

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**DATED 18<sup>th</sup> April, 2011**

**PETITION No. 230(C) OF 2009**  
**(M.A. Nos. 85, 86 & 154 of 2010)**

North Delhi Cable Network Pvt. Ltd. & Anr.

.... Petitioners

Vs.

M/s. Master Cable Network

.... 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 Petitioners : Mr. Tejveer Singh Bhatia, Advocate

For Respondent : Mr. Vineet Bhagat, Advocate  
Ms. Neha Jain, Advocate

**JUDGMENT**

**S.B. Sinha**

1. The petitioner herein is a Multi Service Operator within the meaning of the provisions of the Telecom Regulatory Authority of India Act, 1997 (The Act) and Cable TV Network Regulation Act, 1995 (the 1995 Act).

2. The respondent was a Local Cable Operator and at all material times used to take supply of signals of different channels of the broadcasters.

3. An agreement was entered into by and between the parties hereto, which was an oral one. For the said purpose, a customer form was signed by the parties (Petitioner No.2 and the Applicant) in terms whereof the later agreed to pay subscription charges for 100 subscribers at the rate of Rs.150/- per month per subscriber.

4. Despite availing the signals and receiving the invoices, according to the petitioner, the respondent has failed and/or neglected to pay the regular subscription charges totaling Rs.17,59,089/- as on 31.7.2009.

5. The petitioner contends that the respondent continued to avail receipt of cable signals from the petitioner, but despite the fact that it had not cleared the outstanding bills, it migrated to another network and, thus, for all intent and purport it stopped taking signals from the petitioner.

6. On the aforementioned premise, the petitioner served a notice upon the respondent on or about 01.8.2009. It reads as under :

*“Kindly refer to the agreement/understanding arrived at with our distribution company for re-transmission of cable TV signals in your operational area under which each party was under an obligation to carry out their respective obligations envisaged therein. In*

*furtherance of the said agreement/understanding our company has continuously provided cable TV signals to you from time to time. You have continuously availed various channel signals from us since last several years for onward re-transmission to the subscribers in your operational area and have earned substantial subscription income from the subscribers.*

*However it is regretting to point out that after availing cable TV signals from us you have neglected to pay subscription charges regularly as a result a sum of Rs.17,59,089/- has become due and payable by you till 31.7.2009 as per books/records of the company. We have been continuously following up with you to clear entire outstanding subscription charges, however, you have deliberately ignored our reminders and withheld the said payment which you are liable to pay to us on account of availing cable TV signals from us. It may also be pointed out that in terms agreement/understanding you are also liable to deposit interest @ 18% per annum for delayed period on the above said outstanding amount. However you have migrated to other MSO not only without clearing our outstanding subscription dues but also without complying with the statutory regulations of TRAI which provide that it is mandatory for all operators/distributor of TV channels signals to give a notice to the concerned MSO from whom they are receiving channel signals from time to time and obtain a No Objection Certificate (NOC) from whom they were receiving the signals (presently affiliated MSO) that there are no outstanding dues.”*

7. Attention of the respondent in the said letter was also invited to clause 4.2 of the TRAI Regulations dated 10.12.2004. It was stated :-

*“Without complying the above mentioned regulations of TRAI, you had disconnected our company’s signals without notice and migrated to competing MSO for re-transmission of their signals without first clearing our outstanding subscription dues and without obtaining “No Dues Certificate” from us despite availing the signals of various TV Channels from us and receipt of regular invoices from us from time to time.*

*Despite our best efforts you have neither complied relevant regulations nor deposited entire outstanding subscription charges amounting to Rs.17,59,089/- (Rupees Seventeen Lakhs Fifty Nine Thousand and Eighty Nine Only) as per books of accounts/records of the company after availing interrupted channels signals and acceptance of invoices without any objections till date. It may also pointed out that in terms agreement/understanding you are also liable to pay interest @ 18% per annum for delayed period on the above mentioned outstanding dues. Copy of Statement of Account/Ledger enclosed herewith as Annexure-A.*

*We may once again request you to deposit entire outstanding dues of Rs.17,59,089/- along with interest within 10 days from date of receipt of this notice, failing which we shall initiate appropriate action as per law and in accordance with TRAI regulations, which shall be at your cost and consequences.”*

8. Along with the said notice, the petitioner also enclosed a copy of the statement of account/ledger, from a perusal whereof, it appears that the respondent had been making part payments from the year 1999 to 04.01.2006.

