

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI**

**Dated 31<sup>st</sup> August, 2005**

**Petition No.52(C) of 2005  
(with MA No.142 of 2005)**

P.B. Enterprises  
Through its constituted Special Attorney,  
Mr .Md.Iqbal Ahmed  
G .N .B. Road, Doom Dooma  
District Tinsukhia - 786 151  
Assam

. . . . Petitioner

Vs

1. World View  
Opp.Railway Station  
PO Rapai Siding  
District Tinsukhia , Assam

2. Star India Pvt.Ltd.  
JK Millennium Centre  
46 D, Jawahar Lal Nehru Road  
Kolkata – 700071

3. M/s Purvanchal Communication  
Ganga Bhawan, Opp.SB Deorah College  
GS Road, Guwahati -781 007  
Assam

4. Elpaso Entertainment  
Opp. Ulubari Petrol Depot  
Ulubari, Guwahati -781 007

. . . . Respondents

**BEFORE:**

**HON'BLE MR. JUSTICE N.SANTOSH HEGDE,  
CHAIRPERSON  
MR. VINOD V AISH, MEMBER  
L T .GEN. D.P. SEHGAL (RETD), MEMBER**

For Petitioner : Mr.Syed SaifMahmood, Advocate

For Respondents : Mr.Prateek Jalan, Advocate with Mr.Ashish  
Jha, Ms.Kanika Agnihotri and Ms.Simran  
Brar, Advocates

**ORDER**

Mr.Syed Saif Mahmood, learned counsel for the petitioner, at the outset gives up Respondent No.3 from the array of parties, hence the above petition, so far as it pertains to Respondent No.3 is concerned, is dismissed.

It is seen from the records that Respondent No.4 in spite of service of notice has not appeared nor has it filed any counter affidavit. Therefore, RespondentNo.4 is set ex-parte.

In this petition, the petitioner has prayed for the following reliefs:

- (i) Direct Respondent Nos.2 to 4 not to pressurize the Petitioner in any manner to compulsorily accept their optional second packages;
- (ii) Direct Respondent Nos.2 to 4 not to supply signals directly to Respondent No.1 as long as it is in default of payment to the Petitioner;
- (iii) Direct Respondent No.1 to pay to the Petitioner an amount of Rs.1 ,67,768.00 (rupees one lac sixty seven thousand seven hundred sixty eight only) as per the Statement annexed as ANNEXURE I to the present Petition, along with pendente lite and future interest @ 18% per annum till the date of payment; and
- (iv) Issue any other or further order or orders that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.

In Prayer (i), the petitioner has prayed for a direction to respondent Nos.2 to 4 not to pressurize the petitioner in any manner to compulsorily accept their optional second package. We have already noticed that so far as Respondent No.3 is concerned, the petition stands dismissed. Therefore, there is no need to consider the case of the petitioner with reference to Respondent No.3 in regard to this relief. So far as Respondent No.2 is concerned it has filed its counter affidavit wherein it has specifically stated as follows:

"The Answering Respondent humbly states and submits that no pressure as alleged by the Petitioner was put by the Answering Respondent to accept additional package, and it is further denied that the Answering Respondent

indulged in any restrictive practice, harassment or oppression as falsely alleged by the Petitioner."

This statement made by the Respondent No.2 in the counter affidavit is not rebutted by the petitioner in any manner. Therefore, it is clear from the above that there is no pressure on the petitioner to accept 2nd respondent's optional second , package compulsorily. Consequently, this prayer of the petitioner so far as it concerns respondent No.2, cannot be granted, hence, the same is rejected in regard to Respondent No.2.

So far as Respondent No.4 is concerned with reference to Prayer (i) of the petitioner, there is specific averment in the petition in regard to the said respondent's pressure on the petitioner to accept its additional channels which are not required by the petitioner. Since, this allegation against Respondent No.4 has gone unchallenged by the Respondent No.4, the petitioner is entitled for the relief sought for by it in Prayer (i) of the petition. Therefore, we direct the Respondent No.4 not to pressurize the petitioner to accept its optional second package and continue to give signals to the petitioner in the manner it is being given as on date.

Prayer (ii) of the petitione is not pressed by the learned counsel for the petitioner hence, it is not necessary for us to consider the same.

In Prayer (iii), the petitioner has sought for a direction to Respondent No.1 to pay him an amount of 1,67,768/- (Rupees One Lakh Sixty Seven Thousand Seven Hundred Sixty Eight Only) which according to the petitioner is due to it from the 1 5t respondenttowards the arrears of subscription. Petitioner has annexed a statement as Annexure- I with the petition giving the particulars of dues and has sought for pendente lite as well as future interest at 18% per annum till the date of hearing.

this is a money claimed on an allegation that respondent no.1 being a cable operator, receiving signals from the petitioner for consideration has not paid the same.

A perusal of the averments relating to this prayer in the petition shows that this claim is made based on an assumption that there is a subsisting relationship between the petitioner and the 1<sup>st</sup> respondent as service providers. However, from the averment found in the petition itself, it is seen that there is an admission that even before this petition was filed the 1<sup>st</sup> respondent has ceased to take signals from the petitioner and the business relationship between the parties has severed. It is also seen from the petition that the 1<sup>st</sup> respondent is now receiving signals from other source. Therefore, it is clear that there is no relationship as service providers between the petitioner and Respondent No.1 as contemplated in Section 14 of the TRAI Act. The disputes that could be adjudicated by this Tribunal under the TRAI Act are only those disputes which arise:

- (i) between a licensor and a licensee;
- (ii) between two or more service providers; and
- (iii) between a service provider and a group of consumers

After the severance of business relationship between the petitioner and the 1<sup>st</sup> respondent the 1<sup>st</sup> respondent does not come under anyone of the categories mentioned herein above. Under Section 14 of the Act, this Tribunal is empowered to adjudicate and settle only such disputes that arise between the parties mentioned in the said Section. Since the 151 respondent has ceased to be a service provider with reference to the petitioner herein the claim of the petitioner for recovery of monies allegedly due from the 151 respondent does not come within the purview of Section 14 of the TRAI Act. Therefore, this prayer cannot be adjudicated upon by this Tribunal.

Mr.Syed Saif Mahmood, learned counsel for the petitioner, however,

submits that under Section 15 of the TRAI Act, petitioner cannot go the civil court because the jurisdiction of the civil court is barred. We do not think the argument is acceptable. What is excluded under Section 15 of the TRAI Act from the jurisdiction of the civil court are those matters which this Tribunal is empowered under Section 14 of the TRAI Act to determine. We have already held that since the 151 respondent is not a service provider vis-a-vis the petitioner or vice versa on the date of filing of the petition, any dispute between the petitioner and the 151 respondent cannot be adjudicated by this Tribunal. Therefore, in our opinion the scope of jurisdiction contemplated under Section 15 of the TRAI Act does not apply to the facts of this case.

For the reasons stated above, this petition succeeds i.e. to the extent that there shall be a direction to the Respondent No.4 not to pressurize the petitioner to

accept its optional second package of signals and continue to give signals to the petitioner in the manner it is being done as on date. The petition fails in regard to the other prayers.

Ordered accordingly.

.....Sd/-.....  
**(N.Santosh Hegde)**  
**Chair erson**

.....Sd/-.....  
**(Vinod Vaish)**  
**Member**

.....Sd/-.....  
**(D.P .Sehgal)**  
**Member**

