

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

**DATED 10<sup>th</sup> AUGUST, 2011**

**Petition No. 108 (C) of 2011**

Vision Digital Cable ...Petitioner

Vs.

M/s Star Den Media Services Pvt. Ltd. ...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON  
HON'BLE MR. P.K. RASTOGI, MEMBER**

For Petitioner : Mr. B.S.Sai, Advocate

For Respondent : Mr. Arjun Natarajan, Advocate  
Ms. Garima Sharma, Advocate

**JUDGMENT**

**P.K.Rastogi, Member**

The Petitioner firm is a Multi System Operator (MSO) and the Respondent is the broadcaster of Star Den TV channels.

2. According to the averment of the Petitioner, it has started its Network on 19.11.2007. Thereafter, the Petitioner approached the Respondent for supply of its signals. The respondent did not supply

the signals to the petitioner in spite of submitting necessary documents. Therefore, a Petition No.81(C) of 2009 was filed before this Tribunal on 15.04.2009 for supply of signals, Decoders and IRD Boxes. After hearing the parties, this Tribunal pronounced its final Order on 11.01.2010 and directed the Respondent to provide its signals to the Petitioner. Accordingly, a joint survey was conducted from 15.02.2010 to 04.03.2010 and it was found that the petitioner was having only 1454 subscribers. Finally, an agreement was signed between the Petitioner and the Respondent on 19.04.2010.

3. After entering into an agreement with the petitioner, the Respondent issued six boxes i.e. Star Movies, Star plus, Star World, Channel V and National Geographic on 30.04.2010. Out of six channels, the Respondent activated the Star Movies, Star Plus, National Geography channels on the same date. Two Channels, namely Channel 'V' and Star Gold were activated on 15.05.2010 and one Star World channel was activated on 30.05.2010. On 02.06.2010, Star News, Star Vijay and Fox History were activated. Thus, all the nine channels have got activated on different dates but the respondent raised invoices from 30.04.2010 itself. After receiving the invoices from the Respondent, the Petitioner raised an objection on 30.06.2010 and requested the Respondent to implement the same ratio as was

applicable to the other 3 MSOs in Vijayawada. The petitioner sent number of reminders to the respondent to the same effect.

The petitioner wrote to the respondent for signing the fresh agreement which will expire by 31.12.2010. However, on 14.01.2011 the respondent sent a letter to the petitioner after receiving so many written requests by the petitioner for signing the fresh agreement similar to the other 3 MSO in Vijayawada, In that letter, the respondent alleged that the petitioner has not disclosed the SLR Reports and operating in the unauthorized areas and sought information for signing the fresh agreement only to delay the signing of the agreement.

The petitioner further submitted that the action of the Respondents for not signing the fresh agreement similar to the other 3 MSOs in Vijayawada, was basically to harass the Petitioner and to make unlawful gain and cause huge financial loss to it and to create a monopoly in the area.

4. In view of the above, the petitioner requested this Tribunal for issuance of following directions :

- (I) Direct the Respondent to sign the fresh agreement with the Petitioner similar to the other 3 MSOs agreement in the area;
- (II) Direct the Respondent to apply the same ratio, which are applicable to the other 3 MSOs in the area and enter into a fresh agreement with the Petitioner for the area of Vijayawada (Urban & Rural);
- (III) Direct the Respondent to enter into a proper agreement is required by law without any discriminating terms as similar to the other 3 MSOs in Vijayawada;
- (IV) Direct the Respondent to furnish the Agreement entered upon between both parties;
- (V) Direct the Respondents to provide the proper and legal written agreement duly signed by both parties;
- (VI) Pass such other order or orders as this Hon'ble Tribunal may deem just and proper under the facts and circumstances of the matter.

5. On the other hand, the respondent in its reply submitted that the Petitioner executed a subscription agreement dated 19.04.2010 [the "Agreement"] with the Respondent for the period extending from 19.04.2010 to 31.12.2010. The Agreement categorically stipulates in

unequivocal terms that the Petitioner can serve the following areas:

- “1. Area of Vijayawada (Urban & Rural) for 5 Operators
2. And 1453 Connections only
3. List Attached
4. Areas as per the List in the Joint Survey Report only.”

