

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 8th June, 2011

Petition No.173 (C) of 2010

R.R. Cable Network ... Petitioner

Vs.

Sun TV Network and Sun Distribution Services ... Respondents

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. R. Krishnamurthy, Advocate

For Respondent : Ms. N. K. Sibal, Advocate
Ms. Gouri Setia, Advocate

Interpreter : Mr.Vadivelu Deenadayalan, Advocate

JUDGMENT

S.B. SINHA

The petitioner by way of this Petition, has questioned the legality and/or validity of a notice issued by Respondent herein purported to be under Regulation 4.1 of the Telecom (Broadcasting & Cable Services) Interconnection

Regulations, 2004 as amended from time to time (The Regulations), whereby and whereunder respondent on the ground of default on the part of petitioner for a sum of Rs.7,90,503.48 as also a public notice dated 28.4.2010, has approached this Tribunal claiming, inter-alia, the following reliefs :-

- “(i) Direct the respondent to restore and continue the supply the signals of KTV, Sun TV and Sun News to the network of the petitioner as per law without any interruption.*
- (ii) Direct the respondent to enter into a fresh subscription agreement with the petitioner as this Hon. Tribunal may deem fit and proper in circumstances of this case.*
- (iii) Direct the respondent to give the disconnection credit for the period from 19.5.2010 to the date of restoration of signals in which the petitioner suffered the illegal disconnection.*
- (iv) Direct the respondent to send regular monthly invoice after the restoration of the signals as per the regulation on the basis of fresh subscription fee as to be determined or has to be adjudicated, or as directed by this Hon. Tribunal.”*

2. The petitioner is a Local Cable Operator operating in the town of Tirnelveli in the State of Tamilnadu. Admittedly, an agreement was entered into by and between the parties hereto on or about 01.4.2009 which, according to petitioner, had been signed by it on a blank format of agreement. The said agreement expired on 31.3.2010. This Petition was filed on 31.5.2010.

3. Indisputably purported to be in terms of the aforementioned notice dated 26.4.2010 and the public notice dated 28.4.2010, the supply of signal to petitioner's network was discontinued on and from 19.5.2010.

The matter relating to grant of a interim relief in favour of petitioner came up for consideration before this Tribunal on 02.7.2010. Pursuant to and, in furtherance of the said order, supply of the signals to the network of petitioner was restored. The question with regard to the conduct of a joint survey, as was observed by this Tribunal in its order dated 02.7.2010, came up for consideration on 23.7.2010. On the basis of an affidavit filed on behalf of petitioner contending that during the joint survey some unwanted persons; names of some of whom have been mentioned in the para 3 thereof, had come to represent respondent, whereupon this Tribunal passed the following order :-

“Without going into the correctness or otherwise of the allegations made in the said affidavit, we are of the opinion that for the purpose of smooth conduct of the joint survey it will be appropriate if an Advocate-Commissioner is appointed therefor.

We would request the learned District Judge of Tirunelveli to appoint an Advocate Commissioner to conduct the joint survey. The learned counsel for the petitioner shall hand over to the learned Commissioner a complete set of papers for passing of an order for

his functions as a Commissioner. The parties may for the said purpose appear before the learned District Judge on 30.7.2010.

The Registry is directed to send a copy of this order by FAX to the learned District Judge by 26.7.2010. Copy of this order may also be handed over to the learned counsel for the parties. The fees and other costs of the learned Commissioner shall be borne by both the parties in equal share for the purpose of ascertaining the number of subscriber base of the petitioner by visiting the concerned areas where the petitioner operates.

In modification of our order dated 2nd July, 2010 we direct that as the dispute between the parties pertaining to the amount of subscription charges is whether the petitioner is liable to pay a sum of Rs.85,758/- or Rs.64,628/- and furthermore as it appears that the petitioner had all along been paying a sum of Rs.84,180/- per month for the subscription charges, we are of the opinion that the petitioner, without prejudice to its rights and contentions and subject to any other or further order that may be passed by this Tribunal upon receipt of the report of the learned Commissioner, may pay a sum of Rs.85,758/- towards the subscription charges beginning from the date of re-connection.”

4. The learned Local Commissioner has filed a report.

In the said report, the subscriber base of petitioner was found to be 2456.

