

TELECOM DISPUTES SETTLEMENT & APPELLATE**TRIBUNAL****NEW DELHI****DATED 6th FEBRUARY, 2006****Petition No.4(C) of 2006**

Rajdhani Communication Network Pvt. Ltd.
Prakash Tower, 'J' Block Market,
Ashok Vihar, Phase-I,
Delhi-52

...Petitioner

Vs.

M/s SET Discovery Pvt. Ltd.
2nd Floor, 9/1B, Secular House,
Qutab Institutional Area,
Aruna Asaf Ali Marg,
New Delhi-110 067

...Respondent

AND**Petition No.5(C) of 2006**

Trans Yamuna Communication Network(P) Ltd.
301, Vardhman Complex, C-2,
Yamuna Vihar, Delhi-110053

.....Petitioner

Vs.

M/s SET Discovery Pvt. Ltd.
2nd Floor, 9/1B, Secular House,
Qutab Institutional Area,
Aruna Asaf Ali Marg,
New Delhi-110 067

...Respondent

BEFORE:

HON'BLE MR. JUSTICE N. SANTOSH HEGDE,
CHAIRPERSON

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

For Petitioners : Mr.Maninder Singh with
Mr.Tejevveer Singh, Mr.Yoginder
Handoo, Advocates

For Respondent : Mr.A.N.Haksar, Senior Advocate with
Mr.Gopal Jain, Mr.Vivek
Yadav,Advocates

ORDER

The two Petitions, i.e., Petition Nos. 4(C) of 2006 and 5(C) of 2006 were filed under Section 14 and 14A of the TRAI Act 1997 as amended in 2000, on similar cause of action, the petitioners being M/s Rajdhani Communication Network Pvt. Ltd. and Trans Yamuna Communication Network (P) Ltd. respectively and the respondent being M/s SET Discovery Pvt Ltd in both the cases. The case pertains to the disconnection of TV signals of the petitioners by the respondent on 8th January, 2006. Both the petitioners are franchisees of Siti Cable Network Pvt Ltd and have their headends for distribution of the TV signal over the cable network in their respective areas.

2. In Petition No. 4(C) of 2006, the learned counsel for the petitioner stated that he has been operating in the areas of Ashok Vihar, Lawrence Road, Wazirpur Industrial Area, Bharti Nagar, Tri Nagar, Shastri Nagar, Inderlok, Gulabi Bagh, Rana Pratap Bagh, Shakti Nagar, Ghantaghar, Pratap Nagar and Kishan Ganj since 1995. He said that after a notice on 6th January, 2006, his signals were disconnected on 8th January, 2006 by the respondent on the ground that he was retransmitting signals in areas beyond his area of jurisdiction as per the agreement. He said that the Petitioner is not providing cable TV service in Yamuna Vihar and has no operations in Brij Puri, Karawal Nagar, Khajuri, Monga Nagar, Nehru Vihar and Kabir Nagar and there can be no question of his trespassing to these areas as alleged by the respondent. He said at the outset that he was not hiding the fact that he had started supplying signals in areas of Patel Nagar, Moti Nagar, Karam Pura, Karol Bagh and Inder Puri in the month of December, 2005 and he has admitted the same in the petition. He however, said that he had been supplying signals in these areas earlier also and had now restarted the same. It was also contended by the petitioner that the agreement, which was got signed from it by the respondent on 1st January, 2003, did not specify its area of operation. At the time of signing of the agreement, the territory was left blank in the agreement form and copy of the agreement was not given to the petitioner. The respondent on this issue stated that M/s Rajdhani Communication was authorized as per the agreement to provide cable service in Ashok Vihar whereas it had violated the agreement by giving signals in areas other than Ashok Vihar. The respondent stated that it had given notice to Siti Cable Network on 27th December, 2005 whereby it had informed Siti Cable Network that agreement with the petitioner does not extend to the territories comprising Patel Nagar, Moti Nagar, Karampura, Karol Bagh, Rajinder Nagar, Ranjeet Nagar, Krishna Nagar, Savita Vihar and Laxmi Nagar. Vide this letter it had directed the petitioner not to extend these signals to the areas mentioned therein as these were beyond its authorized area of jurisdiction. It was the contention of the petitioner that it had earlier in the year 2002-03 been providing signals to Patel Nagar, Moti Nagar, Karam Pura, Karol Bagh and Inder Puri, which has been admitted by the respondent in the letter dated 27th December, 2005. The learned counsel for the petitioner said that the recommencement of the signals was permitted by the respondent and to support his case, he referred to minutes of the meeting held between their main company, Siti Cable Network and the officials of SET Discovery, the extracts of which are reproduced below :-

