

The respondents No.1 and 2 are MSOs carrying on their business in the town of Indore. According to the petitioner, the respondent No.3 (M/s S.S. Cable Network) runs its business through its partners, Md. Amin and Sheikh Sazzad. They allegedly have criminal antecedents. Md. Amin, a partner of Respondent No. 3, launched a separate firm known as Naz Cable Network. He entered into an agreement on or about 18.2.2008 with the Respondent No.1 for supply of signal in respect of Jalla Colony and Mamta Colony with about 365 connections.

It is alleged that a partnership agreement was entered into by and between the petitioner and the said Amin Sheikh and Sazzad Sheikh on or about 11.3.2008. The said partnership business, according to the petitioner, is being run in the name of the petitioner. The area of operation is said to be Khazarana.

The list of customers is said to have been exchanged between the parties.

Disputes and differences arose amongst them. Allegedly, the Collector and Superintendent of Police as also the Additional District Magistrate, Indore, having regard to the cases of theft and disturbance in regard to cable lines drawn off brought to their notice, called a meeting on 1.4.2008 and framed certain guidelines. They issued some directions to the cable operators and MSOs for sorting out their disputes in terms of the said purported guidelines.

The petitioner, allegedly, was not aware of the said guidelines. The petitioner is said to have entered into an agreement with the Respondent No. 1 herein for supply of signals of 80 db to it. They have about 2000 connections and the monthly collection in respect thereof is said to be Rs. 1.50 lakh out of which Rs.75,000 was to be paid to the first respondent every month.

According to the petitioner, in violation of the terms of the said deed of partnership dated 11.3.2008 as also the third agreement dated 11.04.2008, the third respondent entered into another lease agreement with the respondent No. 2 again for about 1230 customers in respect of the said area on or about 24.04.08, in terms whereof, the sum of Rs.61,600 per month was to be collected and a share of it i.e. 50% thereof was to be given to it for a period of three years.

Relying on or on the basis of the said agreement, the respondent No.2, started realizing subscription fees from the 700 subscribers of the petitioner, but started sharing profits with the Respondent No.3. According to the petitioner, this constitutes an illegal act on the part of the Respondents No.2 & 3. The petitioner contends that as the Respondent No.3 had not complied with the other terms of agreement, it filed a suit which was marked as Suit No.413(A) of 2008 titled Md.Vaseem Khan vs. Sheikh Sazzad and Another in the Court of Civil Judge Class-2 in Indore.

In the aforementioned suit an interim order of injunction was passed on 2.7.2008 to the following effect:

“15. Consequent to above analysis, the plaintiffs have been successful in proving their application for temporary injunction under Order 39 Rul – 1 & 2 C.P.C. (I.A. No.1) in their application. So the temporary injunction is hereby issued in the case to this effect that till the final disposal of the case, the defendents will not make any illegal possession on the Raja Cable & S.S. Cable 120, Kheerjabad Colony Indore by joining with other M.S.O., they will not transfer, sale or donate, nor get it done from others.”

According to the petitioner, despite the same, Respondent No. 3 has filed a petition before this Tribunal marked as P. No. 83(C) of 2009 (M/s SS Cable Network Vs Hathway Bhaskar Multinet Pvt. Ltd). An Order dated 17.4.2009 was passed which is to the following effect:-

“Notice Mr. Nasir Hussain accepts notice on behalf of the respondent.

The grievance of the petitioner is that supply of signals to the petitioner has been discontinued. Mr. Nasir Hussain, counsel for the respondent submits that according to his instructions the supply of signals to the petitioner is continuing. In any case, the respondent will ensure that supply of signals to the petitioner continues uninterrupted. Both parties will abide by the terms of agreement which exists between the parties.

The petition stands disposed of.”

