

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

**Dated 29<sup>TH</sup> September, 2010**

**Petition No. 156(C) of 2010**

Sree Devi Enterprises

-  
...Petitioner

Vs.

Channel Plus

...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. Yoginder Handoo, Advocate

For Respondent : Ms. Dipti Sinha, Advocate for  
Ms. N. K. Sibal, Advocate

-  
**JUDGEMENT**

**S.B. Sinha**

The petitioner in this petition has, inter alia, prayed for a direction upon the respondent herein to provide it with the decoders for supply of signals of its 'Gemini' and 'Teja Telugu' satellite channels to its network.

Indisputably, the petitioner is a local cable operator. It requested the respondent to supply signal of the channels on or about 19.02.2010, stating:-

"I, Isukapalli Ganesh Kumar Raju S/o I.Rama Krishna Raju Managing Partner of a Multi System Operator in the name & style as M/s Sree Devi Enterprises situated at Door No.20-1-10/7, Super Bazar Complex, Kakinada-1, East Godavari District with control room fully equipped containing Analog systems and catering signal services of 40 free to air channels to my affiliate cable operators around 50 in number who are distributing the same to subscriber of the Kakinada urban and rural areas and nearby villages having around 2925 subscribers.

Since, there is a demand for your channels, our affiliates and subscribers are insisting us to provide them the signal services of your channels. So, therefore, we sincerely request you to provide us with the decoders of your channels, as we are ready to comply with the formalities as may be required for supply of the decoders of your channels to our network.

Please find enclosed the following documents for your consideration:-

A. Postal Registration

- B. List of affiliate cable operators, along with Affidavits 52 Nos.
- C. Service tax registration
- D. Partnership Deed
- E. Photocopy of Pan Card"

The list of affiliate cable operators along with other details have been placed at pages 22 to 23 of the petition; on a perusal whereof it appears that it had enlisted 52 local cable operators having a total subscriber base of 2925.

The name of the respective networks of the local cable operators, their area of operation as also the number of their connections had also been mentioned therein.

As the said request of the petitioner was not responded to, it served a reminder on the respondent, stating:

"We would invite your kind attention to the letter referred above submitted by us requesting you to supply Decoders of your Channels to our Network M/s Sree Devi Enterprises, Kakinada, wherein we have categorically informed you about our Network and its operation and also submitted all the relevant documents for your perusal. The above referred letter is a requisition under clause 3.5 of The Telecommunication (Broadcasting & Cable Services) Interconnection Regulations (3<sup>rd</sup> amendment) (10 of 2006). Even in spite of receiving the above you have not so far responded.

So we hereby remind you once again to consider our requisition dt: 19.02.2010 positively.”

It appears that the petitioner’s request for supply of the aforementioned channels dated 19.12.2010 was received by on the respondent on or about 05.03.2010, whereas the aforementioned reminder dated 17.03.2010 was served on or about 20.03.2010.

The respondent by its letter dated 29.03.2010 responded to the said request of the petitioner asking it to supply some other and further informations which, inter alia, are as under:-

- “1. Details of the total connectivity in your areas, areas of operations and addresses of the households in your serviced areas.
2. Copies of the Latest Entertainment Tax registration certificate.
3. Link operator’s details and copies of the agreements entered with you link operators.
4. ....
5. ....
6. List of other pay channels and copies of the agreements entered with other pay channels.
7. ....
8. Your latest Income Tax Return and your link operator’s Income Tax Return for last 6 months.

9. Details of the infrastructure of the cable room, running cables and equipment details etc.
10. Details of mode of the transmission of signals (whether overhead or underground) and a copy of the certificate of approval from the competent authorities in this regard.
11. Organisational chart for managing the cable network with clear hierarchy of the management and their responsibilities and scope of their work.”

The petitioner in its reply thereto, by a letter dated 10.04.2010 stated:

“The above said information was furnished to you vide our communication dated 19.12.2010, which has not been acknowledged by you specifically and your request for the information such as copies of latest entertainment tax registration, and the copies of the Entertainment Tax payment receipts, list of other pay channels and copies of the agreements entered with other pay channels; copies of the last invoices of other pay channels and copies of the payment receipts paid to other pay channels, latest income tax returns and our link operator’s tax returns for last 6 months, seems to be the information deliberately sought by you knowing fully well such an information is superfluous and not required to a Broadcaster like you.

Further, since we have just begun our operations in Kakinada the list of affiliate cable operators has already been furnished to you, therefore, the question of furnishing you the income-tax returns of those affiliate cable operators for the past 6 months is something unwarranted and unreasonable.

Whereas information regarding the invoices and the subscriptions paid to other broadcasters cannot be furnished to you and as of now we have the following pay channels decoders which are free to air. Further the equipment installed is our headend is described herein below.

