

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

Dated 19th May, 2010

Petition No.162 (C) of 2009

M/s Ramesh Cable Networks ... Petitioner

Versus

M/s Channel Plus .. Respondent

-

BEFORE:

HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON

HON'BLE MR. G. D. GAIHA, MEMBER

-

For Petitioner : Mr.Jayant K. Mehta, Advocate

For Respondent : Mr.Maninder Singh, Senior Advocate
Mrs. N.K. Sibal, Advocate
Ms. Shruti Ranjan, Advocate

JUDGMENT

S.B. Sinha

The petitioner, a local cable operator (LCO) has filed this petition invoking clause 3.2 of The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (hereinafter called and referred to for the same brevity as “the said Regulation”), inter alia, on the premise that despite its request, the respondent had not supplied signals to it for its re-transmission to its customers.

Some basic facts are not in dispute. The petitioner had been obtaining signals from a multi system operator, namely M/s Polymer Cable Networks. However, the said connection was disconnected.

It also appears that the respondent had two other MSOs operating in the said area, namely, Sai City & Pvt. Ltd. and PCC Cable Network.

We, for the purpose of disposal of this petition although referred to by the petitioner in this petition, need not state the aftermath of the purported disconnection by M/s Polymer Cable Networks as in a petition filed by it against TRAI, this Tribunal has held that TRAI had no jurisdiction to enter into the disputes between the petitioner and the said Polymer Cable Networks.

We may, however, notice that a complaint was made by the petitioner with TRAI resulting in a direction issued against it. It, however, appears that the petitioner sought to obtain the decoders and signals directly from the respondent wherefor it approached it on or about 06.09.2008, the relevant portions whereof read as under:-

“Sub: Supply of Sun Decoder – Regarding.

01. I am doing business in Cable Networks in my Dadagapatty Area since 17 years as LMO Last Mile Operator, on the foot of License bearing No.RC.No.45/95 HPO Salem issued from Central Government. I have duly

paid the Service Tax to the Government (R.C. No.126/2002) I was running cable networks by feeding above 700 subscribers of my area Dadagapatty.

02. I was then running my cable business, on monthly payment of Rs.95/- per month per subscriber, by getting cable feeding from MSO namely M/s. Polimer Cable Networks run by its M.D.P.V. Kalyanasundaram. I have paid all payments till May 2008 without any due.
03. In the meantime, Tamil Nadu Government announced that they would start to feed Government Cable line to all districts of Tamil Nadu. By that time, Mr.P.V. Kalyanasundaram attempted to purchase my cable line business in all indirect process. I did not obey him and escaped from his clutches. Hence he with ultra motives raised his claim of monthly payment which I opposed. Taking advantage of my opposition, he de-linked his cable line to me. Hence I have filed suit for permanent injunction in O.S./497/2008 on the file of Prl. District Munsif Court Salem.
04. While the suit was pending, said Polimer Networks caused deactivation of my OFC link line at 6 PM on 16.06.2008. I have reported to Polimer at 7.40 PM on 18.06.2008 by Telegram. They did not respond.
05. Hence I have lodged complaint on 23.06.2006 in accordance with rules to Telecommunication (Broadcasting & Cable Services) Interconnect Regulation 2004, on the files of Magistrate, District Collector, Police. The very Next day said Polimer came to my business are and proclaimed that Ramesh Cable Network would not function or operate hereinafter and consequently they are linking their cable line direct to the subscribers. Till this date, I am running my cable networks with above said 36 channel cable line to my will subscribers.

They also with the hope that SUN Package would come to my cable networks and thereby they enjoy the same from and out of my cable line. They are still in support of mine with hope of seeing SUN package through my cable.

06. Hence on 27.06.2008 on Friday I along with other cable networks of my neighbourhood namely M.S. Suganya Cable Networks, Amman Networks and Kadal Cable T.V. and we all met Mr.Sudarson and submitted our applications for your supply of SUN Decoder to us. On receipt of application, your Officer immediately called upon with his colleagues by Phone and replies to us that on Kalyana Sundaram M.D. of Polimer Cable Networks, Salem is objecting them to feed their SUN Decoders, to us. He also told us to surrender before Kalyanasundaram and as he is unable to support us, to feed SUN Decoders. We argue our position and request them to supply your SUN Decoders. He, at all times replied that his M.D. Mr.Dhayanidhi Maran, is not willing to supply SUN Decoders and assured that they would supply it to us, as and when his M.D. permits him.
07. In continuation I submitted my complaint on 10.07.2008 before TRAI. Further, I have filed Writ Petition No.18861/2008 on the file of High Court Chennai wherein High Court on 06.08.2008 issued order to TRAI, to enquire the issue and dispose the same at the earliest. TRAI received High Court Order on 26.08.2008 and they sent notice to the parties to appear on the hearing on 19.09.2008. In the meantime I was told that your Officer Sudarsan was transferred and with the hope that we applied fresh application for the supply of SUN Decoders before incoming Officer.

