

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 28th July, 2011

Petition No. 139 (C) of 2011

M/s Vision Digital Cable

...Petitioner

Vs.

MAA Television 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. B.S.Sai, Advocate

For Respondent

: Mr.Y. Rajagopala Rao,,Advocate

JUDGMENT

P.K. Rastogi, Member

The Petitioner firm is an MSO and the Respondent is the authorized Broadcaster of all the MAA Network Television Channels namely MAA TV, MAA Music and newly launched MAA Movies and MAA Juniors.

2. The petitioner is requesting the respondent to sign the fresh agreement with the petitioner similar to other 3 MSO's agreement in the area and apply the same ratio of calculating the subscriber base.

3. The Petitioner submits that it is at present transmitting free to air channels along with Gemini, Teja, STAR Package, ZEE Telugu along with MAA pay channels in the whole of Vijayawada (Urban & Rural), Tadepalli Mandal, Mangalagiri Mandalam in Guntur District. The petitioner started its network on 19.11.2007 and it approached the respondent to supply its channel. As the respondent could not concede the request of the petitioner, it filed a Petition No. 79(c) of 2009 against the respondent for providing its Decoders, IRD Boxes and signals to the petitioner. After hearing the parties, this Tribunal pronounced its final Order on 20.05.2010 and directed the Respondent to provide its signals on the basis of 1400 subscriber base till January 2011.

4. The Petitioner further submits that the Parties entered into the agreement at Hyderabad on 26.05.2010. As the respondent had handed over IRD Boxes of MAA TV only, it sent another mail on 28.05.2010 and requested the respondent to supply the MAA TV Music

IRD Boxes also. Even after completion of two months, the Respondent failed to supply the MAA TV Music IRD Box to the Petitioner.

In the meantime, the Petitioner noticed that the Respondent was providing signals to 3 MSOs in Vijayawada Town with total subscribers of 1,70,000 whereas the Respondent was only collecting on the basis of 90,000 subscriber base. Therefore, on 26.10.2010, the Petitioner requested the Respondent to collect the amount from the petitioner based on the same ratio of subscriber base and the total subscribers. Again on 29.12.2010 and 31.01.2011, the Petitioner reminded the Respondent to sign the fresh agreement on the basis of 3 other MSO's ratio in Vijayawada and also supply the IRD Boxes of MAA Music.

5. Finally, the Petitioner received a letter dated 04.02.2011 where the Respondent alleged that the Petitioner was having more than 2000 subscribers and requested the Petitioner to come forward to sign the fresh agreement as per negotiated terms. But the Respondent failed to supply MAA Music IRD Box and further failed to clarify the ratio, which the Respondent was providing to other 3 MSOs in Vijayawada.

6. In view of the above circumstances, the petitioner filed this petition and prayed this Tribunal to issue following directions :

- a) Direct the Respondent to sign the fresh agreement with the Petitioner similar to the other 3 MSOs agreement in the area;
- b) 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), Tadepalli Mandal and Mangalagiri Mandal in Guntur District;
- c) 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;
- d) Direct the respondent to give IRD boxes of MAA Music and newly launched MAA Movies and MAA Juniors channels to the petitioner.
- e) Direct the Respondent to furnish the Agreement entered upon between both parties; and
- f) Pass such other order or orders as this Hon'ble Tribunal may deem just and proper under the facts and circumstances of the matter.

7. On the other hand, the respondent in its reply submitted that the order dated 20-5-2010 passed by this Tribunal in Petition No.79 (C) of 2009 filed by the petitioner was binding on the petitioner and it was not open for the petitioner to contend contrary to the terms of the aforesaid order of this Appellate Tribunal.

8. The respondent further submits that it has three other MSOs in the area of Vijayawada Urban and Vijayawada Rural areas wherein the petitioner is also operating. The other three MSOs: are (1) Blue Chip having a connectivity of 23,400 subscribers; (2) Master Media having a connectivity of 44,100 subscribers and (3) Divya Digital having a connectivity of 22,500 subscribers. All the three MSOs are independently transmitting the signals of the respondent and the respondent is raising invoices to them as per the agreed subscriber base.

