

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

Dated 27th July, 2006

**Execution Application No.6 of 2006
in
Petition No.70(C) of 2006**

Mahadev Cable Net
through its Partner
Goverdhanbai Ambabhai Patel
Having Office at 45, 298 Palanpur Pati
Gujarat Housing Board
Surat – 395 009

.....Petitioner

Versus

Star India Pvt. Ltd.
Having its Office at
Star House, 4th Floor
Off Dr. E. Moses Road
Mahalakshmi
Mumbai

.....Respondent

BEFORE:

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

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

For Petitioner : Mr. Naveen Goel, Advocate

For Respondent : Mr. Ashish Jha, Advocate
(For Karanjawala & Co.)

ORDER

This is an Application filed under Section 19 read with Section 20 of the Telecom Regulatory Authority of India Act, 1997 (the Act) praying for the execution of the order

made by this Tribunal on 20th April, 2006 in Petition No.70(C) of 2006. There is a further prayer to take necessary action against the respondent for willful disobedience of the above said order.

2. The brief facts necessary for the disposal of this application are as follows:-

3. The original petition seeking signals of the respondent was filed by the Petitioner on 4th August, 2005 which was finally disposed of on 29th March, 2006 with the direction that the respondent should supply signals on terms which are not unreasonable without discriminating the petitioner against similarly situated persons. Since the respondent did not comply with the directions issued therein the petitioner was constrained to file EA No.6 of 2006 in Petition No.70(C) of 2006 on 23rd May, 2006. When this EA came before this Tribunal on 1st June, 2006 learned counsel for the respondent took notice and took a day's time to file his objections and the matter was listed on 2nd June, 2006. On 2nd June, 2006, this Tribunal by a detailed order directed the parties to take the following steps:-

- (i) The respondent/non-applicant should intimate in writing to the petitioner/applicant the details of the outstanding amount and the details of the alleged piracy. This communication should reach the petitioner/applicant positively within a week from today.
- (ii) The petitioner/applicant would send its response in writing to the respondent/non-applicant within three days thereafter.
- (iii) Respondent/non-applicant would give time for a meeting at 10.30 AM on 14.06.2006 at its office at Surat to try to resolve the outstanding issues. Only one duly authorized representative of the petitioner/applicant would go for this meeting.

4. The matter was listed for further directions/hearing on 27th June, 2006. On that date the learned counsel for the respondent filed an affidavit stating that on an enquiry it was found that the applicant was receiving Star's signals from one M/s Surat Cable Network and respondent has no objection to continuing that arrangement but the petitioner did not agree for the said arrangement contending that the directions issued by this Tribunal in the original petition as well as on 2nd June, 2006 should be complied with by the respondent which required the respondent to give signals. This Tribunal in that order also recorded that the learned counsel for the respondent had stated that the said respondent will take steps to comply with the order of this Tribunal dated 20.04.2006 and make earnest efforts to reach an amicable solution. The matter was then adjourned to 14th July, 2006. On the adjourned date the learned counsel for respondent sought for another short adjournment which was

granted and the matter was listed for 19th July, 2006. On the date when this matter was taken up for further orders the learned counsel for the respondent contended that under the Interconnection Regulations it was open to the respondent broadcaster to supply signals to the petitioner through an intermediary. Since petitioner is already receiving signals from another service provider the original order of this Tribunal stood complied with, therefore, there is no scope for making further orders either under Section 19 or Section 20 of the Act. He also contended that petitioner is in default in payment of the subscription amount as also the petitioner is guilty of illegally transmitting signals to unauthorized areas, therefore, petitioner is not entitled to get relief under the original order of this Tribunal.