We may notice the subscriber base of petitioner village-wise as was stated in the said report :-

<i>Name of the Operator</i>	<i>Area</i>	<i>Address</i>	<i>Connectivity</i>
<i>R.R. Cable</i>	<i>Vadakankulam</i>		<i>1100</i>
<i>JF Cable TV</i>	<i>Kavalkinaru</i>		<i>300</i>
<i>Stephi Cable</i>	<i>Kavalkinasu Villakku</i>		<i>450</i>
<i>KS Cable TV</i>	<i>SS Puram</i>		<i>200</i>
<i>RR Cable</i>	<i>Kaliyangulam</i>		<i>310</i>
<i>RR Cable</i>	<i>Lepaikudiyirupu</i>		<i>350</i>
<i>Punitha Cable</i>	<i>Thanakarugulam</i>		<i>125</i>
<i>Alex Cable TV</i>	<i>Perungudi & Vedakankulam Extension</i>		<i>200</i>
<i>Paritha Cable</i>	<i>Peddarangapuram</i>		<i>100</i>
<i>Friends Cable</i>	<i>Kavalkinaru</i>		<i>600</i>
<i>MR Cable TV</i>	<i>S.S. Puram</i>		<i>150</i>
<i>Perumal Cable</i>	<i>Manickampudur</i>		<i>25</i>
<i>R.R. Cable</i>	<i>Maniasingapuram</i>		<i>25</i>
<i>Sri Ram Cable TV</i>			<i>65</i>

5. The learned Commissioner, however, in his report made certain observations, which are as under :-

“On verification as far as concerned 80 connections excluding the above said 895 connections, the R.R. Cable T.V. Network connections telecasted but the Sun T.V. Staff has collected the Monthly Payment from the people. (Listed Page 55 to 58 in Annexure No.4)”

12 Villages - Abstract						
S. No.	Village Name	Single Connection	Double Connection	Triple Connection	Disconnection	Total
1.	Vadakkankulam	939	11	2	56	1023
2.	Kavalkinaru	503	3	0	4	513
3.	Lappaikudiruppu	306	0	0	0	306
4.	Sivasubramaniapuram	272	0	0	0	272
5.	Koliyankulam	201	0	0	0	201
6.	South Perungudi	70	0	0	0	70
7.	North Perungudi	30	0	0	0	30
8.	Mariasingapuram	21	0	0	0	21
9.	Manickampudur	20	0	0	0	20
10.	Thankkarkulam	0	0	0	0	0
11.	Betharengapuram	0	0	0	0	0
12.	Kavalkinaru Vilakku	0	0	0	0	0
Total		2362	14	2	60	2456

6. The subscriber base mentioned in the said report is 325 for Sun TV and 2500 for KTV. However, relying on or on the basis of the said report, with regard whereto, apart from the aforementioned observations in respect whereof respondent filed an objection, the parties accepted the same.

7. In that view of the matter, this Tribunal by an order dated 21.10.2010 directed as under :-

“We, however, having regard to the report of the learned Advocate Commissioner and taking a rough figure of 90% viewership, so far as Sun TV is concerned, which comes to Rs.2300/-, and 60% so far as KTV is concerned, which comes to Rs.1460/- and having regard to the rate of Sun TV bouquet at Rs.12.50 and KTV bouquet at Rs.15.60, direct the petitioner to pay a sum of Rs.50,276/- as an interim measure, subject to any other or further order that may be passed hereafter. The orders of this Tribunal dated 2.7.2010 and 23.7.2010 shall stand modified to the aforementioned extent.”

8. Having regard to the pleadings of the parties, the following issues inter alia were framed by an order dated 25.10.2010 :-

“(i) Whether the alleged agreement dated 1.4.2009 was signed by the petitioner on a blank form or a form filled up by itself?

(ii) Whether the petitioner is a defaulter and, thus, liable to pay outstanding amounting to Rs.7,90,000/- till April, 2010 to the Respondent?

(iii) If the answer to the above issue is in the affirmative, whether the petitioner is entitled to signals of the respondent?”

