

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

DATED 28th MAY, 2010

**M.A. No. 38 OF 2010
IN
Petition No.219(C) of 2009**

Shivaji Cable Network
Vs.
S.R.Cable TV Private Ltd.

...Petitioner
...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. Vikram Singh, Advocate

For Respondent : Mr.Kunal Tandon,Advocate

ORDER

The petitioner herein has filed this application purported to be under Sections 19 and section 20 of the TRAI Act(hereinafter referred to as 1997 Act) for alleged non-compliance of this Tribunal's order dated 01.12.2009 passed in Petition No. 219(c) of 2009, whereby and whereunder, it was observed :

“We as at present advised need not to go into the aforementioned rival contentions. Apart from the fact that at least a part of the allegations made in the public notice is not correct as would appear from a bare perusal of the notice dated 22.7.2009, as reproduced hereinabove, it is evident that the same does not meet the requirements of law. It is true, as has been contended by Mr.Kunal Tandon, that the Regulations do not envisage issuance of simultaneous notice both under Clauses 4.1 and 4.3 of the Regulations. But in the event they are issued on different dates the disconnection could be on the expiry of 21 days from the service of the latter notice. In terms of clauses 4.1 and 4.3 of the Regulations three weeks' notice is required to be served upon a cable operator or a Multi Service Operator, as the case may be. The said term envisages clear three weeks' notice. No threat, therefore, could have been given that disconnection would be effected within 21 days, which has been

mentioned in the notice dated 22.7.2009. We, therefore, are of the opinion that the notice served upon the petitioner does not meet the requirements of law.

We, therefore, allow this petition and direct the respondent to continue to grant supply of uninterrupted signals of its channels to the petitioner. The said public notice dated 28.6.2009 as also the notice dated 22.7.2009 are set aside.

It however goes without saying that the respondent may ask the petitioner to supply the number of subscriber base and the areas where it had been carrying on its business so as to enable the respondent, if necessary, to carry on a joint survey.

Before parting, however, we must, place on record that the petitioner, pursuant to order dated 9.11.2009, has deposited a sum of Rs.50000/- in the Registry of this Tribunal. It goes without saying that the petitioner would be entitled to adjust the said amount from its future dues. The Registry may hand over the said sum of Rs.50000/- deposited by the petitioner to it."

The applicant states that despite the said order, the respondent has disconnected the supply of signals to its network on various days, the details whereof have been stated in para 7 and 9 of the petition, which reads as under :

"7. That it is further respectfully on 25.01.2010, the signals of the petitioner were restored by the respondents. It is stated that on the same date, the petitioner received a letter dated 21.01.2010, in which they have categorically admitted that the signals of the petitioner has been willfully and deliberately disconnected on the fictitious ground of survey and chage of cable. It is further stated that the petitioner duly replied to the said letter dated 21.01.2010 vide its letter dated 27.01.2010 and informed the respondent about the subscriber base established in the joint survey. A copies of the letter dated 21.01.2010 and 27.01.2010 are annexed hereto as Annexure PI and PJ respectively.

9. That it is also respectfully submitted that due to the illegal disconnection of signals the subscribers of the area are totally in annoying situation as they are unable to see the channels of their choice because of contemptuous actions of the respondent. The original copies of the affidavits of the subscribers and the video recording in relation to the dis-satisfaction of the subscribers are annexed hereto and is marked as Annexure PL (Colly) and PM respectively."

Drawing our attention to the reply filed thereto by the respondent to the said application, it was contended that it having failed to traverse specific allegations made in the said paras 7 and 9 of the petition, the same would be deemed to have been admitted in terms of the Order 8 Rule 5 of the CPC and, thus, the resopndent may suitably be punished.

Paras 7 and 9 to the reply to which our attention has been drawn, are as under :

“7. That the contents of para no. 7 of the application are wrong and denied. It is denied that the respondent has admitted that the signals were disconnected deliberately as alleged. It is stated that the respondent has all along maintained that the signals were disrupted due to technical fault in the line, which was not in the control of the respondent.

