

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

Dated 20th November, 2009

Petition No.145(C) of 2009

Mona Cable Network, Saharanpur (U.P.)
Opp. Motal Kualilty, Railway Road,
Ghantagarh, Saharanpur,
Uttar Pradesh – 247001.

.... Petitioner

Versus

ESPN Software India Private Ltd., New Delhi
Having its registered office at
F-40, South Extn. Part-I,
New Delhi-110049.

.... Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON

HON'BLE MR. G. D. GAIHA, MEMBER

For Petitioner : Mr. Arun Kathpalia, Advocate
Mr. Nasir Husain, Advocate

For Respondent : Mr. N. Ganpathy, Advocate

JUDGEMENT

S.B. Sinha

Petitioner herein has filed this application praying inter alia for the following reliefs :-

“A Declare the said Public Notices dated 13.05.2009 in the News papers and the 4.1 notice dated 13.05.2009 to be illegal, null and void and quash the same and/or

B. pass an order thereby restraining the Respondent from disconnecting the supply of signals for ESPN, Star Sports and Star Cricket channels for the Saharanpur area of Uttar Pradesh on the cable television network of the Petitioner and/or

C. Pass such other/further Orders as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.”

The petitioner is a cable television service provider registered under Section 3 of the Cable Television Networks (Regulation) Act, 1995 and is thus an 'MSO'. It is engaged in the business of reception and distribution of satellite television, broadcast signals and other electronic signals primarily to various distributors, franchises, local cable operators and sub-link operators and also directly to individual subscribers on its own and on behalf of the subsidiaries/affiliates/associates/joint venture companies/firm for re-transmission to the local cable operators and their ultimate subscribers.

Parties hereto entered into an agreement on or about 31st July, 2008 for transmitting the signals of the respondent for the territory of Saharanpur. The said agreement was valid for one year.

Prior to entering into the said agreement, an understanding is said to have been arrived at by and between the parties on or about 25th June, 2008, wherefor a memorandum was drawn up, which reads as under :-

“Memorandum of Understanding

1. Against an outstanding of Rs.935106/- (Nine lakh thirty five thousand one hundred six only) Mr.Ravi Arora of ex network, Win cable Network, Saharanpur is paying an amount of Rs.380000/- (Three Lakh eighty thousand), that is settled between us.
2. Mona Cable network will start on Rs.1.5 lac per month from June, 08.
3. By any change if “ALFA MEDIA Pvt. Ltd.” is not switched off the Mona Cable Network will pay Rs.60000/- pm till Alfa Media Pvt. Ltd. is switched off.”

It is stated that the petitioner and the aforementioned Alfa Media Pvt. Ltd. were the only MSOs operating in the Town of Saharanpur and as signals of Alfa Media Pvt. Ltd. were not disrupted, the petitioner was awarded the contract of distributing the signals of the respondent for a sum of Rs.60,000/- per month.

Grand Sports, who is a party to the aforementioned Memorandum of Understanding is said to be the Distributor of the respondent. It has further been contended that Ravi Arora was one of the erstwhile partners of the petitioner.

The respondent, however, sent a notice in terms of Regulation 4.1 of Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (for short the 'Regulations') claiming inter alia a sum of Rs.2,13,268/- being the outstanding dues. It is, however, accepted that a public notice was also issued, inter alia in a newspaper 'Amar Ujala' on 13th May, 2009 wherein 9 MSOs were named. The operative portion of the said Public Notice reads as under :-

“Notice is hereby given to the consumers, Cable TV Operators and general public that signals of the ESPN, Star Cricket and Star Sports Channels will be disconnected to the above named distributors for non-payment of outstanding dues and non-signing of subscription Agreement by them. For the above said reason the viewers will not be able to view these channels after the completion of 21 days from the date of publication of this notice. Some of the events that are scheduled for this period in these channels are, ICC Twenty – 20 World Cup, 2009, Ashes Series between England and Australia and the ICC Championship Trophy.”

It is at that stage this petition was filed.

However, three days prior thereto the amount in question admittedly was paid by the respondent to the petitioner.

