

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated : August 29, 2011

Petition No. 40(C) of 2011

SUBHODAYA COMMUNICATIONS PVT. LTD. ...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.Sharath Sampath & Mr. Tulsi Raj
Gokul, Advocate

For Respondent : Mr. Arjun Natarajan, Advocate

J U D G M E N T

S.B. Sinha

The petitioner is a Multi Service Operator. It entered into a subscription agreement with the respondents for obtaining supply of signal its channels in Toopran, Ramayampet and Chegunta villages.

An agreement was entered into by and between the parties hereto on or about 9.6.2010 for the period 1.1.2010 and 31.12.2010. Annexure B appended to the said agreement apart from mentioning the aforementioned villages postulated the area of operation to be "As per Annexure-1".

The petitioner has annexed a list of subscribers which are at pages 46 and 47 of the paper book containing the names of Mandals and Villages within which the subscription agreement is said to be operating. The respondent, however, contends that Annexure-1 to the agreement is not what has been projected to be at the aforementioned pages and the same was to be containing the details of the LCOs operating in the said villages.

The petitioner by a letter dated 21.7.2010, however, expressed its intention to extend its area of operation to Quthbullapur Municipality to provide signals to the residents thereof, inter alia, on the premise that it had been supplying signals of all other broadcasters in those areas except Star TV.

Another request was made by the petitioner to the respondent in that behalf by a letter dated 26.7.2010, stating as under:

"As you are aware, we have been regularly paying monthly subscription amounts to you as per the agreement for the operations carried on by us in this territory assigned to us.

But due to great demand of your channels in the Rural & Urban areas of Sangareddy town. We wish to extend our network to the said areas and request you to accord permission for the proposed extension.

We also intend to negotiate the sub base with you in view of our proposed extension to the urban & rural areas of Sangareddy.

Please acknowledge receipt of this letter and in case we don't hear from you within week days from the date of receipt of this letter, we shall deem that you have no objection for the proposal extension."

The petitioner contends that for the aforementioned purpose it had not only furnished the SLR to the respondent on or about 12.8.2010 but also a map showing its area of operation in the districts of Medak, Ranga Reddy, Nalgonda and Nizamabad.

According to the petitioner for expanding its area of operation the respondent's Regional Manager called it for holding negotiations; whereafter requisite permission in regard thereto was accorded on a total connectivity of 400 i.e. 200 in respect of the proposed areas in Sangareddy Urban/Rural and 200 in respect of Quthbullapur.

Although the name of the concerned Regional Manager has not been stated in the petition, but the same was disclosed in the rejoinder to the reply filed by the respondent.

According to the petitioner, the arrangements entered into by and between the parties was an oral one. It has contended that it had a credit balance of Rs.2,37,140.87 paise.

By a letter dated 5.9.2010 addressed to the respondent, the petitioner stated:

“As required by you, we have sent all the requisite details/information sought by you vide your letter 4.08.2010, through our letter dated 12.08.2010 and pursuant to our discussions had with you, on the subject of proposed extension to R.R. District and Sangareddy as requested by you for advance payment, for the sub-base of 200 (RR Dist.) and 200(Sangareddy), you may please adjust an amount of Rs.149.26 X 400 =59,704 (exclusive of service tax) towards advance subscription amount for the months of August and Sept. 2010 against the credit balance Rs.2,37,140.87/- as per our ledger account.

Assuring you of full co-operation from our end and looking forward to enter into a fresh subscription agreement at the earliest.”

The said request, however, was not acceded to. The respondent also refused to accept cheques for a sum of Rs.1,19,408/- for two months drawn on 28.9.2010 and sent to it by the petitioner in terms of its covering letter dated 28.9.2010. The respondent, however, had been accepting the subscription fee in respect of the agreed area for a sum of Rs.80,000/-

The respondent issued a notice purported to be under Clause 4.1 of the Regulations alleging piracy. However, no public notice under Clause 4.3 was issued. According to the petitioner several meetings

took place between it and one Mohd. Shahnawaz, the authorized representative of the respondent but the same did not yield any result.