The Petitioner admittedly was operating in Tadepalli Mandal and Mangalagiri Mandal, Guntur District as is evident upon a bare perusal of the Petitioner's averments in the Petition. Thus, the Petitioner transgressed the areas authorized under the Agreement never disclosed that it was catering to the said areas to the Respondent.

6. Regarding applying the same ratio for determining the subscriber base as applicable to other MSOs, the respondent submitted that the Petitioner's authorized areas of operation are distinct as well as different from those of the other 2 MSOs operating in parts of Vijayawada City. Furthermore, subscription agreements with these MSOs were executed by the Respondent on the basis of LCOs declared by them and subscribers affiliated to them. The Petitioner has been authorized to supply signals only to the operators declared by it in the Area of Vijayawada (Urban & Rural) whereas the other 2 MSOs have been authorized to supply signals to their respective declared

operators and subscribers affiliated to them in parts of Vijayawada City. Petitioner is the only MSO that operates in the Area of Vijayawada (Urban & Rural) and thus it enjoys monopoly.

7. The respondent further pointed out that :

- The Agreement executed by the Petitioner for the year 2010 expired on 31.12.2010 and it has been enjoying the signals in the absence of any subscription agreement since 01.01.2011 till date.
- The Petitioner's representation as to the investment made by it for laying down superior quality optic fiber cable coupled with the map furnished by it reveals that the Petitioner has laid down its optic fiber cable over a vast area spreading over 750 Kilometers and has set up 219 nodal/redistribution points. The Petitioner has never revealed the LCOs affiliated to it in the said areas as well as their subscriber base till date. Although, the Respondent vide its letter dated 26.10.2010 had requested the Petitioner to provide details of its connectivity through LCos as well as direct connections. However, the Petitioner has till date not furnished the requisite details.

- The petitioner has neither furnished its SLR to the Respondent on a monthly basis nor has it provided any updated SLR till date.
- Although the Petitioner wants to cater to a huge area, pay a meager subscription amount and thereby cause commercial prejudice to the Respondent.
- Upon a scrutiny by the Respondent as to penetration of the Petitioner's signals in the market, it was revealed that the Petitioner's signals were being redistributed in several areas not authorized under the Agreement, namely; Kothapet, Tipparlacolony, Bhargavape and Ayyapanagar.

8. The respondent further submitted that subsequent to filing of the instant Petition in February 2011, the Petitioner has stopped paying the monthly subscription amount from February 2011. On 13.04.2011, the Respondent informed the Petitioner that it had an outstanding to the tune of Rs. 2,38,283/- and the Petitioner was called upon to pay the said amount.

9. In Petition no. 81(c) of 2009, the petitioner had approached this Tribunal for giving direction to the respondent under clause 3.2 of The Telecommunication (Broadcasting & Cable Services) Regulation 2004. The said petition was allowed by this Tribunal directing the petitioner and respondent as follows :

“Subject to the observations made hereinbefore and compliance of the statutory regulations this petition is allowed. The petitioner may comply with the provisions of clause 9.1 and 9.2 of Regulations and furthermore supply a map to the respondent and whereupon the respondent may supply its signals to the petitioner in terms of the prevailing law.”

In accordance with the directions of this Tribunal for supply of signals to the petitioner, a joint survey was conducted by the parties and agreement was signed on 19.04.2010. The agreement shows the following areas as areas of operation of the petitioner :

“Area of Vijayawada(Urban and Rural) for 5 operators  
And 1453 connections only  
List attached  
Areas as per the list in joint survey report only.”

10. The respondent in its letter dated 14.01.2011 has submitted :

“4. Further, we regret to note that while you made repeated allegations on our dealings with MSOs, you remained absolutely silent on the disclosing of the subscriber base in terms of the Regulatory mandates. Needless to mention here your tall claims of having invested huge amounts in laying optic fiber cables in

the urban and rural of Vijayawada, which is self-explanatory to evidence your increased and far reaching connectivities in rural and urban areas of Vijayawada, whereas you never discussed or disclosed the actual increase in subscriber base.

5. Further, we also reliably understand that you have been catering to the signals of STAR DEN channels in the areas of Kothapet, Tipparlacolony, Bhargavapet and Ayyapanagar etc. in addition to the areas authorized under the agreement, which you never accounted to till this date, which is violation of the subsisting subscription agreement in terms of section 1(c) of the agreement.