9. That the contents of para no. 9 of the application are wrong and denied save and except as pertain to matter of record. It is denied that due to the illegal disconnection of signals, the subscribers of the area are totally in annoying situation as they are unable to see the channels of their choice as alleged and it is denied that there was any contemptuous actions of the respondents. The affidavits produced are wrong and denied and the respondents seeks permission to cross-examine the petitioner and the persons whose affidavits have been filed.”

We may place on record that in support of its case, the petitioner has obtained the affidavit of a large number of persons, sample copy whereof contains the following:

“2. That on 18.01.2010, signals of my cable TV got disconnected during the Indo Bangladesh Test series and it was disconnected till 24.01.2010. The signals were again disconnected on 27.01.2010 and it is still disconnected.

3. That on inquiry from Mr. Suresh Katuriya, proprietor of Shivaji Cable Network, it was told to me that S. R. Cable TV Private Limited has disconnected the signals of Shivaji Cable Network.”

The said affidavits have been verified by the deponent in the following terms :

“Verification :

I, Ravindra son of Vijayji, resident of 18, Jansewa Nagar, Indore (MP) aged about 28 years, do hereby verify that the contents of para no. 1 to 3 of the affidavit are true to my knowledge and belief and nothing material has been concealed therefrom.”

Mr. Vikram Singh, the learned counsel appearing for the petitioner would contend that keeping in view of the fact that the disconnection of the signals of the petitioner on various days was arbitrary and as the respondent has intentionally and deliberately violated this Tribunal's order so as to cause a serious loss to the petitioner's business, it should be suitably punished.

In support of the contention that the respondent in view of the statements made in paras 7 and 9 of the reply, must be held to have admitted that allegations made in the application; reliance has been placed on Hari Singh V Dharam Singh (AIR 1980 Delhi 316), Asha V Baldev Raj (AIR 1985 Delhi 76), Badat and Co. Vs. East India Trading Co. (1964 4 SCR 19).

Reliance has also been placed on one of the decisions of this Tribunal in Mahadev Cable Net Vs. Star India Pvt. Ltd. in Petition No. 70(c) of 2006 decided on 27.07.2006 for the proposition that an application both under Sections 19 and 20 are maintainable.

Mr. Tandon, the learned counsel appearing on behalf of the respondent, on the other hand, would urge that the respondent has specifically denied or disputed that the respondent has taken recourse to any willfull disobedience of this Tribunal. Our attention in this regard has been drawn to statements made in paras 2 and 3 of the short affidavit :

“2. That I state that I state that the averments and contentions made in the application are wrong and denied. I state that the signal are being continuously supplied to the petitioner and have never been disrupted by the respondent. I further state that the order dated 01.12.2009 has been fully and strictly complied by the respondent. The only occasions on which the signals were disrupted were due to technical faults in the lines of the respondent, which were explained to the petitioner from time to time and also vide letter dated 21.01.2010, which is annexed to the application as Annexure P-7 at page 109. the contents of the letter dated 21.01.2010 are reiterated as true and correct. I further state that signals on 18.01.2010 were disrupted as there was a major fault in one of the underground cabling for a distance of about 2 Kms and the signals were restored on 18.01.2010 itself, immediately after repairing the lines and since then, the petitioner has been receiving signals from the respondent.

3. That I also state that the respondent had, vide letter dated 20.01.2010, also called the petitioner to assist the respondent in conducting the joint survey with them but the respondent had not come forward for the same and has not paid any money towards the signals that are being received continuously by the petitioner. It is stated that as on date, a sum of Rs. 9,38,160/- is due and payable by the petitioner to the respondent, which the petitioner evading to pay.”

The respondent has filed an additional affidavit explaining the said para 3 as under :

“3. I state and reaffirm that the signals were disrupted on the line on 18.01.2010 due to a major fault in one of underground cabling for a distance of about 2 KMs and the signals were restored at 11 PM on 18.01.2010. It is clarified that the signals on the same line continued to get disrupted until 21.01.2010 due to a continuous fault in the line and finally, the fault was completely rectified on 24.01.2010. I state that while the line fault was being rectified, the signals were being switched on from time to time and there was no continuous disconnection but disconnection for the reason stated in the short affidavit as well as in the present

affidavit. However, after the fault was finally rectified, the signals have been continuously given to the petitioner and are still being given to the petitioner.”

