

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

**DATED 14<sup>th</sup> DECEMBER, 2010**

**Petition No.106(C) of 2008**  
(M.A.Nos.90, 130 & 206 of 2008)

M/s Praja Communications

...Petitioner

Vs.

EENADU TV, Ushodaya Enterprises Ltd.

...Respondent

**BEFORE:**

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

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

For Petitioner : Ms.Vibha Dutta Makhija, Advocate  
Mr.Philemon Nongbri, Advocate

For Respondent : Ms. Neelima Tripathi, Advocate  
Mr. Sanjay Kumar Jha, Advocate

**ORDER**

**G.D. Gaiha, Member**

1. The petitioner is a Multi System Operator. It has filed this petition on or about 29<sup>th</sup> April 2008 with the main prayers as follows:

- (a) Direct the respondent to provide an interrupted good quality signals of ETV and ETV2 channels to the petitioner's network.
- (b) Direct respondent to enter into an agreement with the petitioner for extension of area of operation to 7 new areas.
- (c) Direct respondent to enter into a proper agreement without any discriminating terms as per the present subsisting connectivity.
- (d) Direct the respondent to furnish the agreement entered upon between both parties.
- (e) Direct the respondent to provide the proper and legal written agreement duly signed by both parties;  
and
- (f) Power switch orders or orders as this terminal may deem just and proper under the facts and circumstances of the matter.

2. The matter has been listed before this tribunal since 22<sup>nd</sup> May 2008 on several occasions and directions have been issued by it for sorting out the disputes and differences between the parties, which has resulted in narrowing down to only one dispute between the parties and that is in regard to the issue of providing signals in the extended area of operation.

3. On 10<sup>th</sup> March 2010 it was reported by Mrs. Tripathy the learned counsel appearing on the off of the respondent that the respondent has no objection in granting signals in the areas namely, Tallada, Kalluru, Enkoor, Julurupahad, Koniderla and Penuballi areas (mandals) in Khammam District, subject to the condition that the petitioner fulfils the a statutory obligations including obtaining permission from the concerned municipalities as also upon compliance of clause 9.1 of 2004 Regulations as amended in the year 2006.

4. Ms. Makhija, the learned counsel appearing on behalf of the petitioner states that the cable is in the process of being laid and the requisite permission from the municipalities and the other a statutory authorities, if any, shall be obtained.

5. We have observed in our order dated 10<sup>th</sup> March, 2010:-

“In that view of the matter, we have no doubt in our mind that subject to petitioner’s fulfilling the condition contained in Clause 9.1 of the Regulations, the respondent shall allow the petitioner to transmit signals of the channels in the aforementioned extended areas. It is accepted that having regard to the provision contained in clause 3.2 of the Regulations, the entire process of grant of permission by the respondent to the petitioner for the purpose of transmitting signals in the aforementioned areas should be completed within a period of two months.”

6. On 20<sup>th</sup> May 2010 the following issues were framed.

- (i) Whether the petitioner is entitled to extension of areas of operation to Miryalaguda town, Penpahad, Chivvemla, Kethepally, Atmakum (S) and Suryapet Mandals?
- (ii) Whether the petitioner is entitled to renewal of existing agreement in respect of areas in question?
- (iii) Whether the petitioner has transgressed the areas of its operation?
- (iv) Whether the action of the respondent in disconnecting the signals intermittently is valid?
- (v) Whether the petitioner is liable to make any payment towards the subscription fee for the period when the signals were disconnected?
- (vi) Whether the petitioner is guilty of piracy of signals?
- (vii) What relief, if any, can be granted to the petitioner?

7. On 2<sup>nd</sup> July 2010, the learned counsel for the petitioner submitted that as per order dated 20<sup>th</sup> May 2010 of this tribunal, the cables have been laid in the extended area where the petitioner intends to expand his area of operation. The learned counsel for the respondent would submit that further details have not been furnished by the petitioner so that the same can be examined at their end. It was directed that after the supply of the documents, the parties will meet on 14<sup>th</sup> July 2000 and at 11.00 AM at the Hyderabad office of the respondent to sort out the issues about extended areas for providing signals by the petitioner.

8. A meeting was held on 14<sup>th</sup> July 2010 at Hyderabad. The matter was finally argued on 10 September 2010.

9. The learned counsel for the petitioners, Ms. Makhija would point out that the following documents had been given to the respondent for seeking the expansion of its network in the new areas.

- (a) No objection certificates from the gram panchayats of the areas of the six mandals "Miryalaguda town, Penpahad, Chivvemla, Kethepally, Atmakum, and Suryapet Mandals."
- (b) Cable connection and wanted subscriber list for the new areas
- (c) Industries map without any demarcation.
- (d) For photographs of electric post without any specification.

10. The learned counsel for the respondent, Ms. Neelima Tripathy would submit that the petitioner has yet to give the relevant documents as mentioned below to consider the request of the petitioner for the extension of its network:-

- (i) Valid cable registration certificate issued by the postal authorities for the new areas.
- (ii) Pole permission details from the authorities concerned along with the details of the cable laid that is (overhead or underground) for the new areas.