6. Therefore, we are given to understand that connectivities of your network has gradually increased manifold, the material facts of which, you have willfully and deliberately suppressed with a mafide intention to under declare the subscriber base, which is also violation of the regulatory mandates that requires you to furnish the subscriber line reports (SLRs) on a monthly basis under clause 12 of the Interconnect Regulations of TRAI dated 4<sup>th</sup> September 2006 as amended till this date."

11. In its reply dated 27.01.2011 to the said letter of the respondent, the petitioner clarified:

"3. Further, in your letter dated 12.07.2010 you are not clarified my issue raised in my letters on the subscriber base, but you deliberately mentioned in that letter we entered into the agreement after conduct joint survey, therefore, I have to bind on that agreement. Needless to say at the time of agreement I am not aware of the subscriber base of other 3 MSOs in the area.

4. That immediately after knowing the other 3 MSOs billing ratio against Gemini channel and your channel, I write a letter on 10.06.2010 to implement the same ratio to me also. They are paying Gemini Channel for 1,70,000/- subscribers, but on the other hand you are collecting only 7500 subscriber base. This is clearly violation of the Regulations under clause 3.2.

5. Further, till date you are not mentioning my subscriber base in monthly invoice raised by you, even though I request you to mentioned my subscriber base in the invoices. That is clearly violation of the regulations of the TRAI under clause 3.3.

9. That it is not correct to say that at the time of signing the fresh agreement I am catering to the signals of yours in the areas of Kothapet, Tipparlacolony, Bhargavapet and Ayyapanagar etc. in addition to the areas authorized under the agreement. I am submitting threes areas are all including in my area map and particularly these area are my LCO M/s Ganesh Cable Vision, Mangalagiri, which are part and parcel of my territory map and shown as my LCO in the map as well my petition. At the time of signing agreement on 19.04.2010. You were verified the same and handed over the ID boxes. But at the end of agreement only to dealy to sign the fresh agreement and create problems, you are alleging the same.

10. That I have no intention to under-declare subscriber base when we were entered the agreement on 19.04.2010, we conduct the joint survey and signed the agreement. Thereafter, there is no change in my subscriber base since April 2010. I am not violating the regulating of TRAI at any pint of time. But you are discriminating me to give signals on the same ratio in the same area, which are you collecting from other 3 MSOs. You are very much well come to verify my subscriber base at any point of time.

11. Further, needless to say I am regularly maintain my records containing the bills issued to my LCOs and to subscribers. I am giving only SLR report of my LCOs and my self as per TRAI regulations, when I tried to give to your executive he deliberately not accepting the same. Therefore, I am sending the same with this letter as per your communication as per TRAI regulations.

12. That it is correct the subscription fees mentioned in the agreement was on the basis of actual subscriber base. But it is discrimination to compare to other MSOs in the same area. At the time of signing the agreement I was not aware of the other 3 MSOs billing ratio. Immediately after knowing the ratio of other 3 MSOs I shocked and inform the same to you by implement the same ratio to me also. But you are not heeding my requests

and demanding me to act as per the agreement. This is clear violation of the TRAI regulations.

13. Therefore, once again I am requesting to implement the same ratio, which you are collecting the other 3 MSOs in the same area. While signing the fresh agreement. I am herewith sending the details which are relevant as requested by you for signing the fresh agreement. So kindly fix the place and date for signing the fresh agreement without further delay."

Alongwith this letter, the petitioner attached different documents as mentioned below :

- (a) Copy of postal registration certificate issued by the post office at Vijayawada
- (b) Copies of postal registrations of my LCOs
- (c) Copy of my SLR report with address
- (d) Copy of SLR report of my LCOs with address
- (e) Copy of agreements with my LCOs
- (f) Copy of latest entertainment tax payment receipt.
- (g) Copy of invoices of three existing MSOs for channel plus  
i.e. 170000 subscribers
- (h) Copy of the entertainment tax restration certificate
- (i) Copy of IRS and NRS data – not necessary
- (j) Copy of my ara map, wherein the optic fiber cable has  
been laid down
- (k) Copy of service tax registration

- (I) Copies of M/s Vision Digital Cable income tax returns (AY 2008-09, 2009-2010)

12. The respondent contends that the petitioner has laid down its optic fiber cable which is spreading over 750 Kilometers and having large number of distribution areas points but the petitioner contends that it is giving the signals in limited area of Vijayawada and limited its activities to the extent what is mentioned in the agreement and operating in the area mentioned in the joint survey and he is supplying the signals to the limited areas only. It has laid the cables to cover the large area for future expansion and not supplying the signals to the entire area.