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“Minutes of the meeting

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Minutes of the meeting held on June 21, 2005, between, Siti Cable Network(P) Ltd (hereafter referred to as Siti Cable), Delhi represented by Mr. Subhash Grover & Mr. Sudhir Mongia and SET Discovery Pvt Ltd (hereafter referred to as SETD), represented by Amit Agnihotri, Omesh Uppal, Micky Sharma (Distributor; SETD) and G.S. Oberoi (Distributor SETD).

Venue : Essel House, Lawrence Road Industrial Area, New Delhi.

Both the parties have mutually agreed upon the following :

1.
2.
3. *The contracted headends to be covered under this deal with whom SETD has subsisting affiliation agreements are:*

- a. *Rajdhani Communication Network Pvt Ltd.*
- b. *North Delhi Cable Network Pvt Ltd.*
- c. *Panchsheel Communication Network Pvt Ltd.*
- d. *West Delhi Communication Network Pvt Ltd*
(Janak Puri & Paschim Vihar).
- e. *South Delhi Communication Network Pvt Ltd (Sant Nagar & Arjun Nagar).*
- f. *Trans Yamuna Cable Network Pvt Ltd.*
- g. *Bargach Telelinks Pvt LTd (Noida).*

4.
5. *If any new franchisee / sub operator are acquired / merged / connected with any of the Headends mentioned in para 3 above, directly or indirectly in addition to those mentioned in the list to be provided by Siti Cable by June 30, 2005, the Annual Fee shall be renegotiated and increased as mutually agreed.*
6. *Similarly, if any new franchisee / sub operator migrate from any of the Headends mentioned in para 3 above, from those mentioned in the list to be provided by Siti Cable by June 30, 2005, the Annual Fee shall be renegotiated and decreased as mutually agreed. SETD shall endeavor to get the migrated / shifted operators back to the headend / network.*

Sd/-

sd/-

sd/-”

3. On going through the copy of the agreement dated 1st January, 2003 between the petitioner and the respondent, filed by both the parties, it can be seen that the territory mentioned in the Affiliation Agreement is Ashok Vihar and the agreement has been signed by both the parties. The petitioner, however, said that the original agreement should be produced by the respondent which was seen by the Tribunal. It was seen from the Affiliation Agreement No. 0487 signed by both the parties that territory Ashok Vihar was written in different ink than the ink used for filling the remaining columns on page 1 of the Agreement. Similarly, white fluid was used in front of CNBC Channel at U/A No. and the figures were re-written. We also observed that the term of the agreement on the last line of page 1 was written in still different ink. The petitioner contended that this territory column was left blank when the agreement was signed and has been written by the respondent later. The learned counsel for the petitioner stated that the agreement was not renewed and the signals were continued by the respondent based on the Validation Forms. He said that even the Validation Forms, given to him, were got signed blank and were not in order. He submitted that the Tribunal should ask the respondent to produce the original validation forms. He said that as in the case of the agreement, in one validation form the signatures have been forged while in the other, the territory has been changed to read as “parts of Ashok Vihar” and even ink remover has been used at places. The original validation forms were produced by the respondent, which were compared with the copies on record. In one validation form, there is no particular column for territory but the addresses for correspondence and installation address, both, show Ashok Vihar. In another Validation Form of SET Discovery Pvt Ltd with affiliate Rajdhani Communications Pvt Ltd, with effective date 20th August, 2005, we observed that the territory mentioned was “some parts of Ashok Vihar”. The form was signed by both the parties. The affiliate’s signatures in these two Validation Forms did not match.