5. The learned counsel for the petitioner, however, rebutted this contention by contending that the original petition was filed on the ground that the petitioner was an MSO who is entitled to receive signals directly from the respondent broadcaster and renewal of the contract for supply of signals was denied by the respondent broadcaster on a false ground that the partners and the other members of the partner's family of the petitioner had assaulted the representatives of the respondent, therefore, on the basis of the so-called conduct of the petitioner's representatives the signals were refused. It was also contended vaguely that petitioner is in default of payment. Since that was not made an issue at the time of the argument in the main petition this Tribunal did not go into the same but directed the respondent to enter into a subscription agreement on reasonable terms which the respondent is deliberately avoiding by pleading new and extraneous rights. Accordingly, the learned counsel for the petitioner contended that the respondent was bound in law to obey the orders of this Tribunal which it has not yet done. He also contended that petitioner is not having the signals of the respondent for a long time and after filing of this execution application made a temporary arrangement with M/s Surat Cable Network to receive the signals. The said arrangement was not based on any agreement and is ad hoc one and the respondent cannot disobey the orders of this Tribunal by relying on such ad hoc arrangement.

6. Before proceeding to consider the merits of the rival contentions in the application, it is necessary to note the factual background in which order of this Tribunal dated 20th April, 2006 was made. A perusal of the said order shows that the only point argued in defence of refusing signals to the petitioner was alleged reprehensible and degrading conduct on the part of the petitioner. The question whether a conduct of a signal seeker could be a ground for refusal of signals in the background of the law applicable to the cable sector was elaborately discussed in the said order of this Tribunal of 20th April, 2006. In the order, without going into the correctness of the allegation, this Tribunal held that the statute which controls the supply of signals has provided the grounds on which signals can be refused and the conduct of a receiver of signals is not one of those grounds, therefore, this Tribunal being a creature of the said statute will have to consider the dispute that arises before it

within the framework of the Act and regulations and cannot interject some new grounds on which the provider of signals can refuse signals to the seeker of the signals. On that basis rejecting the contentions of the respondent, this Tribunal directed it to enter into a negotiated agreement with the petitioner for supply of signals. In the very same order this Tribunal did notice that from the pleadings in that petition it seems that there were some other disagreements between the parties with regard to the subscriber base and alleged default in payment. These are issues which have to be discussed by the parties inter se when negotiation for the agreement takes place and these disputes could be settled.

7. From the above direction issued by this Tribunal it is clear that the respondent had to negotiate with the petitioner for supply of signals.

8. The Petitioner has pleaded that pursuant to the order of this Tribunal, meeting was held on 11.05.2006 between the representatives of the parties when petitioner was told that the respondent will get back after discussing the issue with the legal department. It is further stated that on 12.05.2006 through a telephone communication petitioner was assured that further discussion will take place after the legal department render its opinion. Similar was the answer given to the petitioner on 14.05.2006. Petitioner has also produced certain correspondence as annexure to this application which also indicates that petitioner has been making repeated attempts to negotiate and sign a subscription agreement but the respondent on some pretext or the other was delaying such efforts.

9. We have already noted that after this application was filed on 01.06.2006, sufficient time was given to the respondents to comply with the orders of this Tribunal but the same has not been done till date. During the course of the present argument another legal argument was raised by the learned counsel for the respondent on the question whether there is any legal obligation on a broadcaster to give connections directly to a signal seeker as held by this Tribunal in the case of ***Sea TV Vs. Star India*** which is since pending in appeal before the Hon'ble Supreme Court. Therefore, in the background of the fact that since the petitioner has entered into an ad hoc arrangement with M/s Surat Cable Network to which the respondent have no objection this application should be dismissed.

10. After examining the above contention, we note that in the main petition the issue of the right of the respondent broadcaster to give signals through an intermediary was never raised. If it were to be raised then certainly like in most of the cases where such issues have been raised we would not have decided this petition and would have awaited the judgment of the Supreme Court. At the cost of repetition we state that this issue is now being raised for the first time after we issued a direction in the main petition to enter into an agreement with the petitioner for supply of signals. It is also to be noted that the order of this Tribunal giving such a direction on 20th April, 2006 is not challenged and has become final, therefore, this new contention of respondent's right to deny signals directly to the

petitioner cannot be entertained. In our opinion this argument is addressed for the first time only for the purpose of deliberately delaying granting of signals to the petitioner which opinion we have formed from the various orders made by this Tribunal.