9. The petitioner served another notice in the month of February, 2006. The respondent allegedly paid a sum of Rs.30,000/- in cash on 25.3.2006 and thereafter made the payment of a sum of Rs.50,000/- by cheque on 29.2.2008.

10. We would advert to the statement of account vis-à-vis the legal implications in relation thereto a little later.

11. The respondent in its defence has inter-alia raised the following contentions:

1. *The respondent having stopped its cable operation since December, 2005, this petition having regard to the provisions contained in Section 14 of 'The Act' this petition is not maintainable.*
  
2. *The respondent had issued a letter purported to be dated 15.12.2005 stating that it had closed its business and did not intend to obtain signals of the petitioner in future. According to the respondent, the said letter dated 15.12.2005 was received by the Field Manager of the petitioner, Shri J. K. Tiwari.*

12. The petitioner in its rejoinder to the respondent's reply contended that the purported letter dated 15.12.2008 including the purported receipt thereof by Shri J. K. Tiwari is an ante-dated document created only for the instant case. Shri J. K. Tiwari has left the services of the petitioner long back and has been working with a competitor multi service operator. The petitioner, in support of its contention, has relied upon the customer code bearing number 1101-1107.

The first invoice raised for the supply of signals to the respondent was issued on or about 01.9.2002. The petitioner has filed invoices from the said date till July, 2009. As noticed heretobefore, the petitioner has also served a notice upon the respondent on 01.8.2001 and sent the statement of accounts along therewith, to which no reply was given.

13. The respondent, on the other hand, in support of its contention strongly relies upon the purported letter dated 15.12.2005 as also two receipts for sums

of Rs.55,000/- and Rs.18,000/- respectively being dated 21.01.2006 and 24.01.2006, and has contended that this amount was paid in full and final satisfaction of the claim of the petitioner. The respondent also relied upon the First Information Report lodged by the mother of the proprietor of the respondent, Smt. Dayawanti against Mahabir Singh, Shamsheer, Kamal, Naval and four others, who are running cable business under the name and style of Citi Cable alleging that they have been pressurizing her hard to pay a sum of Rs.25,000/-.

14. Threatenings were also said to have been given to her that “if the said money is not paid, they would kill her and her son and would throw them in the forests of U.P. and then rule the market”. Admittedly, after receipt of First Information Report lodged, Sh. Mahabir Singh and others were arrested and later on granted bail.

15. The petitioner, in support of its case, has examined Mr. V. Suresh Kumar, the authorized signatory of the petitioner.

16. So far as the respondent is concerned, it examined its proprietor, Mr. Rajneesh Bhatnagar. It has also examined Sh. V. Suresh Kumar, an employee of Canara Bank, Rani Bagh Branch, New Delhi to prove the fact that the demand draft for a sum of Rs.50,000/- was issued by M/s. Manku Cable Network.

17. Mr. Bhatia, learned counsel appearing on behalf of the petitioner, inter-alia, would contend that the defence of the respondent being revolving round the letter dated 15.12.2005, in the event the same is found to be a fabricated and an ante-dated document, the same must be held to be unreliable. Learned counsel furthermore contended that in any event no notice in terms of Rule 4.2 of the Telecommunications (Broadcasting & Cable Services) Interconnection Regulations, 2004 as amended from time to time, having been served, the respondent must be held to have failed to prove its case that it had ceased to have any privity of contract with the petitioner on or from the aforementioned date.

18. With a view to show that the said letter dated 15.12.2005 is an ante-dated document and created for the purpose of the present case, the learned counsel drew our attention to the statement of Ms. Dayawanti, the mother of the respondent in the above mentioned First Information Report to show that it has clearly been stated therein that she had been running the cable business with her son for the last more than 16 years. Drawing our attention to the Regulations, the learned counsel urged that the requirements of issuance of three weeks' notice on the part of the local operator/MSO to the Broadcaster having been introduced in the year 2006 only, it was wholly unlikely that the respondent would give three weeks' notice to the petitioner as mentioned therein.

