

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

**Dated 5<sup>th</sup> May, 2010**

**Petition No.115(C) of 2009**

Apna City Cable

...Petitioner

Versus

MSM Discovery Pvt Ltd & 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.Vineet Bhagar, Advocate  
Ms. Neha Jain, Advocate

For Respondent No. 1

: Mr.Kaushik Misra, Advocate

**JUDGMENT**

**S.B. Sinha**

The petitioner is a multi system operator (MSO). The first respondent is a broadcaster. The petitioner has 11 sub-operators through whom it had been serving about 1115 subscribers. According to it, none of its subscribers is directly connected with its network. The respondent telecasts its channels under the name and style of Sony TV and other channels. The second respondent is the successor

of Star City, popularly known as City Cable, which is the rival MSO of the petitioner.

The petitioner filed a petition before this Tribunal in the year 2006. It had also filed a petition in the year 2008 which was marked as petition No. 53(C)/2008. In the later petition, this Tribunal by a judgment and order dated 20.10.08, directed the parties thereto to conduct a joint survey. According to the petitioner, in the said joint survey its subscriber base was found to be 1211.

The petitioner contends that by reason of the aforementioned order dated 20.10.08, this Tribunal also directed that as it had been paying the subscription fee on the subscriber base of 1500, necessary adjustment in respect thereof be given to it. Pursuant to or in furtherance of the directions made in the said order dated 20.10.08, an agreement was also entered into by and between the parties thereto for the year 2008 which was valid for the period 1.4.08 and 31.3.09. According to the petitioner, despite the fact that it had been making payments in terms of the said agreement, the respondent disconnected the supply of signals on or about 15.4.09. Prior thereto, according to the petitioner, although the notice was issued on or about 17.2.09 and 14.3.09, no public notice in terms of clause 4.3 of the Interconnect Regulations was issued.

We may refer to a portion from the aforementioned letter of the respondent dated 14.3.09 which reads as under:-

“We write in furtherance to our above-referred letter, wherein, you have been requested to furnish the Subscriber Line Report and the list of subscribers catered by you from the date of signing of the agreement/arrangement. Please note that it becomes incumbent upon you to furnish the updated list of the cable operators along with their subscriber base to the broadcasters on a monthly basis under Clause 12 of the TRAI Regulation dated 4<sup>th</sup> September 2006. We, however, note that no report/document/list have been furnished by you in terms of Clause 12 of the said Regulation, which tantamount to a clear violation of the said Regulation and is detrimental to our commercial interests.

You will appreciate that the authentic subscriber reports as contemplated in the Regulations are of vital importance to us.

It is reiterated that we have reliable market information that the subscriber base of your network has now increased in the area of Hoshiarpur and you have been catering to not less than 2800 subscribers in the area rather than the mere 1211 subscribers as

declared by you to us. We thus request you not to resort to such massive underdeclaration. You will appreciate that mutual trust lies at the edifice of any relationship.”

The respondent, however, contends that in fact a public notice was also issued in the newspapers on or about 25.3.09 wherein the following reason was assigned for deactivation of the network of the petitioner:-

“The reason for deactivation is Non Compliance of Clause 12 of TRAI’s Interconnect Regulation by the following cable operator/s to MSM Discovery Pvt. Ltd in given format [Name, City, Affected Area]

M/s Apna Cable N/W, Hoshiarpur. As per list attached with the municipal limits of Hoshiarpur City only.

Issue by: MSM Discovery Pvt.Ltd. [Erstwhile SET Discovery Pvt. Ltd.]”

According to the petitioner, the purported reason assigned for disconnection of its network is not correct, as it had supplied to the respondent the requisite Subscriber Line Report (SLR) as would appear from Annexure P-3 to the petition.

According to the petitioner, its connectivity was further reduced as one of the LCOs, namely, Shri Vijay Kumar, had discontinued taking supply of signals from July, 2009. It is furthermore, the contention of the petitioner that at no point of time, the connectivity of the petitioner has been verified by the respondent, although the onus of proof in this behalf was on it.

The respondent, however, contends that in fact a survey was undertaken by it wherefrom it would appear that the number of subscribers of the petitioner has gone up to 2763 and in that view of the matter, the petitioner must be held to have not complied with the provisions of Regulation 12 of The Telecommunication (Broadcasting & Cable Services) Regulation 2004 as amended in the year 2006 (The Regulations).

The learned counsel for the petitioner contends that the petitioner had all along asked for supply of signals in respect of Bouquet-I channels whereas its rival, the respondent no. 2 herein, not only had all the channels but had about 28000 subscribers whereas it had merely been paying subscription fee on the subscriber base of less than 10% thereof and taking advantage of the same, he had declared a price-war.

The respondent's counsel, on the other hand, contended that the agreement in question has expired in March, 09 and as the petitioner was bound to comply

with clause 12 of ‘the Regulations’ and the same having not been done, no fault in respect of the notice issued under Regulation 4.1 and the public notice issued under clause 4.3 of the Regulation can be found. It was furthermore contended that although a meeting was held on or about 27.7.09, evidently the respondent did not accept the number of subscribers furnished by the petitioner herein.

The order of this Tribunal dated 20.10.2008 was binding on the parties. The respondent, thus, was required to give effect thereto in letter and spirit. In this petition, we will proceed on the assumption that the respondent in fact had complied with the requirements of Regulations 4.1 and 4.3 of the Interconnect Regulations.

We may, however, consider mainly three aspects of the matter.