By a letter dated 3.11.2010 the petitioner was asked by the respondent to refrain from retransmitting the signals in the areas of Sangareddy, Dulapally and Shapurnagar, stating:

"Please note that-

1. Under the Cable Television Networks (Regulation) Act, 1995, as amended from time to time, and the Copyright Act, 1957, such illegal re-transmission is an offence.
2. Furthermore, please take note that it has been brought to our attention that you are illegally and unauthorisedly showing the Channel/s to your subscribers by illegally stealing signals and distributing/re-transmitting in Sangareddy, Dulapally and Shapurnagar which is outside your authorized area.
3. Such unauthorized distribution/re-transmission is an offence and amounts to infringement of the copyrights of the respective service providers of the Channels. Please also note that such illegal exhibition, screening, playing of unauthorized programs, intercepting and/or interfering with the television signal of the Channel/s are all acts done in violation of the Cable Television Networks (Regulations) Act, 1995, as amended from time to time. STAR Den Media Services Pvt. Ltd. has full right to protect all Copyrights and other Intellectual Property Rights of the Channels.
4. We, hereby give you notice to cease and desist forthwith from such illegal distribution/transmission of Channels. We request you to immediately stop transmitting Channels either directly or through you franchisees/link operators.

5. Please note that should you, hereinafter, fail to so cease and desist, and continue to indulge in such illegal distribution/transmission, STAR Den Media Services Pvt. Ltd. will be compelled to exercise the right of filing a suit for damages and initiate both civil and criminal action against you at your entire risk as to costs and consequences."

The petitioner responded thereto by its letter dated 23.12.2010.

The respondent, by its letter dated 23.12.2010 called upon the petitioner to;

"a. Provide the information sought for under The Standards of Quality of Service (Broadcasting and Cable Services) (Cable Television NON-CAS Areas) Regulations, 2009 and the regulatory mandate requiring you and your link operators to issue receipt and bill for the charges due and payable by the Subscribers for each month under Clause 4B of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2007 ("Tariff Order").

b. To provide the actual and true Subscriber Line Report of your Link Operators along with the names and addresses of their subscribers, the geographical areas covered by them. Kindly disclose evidences exchanged between you and your operators regarding their area of operation, subscriber base, etc.

c. To immediately come forward to negotiate and finalize the commercial terms towards execution of the Subscription Agreement for the services provided in the areas beyond the authorized areas of Toopran, Chegunta and Ramayampet as per the existing Agreement.

d. To intimate to us a mutually convenient date to meet and negotiate the commercial terms.

e. In the meanwhile, request you to refrain from unauthorized cable casting of our signals beyond the areas authorized under the Agreement.

f. And finally call upon you to refrain from building up unwarranted correspondences and cooperate with us to finalise the terms and execute the Agreement pertaining to expanded areas for the current year i.e. 2010 (July 2010 till December 2010) and renewal of agreement for the year 2011.”

The petitioner responded to the said letter by a letter dated 1.1.2011 reiterating the contents of its letter dated 8.11.2010.

This petition was filed on 20.1.2011 praying inter alia for the following reliefs:

(a) Direct the Respondent to enter into a subscription agreement for the year 2011-2012 with the Petitioner on such negotiated terms and conditions as per the Regulations in respect of the existing areas and the extended areas such as rural and urban areas of Sangareddy as mentioned in the SLR in the Medak District and areas in Old Municipal limits of Outbullapur,(which include Adarsh Nagar, Ganesh Nagar, IDPL, Gurumorthy Nagar, Sai Nagar, Chintal, Cherkupalli Colony, Giri Nagar, Jagadgirigutta, Shapoornagar, Kalavthi Nagar, Roda Mastry Nagar, Bapoo Nagar, Bhagathsingh Nagar, HMT colony, Patwari Enclave, APIIC, Bank Colony, HAL Colony, Venkatadri Hills, DP colony, SR Nayak Nagar, Apuroopa Colony, Saibaba Nagar, Suraram Colony, Subhas Nagar, Durga Estate, Ramraju Nagar, Meenakshi Estates, NCL, Rajiv Gandhi Nagar, Jai Ram nagar, Ram Reddy Nagar, Gajularamaram, Sri Krishna Nagar, Weaker Section, Kompally, Prajay Syndicate, Devendar Nagar, and PetBasheerbad), Outbullapur Mandal and Shamirpet, Medchal, Ghatkesar and kesar Mandals, all falling in Ranga Reddy District)

(b) Restrain the Respondent from in any manner interfering/disrupting or disconnecting the signal services being provided to the existing areas of operation of the Petitioner as per the agreement dated 09-06-2010 and also in respect of the extended areas i.e. rural and urban areas of Sangareddy as mentioned in the SLR in the Medak District and areas in Old Municipal limits of Outbullapur (Ranga Reddy District) until disposal of this petition.

