

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

**Dated 4<sup>th</sup> December, 2009**

**Petition No.129(C) of 2009**

M/s Friends Cables  
Through its Proprietor  
Mr.S.N. Pandiarajan  
D-7/W-8, Alagarsamy Kovil Street  
Gudalur – 625 518  
Theni District  
Tamil Nadu

.....Petitioner

Versus

Star Den Media Services Pvt.Ltd.  
Through its Director  
15, Jagannathan Road  
Nungambakkam  
Chennai – 600 034

.....Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON  
HON'BLE MR. G. D. GAIHA, MEMBER**

For Petitioner : Mr.Jayant Mehta, Advocate

For Respondent : Mr.Gopal Jain, Advocate  
Mr.Gaurav Juneja, Advocate

**JUDGEMENT**

**S.B. Sinha**

The petitioner is a Multi-System Operator (MSO) and, inter alia, is engaged in the business of reception and distribution of satellite television to its local cable operators. It is a

registered cable operator for the town of Gudalur being registration No.168 issued by the Post Master, Bodinayakanur Head Post Office.

The respondent is a broadcaster. It has been providing signals for Vijay TV, Star Movies and National Geographic Channels.

2. It is not in controversy that the petitioner was a regular subscriber of the respondent. Its customer ID was 10004132. It has been paying its subscription charges through the distributor of the respondent, namely, TVRO System, Madurai. Although, the agreement between the parties was to expire in December, 2006, the respondents switched off the signals of the petitioner in November, 2006. The petitioner contends that it had been requesting the respondent for activation of its signals but no response thereto was received by it.

It, in the aforementioned circumstances, approached the Telecom Regulatory Authority of India (TRAI) by a letter dated 18.08.2006 which reads as under:

“My Customer Type CATV Customers Code 9010018799 for Zee Turner. I paid the monthly dues properly. The agreement signed copy from 16.09.2006 to 15.09.2007 enclosed. I was renewal my agreement and activate the channels. If there is any dues in it I will pay.

Here I am enabling my postal licence Xerox.

A copy of the said letter was marked to the respondent.

The Authority, however, by its letter dated 22.12.2008 opined that it was unable to take any action on the said complaint as the petitioner had not disclosed any specific instance of violation of the tariff order specified therein or the Regulations framed by it.

In view of the fact that despite several requests, the respondent failed and/or refused to supply signals of Vijay TV, Star Movies and National Geographic Channels to the petitioner, it has approached this Tribunal praying, inter alia, for the following reliefs:

“A. direct the Respondent to provide and activate the signals of Vijay TV, Star Movies and National Geographic channels to the Petitioner in accordance with Regulation 3.2 of the Interconnect Regulations.

B. direct the Respondent to renew the subscription Agreement between the parties on mutually agreed terms and conditions and further direct that duly counter signed copy of such an agreement be provided to the Petitioner;”

3. The respondent in its reply, inter alia, contended:

- (i) The petitioner admittedly was a defaulter as in the petition itself it has accepted that a sum of Rs.10,082/- was payable to it. In fact, a sum of Rs.45,793.55p was due and owing from the petitioner.
- (ii) The petitioner being a defaulter in terms of clause 3.2 of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, it is not entitled to any relief.
- (iii) It has not complied with the requirements of clause 9 of the interconnection agreement.

4. Before, however, we advert to the rival contentions of the parties, we may notice some developments during pendency of this proceeding.

It appears from the order-sheet dated 15.07.2009 that the petitioner had paid a sum of Rs.10,000/- to the respondent in the meanwhile. However, the counsel for the respondent contended that the amount outstanding from the petitioner is Rs.57,793/- and thus, a sum of Rs.47,793/- was still due.

