

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**NEW DELHI****Dated 04 FEBRUARY, 2011****Petition No.151(C) of 2010**
(With M.A. No. 198 of 2010)

Jak Communications Pvt. Ltd.

...Petitioner

Vs.

SUN Distribution Services Pvt. Ltd.

...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. C. S. Vaidyanathan, Sr. Advocate
Mr. Ajay Kumar, Advocate,
Mr. R.L. Saravanan, AdvocateFor Respondent : Mr. Maninder Singh, Sr. Advocate
Mrs. N.K. Sibal, Advocate
Ms. Shruti, Advocate**S. B. Sinha****JUDGEMENT****Background Facts**

The petitioner is a Multi Service Operator. The Respondent is a content aggregator. The town of Chennai is a Conditional Access System declared town. The transmission of channel in the CAS area of Chennai Metropolitan town, therefore, takes place only through Digital System.

2. The petitioner contends the the respondent herein has a virtual monopoly of distribution of channels through it's sister concern known as 'Sumangali Cable

Television' a Multi Service Operator and with a view to continue with the said status, it had not been allowing any other MSO to start its business.

3. The petitioner on or about 5.8.2008 got itself registered with the Ministry of Information & Broadcasting of the Government of India.

4. It, thereafter, made a request to the respondent for supply of signal to it on or about 13.8.2008, stating :-

“ We would like to inform you that we have obtained permission from the Government of India, Ministry of Information and Broadcasting vide Permission No.9/03/2008-BPL dated 05.08.2008 to operate as an MSO in the notified CAS area of Chennai metropolitan through Addressable system.

We are in the process of Installation of a Digital head and along with SMS in the following address :

*Jak Communications Pvt. Ltd.
No.4, 6th Avenue,
Anna Nagar,
Chennai-600102.*

We hereby request you to kindly facilitate with the required hardware to get the signals of all your channels as per your declaration to TRAI and in line to the provisions of Regulation of TRAI with regard to CAS areas.

Your earlier action would be highly appreciated to roll out the digital head end.”

5. No response thereto having been received, the petitioner sent a reminders thereto on or about 5.12.2008 and 14.8.2009.

6. As despite the same the respondent did not reply to the said letters, a legal notice was served by the petitioner stating:-

"I hereby issue this legal notice for and on behalf of my client M/s. JAK Communications Pvt. Ltd. , having their registered office at No.402, C.T.H. Road, Avadi, Chennai-600054, represented by its General Manager, Mr. B. Hari Raj. My Client states,

That you are the distributor of various T.V. channels of SUN group and they are a Multi System Operator holding license from the Ministry of Information and Broadcasting to operate as an MSO in the CAS notified area of Chennai Metropolitan vide ref.No.9/03/2008-BPL dated 05/08/2008.

That they have written to you on 13.08.2008 requesting for signals, since there was no response from your side, they have send you a remainder on 05.12.2008. Meanwhile process of installation of digital head end along with a subscriber management system was in process.

That the said installation is almost complete now and further they have sent you another remainder on 14.08.2009 however you are yet to break your silence in the above said request for signals for the best known reasons for you, you have neither denied the signals nor taken steps to provide the signals.

That your declaration to TRAI with respect to Chennai CAS notified area reveals a fact that SUN TV, GEMINI TV, UDAYA TV, K TV, TEJA TV, UDAYA MOVIES, SUN MUSIC, GEMINI MUSIC, SUN NEWS, GEMINI NEWS, UDAYA VARTHEGALU, GEMINI CABLE VISION, ADITYA, TEJA NEWS, USHE and UDAYA NEWS are the channels distributed as Free To Air (FTA) channels. Your act of not providing them the signals for the above said channels shows your malafide intention to retain the monopoly status of M/s. SCV which is also a part of your Kal Comm Pvt. Ltd.

Your act of not acting upon the request for signals is a clear violation of The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 and to its amendments made time to time. Beingan addressable system the question of subscriber base doesn't arise, further the CAS areas are notified by the Central Government u/s 4(a) of The Cable T.V. Networks (Regulation) Act 1995 and hence the question of operational area doesn't survive and by & large your's are FTA in Chennai CAS area.

In the above said circumstances, I hereby call upon you to provide the signals with respect to your declarations to TRAI relating Chennai CAS area, within 7 days from the date of receipt of this notice failing which I have necessary instructions to proceed against you in the appropriate forum holding you liable for the cost and consequences caused thereof.”

7. As the respondent, however did not supply its signal, a complaint was made before the Telecom Regulatory Authority of India (TRAI) which in terms of its letter dated 1st October, 2009 forwarded the same to the respondent. Yet again by a letter dated 22nd October, 2009 the TRAI asked the respondent to furnish its comments on the said complaint latest by 6.11.2009.

8. In the meanwhile, which according to the petitioner is a malafide action on the part of respondent, it's free to air channels were converted into pay channels except for Sun TV, Sun Music and Sun News w.e.f. 15.11.2009. The petitioner by a letter dated 14.12.2009 again called upon the respondent to provide to it the signals of its channels.

9. The petitioner filed another application before TRAI. The respondent submitted its response to TRAI in terms of its letter dated 3.2.2010, interalia contending that :

- (i) the petitioner is guilty of piracy; and
- (ii) a questionnaire had been sent to it, which having not been responded to, supply of signals could not be given.

10. The petitioner, however, submits that the questionnaire, allegedly sent by the respondent had not been received by it.

11. So far as the allegation of piracy is concerned, it was contended that the same was required to be considered having regard to the issue as to whether the respondent had been supplying signals to the petitioner for the entire district of Kanchipuram or for the town of Kanchipuram only.

12. It is furthermore contended that in fact the respondent in relation to the town of Kanchipuram town has since entered into an agreement with the petitioner on or about 15.7.2010.

13. In its reply to TRAI, the respondent however, did not raise any contention that so far as the petitioner's other areas of operation is concerned it had committed any default.

14. By a letter dated 3.2.2010, the petitioner sent its comments to TRAI interalia, stating :-

“ 7. It is understood from newspaper publications that all the pay channels of M/s. Channel Plus with respect to NON-CAS area would also be pay channels in Chennai CAS area with effect from 15.11.2009 except SUN TV, SUN NEWS and SUN MUSIC. There cannot be any defence for providing us the signals of SUN TV, SUN NEWS and SUN MUSIC Channels which are otherwise FTA in Chennai CAS area.