Despite pendency of this application, the respondent by a letter dated 10th June, 2009 inter alia contended that the petitioner was guilty of misrepresentation with regard to the actual number of subscribers base as also transmission of its network beyond the agreed area. In the said letter the respondent furthermore alleged that the petitioner might have more than 35000 subscriber base whereas it had been paying subscription fee, only for 1082 subscribers.

In response thereto the petitioner by its letter dated 27th July, 2009 raised the following contentions:-

- i) It has been working within the town of Saharanpur only.
- ii) The agreement had been entered into by the respondent with the full knowledge with regard to the connectivity.
- iii) It was ready and willing to resolve the pending issues amicably.

Respondent, however, despite pendency of this application issued another Public Notice on or about 1st August, 2009, stating:

“Notice is hereby given to the consumers, Cable TV Operators and general public that signals of the ESPN, Star Cricket and Star Sports Channels will be disconnected to the above named distributors for non-payment of outstanding dues transgressing out of area and non-signing of subscription Agreement by them.

For the above said reason the viewers will not be able to view these channels after the completion of 21 days from the date of publication of this notice.”

It is accepted that thereafter several correspondences were exchanged between the parties.

The respondent, however, in its reply contended that the petitioner has 26000 subscribers.

Mr. Kathpalia, learned counsel appearing on behalf of the petitioner would contend :

i) As no amount was outstanding when the notice was issued and as in the letter dated 10th June, 2009, only the purported breach of agreement on the part of the petitioner was the bone of contention of the respondent, allegations of transgression of the agreed area, as also the subscriber base were made by way of an afterthought.

ii) If the respondent thought that the petitioner had breached the conditions of supply during pendency of this petition, it should have approached the Tribunal in that behalf and should not have issued the second Public Notice.

iii) It is incorrect to contend that the petitioner was not ready and willing to sign any agreement as from the letters dated 27th July, 2009 and 13th August, 2009, it would be evident

that offer had been made for entering into an agreement for the subsequent year wherefor even a meeting took place on 24th August, 2009. Another letter for reconciliation of the accounts was also served.

iv) The petitioner has not transgressed the area as alleged by the respondent.

v) The petitioner has also not made any understatement with regard to the number of subscribers as alleged.

vi) Having regard to the price freeze imposed by TRAI the question of any higher base of SLR or furnishing the particulars in relation thereto did not arise.

vii) The contention with regard to non furnishing of SLR is incorrect as would be evident from the following :-

a) The respondent in its Memorandum of Understanding dated 25th June, 2008 did not make any reference thereto and agreed to accept a sum of Rs.60,000/- for transmission of the signals in the city upon negotiations, without any demur whatsoever.

b) Between June, 2008 and June, 2009 the respondent did not make any whisper with regard to SLR.

c) The agreement had also been entered into without making any mention of the SLR.

d) None of the parties to the agreement asked for SLR or variation thereof at any point of time.

e) Respondent had been raising invoices without reference to SLR.

Mr. Ganpathy, learned counsel appearing on behalf of the respondent, on the other hand, urged :-

i) The ground for issuance of the Public Notice so far as the petitioner is concerned, namely – transgression of area was not referable to the petitioner and as he had paid the demanded amount prior to the filing of the petition, this petition was not maintainable.

- ii) The petitioner having started its business with the respondent, it did not intend to interfere with the supply of signals during currency of the agreement,
- iii) The agreement was in relation to a part of Saharanpur City and not the rural areas in which the petitioner has transgressed.
- iv) The petitioner had not taken any step for renewal of the agreement in time.
- v) In any event no consensus had been arrived at by and between the petitioner and the respondent with regard to basis of renewal.
- vi) Number of subscribers of the petitioner attributed by the respondents is on the basis of the informations sought for from the authorities of the Entertainment Tax Act which clearly goes to show that the petitioner had at least 13000 subscribers.

According to the petitioner it had been taking supplies of signals in respect of the 'bouquets' in question for a long time in the names of different partnership firms. The petitioner was a partner in the said partnership firm and allegedly purchased the interest of the other partners to convert the concern into a proprietary one.

The Memorandum of Understanding between the parties was followed by an agreement. There cannot be any doubt or dispute that the parties are bound thereby.

