

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

**DATED 6<sup>TH</sup> MAY, 2010**

**Petition No. 104(C) of 2010**

Sree Devi Master Media System Pvt. Ltd. ... Petitioner  
Vs.  
Zee Turner Ltd ... Respondent

**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. Navin Chawla, Advocate  
Mr. Sharath Sampath, Advocate

For Respondent : Mr. Maninder Singh, Senior Advocate  
Mrs. Prathiba M. Singh,  
Mr. Arjun Natrajan, Advocate  
Ms. Nitya Thakur, Advocate

**ORDER**

**P.K. Rastogi, Member**

The petitioner is an MSO and the respondent is a broadcaster. The petitioner executed an agreement with the respondent on 12.10.2008. This agreement provided for payment of Rs.4,54,681.47 for supply of signals to the petitioner by respondent for certain channels for distribution of service in the town of entire Greater Vizag and the adjoining areas. This agreement was valid for 6 months i.e. up to 31.03.2009.

2. After the expiry of said agreement, a fresh subscription agreement could not be executed due to some disputes and differences between the respondent and the petitioner. The respondent had issued a public notice threatening disconnection of signals of the petitioner on 22.06.2009.

The petitioner approached this Tribunal against this public notice. However, this petition was withdrawn by the petitioner, as the parties had arrived at the settlement between them.

3. The respondent has again issued a notice to the petitioner on 7.4.2010 for the disconnection of the signals for default of subscription amount. A public notice was also issued in the newspapers on 2.4.2010. The petitioner has approached this Tribunal praying interalia for setting aside the public notice and restraining the respondent from deactivating or disturbing the supply of channel to the petitioner's network.

4. The petitioner has submitted a copy of the MOU executed on 16.7.2009 between him and the respondent. The contents of the same read as under :

“Total market of Vizag has been pegged at Rs.15,00,000 to be decided between Sri Devi Master Media and Venkat Sai Media (Owned by Rajshekar of Hathway) Sri Devi Master Media has agreed to pay 50% of that which is Rs.7.5 lacs (Telugu 3.5 lacs). Currently he is paying Rs.4.54 lacs which he will increase to Rs.5 lac with immediate effect and the balance Rs.2.5 lacs he will pay from the day Venkat Sai is upgraded to Rs. 7.5 lac from the current Rs.2.27 lacs.

In next one week ground survey will be done to establish the correct market share of the two networks and the same will be adjusted accordingly. For e.g. : if Sri Devi Master Media is 60% then he will pay 9 lacs or vice versa.

In case Venkat Sai does not agree to the increase of the above mentioned share

then the network will be switched off and Sri Devi Master Media will have full freedom to take over the full market. 90 days from Venkat Sai switch off Sri Devi Master Media will upgrade his subscription to Rs.15 lacs including service tax which is the size of the total market.

Sri Devi Master Media has agreed to withdraw the case ASAP.”

5. The petitioner has further submitted that in the month of October 2009, a subscription agreement was executed on 01.10.2009 w.e.f. 16.07.2009 for a monthly subscription amount of Rs.5 lakhs. The petitioner wrote a letter to the respondent on 31.10.2009 to reduce the subscription amount to Rs.2.27 lacs as the subscription charges of his competitors, having 52.5% share, were only Rs.2.5 lacs per month. Again, another subscription agreement was executed on 20.11.2009, as applicable from 01.11.2009 to 31.10.2010, where the subscription amount was reduced to Rs.2, 22,290/-. Accordingly, he paid the amount to the respondent and no amount was payable to the respondent.

6. The petitioner has prayed for an ad interim order for the following reliefs:

- “(a) set aside and quash the Public Notice published on 2.4.2010;
- (b) direct the Respondent to bill in accordance with the amounts mentioned in the subscription amounts entered w.e.f. 16<sup>th</sup> July, 2009 and as per the latest agreement dt. 20.11.09 until its validity period;
- (c) Restrain the respondent from in any manner deactivating or disturbing the supply of various TV channels to the petitioner’s networks in Greater Vishakpatnam.”

The petitioner further prayed for ad-interim order in terms of prayer made above.

7. The learned counsel for the respondent has pointed out that the petitioner has submitted

number of fabricated documents and it cannot be relied upon and no relief should be granted to it based on these documents. He has pointed out that in the petition, at para 6, at page 6 it is pleaded that in the month October 2009, the subscription agreement was executed on 01.10.2009 w.e.f. 16.07.2009 being the date of MOU. However, the copy of the said agreement submitted by the petitioner shows that the starting date is 01.10.2009 and not 16.07.2009. That shows the averment made by the petitioner is contradictory to the documents submitted by him.

8. The respondent has also brought to our notice a letter dated 31.10.2004 addressed by the petitioner to the respondent. The second para of this letter reads as under :

“In true belief and your assurances that you will stick and honour all the understandings of the MOU, we have signed the subscription agreement as per MOU on 20.09.09 which is effective from 16.7.2009 and continued paying the subscription charges.”

It is seen that while MOU is signed on 16.7.2009, this letter mentions the date of MOU as 20.9.2009. The respondent has further pointed out the copy of the subscription agreement dated 20<sup>th</sup> November 2009 filed by the petitioner where the subscription amount was reduced to Rs.2,22,290/-. The counsel of the respondent pointed out that the copy of agreement given to the respondent does not bear the signature of respondent while the copy submitted to this Tribunal bears the signature of petitioner & respondent.

