

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

DATED 14th SEPTEMBER, 2007

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Petition No. 253(C) of 2006

Sri Gowthami Network
D. No. 79-2-13, II nd Floor,
Complex,
Tilak Road, Rajahmundry-533 103
E.G. District, A.P.
Through its Managing Partner,
Shri G. Butchaiah Choudary

Sri Uma Sankara

.....Petitioner

Vs.

Channel Plus-AP,
367/369, Anna Salai,
Teyampet
CHENNAI-600 108

...Respondent

BEFORE:

**HON'BLE MR. JUSTICE ARUN KUMAR, CHAIRPERSON
LT.GEN. D.P. SEHGAL(RETD.), MEMBER**

For Petitioner : Mr. Navin Chawla, Advocate

For Respondent : Mr. Maninder Singh with
Mrs. Narayani K. Sibal,
Mr. Ayush Agarwal, Advocates

ORDER

The petitioner, Sri Gowthami Network is a multi-system operator (MSO) and has asked the respondent, Channel Plus-AP, for supply of signals through decoders and SIM-cards. The respondent has denied its signals to petitioner despite repeated requests and hence this petition.

2. The bone of contention is the contradictory list of cable operators said to have been submitted by the petitioner on which the respondent is not in a position to act. As per the Regulation, the petitioner submitted a list of 8 cable operators to the respondent. The respondent however found that these cable operators were not affiliated to the petitioner and petitioner had sinister designs to get the signals of the respondent to eventually capture the whole market. It was submitted that it was in this background that the petitioner was ready to pay for 40,000 subscribers even though in the list of cable operators submitted, the total number of subscribers are 2165. The petitioner contends that it has laid a large infrastructure for carrying the signals and has agreements with other broadcasters and is receiving signals of other broadcasters. It therefore contends that in accordance with the Regulation it is entitled to signals of the respondent in a non-discriminatory manner. Though initially the petitioner had submitted a list of 8 cable operators but the respondent in its reply produced another list of the petitioner giving a list of 27 cable operators and this list was dated 18.2.2006. The respondent therefore felt that the petitioner had not come with clean hands. Mr. Navin Chawla, learned counsel for the petitioner, however, said that in the petition itself it was mentioned that the petitioner had expanded its business and at one point of time it had 39 cable operators with the connectivity of approximately 10,000. Because of the varying claims and the respondent's questioning the antecedents of the petitioner including the list of affiliated cable operators, we appointed a local commissioner vide our Order dated 11.7.2007. The case was finally heard on 12.9.07 along with the local commissioner's report.

3. We were made to go through the agreements with the other broadcasters, i.e., ETV, Zee TV, VISSA and also the details of decoders received by the petitioner from these broadcasters. The petitioner also made us go through the joint surveys carried out by it with Maa TV and Zee TV, The respondent, however, took the position that no survey was carried out with the Zee TV and the document produced by the petitioner was fabricated. By the time this case was heard, the petitioner had given an additional list making the total list of 24 cable operators. The commissioner was directed to go and visit and verify the details of all the cable operators and whether the petitioner was having a network which qualifies him to get the signals as MSO from the respondent. The local commissioner carried out his inspection in presence of representatives of petitioner and respondent. The relevant paras, viz., paras 3, 7 & 8 of the report of the local commissioner are reproduced below :-

*“3. Accordingly, in presence of Mr. T. Ramalingeswararao,
(on behalf of the petitioner) and Mr. K.V.V.*

*Manager
Kotlingam, Executive (on behalf of*

the respondent), I visited the office of the petitioner, at 79-2-13, Sri Uma Shanker Complex, Tilak Road, Rajahmundry. The office is situated in premises, which, I was informed, was taken on rent. The office consisted of a number of rooms, including a small studio for news reading. In the control room, a number of decoders were seen. I physically verified the decoders and SIM cards in respect of the MAA, VISSA, ZEE, ETV, ETV-2 channels. I was satisfied that said channels were being received through the decoders (and SIM cards) at the location.

7. *In a few cases the respondent challenged that the cable operator was 'dead end' and was actually not distributing signal to subscribers in the area. I then verified one or two customers in such areas, too. I asked the customers to name the local operator from whom the signal was taken. In all cases where challenge was made, the customer correctly identified the local operator.*

8. *All the above information was recorded on the spot at the back of the photocopies of the agreements of LCO's with the petitioner. The notes of the proceedings are annexed herewith."*

4. The learned Commissioner also gave details of all the SIM cards and the decoders of all the other broadcasters and channels. In respect of verification of cable operators, the commissioner states as under :-

"5. I then proceeded to verify the list of LCO's given at page 214- 215 of the paper book. Of a total of 24 operators in that list I could physically verify the location and actual existence/working of 23 operators (I left out the 24th operator as it was late night by the time I finished and the last operator was a fair distance away!)."