8. In this juncture we hereby state you that M/s Channel Plus has no reason to delay the processing the signals to us and further we are ready to provide any information as required by law for receiving the signals for Chennai CAS area and request your good office to kindly act to expedite to process of getting the signals thereby enforcing the regulations of TRAI and to direct M/s Channel Plus to immediately provide us the signals of the FTA channels of them with respect to Chennai CAS area pending the processing of the present complaint.”

15. In another reply to TRAI, in terms of its letter dated 5.2.2010, the respondent interalia contended :-

“4. It is true that in August 2008 all our channels were free to air in Chennai CAS area. However, this does not prevent us in any way from checking the Headend and the encryption system of the MSO as we should know the quality of the transmission when we decide to make them pay in Chennai CAS area. For your information many of our channels are now pay in Chennai CAS area. It is therefore stated that the answers to our questionnaire is very essential before supply of signals.

5. The allegations that SCV is monopoly in Chennai CAS area is unwarranted and is false. There are other MSOs like Hathway operating in Chennai CAS area to whom we have been providing our signals from 2003. In fact by using political clout and rowdy elements the complainant is a monopoly in cable business in the areas of Gummidipoondy, Avadi, Thiruttani, Pulicate, Sriperumandhur, Sunguvarchatram, Janapachatram, Thiruvallur, Thiruvalangadu, Uthukottai and Sholinghur.

7. We wish to bring to your kind notice that the complainant is also running a Local Television by name JAK TV, in which he has telecasted many songs and sequences, for which copy rights are solely and exclusively vested with us. Thus, the complainant has committed offence of infringement of copyrights under various provisions of Copy Rights Act 1957, against which we have filed the following Criminal Cases against him.

1. CC No.11817 of 2009 pending before the Hon'ble XXIII Metropolitan Magistrate at Saidapet, Chennai.
2. CC No.11818 of 2009 pending before the Hon'ble XXIII Metropolitan Magistrate at Saidapet, Chennai.
3. CC No.11819 of 2009 pending before the Hon'ble XXIII Metropolitan Magistrate at Saidapet, Chennai.
4. CC No.12161 of 2009 pending before the Hon'ble XXIII Metropolitan Magistrate at Saidapet, Chennai.
5. CC No.12162 of 2009 pending before the Hon'ble XXIII Metropolitan Magistrate at Saidapet, Chennai.

6. *CC No.12163 of 2009 pending before the Hon'ble XXIII Metropolitan Magistrate at Saidapet, Chennai.*

In addition to the above mentioned cases there are 10 more other Criminal cases about to be filed against the complainant before the Hon'ble XXIII Metropolitan Magistrate at Saidapet, Chennai for committing brazen violation of provisions of copy rights Act 1957. The complainant has therefore violated the conditions on which the license was granted to him to operate in the CAS area of Chennai and the license granted to him has to be cancelled."

16. So far as the alleged violation of the provisions of the Copyright Act by the petitioner is concerned and the consequent criminal cases filed by the respondent, the petitioner states that the same had in fact been filed by a different party and in respect thereof petitioner has obtained orders of stay from the Madras High Court.

Proceedings

17. On the aforementioned premise the petitioner has filed this petition praying interalia for the following reliefs :-

- "(i) To direct the respondent to provide to the petitioner IRD boxes and signals of its all TV Channels on the basis of standard interconnect agreement as per Schedule I of the interconnect regulations-2004 for the CAS notified area of Chennai Metropolitan.*
- (ii) Direct the respondent to provide IRD boxes and signals as its all free to Air Channels namely, SUN TV, SUN News and SUN Music, which are otherwise Free to Air Channel in Chennai."*

18. We may at the outset notice some of the averments made by the petitioner in the petition:-

3.(a) That Mr. M. Kalanidhi Maran, who is the Chairman of SUN TV Network Ltd. and also the majority share holder in the said company. The said promoter have promoted the following enterprises in its vertical integration

in the broadcasting industry.

(b) *Kal Comm Pvt. Ltd. the company promoted and owned by the same Mr. M. Kalanidhi Maran, and in the business of distribution of TV signals in the name and style of Sun Distribution Services, the respondent herein, which takes care of distribution of TV Signals of all Pay Channels of the SUN TV Network Ltd. inter alia selling TV Signals to the General Public through Distribution medium like cable, DTH, IPTV etc. Mr. Vittal Sampath Kumaran is the Managing Director of this distribution company.*

(c) *Kal Cables Pvt. Ltd., the company chairmanned and majority of share are being held by the said Mr. M. Kalanidhi Maran which acts as a Multi System Operator in the name and style of its unit Sumangli Cable Vision (SCV), and controls about more than 50% market share in the State of Tamil Nadu morefully acts as monopoly in almost all TAM towns (metered towns) of the state of Tamil Nadu. The said Mr. Vittal Sampathkumaran is also the Managing Director of the MSO company.*

(d) *That about 45% of the TRP ratings of Tamilnadu is determined by Chennai city, where the Sumangali Cable Vision (MSO) is having its monopoly. This is relevant to mention here that SCV (MSO) of where the majority of shares are held by Mr.M.Kalanidhi Maran and is having its monopoly in distribution of TV channels signal in all TAM towns, where the TRP of Tamilnadu is determined. Thus by monopolizing the market in broadcasting as well as distribution of TV Channel Signals in all TAM towns of Tamil Nadu, SUN group dictates monopoly in the entire Tamil Nadu State. For maintaining this monopoly, the respondent is using all illegal means and methods, which are otherwise not permissible under law.*

(e) *That in pursuance of its objective to monopolise the market of distribution of TV channel signals in Chennai CAS Area, the respondent is either not providing the signals of its TV channels to the other MSO in Chennai CAS area or alternatively providing the week signals, reasons therefor, that out of 5 MSO's, who were granted permission by the Ministry of Inforamtion and Broadcasting for Chennai CAS area. One Indus Ind Media Communication Pvt. Ltd. And second Arasu Cable have not yet started their operations, despite of having valid permission, third (MSO) Hathway has wound up its operation in the month of May 2009 and the petitioner despite having permission in August 2008, was not given the signals by the respondent of its TV channels for Chennai CAS area. Thus le;aving SCV (A unit*

of Kal Cables Pvt. Ltd.) to enjoy monopoly in the Chennai CAS area.

