

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

DATED 19th DECEMBER 2005

**PETITION No.19(C) OF 2005
(M.A.No.52 of 2005)**

Malda Satellite Link

...Petitioner

Vs

M/s SET Discovery India Pvt. Ltd. & Anr.

...Respondents

BEFORE:

**MR. VINOD VAISH, MEMBER
LT.GEN.D.P.SEHGAL(RETD.),MEMBER**

For Petitioner

:

Mr.Anil Kumar
Mishra,Advocate

For Respondent No.1-
SET Discovery

:

Mr.Aditya Narain,
Advocate

-
-
ORDER

This Petition has been filed by M/s Malda Satellite Link which is stated to be a society registered under the Registration of Societies, West Bengal Act XXVI of 1961 and is also holding registration certificate for running a cable television network in Malda district of West Bengal issued by the relevant authority. The Petitioner has challenged the action of Respondent No.1, namely, M/s SET Discovery India Pvt. Limited whereby the signals of its television programme channels which were hitherto being given to the Petitioner were disconnected sometime in August 2003. According to the Petitioner this action of Respondent No.1 was carried out without any prior notice to the Petitioner and is alleged to have done in collusion with Respondent No.2, namely, M/s Malda Cable Network, who has been operating as a cable operator in Malda town before the network of the Petitioner got established and whose customer base is also larger compared to the Petitioner.

2. The Petition has been filed in November 2005 and the following prayers have been made:

(a) Pass appropriate orders for restoration of signals by Respondent No.1 to the Petitioner, Malda Satellite Link and/or:

(b) Pass appropriate orders directing the Respondent No.1 to charge appropriate rate of subscription which is duly proportionate to the number of subscribers' of the Petition and/or:

(c) Pass appropriate orders directing the Respondent No.1 & 2 to compensate the Petitioner for loss of business and reputation from August 2003 till the date of restoration of connection and for costs of the Petition and/or::

(d) Pass such other and further order as the nature and circumstances of the case may require.

3. According to the Petitioner, he entered into an agreement with Respondent No.1, namely, M/s SET Discovery India Pvt. Ltd in November 2002 for receipt of television programme channels included in the service of the respondent company but he was not given a copy of the said agreement. In his Petition he has sought to rely on a copy of an agreement which in reality is only a format used for the agreement which perhaps has been entered into by the Petitioner with another broadcaster, namely, M/s Zee Turner Limited. However, this being only a format, it does not indicate any information regarding the subscription base or the rate of subscription fee. The Petitioner has utilized this format to drive home the point that it stipulates that the payment of subscription fee by the cable operator to the distributor company shall be proportionate to the subscriber base of the cable network and that any increase in the subscriber base shall be intimated to the distributor company and accordingly the subscription fee shall be increased. The Petitioner goes on to state that he started receiving signals from December 2002 after he fulfilled all the pre-requisites of the "agreement" with Respondent No.1, although the details of the same had neither been disclosed by the Petitioner nor by the respondent. According to the Petitioner the subscription fee was initially fixed at Rs.40,000/- per month and after protesting to the respondent against levy of such high fees, he agreed to pay the said amount. He has enclosed with the petition copies of four Demand Drafts, one dated 13.9.2002

for Rs.39,000/- and other three dated 14.9.2002 of Rs.40,000/- each issued in the name of the respondent company. It is not clear as to which of the months these four Demand Drafts pertain and we are left to assume that these would be for the months starting from December 2002. Respondent No.1 is stated to have enhanced the rate of subscription from Rs.40,000/- per month to Rs.55,000/- in January 2003 and in spite of the pleas made by the Petitioner not to increase the subscription fee arbitrarily within a month of the start of the network, respondent did not relent. However, the Petitioner felt that he had no choice and decided to continue with the signals of the respondent company because of the popularity of its channels with the subscribers. The Petitioner further states that the subscription fee was increased from Rs.55,000/- to Rs.66,000/- soon after and in August 2003 the respondent again enhanced it to Rs.88,000/- According to the Petitioner he continued to pay the enhanced subscription fee as demanded by the respondent and in support of his having paid the subscription fee for the month of July enclosed copies of receipts indicating one payment of Rs.29,700/- on 23-7-2003 and another payment on 31.7.2003 of Rs.36,000/- which is stated to be for a subscription base of 1200 at a subscription rate of Rs.55/-. As such it appears that in the month of July, Rs.65,700/- was paid by the Petitioner to the Respondent No.1 as against the alleged enhanced fee of Rs.88,000/-. The disconnection of signals took place thereafter in August 2003 apparently because the Petitioner could not pay the enhanced subscription fee as demanded by the Respondent No.1.

4. Meanwhile it seems that as a result of representations made by the Petitioner, the District Magistrate of Malda intervened and decided that a door-to-door survey be conducted to assess the actual number of subscribers in Malda town as collection of amusement tax by the Government of West Bengal was also involved and there were allegations in regard to suppression of the total strength of consumers in order to evade the said tax. The door-to-door survey indicated that in Malda Respondent No.2 was having a consumer base of 39,338 whereas the consumer base of the Petitioner was assessed as 3550. It appears that the Petitioner pleaded with Respondent No.1 to decrease the subscription amount by making it proportionate to the number of consumers without discriminating between him and Respondent No.2 who was the other cable operator in the area but this was turned down by Respondent No.1. The Petitioner

thereafter approached Telecom Regulatory Authority of India (TRAI) for relief and was advised vide TRAI letter dated 12.12.2004 that since its complaint related to a commercial dispute, the appropriate forum for redressal of the same would be the TDSAT. The Petitioner thereafter has filed this Petition. The main grounds of challenge are that the disconnection of signals was without any prior notice to the Petitioner by Respondent No.1 and was illegal, the escalation of subscription fee from Rs.40,000/- to Rs.88,000/- within a span of nine months covering the period December 2002 to August 2003 was illegal and unjustified, and that Respondent No.1 has discriminated between the two cable operators in the same area namely, Petitioner No.1 and Respondent No. 2, in providing his services. The Petitioner says that he is not a defaulter but admits that he could not afford to pay the unreasonable increases in the subscription rates demanded by Respondent No.1.