5. From the order-sheet dated 01.10.2009, it appears that this Tribunal noticed that the petitioner's request for supply of signals had not been acceded to by the respondent. It is in the

aforementioned situation this Tribunal noticed:-

“The counsel for respondent further submits that the details as on date, which are required for providing fresh signals, have not yet been furnished by the petitioner to the respondent. Counsel for the respondent states that the application form, for asking signals, has already been sent to the petitioner by the respondent alongwith letter dated 28.07.2009. Counsel for the petitioner contests this statement of the counsel for the respondent. Counsel for respondent states that another copy of application form will be handed over to the petitioner on 05.10.2009. Counsel for the petitioner submits, on instructions from his client, who is present during the hearing, that the petitioner will fill up the application and submit the same to the respondent by 07.10.2009. Counsel for the respondent assures that the application of the petitioner will be examined within one week’s time after its receipt.

A provisional payment of Rs.47,793.58 vide cheque dated 07.10.2009, as demanded by the respondent being outstanding amount has been handed over by the counsel for the petitioner to the counsel for the respondent in the court. The counsel for petitioner submits that this payment is without any prejudice to the rights and contentions of the petitioner and subject to adjustment.”

From the order-sheet dated 27.10.2009, it furthermore appears that certain disputes remained between the parties in regard to furnishing of some informations by the petitioner as desired by the respondent.

One of us (Mr.G.D. Gaiha, Member) observed:-

“I think this case is a fit case, in which a meeting between the parties will be useful. Let the meeting between the parties take place at Chennai office of the respondent on 02.11.2009 at 11.00 AM to sort out the issues amicably. In case, the issues are settled in the meeting, the signals should be provided to the petitioner forthwith by the respondent.”

However, before us on 10.11.2009, the learned counsel for the parties stated that no settlement could be arrived at.

6. Mr.Vikas Mehta, learned counsel appearing on behalf of petitioner urged:

- (i) The petitioner being not a stranger to the respondent, the attitude on its part to demand documents/informations at various stages must be held to be malafide.
- (ii) The petitioner although, owed to the respondent only a sum of Rs.10,000/-, it had paid the entire amount as was demanded by it from time to time.

Our attention in this behalf has been drawn to a letter dated 25.12.2006 issued by Orbit Turo System, which is stated to be the distributor of the respondent and addressed to the petitioner which reads as under:

“As your account total amount of debit balance is as per October statement is Rs.63,652 (Rs.63652) given by us

Total amount	63652
(06) October Received	10000
	53652
Less Hungama amount	23570.40 (1683 x 14)
	30,082

The total balance 30,082 is a debit as on December 06.

Received Hungama & Histort channels boxes on good condition from Mr.Pandirajan.”

The said amount of Rs.30,082/- has been paid by the petitioner in the following manner:

- (i) Payment of Rs.10,000/- on 25.12.2006
- (ii) Payment of Rs.10,000/- by cheque No.5755997 dated 26.6.2007
- (iii) Payment of Rs.10,082/- by cheque No.002533 dated 8.7.2009.

- (iii) Knowing fully well that the petitioner was an MSO and had been asking for grant of signals directly, the purported objection that the same is impermissible in law must be held to be without any basis in view of the decision of this Tribunal in Ortel

Communications Ltd. Vs. Yashoda Enterprises (Petition No.141(C) of 2008) disposed of on 21.10.2008 which has since been affirmed by the Supreme Court of India.

The petitioner although had been obtaining supply of signals from one Akash Cable, another MSO, it has discontinued the same and as such the respondent's contention that it should continue to obtain signals from the same MSO must be held to be wholly misconceived.

- (iv) The respondent even in subsequent meetings with the petitioner having fixed the subscription fee for a sum of Rs.30,000/- per month for all its channels, although the petitioner is not interested in receiving channels of Hungama and History, the action on its part must be held to be unfair. The terms of the agreement should have been fixed by the respondent having regard to the said factor. The petitioner has not withheld any document whatsoever as would appear from the fact that the respondent has not pointed out as to which documents asked for by it from the petitioner have not been supplied.

7. Mr.Gopal Jain, learned counsel appearing on behalf of the respondent, on the other hand, submitted:

- (i) The subscription agreement having expired in November, 2006, the prayer of the petitioner for renewal thereof is not maintainable.
- (ii) In terms of the interconnect regulations, the petitioner being entitled only to ask for a new connection, it was bound to comply with the requirements of Regulation 9 of the Interconnect Regulations.
- (iii) The petitioner being an admitted defaulter at least for a sum of Rs.10,000/- it could not take recourse to clause 3.2 of the Regulations and thus, as on the date of the filing

of the application, the petition was not maintainable.