9. The contentions of petitioner are as under :-

- (i) The petitioner having not been served with a copy of the agreement and in fact having been forced to sign a blank agreement, no reliance can be placed thereupon.
- (ii) The respondent has not been carrying on the business in a fair and reasonable manner in so far as it has been providing signals to other MSOs and Cable Operators at a lesser rate.
- (iii) The respondent has a monopoly status and it has made all attempts to exploit its position.

10. Ms. Sibbal, learned counsel appearing on behalf of respondent, on the other hand, urged :-

- (i) It is incorrect to contend that petitioner signed a blank agreement as in fact from the cross-examination of petitioner's witness, it would be evident that it had taken a blank copy of the agreement, kept a photocopy thereof and then came back to the office of respondent and executed the same. The subscriber base has not been varied for the whole period and from the statement of accounts filed by respondent, it would appear that petitioner has been making payments strictly in terms thereof.

- (ii) The petitioner, having accepted the report of learned Commissioner, should have made payments from August, 2010 on the basis thereof.

- (iii) From a bare perusal of the report of learned Commissioner, it would appear that in 3 out of the 12 villages, petitioner has lost all subscribers. Even if the same is accepted to be correct from the month of August, 2010, it would, however, appear that the link operators, Stephi Cable, S.R. Cable, KS Cable & JF Cable who allegedly migrated from the network of petitioner had 728 subscribers, 415 subscribers, 126 and 352 subscribers respectively as would appear from the affidavits filed by the said cable operators, the subscriber base of petitioner has increased, fact having not been denied or disputed by petitioner. The subscriber base of the said cable operators being 1621, which if added to the actual subscriber base of petitioner of 2456 would clearly go to show that the total number of subscribers of petitioner were 4077, which clearly manifests that the negotiated subscriber base provided in the agreement dated 01.4.2010 being 3125 for Sun TV and 2500 for KTV must be held to be correct. If petitioner has been paying the feed charges in terms of the aforementioned subscriber base, it is idle to contend that it was not aware of the negotiated subscriber base.

- (iv) The petitioner, having admittedly received invoices from October, 2008 and never objected thereto, must be held to be estopped and precluded from raising any contention contrary thereto or inconsistent therewith.
- (v) The agreement postulates that the subscriber base of petitioner was 3125 for Sun TV and 2500 for KTV but for a total amount of subscription fees payable was Rs.38,750/- and Rs.39,000/- respectively plus taxes totalling a sum of Rs.77,750/- plus Service Tax.

11. The respondent has annexed a statement of account, from a perusal whereof it appears that petitioner had been taking supply of signals from respondent on the aforementioned subscriber base of 3125 for Sun TV for a long time. However, the subscriber base in respect of KTV was 1300 up to January, 2007. In February, 2007, the subscriber base of KTV was increased to 2500.

The number of the subscribers did never change, although having regard to variation in the component of tax; there were some changes in the amount of subscription fees, such as from September, 2008 a sum of Rs.43,540/- became payable as subscription charges in stead and in place of Rs.42,135/-, it came down to Rs.42,746/- from March, 2009.

The petitioner from December 2007 paid the entire subscription charges on the said basis except a sum of Rs.43,000/-.

He has, thus, been making payments on the basis of aforementioned subscriber base consistently.

12. In this connection, we may notice the statements made in paragraphs 6 and 7 of the petition :-

“6. That the Petitioner further humbly submits that during the month of Dec in the year 2006 when the Sun TV has been made as the Pay Channel, the respondent company has modified his points about 2500 and asked him to pay Rs.15/- for point later on the respondent has modified his points from 2500 to 3125 and asked him to pay of Rs.12.40 per point with service tax till date the Petitioner has been remitting the subscription due to the respondent promptly without any default and delay.

7. That the petitioner respectfully submits that the respondent has not at all sent or issued any payment invoice till October 2008. After October 2008 only the respondent has been issuing the Petitioner the invoice. From the time of having declared the KTV as the pay channel that too also from the month of Dec 2002, the petitioner have been declared only for 1000 points for KTV. During the year 2005, after due verification by the respondent and their distributors, in Jan 2005 the Petitioner point have been upgraded from 1000 to 1300 Points. For that the Petitioner has been remitting the subscription due amount regularly till date without fail.”