It has also filed a reply to the application filed by the applicant stating as under :

“1. It is further stated that the order dated 01.12.2009 passed by this Hon’ble Tribunal has been fully and strictly complied by the respondent. The only occasions on which the signals were disrupted were due to technical faults in the lines of the respondent, which were explained to the petitioner from time to time and also vide letter dated 21.01.2010, which is annexed to the application as Annexure P-7 at page 109. The contents of the letter dated 21.01.2010 are reiterated as true and correct.

2. It is stated that the present contempt petition under section 19 and 20 of the TRAI Act is not maintainable in view of the fact that the order dated 01.12.2009 is a final order in the nature of a decree and as such, execution can be solely filed by the petitioner. The answering respondent refers to and relies upon the contents of the order dated 01.12.2009 at the time of arguments to understand the correct nature of the order. Relevant part of the order dated 01.12.2009 is reproduced hereunder :

“We, therefore, allow this petition and direct the respondent to continue to grant supply of uninterrupted signals of its channels to the petitioner. The said public notice dated 28.6.2009 as also the notice dated 22.7.2009 are set aside.”

4. It is stated that in fact, it is petitioner who is in wilfull default and disobedience to the order dated 01.12.2009 by having failed to comply with the directions of this Hon’ble Tribunal to conduct a joint survey and allow the respondent to carry/verify the subscriber base.”

It was urged that the pleadings must be read in their entirety. It was also submitted that there cannot be any doubt or dispute that the respondent has traversed the allegations specifically in the said application.

The Tribunal has passed the aforementioned order dated 01.12.2009 principally on a technical ground that the respondent has not complied with the requirements of the law as contained in Regulation 4.1 and 4.3 of the Telecommunications (Broadcasting and Cable Services) Interconnection Regulations 2004 as amended in the year 2006.

Section 19 of the 1997 Act provides that orders passed by Appellate Tribunal to be executable as a decree of civil court and for the said purpose, it shall have all the powers of a civil court. (emphasis supplied)

The applicant has not filed any Execution Application in the prescribed form, nor any prayer has been made for execution of the decree as provided for under Order 21 of CPC. No occasion, therefore, has arisen for this Tribunal to execute a decree as a civil court as mentioned in section 19 of the 1997 Act.

Section 20 of the 1997 Act on the other hand, confers jurisdiction on this Tribunal to impose penalty on a party to the petition if he willfully fails to comply with the orders of this Tribunal.

Sections 19 and 20 of the 1997 Act, therefore, in our opinion, stand on different footings. Recourse to section 20, of course, can be taken in any exceptional case where the respondent has willfully disobeyed even the final order of this Tribunal but even for the said purpose, we must keep in some essential differences of two nature of jurisdictions, this Tribunal exercises.

The observations made in Mahadev Cable (Supra) by this Tribunal must be considered in the aforementioned context, which we may notice :

“11. Section 19 of the Act contemplates the execution of the order of this Tribunal as a decree of the civil court and for that purpose this Tribunal has all the powers of a civil court. The object of the Act clearly indicates that the resolution of dispute between the service providers when decided, such decision has to be taken to a logical conclusion and cannot be permitted to be flouted. It is for that purpose, Section 20 has been incorporated in the Act. From the pleadings of the parties both in the main petition as well as in the present application as also from the orders made by this Tribunal, we are satisfied that the respondent is deliberately and willfully avoiding to comply with the order of this Tribunal in spite of repeated opportunity given to it. The fact that the petitioner has recently entered into an ad hoc arrangement with M/s Surat Cable Network to receive signals cannot deny the petitioner its right to execute the order of this Tribunal. As a matter of fact it is clear from the record that it is not at the instance of the respondent that M/s Surat Cable Network gave connection to the petitioner but when the respondent came to know that M/s Surat Cable Network was giving ad hoc signals to the petitioner, that was sought to be legitimized and made as a shield which we cannot say is a compliance of the directions issued by this Tribunal.