08. I do hereby assured that I would submit the details of SLR to your Office periodically and pay the necessary payment periodically, if your SUN Decoders are supplied to me with the consent of your Chairman. And also assured that I would not cause default on it at any score.”

The receipt of the aforementioned letter is neither denied nor disputed. Another letter by way of a reminder, was sent by the petitioner on or about 5.11.2008, the proof of delivery whereof is not in dispute. The same reads as under :-

“From

S. Balamanikandan,
M/s. Ramesh Cable Networks,
85, Tagore Street,
Dadagapatty, Salem-6.

To

Thiru. Chairman and Managing Director,
SUNNET WORK PVT. LTD.
No. 7, Norton Road,
Manihaveli, Chennai-28.

Sub : Supply of Sun Decoder – Regarding

Sir,

I have send my application to your good Office, for the supply of Sun Decoder on 06.09.2008 which was acknowledged by your Office.

2. In my application I have duly referred that M/s. Polimer Cable Networks Salem de-linked their cable line to me and my complaint on the file of TRAI is pending disposal. I also referred the said M/s. Polimer snatched our

Subscribers by direct feeding their cable networks. Hence I crave leave of your Office to grant me Sun Decoder through which to receive your Sun Package for enabling me to feed it, to my Free Air holding subscribers.

3. In the mean time, The Authority of TRAI, New Delhi, directed the Polimer Cable Networks to restore their supply of Cable line to us and said M/s. Polimer did not comply the order to restore the feeding to us.

4. Hence I crave leave of your esteemed Office, to supply SUN Decoder to us, for enabling me to give all Sun Packages to all my Free to Air Signal (since 5 months) subscribers and restore my cable networks business as before.

Salem
Date 05.11.2008

Yours Truly,
Sd/-
(S. Balamanikandan)

Encl :

6.9.2008 Dated application
Trai Direction copy
NOC written statement from Polimer Cable Net work (Court copy)”

The respondent even did not reply thereto. It is in the aforementioned situation a complaint was made to TRAI resulting in asking for a response from the respondent by it. It appears that the petitioner had informed the respondent that he had connectivity of about 30 subscribers. However, it was requested to provide the latest subscriber list. A joint survey was also proposed as would appear from the respondent’s letter dated 7.2.2009 which reads as under:

“Sir,

Sub: Complaint given by M/s Ramesh Cable Networks against us.

Ref: Your letter bearing F.No.3-9/2009-B&CS, dated 28.01.09.

With reference to the above said letter, we wish to inform you that the Complainant came for meeting on 06.02.09 at our Chennai office and discussed various issues. A copy of the minutes of the meeting is enclosed herewith. Both parties mutually agreed to conduct the Joint Survey to find out the original connectivity in his area. This is for your kind information.”

According to the petitioner although all informations including the documents sought for by the respondent, as also the subscriber line record, including the earlier one, when the petitioner had been getting signals from M/s Polymer Cable Network as also the current one, had been supplied to the respondent through Shri P. Srinivasan, Executive of the respondent, the respondent denies and disputes the same. The petitioner is said to have requested the respondent again in terms of its letter dated 23.03.2009 requested for supply of signal which reads as under:-

“Kindly refer to your letter dated 20 Feb. 2009 for the respondent of M/s Channel Plus. Joint survey as mentioned in the response of Chennai Plus was conducted on 27th Feb 2009. Send the letter to Chennai Plus on 11th March 2009 and visited their officer on Chennai 13 March & 14 March 2009. However the Sun Package Decoders have not been issued to me so far.

Kindly take up the matter M/s Channel Plus for issue of Sun Package decoders to me at the earliest.”

