

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

Dated 23rd August, 2010

Petition No. 62(C) of 2010

M/s Super Cable Network

...Petitioner

Vs.

M/s Sanjay Cable Network and Ors

...Respondents

BEFORE:

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

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

HON'BLE MR. P.K.RASTOGI, MEMBER

For Petitioner : Mr.Rajender Vaid, on behalf of the
petitioner

For Respondent No. 1 : Mr. Tejveer Singh Bhatia, Advocate

For Respondent No. 2 : Mr. Arjun Natrajan, Advocate

For Respondent No. 3 : Mr. S. C. Saluja, Advocate

For Respondent No. 4 : Mr. Meet Malhotra, Advocate
Mr. Ravi S. S. Chauhan, Advocate

JUDGEMENT

S.B. Sinha

Interpretation and/or application of the provision of the Cable Television Networks (Regulation) Act, 1995 (The 1995 Act) arises for consideration in this petition.

We, may, however, at the outset notice the prayers made by the petitioner herein which are as under :-

- a. To direct the respondent No. 4 to report the matter to authorised officer (Commissioner of Police, District Magistrate, Sub Divisional Magistrate) under Section 2 of the Act 1995 for violation of Section 4A by the respondent No. 1 and 2 and to take action under Section 11 and Section 16 of the Act – 1995 against the respondent No. 1 and 2.
- b. To direct the Information & Broadcasting Ministry through respondent No. 4 to suspend or revoke the permission given to respondent No. 2 under sub rule 7 of Rule 11 of the Cable Television Network Rule, 2006 for violation of Section 4A of the Act 1995,
- c. To direct the respondent No. 3 and 4 to exercise their power envisaged by the law against the respondent No. 1 and 2 to penalise for violating the Section 4A of the Act-1995.
- d. To direct the Broadcasters through respondent No. 4 to ensure about Prevention of illegal telecast of Pay Channels to the respondent No. 1 and 2 for violation of Section 4 A of the Act-1995.
- e. To pass any order/orders in favour of the Petitioners and against the respondents which deem fit and proper in the facts and circumstances of the case.”

The petitioner is a Cable Operator. The 1st respondent is also a Cable Operator.

The 3rd respondent herein has been constituted in terms of the provisions of Telecom Regulatory Authority of India Act, 1997 (The Act) for the purpose of regulating inter alia the business of Cable Network. The 3rd Respondent in his capacity as a Nodal Officer is responsible for collection of Entertainment Tax under the provisions of Delhi Entertainment and Betting Tax Act, 1996.

The petitioner is aggrieved by and dissatisfied with the alleged inaction on the part of the official respondents herein in taking appropriate steps against the 1st and 2nd respondents in so far as despite the fact that the area in question had been declared to be a CAS area, but they had been allowing them to continue to carry on their operations of transmitting signals of various channels of the Broadcasters on a non-CAS basis.

We are, in this petition, concerned with a preliminary issue of maintainability of the petition raised by the respondents inter alia on the premise that the matter relating to carrying of business being covered by the provisions of 1995 Act and as any violation of the provisions thereof would attract the penal provision contained in Section 4 A thereof, the same is beyond the jurisdiction of this Tribunal which has been created in terms of the provisions of the said Act for a limited purpose.

The submission of the learned counsel appearing on behalf of the respondents is that the provisions of the said Act as amended in the year 2000 do not confer any jurisdiction upon this Tribunal to issue any mandatory order

directing the authority and/or the nodal officer to initiate a criminal proceedings and/or realise tax.

On the other hand, Mr. Patel, the learned counsel and Mr. Satish Kumar Panchal, a chartered accountant appearing on behalf of the petitioner would contend that by reason of the impugned action on the part of the respondent Nos. 1 and 2; the petitioner had been suffering losses and moreover in view of the fact that despite several complaints made to the authorities concerned including the TRAI and the respondent No. 3, no action has been taken, the petitioner had no other alternative but to approach this Tribunal.

It was urged that even the queries raised by the petitioner under Right to Information Act have not been replied to by the competent authorities on vague grounds.

