

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 20th May , 2010

Petition No.79 (C) of 2009

M/s Vision Digital Cable

... Petitioner

Versus

MAA Television Network & Anr.

... 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. B.S,Sai, Advocate

For Respondent No.1 : Mr.Y.Rajagopala Rao,Advocate

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JUDGEMENT

S.B.Sinha

The petitioner is an MSO. The respondent is a Broadcaster.

Interalia, on the premise that the respondent has not complied with the 'must provide' clause as contained in the clause 3.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, (Regulation), the petitioner has filed this petition claiming interalia, the following reliefs :

- (a) "Direct the respondents to provide uninterrupted signals of respondents MAA TV channel to the petitioner network.
- (b) Direct the respondents to provide decoders, viewing cards of the respondents MAA TV channel to the petitioner network.
- (c) Direct the respondents to enter into an agreement with the petitioner in the area of Vijayawada (Urban and Rural)."

The respondent contends that the subscriber base disclosed by the petitioner, namely, 900 is not correct as being a distributor of Gemini Channel, it has 1,20,000 subscribers and thus, there is absolutely no reason as to why the subscribers base has been shown as 900 only. The petitioner, however, offered a subscriber base of 1400.

This Tribunal having regard to the aforementioned rival contentions of the parties, by an order dated 13.11.2009 opined as under :

"The short question which arises for consideration in this petition as to whether that the petitioner's offering of subscriber base of only 1400 persons is correct. The learned counsel appearing for the respondent states that in fact the subscriber base of the petitioner for Gemini and other channels is 1,20,000. The learned counsel further states that her client is ready and willing to negotiate with the petitioner on the issue of subscriber base.

The parties may meet at the office of respondent No. 1 for the aforementioned purpose on 23.11.2009 at 11.00 AM. The petitioner shall produce all records in its possession before the authorized representative of respondent No. 1 on that date.

Put up for directions on 17.12.2009.

The parties, in the event of the disagreement with regard to the subscriber base may take recourse to joint survey as well.”

As no settlement has been arrived at, a Joint Survey was undertaken. In the joint survey also the number of subscribers was found to be 1416. They entered into further negotiations but they could not arrive at an agreed figure.

The only question, which arises for our consideration is, as to whether the respondent should be directed to provide signals on the aforementioned subscriber base of 1400.

Mr. B. S. Sai, the learned counsel appearing on behalf of the petitioner would contend that the number of subscribers of the petitioner having been found to be only 1400, it would be inequitable if the petitioner is directed to enter into an agreement at a higher subscriber base.

Mr. Rajgopala Rao, the learned counsel appearing on behalf of the respondent, on the other hand, would contend that the subscriber base found in the joint survey should be the basis for further negotiation. The petitioner in its rejoinder has inter alia contended that the joint survey was conducted by Zee Turner which has found its connectivity at 1278 only. The petitioner, however, does not disclose as to on what connectivity it had entered into an agreement with Zee Turner Ltd.

A SLR has been filed by the petitioner wherein details of the subscribers have been disclosed locality-wise in the area, in respect of which the petitioner seeks fresh connections. The petitioner has also furnished the details of 5 link operators stating they are having about 900 connections, which reads as under:

S.No.	Name of the Operator	No. of connections.
1.	Ganesh Cable Vision	300
2.	Kondapalli Venkateswara Rao	200
3.	Musunuru Ananda Kumar	200
4.	Pasupuleti Sridhar	100
5.	Kandula Aparna	100
	Total	900

Apart from the said local cable operators, the petitioner supplies signals directly to about 500 subscribers.

Clause 3.2 of the Regulations reads as under :

“3.2 Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator,

multi system operator, head ends in the sky operator; Multi system operators shall also on request re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators.

Provided that this provision shall not apply in the case of a distributor of TV channels having defaulted in payment.

Provided further that any imposition of terms which are unreasonable shall be deemed to constitute a denial of request. ”

We, having regard to the facts and circumstances of this case, are of the opinion that respondent cannot be permitted to shift from its legal obligations to provide signals to the petitioner either on the ground that it is distributor of Gemini TV or it has less number of subscribers. The petitioner, as noticed hereinbefore, has about 5 link operators, who together have about 900 subscribers. The petitioner has direct connectivity of 500.

We have noticed heretobefore that the petitioner for reasons best known to it has not disclosed as to what was the number of subscribers for which it has entered into an agreement with Zee Turner Limited.

We, therefore, think subject to further review of subscriber base, which may take place in November – December 2010, interest of justice would be sub-served if the respondent is directed to enter into an agreement with the petitioner on the subscriber base of 1400. If on the review, the petitioner is found to have a larger subscriber base, a fresh agreement may be entered into by the parties from January 2011 onwards. It goes without showing that other usual terms shall be incorporated in the agreement.

This petition is allowed with the aforementioned directions and observations. In the facts and circumstances of this case, however, there shall be no order as to costs.

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

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(G. D. Gaiha)
Member

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(P.K. Rastogi)
Member