Therefore, with the information provided already on 19.02.2010 and the information furnished today, I request you to first of all confirm receipt of the said information and revert back to us in case of any cross verification at the earliest and provide us with the signals of your channels without delaying by issuing letters seeking information which is mostly not relevant and necessary for the purposes of providing signals/decoders of your channels.

Further, we would be glad to clarify any doubts and provide you with any further information on the documents and information already provided to you on 19.02.2010, regarding our establishment and business setup and would invite any enquiry or cross verification or physical verification of the information already furnished to you as mentioned hereinabove.”

Mr.Yoginder Handoo, the learned counsel appearing on behalf of the petitioner in support of the petition, inter alia, would submit:

- (i) The petitioner having furnished the required details to the respondent which were necessary for the purpose of grant of fresh signal of its channels to the network of the petitioner, irrelevant questions had been asked and irrelevant details had been sought for which is not contemplated in law.

- (ii) The petitioner having raised a contention in Para 5 of the petition that the details asked for were not required and the same having been admitted, it does not lie in the mouth of the respondent to contend otherwise.
- (iii) The petitioner, in view of the fact that it has not entered into any contract with any other broadcaster and having been airing only free-to-air channels, the respondent must be held to have acted illegally in asking the petitioner to supply unnecessary and irrelevant informations.

Ms. Deepti Sinha, the learned counsel appearing on behalf of the respondent, on the other hand, submitted:

- (a) The details sought for by the respondent were necessary in order to verify in regard to the questions as to whether the petitioner is an income-tax payee; so as to ascertain that it has the capacity to pay.
- (b) The infrastructure available with the petitioner in its headend and other details were necessary so as to enable the respondent to get itself apprised of as to what system it had in place for retransmission of its signals and the nature of the cable laid.
- (c) The query as to whether while laying cables, the petitioner has obtained the permission of the competent authorities as the respondent would not like to be a party to any illegality and to maintain for the purpose of good business relationship, whom contact for the purpose of day-to-day operational measures, the requisite information were sought for.

- (d) The petitioner having not furnished the requisite details as are necessary for the purpose of transmission of signal of channels, it is not entitled to any order from this Tribunal.

Clause 3.2 of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004 as amended from time to time reads as under:-

“3.2 Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi-system operator, head ends in sky operator; Multi-system operators shall also on request re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators:

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

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

Indisputably both the petitioner being a service provider and the respondent being a content aggregator, are bound by Regulations framed by TRAI.

The Regulations has prescribed a 'must provide' clause on a broadcaster. Indisputably, a content aggregator being a distributing agency of a broadcaster will come within the purview of the definition of the terms broadcaster as contained in Section 2(e) of the Regulations. It is not in dispute that the petitioner had undertaken the business of retransmission of signal services to more than 50 cable operators in the town of Kakinada and surrounding areas. It is, furthermore not in dispute that the petitioner has been supplying the signals of 'free-to-air channels' only and it having not entered into any agreement with any of the broadcasters, the question of its receiving any invoice and/or paying any amount to any broadcaster would not arise.

The petitioner indisputably has complied with the requirements of clause 9.2 of the Regulations as it had furnished all the details of the cable operators it had been serving in a around the town of Kakinada.

The short question which arises for consideration is as to whether the respondent was correct in seeking various informations as were sought for in its aforementioned letter dated 29.03.2010 or not?

It is true that as has been contended by Mr.Handoo that Paras 4 and 5 of the petition have not specifically been traversed but it is also well known that for the aforementioned purpose the pleadings must be read as a whole. The reply of the respondent, if read as a whole, would clearly go to show that it had been insisting on the furnishing the details as is required under law.

Before us, Ms.Sinha, the learned counsel appearing for the respondent has very fairly stated that the demand of entertainment tax registration etc. was not necessary. It is, however, not in dispute that the petitioner has complied with the statutory requirements by providing other details. We may also place on record that although the

petitioner in its letter dated 10.04.2010 has referred to certain requirements made by the respondent, it has not furnished some other requirements which the respondent think it necessary.

The Regulations provide for a 'must provide' clause directing the broadcaster to provide signals to a distributor of TV channels. There cannot, however, be any doubt or dispute that such a provision has been made by the independent regulator in contra-distinction with the ordinary law of contract, namely, the parties in order to arrive at a binding contract must be *ad idem* on the details thereof including the terms and conditions of contract. The regulatory regime in this behalf, in the considered opinion of this Tribunal, must be ascertained upon reading the Regulations in its entirety.