Before advertng to the rival contentions of the parties herein, we may notice that the Parliament enacted the 1995 Act which has been amended in the year 2002 with the following objectives as would appear from the Statement of Objects and Reasons thereof :-

“1. There has been haphazard mushrooming of cable television networks all over the country during the last few years as a result of the availability of signals of foreign television networks via satellites. This has been perceived as a "cultural invasion" in many quarters since the programmes available on these satellite channels are predominantly western and totally alien to our culture and way of life. Since there is no regulation of these cable television networks, lot of undesirable programmes and advertisements are becoming available to the viewers without any kind of censorship.

2. It is also felt that the subscribers of these cable television networks, the programmers and the cable operators themselves are not aware of their rights, responsibilities and obligations in respect of the quality of service, technical as well as content-wise, use of material protected by copyright, exhibition of uncertified films, protection of subscribers from anti-national broadcasts from sources inimical to our national interest, responsiveness to the genuine grievances of the subscribers and perceived willingness to operate within the broad framework of the laws of the land.e.g. the Cinematograph Act, 1952, the Copyright Act, 1957, Indecent Representation of Women (Prohibition)Act, 1986.

3. It is, therefore, considered necessary to regulate the operation of cable television networks in the entire country so as to bring about uniformity in their operation. It will, thus, enable the optimal exploitation of this

technology which has the potential of making available to the subscribers a vast pool of information and entertainment.

Section 2 of the said Act provides for the 'Interpretation' of various terms.

'Authorised officer' has been defined as the District Magistrate, a Sub-Divisional Magistrate or a Commissioner of Police and includes any other officer notified in the Official Gazette of the Central Government or the State Government to be an authorised officer for such local limits of jurisdiction as may be determined by the government.

Section 4 of the Act provides for registration of persons as Cable Operators.

Whenever an area is notified for transmission of channels of the broadcasters through addressable system, the matter indisputably would be governed by Section 4A of the Act and in the event of a notification issued by the Central Government notifying an area to be one in which transmission of programme can only be done through addressable system, certain steps are required to be taken by the operators as provided for under sub-Sections (vi), (vii), (viii) and (ix) thereof.

We may notice the said provisions :-

“(vi) Notwithstanding anything contained in this Section, programmes of basic service tier shall be receivable by any subscriber on the receiver set of a type existing immediately before the commencement of the Cable Television Networks (Regulation) Amendment Act, 2002 without any addressable system attached with such receiver set in any manner.

(vii) Every cable operator shall publicise, in the prescribed manner, to the subscribers the subscription rates and the periodic intervals at which such subscriptions are payable for receiving each pay channel provided by such cable operator.

(viii) The cable operator shall not require any subscriber to have a receiver set of a particular type to

receive signals of cable television network;

Provided that the subscriber shall use an addressable system to be attached to his receiver set for receiving programmes transmitted on pay channel.

(ix) Every cable operator shall submit a report to the Central Government in the prescribed form and manner containing the information regarding-

(i) the number of total subscribers;

(ii) subscription rates;

(iii) number of subscribers receiving programmes transmitted in basic service tier or particular programme or set of programmes transmitted on pay channel, in respect of cable services provided by such cable operator through a cable television network, and such report shall be submitted periodically at such intervals as may be prescribed and shall also contain the rate of amount, if any, payable by the cable operator to any broadcaster.

Explanation - For the purposes of this Section,-

(a) "addressable system" means an electronic device or more than one electronic devices put in an integrated system through which signals of cable television network can be sent in encrypted or unencrypted form, which can be decoded by the device or devices at the premises of the subscriber within the limits of authorisation made, on the choice and request of such subscriber, by the cable operator to the subscriber;

(b) "basic service tier" means a package of free-to-air channels provided by a cable operator, for a single price to the subscribers of the area in which his cable television network is providing service and such channels are receivable for viewing by the subscribers on the receiver set of a type existing immediately before the commencement of the Cable Television Networks (Regulation) Amendment Act, 2002 without any addressable system attached to such receiver set in any manner;

(c) "channel" means a set of frequencies used for transmission of a programme;

(d) "encrypted", in respect of a signal of cable television network, means the changing of such signal in a systematic way so that the signal would be unintelligible without a suitable receiving equipment and the expression "unencrypted" shall be construed accordingly;

(e) "free-to-air channel", in respect of a cable television network, means a channel, the reception of which would not require the use of any addressable system, to be attached with the receiver set of a subscriber;

(f) "pay channel", in respect of a cable television network, means a channel, the reception of which by the subscriber would require the use of an addressable system, to be attached to his receiver set."