- (iv) The petitioner having approached the TRAI for redressal of its grievances and the same having been denied to it, this application on the original side of this Tribunal must be held to be not maintainable.

8. The question which arises for consideration in this petition is as to whether the petitioner in the facts and circumstances of the case is entitled to any relief?

9. The TRAI(Authority) in exercise of its powers, inter alia, conferred upon it by Section 36 of the TRAI Act, framed Regulations called “The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2003” (hereinafter called for the sake of gravity as ‘Regulation’). It was amended in the year 2006.

Clause 2(p) of the Regulation define subscriber as under:-

“(p) **“subscriber base”** means the number of subscribers –

(i) as agreed to by two service providers in a non-addressable system on the basis of which payments are made by one service provider to the other, or

(ii) as reflected by the Subscriber Management System, where addressable systems are employed.

Clause 2(q) of the Regulation define Subscriber Lines Report or SLR as under:-

“(q) **“subscriber line report”** or **“SLR”** means a monthly statement wherein, in a non-addressable system, a multi system operator and a cable operator agree upon the subscriber base for that month.

Clause 3.2 of the Regulation reads as under:-

“3.2 Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator; Multi system operators shall also on request re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators.

Provided that this provision shall not apply in the case of a distributor of TV channels having defaulted in payment.

Provided further that any imposition of terms which are unreasonable shall be deemed to constitute a denial of request.”

Clause 9 of the said Regulation reads as follows:

**“9. Finalising Subscriber Base at the time of first agreement**

**First agreement between Multi System Operator and Cable Operator**

9.1 In non-addressable systems, while executing an interconnection agreement for the first time between a multi system operator and a cable operator, the parties to the agreement shall take into account the subscriber base of the cable operator on the basis of the Subscriber Line Report (SLR) where such SLR exists. Where such SLR does not exist, this shall be negotiated on the basis of the evidence provided by the two parties on the subscriber base, including the subscriber base of similarly placed cable operators and local survey.

**Explanation**

The Subscriber Line Report (SLR) is only an indicative basis for arriving at the subscriber base and the subscriber base as mutually agreed by the two parties could be more than or less than the number indicated by the SLR.

**First agreement between Multi System Operator and Broadcaster**

9.2 In non-addressable systems, while executing an interconnection agreement for the first time between a multi system operator and a broadcaster, the multi system operator shall furnish a list of the cable operators who will be getting signals from its network along with their subscriber base. The parties to the agreement shall take into account the subscriber base of cable operators connected to the multi system operator while negotiating the subscriber base of the multi system operator. For the consumers proposed to be directly served by the multi system operator, the procedure as laid down in sub-clause 9.1 of this regulation shall be followed.”

Although existence or validity of the said Regulation is not in question, applicability thereof arises for our consideration. There cannot be any doubt or dispute that an agreement

comes to an end on the expiry of its tenure. However, it is possible for the parties to renew the said agreement even after lapse of some period and give the same a retrospective effect and retroactive operation.

10. Mr.Gopal Jain has produced before us an order dated 13.07.2007 of this Tribunal passed in Petition No.105(C) of 2007 (Studio 57, Ahmedabad Vs. Star India Pvt.Ltd.) wherein it was opined:-

“By this petition, the petitioner prays for a direction to the respondent to renew the subscription agreement and restore signals of Star Channels. The agreement between the parties came to an end on 31.12.06. Thereafter there is no agreement. Therefore, we cannot issue such direction. The petitioner has to approach the respondent in accordance with regulations and negotiate for the purpose of a fresh agreement for present. Let the petitioner take steps accordingly and the respondent will consider the application the petitioner, if made, for this purpose expeditiously.”