(s) That, the respondent did not even bother to reply or to respond this letter dated 22.10.2009 issued by the TRAI and maintained silence. Then compelled by circumstance, the petitioner wrote another letter dated 14.12.2009, addressed to the respondent directly. Whereby, the petitioner again requested the respondent to provide signals of the TV Channels to the petitioner for Chennai CAS area. In this letter itself petitioner pointed out to the respondent that during this time with oblique motives, the respondent has converted its pay channels of non-CAS as pay channel in Chennai CAS area, except SUN TV, SUN Music, SUN News w.e.f. 15.11.2009. The petitioner further pointed out in this letter that the respondent is in open defiance of the law, because of its market monopoly and political clout. The petitioner vide this letter dated 14.12.2009 called upon the respondent to provide signals of its TV Channels within 10 days, from the receipt of the said letter (Copy of letter dated 14.12.2009 is enclosed herewith as Annexure P-12).

(v) That, the petitioner was taken to surprise, on the receipt of this letter dated 03.02.2010 of the TRAI and enclosed response of the respondent dated 22.12.2009. Because, in this letter dated 22.12.2009, the respondent has claimed that the petitioner has not responded to the questionnaire given by the respondent to it. Whereas, no such questionnaire was even given or served by the respondent to the petitioner. Not only this, the respondent justified its acts for not providing signals of its TV Channels to the petitioner on the ground that the petitioner is pirating its signals in Kanchipuram and other area for which the respondent is enjoying injunction from the Chennai High Court (Copy of respondents response dated 22.12.2009 along with its enclosures is annexed herewith as Annexure P-15).

(w) That as per directions of the TRAI issued by it vide its letter dated 03.02.2010, the petitioner on the same very day i.e. on 03.02.2010 submitted a detail reply to the response of the respondent dated 22.12.2009 vide this letter dated 03.02.2010, the petitioner in its letter dated 03.02.2010 stated that letter dated 25.8.2008, as enclosed by the respondent along with its response dated 22.12.2009 is a fabricated document. Which was fabricated by the respondent only for creating evidence before the TRAI. It was further stated by the petitioner that on the date of first request i.e. 13.8.2008, whereby the petitioner requested the respondent to provide signals of TV channels for the first time, during that time all the respondents channels were free to Air for Chennai CAS area, which does not require the standard interconnection

agreement as per law. The respondent is otherwise bound to provide signals of TV channels to the petitioner. In those circumstances, there was no reason for the respondent in sending a questionnaire to the petitioner on the relevant day.

(x) The petitioner in this letter itself offered to provide any information related to addressable system as required by law.

The petitioner in reply to allegation of piracy raised by the respondent, in its response letter dated 22.12.2009 further stated that the respondent is trying to find ways and means to block the petitioner somehow from getting signals of its channels, just to maintain the monopoly status of SCV in Channei CAS area. In fact, the allegation of piracy that too for some other areas are leveled against the petitioner just to deprive it from getting signals. Which were leveled subsequently to brow beat the petitioner, as the petitioner has intensified its request for CAS signals. The petitioner further stated that although the respondent deliberately converted most of its free to Air channels in Channai CAS area as pay channels. But, even then, it can not have any defence for providing to the petitioner, signal of SUN TV, SUN News, SUN Music, which are otherwise free to air in Chennai CAS area (Copy of petitioner's letter dated 03.02.2010 is enclosed herewith as Anneuxre P-16)."

19. The respondent in its reply interalia contended :-

- (a) The petitioner is a defaulter having not paid the subscription fees amounting to a sum of Rs.2,64,85,375/- as in 2009,
- (b) The respondent has filed a suit for recovery of the said amount in the Madras High Court,
- (c) The petitioner is guilty of commission of piracy; and
- (d) It had not replied to the aforementioned questionnaire.

20. We may however, notice that the petitioner had filed a petition before this Tribunal which was marked as Petition No. 190 (C) of 2009. Prior thereto another petition was filed by it which was marked as Petition No. 112 (C) of 2008 but the same was withdrawn

pursuant to a settlement arrived at by and between the petitioner and the respondent during pendency thereof.

21. So far as Petition No. 190 (C) of 2009 is concerned, the same was filed by the petitioner seeking for a direction against the respondent from disconnecting the supply of its TV Channels. It now stands admitted that on or about 16th July, 2010 an agreement has been entered into in respect of the Kanchipuram town.

22. So far as the matter relating to default is concerned, according to the petitioner it did not receive, the statement of account and/or the respondent's letter dated 31st December 2009 with which it was said to have been annexed.

23. However, we may notice the same :

“LEDGER ACCOUNT OF M/S. JAK COOommunications Pvt. Ltd. – AVADI

<i>DATE</i>	<i>PARTICULARS</i>	<i>DEBIT</i>	<i>CREDIT</i>
<i>08.07.2009</i>	<i>Opening Balance*</i>	<i>16,646,141</i>	
<i>09.07.09</i>	<i>Bill No.481857 Subscription of July 9</i>	<i>3,210,674</i>	
<i>0 .08.09</i>	<i>Bill No.523709 Subscription of Aug 9</i>	<i>3,210,674</i>	
<i>0 .08.09</i>	<i>DD No.244744 dt. 19.08.09</i>		<i>446,875</i>
<i>31.08.09</i>	<i>CH No.192676 dt. 31.08.09</i>		<i>2,249,814</i>
<i>06.09.09</i>	<i>Bill No.565600 Subscription Sept 9</i>	<i>3,210,674</i>	
<i>29.09.09</i>	<i>CH No.192677 dt. 29.09.09</i>		<i>2,000,000</i>
<i>06.10.09</i>	<i>Bill No.590354 Subscription of</i>	<i>3,210,674</i>	

	Oct 9		
30.10.09	CH No.192678 dt. 30.10.09		2,000,000
06.11.09	Bill No.618619 Subscription of Nov 9	2,817,843	
30.11.09	CH No.192679 dt. 30.11.09		2,000,000
06.12.09	Bill No.660017 Subscription of Dec 9	2,817,843	
21.12.09	DD No.815076 dt. 05.12.09		616,196
30.12.2009	DD No. 192680 dt. 30.12.2009		2,000,000
		35,124,524	11,312,885

1. **Due as on 30.12.09** **23,811,638.54**
2. *Opening Balance as per settlement agreement dated 08.07.2009
3. Classifications on the Party's Ledger copy
 - TDS will be given credit only after receipt of TDS certificate from Party.
 - ** Not adjusted the Kanchipuram
 - Advance amount in avadi account, due to piracy
 - Claim at Kanchipuram, avadi and part of
 - Tiruvannamalai dist."