We may notice certain terms of the agreement dated 31st July, 2008, which are as under:

“Clause II

AREA(s) to be served by Affiliate: parts of Sharanpur city

(‘Distribution System(s)’) (Excluding Hotels, Offices & Other Commercial Establishments, Bars, Restaurants, Pubs, Guest Houses, Hospitals, Cinema Halls, Theatres, Public Viewing Areas, Stadium, Clubs and the like for which a separate agreement shall be required)

Clause III TERM

This Agreement is for a fixed period of 12 Months and 1 Day and shall be effective from 31-Jul-08 and 31-Jul-09 (“Minimum Term”). It is agreed between the Parties that upon the expiry of the above said Minimum Term this Agreement shall come to an end.

Thereafter, if the parties agree to extend the term, a fresh agreement shall be executed upon such agreed terms and conditions.”

FEES:

Immediately upon execution of this Agreement, based on a subscriber base as represented by the Affiliate, the Affiliate shall pay to the Licensor, for the term of this Agreement, total subscription fees of Rs.9,39,757/-

For purposes of this Agreement, the ‘Total Subscription Fee’ referred to above shall be equal to the number of Subscribers, declared by the Affiliate, multiplied by the price per Subscriber home multiplied by the number of months (term of the contract).

Based on the representations and subject to fulfillment obligations under this Agreement, by the Affiliate, the Licensor has offered as discount of Rs.1,38,707/- on the total subscription fee and therefore, the subscription fees payable by the Affiliate shall be Rs.8,03,047/- for the term of the Agreement.

Clause (f)

It shall not misuse the Service and shall not conceal/misrepresent about the number of Sub-operators, Sub Affiliates/Cable Operators and the number of their respective Subscribers connected to its Distribution System(s).”

RECORDS AND ACCOUNTS

“8.1 The affiliate shall prepare and provide to the Licensor complete and accurate monthly subscriber base statement (“Subscriber Base Statement”), for the Service, by 7th day of each month detailing as under:

- i) Total number of subscribers, including their name, address and telephone number;
- ii) Maximum Retail prices charged for the Service;
- iii) Such other information as the Licensor may require for determining the Subscription Fees. Upon Licensor’s written request, the Affiliate shall provide number of subscribers by category, tier, location, sub-operator/last mile operator that Licensor may require with prior intimation and sufficient Notice to the Affiliate.

8.2 This obligation shall survive termination of the Agreement until Licensor receives the Subscriber Base Statement for each relevant month and all outstanding monies have been paid.”

It is accepted at the Bar that the number of subscribers of the petitioner was shown to be 1082. The agreement was a subscriber based one. Subscription fee payable by the petitioner must have been worked out on that basis.

The contention of Mr. Kathpalia, however, is that the said figure was arrived at on the basis of the amount of the subscription fee. It may or may not be correct but this Tribunal, while determining an issue between the parties in that behalf, unless otherwise proved, must accept the figures appearing in the record.

Indisputably the matter relating to transmission of signals is covered by the Regulations framed by the Telecom Regulatory Authority of India known as the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (for short '2004 Regulations').

Regulation 2(p) of 2000 Regulation defines 'subscriber base' to mean:-

“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.”

Regulation 2(q) defines “subscriber line report” or “SLR” to mean 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.

Regulation 4.1 reads as under :-

“4. Disconnection of TV channel signals

4.1 No broadcaster or multi system operator shall disconnect the TV channel signals to a distributor of TV channels without giving three weeks notice to the distributor clearly giving the reasons for the proposed action.

Provided that a notice would also be required before disconnection of signals to a distributor of TV channels if there was an agreement, written or oral, permitting the distribution of the broadcasting service, which has expired due to efflux of time.

Provided further that no notice would be required if there is no agreement, written or oral, permitting the distribution of the signals.

8. Time Period for Renewal of existing agreements

8.1 Parties to an interconnection agreement for supply of TV channel signals shall begin the process of negotiations for renewal of existing agreement at least two months before the due date of expiry of the existing agreement. Provided that if the negotiations for renewal of the interconnection agreement continue beyond the due date of expiry of the existing agreement then the terms and conditions of the existing agreement shall continue to apply till a new agreement is reached or for the next three months from the date of expiry of the original agreement, whichever is earlier. However, once the parties reach an agreement, the new commercial terms shall become applicable from the date of expiry of the original agreement. Provided further that if the parties are not able to arrive at a mutually acceptable new agreement, then any party may disconnect the retransmission of TV channel signals at any time after the expiry of the original agreement after giving a three weeks notice in the manner specified in clause 4.3. The commercial terms of the original agreement shall apply till the date of disconnection of signals.