Yet again, another letter dated 3.4.2009 was issued for the said purpose. The petitioner received a letter dated 10.4.2009 from the respondent asking it to supply the same informations:-

“Sub: Complaint from M/s Ramesh Cable Networks against M/s Channel Plus – reg.

Ref: Your letter No.F.No.3-9/2009-B&Cs.

With reference to the above said letter we would like to inform you that, as per the meeting dated 06.02.2009 with complainant, we conducted the joint survey in his areas on 27.02.2009 through our executive. In that joint survey our executive found that the complainant is having 8432 connectivity. But the complainant furnished the details only for the connectivity of 26. Hence we asked the complainant to produce the details of original connectivity in his area. But so far he has not furnished the same. After receiving the correct details only we will be able to proceed furnished in this matter.”

The petitioner contends that it had sent a reminder to TRAI on or about 2.5.2009. However, TRAI had refused to issue any direction in the matter stating that it had no jurisdiction in respect thereof. The respondent in its reply inter alia contended:-

- (i) This Tribunal has no jurisdiction to entertain this petition as according to the petitioner itself it has merely a subscriber base of 26 subscribers.
- (ii) A sum of Rs. 16,64,000/- is owing and payable by the petitioner to M/s Polymer Cable Networks in August, 2009.
- (iii) The petitioner had not provided for the documents which are required in terms of clause 9.2 of the Regulations and unless such documents are filed, no signal could be provided to it.

(iv) In fact, the petitioner had a subscriber base of 8482.

The petitioner in support of its case, has examined its proprietor, Mr. S. Balamankinandan. It had also examined two of its customers, namely, Mr. Shiv Prakash and Mr. Srinivasan.

The respondent has also examined three witnesses. Its principal witness is Mr. Samuel Ranjan, Manager (Operations). It has also examined its Field Executive, Mr. P. Srinivasan who conducted the purported joint survey to show that the subscriber base of the petitioner is 8432; and Mr. Krishnamurthy, General Manager (Operations) of M/s Polymer Cable Networks.

Mr. Jayant Mehta, the learned counsel appearing on behalf of the petitioner would contend:-

- (i) From the materials brought on records it would appear that the contention of the respondent that the petitioner owed a sum of Rs. 16,64,000/- to M/s Polymer Cable Networks is incorrect in as much as no such stand had been taken by M/s Polymer Cable Network before TRAI or in the subsequent litigations between the parties.
- (ii) M/s Polymer Cable Network, except sending a purported e-mail in response to a query made by the respondent herein, had not filed any documentary proof to support its contention that a sum of Rs. 16,64,000/- is due to it, nor had it filed any petition before this Tribunal for recovery of the said sum and, thus, the petitioner is not a defaulter..
- (iii) The petitioner having supplied all necessary documents, which would also be evident from the joint meeting between the parties that his subscriber base is about 30, it would not be correct to contend that the petitioner has not complied with the provisions of Clause 9.2 of the Regulations.

- (iv) The petitioner having filed its Subscriber Line Report, the claim of the respondent that it has a subscriber base of 8432 must be held to be incorrect as joint survey was allegedly conducted by Mr. P. Srinivasan only on 27.2.2009 and it is difficult to accept that on a single day, a survey could be made in 8432 houses.
- (v) In view of the decisions of this Tribunal in M/s Ortel Communications Ltd. Vs. M/s Ushodaya Enterprises Ltd. & Ors., [P.No.141(C)/2008] and M/s Friends Cables Vs. Star Den Media Services Pvt. Ltd. [P.No.129(C)/2009], indisputably this Tribunal has the requisite jurisdiction to direct the respondent to supply signals directly to the petitioner.

Mr. Maninder Singh, the learned senior Counsel appearing on behalf of the respondent, on the other hand, urged:-

- (i) The provisions of the regulations read as a whole would clearly indicate that a broadcaster cannot be compelled to supply signals directly to a local cable operator and it must obtain such supply from one of its multi system operators.
- (ii) The petitioner itself having disclosed that it had obtained a connection from M/s Polymer Cable Networks, the respondent cannot be faulted, if it made queries in respect thereof from the latter.
- (iii) The petitioner being a defaulter, this Tribunal should not issue any direction upon the respondent to supply signals directly to it in view of the explanation appended to clause 3.2 of the Regulations.

- (iv) The petitioner having not complied with the provisions of Regulation 9.1 of the Regulations, it is even not otherwise entitled to obtain signals from the respondent directly.