The Explanation appended thereto also defines 'addressable system' in the similar terms.

The term 'encrypted' has been defined in clause 'b' of the said 'Explanation' to mean :-

"encrypted", in respect of a signal of cable television network, means the changing of such signal in a systematic way so that the signal would be unintelligible without a suitable receiving equipment and the expression "unencrypted" shall be construed accordingly."

Section 16 of the Act occurring in Chapter iv thereof provides for 'offences and penalties'.

It reads as under :-

“16. Punishment for contravention of provisions of this Act. Whoever contravenes any of the provisions of this Act shall be punishable,-

- (a) for the first offence, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both;
- (b) for every subsequent offence, with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees.

Section 18 of the Act provides that ‘no court shall take cognisance of any offence punishable under the said Act, except upon a complaint in writing made by any authorised officer’.

We may also notice the relevant provisions of the 1997 Act.

Section 11 (1) (a) of the Act empowers the TRAI to make recommendations inter alia for revocation of license for non-compliance of terms and conditions of license.

However, such recommendations made by the TRAI is required to be accepted and approved by the Central Government.

Section 11 (1) (b) of the 1997 Act obligates the TRAI to discharge a large number of functions as enumerated therein, including ensuring compliance of terms and conditions of license.

Section 12 provides the Authority the power to call for information and conduct investigation etc.

It also empowers the 'Authority' to direct any of its officers or employees to inspect the books of accounts or other documents of any service provider.

The TRAI is also empowered to issue directions in terms of Section 13 of the Act.

Such a power conferred upon the TRAI whether would also include the power to initiate a criminal proceedings and/or make the authorised officer, to do so is the question.

Contention of Mr. Patel the learned counsel for the petitioner is that having regard to the wide jurisdiction of this Tribunal as provided for in Sections 14 and 14A of the 1997 Act, the reliefs prayed for by the petitioner can be granted to the petitioner inter alia on the premise that both the petitioner as also the respondent No. 1 are service providers and in the event it is found that the 1st respondent has violated the provisions of law, as a result whereof another service provider has suffered damages, the same would become enforceable by this Tribunal.

It has not been denied or disputed that in the event a notification is issued in terms of the 1995 Act, the operators would be bound to telecast the broadcasting channels through Set Top Boxes and not through the analog mode.

Whereas according to the petitioners in the Pushp Vihar area, the 1st respondent had not been doing so, the respondents No. 1 & 2 contend not only the said provisions had scrupulously been complied with, but in fact the authorised officer upon considering all their documents found the petitioner's case to be not correct.

Mr. Patel, the learned counsel appearing on behalf of the petitioner would submit that on some earlier occasions, the TRAI had taken up the matter with the authorised officer under the Act. This may be so, but it is now a well settled principle of law that for the purpose of issuance of an order in mandatory form which is analogous to the principles of Writ of or in the nature of 'Mandamus', the petitioner must establish a legal right in itself and a corresponding legal duty in the respondents.

We have noticed heretofore that the main plank of contention of Mr. Patel is that by reason of the illegal acts on the part of the respondent No. 1 and 2 herein, the petitioner had suffered losses.

If that be so, indisputably the petitioner had a remedy provided for under the said Act itself, but there is nothing on record to show that the TRAI has refused to implement its own order. No order for grant of a decree for damages have also been prayed for.

The prayer made before us, as noticed heretofore, is merely to direct the authority to see that the respondents No. 1 and 2 are prosecuted. Except for the matters provided for in the said Act, we are of the opinion,

the TRAI cannot be directed by us to take recourse to the provisions of Section 4 A by reporting the matter to authorised officer under the Act. What cannot be done directly, it is well known, can not be done indirectly.

If there had been a contravention of the provisions of Section 4 A of the 1995 Act, as indicated hereinbefore the same would attract the penal provisions contained in Section 16 of the Act, wherefor cognizance can be taken by an appropriate court only upon compliance of the requirements specified in Section 18 thereof.

The respondent No. 4 has infact forwarded the letter of the petitioner to the authorised officer. There cannot be any doubt or dispute that coordination by and between the authorities under different statutes is necessary for proper and effective implementation of the statutory provisions regulating the business of Cable Television but we are satisfied that in a case of this nature, the respondent No. 4 could not have done anything more.