13. It is seen from the records that there was a joint survey between the parties and it was found that there were 1453 subscribers where the amount is being charged for each subscriber. In non-CAS area, the channels are distributed to the subscriber on the basis of viewer-ship of the channel, which is negotiated. The viewer-ship may depend upon the language, popularity of the particular channel etc. Generally, the viewer-ship will be same in a particular area. However, there is a

provision in the Regulation to provide volume based discounts. The relevant clause 3.6 reads as under :

“3.6 The volume related scheme to establish price differentials based on number of subscribers shall not amount to discrimination if there is a standard scheme equally applicable to all similarly based distributors of TV channel(s).

#### Explanation

“Similarly based distributor of TV channels” means distributors of TV channels operating under similar conditions. The analysis of whether distributors of TV channels are similarly based includes consideration of, but is not limited to, such factors as whether distributors of TV channels operate within a geographical region and neighbourhood, have roughly the same number of subscribers, purchase a similar service, use the same distribution technology.

For the removal of doubts, it is further clarified that the distributors of TV channels using addressable systems including DTH, IPTV and such like cannot be said to be similarly based vis-à-vis distributors of TV channels using non addressable systems.”

14. While the petitioner contends that the respondent is charging on the basis of 7500 subscriber base against total number of 1,70,000 subscribers of other MSOs, the petitioner is paying for 1400 subscribers base for the same number of subscribers. We agree with the contention of the petitioner that the viewer-ship of the non Telugu channel cannot be 100%. We are of the opinion that subscriber base of the respondent channel will be on similar lines as in the case of other MSOs. The only difference is that the respondent may provide

volume discount to bigger MSOs in accordance with the prescribed regulation. As the petitioner is not operating in the entire area of Vijayawada(Urban and Rural), the subscriber base should be negotiated for its area of operation on the same lines as is applicable to other MSOs exception being volume discounts, subject to the statutory mandate.

15. Regarding the issue of piracy it is seen that the area of operation mentioned in the agreement signed between the parties not only include the area in Vijayawada (Urban & Rural), it includes the "area as per the list in joint survey report only". The joint survey report as produced by the petitioner includes the L.C.O. M/s Ganesh Cable Vision, Mangal Giri, operating in the areas of Kothapet, Tipparlacolony, Bhargavapet and Ayyapanagar etc. Therefore, we are of the opinion that the petitioner is not guilty of piracy of signals as both the parties signed the agreement with their eyes and ears open. But the same would not mean that the petitioner would not be required to obtain any certificate of being registered in terms of 1995 Act and 1994 Rules.

16. In view of the aforementioned reasons, we are of the opinion that the interest of justice shall be sub-served, if a direction is given to

the parties to enter into the new agreement in terms of the Regulation. The petitioner will supply the SLR of each month, if not already supplied. The petitioner should have the registration from postal department for the area for which signals are to be supplied, proposed connectivity and LCOs including the area of operation. The respondent may give volume discount based on the total number of subscribers. The respondent may verify the same and conduct joint survey, if felt necessary and execute the agreement. However, joint survey, if required should be completed expeditiously and not later than 15 days.

17. During pendency of the petition, the respondent had issued disconnection notice under Regulation 4.1 and 4.3 on 12.07.2010 and on 09.10.2010 respectively. By our interim order dated 10.5.2011, we directed the petitioner to pay a sum of Rs. 2,38,000/- to the respondent. The petitioner paid the said amount and on 11.05.2011 the respondent was directed to restore the supply of signals to the petitioner. The interim order is made absolute, subject to determination of subscriber base i.e., the subscription amount payable by the petitioner be fixed from the date of expiry of the existing agreement on that basis.

18. The petition is partially allowed in terms of aforementioned directions. In the circumstances of the case, there shall be no order as to costs.

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

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

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