

Court refuses interim injunction against ICTA

Colombo District Judge K.H.Sumithrapala dissolved the Enjoining Order and refused the application for Interim Injunction with costs against Information and Communication Technology Agency (ICTA) of Sri Lanka.

Celltel Lanka Limited, Sun-tel Limited and Lanka Bell instituted action in the District Court of Colombo against ICTA and TRC and obtained an ex-parte Enjoining Order against ICTA, restraining ICTA, its agents, employees and servants from taking any steps whatsoever pursuant to Request for Pre-Qualifications (RFPQ) for provisions of Regional Telecommunication Network (RTN) in the North-East and deep-South quadrants of Sri Lanka

The ICTA filed its objections and brought to the Notice of the Court that the Plaintiffs have suppressed to Court that :-

(a) The 1st Defendant is an agency functioning under the office of the Prime Minister and therefore an agency of the State.

(b) The Government of Sri Lanka is the sole owner of the 1st Defendant.

(c) All rights and obligations as set out in the impugned Request for Pre-Qualification document referred by the Plaintiff is referable to the Government of Sri Lanka.

(d) That the process of tendering for RTNs was carried out ICTA pursuant to a series of decisions of the Cabinet of Ministers, whereby the roles and responsibilities of ICTA as well as TRC and the Telecom Ministry were clarified.

(e) The 1st Defendant is established and or regulated inter alia by the Information and Communication and Technology Act No 27 of 2003.

Having perused the Plaintiff, Affidavit and Documents tendered by the Plaintiffs and having perused the Statement of Objections, Affidavit and Documents tendered to Court by ICTA and also having perused the Written Submissions filed by both parties Court delivered its Order and dissolved the Enjoining Or-

der which was issued ex-parte and refused the application for Interim Injunction with costs.

In the said Order the learned District Judge has stated that the main reason for issuing an Enjoining Order against the ICTA on the first day was that the Plaintiff has pleaded that the Technical Report is to be the final Document which forms the basis of the Request of Pre-Qualification.

However, as per the Documents and Objections tendered by the 1st Defendant ICTA it is seen that licences could not be obtained merely by Request for Pre-Qualification. But issuing of such licenses are done only by the minister of Telecommunications.

The Learned District Judge also observed that the ICTA acts to enforce the policy of the State and the policy framework of previous and present governments in the country for the development of the country envisages the setting up of the said regional Telecommunication Network for the benefit of the people.

It is disclosed that the ICTA's function is based on the instruction and National policy of the State to develop the under-developed through a comprehensive development plan form allocated by World Bank.

The Judge also observed, therefore, that preventing such development functions of the ICTA is a loss not only to the ICTA but to the entire country as well, and held that balance of convenience is in favour of the Defendant ICTA.

In its order Court came to the conclusion that the Plaintiffs have not established a prima facie case to succeed and therefore the balance convenience is in favour of the defence.

K. Kanag-Ishvaran President Counsel with Mr.Avin-dra Rodrigo and Mr. Manoj de Silva instructed by FJ & G de Saram appeared for the Plaintiffs

Romesh De Silva President Counsel with Mr.Hiran De Alwis instructed by G.G. Arulpragasam appeared for the ICTA.