11. We, however, are not aware as to the factual matrix involved in the said matter. In fact, the general legal principle applied therein may not be in dispute. We, in this petition, are however, dealing with a different fact situation. The respondent is said to have disconnected supply of signals on 06.11.2006, although the agreement was to expire in December, 2006. If the petitioner is right in its contention that the respondent's action was malafide in view of the fact that despite several requests it had not been granting direct connection to it, in our opinion a separate approach is required for resolution of the dispute. It is true that the petitioner did not pay a sum of Rs.10,000/- to the respondent, but it must also be noticed that no evidence was produced to prove as to whether for the said purpose an invoice was served upon the petitioner or not.

12. Regulations framed by the Authority in the year 2003 and as amended in the year 2006 mandate the broadcaster not only issue to invoices every month but also to prove that the same had been served upon the MSOs before an action in terms of the Regulation can be taken.

13. Be that as it may, the petitioner indisputably has been requesting the respondent to grant direct connection. It is possible that, it in the meanwhile, have been obtaining signals from another MSO, namely, M/s Akash Cable. The respondent, in law, however, cannot refuse to grant direct signals to an MSO asking for the same for more than one reason:

- (a) Because it is the mandate of the regulations;
- (b) The Supreme Court of India in *Star TV (P) Ltd. Vs. Sea TV Network Ltd.* – 2007(4)

SCC held as under:-

“15.3 The difficulty arises when the broadcaster as in the present case appoints or enters into an agreement with a distributor, who in turn is an MSO and who in turn has his own business because in such a case such an agent-cum-distributor is also a competitor of the MSO who seeks signals from the broadcaster. We are living in a competitive world today. If under the Interconnection Regulations an MSO is entitled to receive signals directly from a broadcaster, if directed to approach his competitor MSO then, discrimination comes in. The reason is obvious. The exclusive agent of a broadcaster has his own subscriber base. His base is different from another MSO in the same territory. If that another MSO has to depend on the Feed to be provided by the exclusive agent of the broadcaster then the very object of the Interconnection Regulation stands defeated.”;

- (c) This Tribunal in *Ortel Communications Ltd. Vs. Yashoda Enterprises* (Petition No.141(C) of 2008) in its order dated 21.10.2008 held as under:-

“10. During the course of arguments, the counsel for Respondents raised the issue whether the interpretation sought to be given by the Petitioner would not result in a situation where every local cable operator would seek signals directly from the broadcasters. It should be pointed out that this situation already exists. Not only do some local cable operators seek signals directly from the broadcasters but more importantly, this is what is done by the DTH operators and Head ends in the sky (HITS) operators. These entities receive signals directly from the broadcasters and retransmit the same to the consumers directly. They are covered under the term ‘distributor of TV channels’. What is important is their ability to receive signals directly from the broadcaster and retransmit the same. DTH and HITS systems operate in an addressable mode. On the other hand, in a non-addressable system, if most local cable operators do not receive signals directly from the broadcasters but from an MSO, it is not because of any restriction in the Regulations or even

technology but because of the investment involved in being able to receive signals directly from a broadcaster in digital mode and converting them into analogue mode for retransmission to consumers. It is because of this inability to invest that most cable operators receive the signals from an intermediary viz., MSO in an analogue mode. It is evidently the reason why the term ' local cable operator', which is widely used commercially, does not find a place in the definitions. A practice, albeit common, necessitated by commercial considerations, need not and should not, in our view, become a legal requirement. We accordingly do not agree with the view that a multi system operator is one who receives signals from the broadcaster and retransmits the same to one or more local cable operators. What is important is the ability to receive signals of TV channels from the broadcaster and retransmit the same to the consumers directly or indirectly, including through local cable operators.”

It was furthermore held -

“11. The counsel for Petitioner drew our attention to the recommendation said to have been made by the Telecom Regulatory Authority of India (TRAI) on 15.7.2008 to redefine the term multi-system operator (MSO) to mean any person who manages and operates a multisystem cable television network to provide cable television service to one/multiple local cable TV operator (s) or to any other distribution platform permitted and licensed by the government. Admittedly, this is only a recommendation supposed to have been made by TRAI and needless to say, requires examination and decision by the competent authority. Even as on today, let alone on the date of application of the Petitioner to the Respondent or even on the date of filing this petition, the definitions cited in para 6 above hold ground and only they can be the basis for consideration and decision in this case. We therefore hold that this contention of the Respondent is inadmissible. Outside the framework of this case, it appears to us that the proposal to redefine the term ‘multi system operator’, if true, would warrant a careful examination by the appropriate authority as it has the potential of mandating a hierarchy and bringing in rigidity in a scenario of evolving technology, and possibly adding to the costs.”