12. In **Execution Application No.4 in Petition No.77(C) of 2006 – Sanskardhani Cable & Anr. Vs Star India Pvt. Ltd.** when the respondent therein who also incidentally happens to be the respondent herein willfully refused to enter into agreement as directed by this Tribunal in an execution petition, as an interim arrangement and to see that the order of this Tribunal is respected, this Tribunal directed the respondent to enter into a subscription agreement on the basis of the terms fixed by this Tribunal as a special case (though in an ordinary agreement terms are mutually settled). The order in that Petition has since been taken to Supreme Court in Civil Appeal No.2812 of 2006 and the said appeal is now tagged with Civil Appeal No.5524 of 2005 but no stay has been granted. On the contrary the Hon'ble Supreme Court was pleased to extend the time for compliance with the directions of this Tribunal till 22nd August, 2006.

13. Following the above principle, we directed the respondent to enter into a subscription agreement with the petitioners on terms stated herein below.

14. We direct that for the current subscription year i.e. year ending on 31st December, 2006, the respondent shall supply signals to the petitioner on a subscriber base and at the rate per bouquet per subscriber as was being collected from the petitioner when the signals of the petitioner were disconnected. The payment for such receipt of signals will be liable to be made by the petitioner from the date on which the petitioner starts receiving the signals. Since we notice reluctance on the part of the respondent to give signals to the petitioner in spite of the directions of this Tribunal, we direct that the respondent shall supply its signals to the petitioner within 48 hours from the receipt of this order.

15. This leaves us to consider claim of the petitioner for invoking the Penalty Clause under Section 20 of the Act which contemplates a levy of fine for willful failure to comply with the order of the Tribunal which may extend to Rs.1 lakh. In case of a second or subsequent offence the fine may extend to Rs.2 lakhs and in case of continuing contravention the fine may extend to Rs.2 lakhs every day during such default. We have noticed right from the beginning in this case the attitude of the respondent has been to deny signals to the petitioner on one ground or the other and after the directions issued by this Tribunal in the main petition i.e. Petition No.70(C) of 2006 on 20.04.2006 the signal is being refused by the respondent on grounds which indicates a willful desire not to comply with the orders of this Tribunal. Therefore, we think it appropriate, as contended by the petitioner, to invoke Section 20 of the Act and levy fine of Rs.1000/- per day starting from 11th May, 2006, the day when the parties first met after the judgment of this Tribunal upto the date of this order. If this order of the Tribunal is not complied within 48 hours from the receipt of this order, we, acting under Section 20 of the Act levy a fine of Rs.10,000/- per day from the date of that default till the compliance of this order.”

This Tribunal as it was noticed hereinbefore in the said judgment has exercised both its jurisdictions under section 19 and 20 differently. However, unfortunately, the essential difference between the two jurisdictions of this Tribunal was not brought to its notice.

Section 20 can be resorted to even in relation to an interim order.

Mahadev Cable (Supra) was furthermore a gross case where various directions were issued therein. It was a case of enforcing an interim order. The matter had not been finally disposed of.

The order in respect whereof of the provisions of Section 20 of 1997 Act is sought to be invoked, however, is in the nature of a contempt. The powers of Civil Court in that behalf is contained in Order 39 Rule 2 A of the CPC or the provisions of Contempts of Courts Act, 1971.

The contempt jurisdiction of the court being a matter upon which cogizance thereof has to be taken in a matter between the court and the contemnor. The court is to exercise its extra-ordinary jurisdiction, provided it is found that the respondent is guilty of disobedience of its order willfully.

The respondent in its various affidavits to which we have referred to hereinbefore did not deny or dispute that it had discontinued the supply of signals to the petitioner's network but had given an explanation stating as to how the supply of signals were disrupted.