Submissions

24. Mr. Vaidyanathan, the learned senior counsel appearing on behalf of the petitioner, would contend :-

- (i) The story of default set up by the respondent must be held to be an afterthought in as much as even in its reply, the respondent contended that a sum of Rs. 1,16,37740/- was due from the petitioner, although, in some other paragraph it was contended that a sum of Rs. 2,64,85,375 has become payable, although no date in regard thereto

has been specified and similarly, at page 2938 of the Paper Book again the amount due was stated to be Rs. 2,64,85,375, but from the minutes of meeting dated 15.07.2010, it would appear that no mention has been made with regard to any alleged arrears.

- (ii) Had the petitioner been in arrears of payment of subscription fee of such a huge amount, no prudent businessman would have entered into another contract with it and/or restore the supply of its signals.
- (iii) From the notice dated 7.8.2009, it would appear that whatever has been mentioned therein was confined to the liability of the petitioner to pay only the security amount, which was stated to be a notice under Clause 4.1 of the Telecommunication [Broadcasting & Cable Services] Interconnection 3rd Amendment Regulations, 2006.
- (iv) From a perusal of the letter dated 24.05.2008, it would, however, appear that a contention was raised therein that a sum of Rs. 2,64,85,375/- was owing and due from the petitioner.
- (v) From cross-examination of the witness of the respondent, Shri Samuel Rajan, it would furthermore appear that he has failed to furnish any proof of service in regard to the statement of account or any notice showing any arrears or even proof of service of invoices.
- (vi) The said witness in regard to the alleged acts of piracy having not denied or disputed the agreement dated 15.07.2010, although, he has accepted that the agreement in question bears the signature of Mr. Neil George, it must be held that the respondent has failed to prove that the petitioner has committed any act of piracy as alleged.
- (vii) Even the said witness could not show any proof so far as the service of the alleged questionnaire is concerned.

- (viii) Having regard to the fact Mr. Rajan was even not aware as to whether apart from 'Sumangali Cable Vision' any other cable operator or MSO had been sending any SMS report to show that they have been operating within the CAS area of Chennai, it must be held that no other operator had been operating in the area.
- (ix) Two documents, one being a postal receipt dated 13.2.2010 and another being a notice dated 31.12.2009 have been filed at a later stage which are neither relevant nor any opportunity to cross-examine the witness having been granted to the petition on the said documents, no reliance can be placed thereupon.

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

- (1) An application for amendment of the reply having been filed in regard to the discrepancy of the amount of arrears being M.A. No. 280 of 2010, having been allowed by this Tribunal, it must be held that there is no discrepancy in regard to the amount outstanding from the petitioner.
- (2) The petitioner, having been transgressing its stipulated area of operation in a non-CAS area, must held to have committed the act of piracy.
- (3) As the transmission of signals in an unauthorised area was a specific issue in Petition No. 190(C) of 2009 and from the orders dated 30.10.2010 as also the order passed in the review application being dated 15.12.2009, it would be evident that the petitioner has been held to be prima facie guilty of piracy. The petitioner having filed a Writ Petition against the order dated 30th October, 2009 and having withdrawn the same, the said

orders must held to have attained finality.

- (4) The petitioner having not furnished the requisite information requested by the respondent by producing the requisite documents, its request cannot be held to be valid.
- (5) There is nothing to show that the petitioner had setup its digital head-end for CAS Area operation and from the evidence of PW-I, Mr. B. Hariraj, it would appear that he did not have any digital head-end at Chennai on the date when the first application was filed and irrespective of the fact as to whether the transmission of signals is for FTA Channels or Pay Channels, the SMS system must be held to be in place.
- (6) Irrespective of the fact as to whether the questionnaire had been received by the petitioner or not as it now stands established that no digital head-end has been set up the petitioner is not entitled to any relief.
- (7) A recovery suit having been filed before the Madras High Court, it must be held that the petitioner prima-facie is a defaulter.
- (8) In a Writ Petition filed by the respondent, the Madras High Court by an Order dated 10.11.2010 having directed the Ministry of Information & Broadcasting of the Government of India to consider the question of cancellation of the permission granted to the petitioner within a time frame, this Tribunal should stay its hands for some time.
- (9) Only because an agreement has been entered into by and between the petitioner and the respondent on or about 15.07.2010, the same would not mean that the piracy issue has

been resolved.

26. Mr. Vaidyanathan in reply urged :-

- (a) The orders of this Tribunal dated 30.10.2009 and 15.12.2009 being interim in nature and subsequently the parties having entered into a settlement, the same for all intent and purport, has lost all relevance.
- (b) The respondent having not served a copy of the Writ Petition or even a copy of a Miscellaneous Application on the petitioner, any order passed by the Madras High Court must be ignored.
- (c) In any event, Section 4A of the Cable Television Network (Regulation) Act, 1995 governs only the Pay Channels and not the Free to Air channels, the same shall not have any application in the instant case.
- (d) A digital head-end has since been set up and the other broadcasters having agreed to transmit signals of their respective channels to the petitioner, but the services thereof have not yet been rolled out in absence of any supply of signal by the respondent, which are the prime channels in the area.
- (e) The witness of the respondent having no knowledge as to whether any question with regard to piracy or the amount outstanding was raised at the time of entering into an agreement, it must be held that neither any amount was due nor any case of piracy has been made out.
- (f) Having regard to the proviso appended to Clause 3.2 of the Regulation, it is apparent that whereas default operates as a bar to obtain connection, but not piracy as in that view of the matter, there is no reason as to why this Tribunal shall not direct the respondent to grant connection to the petitioner.

Questions :

27. Three principal questions which arise for consideration of this Tribunal in this petition are :-

- (a) Whether having regard to Clause 3.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Agreement, 2004 (The Regulations), as amended from time to time, the petitioner has made out any case for issuance of any direction upon the respondent for grant of signal to the petitioner's network at Chennai.
- (b) Whether the petitioner is a defaulter and/or guilty of commission of piracy and, thus, has disentitled itself from obtaining any supply of signal to its network by the respondent in terms of the provisions of the said Regulations or otherwise.
- (c) Whether having regard to the fact that the parties had entered into an agreement in respect of Kanchipuram town, the respondent is estopped and precluded from raising any question as regards default and/or piracy.