The petitioner has alleged of other purported acts of omission and commission on the part of the Respondent No.3 with which we are not concerned for the present. It is admitted that the petitioner filed a petition before this Tribunal which was marked as P. No. 173(C) of 2009 but admittedly the same was dismissed as withdrawn. The order recorded in the said petition reads thus:

“Counsel for the petitioner submits that the petitioner wants to withdraw the petition with liberty to file the amended petition.

Counsel for petitioner also prays that the petitioner is not in a position to pay the court fees for amended petition and the same may be condoned, in case the petitioner files the amended petition. The prayer is granted.

The petition is dismissed as withdrawn.”

The petitioner, indisputably, during pendency of this proceeding, has filed another suit which was marked as Civil Suit No. 42(A) of 2009 on 16.7.2008 against the Respondent No. 2 and others for a relief to restrain them from entering into partnership network of the petitioner with any other person wherein a decree for permanent injunction is said to have been passed on 18.12.2009 in terms whereof the Respondent No.2 and others have been restrained from entering into the said area of the partnership network of the petitioner.

Despite service of notice, the Respondent No. 1 and Respondent No. 3 have not appeared. A reply has been filed on behalf of the Respondent No. 2 on 4.2.2009 wherein a preliminary objection was taken that it is not a necessary party to the petition. The Respondent No.2 contends that there was no working relationship by and between the petitioner and the Respondents No. 2 had never been a privity of contract with the petitioner.

According to the Respondent No. 2, no substantial relief has been claimed against it and at best, it is a dispute amongst the partners and in that view of the matter this Tribunal has no jurisdiction in terms of Section 14 of the Telecom Regulatory Authority of India Act, 1997 (the Act) to entertain this petition. The Respondent No. 2, however, states that for some time, having regard to the “must provide” clause contained in Clause 3.2 of the Interconnect Regulations, it supplied signals to the Respondent No. 3. The said Respondent contends that even supply of the signals has now stopped.

Before adverting to the rival contentions raised by the parties, we may notice that the learned counsel appearing on behalf of the petitioner would contend that the Respondent No.3 has gone back to the fold of the petitioner once over again.

The short question which arises for our consideration is as to whether the Respondent No. 2 is a necessary party. However, as the reply was filed on that date, and as prayed for, by the learned counsel for the petitioner, the matter was postponed. The petitioner was also given an opportunity to file a rejoinder within a period of two weeks. Admittedly, it has failed to do so.

The prayer made by the learned counsel for the petitioner to file its rejoinder before us has been declined.

Mr. Mishra, the learned counsel appearing on behalf of the petitioner would contend that although two suits had been filed in the Civil Courts at Indore and although in one of the said suits, the Respondent No. 2 was arrayed as a party, the reliefs claimed for herein are different from those in the said suit.

According to the learned counsel, the reliefs sought for in the Civil Court was to restrain the Respondents No. 2 & others from supplying signals with the area for which partnership agreement dated 11.12.2008 was entered into.

Admittedly, the petitioner has filed two suits. In one of the said suits, final relief has been granted in favour of the petitioner. In another suit, as noticed hereinbefore, an order of injunction had been passed against the Respondent No. 3 and/or the other defendants therein.

The petitioner, principally, speaks of three agreements –

- (i) relations in constitution of the partnership firm,
- (ii) an agreement by and between the Respondent Nos. 2 and Respondents No. 1 & 3; and
- (iii) an agreement dated 24.4.2008 entered into by and between Respondents No. 2 & 3.

Call it a partnership of a joint venture or some pooling arrangement, the partners, the R-1 and the petitioner and R-3 are said to have entered into some arrangements. The Respondent No. 2 is not a party thereto. In terms of the said arrangement, entered into by and between the petitioner and the respondent No. 3, they were to take supply of signal form Respondent No.1. Respondent No.3, is said to have entered into a private arrangement with the Respondent No. 2. Admittedly, therefore, there is no privity of contract by and between the petitioner and the Respondent No. 2. In regard to the purported acts of omission and commission on the part of the third respondent, the petitioner has already filed a suit. It has obtained an order of injunction. It, during pendency of the present proceeding, had filed another suit against the Respondent No. 2 and an ex parte decree is said to have been passed therein.