There cannot furthermore be any doubt or dispute that the respondent broadcaster would not be held bound to supply signals to a distributor of TV channels only because it has been asked to do so. It is entitled to seek for other or further informations which would be necessary for it to enter into a subsisting binding agreement. It is admitted that ultimate agreement between the parties should be of the normative standard. While doing so, the basic requirements of both the parties cannot be lost sight of. When a multi-service operator or a distributor or even a local cable operator ask for supply of signals the broadcaster should be *prima facie* satisfied that the franchisee would be able to perform its part of contract. For the aforementioned purpose, it must satisfy itself that the headend of the distributor have the requisite equipments so as to enable it to retransmit the signals of its channels. Even for the aforementioned purpose in a case of this nature, the broadcaster would be entitled to ascertain the capability of the franchisee to pay the subscription amount. It is also true that some of the informations which were sought for, as for example; subscriber base on the basis whereof the franchisee had

entered into a contract with the other broadcasters need not be divulged unless a complaint is made before this Tribunal that the broadcaster is not ready and willing to supply signals on the petitioner on reasonable and non-discriminatory terms.

In Ganpati Cable Network Vs. M/s. MSM Discovery Pvt. Ltd. [Petition No.256(C) of 2009], this Tribunal opined as under:-

“We have noticed heretofore the requirements sought for by the respondent. The Regulations *stricto sensu* provide for two basic informations, which are required to be furnished by an applicant for supply of signals for the channels from a broadcaster, one of them being that the applicant should not be a defaulter even if he was not the LCO/MSO of the broadcaster concerned and before the supply of signal commences, the broadcaster and/or MSO may demand the last invoice issued by the outgoing broadcaster/MSO. Another statutory requirement for obtaining supply of signal for the channels of the broadcaster/MSO is contained in clause 9, of the ‘Regulations’.

The said provision mandates the applicant to furnish a Subscriber Line Report which would indicate the subscriber base of the cable operator. If, however, such SLR does not exist, the parties may negotiate on the basis of evidence in their possession or power. The broadcaster is otherwise also bound to supply the signal on reasonable terms and on a non-discriminatory basis.

It is in the aforementioned context, the informations sought for by the respondents are required to be taken into consideration so as to arrive at a decision in a matter of this nature.

Basically, the broadcaster should be interested in knowing the subscriber base. In that view of the matter, the details sought for by the respondent and in particular the number of the direct subscriber SLR submitted to the petitioner by its link/sub-operators, the declaration before entertainment/service tax authorities monthly subscriber statement, the details of equipments at control room and insurance details, monthly invoice if any cannot be said to be wholly irrelevant for the purpose of determination of the subscriber base and/or for the purpose of showing the reasonableness or otherwise of the terms of the agreement.”

Often, on behalf of the broadcasters, an argument is advanced that a request must carry the requisite details. This may be so but even for the purpose of getting the petitioner know about the deficiencies made by it, it is expected, that the broadcaster would respond to the request made to it and/or the inadequacies thereof . In this case, not only the details of the operators have been furnished, as indicated hereinbefore even the affidavits affirmed by the respective operators had also been furnished. The list of the operators in effect and substance complies with the requirements of clause 9.2 of the Regulations.

We, therefore, are of the opinion that in this case supply of the copies of the latest invoice of other pay channels and copies of the payment receipts paid to other channels was not necessary. Furthermore, the petitioner cannot be asked to provide the local operators’ income-tax returns for the last six months or otherwise. The petitioner, however, may be asked to disclose about its own income. It may, further, be asked to disclose the details of infrastructure of the cable rooms running cables and equipments and mode of transmission as also the fact as to whether the petitioner in laying down the cables had obtained the requisite permission of the competent

authorities or not. The petitioner, furthermore, need not withhold the name of its partner and/or officer with whom the respondent may contact for the purpose of carrying out the smooth operation.

We, therefore, direct the respondent to hold negotiations with the petitioner for arriving at the subscriber base upon the petitioner's furnishing aforementioned details. The petitioner may furnish the said details as early as possible and preferably within a period of two weeks from today. The parties may hold negotiations on the subscriber base on the premise that the petitioner has complied with the requirements of clause 9.2 of the Regulations.

We may place on record that the petitioner is ready and willing to make an advance payment. In the event it is found necessary for the respondent upon ascertaining the capacity of the petitioner to pay the amount of subscription fee which may be arrived at by and between the parties, it may ask for payment of an advance sum from the petitioner not more than two months.

However, in the event the parties are unable to arrive at a settlement, the remedies available to them shall remain open.

We hope and trust that the parties shall arrive at a settlement and enter into an agreement within four weeks from date.

This petition is allowed with the aforementioned observations and directions.

In the facts and circumstances of this case, there shall be no order as to costs.

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

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

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

**MKS/**