4. As regards the issue of the territory, we have no reason to contest the respondents' plea that the agreement catered for the area of Ashok Vihar only. We have at the same time no reason to differ from the petitioner that blank form was got signed from him but it is also a fact that he had been assigned the territory of Ashok Vihar and he was aware of it all along. This is supported by the fact that the petitioner was paying subscription for that area. Despite having signed blank agreement, there was an understanding between the two parties on provision of cable service in Ashok Vihar. Going beyond Ashok Vihar, therefore, would make the petitioners stand on weaker footing and we would have rejected the petition straightaway but for the minutes of the meeting held on 21st June, 2005 which are on record as part of the petition and were not contested by the respondent, extracts of which are reproduced in para 2 above. It is clear from the Minutes that both the parties had agreed to the following conditions:-

- (a) The agreement will be between the franchisee and the respondent;
- (b) The affiliate could go beyond their area of operations and enroll/ enlist additional operators and negotiate with the respondent for additional payment for these additional operators.

5. Since both the parties had agreed in June, 2005 to this scheme of business relationship, the petitioner seems to have been well within limits to extend the operation to additional areas, declare the same to the respondent and negotiate for a fresh commercial agreement for providing service in the said additional areas.

6. Learned counsel for the petitioner also stated that in the public notice given by the respondent, it was stated that the signals were likely to be disconnected shortly and no period was mentioned. He said that omission of the specific period in the notice was done by design since at that particular time negotiations for settlement were on and just two days before the public notice there was a meeting between the petitioner's and the respondent's representatives.

7. Mr. Maninder Singh said that it was very clear from the letter of the respondent dated 5th January, 2006 that it was ready to accept Rs. 15 lacs instead of Rs. 28 lacs which was due from the previous cable operator though without prejudice, which itself proves the point that the respondent was ready for the negotiations to settle the issue of giving signal to the additional areas, where the respondent has alleged trespassing.

8. The correspondence produced by the petitioner also reveals that negotiations were clearly on between the two parties for the so called trespassing alleged by the respondent. This point stands out clearly from the letter written by the respondent dated 8th December, 2005 addressed to Mr. Subhash Grover of SITI Cable Network, the relevant para of which is extracted below:-

"Please note that as per our records the total dues receivable by us from Siti Cable for the territories of Patel Nagar, Asaf Ali and East Delhi are approximately Rs 28 lakhs. Therefore, we once again call upon you to immediately clear the outstandings and discuss the issue of subscription fees with us in order to work out a fresh deal for these areas in the meanwhile, we request you to kindly refrain from transmitting the signals of our channels in all such areas where Siti Cable has not executed an Agreement with us."

9. While arguing the case in its favour, the respondent brought to our notice the last para of this letter which is extracted below:-

"Please note that this communication on payment of outstanding by Siti Cable does not purport to admit your eligibility or entitlement to receive the 'The One Alliance channels' for territories comprising in Patel

Nagar, New Moti Nagar, Karampura, Karol Bagh, New Ranjeet Nagar, Krishna Nagar, Savita Vihar and Laxmi Nagar.”

10. Having gone through the complete letter and arguments of both sides it appears that the negotiations between the two parties for transmitting TV signals in the additional areas were on which could not fructify and the signals to the petitioners were disconnected with two days' notice. Since as per the minutes of the joint meeting held in June, 2005, this activity was permitted, we feel it should have been finally decided one way or the other without leaving room for ambiguity.

