

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

Dated 14th December, 2005

Petition No.87(C) of 2005

Mr.Manish Chabbra
M/s Star Vision Cable Network
In front of Town Hall
Petrol Pump Wali Gali
Bijnore, U.P.

....Petitioner

Versus

Zee-Turner Ltd.
5th Floor, Radisson Plaza
NH 8
New Delhi – 110 037

....Respondent

BEFORE:

**HON'BLE MR.JUSTICE N.SANTOSH HEGDE
CHAIRPERSON
MR.VINOD VAISH, MEMBER
LT.GEN. D.P. SEHGAL(RETD), MEMBER**

For Petitioner : Mr.Navin Chawla, Advocate

For Respondent : Mr.Maninder Singh, Advocate with
Mr.Yoginder Handoo and Mr.Tejveer
Singh, Advocates

ORDER

This is a petition filed under Section 14 read with Section 14A of the Telecom Regulatory Authority of India, 1997 (for short the "Act") by a cable operator situated in Bijnore. The complaint of the petitioner in this petition is that the respondent broadcaster has disconnected his signals of respondent's channels from 28.08.2005 without proper notice as required under Para 4.1 of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulation 2004 (for short the "Regulation"). It is also contended that the petitioner though has only a subscriber base of 200 but to obtain the signals of the respondent has offered to enter into a subscribers agreement with a subscriber base of 500 even then the respondent very unreasonably refused to accept the said offer and with an ulterior motive of preventing the petitioner from having its signals threatened to disconnect the signals which the petitioner came to know from the letter of respondent dated 27th August, 2005. It is further submitted that even before the petitioner could approach this Tribunal the respondent effected the disconnection so as to make the petitioner's interim prayer infructuous.

The Petitioner has contended that he was already willing to sign an agreement with a subscriber base of 500 with respondent and comply with the agreed terms of the contract but the respondent deliberately has refused to accede to the request of the petitioner to enter into an agreement and has also resorted to an illegal disconnection of its signals. Therefore, the petitioner has prayed for reconnection of the signals of the respondent

broadcaster and for a further direction to the respondent to continue to supply its signals of TV channels on such terms and conditions as may be found just and reasonable by this Tribunal.

The respondent in its counter has disputed the subscriber base of the petitioner and has alleged that petitioner's subscriber base as per the survey conducted by it, through an independent agency, is actually more than 3800 and it has been under declaring its subscriber base, apart from the fact that it has been supplying signals by undercutting the subscribers rate in the areas where it is not entitled to supply signals, consequently affecting the business of other cable operators having connections from the respondent. Respondent has denied the fact that it has not given any notice as contended by the petitioner. On the contrary, it has averred in the reply affidavit that such notice has been given and at the time of hearing produced two newspaper cuttings, one in English and one in Hindi to show that Public Notices in newspapers as required under the Regulations have been issued on 26th August, 2005 and disconnection in question took place only on the 28th August, 2005, thereby had given two clear working days' notice of its intention to disconnect of signals for the illegal activities of the petitioner.

Respondent has further contended that the petitioner himself had originally agreed to sign a subscription agreement on a subscriber base of 1500 connections but subsequently resiled from the same by manipulating the Subscriber Agreement Form and reducing the said subscriber base to 500

which figure is far below the figure as assessed by the respondent in the survey conducted by it as also much below to the declaration made by the petitioner himself to the Entertainment Tax Authorities wherein he had declared that he was paying entertainment tax at a subscriber base of 1700 connections. In support of this contention the respondent has produced a certificate issued by the District Entertainment Tax Officer, Bijnore. Therefore, the contention of the petitioner that he has a subscriber base of only 200 connections and even then he agreed to sign a subscription agreement on a subscriber base of 500 is contrary to actual facts.

The learned counsel for the petitioner in his rejoinder has contended that assuming that the petitioner has given Public Notices in newspapers, it being only on 26th August, 2005 and disconnection having taken place on 28th August, 2005 which is a Sunday, same does not amount to two clear working days notice as contemplated under Regulation 4.1 of the Act. Therefore, the notice being contrary to law, disconnection per se is illegal hence, petitioner is entitled to relief sought for.

Both the petitioner and respondent have made certain factual allegations against each other in support of which we find no materials in the pleadings such as manipulation of the agreement document etc. Therefore, even though this Tribunal is a fact finding body, we find it difficult to accept these allegations nor do we find it necessary to go into those disputed questions in view of the other questions based on which this petition could be disposed of.

