

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

Dated 14th December, 2005

Petition No.97(C) of 2005

P.Syamkumar Reddy
Managing Partner
Raja Rajeshwari Channel
Flat No.406 & 408, Radhakrishna Towers
Near AC Stadium
Nellore – 524 004
Andhra Pradesh

.....Petitioner

Versus

Channel Plus-AP
Door No.367 & 369
Anna Salari, Teynampet
Chennai – 600 018
Tamil Nadu

.....Respondent

BEFORE:-

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

For Petitioner : Mr.Maninder Singh, Advocate with
Mr.D.Bharat Kumar, Mr.Yoginder Handoo
Mr.Tejeev Singh Bhatia, Advocates

For Respondents : Ms.Yogesh Gupta, Advocate

ORDER

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The petitioner in this petition, filed under Section 14 and other relevant provisions of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act), has sought for direction to the respondent herein to issue decoders and other required equipment on payment basis to transmit the signals of Gemini and Teja Channels for further transmission to its subscribers. Cause of action for filing this petition arose when petitioner's request for supply of the signals of the above said two channels was refused by the respondent on the sole ground that by an injunction granted by the 2nd Additional District Judge, Nellore in OS No.3 of 2003, there is a restraint order which prevents the giving of signals of the above said channels except through the plaintiff in the said suit. Therefore, any order pertaining thereto might amount to contempt of court.

From the pleadings in this petition a narrow issue arises for consideration i.e. whether the injunction order made by the 2nd Additional District Judge, Nellore dated 1st April, 2003 would in any manner deprive the petitioner of his right to obtain signals of Gemini and Teja channels.

After coming into force of the amendment dated 9th January, 2004 to the Act, under Section 14 and 14A of the Act, all disputes between the service providers will have to be adjudicated by this Tribunal. It cannot be denied that the petitioner and the respondent are service providers under the Act and by the refusal to give signals of Gemini and Teja channels to the petitioner by the respondent a dispute has arisen between the two service providers. Therefore, under the provisions of the Act, this is a dispute which becomes adjudicable by this Tribunal. Under Section 15 of the Act, civil courts have

been barred from entertaining any suit or proceedings in respect of any matter which this Tribunal is empowered by or under this Act to determine. The said Section also prohibits a civil court from granting any injunction in respect of any action ought to be taken in pursuance of any power conferred under this Act.

However, the fact remains that before coming into force of the amendment dated 9th January, 2004 which included Cable Sector within the definition of telecommunication services, a suit was filed by one, Akash Cable Network Pvt. Ltd., Nellore against one Chatala Mallikarjuna Rao for a permanent injunction restraining that defendant from giving the channels, Gemini and Teja operated through M/s Channel Plus Chennai to any other operator at Nellore and Kovur except to the plaintiff therein. The said suit came to be decreed *ex parte* by the judgment of the said court dated 1st April, 2003 and it is an undisputed fact that such decree of permanent injunction made against Chatala Mallikarjuna Rao has not been challenged.

The learned counsel for the petitioner submits that apart from the fact that the said decree is a collusive decree, said decree being a decree in-persona against Chatala Mallikarjuna Rao does not in any manner bind the respondent herein who is not a party to the said proceedings from giving signals of Gemini and Teja channels to the petitioner. According to the learned counsel for the petitioner such decree is only being used as an excuse to prevent the petitioner from getting the signals of the said channels. Learned counsel also pointed out that after coming into force “The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004”, it is

mandatory for a broadcaster or his agent, as is the case with respondent in this petition, to give connections on reasonable terms on being sought by a MSO or a Cable Operator like the petitioner. Any denial of signals without reasonable grounds which is contemplated under the Regulations would give cause of action for the petitioner to approach this Tribunal for suitable relief.

Learned counsel for the respondent, however, tried to argue that the petitioner has already invoked other alternative remedies like filing the writ petition in High Court of Judicature in Andhra Pradesh and initiated proceedings before the Monopolies and Restrictive Trade Practices Commission(MRTPC), therefore, this petition is not maintainable. Even otherwise, it is admitted that the injunction granted by the civil court referred to hereinabove prevents respondent from providing signals to any other person than the plaintiff in the said suit, hence petitioner's request cannot be granted.

In reply, the learned counsel for the petitioner submitted that the writ petition before the High Court of Judicature at Andhra Pradesh has since been withdrawn and so also the proceedings before the MRTPC and in view of the fact that the judgment of the civil court being a nullity of Section 15 of the Act, the objection raised by the respondent has no merit.

It is no doubt true that under Section 15 of the Act the civil court's jurisdiction has been taken away in regard to all disputes which comes within the purview of the Act and this Tribunal has been entrusted with the duty of settling of disputes that arise between the service providers (as is the case in this petition). Therefore, after the coming into force of this amended Act, any proceedings before the civil court would be a nullity. But in the instant case

the civil suit was filed, a decree was obtained prior to coming into force of the amended Act, therefore, it cannot be said that the decree is a nullity but, however, the question would still remain that after the coming into force of the amended Act and in view of the language of Section 15 of the Act whether the decree obtained from a civil court would ever be executable.

Be that as it may, it is not necessary for us to go into that question in this petition. It is seen that neither the petitioner nor the respondent is a party to the said suit, therefore, the decree cannot be binding on either of the parties. Hence the defence taken by the respondent in our opinion cannot be sustained. From the materials on record we find that there is substance in the allegation of the petitioner that the decree is a collusive decree so as to create a monopoly in favour of the plaintiff therein which runs counter to the object of the Act and the Regulations.

Since we are of the opinion that the decree does not come in the way of the respondent from providing signals of Gemini and Teja Channels to the petitioner, the petitioner is entitled to the relief sought for. Therefore, we direct the respondent to supply signals of Gemini and Teja Channels on such agreed terms between the parties which terms shall not be unreasonable and on the petitioner's entering into a subscribers agreement within two weeks from today.

Ordered accordingly.

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

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

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