Jurisdictional Issue

28. Clause 3.2 of the Regulations read 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 the sky operator; [HITS Operators and 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

[Provided also that the provisions of this sub-regulation shall not apply in the case of a distributor of TV channels, who seeks signals of a particular TV channel from a broadcaster, while at the same time demanding carriage fee for carrying that channel on its distribution platform.]

“Explanation 1. The applicant distributors of TV channels intending to get signal feed from any multi-system operator other than the presently-affiliated multi system operator, or from any agent/ any other intermediary of the broadcaster/ multi system operator, or directly from broadcasters shall produce along with their request for services, a copy of the latest monthly invoice showing the dues, if any, from the presently-affiliated multi system operator, or from any agent/ any other intermediary of the broadcaster/ multi system operator who collects the payment for providing TV channel signals.”

“Explanation 2. The stipulation of “placement frequency” or “package/ tier” by the broadcaster from whom the signals have been sought by a distributor of TV channels, as a “pre-condition” for making available signals of the requested channel(s) shall also amount to imposition of unreasonable terms.”

29. Indisputably, the ‘must provide’ clause contained in Clause 3.2 of the Regulations, is an exception to the Common Law of Contract and/or the provisions of the Indian Contract Act, 1870, by reason thereof in the event a ‘Distributor of the Telecommunication Services’ makes a request to a ‘Broadcaster’ for grant of supply of signal of its channels, subject to the exceptions contained therein, the latter is statutorily obligated to do so.

30. There cannot, therefore, be any doubt or dispute that this Tribunal, in exercise of its jurisdiction under Section 14 and 14A of the Telecom Regulatory Authority of India Act, 1997 (The Act) can issue any direction on such request made by the ‘Distributor of the Telecommunication Services’ only when it fulfils the statutory obligations in relation

thereto. In terms of the provisions of the said Regulations, a 'Distributor of the Telecommunication Services' may ordinarily be held to have disentitled itself from obtaining supply of signals if the proviso appended to clause 3.2 of the regulations and/or clause 9.2 thereof are attracted.

31. It has, however, been held in a number of decisions that a 'Broadcaster' would be well within its rights to refuse to grant signal in the event a 'Distributor of the Telecommunication Services' has not fulfilled the obligations in terms whereof it would not be able to provide the supply of the signal of its channels on reasonable terms and on non-discriminatory basis.

See *Shreedevi Enterprises Vs. Channel Plus*, Petition No. 156 (C) of 2010.

32. It is, moreover, a trite law that the respondent cannot having regard to the statutory mandate, refuse and/or delay grant of supply of signals unreasonably. It cannot do so for an unauthorised purpose which would amount to acts of malice of fact. See *W.B.S.E.B v. Dilip Kumar Ray* reported in (2007) 14 SCC 568, *Kalabharati Advertising v. Hemant Vimalnath Narichania* (2010) 9 SCC 437.

Monopoly Issue

33. The respondent is a content aggregator. It is one of the companies forming a group of companies run by the producers of Sun TV and other channels. The petitioner has made out a case that for all practical purposes, the petitioner enjoys a monopoly status so far as the distribution of the channels of the broadcasters of which the respondent is concerned for the town of Chennai, which as noticed heretofore, is a CAS notified town.

34. An act of malice whether on fact or in law would render its action illegal and a

nullity. The Supreme Court of India furthermore in *Star India (Pvt.) Ltd. Vs. Sea TV Network Ltd. & Another* reported in (2007) 4 SCC 656, categorically held :-

“15.3. The difficulty arises when the broadcaster as in the present case appoints or enters into an agreement with a distributor, who in turn is an MSO and who in turn has his own business because in such a case such an agent-cum-distributor is also a competitor of the MSO who seeks signals from the broadcaster. We are living in a competitive world today. If under the Interconnection Regulations an MSO is entitled to receive signals directly from a broadcaster, if directed to approach his competitor MSO then discrimination comes in. The reason is obvious. The exclusive agent of a broadcaster has his own subscriber base. His base is different from another MSO in the same territory. If that another MSO has to depend on the feed to be provided by the exclusive agent of the broadcaster then the very object of the Interconnection Regulations stands defeated.

15.4. We are satisfied that even technically the quality of signals receivable through the decoders is different from the quality of signals receivable through cable feed.

15.5. In the present case the broadcaster has appointed Moon Network as its distributor for the territory of Agra. In the present case the agreement provides that Moon Network Pvt. Ltd. will operate on principal-to-principal basis and will not be an agent of Star India Pvt. Ltd. (Broadcaster). In that agreement it is expressly provided that Moon Network Pvt. Ltd. would not be entitled to use any other medium except ground cable. Under the Distribution agreement the broadcaster has appointed Moon Network Pvt. Ltd. as the sole and exclusive distributor of the subscribed channels. It is important to note that under the Interconnection Regulations exclusivity of contracts stands eliminated. Notwithstanding such regulations the broadcaster in the present case has appointed Moon Network Pvt. Ltd., who is also an MSO, as the sole and exclusive distributor of the subscribed channels through the cable network owned and operated by Moon Network Pvt. Ltd. in the territory of Agra. (See clause 1.1.)

15.6. This is where the difficulty comes in. The object of the Interconnection Regulations is to eliminate monopoly. If Sea TV, Respondent 1 carries on business in competition with Moon Network Pvt. Ltd. and if it is to depend on the feed provided by its competitor and if the quality of the signals available through that feed is poorer than the quality of the signals available

through decoders, then the Tribunal is right in holding that the above arrangement is per se discriminatory.”

35. The respondent, however, contended that apart from its distributor ‘Sumangali Distribution’, various other operators operate in the town of Chennai. But then, when specific questions were put to the sole witness of the respondent Mr. Samuel Rajan, who had been working as Manager – Operations of the respondent, in answer thereto, he stated as under :-

“Q. What is relationship between SCV and your company?”

A. SCV is our customer. It is a part of our group company.

Q. Who is MD of your company?”

A. There is no MD of the company now. Mr. Mujib is the President of the company.

Q. Is it correct that respondent is a unit of Kal Comm Pvt. Ltd.

A. Yes.

Q. Who is Chairman or Managing Director of Kal Comm?”

A. I am not sure.

Q. I put it that you are not deliberately answering these questions.

A. It is incorrect.

Q. I put it to you that Mr. Kalanidhi Maran is the Chairman and Mr. Vittal Sampathkumaran is the Managing Director of the Kal Comm?”

