TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 29th July, 2010

M.A. No.177 of 2010

In

Petition No.218(C) of 2009

M/s Sri Malleswari Start TV & Relay Programmes …Petitioner

Vs.

R.R. Channel & Ors. …Respondents

BEFORE:

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

For Petitioner : Mr. Sunder Khatri, Advocate

For Respondent No. 1 & 3 : Mr. Tejveer Singh Bhatia, Advocate

For Respondent No.2 : Mrs. Narayani K. Sibal, Advocate

ORDER

S.B. Sinha

The petitioner is local cable operator. The second respondent, M/s Channel Plus, is a distributor of various broadcasters and is engaged in the business of transmission of signals of their channels.

The petitioner, inter alia, on the premise that a demand for a sum of Rs.7,72,233/- towards subscription charges raised by the respondent No.2 is null and void, has filed this petition.

It has also prayed for a direction upon the said respondent not to disconnect ETV, ETV-2, MAA TV and Gemini package in terms of the agreement dated 01.12.2003.

Although not relevant for our purpose, we may also notice that in regard to certain actions on the part of the respondent Nos.1 and 3, a First Information Report(FIR) was lodged and on the basis of purported report made therein which is contained in Annexure-P2 of the petition, the petitioner has also asked for damages towards business loss.

After this petition was filed, the parties held negotiations in regard to supply of decoders to the petitioner. As had been requested, the said meeting was held on 09.02.2010. Decoders were also supplied by the respondent and activated. This Tribunal in its order dated 12.03.2010 observed that the disputes which survived is the question of subscriber base of an outstanding amount due from the petitioner. This Tribunal observed that having regard to the conflicting claims made by the parties, the issue of subscriber base was a matter which should be negotiated between them. It was also observed that all dues would be paid before a meeting which was proposed to be held on 18.03.2010.

The parties met on 18.03.2010. A copy of the minutes of the meeting signed by the parties had been produced. The said minutes of the meeting read as under:-

"Mr.M.Suresh Kumar states that Mr.Sivakotaiah who was the proprietor of the said network died on 10.07.2006 and thereafter his wife Mrs. M.Mahalakshmma is running the said network.

Mr.Naidu condemned regarding the non information of the said issue and also requested to submit the authorization letter for conducting this meeting on behalf of Mrs.M. Mahalakshmma. Mr.Suresh Kumar replied that he did not bring the authorization letter for conducting this meeting. Further Mr.Naidu requested to submit the postal registration certificate and other necessary documents in the name of M.Mahalakshmma. Mr.Suresh Kumar agreed to produce the said documents within two days.

Mr.Naidu requested to enter a fresh agreement for the existing 6000 connectivity in the areas of Buchireddypalem based upon the certificate issued by Asst.Accounts Officer, Buchireddypalem stating that 8255 connectivity is available in Buchireddypalem. But Mr.Suresh Kumar refused to enter the said agreement.

Further, Mr.Naidu condemned that the non-payment of the subscription dues from Nov'09 to till date and also requested to pay the pending due amount of Rs.9,45,262/- till date immediately. Mr.Suresh Kumar

agreed to pay the part amount of Rs.2,36,315/- on or before 31st March'10 and Rs.2,36,315/- on or before 30th April,'10 and balance due amount of Rs.4,72,630/- will pay as per court order."

From a bare perusal of the said minutes, it is clear that the petitioner, without any demur whatsoever had agreed to pay a sum of Rs.9,45,562/- in three installments. Despite the said undertaking, however, no payment was made. In that view of the matter, a prayer was made on behalf of the respondent seeking liberty to serve notice in terms of clauses 4.1 and 4.3 of the Telecommunication (Broadcasting & Cable Services) Interconnect Regulations, 2004 as amended from time to time.

However, on the said date several issues were also framed; one of them being; "Whether the petitioner is liable to make payment to the Respondent No.2 on the basis of oral agreement?"

Indisputably, pursuant to or in furtherance of the said liberty granted, the respondent No.2 has issued a notice on 22.04.2010 in terms of clause 4.1 of the Interconnection Regulations, 2004 in the following terms:-

"Sub: 4.1 notice issued as per TRAI regulations 2006 – reg.

We would like to inform you that you have to pay the pending subscription due amount of Rs.,9,94,933/- till date. You have not settled the said due amount even after several reminders made by us. We hereby call upon you to pay the above said due amount immediately on receipt of this notice, failing which we will be constrained to disconnect the signals presently being provided to you.