The judgment of this Tribunal is said to have been upheld by the Supreme Court of India.

Indisputably, ordinarily Regulation 9 would be applicable in terms whereof an MSO is bound to provide informations to the broadcaster with regard to (i) exact area to prove franchises

and linkage thereof with cable operator; (ii) the number of subscribers; (iii) SLR for the number of existing relationship or for local survey and (iv) for the purpose of direct payment.

Here, however, the agreement between the parties was not the first one. Moreover, the parties themselves during pendency of these proceedings have entered into negotiations for the purpose of entering into an agreement. We are informed by the learned counsel for the petitioner that it not only had supplied all requisite informations including the number of subscribers but also filled up the agreement form. In the above situation, in our considered view it could be wholly improper to push the petitioner to another round of litigation.

14. Mr.Jain, however, has drawn our attention to the existing agreement to contend that the box in page 2 thereof has not been filled and no plan as is required, has been supplied.

From the agreement it appears that all primary informations relevant for the purpose of entering into an agreement between a broadcaster and an MSO have been supplied.

The petitioner contends that it would not be liable to pay service tax. So far as the necessity to submit a plan is concerned, it appears that the name of the MSOs and the respective areas where they have been serving has been indicated by providing some boxes (apparently to show different parts of the town in question). However, the learned counsel for the petitioner states that a plan shall be supplied.

15. Our attention has been drawn to a letter dated 21.10.2009, paras (ii) and (v) whereof read as under:

“(ii) We further wish to draw your attention to page 6 of your Letter wherein you have indicated ‘Friends Cable’ as one of the proposed area of operation. In this regard we request you to please clarify the area that has been signified by you as ‘Friends Cable’.

- (v) Copy of latest monthly invoice showing dues (if any) from the presently/ latest affiliated MSO has not be furnished by you.

In light of the above, we would request you to immediately furnish us abovementioned details and/ or documents so as to ascertain veracity of you claim and also to determine whether signals can be provided directly by STAR DEN or not.”

Our attention has also been drawn to a letter dated 05.11.2009, para 2 as also the operative part thereof read as under:

“2. Despite our repeated requests, you failed to furnish/disclose your area wise subscriber list during the Meeting. We made it very clear to you that in the absence of detailed information regarding the names of the cable operators who will be getting signals from your network along with their subscriber bases as stipulated in clause 9 of the TRAI’s Interconnection Regulation dated 04.09.2006 (“Regulations”), it would not be possible to commence negotiations.”

In the light of the above, we request you to:

- (i) Clarify whether you are interest to take a feed from said Akash Cable or from us directly;
- (ii) Provide us with subscriber information as stipulated in Clause 9 of the Regulations well in advance, in case you want to take feed from us directly.”

So far as the paragraph 2 of the above letter is concerned, in our opinion the same is wholly irrelevant as the petitioner in no uncertain terms had been informing the respondent that no other MSO should come in between the petitioner and the respondent as it would take signals from the respondent directly. In that view of the matter, the first request in the operative part of the letter may also be held to be irrelevant.

So far as the request No.2 is concerned, again the petitioner had all along been making its position clear.

16. It is true that ordinarily in a civil suit a plaintiff is granted a relief as was available to him to the date of institution of the suit. The jurisdiction of this Tribunal having regard to the provisions contained in Sections 14 and 14A of the TRAI Act must be held to be somewhat

different than an ordinary civil court. Any decision rendered by the Tribunal ultimately may affect the consumers. This Tribunal, therefore, while granting reliefs to the petitioner would be entitled to not only consider the issues between the parties keeping in view their respective claims and counter-claims but also the interest of the consumers as also the public interest.