The main contention of the petitioner is that under Regulation 4.1, there is a requirement that the broadcaster who intends disconnecting his signals for piracy must give a minimum notice of two working days and in the instant case the same having not been given the disconnection is contrary to law. This was the original pleading in the petition but in reply filed by the respondent it was specifically contended that a notice of disconnection on the ground of illegal activities of the petitioner was given in two newspapers on 26th August, 2005 and the disconnection having taken place only on 28th August, 2005, there is substantial compliance of the requirement of notice under the Regulations. In support of this contention that the notices have been given in two newspapers, the respondent has produced before the Court newspaper cuttings of "The Pioneer" dated 26th August, 2005 in English and "Dainik Maneesh Times" of the same date in Hindi. Having seen copies of the Public Notice in the newspaper cuttings, the petitioner could not challenge the veracity of the same hence, raised a technical argument that under Regulation 4.1 it is mandatory for the broadcaster to have given two working days notice, therefore, under the provisions of the General Clauses Act, 1897 the first day of publication should be excluded and if that is done then the requirement of two working days will not be complied. Learned counsel appearing for the respondent countering the said argument submitted that the Regulation 4.1 does not use the word "from" while requiring the broadcaster to issue notice of disconnection, therefore, Section 9 of the General Clauses Act which

excludes the date of publication or date of issuance of a notice cannot be made applicable to the facts of this case.

We find sufficient force in the argument of the learned counsel for the respondent. Apart from the fact that the petitioner did not disclose to this Tribunal in his pleadings that such Public Notices have been given in the newspapers even the technical argument that there is no substantial compliance of the Regulation cannot be accepted. Two days notice is intended to be given to the public who are subscribers of the cable operators whose connection is likely to be disconnected. In reality it is not a notice to the cable operator who would have been informed earlier of his misconduct and the likely disconnection. Even assuming that it is a notice to the cable operator himself, even then in our opinion since notice has been published in the morning of 26th August, 2005 and disconnection having taken place only on 28th August, 2005 (Sunday), Friday and Saturday admittedly being the working days in that area, there is substantial compliance of the notice, hence no fault could be found with the respondent on this score. Learned counsel for the petitioner, however, placed reliance on two judgments of the Supreme Court in the case of Haru Dass Gupta Vs. State of West Bengal – AIR 1972 Supreme Court 1293 and Public Passenger Service Ltd. Vs. M.A. Khadar – AIR 1966 Supreme Court 489.

We have carefully gone through the law laid down by the Supreme Court in the above cases and with respect we submit that the principles laid down

therein do not apply to the facts of this case. On the contrary, law laid down by the Apex court in the case of Tarun Prasad Chatterjee vs. Dinanath Sharma [2000(8) SCC 649] applies to the facts of this case directly.

The next question where parties have joined the issue is in regard to the subscriber base of the petitioner. It is the contention of the petitioner that its actual subscriber base is only 200 but to keep the business going it offered to pay subscription to the respondent on a subscription base of 500. Per contra, respondent has pleaded as per its Survey the subscriber base of the petitioner was more than 3800, even then it only demands for fixing the subscriber base at 1500 but the petitioner refused to accede to even this request. Alternatively, the respondent has stated the petitioner having himself declared a subscriber base of 1700 to the Entertainment Tax Officer he cannot contend to the contrary and say that his subscriber base is less than 500. Therefore, the respondent contends that the claim of the petitioner that his subscriber base is either 500 or less cannot be accepted.

In this petition it is the petitioner who has come up before us contending that his subscriber base is less than 500 and he is willing to pay subscription of a subscriber base of 500 only. Apart from this ipsi-dixes of the petitioner there is no other material to support the contention of the petitioner. This we say having rejected the partially produced copy of agreement the contents of which have been denied by the respondent. On the contrary the respondent has stated in its pleading that the survey

conducted by it shows the subscriber base of the petitioner as 3800 and, the certificate issued by the District Entertainment Tax Officer, Bijnore showed that the petitioner has voluntarily declared a cable connection of 1700 and paid entertainment tax on that basis, therefore, the contention of the respondent that the petitioner has a subscriber base of more than 500 and is not willing to disclose the true subscriber base seems more probable. At any rate the petitioner having come to this Tribunal on a specific contention that its subscriber base is less than 500 and having not established to the satisfaction of this Tribunal that fact we do not think that a direction to the respondent can be issued to enter into a subscriber agreement on a subscriber base of 500. Since the contract in this case is coming to an end under the Regulations by 31st December, 2006 and the parties concerned will have to enter into a fresh agreement with effect from 1st April, 2006, we proposed to the petitioner that he may enter into an agreement with a subscriber base of 1000 as against the declaration of 1700 made by it to the Entertainment Tax Officer, but the petitioner has not accepted this offer, therefore, we are left with no choice but to reject the prayers of the petitioner. Consequently, this petition fails and the same is dismissed.

.....Sd/-.....J
(N.Santosh Hegde)
Chairperson

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

Member

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