19. It was furthermore urged that the statement of Shri Rajneesh Bhatnagar to the effect that although the agreement between the parties was an oral one,

one of the terms thereof was issuance of notice for three weeks, must be held to be by way of an after-thought.

20. Drawing our attention to the evidence of Mr. J. K. Tiwari, the learned counsel submitted that not only he had left the services of the petitioner and joined a rival MSO viz. M/s. Digi Cable, the very fact that he appeared before this Tribunal without service of any summons upon him clearly goes to show that he has been hands in glove with the respondent. So far as the issuance of the cheque for a sum of Rs.50,000/-, purported to have been deposited by the respondent is concerned, the learned counsel submitted that it was not possible for the petitioner to know the identity of the person issuing the cheque on the basis of the account number only. It was furthermore urged that it is possible that any person could make payment on behalf of another.

21. Mr. Vineet Bhagat, learned counsel appearing for the respondent, on the other hand, urged :

- (1) The statement of account of M/s. Manku Cable Network for the period 1.9.2007 to 31.8.2008 (Exh. R1/6) would clearly show that it was a cable operator taking signals from the petitioners and had regularly been paying a sum of Rs.50,000/- per month throughout and in that view of the matter it is wholly unlikely that the said Network had made payments on behalf of respondent also. Even if it has done so, the payment should have been made twice by its Network; one to cover its own liability and another by way of part payment on behalf of the respondent.

- (2) The petitioner having not been able to prove service of the invoices, it must be held to have failed to prove its case.
- (3) The respondent having served the notice dated 15.12.2005 on Shri J. K. Tiwari who at the relevant time, was the Area Manager of the Petitioners, it must be held to have proved its case that the said notice was served in terms of the oral agreement.
- (4) From the statement made by Shri J. K. Tiwari, it would be clear that although there existed a practice of service of the invoices by hand, the petitioners used to maintain a register which having not been produced, an adverse inference must be drawn against it.
- (5) The respondent having made payments in February, 2006 by way of full & final settlement, no other or further amount was due from it.
- (6) The very fact that the First Information Report was lodged by the mother of the respondent against Shri Mahabir Singh and others, who were appointed as distributor of the petitioner, it would clearly go to show that despite the fact that no signal was supplied for a period of four years, the petitioners intended to capture the market by taking recourse to illegal demand of money from the respondent.
- (7) The petitioner itself having accepted that the respondent has migrated to another MSO, the date of which having not been disclosed, the petitioner's case must be disbelieved.
- (8) The jurisdiction of this Tribunal being limited as envisaged under Section 14 and Section 14 (A) of the Act, having regard to the fact that the respondent has ceased to be a cable operator, this Tribunal must be held to have no jurisdiction.

22. We wish to take up the jurisdiction issue at the outset. The jurisdiction of this Tribunal emanates from Section 14 of the TRAI Act.

It reads as under :-

*“14. Establishment of Appellate Tribunal. – The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to –*

*(a) Adjudicate any dispute*

*(i) between a licensor and a licensee;*

*(ii) between two or more service providers;*

*(iii) between a service provider and a group of consumers;*

*Provided that nothing in this clause shall apply in respect of matters relating to –*

*(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969);*

*(B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Disputes Redressal Commission established under Section 9 of the Consumer Protection Act, 1986 (68 of 1986);*

*(C) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act 1885 (13 of 1885);*

*(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.”*

23. By reason of various decisions of the Supreme Court of India and in particular the one in Cellular Operators Association of India Vs. Union of India

reported in 2003 (3) SCC page186 as also Union of India Vs. M/s. Tata Teleservice Limited reported in 2007(7) SCC page 517, it is now well settled that the jurisdiction of this Tribunal is wide in nature. It is, thus, difficult for us to hold that only because a cable operator has for one reason or the other ceased to be a service provider, the same would by itself mean that this Tribunal will have no jurisdiction to determine the dispute between the parties. What would be of substance is that the date on which the relationship of the parties existed or the date on which the relationship is said to have ceased, which should normally be considered as the relevant date for determination of rights and obligations of the parties.