13. The petitioner, therefore, did not say that its connectivity was less.

He, thus, admittedly received the invoices from October, 2008. He never questioned the correctness of the demands of respondent raised through the said invoices. Keeping in view the pleadings of the parties as also the evidence brought on record, we are of the opinion that respondent has been able to show that the subscriber base mentioned in the agreement was correct.

14. Moreover, before us a statement of account has been produced by respondent, the correctness whereof is not in dispute. The petitioner paid the entire amount of Rs.84,180/- for the months of January, February, March and April. No payment was made for the month of May. Again, towards subscription fee for the month of June, he made payments for a sum of Rs.43,090/- and Rs.42,090/-. In July, he again paid a sum of Rs.84,180/-.

Similar payments were made for the month of July, 2009. However, in August, September and October, he paid 50% of the said demands. In the month of November also he made payments of a sum of Rs.42,090/- only. However, in the month of December, he paid a total amount of Rs.2,68,000/-.

For the months of January and February 2009 similarly, payments have regularly been made on that basis. He also paid a lump sum amount of Rs.3 lacs in July 2009, Rs.20,000/- in July 2009, Rs.25,000/- and Rs.25,000/- each in the month of October, 2009 and a sum of Rs.2,50,000/- on 28.10.2009. Similarly, he has made various payments from 20.11.2009 upto

20.4.2010. It furthermore appears that petitioner did not ask any question to respondent's witness, Mr. Samuel Rajan with regard to the correctness of the aforementioned agreement.

15. Cross-examination of Shri Samuel Rajan makes an interesting reading. Some questions were put to him with regard to the joint survey, correctness whereof is not in dispute. One question was asked with regard to the method of assessment of viewers' percentage so far as the channels of respondent is concerned. Thereafter, some suggestions were given. The last two questions put to the said witness in cross-examination are as under :-

“Q. Are you aware that those cable TV operators who moved have left with a large subscription payment due to the petitioner's cable TV network?”

A. I am not aware.

Q. If the petitioner comes forward to have a proper and prompt business with your network without any default in future payment subscription due, will you provide the supply of signals without interruption?”

A. Sure.”

16. The petitioner examined two witnesses. One Shri C. Jayamurthy who is its Manager and another, Shri E. Anandharaj.

The first witness without any basis stated that the percentage of viewership of KTV is 20%. He furthermore stated that viewership of Sun TV is 50%. The contention of the said witness that petitioner had only 1198 points for Sun TV and 478 points for KTV, does not inspire confidence.

There is no reason as to why petitioner did not examine its proprietor. An adverse inference, therefore, should be drawn against petitioner.

No proof has also been filed that in its area several other cable operators had started encroachment. The contention of the witness that he has visited the office of respondent for lodging complaint has not been proved. The said witness, in his cross examination stated as under :-

“It is incorrect to state that I have falsely stated in my affidavit that petitioner has signed a blank agreement with the respondent.

Vol. I personally took the photocopy of the said blank agreement.

Q. Where did you take the photocopy in Chennai or Trinelveli?

A. The photocopy was taken in Vadakkankulam.

Vol. The respondent came to our office to take our signature on the said blank agreement.

Q. On which date?

A. I do not remember the date.

It is incorrect to suggest that I am falsely deposing that the respondent came to the petitioner’s office and took the signatures in the blank agreement.”

17. As indicated heretobefore, petitioner having accepted its subscriber base on a substantial basis, respondent must be held to have proved that he has not signed on any blank agreement.

18. For the reasons aforementioned, this petition is dismissed.

However, we are of the opinion that the parties may negotiate for entering into a new agreement on the basis of the Commissioner's report and in terms of the interim order passed by us afresh. However, if the parties so desire, they may hold further negotiation.

19. The petitioner, however, must pay the arrears of payment in terms of the interim order of this Tribunal.

20. As noticed heretebefore, this order is being passed in exercise of our inherent jurisdiction to restore the parties back to same position as if the order of interim injunction had not been passed.

Moreover, petitioner having enjoyed the benefit of restoration of signals, must compensate respondent suitably and particularly when the report of learned Commissioner has not been objected to.

In the facts and circumstances of the case, the parties shall pay and bear their own costs.

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

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

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

rkc