

ICTA granted relief in injunction filed by operators

COLOMBO District Court (CDC) Judge K.H. Sumithrapala dissolved the enjoining order and refused the application for interim injunction with cost against Information and Communication Technology Agency (ICTA) on Friday (July 15).

Sri Lanka Telecom (SLT), MTN Networks (Pvt) Ltd., Mobitel (Pvt) Ltd and Hutchison Telecommunication Lanka (Pvt) Ltd., instituted actions in the CDC against ICTA and the Telecommunications Regulatory Commission (TRC) and obtained an ex-parte enjoining order against ICTA, restraining it, its agents and employees from taking any steps whatsoever pursuant to request for pre-qualifications (RFPQ) for provisions of regional telecommunication network in the North-East and in the deep South quadrants of Sri Lanka.

ICTA filed its objections and brought to the notice of the Court that the plaintiffs have suppressed to Court that ICTA is an agency functioning under the office of the Premier, thus an agency of the State. The Government of Sri Lanka (GoSL) is the sole shareholder of the first defendant. All rights and obligations as set out in the impugned request for prequalification document referred by the

plaintiff is referable to the GoSL. And that the first defendant is established and or regulated inter alia by the Information and Communication Technology Act No 27 of 2003.

Having perused the plaint, 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 the order and dissolved the enjoining order which was issued ex-parte and refused the application for interim injunction with cost.

In the said order the Judge said that the main reason for issuing an enjoining order against ICTA on the first day was that the plaintiff had pleaded that the technical report is to be the final document which forms the basis of the RFPQ.

But, according to the documents and objections tendered by ICTA, it is seen that licenses could not be obtained merely by RFPQ. But the issuing of such licenses are done only after obtaining the approval of the Minister concerned by providing advice to the Minister in that regard by the TRC.

The Judge had also ob-

served that ICTA acts to enforce the policy of the State and that the policy framework of previous and present governments for the development of the country by setting up of the said regional telecommunication network for the benefit of the people.

It is disclosed that ICTA's function is based on the instruction and national policy of the State to develop the under-developed areas under World Bank funding. The Judge also observed that therefore preventing such an act of ICTA's is a loss not only to ICTA, but to the entire country as well, and accordingly held that the balance of convenience is in favour of the defendant ICTA. The Court held that the function by ICTA is not an unlawful act and such an act does not violate the right of the plaintiffs.

In its order, Court came to the conclusion that the plaintiffs have not established a prima facie case to succeed and therefore the balance of convenience is in favour of the defence. K. Kanag-Ishwaran (PC), with Sanjeewa Jayawardena and Priyanthi Gooneratne (attorneys at law), instructed by Julius & Creasy appeared for SLT, Dialog, Mobitel and Hutchison.

Romesh de Silva (PC) with lawyer Hiran de Alwis instructed by C.G. Arulpragasam (attorney at law) appeared for ICTA.