24. The jurisdiction of this Tribunal to entertain a petition filed by a party aggrieved by and dissatisfied with an action, in-action, or acts of commission or omission on the part of the respondent would depend on the cause of action in relation thereto.

25. Cause of action, as is well known, is a bundle of facts which are necessary to be proved for a petitioner to succeed in its case. Lawful termination of contract between the parties in this case would be a part of cause of action. Even the allegation as to whether the respondent in effect and substance has ceased to be a service provider is itself a question which is required to be gone into.

26. In A.B.C. Laminart Pvt. Ltd. Vs. A.P. Agencies 1989 (2) SCC 163 the Supreme Court of India opined :

*“A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to be*

*a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”*

**{See also Liverpool & London S.P. & I Assn. Ltd. Vs. M.V. Sea Success 2004 (9) SCC 512}**

27. The precise question has been considered by this Tribunal in Petition No. 29 (C) of 2008 (M/s. Eureka Cable TV Networks V. Valric Cable & Anr.) disposed of on 28.5.2010. In that decision, referring to the decision of this Tribunal in P.B. Enterprises Vs. World View & Ors, it was held as under :

*“A bare perusal of the aforementioned paragraph would clearly go to show that in that case an admission had been made that even before filing of the petition, the respondent has ceased to take signals from the petitioner.*

*We have indicated hereinbefore that according to the petitioner, the relationship continued as the first respondent or for that matter, the second respondent had not served notice in terms of the extant regulations. Unfortunately, this aspect of the matter was not brought to the notice of the Tribunal.*

*Furthermore, having regard to the provisions contained in Section 15 of the Act, the jurisdiction of the Civil Court is barred. A cause of action as is well-known, constitutes a bundle of facts. A suit in a Civil Court and/or a petition before this Tribunal would be entertained having regard to the cause of action disclosed in the plaint/petition. If a major part of cause of action arises for*

*determination of the Tribunal; this Civil Court's jurisdictions being barred, there cannot, in our opinion, be any doubt whatsoever that such a petition would be maintainable.*

*Moreover, the Supreme Court of India in UoI Vs. Tata Teleservices Ltd. 2007 Vol. IV or VI SCC 656, has gone to the extent of opining that the jurisdiction of this Tribunal is so wide that a counter-claim would be maintainable, even if the parties had not entered into an agreement in writing.*

*The decision of the Supreme Court of India in Tata Teleservices (Supra) is binding on us.”*

28. Yet again in Bargachh Telelinks Pvt. Ltd. & Anr. Vs. M/s. Noida Vision being Petition No.37 (C) of 2009 disposed of on 28.5.2010, this Tribunal distinguished the decision of a two Member Bench judgment of this Tribunal dated 31.8.2005 in Petition No. 52 (C) of 2005 (P.B. Enterprises Vs. World View & Ors.), and stated the law thus :

*“Our attention, furthermore has rightly been drawn by Mr. Bhatia to the new statutory regime, which we may notice :-*

*In a given case it is possible that having regard to the provisions of Regulations 4.2 and 4.3 of the interconnect regulations in the event no notice thereunder is given, the relationship would continue despite the fact that the respondent has wound up its business. It may be true that by reason of the Explanation appended to Clause 3.2 of the Regulations, a new MSO to whom the local cable operator or MSO intends to migrate may not refuse the migration itself, only because an invoice is produced before it showing the outstanding dues, but there can not be any doubt or dispute that in relation thereto the outgoing MSO would have a right to bring an action before this Tribunal for an injunction against the new MSO and/or to restrain it from allowing the local cable operator to migrate to its network and/or for issuance of a direction not to do so without clearing the former's dues.*

*It is to the aforementioned limited aspect, a new right has been created which did not exist prior to coming into force of the 2006 Amendment Act.*