During pendency of this petition pursuant to the observations made by this Tribunal in that behalf in its order dated 21.1.2011 the parties met. The petitioner during pendency of the petition has supplied the requisite informations which according to it were available with it, pursuant to the said meeting and as was asked by the respondent, in terms of its letter dated 27.1.2011 contending:

"a) Postal registration certificate of Subhodaya Communications Pvt. Ltd. bearing No.218 dt. 2-12-2010, renewed w.e.f. 29-11-10 to 28-11-2011 is enclosed.

b) Detailed list containing information regarding the cable operators connected to our network along with their areas of operation and connectivity declared by them is enclosed.

c)The operators mentioned in the list enclosed are existing operators and to the best of our knowledge there are no dues payable by them to their earlier MSO's since there are no migrations.

d) There are no direct subscriber/connectivity, hence no details are furnished.

e) The affiliate Cable Operators, since are serving in remote villages, have not furnished any details of their subscribers, hence such information is not available.

f) 30 agreements executed with Cable Operators till date are enclosed.

g) Service Tax registration proof dt.09-5-2008, with the STC Number AAKCS0743HST001 is enclosed; Entertainment tax payment proof along with proof of payment of annual fee vide receipt No.B 2774889, dt. 13.10.2009 is enclosed.

h) Such information since is not available, hence unable to provide.

i) Such information since is not available, hence unable to provide.

j) Detailed Map showing the areas of operation is filed.

k) The information furnished in para (g) hereinabove suffices in response to the information sought.

l) Detailed list of equipments is filed.

m) Such information since is not available could not be furnished.

n) The map filed herewith in response to the information sought in para (j) suffices.

o) Information furnished in response to the information sought in para (g) suffices.

p) Information since not available at the moment could not be furnished.

q) The information furnished in response to the information sought in para (g) suffices requirement of information sought in para (q)."

A revised SLR was also furnished along with the registration certificate.

The parties have gone to trial on the following issues:

- i) "Whether the respondent is entitled to refuse to enter into a subscription agreement with the petitioner for the year 2011-2012 for the areas mentioned in the petition?"
- ii) Whether the petitioner was authorized by the respondent to extend its area of operation to Quthbullapur and Sangareddy or to any other area other than the areas mentioned in the agreement for the year 2010?
- iii) Whether the petitioner has provided authentic and complete information of its LCOs to the respondent as requested by the respondent vide its letters dated 25.10.2010, 23.12.2010 and 27.1.2011 to process petitioner's request to expand its area of operation?"

The petitioner in support of its case has examined its Managing Director Shri M. Subhash Reddy. The respondent, however, filed affidavit of Mr. Pradeep G. as also Mr. Satyanaryana. On the premise that the latter had left its services the respondent did not produce the said witness for cross-examination.

Mr. Sarath Sampath, learned counsel appearing on behalf of the petitioner in view of the subsequent development would contend that the parties may hold negotiations on the basis of the SLRs furnished by the petitioner upon holding a joint survey, if necessary.

Mr. Arjun Natarajan, learned counsel appearing on behalf of the respondent, however, urged:

1. Shri M. Subhash Reddy, having not been authorized by the petitioner company, could not have deposed on its behalf.
2. The said witness having in his cross-examination admitted that the purported negotiated subscriber base disclosed in the SLR was not correct, and, thus, the petitioner should not be held to be entitled to any direction on the respondent to hold negotiations with it as it failed and/or neglected to supply a correct SLR.
3. The area of operation of the petitioner was confined to three villages and Annexure-1 contained in Annexure-B to the agreement was confined to the said areas only.
4. It is incorrect to contend that Shri M. Satyanaryana or any other person had given any assurance to the petitioner for expansion of its area and, thus, the petitioner must be held to be guilty of commission of acts of piracy.
5. Although the petitioner pays entertainment tax but having shown no direct connectivity, it must be held to have suppressed its true subscriber base.

This petition raises some interesting questions having regard to the conduct of the parties.

Area of operation having regard to the provisions of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulation 2004 (The Regulations) as amended from time to time is of utmost importance and is undoubtedly necessary for determination of the subscriber base of a Multi Service Operator. If the area of operation is expanded and that too to a large extent covering not only the far away places situated within the same district but also to the neighbouring districts, it is necessary to modify the terms of the agreement in writing and/or by way of a fresh agreement.