The other prayer made by the petitioner relates to the respondent No. 3. Respondent No. 3 is the nodal officer for Conditional Access System. The said respondent in its reply categorically stated that a complaint had been received through the TRAI and the same was being disposed off according to the provisions of the Acts, Rules and Guidelines.

Mr. Patel, however, would contend that the respondent No. 3 is the appropriate authority for collection of tax under the provisions of Delhi Entertainment and Betting Tax 1996 being Delhi Act No. 8 of 1997. Drawing our attention to Section 8 thereof the learned counsel would contend that the Government of NCR of Delhi being entitled

to the 'Entertainment Tax' from the service providers, it was obligatory on the part of the respondent No. 3 to take such actions as against the respondent Nos. 1 and 2 which were necessary for effective implementation of the notification declaring the area in question to be a CAS area.

A matter relating to taxation, as it is well known, is a matter between the 'State' and the 'Assessee'. The 1996 Act is a self contained code. Any action required to be taken in terms thereof must be taken in consonance of the provisions thereof.

Our attention has been drawn to a query raised by the petitioner in terms of the provisions of the RTI Act as to whether the respondent Nos. 1 and 2 have evaded payment of tax to which the information supplied to the petitioner was, "no data in compiled form is available".

Yet again, the remedy of the petitioner, if any, was to prefer an appeal thereagainst before the Appellate Authority under the said Act.

We may, however, notice that the respondent No. 1 along with its reply has annexed a large number of documents to show that infact all actions required to be taken in terms of the notification issued by the State have been taken.

According to the said respondent, the list of the subscribers as also the details of the Set Top Boxes and the viewing cards supplied to them have been supplied to the authorities.

The question, however, is as to whether the same contains the details of the subscribers residing in the 'Pushp Vihar' area as also the details of Set Top Boxes supplied to the subscribers of that area or not. We may, however, notice that the authorised officer upon making a detailed investigation has come to the conclusion that the respondent No. 1 and 2 have complied with the statutory requirements. The said order, it is doubtful, whether can be questioned before us. In fact no such question has been raised.

In the letter dated 9.2.2010 issued by the Additional Deputy Commissioner of Police-Cum-Public Information Officer, South District, New Delhi, it was stated :-

"In this regard, this is to inform you that as per report of ACP/Hauz Khas, the pointwise information is as under :-

1. Enquiry into the aforesaid complaint of M/s Super Cable Network and M/s Kumar Cable Network has been conducted and it has been found that the matter is related to TRAI department as such the said complaint has been sent to Telecom Regulatory Authority of India, Mahanagar, Doorsanchar Bhawan, Jawaharlal Nehru Marg, Old Minto Road, New Delhi – 2 for necessary action.

2. Since no proof of violation has been found, as such, no action has been taken. Besides, TRAI has not reported any such violation which led to action against the said Cable Network.
3&4. As mentioned above.”

It would also be of some significance to notice the reply of the Authority as contained in its letter dated 20th January, 2010, the relevant portion whereof reads as under :-

“Kindly refer to letter No. 18/86/2009-BP&L dated 05th January, 2009 from CPIO, Ministry of Information & Broadcasting, forwarding your application dated 23rd December, 2009, seeking information under the provisions of the RTI Act, 2005 regarding ‘Action taken on complaint dated 28.10.2009 and other issues’. In this context, the following information is furnished :-

TRAI has not reported the violation of Section 4A of Cable Television Networks Act 1995 by M/s. Sanjay Cable Network, F-10, Lado Sarai, New Delhi – 30 and MSO namely M/s. Wire and Wireless (India) limited to any Authorised Officer.

No information in this regard is available with TRAI.”

If the petitioner is not satisfied with the action taken on the part of the authorised officers, probably, its remedy lies elsewhere, but keeping in view the nature of the reliefs sought for in this petition, we have no doubt in

our mind that the petitioner is not entitled to any relief from us particularly when, we may reiterate, the petitioner has not prayed for award of damages against the respondent Nos. 1 and 2.

For the reasons aforementioned the preliminary issue raised by the respondents herein is upheld and the petition is dismissed.

We may, however, observe that it would be open to the petitioner to take recourse to such remedies which are available to it in law.

In the facts and circumstances of this case, there shall be no order as to costs.

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

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