9. The respondent contended that the claim of the petitioner that the petitioner was also entitled to a deduction as in the case of other MSOs had no basis and not sustainable under the regulations when all the MSOs are independently operating and transmitting the signals of this respondent and entered agreements depending on their connectivity or by way of negotiations.

Pursuant to the directions of this Tribunal in the aforesaid order, it had entered into an agreement with the petitioner for a

subscriber base of 1400. The order passed by this Tribunal and the agreement entered between the parties are binding and it is not open for the petitioner to contend contrary to the submissions made by the petitioner before this Tribunal in the Petition No.79 (C) of 2009 and the terms of the order. This Tribunal was only pleased to reserve the liberty for this respondent to review while observing "If on the review, the petitioner is found to have a larger subscriber base, a fresh agreement may be entered into by the parties from January, 2011 onwards." So far as the petitioner is concerned, the minimum subscriber base of 1400 has become final and it is binding on the petitioner.

In fact the petitioner's subscriber base has increased to more than 2000 subscribers and the respondent therefore, contemplated the renewal of the agreement at the increased subscriber base.

10. The respondent further submitted that the contention of the petitioner that the respondent is giving a deduction in favour of the other three MSOs and charging less amounts discriminating the petitioner is not true and correct. Each broadcaster is independent and having its own policy and also the rate of per

subscriber is also different. The subscriber base of each MSO and the respective broadcasters will be decided by way of mutual negotiations or depending on the subscriber base arrived at the time of entering agreements.

11. The main question arising in this petition is whether the petitioner is entitled to have the subscriber base calculated on the basis it is done for other 3 MSOs operating in the same area.

12. In this regard, we would like to read the relevant provisions of the Regulations. Regulation 3.6 alongwith its explanation 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."

In this particular case, the petitioner has requested to sign the fresh agreement based on the terms provided to other 3 MSOs. It has been submitted that three MSOs namely, (1) Blue Chip having a connectivity of 23,400 subscribers; (2) Master Media having a connectivity of 44,100 subscribers and (3) Divya Digital having a connectivity of 22,500 subscribers, which are operating in the same area of operation as that of the petitioner. The subscriber base of these MSOs is more than 15 times in each case. Therefore, these MSOs cannot be compared with the petitioner in terms of the provisions of the Regulation 3.6 aforesaid mentioned. The prayer of the petitioner for calculating subscriber base on the basis of 3 MSO's connectivity cannot be accepted.

13. In petition No. 79(c) of 2009, the petitioner had himself offered the subscriber base of 1400. The petitioner had mentioned that Joint Survey was conducted by Zee Turner, where its connectivity was only 1278. The petitioner had also furnished the details of 5 link operators showing the connectivity of 900 subscribers. Considering these

aspects, we had given a clear findings stating :

“We have noticed heretofore that the petitioner for reasons best known to it has not disclosed as to what was the number of subscribers for which it has entered into an agreement with Zee Turner Limited.

We, therefore, think subject to further review of subscriber base, which may take place in November – December 2010, interest of justice would be sub-served if the respondent is directed to enter into an agreement with the petitioner on the subscriber base of 1400. If on the review, the petitioner is found to have a larger subscriber base, a fresh agreement may be entered into by the parties from January 2011 onwards. It goes without showing that other usual terms shall be incorporated in the agreement.”

Further, the petitioner is supposed to give its S.L.R. every month to the respondent. Had the petitioner given its SLR, it would have been useful to calculate the subscriber base for the new agreement. The petitioner and the respondent could have conducted the joint survey also, if felt necessary.

14. We are of the opinion that the end of justice will be sub-served, if a direction is issued to the petitioner and the respondent to have a meeting within two weeks to negotiate. Meanwhile, the petitioner has to submit its S.L.R. for each month to the respondent. The respondent shall consider the request of the petitioner for supply of signals for MAA Music, MAA Movies and MAA Junior also on reasonable terms.

15. The petition is disposed of in terms of the above directions. In the facts and circumstances of the case, there shall be no costs.

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(S.B. Sinha)
Chairperson

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(G. D. Gaiha)
Member

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(P. K. Rastogi)
Member

/NC/