*It is now also beyond any dispute that a petition for recovery of an amount against a LCO/MSO by another service provider would be maintainable if Telecommunication Services have been provided. So far as a dispute between two service providers is concerned, irrespective of the fact that one has allegedly ceased to be a service provider, is concerned. Suffice it to point out that the Parliament thought that an Expert Appellate Tribunal created for the said purpose should have exclusive jurisdiction in relation thereto and not any other court.*

*If a petition otherwise is maintainable, indisputably, no suit would lie before a Civil Court. If it is maintainable as on the date of the institution thereof; only in view of the defence taken, this Tribunal would not cease to have any jurisdiction.”*

It was observed :

*“In any event, in exceptional situations there cannot be any dispute, that this Tribunal can overrule its earlier decision as has been held in Bengal Immunity Co. Ltd. Vs. State of Bihar AIR 1955 Supreme Court 661. See also ‘In the matter of Cauvery Water Disputes Tribunal’ reported in 1993 Supp (1) SCC 96.*

*It is also a well settled principle of law that a strict compliance of statute would be required in the case of exclusion of jurisdiction of a Court [See G.P. Singh’s Principles of Statutory Interpretation (11th Edition) Page 707].*

*We, therefore, are of the opinion that this Tribunal has the requisite jurisdiction to determine the dispute between the parties.*

*Furthermore, the meaning of the words should be given a plain meaning unless context otherwise requires. (See Lalu Prasad Yadav Vs. State of Bihar reported in [2010(3) SCALE 443 (Paras 18-25)].*

*Given the ordinary meaning assigned to the term ‘Dispute’ between two service providers; the same would not mean that so long as they remain service providers and both of them must continue to have the*

*relationship, although when the dispute arose, both of them were service providers.*

29. In view of the aforementioned binding precedents of this Tribunal in Eureka Cable (Supra) and Bargachh Telelinks Pvt. Ltd. & Anr. Vs. M/s. Noida Vision (Supra), we have no doubt in our mind that this Tribunal has the requisite jurisdiction to entertain this petition.

30. The conduct of both the parties in this matter appears to be very peculiar. Despite the same, we have no other option but to resort to our task of appreciation of evidence in the light of the materials brought on record by the parties and the law operating in the field.

31. The fact that the respondent had been taking supply of signals from the petitioner is not in dispute. The relationship between the parties, therefore, stands admitted. The petitioner herein has produced before us a large number of invoices issued in the name of M/s. Citi Cable Networks. According to the petitioners, by an order dated 17.11.2006 passed by the High Court of Bombay, the said Citi Cable Network was directed to be demerged and vested in it. The fact that the aforementioned order was passed by a learned Single Judge of the Bombay High Court in Company Petition No. 531 of 2006 is not disputed.

32. Although the petitioner has filed as many as 100 invoices, a statement has been made by its witness, Shri Suresh Kumar that it has no documentary proof to show service thereof. However, it is stated that as per the business

practice, invoices used to be served by hand. Shri J. K. Tiwari, Area Manager who, as noticed heretobefore, was examined on behalf of the respondent, on the other hand, stated that the petitioner used to maintain a register by way of proof of service of notice. According to the said witness, the petitioner used to grant receipts for the amount received from the cable operators. We would consider the said issue a little later.

33. On the aforementioned premise, the statement of account filed by the petitioner and in particular the payment said to have been made by the respondent viz. Rs.30,000/- on 25.03.2006 and by a cheque for a sum of Rs.50,000/- on or about 29.02.2008 must be considered. The respondent has filed two receipts dated 21.01.2006 and 24.01.2006 for a sum of Rs.25,000/- and Rs.50,000/- respectively.

34. It cannot be denied or disputed that the amount was received by the petitioners either in cash or by way of cheque, for which receipts used to be granted. So far as the cheque received by the petitioner on or about 29.02.2008 is concerned, it now stands established that the same was drawn by one M/s. Manku Cable Network.

35. From various documents filed by the respondent and in particular the records produced by the Bank through Mr. Sachdeva, it is clear that M/s. Manku Cable Network had been paying to the petitioners a sum of Rs.50,000/- per month for the period 01.8.2007 to 31.8.2008. The said statement of account has been taken on record and marked as Ex. R1/6.