A. I am not sure.

Q. I say that SCV is a unit of Kal Cables Pvt. Ltd.

A. I am not sure.

Q. I put it to you that Mr. Kalanidhi Maran is the Chairman and Mr. Vittal Sampathkumaran is the Managing Director of the Kal Cables Pvt. Ltd.?”

A. I am not sure.

Attention of the witness is drawn to para 9 of the affidavit.

Q. Except your own MSO i.e. SCV no other MSO is operating in Chennai CAS area?”

A. It is incorrect.

Q. Except SCV to whom you have given to signals for Chennai CAS area ?

A. I am not sure.

Q. From which MSO you are getting SMS report except SCV in Chennai CAS area?

A. I do not remember.

Q. I put it to you that except SCV you are not supplying signals to any other MSO. You are deliberately avoiding to answer the questions.

A. It is incorrect. “

36. According to the said witness, he had been working with the respondent since 2007 on a full time basis, although he had been associated with it on a part time basis since 2002.

37. It is not possible to accept the testimony of the said witness as he even did not know as to who was the Managing Director or Chairman of the Company or the names of the sister concerns of the respondent. Why a senior officer of the respondent would make all endeavours to suppress the basic facts relating to the respondent is difficult to comprehend. Chennai, more importantly, being a CAS area, all the operators operating therein would be maintaining a Subscriber Management System.

38. Mr. Samuel Rajan, therefore, there cannot be any doubt, should have known as to from which other operators the respondent had been receiving the SMS reports apart from Sumangali Cable Vision, which is said to be a sister concern of the respondent.

39. It is of some importance to notice that the petitioner had questioned the assertions of Mr. Samuel Rajan that he had been working with the respondents since 2007, as according to it, he has joined the respondent company much later and therefore, would

not know about the details of the initial requests made by the petitioner.

40. Mr. Rajan stated before us that he could produce his passport to show that he had been working with the Singapore Airlines only upto May, 2007, but he did not do the same for reasons best known to him.

41. The plea of the petitioner, therefore, that it had been unjustly denied the supply of signal by the respondent may have to be considered keeping in view the pleas raised by the respondent.

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Request – Whether Valid

42. It is on the aforementioned premise we may notice that the petitioner had made a request for supply of signal to the respondent for the first time on 13.08.2008. The respondent contended that it had supplied a questionnaire to the petitioner. The petitioner has denied and disputed the receipt thereof. The respondent has not filed any proof of service in relation thereto.

43. Mr. Rajan, in his deposition stated :-

“Q. Can you explain as on that date that the questionnaire relating to head end or encryption system arose for free to air channels?”

A. I am not sure.

Q. Do you have any proof of service for the despatch of this questionnaire?”

A. I do not remember.

I put it you that you never served this questionnaire to the petitioner?”

A. It is incorrect.

Q. What is the mode of service?”

A. Might be courier or speed post.

Q. Can you file a proof of service?

A. I do not remember.

The letter attached on page 389 dated 25.08.2008 bears my signatures.

I put to you that on the date of issuance of this letter i.e. 25.08.2008 you were not in the service of respondent and this letter is fabricated.

A. It is incorrect.

Q. Can you file the relieving letter from Singapore Airlines?

A. I can file a testimonial issued by the CEO of the Singapore Airlines.”

44. It is furthermore relevant to place on record that even before TRAI, when complaint was made to it by the petitioner, no such contention had been raised by the respondent. It is true that suggestion put in this regard by the petitioner to the respondent's witness has been denied, but we find some substance in the contention of the petitioner.

45. We may, however, notice the said suggestion :-

“Q. Is it correct that alongwith your letter dated 30.10.2009 and also your letter dated 22.12.2009 addressed to TRAI you have not supplied the copy of questionnaire you have filed on page 390 which you claim have been served upon the petitioner.

A. It is incorrect.

Q. I put it you that you are misleading this Tribunal stating that no such document have been supplied to TRAI.

A. I do not remember as to whether a copy of questionnaire was sent to TRAI or not. “

Piracy Issue

46. So far as the principal defence of the respondent for denying supply of signals to the petitioner is concerned, we may notice the question of piracy at the outset.

47. Indisputably, the parties had entered into a contract for the town of Kanchipuram. The petitioner, however, had raised a contention that the said contract was for the entire district of Kanchipuram.

48. It, however, now stands admitted that the parties have entered into a fresh agreement in respect of town of Kanchipuram on or about 15.07.2010.

49. It is also not in dispute that in the said agreement, no clause as regards payment of any arrears nor any case of piracy was inserted.

50. Supply of signals in respect of Kanchipuram town was preceded by a Memorandum of Understanding executed by and between the parties. It is also not in dispute that the negotiations on behalf of the respondent were held by one Shri Neil George, Assistant Vice President of the respondent.

51. According to the petitioner, even no question of default or piracy has been raised by Mr. Neil George in the said meeting. The petitioner in fact has raised a contention that in terms of the settlement between the parties, culminating in execution of the agreement dated 15.7.2010, no dispute between the parties survived so far as the allegation of piracy is concerned.

52. We may refer to the relevant portion of the deposition of Mr. Samuel Rajan in this

behalf :-

“Q. Is it correct that on 15.07.2010 you have entered into a fresh agreement for non-CAS area with the petitioner for settling all the disputes relating to alleged piracy in the non-CAS areas?”

A. Yes a fresh agreement was entered into but I am not sure whether the issue of piracy was settled or not.

Q. I put it you that all disputes between the parties in respect of Non-CAS areas have been settled.

A. It is incorrect.

I was not present in the meeting when the settlement agreement was arrived at between the parties on 15.07.2010.

Attention of the witness is drawn to page 238

I can verify the signature of Mr. Neil George, Asst. Vice President.

Attention of the witness is drawn to marked portion ‘b to b’ at para 4 of the affidavit.

Q. Is it correct that these decoder boxes were provided to the petitioner in terms of the settlement agreement dated 8.07.2009 which is on page 317?”

A. It is incorrect. Decoder boxes were provided in terms of the subscription agreement i.e. for Kanchipuram town.”

53. An act of piracy on the part of a Multisystem Opeartor, there cannot be any doubt or dispute, should be dealt with very seriously. If the contention of the respondent prima-facie is correct that the petitioner although had entered into an agreement for supply of signal for the town of Kanchipuram only, it was supplying signal to its customers outside the town and in fact throughout the district of Kanchipuram, it is difficult to comprehend as to on what basis the minutes of meeting ended on a positive note and the parties hereto entered into an agreement in respect of the town of Kanchipuram on 15.7.2010.