This Tribunal by an Order dated 27.11.2009 framed the following issues:-

- “1. Whether there is any cause of action for the present petition;
2. Whether the respondent is liable to supply signals of its network to the petitioner; and
3. Whether the petitioner is receiving signals from another MSO namely Polimer Cable Network.”

Before adverting to the merit of the matter, we may notice some provisions of the Regulations whereupon reliance has been pressed by the learned counsel for the parties.

The Regulations were made by TRAI in purported exercise of its powers conferred upon it under Sec. 36 read with paras (ii), (iii) & (iv) of clause (b) of Sub-Sec (1)) of Sec. 11 of the TRAI Act, 1997. Regulation 2 provides for the interpretation section.

We may notice that ‘cable service’ has been defined in Sec. 2(h) to mean the transmissions by cable of programmes including retransmissions by cables of any broadcaster television signals.

Distributor of TV channels has been defined in clause 2(j) to mean—

“**“distributor of TV channels”** means any person including an individual, group of persons, public or body corporate, firm or any organization or body re-transmitting TV channels through electromagnetic waves through

cable or through space intended to be received by general public directly or indirectly. The person may include, but is not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator”

The term Multi System Operator (MSO) has been defined in Regulation 2(m) in the following terms:-

“**“multi system operator”** means any person who receives a broadcasting service from a broadcaster and/or their authorized agencies and re-transmits the same to consumers and/or retransmits the same to one or more cable operators and includes his/her authorised distribution agencies.”

Mr. Maninder Singh would contend that the very fact that only an MSO has been held to be entitled to retransmit the signals either to the cable operator or to the customers directly is a clear pointer to the fact that the TRAI intended to make a distinction between a Cable Operator and an MSO. It was urged that a bare perusal of Regulations 3.1 and 3.2 would clearly go to show that the regulator never contemplated, while creating a right in the distributor, to obtain signals directly from the broadcaster unless it is itself an MSO.

The Regulations have been framed by a statutory authority. It did so as the Cable and Broadcasting Services had been brought within the purview of the term ‘Telecommunication Service’ as contained in the provisions of Section 2(k) of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act).

It is true that cable service, cable operator, a distributor of TV channels and the MSO have been defined separately in the Regulations. It is furthermore true that when terms are interpreted differently in “The Telecommunication (Broadcasting &

Cable Services) Interconnection Regulation, 2004 (Regulations), unless the context otherwise requires, the same meaning should be attributed to the said terms throughout the legislation.

Regulation 3.2 admittedly provides for a right in a distributor. It must be given its natural meaning. A right granted in favour of a section of persons should not be unduly denied unless it can be clearly deciphered from the statute itself. A distributor of TV channels, as would appear from Regulation 2(j) would clearly show, may include, but is not limited to a cable operator or an MSO.

If the definition of a distributor of TV channels is a broad one, we see no reason as to why a restrictive meaning thereto shall be given. The meaning of the word distributor of TV channels has been used in Regulation 3. The said provision must be read as a whole.

It is difficult to accept the submissions of Mr. Maninder Singh that in absence of any specific mention having been made in Regulation 3 that a broadcaster is obligated to supply directly to a local cable operator (LCO), even if a LCO is otherwise entitled to obtain signals from the broadcasters directly, it cannot be held to be deprived therefrom. Clause 3.2 is a 'must provide' clause. It creates an exception to the ordinary law of contract relating to the consensual agreement to be arrived at between the parties to constitute a valid and binding contract.

By reason of the said provisions, the broadcasters are statutorily enjoined with a duty to cause the signals provided on a non-discriminatory basis. Once a statutory obligation has been imposed on the broadcaster, it matters not whether the word 'directly' has been used or not. It is now a well-settled principle of law that when the meaning of the statutory provision is clear and unambiguous, effect thereto must be given to it. It is also well-settled that a statute must be read in such a manner which

makes it workable and would not take away a right sought to be granted to a class of persons. [See Bata India Ltd. Vs. Commr. of Central Excise – 2010 (3) SCALE 646].

We may, apart from the reasons assigned in two of our decisions referred to heretofore, may also notice that so far as the registration certificate granted by the postal authorities to a cable operator or an MSO is concerned, the same is absolutely the same. No registration certificate is granted to a person being an MSO but as a cable operator. It furthermore appears that a distinction had to be made between a person who is a cable operator and another who is an MSO. A person having its own headend would be entitled to retransmit the signals to one or more cable operators, whereas a cable operator would not be entitled thereto. It is in the aforementioned situation only TRAI has advisedly included both cable operators as also the, MSOs within the definition of ‘a distributor of TV channels’ as is contained in Regulation 2(j) of the Regulations.