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.

10.1 In non-addressable systems, the subscriber base agreed upon by the parties at the time of execution of the interconnection agreement between a multi system operator and a cable operator shall remain fixed during the course of the agreement except in exceptional circumstances that warrant an increase or decrease in the subscriber base. In such an eventuality, it is for the service provider seeking a change in the subscriber base to provide reasons and accompanying evidence including local survey for the proposed change.

11. Finalising Subscriber Base at the time of Renewal of agreement

Between Multi System Operator and Cable Operator

11.1 In non-addressable systems, negotiations on revision of subscriber base at the time of renewal of interconnection agreement between a multi system operator and a cable operator shall take into account the changes in subscriber base of the cable operator over the past three years, as well as the changes in subscriber base of other cable operators operating in the area in which the cable operator is operating and its adjoining areas for the current period.

12. Monthly Subscriber Base Statement

12.1 In non-addressable systems, the multi system operators shall furnish the updated list of cable operators along with their subscriber base to the broadcasters on a monthly basis.

Before advertng to the rival contentions of the parties, as noticed heretobefore, we may place on record that a question was mooted before this Tribunal with regard to transgression of the area by the petitioner. A prayer was made for immediate survey of the rural areas of Saharanpur. One of us, in the said order, recorded as under:-

“Counsel for the petitioner submits that one of the issues is transgression in rural areas. The counsel for respondent submits that an immediate survey should be conducted to assess whether there is any transgression in the rural areas or not. Let the survey be conducted for finding out the facts about the transgression into the rural areas at the initiative of the respondent.

Counsel for the parties agree that Mr. Vibhav Srivastava, Advocate, present in the Court, may be appointed as commissioner for conducting the survey. I appoint Mr. Vibhav Srivastava, Advocate as the Local Commissioner for conducting the survey. Parties will supply necessary material to Mr. Srivastava to enable him to complete the survey as early as possible. Parties will fully cooperate with him. Fee of the Local Commissioner is fixed at Rs.20,000/- per day for conducting the survey besides actual expenses for stay and travel. All expenses will be borne by the respondent since this survey is being conducted at the initiation of the respondent. The commissioner will be free to take assistance of any other person. Let the survey for rural areas start from today itself as requested by the respondent.”

Pursuant to or in furtherance of the said direction, the Commissioner upon conducting a survey has submitted a report, paragraph 2 whereof reads as under:-

“2. There was apprehension from the side of the Respondent in calling of the representative of the Petitioner as the survey is not a joint survey and more over if the petitioner get to know the exact location of survey then the Petitioner may switch off that area during survey period therefore I have not disclosed my exact location to the Petitioner and proceeded for the survey on 30th Septembr, 2009.”

It is, therefore, not in dispute that the survey was made behind the back of the petitioner.

It was concluded:-

“The channels of Respondent were coming in Village Dabki Village and Hasanpur Kadim (Manoharpur) which is seen by me in TV installed in respective villages and the identity of MSO can be identified the local channels run by the MSO and two of the local channel has the name of Mona Music & Mona Cinema and other is local news channel named Channel 9 which on enquiry found to be local news channel run by Mona Cable Network.

The identity of the MSO cannot be verified by me in villages Tapri, Samtagarh, Pairagpur, Mavi Kalan and Chunehti on seeing the TV as there was no electricity and therefore cable signals were not coming and only inference can only be drawn from the statement of people which are duly recorded and indicates that Mona Cable Network is operating in these areas and channels of Respondent is being shown in these areas.”

The learned Commissioner in our opinion should not have carried out the survey behind the back of the petitioner.