If the Order of injunction is being violated by the Respondent No. 3, the petitioner has its own remedies. As noticed hereinbefore, in relation to the purported joint venture between the petitioner and the Respondent No.3, the Respondent No. 2 has no role to play. Admittedly, Respondent No. 3 had approached this Tribunal wherein an order was passed which we have noticed heretofore.

If by reason of some arrangement entered into by and between the Respondent No. 3 and Respondent No. 2, the petitioner has been suffering some damages, in our opinion, the same would not constitute a cause of action within the meaning of the provisions of Section 14 of the Act.

Furthermore, it appears that the petitioner had approached this Tribunal in P. No. 173(C) of 2009. The said petition was permitted to be withdrawn. It is true that liberty was granted therein to file a fresh petition. It has, however, not been stated as to why the petitioner has filed a new petition.

The petitioner appears to have indulged in forum-shopping. We have noticed hereinbefore that it had approached this Tribunal but without any good reason withdraw the said petition on 10.9.2009. Even prior thereto, it had approached the Civil Court. If the petitioner was aggrieved by the Order of this Tribunal dated 17.4.2009, passed in P. No. 83(C) of 2009, it could have approached it for review of the said Order. The petitioner by filing this petition cannot be permitted to achieve something indirectly which it can not do directly. A bare perusal of the order of this Tribunal dated 17.4.2009 would show that some sort of an arrangement by and between the Respondents No. 2 & 3 had been entered into. The respondent No. 2, however, discontinued supply of signals. According to the Respondent No. 2, however, the supply of signals has been continuing.

Before us, however, Mr. Mehta categorically stated that although for a brief period, signals were supplied to the network of the Respondent No.3 by Respondent No.2, no agreement which is subsisting at present.

It may be true that the Respondents No. 2 & 3 had arrived at an agreement for a period of three years. But having regard to the categorical statement made by Mr. Mehta that Respondent No. 2 at present has not been supplying any signals to the Respondent No. 3, in absence of any other material having been brought on record to show that the said statements are incorrect, there is absolutely no reason as to that this Tribunal should not rely thereupon. In any event, if there is a clash of interest on the one hand by and between the petitioner and Respondent No. 3, and on the other hand, by and between the Respondents No. 2 and 3, in absence of a privity of contract by and between the petitioner and the Respondent No. 2, in our opinion, it has rightly been contended by Mr. Mehta that in this petition, the dispute involves only the petitioner and the respondent No.3 and the respondent No.2 is not a necessary party.

For the purpose of maintaining a petition for grant of damages and/or an order of injunction, the petitioner was bound to plead existence of a continuing an existing relationship between itself and the Respondent No.2.

If Respondent No. 3 had been taking supply from the Respondent No.2 in violation of the partnership agreement, the same would not constitute a cause of action within the meaning of the provisions of Section 14 of the Act.

Furthermore, the law does not prohibit a local cable operator from taking a double feed. Thus, whereas the network of the Respondent No. 3 can continue to take a feed from the Respondent No.1, it can also take another feed from Respondent No.2.

To our query, Mr. Mishra stated that the Respondent No. 3 has taken over the control of the headend of the petitioner. Even in the event the Respondent No. 3 has put up another headend and allegedly encroached upon the subscriber base of the petitioner, in view of its own contention that the same would constitute breach of the terms of the agreement dated 11.3.2008, in our opinion, no relief can be granted to the petitioner against the Respondent No. 2 in this petition.

The preliminary objection raised by the Respondent No.2, therefore, is sustained. Its name is directed to be expunged from the records with costs.

Counsel's fees assessed at Rs.25,000/-.

Put of the matter on 02/07/10 for further direction.

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

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(G.D. Gaiha)
Member