In this case, the respondent is not a broadcaster. It is itself a distributor. We were required to delve deep in the matter if the respondent was a Broadcaster. It being not, in our opinion, it cannot say that supply of signals should be made through another distributor.

This question came up for consideration in M/s Ortel Communications Ltd. Vs. Ushodaya Enterprises Ltd. & Ors. [Petition No.141(C)/2008 disposed of on 21.10.08]. It has been held therein:-

“7. We have carefully considered the contentions of both the counsels. The case in question is one of seeking of signals from a broadcaster. As indicated above, clause 3.2 of the Interconnection Regulations 13 of 2004 states that every broadcaster shall provide on request signals of its TV channels to all distributors of TV channels, which may include, but be not limited to ... In other words, every distributor of TV channels has the right to request for and

receives signals of TV channels from the broadcaster. A reading of clause 3.2 as well as clause 2 (j) makes it clear that any individual or group of individuals or a Body, whether corporate or otherwise, is entitled to seek and receives signals of TV channels from the broadcaster. So, firstly, it is not necessary that the seeker should be a multi system operator as is made clear in clause 2(j) cited supra. Besides, it is also not necessary that a multi system operator must necessarily retransmit the signals through the local cable operator/s. Clause 2 (m) clearly speaks of any *person* who retransmits the signals to consumers (emphasis supplied) and/or through one or more cable operators. In other words, it is perfectly admissible for an individual to seek and receive signals of TV channels from the broadcaster and retransmit the same directly to the consumers. The only stipulation is that he should be a cable operator, as defined under the Cable Act 1995, and be registered as such.

8. As for the contention of the Respondents that the various provisions in the Interconnection Regulation 13 of 2004 must be read harmoniously, we are unable to find the need/scope for the same in this particular case. The rule of harmonious construction arises in a case where there are two provisions which cannot be reconciled with each other. In *Bengal immunity co. Vs state of Bihar* (AIR 1955 SC 661), the Supreme Court had observed as follows:

"It is a cardinal rule of construction that when there are in a statute two provisions which are in conflict with each other such that both of them cannot stand, they should, if possible, be so interpreted that effect can be given to both and that a construction which renders either of them inoperative and useless should not be adopted except in the last resort. This is what is known as the rule of harmonious construction ..."

In the present case, we do not find any ambiguity between various clauses of the Interconnection Regulation 13 of 2004. The case of the Respondents is that the Petitioner is not eligible to receive the signals from the broadcaster

directly because it is not an MSO and their understanding is that an MSO has to necessarily retransmit the signals only to cable operators. They are conveniently overlooking the fact that the definition of an MSO includes a person who retransmits the signals directly to consumers. The other provisions of the Interconnection Regulation 13 of 2004 referred to by the counsel for Respondents do not support this view nor do they contain provisions which are contrary to the definition of an MSO.”

The said decision of this Tribunal has recently been followed in M/s Friends Cable v. Star Den Media Services Pvt. Ltd. being Petition No.129(C)/09 disposed of on 04.12.09. Therein, this Tribunal has also noticed that the judgment of this Tribunal in Ortel Communications was upheld by the Supreme Court of India.

In this view of the matter, we are of the opinion that the petition is maintainable.

What are the requirements to obtain signals may now be considered. It is contained in clause 9.2 of the Regulation which reads as under:

“9. Finalising Subscriber Base at the time of first agreement

First agreement between Multi System Operator and Broadcaster

9.2 In non-addressable systems, while executing an interconnection agreement for the first time between a multi system operator and a broadcaster, the multi system operator shall furnish a list of the cable operators who will be getting signals from its network along with their subscriber base. The parties to the agreement shall take into account the subscriber base of cable operators connected to the multi system operator while negotiating the

subscriber base of the multi system operator. For the consumers proposed to be directly served by the multi system operator, the procedure as laid down in sub-clause 9.1 of this regulation shall be followed.”

The requirement in terms of the aforementioned provisions, therefore, would be satisfied, if a subscriber base has provided the requisite particulars furnished therein. We have noticed hereinbefore that according to the petitioner, such SLR had been furnished not only when it was taking signals from M/s Polymer Cable Network but also the current one. The respondent contends that the same has not been done.

