SUPREME COURT OF INDIA

Digi Cable Network (India) Pvt. Ltd.

Vs.

Union of India

C.A.No.120 of 2019

(Abhay Manohar Sapre and Indu Malhotra,JJ.,)

07.01.2019

JUDGMENT

Abhav Manohar Sapre,J.,

SLP(C)No.33244 of 2015

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 30.10.2015 of the High Court of Judicature at Bombay in Writ Petition No.58 of 2015 whereby the Division Bench of the High Court dismissed the writ petition filed by the appellant herein.

3. The controversy involved in this appeal lies in a narrow compass as would be clear from the facts stated hereinbelow.

4. By letter dated 12.06.2012 (Annexure P-2) the appellant was granted permission by the Government of India under Rule 11C of the Cable Television Network (Amendment) Rules, 2012 (hereinafter referred to as "the Rules") for operating as Multi System Operator (MSO) in the Digital Addressable System (DAS) notified areas vide notification dated 11.11.2011.

5. This permission was, however, cancelled by the Government of India vide order dated 03.09.2014 on the ground that the Ministry of Home Affairs has denied issuance of "security clearance" to the appellant. In other words, since the Ministry of Home Affairs did not grant security clearance to the appellant, the permission initially granted to the appellant vide letter dated 12.06.2012 was cancelled.

6. Challenging the order of cancellation of grant of permission, the appellant filed writ petition before the High Court of Bombay at Mumbai. By impugned order, the High Court dismissed the writ petition and upheld the order of cancellation as being just, legal and proper which has given rise to filing of the present appeal by way of special leave in this Court by the unsuccessful writ petitioner.

7. So, the short question involved in this appeal is whether the High Court was justified in dismissing the appellant's writ petition and, in consequence, was justified in upholding the order dated 03.09.2014 cancelling the permission which was granted to the appellant vide letter dated 12.06.2012.

8. Heard Mr. Jay Savla, learned counsel for the appellant and Ms. Pinky Anand, learned ASG for the respondents.

9. It may be mentioned here that Ms. Pinky Anand, learned Additional Solicitor General appearing for the Union of India-respondent filed the copy of the reasons in a sealed cover which was made basis to deny security clearance to the appellant and which led to cancellation/withdrawal of permission granted to the appellant. The document filed is taken on record for perusal.

10. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal.

11. In our considered opinion, the impugned order of cancellation was passed in conformity with the requirements of Rule 11C of the Rules and hence it was rightly upheld by the High Court in impugned order.

12. Rule 11C was inserted in the Rules with effect from 28.04.2012. Rule 11C(1) reads as under:

> "11C. (1) Registration as multi-system operator-(1) On being satisfied that the applicant fulfils the eligibility criteria specified under rule 11B and the requirements of rule 11A. the registering authority shall, subject to the terms and conditions specified in rule 11D and the security clearance from the Central Government, issue certificate of registration."

13. It is clear from mere reading of the Rule 11C(1) that grant of permission is subject to issue of security clearance from the Central Government to the applicant (appellant in this case).

14. In this case, admittedly the appellant failed to obtain the security clearance as provided under Rule 11C of the Rules. It was a mandatory requirement as provided under Rule 11C of the Rules. Since the grant of permission was subject to obtaining of the security clearance from the concerned Ministry, the competent authority was justified in cancelling the conditional permission for want of security clearance.

15. Learned counsel for the appellant, however, argued that the appellant was not afforded any opportunity of hearing before cancelling the permission and, therefore, the impugned cancellation order is rendered bad in law having been passed without following the principle of natural justice and fair play. We find no merit in this submission.

16. In somewhat similar circumstances, this Court while repelling this submission laid down the following principles of law in the case of *Ex- Armymen's Protection Services Private Limited vs. Union of India And Others*[1] in para 16 and 17 which read as under:

> "16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in Secy. of State for Home Deptt. v. Rehman: (AC p. 192C)
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> "... [in the matter] of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive."
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> 17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party."

17. Having perused the note filed by the Union of India, which resulted in cancellation of permission, we are of the considered opinion that in the facts of this case, the appellant was not entitled to claim any prior notice before passing of the cancellation order in question.

18. In other words, we are of the view that the principles of natural justice were not violated in this case in the light of the law laid down by this Court in the case of Ex-Armymen's Protection Services Private Limited (supra) inasmuch as the appellant was not entitled to claim any prior notice before cancellation of permission.

19. In view of the foregoing discussion, the appeal is found to be devoid of any merit. It is accordingly dismissed.

20. However, the appellant would be at liberty to apply for grant of fresh permission in accordance with law.

IN CIVIL APPEAL NO.121 OF 2019 (Arising out of S.L.P.(C) No. 33411 of 2015) In the light of our detailed order passed in Civil Appeal No of 2019 @ SLP (C) No. 33244 of 2015, this appeal is also dismissed.

2. However, the appellant would be at liberty to apply for grant of fresh permission in accordance with law.

Judgment Referred.

[1]*(2014) 5 SCC 0409*