11. Mr. Maninder Singh pointed out that the territory mentioned in the agreement, i.e., Ashok Vihar is a subsequent insertion because in the original agreement column of Territory was left blank and further for reasons not known to the petitioner even this “Ashok Vihar” was changed to “parts of Ashok Vihar” in the validation form. On this issue the respondent stated that the original agreement which was shown to the Tribunal authorized the petitioner to restrict itself to Ashok Vihar. It said that since Ashok Vihar is a large area, subsequently in the validation done later on it was changed to ‘parts of Ashok Vihar’. The counsel for the respondent said that the petitioner, having been in the cable business for many years was fully in the know of everything. There was no dispute about the areas as per the agreement; it is only when the respondent came to know of his transmitting signals beyond the areas of Ashok Vihar that it gave notice to the petitioner.

12. The learned senior counsel for the respondent Mr. Haksar said that it was a clear case of piracy where petitioner after indulging in trespassing is subsequently willing to pay for the areas where it is making unauthorized transmission so as to legitimize its illegal acts. He said that a bonafide operator will first offer his service, negotiate for the deal and then do business in the areas negotiated between the two parties. But here was a case where the petitioner has already committed the piracy and when pointed out and having got the notice, has come to this Tribunal stating that it is willing to pay for the extension of his business which it has unilaterally ventured into. The learned senior counsel for the respondent said that if the petitioner gets relief in this case, every distributor / cable operator will start indulging in unauthorized trespassing and then come to this Tribunal for getting relief. He therefore said that this petition should be rejected outright.

13. Mr. Gopal Jain, Learned Counsel for the respondent in the other petition stated that the preamble of the TRAI Act itself not only caters for the consumer interests but also protects the interests of the service providers. Therefore, the respondent's interests are also to be protected. He said that the petitioner had defaulted in payment, which authorized the respondent to disconnect the signals to the petitioner which was done after following the complete procedure including the public notice as laid down in the Regulation. He also stated that the petitioner was in the know of the dues to the respondent and it was aware that some cheques have been dishonoured and despite that it did not take action to clear the dues and remained a defaulter. Mr. Jain said that as far as unauthorized transmission was concerned, they came to know of it in the second week of November, 2005 and when the petitioner was given notice of it, there was no reply.

14. The learned senior counsel for the respondent supported his case of violation of Copyright by relying on the following provisions of the Copy Right Act :-

Extracts from The Copyright Act, 1957

2(f) “cinematograph film” means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography including video films;

14(a)(iii) to perform the work in public, or communicate it to the public;

14(d) in the case of a cinematograph film,--

(i) to make a copy of the film including a photograph of any image forming part thereof;

(ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the film to the public.”

On the above basis, the respondent contends that the petitioner being a defaulter and having violated Interconnect Regulation, has disentitled itself to seek mandatory injunction from this Tribunal. The contention of the petitioner was, however, that in the absence of an agreement or arrangement there is no violation of Copyright. It reiterated that it only resumed the signals to those areas where it was providing service earlier and for which it was ready to pay also.

15. The learned counsel for the petitioner also stated that the respondent has been unjust with the petitioners on number of counts. He said that the initial agreement entered into between the parties was for 4,500 subscribers whereas on 4th May 2005 the respondent wrote to the petitioner asking for entering into fresh validation for 8,000 subscribers which was contested by the petitioner vide its letter dated 12th May 2005. He said that this was done just to impose unjustified financial burden on the petitioners and their consumers under the threat of disconnection and deactivation. He further said that there was no reply to this letter of 12th May 2005.

