been given by the fifth respondent in the subject building. Necessary remuneration had also been paid to the Advocate Commissioner. There is no representation on behalf of the Advocate Commissioner. I am confident that he is a satisfied person, having received the remuneration .

26. At any rate, the report of the Advocate Commissioner was not relied either by the petitioner counsel or by the learned Additional Advocate General. I also do not find the said report helpful either to the petitioner or to the respondent herein.



WEB COPY 27. The entire issue revolves around the suitability and eligibility of the petitioner to claim as preference, the permission to provide television cable connections to 1848 tenements at the aforementioned officers' complex. It would certainly have been a more sensible approach if those officials who work in various Government Department are denied television cable connections in entirety as they would probably be more at peace.

28. The learned counsel for the petitioner is insistent that the petitioner alone should be granted permission and that the fifth respondent should not be granted permission to provide cable television line.

29. I am unable to accept that submission. There was a condition that the petitioner should provide Bank Guarantee. A Bank Guarantee speaks for itself. It is an agreement extended by a party to a contract to ensure that he performs the covenants of the said contract. It comes into effect only when the contract comes into effect. There is no contract, there is no necessity to present a performance guarantee. There is nothing to be performed. There is no contract. There is no obligation to perform any act.



Even if produced, it is just a piece of paper. It has to be simultaneously produced along with a contract.

30. However, there was a condition laid that the petitioner should provide a performance guarantee in advance. If it is to be done, then on the date when the contract is to be entered into, the respondent should have a performance guarantee in their hands. There should be an assurance extended that if the petitioner fails to provide television cable connections to all the 1848 tenements or there are complaints about the quality of service rendered, then the respondents would be able to enforce the performance guarantee as against the petitioner herein. The performance guarantee expired in May 2021. As and from May 2021, the respondents would not have any hold over the petitioner herein. There was no contract between the two parties. There was no privity of contract between the two parties. It was open to the respondents to appoint any cable operator.

31. Reliance by the petitioner on the information given under the Right to Information Act cannot be put to use to the disadvantage of the respondents. It is only an information on a query raised. It cannot be termed



as a statement proved or a statement established. When a question is raised under the Right to Information Act, every Government Official to whom the said query is focused answers the same. If he/she does not then he/she is liable to face the consequences. When it so answered, the answer given would be based on the available records. It does not create any obligation. Such obligation is created only when a contract is actually entered into.

32. In the instant case, it is the fourth respondent, who is answerable for grant of permission. It is the very specific opinion of the fourth respondent that the petitioner had not renewed the performance guarantee. The petitioner claimed that the respondent can always lay a claim over performance guarantee even after one year. But that could be done only there is an existing contract between two parties. There is no such contract. The performance guarantee had simultaneously lapsed by itself.

33. The other aspect is that after demolition of the building the petitioner cannot reasonably expect that the permission should and must be given. That stand cannot withstand judicial scrutiny. The earlier tenements



were around 500 in number. The tenements now are around 1800 houses.

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The entire building had changed. Naturally the respondents must be given the choice to appoint a cable tv operator, who in their opinion would be able to provide television cable connections to all the 1848 tenements. It is a matter of subjective satisfaction.

34. This Court cannot thrust a contract on the respondents. This Court can not also sit as an appellate authority over a decision taken. It is an issue of subjective satisfaction of the respondents herein.

35. The petitioner should be satisfied with the fact that he had, for considerable period provided television cable connections to the residents. His term had run from 2002 to 2012 when the building was demolished.

36. I am afraid I cannot grant any relief for the petitioner.



WEB COPY 37. Accordingly, the Writ Petitions stand dismissed. No order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.

23.02.2023

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Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order

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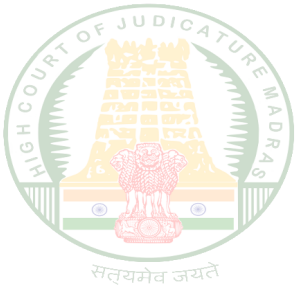
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