9. We have gone through various documents filed by the petitioner. As seen from the accounts statement submitted by the petitioner, a demand of Rs.4, 54,681/- per month was being

raised regularly by the respondent. The petitioner was also paying the amount till October, 2009. It is only in the month of November, 2009 he reduced the payment to Rs.2.25 lacs. It seems that he has reduced this amount based on the purported agreement signed on 20<sup>th</sup> November, 2009. The respondent has denied the existence of such document and has pointed out the anomaly that the copy of the agreement given to him does not bear the signature of respondent. The respondent has denied the existence of subscription agreement dated 01.10.2009 also. The contradiction between the pleadings that the agreement came in force with effect from 16.7.2009 is totally against the documents submitted to this Tribunal. This document shows the date of start as 01.10.2009. Similarly, the letter written by Sree Devi Master Media System Pvt. Limited addressed to the Zee Turner Ltd. on 31.10.2009 where the petitioner has requested the respondent to enter into fresh agreement on the same terms as provided to his competitor Sree Venkat Sai Media, also has factual inaccuracy.

10. According to the contents of the MOU dated 16.7.2009, the petitioner was to increase the subscription amount to Rs. 5 Lacs from Rs. 4.54 Lacs with immediate effect. Instead of increasing the amount, he decreased the same to Rs 2.25 lacs per month. He should have continued to pay at least the same amount which he was paying earlier. As the petitioner has not paid the subscription amount, which he was paying regularly, respondent seems to be within his right to issue public notice and individual notice for disconnection due to default of payment.

11. In the matter of grant of an interim relief, the conduct of the parties is very relevant. Undoubtedly, public interest as also the interest of the consumers would be relevant grounds for grant of relief by this Tribunal having regard to the Parliamentary intent, but for the purpose of

grant of an interim relief, the petitioner must make out a prima facie case.

12. We have noticed heretofore that, prima facie, the petitioner is guilty of suppression of material facts and/or placing reliance on some documents, the genuineness whereof, is open to question. In the event ultimately, it is found that the allegations made by the respondent are correct, the inevitable inference would be that there does not exist any agreement between the parties.

13. The matter relating to grant of interim relief, which is discretionary in nature, should be exercised by taking into account all relevant facts which would tend towards the justice or injustice in granting the remedy. Untidiness, the lack of clean hands are some relevant matters which must be taken into consideration for the said purpose. It is not a case where the particular discretionary matter can be counter veiled by equal or greater weight. A party, who, prima facie, is found to be involved in relying upon some documents, which are not genuine, ordinarily, should be held to have approached the Court with a pair of unclean hands. The action on the part of the petitioner is related to an 'immediate and necessary relation' between the reliefs sought for and the delinquent behavior in question that it would be unjust to grant that particular relief. (See *Moody V. Cox* {1917(2) Chancery page 71}).

14. In *Parmanand Patel (Dead) by LR and Anr V. Sudha A.Chowgule and Ors.* Reported in 2009 (11) SCC 127 in relation to appoint of Receiver, it was held :-

“15. Although the learned Counsel for the parties have addressed us at great length and in fact we have been taken through the minute details of the relevant and important documents filed and relied on by the parties, we are of the opinion

that it would not be prudent on our part to discuss the same in great details.

A receiver, having regard to the provisions contained in Order 40 Rule 1 of the Code of Civil Procedure, is appointed only when it is found to be just and convenient to do so.

Appointment of a receiver pending suit is a matter which is within the discretionary jurisdiction of the Court. Ordinarily the Court would not appoint a receiver save and except on a prima facie finding that the plaintiff has an excellent chance success in the suit. It is also for the plaintiff not only to show a case of adverse and conflict claims of property but also emergency danger or loss demanding immediate action. Element of danger is an important consideration. Ordinarily, a receiver would not be appointed unless a case has been made out which may deprive the defendant of a de facto possession. For the said purpose, conduct of the parties would also be relevant.” (Emphasis supplied)

15. In Gujarat Bottling Company Ltd. Vs. Coca Cola Ltd. 1995 (5) SCC 545, the Apex Court held that the conduct of a party in approaching the Court of law, whether for grant of an injunction or vacating an interim or temporary injunction order must be free from blame and his conduct should be fair and honest.

16. It is a well-settled principle of law that in passing an order of injunction the Court is under a bounden duty to find out as to whether a prima facie case has been made out or not; in whose favour the balance of convenience lies and whether the petitioner suffers any irreparable loss, if injunction is refused. It is also well-settled that the question of consideration of balance of convenience and irreparable injury would arise provided a prima facie case is established. For establishing a prima facie case, in a case of this nature, the petitioner was bound to prove that

there exists a subsisting agreement between the parties and the question raised in the petition were substantial ones. For the purpose of finding out a prima facie case, the Court is required to scrutinize the materials on record, including the pleadings of the parties.

17. In Prem Singh Vs. Ceema Automobile Ltd. {AIR 1990 Delhi 233}, it has been held that a plaintiff, who appears to be guilty of a wrongful conduct, would not be entitled to a grant of temporary injunction.

18. Having considered the matter at some length, we are of the opinion that the petitioner is not entitled to any equitable relief. This prayer for injunction is, therefore, refused.

....., J

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

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

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**(P. K. Rastogi)**  
**Member**