This notice may be treated as notice issued under clause 4.1 of the Telecommunication (Broadcasting & Cable Services) Interconnection (Third Amendment) Regulation, 2006."

On the same date, public notices were also issued and published in two newspapers. Thereafter, the signals of the channels of the respondent No.2 were disconnected.

The petitioner admittedly did not question the validity/legality of the said action on the part of the respondent.

On the aforementioned premise, this application has been filed.

Mrs.N.K. Sibal, the learned counsel appearing on behalf of the respondent No.2 urged that having regard to the fact that the agreement entered into by and between the respondent No.2 and the petitioner expired as far as back on 31.11.2006 which had been entered into on 01.12.2003, being valid for a period of three years, the petitioner cannot be said to have any legal right whatsoever to continue to get signals of channels of the broadcaster of which the respondent No.2 is the distributor. The learned counsel further argued that by reason of the subsequent events, the prayers made in the petition against the respondent cannot be granted.

Mr.Sunder Khatri, the learned counsel appearing on behalf of the petitioner, however, urged that the issues having been framed, this Tribunal should dismiss the application of the respondent. According to the learned counsel there is nothing to

show that any sum was owing or due to the respondent No.2 from the petitioner and in fact, the petitioner has been making all payments but on the basis of reduced connectivity i.e. 50% of its subscriber base as contended by the respondent No.2.

This Tribunal *stricto sensu* is not bound by the provisions of Code of Civil Procedure 1908. It, in fact, keeping in view the provisions of 16(1) of the Telecom Regulatory Authority of India Act, 1997, is entitled to lay down its own procedure. The provisions of Code of Civil Procedure, 1908 are applicable only in relation to the subjects enumerated in sub-section(2) thereof. This Tribunal is only required to follow the principles of natural justice.

In Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success I & Anr. – (2004) 9 SCC 512, the Supreme Court held as under:-

> "132. It is trite that a party should not be unnecessarily harassed in a suit. An order refusing to reject a plain will finally determine his right in terms of Order 7 Rule 11 of the Code of Civil Procedure.
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> 133. The idea underlying Order 7 Rule 11(a) is that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of a suit. Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the courts would interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation which in the opinion of the court is doomed to fail would not further be allowed to be used as a device to harass a litigant. (See Azhar Hussain v. Rajiv Gandhi – 1986 Supp SCC 315)."

A dispute between two service providers ordinarily should be disposed of within a period of 90 days. Even at this stage, it is found that having regard to the subsequent events, it is not possible to grant any relief to the petitioner. We are of the view that this Tribunal cannot be denuded of its jurisdiction to pass an order on the application of the nature filed by the respondent No.2 herein, only because issues have been framed. It is a well settled principle of law that having regard to the provisions contained in Order VII of Rule 7 of the Code, a court is entitled to mould the reliefs if it is shown that the original relief claimed has, by the event of subsequent changed circumstances became inappropriate, it is obligatory on the part of a court of law to take notice of the events which had happened since the institution of the suit.

In P. Venkateswarlu Vs. The Motor & General Traders - AIR 1975 SC 1409, the Supreme Court held as under:

> "4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-à-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept, the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice – subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to

take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations, for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions the High Court, in revision, correctly took this view. The later recovery of another accommodation by the landlord, during the pendency of the case, has as the High Court twice pointed out, a material bearing on the right to evict in view of the inhibition written into Section 10(3)(iii) itself. We are not disposed to disturb this approach in law or finding of fact."

In this case the petitioner, as noticed hereinbefore, has accepted that a huge amount has not been paid. It is, therefore, estopped and precluded from contending that no payment was to be made to the said respondent. The petitioner shall not be heard to say anything contrary thereto or inconsistent therewith. In view of the fact that the demand raised by the respondent No.2 which has been admitted to be correct, in our opinion, having regard to the provisions contained in Section 58 of the Indian Evidence Act, no evidence is required to be laid. The issue with regard to subscriber base, thus, looses all significance. If the petitioner is to make a huge payment to the respondent No.2, by no stretch of imagination, respondent No.2 can be directed to supply signal of the channels of any of the broadcasters.

It may be placed on record that except Gemini Package, the petitioner does not broadcast the channel of the other broadcasters mentioned in prayer (iii) in the petition.

For the reasons aforementioned, this Miscellaneous Application is allowed. The petition is dismissed as against the respondent No.2. However, in the facts and circumstances of this case, there shall be no order as to costs.

…….....J
(S.B. Sinha)
Chairperson

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(G. D. Gaiha)
Member

/**SKS**/