

(2006) 09 CAL CK 0069

Calcutta High Court

Case No: Writ Petition No. 13472 (W) of 2006 and CAN No. 4959 of 2006

Sanhati Infocom
Services Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: Sept. 4, 2006

Citation: (2007) 3 CHN 517

Hon'ble Judges: Soumitra Pal, J

Bench: Single Bench

Advocate: Krishnendu Bhattacharya, for the Appellant; Debol Kr. Banerjee, S.B. Saraf and
G.N. Jajodia for Respondent Nos. 2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

Soumitra Pal, J.

In the writ petition, the petitioner, who is a cable multi-system operator, has challenged notices dated 22nd May, 26th May and 2nd June, 2006 issued by the respondent Nos. 2 and 3 and has prayed for reconnection of the service in terms of the agreement dated 1st July, 2005 entered into by the petitioner and the SET Discovery Private Limited, the respondent No. 2.

2. The matter was moved on 8th June, 2006. After hearing the learned Advocates for the parties, directions for affidavits were issued. By an interim order the respondent No. 2 was directed to restore the connection preferably within twenty four hours and was restrained from disconnecting the same before the disposal of the writ application or expiry of the period of the agreement between the parties which ever is/was earlier.

3. Perusing the order dated 8th June, 2006, I find that Mr. Banerjee appearing on behalf of respondent Nos. 2 and 3 raised the point of maintainability and it was recorded that the "submission with regard to maintainability by Mr. Banerjee is not

correct. This is, however, my prima facie view and the matter shall be gone into in great deal after the affidavits are exchanged."

4. Thereafter, affidavits have been exchanged. The matter came up for hearing on 14th, 18th and 24th July, 2006. It may further be mentioned that an application for contempt was moved by the respondent Nos. 2 and 3 alleging violation of the Court's order dated 8th June, 2006. Be it noted that since the service was again disconnected the petitioner filed an interim application for reconnection of the service.

5. The said application was moved on 24th July, 2006. Parties were directed to file affidavits. However, no interim order was passed. Against the order dated 24* July, 2006 an appeal was preferred. On 7th August, 2006, the Division Bench after hearing the parties declined to pass interim order of injunction and disposed of the appeal by affirming the order passed by this Court.

6. Today the matter has come up at the instance of the writ petitioner. It has been submitted on instruction that his client does not want to proceed and wants to withdraw the writ petition.

7. Opposing the said prayer Mr. Banerjee has pointed out that after the order dated 7th August, 2006, the petitioner has filed an application before the TDSAT, the appropriate authority, which makes abundantly clear that writ petition is misconceived and is an abuse of the process of the Court. Submission has been made though it was repeatedly pointed out of the time of hearing that there is an alternative forum, the petitioner chose to press this writ application till 11th August, 2006 the day when an appeal has been filed before the TDSAT. It has been submitted since the respondent Nos. 2 and 3 had incurred a considerable amount for defending the writ petition, they should be suitably compensated.

8. Heard learned Advocates for the parties.

9. Perusing the orders passed, I find the matter was heard on several dates. At the threshold an interim order for reconnection was passed. After the expiry of the interim order the petitioner made a prayer for its reimposition but failed. Being dissatisfied an appeal was preferred." It was dismissed. Thereafter, an application was filed before the TDSAT. In my view, the action of the petitioner by filing an application before the TDSAT during the pendency of the writ petition and, thereafter, praying for its withdrawal when it is ready for hearing after exchange of affidavits, is nothing but a gross abuse of the process of the Court which cannot be supported. Had the petitioner prayed for withdrawal at the threshold when the maintainability of the writ petition was raised, it could have been disposed of at that stage by passing appropriate orders. But the petitioner thought it otherwise. In my view, the action of the petitioner is vexatious.

10. Therefore, for the aforesaid reasons, the writ petition is dismissed along with the application being CAN No. 4959/2006.

11. Considering the facts and circumstances, I am of the view that the respondent Nos. 2 and 3 are entitled to costs which is assessed at Rs. 10,200/-to be paid by the petitioner within a month from date.

12. Urgent xerox certified copy of this order, if applied for, be given to the appearing parties on priority basis.