36. It is true and as has been contended by Mr. Bhatia that Mr. V. Sachdeva, the employee of the Rani Bag Branch of Canara Bank admitted that nobody can identify the name of the account holder with reference to bank account number only nor any account details of such person can be ascertained from the bank number of the customer but having regard to the facts and circumstances of this case and in particular the fact that the said Manku Cable Network having been a customer of the petitioner, there was absolutely no reason as to why the same was not accounted for in the appropriate account.

37. It is not the case of the petitioner that the said Manku Cable Network communicated to it in writing or otherwise that the said payment was being made on behalf of the petitioner.

38. We fail to understand as to why the said cheque could be credited in the account of the respondent in stead and in place of M/s. Manku Cable Networks. Mr. Bhagat, in our opinion, has rightly submitted that if M/s. Manku Cable Networks was to pay the said amount on behalf of the respondent also, it could not have failed to make any amount on its own behalf for the month of February, 2008. We, therefore, have no hesitation to reject the said contention of the petitioner.

39. It is also difficult to accept that the petitioner has adduced any cogent evidence to prove payment of Rs.30,000/- in cash and Rs.50,000/- by way of cheque to the petitioner.

40. Before, however, we consider the consequence thereof, we may dispose of two short questions.

41. It may now be considered what would be the consequence, when relationship between the parties was not legally extinguished. The obvious legal answer would be 'it continues'. By reason of the purported letter dated 15.12.2005, the receipt whereof has been acknowledged by Shri J. K. Tiwari, an ex-employee of the petitioner, the respondent is said to have terminated the contract. In order to appreciate the respective contentions of the parties herein, We may notice the said letter :

*"I, the proprietor of Master Cable Network Limited, Shalimar Bagh, New Delhi request you to withdraw your Cable signal with immediate effect. This letter treats a three weeks notice to your company from my concern.*

*Please accept this request/notice and be placed in you record."*

42. Admittedly, Shri J. K. Tiwari, was an employee of the petitioner on that date. He left the service of the petitioner in 2007 and joined another Multi Service Operator, M/s. Digi Cable. The letter was to be treated as three weeks' notice. Indisputably, Regulation 4.2 of the Regulations was inserted only in

the year 2006 mandating the local cable operators also to serve notice on the broadcasters and/or MSOs.

43. The agreement between the parties was an oral one and it is said to have been valid for a period of three years initially, but the same allegedly continued.

44. Mr. Bhatnagar, a practicing Advocate in his evidence stated that he was not aware that there was any statutory requirement of any notice period in the year 2005. However, according to him the said notice was given in terms of the agreement between the parties thereto, although it was an oral one. Keeping in view of the fact that there was no TRAI Regulations, a party in December, 2005 in terms whereof the local cable operators were required to serve the notice upon the MSOs, it is difficult to believe the said statement in support of which, neither any pleading was raised nor any statement was made in his affidavit that such notice has been given in terms of the agreement. Such a statement, thus, is in-admissible in evidence.

45. The petitioner should have at least made such a statement in his Examination-in-Chief i.e. in his own affidavit.

46. Now, with a view to arrive at a conclusion as to whether the said letter dated 15.12.2005 is a genuine document or an ante-dated one, having been created in collusion with Shri J. K. Tiwari, an employee of the petitioner, the question must be considered keeping in view the circumstances attending thereto.

47. Shri J. K. Tiwari on his own showing has a limited role to play while discharging his duties. His job was to entertain complaints, collection of payments and day to day work relating to operations. Receiving of letters and that too contractual notices, evidently was not his job. His job was also to issue invoices and collect payment therefor.

48. No summons was served upon Shri Tiwari but he appeared before this Tribunal on 30.6.2010 for his cross examination. In his Examination in Chief, he not only admitted and acknowledged his signature on the said letter, he proceeded to say that he had received instructions to disconnect the supply. In his cross examination also, he stated that he had to have instructions for receiving the said letter from the Business Manager. He did not say so in his affidavit.