No evidence can be collected by an officer of the court behind the back of the party unless necessitated inter alia by an emergency. Before a Repot submitted by the Advocate/Commissioner can be taken on record, it must conform to the principles of natural justice as also the procedures analogous to the ones contained in Order XXVI Rule 9 of the Code of Civil Procedure. [See – Mahant Narayana Dossjee Varu v. The Board of Trustees, the Tirumalai Tirupati Devasthanamas, Tirupathi, AIR 1959 AP 64 and Maroli Achuthan v. Kunhipathumma, AIR 1968 Kerala 28.

Although the learned Advocate/Commissioner's report is inadmissible in evidence, it is apparent that the petitioner did not even intend to bear the costs therefor. A joint survey was

proposed by the respondent both for the purpose of ascertaining the subscribers base as also for the purpose as to whether the petitioner has transgressed into the rural area unauthorisedly.

The agreement clearly provides that the quantum of subscription fee was entered into having regard to some subscription base. In that sense it was not entirely a negotiated contract where subscribers base would have no role to play. The agreement clearly provides that increase in the number of subscribers base should be disclosed to the respondent.

Mr. Kathpalia urged that the agreement being a negotiated one and having nothing to do with SLR, no question for updating the subscription base for every month arose in terms of Regulation 8.1 of the Regulations.

We are unable to accept the said contention in view of the clear stipulations contained in the agreement.

It may be true that it was for the respondents to produce evidence to show that there has been an increase in the subscribers base. It may also be true that the respondent in one of its letters being dated June 10, 2009 and its reply to the petition had given two different figures as regards subscriber base, namely 35000 and 26000.

It, however, appears that the respondent in its reply categorically stated :-

“5. It would also be relevant to mention that the Petitioner is paying to the Respondent a meagre sum of Rs.66,738/- which represents 1082 subscribers approximately whereas in actual fact as per an independent survey conducted by the Respondent herein the Petitioner has 26000 (Twenty six thousand) subscribers. A copy of the list setting out all the details is enclosed herewith and collectively marked as Annexure A.

The petitioner responded by its letter dated July 27, 2009 (received by the Respondent on July 30, 2009) and suggested a meeting on July 28, 2009. The enclosure referred to in the said letter was missing.”

The petitioner in its petition contended :-

“v. The Petitioner submits that since last many years the Petitioner is receiving feed signals for ESPN Bouquet for the territory of Saharanpur, U.P. The Petitioner

and the Respondent duly entered into an Agreement dated 31st July, 2008 to transmit the signals of Respondent for the territory of Saharanpur, U.P. for a period of one year from 31.07.2008 to 31.07.2009. The respondent has been providing signals under the Agreement and has received the payments from the Petitioner towards the same, as per the agreed payment schedule detailed in Article IV of the said agreement.”

The respondent traversed the said allegations contending :

“(v) The contents of paragraph v as stated are denied. It is incorrect to say that for last many years the petitioner was receiving signals of ESPN. The first and last contract in the name of M/s Mona Cable was executed by Ravinder Kumar which was effective from July 31, 2008 till July 30, 2009. It would be relevant to mention here that when the agreement was signed between the parties, the Petitioner was requested to give particulars of his subscriber base, the Petitioner stated that since he was just starting his new business, he would furnish the particulars of his connectivity/subscriber base at a later date. However, till date he has not furnished any particulars of his connectivity/subscriber base to the Respondent.

It would be relevant to mention that upto December\ 2004, the Respondent used to bill Saharanpur @ 5000 subs to M/s Media Plus proprietary concern of Mr.Ravi Arora for a payout of Rs.1.98 lacs for two channels of ESPN and STAR Sports. In addition to this service contract with Media Plus, the Respondent had a contract with one more network which was active and was paying the Respondent separately. At all relevant times, there were two networks running in the city of Saharanpur.

The said Mr.Ravi Arora, entered into contract effective March 2005 in the name of Win Cable Network @ 3000 subs upto June 2007 for payout of Rs.1.43 lacs for two channels of ESPN and STAR Sports when the rates of the Respondent were Rs.42.48 only. Now the Respondent's rates for all their three channels are Rs.66/- and still the Respondent does not receive any growth in the net payout. The Respondent signed the contract on lower sub-base, since the Petitioner had newly started his network and restricted to a very limited area in Saharanpur city.