54. Although it is difficult to accept the submissions of Mr. Vaidyanathan that having regard to the ‘Proviso’ appended to clause 3.2 of the Regulations, an act of piracy would

not operate as a bar to obtain connection as a preposition of law; in our opinion, the question of piracy raised by the respondent must be considered having regard to the peculiar facts and circumstances obtaining in this case.

55. The respondent has initiated some criminal cases for alleged violation of the provisions of the Copyright Act against the petitioner. We have, however been informed at the bar that the Madurai Bench of the High Court of Madras has stayed the further proceedings in all the criminal cases except one.

56. We, however, are of the opinion that keeping in view the fact that the matter is pending consideration before the Madras High Court, it is not necessary for us to dwell on this subject any further.

57. So far as the town of Chennai is concerned, the same being governed by a notification issued under Section 4 A of the Cable Television Networks (Regulation) Act, 1995 and, thus, as supply of signal therein would not entail any underdeclaration or piracy, the law must be allowed to take its own course so far as the alleged acts of piracy committed by the petitioner in respect of its Kanchipuram Network is concerned.

58. Moreover, the allegation of piracy has been made only in respect of Non-CAS areas and it is accepted by the witness examined on behalf of the respondent that no signal having been provided to the petitioner in respect of the CAS area, the question of committing any piracy in relation to the town of Chennai would not arise.

59. We may, however, notice that for reasons best known to Mr. Samuel Rajan, he

even has expressed his ignorance that the question relating to the alleged piracy is sub-judice before the Madras High Court.

Default Issue

60. So far as the question of alleged default on the part of the petitioner is concerned, suffice it to say that the respondent contends that a sum of Rs. 2,64,85,375/- is owing and due from the petitioner. Indisputably, the respondent for reasons best known to it, has filed a suit for recovery of the said amount before the Madras High Court. The matter is still pending adjudication. The respondent had contended that a statement of account had been served on the petitioner.

61. No proof of service of the said statement of account has been filed. In fact although the respondent is a company incorporated and registered under the Companies Act, 1956 and it must have been maintaining books of accounts in regular course of business, it has failed to bring on record the same.

62. The respondent has also not been able to substantiate its contention that it has served notices of demand upon the petitioner. Allegedly a notice was sent by the respondent on or about 31st December, 2009. It did not file any postal receipt.

63. Only after the cross examinations of the witnesses was over, a few documents one of them being a postal receipt dated 13.2.2010 and another a notice dated 31.12.2009 had been filed. No witness however, was examined nor any prayer for adduction of additional evidence was made to co-relate the said postal receipt dated 13.2.2010 or proof of issuance of service of the notice dated 31.12.2009 on the petitioner. If the respondent was serious in proving the said documents, the least it could do, was to file an

application for adduction of additional evidence and bring the same on record in accordance with law. The question of an act of default on the part of the petitioner furthermore would have been relevant if it had made any default in respect of the agreement which was in force.

64. We have noticed heretofore that despite the acts of alleged default or piracy, the respondent without any demur whatsoever has entered into an agreement with the petitioner for the town of Kanchipuram.

Withholding of Documents

65. The witness of the respondent furthermore although in its affidavit stated that invoices have been served in his deposition. He stated as under :-

‘Q. Have you served invoice the petitioner claiming the amount from it ?

A. Yes invoices were served.

Q. Do you have any proof of service of the invoices ?

A. I am not sure.

Q. Is there anything on record to show service of invoice?

The witness goes through the records

A. No.

Q. I put it you that no invoice was served upon the petitioner and the petitioner did not owe any amount as claimed in para 2 of the affidavit.

A. It is incorrect. “

66. Why the respondent has failed to bring on record the documents in his possession has not been explained. It is also relevant to notice that even he has not been able to show before us the exact amount which is said to be owing or due from the petitioner with reference to its books of accounts. The assertion of the witness of the respondent that a copy of the ledger had been sent to the petitioner has not been established. The

said witness was not maintaining the books of accounts. He even could not say for what period for which the amount was claimed was due as would appear from the followings :-

‘Q. Can you tell us the period for which the amount was claimed?’

The witness goes through the records

A. It is a cumulative outstanding but I cannot say about the exact period.

We maintain books of account. The witness points out page 314 to 316.

Vol – I do not know for which period the arrears brought forward in July 2009 as mentioned in the ledger and that is why I say that I am not aware of the entire period for which the amount due was claimed from the petitioner.

Q. Have you supplied the copy of the ledger to the petitioner.

A. Yes many times we have sent it.

Q. How did you send the copies of the ledger?

A. Through speed post.

Q. Have you filed any proof of service?

A. We have not filed it but I have proof of service in my office.

Q. Can you file the same?

A. Yes, it can be filed as soon as possible.

Vol – We have filed some of the proof of service in other case against the petitioner.

It is incorrect to suggest that we have no proof of service nor we have filed the same in any proceedings before this Tribunal.

Q. Have you ever served any notice of demand before issuing the statutory notice under Regulation 4.1 dated 24.05.2008?

A. I am not sure.”

67. We may, furthermore, notice that the witness of the respondent when called upon to file a large number of documents, stated as under :-

“Q. Can you file the copies of Passports, proof of services of invoices on the petitioner, Kanchipuram subscription agreement, copy of PF statement of the deponent from 2007 onwards alongwith PF returns submitted to department, proof of service of demand of October / November 2009, testimonial form of

Singapore Airlines, 6 months SMS report of SCV?

A. Yes we can file the documents within 10 days' time."

68. At every stage, this said witness undertook to produce the documents but then, he failed/or neglected to do so, although as indicated heretobefore he had filed two documents at a later stage.

69. When such serious questions had been raised and at least the credibility of the witness vis-a-vis his joining of services with the respondent company, the service of the ledger, the service of the notice, the service of invoices etc. were raised and the respondent which had been fighting litigations against the petitioner in various courts of law both civil and criminal, there could be no reason for it to withhold the best evidence from us.

70. We, therefore, have no other option but to draw an adverse inference against the respondent that had those documents been produced, the same would have gone against it to contentions.

71. It is now a well settled principles of law that a party to a lis, being in possession of some documents which have a vital bearing on the outcome of litigation, should not withhold the same, even if the onus of proof was on the other side.