The parties had negotiated with each other. The respondent accepted that such a meeting had taken place on 6.2.09, the minutes whereof are as under:-

“Minutes of the meeting between M/s Channel Plus and M/s Ramesh Cable Network held on 06.02.2009.

Venue: Channel Plus Office – Chennai at 2.00 p.m.

Particulars: 1. Mr.Samuel Rajan - Channel Plus – TN

2. Mr.S.Balamanikandan

Proprietor

3. Mr.Vijaykumar - Advocate

Mr.S.Balamanikandan requested Mr.Rajan to provide separate decoder box for his Network.

Mr.Rajan asked Mr.S.Balamanikandan details of the total connectivity in his area. Mr.S.Balamanikandan replied that, now he has around 30 connections in his area. Mr.Rajan requested Mr.S.Balamanikandan to submit the latest subscriber list and other related documents, but Mr.S.Balamanikandan provided the old subscriber list only.

Both the parties mutually agreed to conduct the join survey to find out the original connectivity in his area.”

The contention of the petitioner, thus, is that even at that point of time he had stated that it had about 30 connections. It is in that view of the matter that a joint survey was agreed to be conducted.

If that be so, the next question which would arise for consideration would be as to whether such a joint survey had been conducted or not.

Although the respondent has taken a positive stand that no such joint survey had been conducted, it appears from a letter dated 10.04.09, the same has been referred heretobefore.

We may at this juncture notice the evidence adduced in this behalf by the respondent.

Mr. Samuel Rajan, the witness of the respondent, would contend that survey conducted by Mr.P.Srinivasan was not a joint survey. He, however, accepted that such a survey had been conducted on 27th February 2009.

It is relevant to notice that Mr.Srinivasan in his evidence stated that the petitioner is a cable operator who provides signals to other link operators. We may, however, notice that apart from the fact that he has admitted that there does not exist any documentary evidence in support thereto, the same has also not been pleaded.

In his evidence, he states –

“Although I have not verified the no.of subscribers on visiting every house but a figure 8432 was arrived at on the random survey of houses on each street.

Vol – Moreover since my birth I have been living 2 km away from that area thus I have ground knowledge.

I have no record to show how many houses I have visited.

I have no record of the name and address of these 8432 subscribers.

M/s Polymer cable has about 60000 subscriber in the town of Salem.

I visited the headend of the petitioner at Feb 2009 and noticing that it had been taking the signals from polymer and visited the office of polymer to verify that.

Two days time was taken to conduct the survey.

Attention of the witness is drawn to page 66, letter dated 10.04.2009.

I am aware of this letter.

Q. Was any joint survey conducted with the petitioner.

A. The join survey was undertaken but the petitioner took me to only some houses and not beyond those.

Thereafter I conducted the survey alone.

The attention of the witness is drawn to the survey in the letter dated 27.02.2009.

Q. Is the aforementioned date was the only date for joint survey.

A. The joint survey started on 27.02.2009 and finished on 28.02.2009.

The signature appearing in the letter dated 27.02.2009 (page 50) is not mine.

It is incorrect to say that the signatures in question is mine. (Marked 'A' for identification)

Mr.Rajan has asked me to conduct the joint survey but there is no document in respect of same.

It is wrong to suggest that I have not conducted any survey.”

The petitioner in its rejoinder had stated that in the village in question there are about 1800 houses only. If Mr. Srinivas on his own admission has not been able to visit every house, it is difficult to expect that a definite figure of 8432 could be arrived at to show the connectivity from the petitioner's headend. He, in his evidence, furthermore, as noticed heretofore, did not say as to how many houses he had visited or the names or addresses of those subscribers.

Although the documentary evidence shows that a purported survey was conducted only on 27.2.09, he has improved the case of the respondent by stating that survey was also conducted on 28.2.09. A different stand was taken by Mr. Samuel Rajan in his cross-examination which is as under:-

“Mr.Srinivas did not give me anything in writing but only verbally told.

The survey made by Mr.Srinivas was not a joint survey and as such no report was prepared.

Vol – My executive asked the petitioner but the petitioner insisted that he had a connectivity of only 26 subscribers and did not come to joint survey.

Attention of the witness is drawn to letter dated 3.4.2009 at page 59.