Firstly, we may notice that admittedly a meeting was held between the petitioner and the respondent no. 1 on or about 27.7.09 in relation where to, the first respondent issued the following letter:-

“This is to inform you that a meeting held between MSM Discovery Private Limited, NBCC Plaza, Tower No.-3,2<sup>nd</sup> Floor, Pushp Vihar, Sector-5, New Delhi represented by Arun Arora and Apna City Cable,

Gaushala Bazaar, Distt. Hoshiarpur, represented by Yogesh Kumar and Narender Kumar. This meeting is held at MSM Discovery Private Limited, SCO 306, Sector 38 D, Chandigarh. The following points is discussed in this meeting.

1. Apna city cable offered to run the TOA Channels on 994 sub base, against declaration of 1115 sub base, because one of their operator issued a letter for disconnect his signals from July onwards. A copy of this letter is received.
2. Received list of operators and their subscriber base.
3. Received Registration certificate of Apna City Cable.
4. Provide him list of documents required with receiving on 2<sup>nd</sup> copy.

The above mentioned points are discussed in meeting.”

The respondent, therefore, did not reject the contention of the petitioner that it had a subscriber base of 994.

Secondly, it is not disputed that the list of operators and their subscriber base had been furnished. It is, therefore, not correct to contend that the petitioner never furnished any SLR as contended by the respondent. The respondent’s reliance upon a purported survey (a copy of the said survey report was annexed with the

reply) is wholly misplaced as from a bare perusal thereof, it would appear that it contained some computer junks.

We fail to understand how a well-known broadcaster like the first respondent could act thereupon.

Our attention however has been drawn by Mr. Misra to a purported corrected copy thereof which was filed on or about 02.02.2010. The said report is not supported by any affidavit. No application in support thereof was filed. On what basis, Annexure 'A' was sought to be substituted has not been disclosed. Whether the purported substituted survey report was on the basis of the same survey or some other survey has also not been disclosed. Even the contents of the said survey would make an interesting reading. It contains names under the heading –

**“Dairy De Saamne Wali Gali –**

1. Vinnu
2. Bhaiya
3. Murder
4. Murlidhar
5. Sali Ke Aage Ghar
6. Om Prakash, Sood

## 7. Or Saamne

## Gurudware Wali Gali

1. Kalu Jat
2. Doli
3. Gogi
4. Committee wala
5. Bhaiye
6. Asha
7. Ramu
8. Tripta Madam
9. Murlidhar
10. Balgira
11. Bhaiye
12. Hani
13. Nai
14. Gora
15. Ravi
16. Buntty Beer
17. Rinki
18. Wasdhar

19.Bai”

Similarly, in the end, under the heading ‘Lambi Gali’, the name of one ‘Thhathiar’ appears; which name also finds place at item nos. 10,11,12,14 and 15 of the subscribers residing in ‘Mori Muhalla’.

It also contains names like ‘Saath wala ghar’, ‘Punjab wala’, ‘Sardar Ji’ etc. No address of any of the subscriber has been given. We have mentioned a few names only to show that no prudent person can rely upon such a purported survey report should resort to such an action like disconnection of the signals of an MSO who had entered into an agreement with the respondent No.1 in terms of an order of this Tribunal. It, in our opinion, fortifies the contention of the petitioner that such a step was taken only to favour the respondent No.2.

Thirdly, we may also notice the relevant pleading of the parties.

The petitioner in its petition stated as under:-

“13. That when no reply was received by the Petitioner, the Petitioner was constrained to send another letter dated 28.04.2009 (wrongly dated as 28.04.2010 and dispatched on 4 May 2009), vide which the Petitioner has denied all the allegations which were leveled by the Respondent No.1 in its letter dated 14.03.2009. Vide the

above-said letter the Petitioner also apprised the Respondent No.1 with a fact that the Rival MSO ‘Star Siti Cable’, who is having a connectivity of more than 60,000 has been paying to the Respondent No.1 for 4,000 connectivity, which is far less than even 10% of the total connectivity. A copy of letter dated 28.04.2009 (wrongly dated as 28.04.2010 and dispatched on 4 May 2009) is annexed as ANNEXURE-P/9.....”

The respondent no. 2 in its reply merely averred that the statements made in para 13 are false and denied.

The allegations made in para 13 of the petition, therefore were not specifically traversed. Even the purported notices dated 17.2.09 and 14.3.09 letter were based on market information. It is of some significance to notice that the petitioner also was served with a letter dated 27.7.09 wherein a large number of unrelated and irrelevant informations were sought for. Although the same does not appear to be relevant even to the respondent No. 1 having regard to the fact that the area in question was not a CAS area, as for example, the subscriber base of other operators in the petitioner’s area or the latest IRS and NRS data revealing the number of cable and satellite homes in its area.

Taking, thus, any view of the matter, we have no other option but to hold that the action on the part of the respondent is wholly unsustainable.

We, therefore, set aside the impugned public notice and allow this application and direct the first respondent to restore supply of signals to the cable TV network of the petitioner.

It must also enter into a new subscription agreement for bouquet-I only for the years 2010-2011 on the subscriber base of 948.

The parties shall, however, undertake a joint survey and requisite adjustment shall be made in relation thereto from the date of entering into the subscription agreement.

The first respondent shall also enter into the negotiated subscriber base upon taking due consideration of the number of subscribers vis-à-vis the negotiated subscriber base of the respondent no.2, although in respect thereof, it must be clarified, we do not intend to say that the subscriber base should be less than 10% as appearing to the case of the second respondent.

We have no doubt that the respondent No.1 shall not act on a discriminatory manner and give a fair and reasonable treatment to the petitioner herein.

The first respondent shall pay and bear the cost of the petitioner. Counsel's fee assessed at Rs.50,000/-.

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

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

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