In the later case Clause 4A of the Regulations would clearly be attracted in terms whereof an agreement entering into in writing is imperative in nature. Having regard to the provisions contained in Clause 4.1 of the Regulations, even no notice is necessary to be issued in terms thereof if the agreement is not in writing.

Clause 18 of the agreement prohibits any modification, variation or oral termination except in writing and entering into an agreement executed by or on behalf of the parties.

Keeping in view the conduct of the respondent and in particular return of the cheque issued by the petitioner so far as request of the petitioner to extend its operation in the expanded area is concerned, it is difficult to agree with the contention of Mr.

Sarath Sampath that such an oral arrangement had been entered into.

Even otherwise in view of Clause 4A of the Regulations and as also Clause 18 of the agreement such an oral arrangement was not permissible in law.

However, the respondent failed and/or neglected to terminate the agreement on the ground of piracy. It even did not call upon the petitioner to make payments for its operation in the expanded area.

As noticed heretofore a notice in terms of Clause 4.1 of the Regulations was although issued but the same was not taken to its logical conclusion, as no public notice under Clause 4.3 was issued. Despite expiry of the agreement, the relationship between the parties was not terminated as was permissible in law by issuing a public notice alone in terms of the 2nd proviso appended to Clause 8.1 of the Regulations.

The petitioner, therefore had been enjoying the benefits of supply of signals of its channels in the expanded area without making any payment therefor.

Mr. Natrajan, moreover, is right in bringing to our notice that whereas in the purported SLR the subscriber base of APPURUP TS cable network in the Rangareddy district was shown as zero but

in cross-examination Mr. M. Subhas Reddy admitted that the said cable operator had 400 subscribers. Similarly the subscriber base of 'Shrisairam Cable Network of Papa' was stated to be 50 to 60 subscribers although in SLR its subscriber base has been shown to be nil.

It furthermore appears that the petitioner had not been receiving the SLRs from its link operators. No record has been produced to show the subscriber base of the LCOs. Even with some affiliates the petitioner has not entered into written agreements. The petitioner has been paying the entertainment tax but in its letter dated 8.2.2011 it contended that it had no direct subscriber or connectivity.

It has admitted that it supplies signals in the Jeedimetla area contending that the same falls within Quthbullapur Municipality although from the letterhead of the petitioner it appears that it is within the town of Secunderabad.

Ordinarily, therefore, the petitioner was not entitled to the reliefs prayed for in the petition.

However, in this case the respondent itself has shown its interest to enter into a fresh agreement with the petitioner.

Such an agreement, must be a new agreement as the old agreement had also expired and in any event the parties are

required to enter into a comprehensive agreement not only for the existing areas but also for the expanded areas.

In the peculiar facts and circumstances of this case, we are of the opinion that interest of justice would be subserved if the following directions are issued:

- (1) The petitioner must furnish the latest Subscriber Line Reports and details of its direct connectivity, if any, within one week from date.
- (2) The Respondents would be entitled to verify the same and, if necessary, hold a joint survey with the petitioner. Such survey must, however, be conducted as expeditiously as possible and preferably within a period of four weeks from the date of supply of such SLR and declaration by the petitioner as are required in terms of the Regulations.
- (3) Upon completion of the joint survey and/or verification of the SLR furnished by the petitioner the parties may hold negotiations. Such negotiations may be completed within a further period of four weeks.
- (4) The petitioner, keeping in view the fact that it had itself offered a sum of Rs.1,19,408/- for the months of October and November, 2010, is directed to deposit

with the respondent a sum calculated from October 2010 up to August, 2011 and continue to pay at the same rate till a settlement is arrived at. Deposit of the said amount shall be without prejudice to the rights and contentions of the parties and subject to the final determination of the subscriber base of the petitioner and consequent fixation of the amount of subscription fee found to be payable by it to the respondent so far as its operation including the expanded area of operation is concerned.

- (5) The respondent, however, would be entitled to exercise its statutory right in terms of the Regulations.

This order has been passed keeping in view the statement made at the Bar that the petitioner had paid the due subscription amount to the respondent during pendency of this petition in terms of the existing agreement.

This petition is disposed of on the above terms but in the facts and circumstances of this case there shall be no order as to costs.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

August 29, 2011
`anu'