49. We may notice the relevant questions and answers in this behalf.

*“Q. I put to you that the letter dated 15.12.2005 was never brought to the notice of Business Manager?”*

*A. Before receiving the letter I talked to Business Manager and on his instruction only I received the said letter.”*

50. A bare perusal of the said question and answer would clearly show that he has not replied one way or the other to the suggestions put to him. So far as disconnection of the supply of signals is concerned, although according to him, he used to take instructions from Business Manager evidently because

lack of his authority in this behalf, it is apparent that despite his designation of Area Manager, he could not take a decision on his own, and was thus, required to take instructions from higher officials. He, it is important to notice, could not even name the then Business Manager who occupied the said office in December, 2005.

51. We have noticed heretobefore that although the summons were not issued on him, in his cross examination he stated that the same was received by his tenant and he had shown the same to him. He went on to state that he came to this Tribunal for deposing in the matter on a call received from WWIL. The evidence of Shri Tiwari, in our opinion, does not inspire confidence at all, for less so far as the same relates to service of notice by the respondent upon the petitioner is concerned.

52. There is another aspect of the matter, which cannot also be lost sight of. Admittedly, the mother of the respondent lodged the First Information Report against Shri Mahabir Singh & Others in 2009. It may be of some interest to note that in the said First Information Report, it was alleged :

*“The Statement of Dayawanti w/o Lt. Sh. Shiv Prakash R/O 107-D U&V Block, Shalimar Bagh, Delhi age 45 years she said that I live with my son, advocate Rajneesh Bhatnagar at the above said address and from last 14 years have working as a Cable Operator in the U&V Market of Shalimar. My husband died 26 years before and this is the only source of my survival. From last one month Mahabir Singh, Shamsher, Kamal, Naval and their four other friends are pressurizing me to give 25000/- for their illegal demand and threatened me that if I will not give the money then they will kill me and my son and will throw me in a forest of U.P. State and they will*

*rule this Market. On the above said threat I have many times complained against them in PCR and even today about (not legible) 'O clock some of their friends whose name I don't know, came to my house and told that Mahabir Singh and Shamsher Singh sent them to collect the sum of Rs.25000/- from her. When I refused to give the money then they warned me and said that now Mahabir Singh, Shamsher Singh & Kamal will look after us. Thereafter my son came home and he informed about this incident in Police Station. The above mentioned Mahabir Singh, Shamsher Singh & Kamal run their office in the SE Sigalpur village, Shalimar Bagh, Delhi in the name of SITI. The statement is heard and correct. SD ENGLISH DAYAWANTI 2-7-09 ATTESTED SI HIRA LAL... SHALIMAR BAGH DT 2-7-09. SH. DO, Police Station Shalimar Bagh, Delhi.....it is humble request that .....DDNO 16A ... (not legible)."*

53. Allegations contained in the said F.I.R. although does not corroborate the case of the respondent fully, the same should not be held to be sacrosanct. It may be noticed that Mr. Rajneesh Bhatnagar in his cross examination stated that her mother had been running the business of cable operation since 2009. This statement does not corroborate the statement of his mother in the First Information Report. Mr. Bhatnagar admitted that the address given in the First Information Report was his residential address. He furthermore admitted that he used to run the control room from the same premises even before 2005.

54. If the respondent furthermore is correct in its contention that it has ceased to carry on the business as a cable operator since December, 2005, it would not have renewed its postal registration certificate.

55. In his statement in cross-examination, Shri Bhatnagar stated :

*"I had done certain formalities regarding Cable TV Registration after closing of my business in December 2005, but I do not remember what were those formalities.*

*I used to know Mr. J. K. Tiwari as a Field Manager*

*It is incorrect to suggest that Ex RW 1 at page 204 is a back dated letter.*

*Vol. – The letter was made on 15.12.2005.*

*I do not remember whether I had renewed my postal registration certificate from time to time after December 2005.*

*I do not remember whether I had supplied renewed postal registration certificate to the petitioner company after December 2005.*

*The counsel for the petitioner confronts the witness with the postal certificate with registration no. 554 which is a photocopy (Objected to by the counsel for the respondent being a photocopy) (Mark 'Y' for identification)*

*My name is wrongly spelled on the postal registration certificate as I used to spell my name as Rajneesh as my first name whereas the postal registration certificate bears the name Rajnish.*

*The address given in the postal registration certificate is mine.”*

56. No reliance can be placed on the purported letter dated 15.12.2005 on the basis of deposition of Shri Bhatnagar.

57. The circumstances attending to the issuance of the said purported notice, in our considered opinion, point out to the fact that the same is not reliable. On what basis the said notice was issued, is also not known. Moreover, the onus of proof in this regard was also on the respondent inter-alia being within its special knowledge. It failed to discharge the same.