Q. Did channel plus reply to this letter.

A. I do not remember.

I did not ask Polimer Cable to give the SLR of the petitioner.

My executive did not give the names of all the subscribers but only mentions the areas and these areas would be places where the cables of the petitioner have been laid.

I do not remember the number of subscribers on which M/s Polimer cable was billed. However, the figure would be very high.

In the town of Salem there are to my knowledge three MSO including Polimer but there could be more.

I know that the petitioner has filed a suit in the Court of District Munsif at Salem against respondent.

It is definitely not correct that the number of subscribers of the petitioner is only 26.

I am not aware the subscriber base on which M/s Polimer Cable was billing to the petitioner.

It is wrong to suggest that M/s Polimer Cable is not providing signals to the petitioner.

Vol – I had sent my executives on a secret visit to the control room of the petitioner where it was found that the petitioner was getting signals from Polimer.

There is no record of these visits.”

Mr. Samuel Rajan in our opinion was not correct to say that no joint survey had been conducted. Mr. Srinivas said so before us.

The least that could have been done by the respondent was to ask for the subscriber base from M/s Polymer Cable. It did not do so. Why the same was not done is difficult to comprehend. We, therefore, are of the opinion that it may not be correct on the part of the respondent to contend that in fact the subscriber base was 8432.

The next issue is as to whether the petitioner owed a sum of Rs.16,46,000/- to Polymer Cable Network. The fact that the petitioner had protested against the fact of disconnection of signals against Polymer Cable Network before the TRAI is not in dispute. It also stands admitted that M/s Polymer Cable Network had not filed any claim petition against the petitioner nor took any action thereagainst. It is also not in dispute that for the said purpose, the petitioner not only filed a complaint before the TRAI but had also moved the Madras High Court.

Mr. S. Krishnamoorthy (RW-III) has admitted that the petitioner has been approaching for re-connection of the signals.

Mr. Samuel Rajan in his cross examination with regard to the alleged dues stated as under:-

“The statement made in para 6 has been made on the basis of one email received from Polimer Cable. That e-mail is neither on record nor it has been referred to in my affidavit.

M/s Polimer Cable did not send any invoice showing that the aforementioned amount was owing and due from the respondent.

I also did not ask M/s Polimer cable for the invoice.

Except that email there is nothing with me to support the statement made in para 6 of my affidavit.”

The letter dated 07.02.2009 of Polymer which is the only basis for raising a contention that the petitioner owes a sum of Rs. 16 lakhs is as under:-

“Dear Sir,

With reference to the telephonic discussion we had with you in connection with Kadal T.V. Ramesh Cable, Suganya Cable, Dhadhagapatty – Salem. As required by you we are enclosing the following documents:

1. TRAI Direction letter Dt: 21.10.08.
2. Complaints report for the Direction of TRAI.

We also like to inform you that our Salem Assistant Commission have already inspected the above said operators areas and confirmed to TRAI that the signal has been restored. This is for your kind information.”

It is of some significance to notice that the letter from M/s Polymer was sent to the respondent only two days after the meeting, which, admittedly, took place between the parties on 6th February, 2009.

It is also of some significance to notice that Mr. Samuel Rajan in his evidence by way affidavit in para 6 stated as under:-

“6. I further state that the Petitioner has concealed the fact that it owes the outstanding due amount for Rs.16,64,000/- to M/s Polimer Cable Network as on August 2009.”

He, however, in his cross-examination admitted that there is no document in support of the said plea. The witness proceeded on the basis that there had been telephonic conversations. It may be so. The attention of the witness was drawn to his aforementioned statement in the cross-examination, to which, he stated as under:-

“The signatory of the letter dated 7.2.2009 is the manager of Polimer Cable, it may of Mr.Kanakraj but I am not sure about it.

I had talks with Mr.Kalyan Sundaram and Mr.Krishnamoorthy after receiving letter dated 7.2.2009. (Exhibit RW 1/1).

There is nothing in my affidavit to show that I had talked with Mr.Kalayan Sundram and Mr.Krishnamoorthy.

We did not write any letter to M/s Polimer Cable Network but we had only a telephonic discussion.

I spoke personally with Mr.Kalyan Sundram and Mr.Krishnamoorthy.”