5. During the arguments, Mr. Maninder Singh, learned counsel for the respondent, stated that all the operators were registered after the petition was filed, i.e., on 19.7.07. This aspect has also been covered by the commissioner. We also found from the report that in two cases, the cable operators have control rooms on electric poles and possessed no TV sets to verify the quality of signals being received. The petitioner, however, said that these cable operators are in slum areas and are still functioning as cable operators with this infrastructure – though somewhat poor.

6. The respondent contended that the agreement signed by the petitioner with other broadcasters was for varying subscriber base and also that these figures did not tally with the report of the survey, e.g., in ETV case, the survey report carried out between 16.6.07 to 18.6.07 has found 16,668 subscribers whereas the agreement is signed for 20,000 subscribers. It was very strongly submitted by the respondent that in view of the falsehood in submission of documents and declarations, the petitioner does not qualify to get signals under Clause 3.2 of the

Regulation. In support of the respondent's case, Mr. Maninder Singh quoted a case reported in (1994) 1 Supreme Court Cases 1 [S.P. Chengalvarya Naidu(Dead) By LRs Vs. Jagannath (Dead) By LRs and Others], the relevant extracts of which are as under :

“We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

7. On this legal issue, Mr. Chawla quoted a judgment of TDSAT in a case titled Mahadev Cable Net., Surat Vs. Star India Pvt Ltd., Mumbai (Petition No. 70(C) of 2006) where it had been ruled that the only reason where a broadcaster can refuse signals is on outstanding dues. We had ruled at that time that any other factors like other record of the signal seeker will not affect the broadcaster in any way and the broadcaster is bound by “must provide” clause under Clause 3.2 of the Regulation.

8. This is a very peculiar case where a petitioner MSO has a requisite infrastructure and has a subscriber base and is getting signals from broadcasters but is being denied signals from the respondent broadcaster. The respondent actually has no basis to refuse the signals but is doing so on the assumption that the petitioner has sinister designs to get signals from this broadcaster and then capture the whole market. How could it be when the petitioner has already a subscriber base and is MSO and is servicing a large number of subscribers of other broadcasters but has not been able to capture the whole market qua the other broadcasters. The statement that the petitioner is ready to pay for 40,000 subscribers whereas it initially had only 8 cable operators with approximately 2165 subscribers is also creating some doubts in the mind of the respondent. Though on the other hand the petitioner's contention was that since the respondent was not agreeing to give signals it had agreed for a higher subscriber base to begin with. Be that as it may, we are not able to understand as to why a respondent should refuse such an offer when it is getting additional revenue from the petitioner. We would have given some consideration to respondent's contention and stand but since the petitioner already has subsisting agreements with other broadcasters we are unable to accept the apprehensions of the respondent. In a market where healthy competition is the name of the game, we think the respondent should not hesitate to give signals on unjustified grounds to any seeker of the signals. It gives an impression to us that either there is ulterior motive of the respondent or perhaps earlier business dealings or it has some understanding with some other MSO which is not allowing it to proceed in accordance with the Regulation in the instant case.

9. We do agree that the petitioner initially came with a request for signals for its 8 affiliated cable operators. The point that it has now some more cable operators registered as late as 17.7.07, does not go against the petitioner at all. Since the petitioner has signals of other broadcasters it is but natural that it would like to expand its business and would have more cable operators. This cannot be the basis to deny signals to the petitioner. We therefore do not accept the arguments put forth by the respondent because it amounts to denial of a legitimate request made by the petitioner which is not justified and we would not permit it. However, in this case, we will consider limiting the initial request made by the petitioner to 8 cable operators.

10. In view of the above and since the petitioner initially asked for signals of the respondent for 8 cable operators for a subscriber base of 2165, we direct the respondent to start supply of signals to the petitioner within 72 hours for a subscriber base of 2000. We have reduced the subscriber base by 165 keeping in mind the local commissioner's report where two cable operators have been found to be lacking in infrastructure. Parties will enter into agreement in accordance with the Regulations.

11. We place on record our appreciation for Mr. Meet Malhotra, learned Local Commissioner, whose services and help went a long way in finalisation of this case.

12. The petition is disposed of.

.....J
(Arun Kumar)
Chairperson

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