

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

Petition No.45(C) of 2006

Dated 29th March, 2006

Warana Cable Network
Through its authorized representative
Mr.Govind Mehra
Having its office at
Lal Bahadur Shastri Bhawan
Ground Floor, Warana Nagar
Kolhapur
Maharashtra

....Petitioner

Versus

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

Also at:

M/s Zee Turner Ltd.
Through its Regional Manager
Gr.Floor, 135 Continental Bldg.
Dr.Annie Besant Road. Opp.Glaxo
Worli, Mumbai – 400 018
Maharashtra

2. M/s Bhim Riddhi Infotainment
through its General Manager
Mr.Manoj Upadhye
987/C, Rajeshwari Apts.
1st Floor, Bhui Galli, Laxmipuri
Kolhapur – 416 002
Maharashtra
-Respondents

BEFORE:

HON'BLE MR.JUSTICE N.SANTOSH HEGDE,

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

For Petitioner : Mr.Raghvinder Singh, Advocate

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

ORDER

The Petitioner herein claims to be a Multi Service Operator (MSO) in the cable sector, serving areas within Warana Nagar and Kolhapur, Maharashtra. It is stated that under an agreement dated 1st February, 2000 with Respondent No.1, Broadcaster, Petitioner was directly receiving signals of Zee on a subscriber base of 600 and on that basis he has been paying subscription as per the terms of the agreement between the parties. It contends that most of its subscribers are within Warana Nagar but a few of them are in Kolhapur Town and right from the beginning, Petitioner has been supplying signals to its subscribers both in Warana Nagar and Kolhapur and no objection was ever raised by the first Respondent for this arrangement of the Petitioner. It is further contended that in October, 2005, Respondent No.1, for the first time after three years, sought information regarding subscriber base and the areas in which the petitioner was providing cable service. It is stated that in the said letter three days notice is given to the Petitioner for providing the required information failing which the Petitioner's signals were threatened to be disconnected. A copy of the said letter dated 17.10.2005 received by the Petitioner is annexed to the Petition as Annexure P-I. The Petitioner contends that this notice was given to coerce the Petitioner to subscribe to a more expensive bouquet of channels and is not a bonafide notice.

2. The Petitioner further contends that in spite of the notice dated 17.10.2005, signals of the Petitioner were not disconnected since the representative of the Petitioner met the representatives of the first Respondent and sorted out the dispute.

3. It is further stated that in or about December, 2005, Petitioner received another letter from Respondent No.1 whereby it was intimated that in view of the fact that Telecom Regulatory Authority of India (TRAI) has announced a 4% increase in the subscription rate on account of inflation w.e.f. 1st January, 2006, the first Respondent would be demanding a hike of 4% on the agreed subscription towards the bouquet of channels provided by the first Respondent. It is stated that the Petitioner refused to pay the said increase since the notification of the TRAI increasing 4% hike in the subscription rates was stayed by this Tribunal in Appeal No.12(C) of 2005. The Petitioner contends that Respondent, however, orally threatened to disconnect the signals on some ground or the other unless the said 4% increase is paid. The Petitioner, however, to avoid any confrontation paid a sum of Rs.5 lakhs on 9th January, 2006 which is equivalent to the subscription upto the month of July, 2006 and which has been received and acknowledged by the first Respondent.

4. It is further contended that in spite of the above, the first Respondent tried to reopen the issue of unauthorized transmission of signals by its letter dated 21st January, 2006 based on the area mentioned in the subscription agreement between the parties which according to the first Respondent confined the distribution of its signals by the Petitioner to Warana Nagar only. The Petitioner contends that this agreement, though signed by the Petitioner, was blank when it was signed and the area of distribution in this agreement was subsequently included by the first Respondent which is evident to naked eye from the ink, pen and the writing as compared to the contents found in Page 1 of the agreement.

5. Thus, the contention of the Petitioner in this Petition is that the agreement between the Petitioner and the first Respondent entitled the Petitioner to transmit the

first Respondent's signals not only in Warana Nagar but also in some places in the city of Kolhapur. At any rate, the Petitioner submits that once the Respondent gave up the allegation made in the first notice dated 17.10.2005 and did not act upon the same and thereafter received a sum of Rs.5 Lakhs in advance towards the subscription, it could not have reopened the same issue once again and that too after receiving additional sum from the Petitioner. Therefore, the Petitioner contends that signals which were disconnected during the pendency of this Petition should be restored and Respondent be directed to pay damages for the loss of business suffered by the Petitioner on account of disconnection. We must note herein that the prayers have been modified because of the changed position in as much as the signals were disconnected during the pendency of the Petition.