Even, under the Code of Civil Procedure, 1908 the Civil Courts would be entitled to take in consideration the subsequent events having regards to the provisions contained in Order 7 Rule 7 thereof which reads as under:-

“7. **Relief to be specifically stated** – Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.”

The Supreme Court of India in Shiv Kumar Sharma Vs. Santosh Kumari - AIR 2008 SC 171 observed as under:

“No doubt, the court in an appropriate case, even in a civil suit may mould a **relief** but its jurisdiction in this behalf would be confined to Order VII, Rule 7 of the Code of Civil Procedure. [See Bay Berry Apartments Pvt.Ltd. and Anr. v. Shobha and Ors. 2006(10) SCALE 596 and U.P. State Brassware Corpn. Ltd. and Anr.v. Udai Narain Pandey (2006) 1 SCC 479].”

In that case relief of damages have not been claimed in the suit although was available to it and, therefore, in Shiv Kumar(supra) it was found that reliefs could not have been moulded.

17. Reliefs are required to be granted to one party or to the other not only keeping in view the materials brought on records by them but also the subsequent event as also their conduct.

18. The petitioner paid a sum of Rs.10,000/- to the respondent which was accepted by him without any demur. It also paid a sum of Rs.30,082/- as demanded by the distributor of the respondent. It is in the aforementioned situation the claim of the respondent that a sum of Rs.57,000/- was due should be taken into consideration. According to the petitioner the admitted amount outstanding against him was only a sum of Rs.10,000/-. Demand of any other or further sum was, therefore, disputed. The petitioner, however, without prejudice to its rights and contentions even tendered the aforementioned amount to the respondent so that it can continue its business. The respondent accepted the said payment without any demur. It even did not question the correctness or otherwise of the order passed by this Tribunal from time to time in terms whereof not only the payment by way of arrears was found to have been made, but also even the parties had entered into detailed negotiations.

19. We have noticed heretofore that the respondent for one reason or the other had been asking for informations from the petitioner which are not only wholly irrelevant but also not germane for the purpose of entering into an agreement; even a fresh agreement. The respondent, therefore, in our considered opinion having accepted the entire amount which could have been a subject matter of suit at its instance and having entered into a detailed negotiation with the petitioner for the purpose of entering into an agreement with it, must be held to be estopped and precluded from raising a contention that petitioner cannot be granted any relief at this stage having regard to the circumstances which were existing on the date of filing this petition.

20. Even in a civil suit a party waive its rights in this behalf. Submission of Mr.Jain that an original application was not maintainable having regard to the direction of the TRAI cannot also be accepted. Section 11 of the TRAI Act provide for its functions. Our attention has been drawn to sub-clause(iii) of Clause (b) of sub-section 1 of Section 11 which reads as under:-

“(iii) Ensure technical compatibility and effective interconnection between different service providers.”

It, however, does not appear that the petitioner has invoked the aforementioned jurisdiction. Furthermore, the TRAI merely refused to entertain the application at the threshold stating that the petitioner has not furnished the details/particulars of the violations allegedly committed by the respondent. Such a communication on the part of the Authority did not result into recommendation or a decision mandating recourse to only the appellate jurisdiction of this Tribunal and not the original jurisdiction.

In any event, this Tribunal having both the original jurisdiction as also the appellate jurisdiction may consider, in a given case and in the interest of justice a matter to have been moved before it in its appellate jurisdiction although the petitioner has sought to invoke its original jurisdiction. We, therefore, find no merit in the contention of the respondent in this behalf.

21. We, therefore, are of the opinion that the reliefs claimed for by are capable of being suitably moulded having regard to the subsequent event as also conduct of the respondent reference whereto has been mentioned herein. We, therefore, direct the respondent to grant signals to the petitioner within one week from the date of furnishing of the relevant informations as contained in sub-clause 2(ii) and (v) of the respondent in its letter dated 21.10.2009. The petitioner is also entitled to costs of this petition. Counsel's fee assessed at Rs.50,000/-

.....J  
**(S.B. Sinha)**  
**Chairperson**

.....  
**(G.D. Gaiha)**  
**Member**