See Gopal Krishnaji Ketkar v. Mohd. Haji Latif reported in AIR 1968 SC 1413 See also Kamakshi Builders v. Ambedkar Edn. Society (2007) 12 SCC 27.

72. Be that as it may, having regard to the fact that the matter relating to the recovery

of the amount in question is pending consideration before the Madras High Court, and as any direction issued by us would be subject to the outcome of the other matters pending before other courts of law, we are of the opinion, it is not necessary for us to consider any other or further arguement advanced by the parties hereto.

Estoppel Issue

73. We, however, have no hesitation in holding that the respondent is estopped and precluded from contending otherwise so far as the present proceeding is concerned being bound to follow the provisions of the regulations.

Interim Orders Passed in Petition No. 190 (c) of 2009

74. Before parting with this case, we may notice two submissions of Mr. Maninder Singh.

75. According to the learned counsel, the petitioner admitted the acts of piracy in Petition No. 190 (C) of 2009 as would appear from the order dated 30th October, 2010 and 15th December, 2009.

76. The order dated 30th October, 2010 was an interlocutory order wherein one of us mentioned that the petitioner had admitted the acts of piracy. A review application was filed, which has been dismissed by an order dated 15.12.2009 but it was mentioned therein that the petitioner is entitled to expunction of the remark that 'he had admitted piracy'.

77. An interlocutory order, as is well known, is subject to a final order. The question of piracy has also been raised in Petition No. 190 (C) of 2009. It has been disposed of by

a reason of an order dated 21st July, 2010 wherein, it has been held :-

“It is stated by the learned counsel for the parties that the parties have entered into a subscription agreement and in that view of the matter, as prayed for, the petition is permitted to be withdrawn”

78. We, therefore, are of the opinion that in view of the aforementioned decision it would be incorrect to contend that the said orders dated 30th October, 2010 and 15th December, 2009 would be binding on the petitioner in terms of the general principles of res judicata.

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Digital Head-End Issue
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79. Another submission of Mr. Maninder Singh was that admittedly the petitioner did not have any digital head end at Chennai on the date on which the first application had been made. This may be true, but the petitioner started free to air channel at Chennai for which a digital headend was not necessary. The petitioner had applied for supply of signal from many of the broadcasters and as would appear from the evidence of Mr. B. Hariraj. He, in this regard stated as under:-

“The witness is shown page No. 60 of the petition (exhibit PW1/3).

Q: Is this the letter you are referring to by which you informed the respondent of the installation of you head-end?

A: This is not for the information of the Head-End. This is request for the signals.

Q: If this is not the letter then which is the letter by which you informed the respondent of the complete installation of your head-end?

A: This question is not relevant as for free to air channel the respondent could not have insisted on the set up of the head-end.

To a question of the Tribunal as to whether the witness knows as to what a Head-End is, the witness states that it is a control room.

The witness was given another opportunity to state by which date the petitioner had informed the respondent in regard to the complete installation of

the head end. The witness states that he does not remember the actual date.

Q: When did the petitioner's channel become pay channels?

A: On 15.11.2009.

Q: After 15.11.2009 did you inform the petitioner that you have completed the set up of your headend?

A: We informed orally.

Attention of the witness is drawn to para M of the affidavit at page No. 282.

Q: These requests which you are referring in this period of 8 months, were these in writing?

A: These requests were only oral.

Q: I put it you that you have never informed the respondent that you have completely installed your headend.

A: I don't know.

Q: Is it correct that for the pay channels in CAS areas a complete headend with SMS system is mandatory.

A: Yes."

80. It is true that the petitioner did not inform the respondent about the digitalisation of its head-end after 15.11.2009 in writing, but the fact remains that keeping in view the fact that it has obtained a positive response from 'Sony' and 'Star' so far as the channels of the said broadcasters are concerned, indisputably it has a full-fledged head-end now for the purpose of retansmission of signals.

81. We may notice the deposition of the witness examined on behalf of the petitioner in this behalf which is as under:-

"Q: Have you started supply of signals of SONY or STAR in Chennai?

A: we have not yet rolled out our signals in Chennai.

Q: Are you in possession of active decoders of SONY and STAR?

A: For STAR it is active and for SONY, we are yet to receive the decoders though the agreement is signed. We have received the ESPN decoders and

agreement is signed and the boxes are active. We have also received from most other broadcasters except the respondent.”

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Observations of the Madras High Court

82. An application has been filed before us to stay our hands on the premise that the respondent had filed a Writ Petition before the Madras High Court wherein allegedly on the ground that the petitioner is guilty of commission of acts of piracy, the Ministry of Information & Broadcasting, of the Government of India has been directed to consider the question of cancellation of the permission granted to it within a time frame. So far as the question of staying our hands is concerned, we are of the opinion that keeping in view the fact that we have not delivered out judgement for some time but the Central Government having not passed any order, it is not possible for us to withhold it any longer.

83. In the event, however the permission granted to the petitioner by the Ministry of Information & Broadcasting is cancelled, the law will take its own course.

84. We may notice, the submission of Mr. Vaidyanathan in this behalf that neither a copy of the Writ Petition nor a Miscellaneous Application on the petition filed before Madras High Court by the respondent has been served.

85. We do not intend to comment upon the question raised by Mr. Vaidyanathan on the construction of Section 4A of the Cable Television Networks (regulation) Act, 1995.

Conclusion

86. Having regard to the fact that the petitioner has not been granted any signal by the respondent for a long time and as we are of the opinion that the respondent enjoys a monopoly so far as supply of signals in the town of Chennai is concerned, we are of the

opinion that the interest of justice would be sub-served if the following directions are issued :-

- (A) The respondent may supply signal of its channels in respect whereof the request had been made by the petitioner upon execution of an agreement in this behalf as early as possible and not later than 15 days from the date of completion of the formalities in this behalf including the directions made hereinafter.
- (B) The petitioner shall deposit 3 months' subscription fee in advance.
- (C) The commercial terms of the agreement must be on a non-discriminatory basis.
- (D) This direction is subject to any other or further order which may be passed by the Madras High Court in the Civil and Criminal cases pending before it or by the Ministry of Information and Broadcasting.

87. This petition is allowed with the aforementioned directions and observations. Keeping in view the conduct of the respondent, it must pay and bear the cost of the petitioner. Advocate's fee assessed at Rs.2,00,000/-.

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

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

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

rkc/sree