5. In his reply, Respondent No.1 has taken the plea that the signals of the Petitioner were disconnected by the respondent in August 2003 and there have been no dealings between the Petitioner and the Respondent thereafter. It has been pointed out that "Broadcast Services" and "Cable Services" were notified by the Government of India to be Telecommunication service under Section 2(1) of the Telecom Regulatory Authority of India Act, 1997, as such the disconnection of signals in August 2003 was not covered by the TRAI Act. The Respondent No.1 has further stated that Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 came into effect from 10.12.2004, therefore the stipulation of giving prior notice before disconnection as contained in these regulations could not be invoked for the disconnection which took place around August 2003. Respondent No.1 has further taken the stand that neither the Petitioner nor the respondent No.2 can be regarded as service providers under the TRAI Act, as such the Tribunal ought not to entertain the present petition since it does not pertain to dispute between two or more service providers. Respondent No.1 has further stated that broadcasters, including the respondent do not fall within the definition of licensee under Section 2(1)(e) of TRAI Act. According to Respondent No.1, the Petitioner has been a defaulter in making payment of subscription fees to the respondent which has resulted in disconnection of signals in August 2003. He has denied the other allegations made by the petitioner in regard to working in collusion with respondent No.2 and in regard to the arbitrary

increase in fees and has also denied that there was any affiliation agreement entered into between the respondent and the petitioner. He even denies that Petitioner had made any protest regarding the fee fixed by the respondent. According to Respondent No.1 no credence can be given to the survey report conducted by the Agriculture Tax Officer of Government of West Bengal as it was conducted without the presence of the representative of the respondent. Respondent No.1 has also challenged the authority of the Agriculture Tax Officer to conduct the said survey. According to Respondent No.1 no injury or loss has been caused to the Petitioner or to the subscribers and that there was no need for the Tribunal to issue any direction for restoration of signals.

6. We have heard the learned counsels of both parties. We find that although disconnection of signals has taken place in August 2003 the Petition has been filed before us in February 2005 after considerable lapse of time. We also notice that while the said disconnection took place in August 2003, the notification by which the broadcasting and cable services were notified by the Government to be Telecommunication Services under section 2.(1) of the Telecom Regulatory Authority of India Act, 1997 is dated 9-1-2004. The provisions of the TRAI Act were therefore not applicable when the disconnection of signals took place in August 2003. It is also true that the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations 2004 came into effect from 10-12-2004 and the Petitioner has cited clause 4.1 of the said regulations in his support which stipulates giving of one month notice before disconnection of signals, even these regulations were not in existence at the time of disconnection, hence Petitioner cannot rely on the same. We also find that we are unable to make out what exactly were the terms of agreement/arrangement between the Petitioner and Respondent No.1 and consequently it is difficult to make out what exactly has been the breach of contract.

7. Respondent No.1 has raised a number of issues questioning the jurisdiction of the Tribunal. We do not consider it necessary to go into these at length and would only refer to our order in the case decided by us on 24-8-2005 in Sea TV Network Limited versus Star India Private Limited in Petition No. 41(C) of 2005 (2005) 5 CLJ 462 (TDSAT) where we have clearly answered some of the issues raised by Respondent No.1. This is particularly in regard to

cable operators and broadcasters being treated as service providers and also the jurisdiction of TDSAT to decide disputes arising between cable operators and broadcasters. In regard to the other objections whether TDSAT had jurisdiction to look into the cause of action arising out of disconnection of signals in August 2003, it is true that the remedy available to the Petitioner on the date of disconnection was to go to the Civil Court if he was aggrieved on the grounds of breach in the agreement under which he started receiving signals from Respondent No.1. However after coming into force of the notifications of 9-1-2004 whereby the TRAI Act 1997 has become applicable to the cable and broadcasting sectors the provisions of section 15 of the said Act have become relevant. This is quoted below:

“15. Civil Court not to have jurisdiction – No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

According to the Petitioner the period of limitation available to him was three years and that he was entitled to approach the TDSAT within the said period as the remedy of approaching the civil court was no longer available to him. We find considerable merit in this argument and hold that in view of Section 15 of the TRAI Act, TDSAT is the appropriate forum for the petitioner to pursue his rights arising from the cause of action of August 2003.

8. Having heard the contentions of either side, we feel that in view of the considerable time that has elapsed since the disconnection of signals, it may not be worthwhile for us to go into the details of the circumstances under which the said disconnection took place. In view of the order we are intending to make, we do not consider it necessary to go further into the illegality of the disconnection nor even the grant of compensation for the alleged loss of business of the petitioner arising therefrom. However, in view of the coming into force of the Interconnection Regulation notified by TRAI on 10-12-2004 and the subsequent related further notifications by TRAI, we consider it appropriate to direct that the Petitioner may approach Respondent No.1 and seek signals from him vide clause 3.2 of the Regulation of 10-12-2004. In view of the facts and of the circumstances of the case we direct Respondent No.1 to expeditiously consider the request when made by the Petitioner, in the light of the

Interconnection Regulation, and provide signals to him at the earliest on the basis of a clear written agreement to be entered between the parties on terms that should be capable of being easily understood and on reasonable and non discriminatory terms vis-à-vis those offered to other cable operators in the same area.

9. The Petition is disposed of accordingly with the above directions, with no order as to costs.

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

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