If ‘Polymer’ was an MSO and the parties were fighting over some disputes before a statutory authority, it would be difficult for us to agree with the contention of the respondent that no correspondence in writing would be made and only the officers of M/s Polymer would be contacting the officers of the petitioner only on telephone. We may notice that the statement made in para 6 of the affidavit, according to the said witness, had been made on the basis of an e-mail, which, however, has not

been produced. Even factum of receipt of such e-mail has also not been stated in the affidavit. Admittedly, M/s Polymer Cable did not consent in this behalf. It had not asked for information nor did they provide the one. It is also difficult to accept why an MSO would allow a huge amount to be legally written off due from an LCO who has merely a few connections and that too when the parties had been fighting a legal battle before TRAI.

It is, therefore, difficult for us to accept that any amount was due and owing from the petitioner and payable to Polymer. The petitioner in no uncertain terms contended that it had provided all details.

Mr.Samuel Rajan states that the annexures were not supplied by the petitioner. It is expected that if the annexures to the application were not supplied to the respondent by the petitioner, the same would have been brought to its notice.

The petitioner in its letter dated 27.2.09 states as under:-

“Sub: Supply of Sun Decoder and TRAI F.No.3/2009.B&CS – reg.

Sir,

Your field Officer Mr.P.Srinivasan came and made inspection of my Cable Networks Salem. I have submitted all my Networks documents as detailed below:-

- (1) Cable License – Copy HPO Salem
- (2) Service Tax RC – Copy 126/2002
- (3) Entertainment Tax – RC Copy 002/2003.
- (4) Cable Wire laying permission form Corporation – 01/2002 Copy.

- (5) Subscriber Line Report as on 08.04.2008 with reference to the details of Live 810 Subscribers names.
- (6) The copy of Written Statement and Counter Statement of M/s Polimer's Managing Director Mr.Kalyanasundaram, filed on the file of District Munsif Court, admitting the de-linking the cable line to the Ramesh Cable Networks and also recommending to feed Signal from the broadcasters.
- (7) The details of payment made by Ramesh Cable Networks to M/s Polimer for the period from 12.01.2004 to 31.08.2008.
- (8) The report of Police Commissioner of Salem, referring the de-linking of cable line by M/s Polimer Cable Networks to Ramesh Cable Networks and also referring the illegal direct feeding of cable line to the subscribers of Ramesh Cable Networks, by its Copy C.No.G2/986/ 13694/2008 dated 14.08.2008.
- (9) The present Subscribers Line Report of Ramesh Cable Networks as on 25.02.2009.

Hence I crave leave of your esteemed Office to fix the point for my 810 Subscribers (Licensed & permitted by Post Office) for enabling me to pay the necessary payment. And also prays to pass an order or direct M/s Polimer Cable Networks, to withdraw their illegal trespass by direct feeding their cable line to my subscribers, at the earliest.

And also prays to pass an order/direction to supply Sun Decoder Box to me, for enabling to restore my cable business and survive.”

In the said letter, one Mr. P. Srinivasan, the Field Executive of Sun Network is a witness. If that be so, it may be difficult to accept that plea of the petitioner too. It, however, appears that the petitioner in its letter dated 3.4.2009 stated as under:-

“I came before your esteemed Office on March 25th 2009 at about 10 AM for getting SUN TV package Decoders. In the evening I am called upon to postpone the negotiation to March 26th as your legal office bearers not in chair. Hence I met your legal Officer by name Mr.Vijayakumar on March 26th. I made negotiation with your legal officer. Your officer told me that your office would not issue package Decoders to whom who holds only 800 points. He agreed to give package decoders to me, if I would rise to 1500 points. For that I agreed and assured that I would SLR (Subscriber Line Report) of the above the points over to 800 points on every month and consequently your officer agreed to comply my demand to issue package decoders.”

Mr. Mehta would contend that the contents of the said documents may not reflect what the petitioner intended to convey, we do not agree. The letter of the petitioner is clear and explicit.

We, therefore, are of the opinion that the petitioner is bound thereby.

The petitioner, therefore, is entitled to be supplied the signals on a subscriber base of 1500 and not on 8000 subscribers as contended by the respondent.

The parties may enter into an agreement for three months on usual terms during which period a joint survey may be conducted and the subscriber base found therein shall form the basis of the agreement from the date for which it had been entered into originally.

The subscriber base found in the joint survey indisputably would be subject to negotiations.

This petition is allowed with the aforementioned directions and observations with costs.

Counsel's fee assessed at Rs.50,000/-.

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

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