16. The learned counsel for the respondent alternatively contended that the petitioner was a defaulter hence, by a notice dated 4th December, 2005 the petitioner was called upon to pay an outstanding amount of Rs.7,34,630/-. It is also indicated in the said notice that the same should be treated as a notice under clause 4.1 of the Regulation, i.e., a 30 days notice for disconnection for default in payment of dues. Therefore, even if the respondent's contention that petitioner has been guilty of unauthorized transmission is not accepted by this Tribunal, the notice of 4th December, 2005 which is a notice for default giving him 30 days time before disconnection, would be a valid notice since the disconnection took place after the period of 30 days of the notice of default. A perusal of the notice dated 4th December, 2005 shows that the respondent has claimed a sum of Rs.7,34,630/- as being a sum due from the petitioner and in response to the said notice there was a discussion between the parties and subsequently on 5th January, 2006 the outstanding amount after negotiation was reduced to Rs.4,34,630/-. This is an admitted fact. Question then arises when the respondent issues a default notice under clause 4.1 of the Regulation giving 30 days time of payment or to face disconnection and within the period of 30 days after negotiation reduces that sum substantially, would the original notice demanding a larger sum remain to be a valid notice under clause 4.1 of the Regulation? Regulation 4.1 mandates that no Broadcaster or a Multi System Operator (MSO) shall disconnect the TV channel signals to a distributor of a TV channels without giving one month's notice indicating the brief reasons for the proposed action. In the instant case such a notice demanding Rs.7,34,630/ was given on 4th December, 2005 but before the expiry of 30 days the parties settled the amount due between them by an altered figure of Rs.4,34,630/-. This is not the amount claimed in the notice dated 4th December, 2005 issued under clause 4.1 of the Regulation. In our opinion, after the issuance of the demand notice contemplated under clause 4.1 of the Regulation if there has been a settlement between the parties reducing the claim under the said notice, then the

demand made under the earlier notice i.e. in this case the notice dated 4th December, 2005, stood compromised and if the petitioner failed to pay the reduced amount under the compromise then in our opinion, the respondent cannot rely upon the notice dated 4th December, 2005, to disconnect the signals but will have to issue a fresh notice under clause 4.1 of the Regulation demanding the actual amount that became due after the settlement of account which in this case was for Rs.4,34,630/-. Therefore, the cause of action available for the respondent to disconnect the signals for default of earlier payment cannot be invoked after the parties arrive at a settlement. In that view of the matter, in our opinion, it is not open to the respondent to rely upon the notice dated 4th December, 2005 to disconnect the signals given to the petitioner on the ground of default as stated in the said notice of 4th December, 2005.

17. During the course of discussion on these two petitions, we find that while agreement was signed by both the parties in Petition 4(C) of 2006, but territory etc were perhaps left blank to be filled later. Similarly, in validation form, some parts were left blank and were filled later. In case of Petition 5(C) of 2006, no agreement exists between the two parties and there are only two validation forms where also it could be seen that some changes were made or some entries were made later. In Petition 5(C) of 2006 also the respondent has alleged unauthorized retransmission by the petitioner. In this case also the minutes of the meeting held on 21 June, 2005 are equally applicable as in case of Petition 4(C) of 2006.

18. We have also seen in other petitions filed before us that in a large number of cases, the broadcasters get blank agreements signed from the distributors of TV signals. These are produced as signed by one party only in this Tribunal. Almost all the agreements are subsequently contested by the other side. This practice is definitely not in tune with honest commercial dealings. As per the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004 (15 of 2004) all agreements are to be registered. Para 5 of the Regulation states that all Broadcasters shall register with the authority interconnect agreements entered into by them or modifications/amendments thereto with the authority within the time frame specified under Clause 5(b). These timings are specified for first reporting and subsequent updation etc. Para 5 of the Explanatory Memorandum of this Regulation is reproduced as under:-