- It is also to be noted when the Respondent deactivated Win Cable Network in June 2007, this operator had indulged in piracy in Saharanpur area during the ICC T20 world cup and during this period the Respondent's anti-piracy team has switched-off close to 17 DTH boxes which were operating in the Win Cable Network.
- At the time Mona Cable executed the Service Contract effective July 2008 they had limited Local Cable Operators connected to their

network and therefore the Respondent agreed to provide its service for a subscription calculated @ 1082 subscriber base. However this was not a fixed fee as is being contended by the Petitioner. All over the country, the Respondent agrees on a subscription fee based on the number of subscribers attached to a network be it a MSO and/or a LCO. But over a period of time, i.e. over the last one year, the Petitioner has grown exponentially in joint venture with Hathway and formed Hathway Digital Saharanpur Cable Datacom Private Limited and/or Hathway Mona Cable Network Limited and connected the whole of Saharanpur and the adjoining rural areas comprising of a number of villages without giving any growth to the Respondent. The Petitioner which purports to swear by the Regulations conveniently ignores providing to the Respondent herein updated monthly subscriber base statement as required under Regulation 12.1. This cannot be permitted.

- Today, the sub-base for which the Respondent is being paid for the entire city of Saharanpur and its adjoining rural area is only 2800 subscribers from different operators compared to 6000 subscribers in the year 2004-05. Considering the growth over the years and increase in the connectivity, the total discounted payout should be not less than 10,000 subs from all the operators and Mona Cable's control over the market is close to 80%. As per the Entertainment tax officer, Mona Cable has close to 13,000 taxable subscribers as per their own showing. The Respondent encloses herewith the figures submitted by the Entertainment Tax Officer pursuant to an RTI application made by the Respondent. The same is collectively enclosed herewith as Annexure-R-1. The Respondent's own survey shows that the Petitioner has a subscribe base not less than 26968 including the villages of Saharanpur."

The respondent sought for the details of the subscribers of the petitioner under the Right to Information Act, 2005 from the District Entertainment Tax Officer,, Saharanpur, which was responded to by his letter dated 11th September, 2009. The details furnished by the concerned officer show that the petitioner had about 13000 subscribers.

The respondent, therefore, had proceeded to obtain information from an independent source apart from conducting its own survey. According to the respondents the number of subscribers disclosed to the officer of the Entertainment Tax Department might not be accurate

and having regard to the fact that on its own independent survey it had found that the petitioner had about 25000 subscribers, it opined that the petitioner might have 26000 subscribers. It is beyond any cavil of doubt that the number of subscribers of the petitioner would not be less than 13000. In terms of Section 114(g) of the Indian Evidence Act, a presumption of official acts having been carried out in due course of business can be drawn; even we may not agree with Mr.Ganpathy that tendency on the part of a person to evade tax should be presumed.

Respondent, therefore, has discharged its onus. Even otherwise having regard to the principles contained in Section 106 of the Indian Evidence Act, the petitioner should have, in all fairness, produced all the records before the respondent so as to enable it to arrive at the correct number of subscribers and on that basis the amount of subscription fee which would have been payable by reason of the renewed agreement.

In a legal proceeding, a party should not be allowed to withhold a document in his possession and power merely on the bases of technical pleas.

The Supreme Court of India in Gopal Krishnaji Ketkar v. Mohd. Haji Latifi, AIR 1968 SC 1413 held as under :-

“ Even if the burden of proof does not lie on a party, the court may draw an adverse inference, if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof.”

[See also Kamakshi Builders v. Ambedkar Educational Society, (2007) 12 SCC 27].

It is, furthermore, accepted that no consensus has been arrived at between the parties in regard to entering into a fresh agreement and in that view of the matter the earlier agreement must be held to have come to an end.

Before parting, however, we would like to place on record that Mr. Ganpathy has categorically stated that his client would still be ready and willing to renew the agreement with the petitioner upon negotiation on the basis of an appropriate subscriber base.

We hope and trust that the parties hereto will arrive at a consensus so that the viewers of television may not suffer.

For the reasons aforementioned we are of the opinion that it is not a fit case where the petitioner should be granted any relief. The petition is dismissed with costs. Counsel's fee is assessed at Rs.50,000/-.

.....J
[S.B. SINHA]
Chairperson

.....
[G.D. GAIHA]
Member