6. On behalf of the Respondents, it is contended that the agreement between the Petitioner and the first Respondent clearly stipulated that Petitioner was entitled to transmit signals only in the Warana Nagar area and that too in the Warana Nagar Cooperative Society premises. It is contended that the Petitioner had been admittedly transmitting signals in the city of Kolhapur and other villages extending as far as 45 Kilometers from Warana Nagar. It is further contended that even as per the latest agreement of 23rd September, 2005, the area of distribution of the Petitioner has been confined to Warana Nagar only, therefore, the Petitioner is not entitled to the relief sought for in view of the fact that under Regulation 4 of "The Telecommunication (Broadcasting & Cable Services) Interconnection Regulation 2004" any unauthorized transmission of signals can be treated as a basis of disconnection of the signals. Therefore, the first Respondent was well within its legal limits to disconnect the signals.

7. Having heard the learned counsel for the parties and having perused the documents, we notice that in the various agreements signed between the parties, the area of transmission of the signals has been confined to Warana Nagar and originally the subscription base was shown as 500 which was later increased to 600. While the Petitioner contends that right from the first agreement in the year 2002, it was a fact known to the first Respondent that Petitioner was transmitting signals to its subscribers

in Warana Nagar and also in some places in Kolhapur and the Respondent had no objection for the same, hence, was receiving subscriptions without any demure. It is also noticed from the records that for the first time in the year 2005, the Respondent issued a notice on 17.10.2005 making allegations that it has come to its notice that the Petitioner has been transmitting signals in certain areas mentioned in the said notice unauthorisedly. The said notice also mentioned that the Petitioner has a subscriber base of 600 but it was transmitting signals to much larger number than 600. Therefore, under-declaration of the subscriber base also amounts to breach of agreement which disentitles the Petitioner from receiving signals of the first Respondent and the Agreement is liable to be terminated for material breach of the terms of the agreement. However, it is seen that in spite of said notice of termination, no further action was taken by the first Respondent to terminate the signals. In fact, on the contrary, as alleged by the Petitioner, the first Respondent sent a letter dated 15th December, 2005 calling upon the Petitioner to pay an enhanced subscription of 4% as permitted by the TRAI notification. To be precise, this was about two months after the notice of termination dated 17.10.2005. That apart, on 9th January, 2006, the second Respondent has received a sum of Rs.5 lakhs from the Petitioner towards the balance subscription payable by the Petitioner as well as an advance payable upto the month of July, 2006.

8. Regulation 4 of The Telecommunication (Broadcasting & Cable Services) Interconnection Regulation 2004, as contended by the first Respondent, does empower the signal supplier to disconnect the signals if the receiver of signals has been transmitting the same unauthorisedly to the detriment of the commercial interests of the signal supplier. This is only an enabling provision and is not a mandatory provision. It is open to the signal supplier concerned like Respondent No.1 herein, to disconnect the signals on the ground of unauthorized transmission if it so desires or not to do so for reasons of its own by condoning the act of such service provider. In the instant case, it is the contention of the Petitioner that from the beginning of its business relationship with first Respondent it has been supplying signals not only in

Warana Nagar but at a few places in Kolhapur and it was within the knowledge of the first Respondent to which first Respondent did not object. Of course, it is specifically contended by the Petitioner that all the agreements were signed blank and most of the contents were filled in by the first Respondent without the concurrence of the Petitioner. We would not go into this disputed question since it is not necessary for the disposal of this Petition. Suffice it to say that the conduct of the Respondent in making a demand for increased subscription after the first notice and the receipt of the sum of Rs.5 lakhs thereafter, are sufficient indications of the fact that the first Respondent has condoned the act of unauthorized transmission. Therefore, in our opinion, on the very same cause of action it is not open to the first Respondent to issue another notice of disconnection on the ground of unauthorized transmission unless, of course, the first Respondent has material to establish that after the first notice a fresh cause of action has arisen; but that is not the case of the first Respondent. Therefore, in our opinion, the Petitioner is justified in complaining that his signals have been disconnected not on a genuine ground of illegal transmission but for collateral purpose.

9. Be that as it may, above finding of ours would not entitle the Petitioner to transmit signals to more than 600 subscribers because that is the subscriber base agreed between the parties in regard to which the Petitioner has not made any grievance and is paying subscription on that basis. Therefore, the Petitioner's supply of signals will have to be restricted to only 600 subscribers and not more than that. If he wants to supply signals to more consumers, then he will have to bring it to the notice of the Respondent No.1 and pay enhanced subscription proportionately.

10. For the reasons stated above, this Petition is partially allowed. There shall be a direction to first Respondent to restore signals to the Petitioner as was being done prior to the date of disconnection on same terms and conditions within a week from today. At the same time, we restrain the Petitioner from transmitting signals to more than 600 subscribers unless it brings to the notice of the first Respondent the increased subscriber base and pay proportionate increase in the subscription.

11. Petition is allowed to the extent stated hereinabove.

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

.....
(Vinod Vaish)
Member

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