“The new Register of Interconnect Regulation requires all Broadcasters to register with the Authority all Interconnect Agreements entered into by them as against the provisions in the existing Regulation which require the filing of interconnect agreements to which not only the Broadcasters but also multi service operators are parties. The changed provision is in line with the position spelt out in TRAI’s recommendations on Broadcasting and Distribution of TV channels dated 1/10/04 stating that the agreements entered into between an MSO and an LCO shall be registered with the Authorised Officer and agreements entered into between broadcasters, MSOs, DTH operators and HITS operators shall be filed with the Authority. Broadcasters would therefore have to file all their interconnection agreements with the Authority of the following distributors:-

- (i) Cable Operators*
- (ii) MSO’s*
- (iii) DTH Operators*
- (iv) HITS Operators.”*

Though in the above regulation there is a direction for registration of agreements between all service providers, the regulator has not specified the authorized Officer for registration of agreements between Distributors & MSOs and MSOs & Cable Operators. Therefore, this lacunae should be rectified by TRAI at the earliest.

19. We therefore direct that all parties must sign the agreements and should have in possession the signed agreement finalized after negotiation and the same be registered.

20. We also wish to draw attention of petitioners and respondents in instant petitions for necessary action as per our Judgment dated 17th January, 2006, in case of Star India Pvt Ltd. Vs Indusind Media & Communications Ltd. (Petition No. 44(C) of 2004), the relevant sub paras of which are reproduced below :-

“Under the Interconnect Regulation 2004, parties are bound to sign written agreement; and if a fresh agreement is required under the Regulation same should be finalized at least 30 days prior to the expiry of the old agreement;

if terms proposed in the agreement are not acceptable to any party, it is for the party which is seeking signals to approach this Tribunal for the redressal of its grievances.”

21. We will now consider, what would be the relief the petitioners are entitled to. Having come to the conclusion that the disconnection notice dated 5th January, 2006 is contrary to law in the normal course the petitioner would have been entitled to the relief sought for by it i.e. to quash the impugned notice dated 05.01.2006 and the public notice dated 06.01.2006 but there have been certain intervening facts during the pendency of the petition herein. It is an admitted fact that at the point of time when the signals were disconnected there was no subsisting agreement between the parties and still the signals were being continued to be given to the petitioner in Petition No.4(C) of 2006 on the basis of earlier agreement and validation forms signed by it whereas in regard to Petition No.5(C) there was never an agreement and signals were being given based on the validation form only. By issuing the notice terminating the signals the respondent has tacitly admitted that there was some sort of a contract between the parties for supply of signals and since we have held that the termination notice is contrary to law as stated above in the ordinary course we would have declared termination notice as invalid consequent to which the signals would have been restored to the petitioner. But after coming into force of the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004, it has become mandatory for the parties to enter into a written agreement, therefore, in the absence of any agreement between the parties in writing, a declaration quashing the termination notice would be an action in futility. Therefore, we direct the petitioners to approach the respondent and negotiate in regard to the terms on which the petitioners can obtain respondent's signals. For this, we give 30 days time to the petitioners to finalise the agreement and direct the respondent to settle the terms of the agreement in a reasonable and non-discriminatory manner as per the prevailing business practice in the area concerned. Till then we think equity requires, the respondent to restore the signals to the petitioners on

terms on which signals were being given on the date of disconnection and the petitioner will pay to the respondent the subscription charges at the rate at which it was being paid on the date of disconnection. The petitioner in Petition No.4(C) of 2006 shall also pay to the respondent a sum of Rs.4,34,630/- as was agreed to be due between the parties within 2 weeks. The signals will be reconnected by the respondent within 48 hours of receipt of this said payment. We further restrain the petitioner in Petition No. 4(C) of 2006 from transmitting the signals beyond the territory of Ashok Vihar during this interim period.

22. In regard to the terms of the new contract, if there is any dispute then it is open to the aggrieved party to approach this Tribunal for suitable relief.

23. Petitions disposed of.

24. A copy of this order will be communicated to the Telecom Regulatory Authority of India.

.....J

(N.Santosh Hegde)
Chairperson

.....
(Vinod Vaish)
Member

.....
(D.P.Sehgal)
Member