We may in this behalf notice the stand taken by the respondent as far as back as 21.01.2010 through its letter of the said date addressed to the proprietor of the petitioner, stating as under :

"We are in receipt of your letter dated 18.01.2010 for complaints regarding disconnection of signals in your network. In this regard please note that on 10.12.2009 there were line maintenance running on the network by company, because of that reason the signals were disrupted for 1 hrs i.e. from 1300 hrs to 1400 hrs.

Further on 23.12.2009, you have complaint to us by this letter that from 1730 hrs to 1830 hrs again your services have been disrupted. In this connection we would like to make it clear that our end that due to cable cutting happened in the Area, signals were disrupted for the said time. However, our team traces the fault and restores the servies.

Now on 18.01.2010 you signals were disrupted in the morning because there was major fault occurred in one of our underground cabling on you network. Our technical team is doing survey and very soon we will restore the services on your network, please note that we have to change cable around 2 KMs in your area. We have no such intention to frequently disrupt any LCO's services on their network."

The respondent has no doubt made an error in contending in its short affidavit that there had been a major fault in one of the cable for about 2 kms and the signals were restored on 18.01.2010 itself. This Tribunal however, noticed the same in its proceeding sheet dated 26.02.2010 directing as under :

"As per our instructions vide our order dated 23.02.2010 an affidavit has been filed by the respondent in which it has been mentioned that the signals were disrupted because of major fault in one of the underground cabling for a distance of about 2 Kms and the signals were restored on 18.01.2010 itself. It is brought to our notice by the learned counsel for the petitioner that vide Respondent's letter dated 21.01.2010, the respondent itself has admitted that their technical team is doing survey and very soon they will restore the services.

There appears to be contradiction in the affidavit filed by the respondent on 25.02.2010 about the date on which cable has been repaired and signal restored. Let affidavit be filed by the respondent on this discrepancy by 05.03.2010."

Pursuant to and in furtherance of the said order, the respondent filed an additional affidavit clarifying the position stating as under

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"3. That I also state that the respondent had, vide letter dated 20.01.2010, also called the petitioner to assist the respondent in conducting the joint survey with them but the respondent had not come forward for the same and has not paid any money towards the signals that are being received continuously by the petitioner. It is stated that as on date, a sum of Rs. 9,38,160/- is due and payable by the petitioner to the respondent, which the petitioner evading to pay."

Mr. Singh may not be entirely correct in terms of Order 8 Rules 3, 4, 5 of the CPC are applicable in this case. They are not applicable in relation to the pleadings of the application under section 20, which is not to be construed to be a pleading in an original petition.

Furthermore, as has rightly been submitted by Mr. Tandon that pleadings must be considered in their entirety. An explanation should not be taken as an admission on the part of the defaulter without considering his pleadings as a whole. The respondent has sufficiently traversed the allegations made in the petition.

The decisions cited by Mr. Singh, therefore, in our opinion, are not applicable.

Furthermore, all affidavits of the witness as noticed hereinbefore do not subserve the requirements of Order 19 Rule 3 of the CPC as there is such no relevance which can be placed thereupon. See Smt. Savithamma Vs. CECIL Naronha and Anr 1988 (Supp) SCC 655.

The allegation made by the petitioner may constitute a subsequent cause of action for which no action need be taken in view of the decision of the Supreme Court of India in J.S. Parihar Vs. Ganpat Duggar and others (1996) 6 SCC 291, wherein it has been held as under :

“6. The question then is : whether the Division Bench was right in setting aside the direction issued by the learned single Judge to redraw the seniority list. It is contended by Mr. S.K. Jain, learned Counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2.7.1991 Subsequently promotions came to be made. The question is : whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, afresh direction by the learned single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division

Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge, the Division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench.”

We, therefore, are of the opinion, in the facts and circumstances of the case that exercise our jurisdiction under section 20 of the 1997 Act as amended in the year 2000 for non-compliance of our order is not maintainable. It is dismissed accordingly.

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

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(G. D. Gaiha)
Member

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(P.K. Rastogi)
Member