

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

Dated 27th July, 2006

Petition No.161(C) of 2006

1. Peoples Cable Network
Penumantra, West Godavari District
Pin 53124
Andhra Pradesh
2. Sri Sai Jaganadh Communications
2nd Floor, Above Rajeshwari Departmental Stores,
Opp. Surya Mahal, G.T. Road,
Andhra Pradesh
3. Sangamitra Cable Network
Korumamidi, West Godavari District
Andhra Pradesh
4. Sri Lakshmi Mini Cable Network
Ubalanka, East Godavari District,
Andhra Pradesh

....Petitioners

VERSUS

1. Channel Plus, A.P.
Door No.4, 2nd Floor,
Fagun Chambers
No.26, Ethiraj Salai
Chennai 600 105

Also at
367/369, Annasalai Teynampet
Chennai – 600 018

2. M/s. J.K. & Sons
1st Floor, Usha Complex, G.T. Road,

Srikakulam – 532 001

3. M/s. Gold Star Vision
3rd Floor, Rajkamal Complex,
R.P. Road, Tanuku – 534211
West Godavari District A.P.
4. Sri Sai Lakshmi Communications & City Cable
Amalapuram, East Godavari District
Andhra Pradesh
....Respondents

BEFORE :

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

MR.VINOD VAISH, MEMBER

LT.GEN.(RETD) D.P. SEHGAL, MEMBER

For Petitioner : Ms. Vibha Datta Makhija,
Mr.Philemon Nongbri, Advocates

For Respondent No.1 : Mr. A. Ramesh, Mr. Viswanath
Mr. Amit Sharma, Advocates

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ORDER

In this petition five different Multi System Operators in the cable sector are seeking a direction to various respondents to provide uninterrupted signals of Gemini and Teja Channels for onward transmission to their respective subscribers.

2. A preliminary issue has arisen in this petition whether such a joint/common petition is maintainable when Petitioners' interest is neither joint nor common while their grievances may be common inasmuch as they have not been receiving the signals sought for by them from the respondents.

3. It is to be noted that the five petitioners are situated in different parts of the State of Andhra Pradesh and all of them are not seeking signals of the 1st respondent from any one respondent but from different respondents who are the authorized

agents of the 1st respondent in their respective areas. That apart the cause of actions for filing the petition has arisen on entirely different factual background in the case of each one of the petitioners.

4. It is to be noted that so far as the 1st petitioner is concerned, it's request for receiving the signals was answered by 1st Respondent on 24th February, 2005 wherein on behalf of the 1st Respondent a letter was sent to the 1st petitioner seeking certain particulars. The first petitioner contends that it has furnished all the required information to the 1st respondent but it has not thereafter responded to the request of the 1st petitioner. Therefore, we do not know the ground for rejection of the request.

5. Whereas the case of the second petitioner is that its request to the 1st respondent for receiving signals was forwarded to second respondent who has not taken any action to supply signals. Therefore, the inaction complained of is on the second respondent.

6. The 3rd petitioner complains that it approached the 2nd respondent for grant of signals who sought for particulars but in spite of the same the said petitioner had not been able to receive their signals.

7. The 4th Respondent complains that its request for signals to 1st respondent and 3rd respondent remained unanswered.

8. Thus, it is seen that these petitioners individually have their own facts which give rise to a cause of action for filing this petition which cannot be considered as a common cause of action.

9. However, the learned counsel for the petitioners contended that since 1st respondent is a broadcaster and it is the obligation of the 1st respondent to see that signals are received by other service providers in a reasonable and non-discriminatory manner, therefore, this petition though filed on behalf of four different MSOs should be construed as a common petition and entertained as such. The learned counsel placed strong reliance on Order I Rule 1, 2, 4 and 8 of CPC which contemplates that all persons may be joined in one suit as plaintiffs if the suit is based on a common question of law or fact, or where there is no embarrassment or, delay in trial of the suit and the court thinks that it is expedient to do. This provision also permits the court to entertain the suits of different plaintiffs jointly where different plaintiffs have same

interest. At the outset, it should be noted that as per the provisions of the Telecom Regulatory Authority of India Act, this Tribunal is not bound by the procedure laid down in Code of Civil Procedure but shall be guided by the principles of natural justice. This Tribunal also has the power to regulate its own procedure.

10. But that is not the main reason why we find it difficult to accept the maintainability of this petition because in this petition the individual grievances of each one of these petitioners will have to be separately examined. The refusal of signals by the concerned respondent has not been on any common ground and reasons for the same cannot be common. This Tribunal will have to examine whether the 1st Respondent is at fault in not supplying the signals to any of the petitioners and, if so, on what basis, which will not be a common basis for the four petitioners in this petition. This Tribunal can only give relief depending upon the rights under the provisions of Interconnection Regulations. Therefore, there will have to be a separate investigation of facts in each of these cases which may even require separate evidences being laid in support of the case for and against each of the Petitioners.

11. The learned counsel for the petitioner has placed reliance on a number of judgments like in the case of Umesh Chand Vs. Krishi Utpadan Mandi Samiti (FB) [AIR 1984 Allahabad 46], Mota Singh Vs. State of Haryana [AIR 1981 Supreme Court 484] and Paikanna Vithoba Mamidwar and anr. Vs. Laxinarayan Sukhdeo Dalya and anr. [AIR 1979 Bombay 298]. We have perused the ratio laid down by the Supreme Court and the High Courts concerned in those judgments and we do not think that on facts it applies to the case. As a matter of fact, in Mota Singh case (supra), Supreme Court held that:-

“Each one has his own cause of action arising out of the liability to pay tax individually and the petition of each one would be a separate and independent petition and each such person would be liable to pay legally payable court fee on his petition. It would be a travesty of law if one were to hold that as each one uses highway, he has common cause of action with the rest of truck pliers.”

12. Of course, as a matter of convenience in that case Hon'ble Supreme Court entertained a common petition after payment of separate fee but in this case even that may not be possible because there would be utter confusion in the pleadings since four different factual matrix have been projected by the petitioners which will have to be answered differently by the concerned respondents which could be best dealt with, when separate petitions are filed after payment of necessary court fees. Petitioners are

permitted to file separate petitions after paying the balance of court fee. Court fee already paid shall be adjusted towards the future petitions.

13. Ordered accordingly.

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(N.Santosh Hegde)
Chairperson

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(Vinod Vaish)
Member

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(D.P. Sehgal)
Member