58. Moreover, the respondent has not stated, in view of the fact that the agreement in question was an oral one, as to what were the other terms & conditions of contract. Why the parties had to enter into such a contract providing for notice for a period of three weeks before the same is terminated, which incidentally tallies with the statutory requirements contained in Regulation 4.2 of the Interconnection Regulations which, as noticed heretobefore, came into force only in 2006, has not been disclosed. Furthermore, Shri J. K. Tiwari is not a reliable witness for the reasons stated heretobefore. On that ground too, it is difficult to accept that he either had the authority to receive the said notice or in fact did so at his own instance or at the instance of the Business Manager.

59. We cannot, in the facts and circumstances of this case, countenance as to how Shri J. K. Tiwari would remember the details of the transaction namely what had happened by and between the parties hereto. The manner, in which he had deposed favouring the respondent on all counts, is also a matter which cannot be lost sight off. We also must take into consideration his conduct vis-à-vis appearance before this Tribunal for the purpose of deposing before us. There cannot, therefore, be any doubt whatsoever that said purported notice has not been served upon the petitioner herein.

60. What would be the effect of our not believing one part of the story of Petitioner and a part of the story of respondent?

61. The burden of proof was on the Petitioner.

62. We are not oblivious of the fact that by conduct of the parties, an oral agreement can be inferred. Although an oral agreement constitutes a contract as has been held by the Supreme Court of India in *Alka Bose vs Parmatma Devi & Ors.* reported in (2009) 2 SCC 582 and although the respondent has failed to prove valid termination of the agreement, there are certain circumstances which should be borne in mind for arriving at a final decision.

63. The petitioner, with a view to prove its case was bound to establish continuance of the relationship.

64. Admittedly, save and except the alleged payments made by the respondent to the extent of Rs.30,000 in cash and a sum of Rs.50,000 by way of cheque, no other payment was made. If from 26.01.2006 onwards, no payment was made by the respondent, having regard to the relationship between the parties, it is difficult to accept that the petitioner would not raise any demand at all.

65. The evidence adduced on behalf of Petitioner clearly shows that it had not been able to establish that an invoice has been served upon Respondent

from January 2006 onwards. If signals were continued to be supplied from 2006 onwards, can it reasonably be expected that the Petitioner would at least maintain some records to prove the same. There is furthermore nothing on record to show as to from which date the Respondent migrated to another multi service operator.

66. This petition was filed on 18<sup>th</sup> September 2009.

67. It is not in dispute that the regulator had issued a notification on or about 17.3.2009, whereby and whereunder clause 4(A) was inserted in the regulations; in terms whereof it was obligatory on the part of a broadcaster and a distributor of telecommunication services to reduce the agreement entered into by and between them in writing in terms thereof.

68. The very fact that the Petitioner never insisted to enter into an agreement in writing despite coming into force of the aforementioned amended Regulations with effect from 17.3.2009, the inference which is possible to be drawn was that no supply of signals was being effected.

69. For the purpose of arriving at a finding of fact, a court of law is required to take into consideration the entire fact situation obtaining in a particular case. A little difference in the fact of one case from the other or the additional fact may result in different conclusion on fact.

70. Keeping in view the conduct of both the parties and as the Petitioner has failed to discharge the onus, we have no other alternative but to hold that the Petitioner has not been able to prove its case.

71. We, however make it clear that this judgment may not be construed to be that we have entered into the merit or otherwise of the criminal case which must be decided on its own merits.

72. This petition is dismissed. In the facts and circumstances of this case, the parties shall pay and bear their own costs.

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

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

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

rkc