- (iii) Duly certified map from the municipalities of the new areas with the demarcation of the area of operation of the petitioner.
- (iv) Control room/equipment/insurance details.
- (v) Details of the cable operators along with their Postal Registration Certificate/Income Tax Returns/Bank Statement for the past six months/Entertainment Tax and Service Tax Registration Certificates.
- (vi) Optical Fiber Cable details along with the distance.

11. It is recorded in the minutes of meeting that the petitioner stated that the Postal Registration Certificate is not necessary and the petitioner will provide the signals from the existing control room. In regard to the list of the cable operators, the petitioner stated that he is not having any cable operators.

12. The said minutes of meeting appear to have been drawn out with the consent of the parties since the same have been signed by the representative of the petitioner as well as by the representative of the respondent.

13. The learned counsel for the petitioner, Ms. Makhija would submit that as far as the Postal Registration Certificate is concerned, the same has been renewed. In the petition the Postal Registration Certificate which is valid up to the year 2008, has been placed. The learned counsel would further contend that in this certificate the address of the location of the head end has been mentioned and the same has been issued by the competent Post Office meant for this purpose and, therefore, this shortcoming in regard to the required documents may not be considered by the respondent.

14. In regard to the permission for laying the overhead cable, the learned counsel for the petitioner would contend that no such permission is issued and in case the respondent can mention the authority from which the certificate is to be

obtained, the petitioner would try to obtain the certificate from the concerned authority for the purpose of completing the requirement of this particular document.

15. In regard to the maps supplied by the learned counsel for the petitioner, the learned counsel for respondent has raised objections since the geographical map of the Khammam District is of no significance from the point of view of the assessment of the exact areas which are likely to be covered for providing signals by the petitioners in the extended areas. In regard to the line diagram of the areas to be covered along with the distance mentioned therein, the learned counsel for the respondent would raise serious objection from the point of view of projected subscriber base by the petitioners after creating a network which is approximately covering a distance of not less than 50 to 60 km in the extended areas around the headend. The learned counsel for the respondent would extend the argument by bringing to our notice that the number of subscribers as shown for providing signals by the petitioners are only 32 in Thallada, 25 in Kalluru, 20 in Penubali, 27 in E nukuru, 22 in Julurupadu and 20 in Konijerla. The learned counsel for the respondent would further extend the argument by stating that a network which had been created by laying cables for a distance of several kilometers will not serve only for a meagre number of subscribers as mentioned by the petitioner in its letter dated 8<sup>th</sup> July, 2010, issued prior to holding the meeting on 14<sup>th</sup> July, 2010. The learned counsel would further contend that the ground connections for six mandals is 42219 and, therefore, the figures projected by the petitioner is grossly under-declared and cannot, in any case, become the basis for providing signals.

16. From the above arguments, we conclude as follows:-

(a) We are inclined to believe that petitioner is not trying to disclose its potential subscriber base which is likely to be benefitted by the creation of a massive network spreading more than 100 kilometers around the head end.

(b) In regard to asking for the maps of cable network laid by the petitioner in different localities of the 6 new mandals, we are of the opinion that these maps should be provided by the petitioner to the respondent, so as to make an assessment of the areas and the likely subscriber base which is possible to be served by the petitioner after obtaining signals from the respondent.

(c) We also feel that at this stage when the petitioner is going to start the services in these new areas, it is not possible to provide the details of the cable operators and their Postal Registration Certificate, Tax Return etc. as desired by the respondents.

(d) In regard to the poles, where the petitioner has laid overhead cables, it is known to the petitioner, as to who is the owner of these poles and, therefore, to obtain a certificate from these authorities shall not be a difficult job. The apprehension of the respondent about the certificate from the authorities owning the poles is quite genuine because if there is any spurious emission from the cables of the cable operator, it is very likely that the respondent could be held responsible for its consequences as per law. The permission granted to the petitioner by the authorities owning the poles shall safeguard the interest of the respondent in certain contingencies.

(e) In regard to the control room equipment, we feel that the petitioner should have no difficulty in providing the details. The plea of the petitioner that the same are not required because this is not the CAS area and, therefore, as per law, it is not obligatory on its part to provide these details is quite valid, but on the other hand, to provide details, in case the petitioner has set up the headend, is not a serious handicap which cannot be cured by merely providing its details.

17 (a) We, therefore, direct petitioner that it should provide the following information to the respondent to consider its application for providing signals in right earnest.

(i) Valid Cable Registration Certificate up-to-date.

(ii) Pole permission details.

(iii) A map showing the exact details of the cable network laid out by the petitioners in the new areas.

(iv) Optical Fibre Network diagram and details for connecting the distantly located Mandals.

(b) We are confident that after providing these details and predicting a realistic subscriber base vis-à-vis the network created by the petitioner, the respondent will consider the request of the petitioner for providing signals at the earliest.

18. We, therefore, direct that the parties to fulfill their respective obligations in right spirit, and to negotiate for signing an agreement on the basis of reasonable conditions without obviating any Regulations.

However, in case of any discrimination and/or imposition of unreasonable conditions by anyone of the parties, this Tribunal will not hesitate to intervene.

19. This petition is disposed of accordingly and in the present circumstances, there is no order as to costs.

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

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

HKC/