11. Section 19 of the Act contemplates the execution of the order of this Tribunal as a decree of the civil court and for that purpose this Tribunal has all the powers of a civil court. The object of the Act clearly indicates that the resolution of dispute between the service providers when decided, such decision has to be taken to a logical conclusion and cannot be permitted to be flouted. It is for that purpose, Section 20 has been incorporated in the Act. From the pleadings of the parties both in the main petition as well as in the present application as also from the orders made by this Tribunal, we are satisfied that the respondent is deliberately and willfully avoiding to comply with the order of this Tribunal in spite of repeated opportunity given to it. The fact that the petitioner has recently entered into an ad hoc arrangement with M/s Surat Cable Network to receive signals cannot deny the petitioner its right to execute the order of this Tribunal. As a matter of fact it is clear from the record that it is not at the instance of the respondent that M/s Surat Cable Network gave connection to the petitioner but when the respondent came to know that M/s Surat Cable Network was giving ad hoc signals to the petitioner, that was sought to be legitimized and made as a shield which we cannot say is a compliance of the directions issued by this Tribunal.

12. In ***Execution Application No.4 in Petition No.77(C) of 2006 – Sanskardhani Cable & Anr. Vs Star India Pvt. Ltd.*** when the respondent therein who also incidentally happens to be the respondent herein willfully refused to enter into agreement as directed by this Tribunal in an execution petition, as an interim arrangement and to see that the order of this Tribunal is respected, this Tribunal directed the respondent to enter into a subscription agreement on the basis of the terms fixed by this Tribunal as a special case (though in an ordinary agreement terms are mutually settled). The order in that Petition has since been taken to Supreme Court in Civil Appeal No.2812 of 2006 and the said appeal is now tagged with Civil Appeal No.5524 of 2005 but no stay has been granted. On the contrary the Hon'ble Supreme Court was pleased to extend the time for compliance with the directions of this Tribunal till 22nd August, 2006.

13. Following the above principle, we directed the respondent to enter into a subscription agreement with the petitioners on terms stated herein below.

14. We direct that for the current subscription year i.e. year ending on 31st December, 2006, the respondent shall supply signals to the petitioner on a subscriber base and at the rate per bouquet per subscriber as was being collected from the petitioner when the signals of the petitioner were disconnected. The payment for such receipt of signals will be liable to be made by the petitioner from the date on which the petitioner starts receiving the

signals. Since we notice reluctance on the part of the respondent to give signals to the petitioner in spite of the directions of this Tribunal, we direct that the respondent shall supply its signals to the petitioner within 48 hours from the receipt of this order.

15. This leaves us to consider claim of the petitioner for invoking the Penalty Clause under Section 20 of the Act which contemplates a levy of fine for willful failure to comply with the order of the Tribunal which may extend to Rs.1 lakh. In case of a second or subsequent offence the fine may extend to Rs.2 lakhs and in case of continuing contravention the fine may extend to Rs.2 lakhs every day during such default. We have noticed right from the beginning in this case the attitude of the respondent has been to deny signals to the petitioner on one ground or the other and after the directions issued by this Tribunal in the main petition i.e. Petition No.70(C) of 2006 on 20.04.2006 the signal is being refused by the respondent on grounds which indicates a willful desire not to comply with the orders of this Tribunal. Therefore, we think it appropriate, as contended by the petitioner, to invoke Section 20 of the Act and levy fine of Rs.1000/- per day starting from 11th May, 2006, the day when the parties first met after the judgment of this Tribunal upto the date of this order. If this order of the Tribunal is not complied within 48 hours from the receipt of this order, we, acting under Section 20 of the Act levy a fine of Rs.10,000/- per day from the date of that default till the compliance of this order.

16. The petitioner is entitled to the cost of this petition quantified at Rs.5,000/-.

.....J
(N. Santosh Hegde)
Chairperson

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(Vinod Vaish)
Member

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(D.P. Sehgal)
Member