

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated 1st June, 2011**

**Petition No.168 (C) of 2010**

**G K Communications** **...Petitioner**

**Vs.**

**Sun Network** **...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. Veerajaneyulu K L N V, Advocate**

For Respondent **Mrs. N K Sibal, Advocate**

**Ms. Shruti Ranjan, Advocate**

**JUDGEMENT**

**S.B. Sinha**

The petitioner is a multi service operator. The respondent herein is a distributor of Sun Group of Broadcasters.

2. Shri K Gopala Krishna, the Proprietor of the petitioner was running another network known as G K Cable Network.

3. The petitioner herein as a Multi Service Operator was retransmitting signals to its subscribers who were residents of a colony known as KCP Colony occupied by the employees of a Sugar Factory. The petitioner had also been supplying signals to the residents of one Geeta Bhopani Satellite Colony.

4. It had set up a head-end in a village known as Vuyyuru. He shifted his control room to Door no. 7-223-7 Rajashri Nagar, K R K Estates, Thotavalluru Road, Vuyyuru.

5. He obtained a registration certificate for operating a head end at the said address from the Postal Authorities.

6. On or about 5.8.2009, petitioner is said to have taken over the connectivity of 1100 connections from three cable operators namely: (a) Tadepali Shashadri (400 connections), (b) B Rama Prasad (400 connections) and (c) G V Gangadhar (300 connections), operating in the areas of AGK Nagar, Kobbari Thota, Sivalayam Street, Chandra Mouli Nagar, Bus Stand, Sri Lanka Colony, Panchayat Office Area, Rajeev Nagar, Gandhi Nagar and Gurajada Street areas of the said village.

7. According to the petitioner, in the year 2006, respondent herein agreed to supply signals to M/s. G K Cable Network.

8. In the year 2009, the petitioner contends, a rival multi service operator started operating in his area. It started giving troubles to him by interfering with his optical fiber cables laid in his area of supply namely KCP Colony.

9. The said rival MSO of the petitioner later on obtained permission from the said authorities of the said Sugar Factory Establishment to supply signals to its employees. In the said background, petitioner is said to have started operations in respect of the aforementioned three networks.

10. By a letter dated 4.6.2009, petitioner intimated respondent with regard to shifting to its new address.

11. The petitioner entered into an agreement with Zee Turner Ltd. on or about 1.8.2009. He informed the respondent thereabout and requested it to increase the number of its subscribers.

12. The respondent had been issuing invoices on a subscriber base of 1,110 as would appear from the one issued for the month of August 2009. The respondent, however, discontinued supply of signals to the petitioner's network on or about 29.8.2009 to which it protested and asked it to restore supply of signals by a legal notice dated 29.08.2009, stating:-

“In this month my client has purchased 1,020/- connections from the existing cable operators. On 25.8.2009, my client had sent a letter to you and Smt. Sarojini Vijayan Nair, accounts Head Channel Plus Chennai and Mr. P V Siva Prasad, Distributor (Krishna), Channel Plus Vijayawada. Regarding the increase in the subscribers and also he enclosed the sale agreement copies entered by my client with the cable operators.

Today suddenly you had disconnected the signals of Gemini TV, Teja TV, Gemini Music TV, Gemini News TV. I request you to activate these signals immediately. Disconnecting the signals without any prior notice is against the regulations prescribed under the Telecommunications (Broadcasting and Cable Services) Interconnection Regulations. I request you to activate your channels immediately, if so not my client has only option to approach the Hon'ble TDSAT against you for disconnecting the signals."

13. The petitioner thereafter by several letters and in particular the one dated 25.8.2009 asked Shri Chandershekhar Naidu of respondent to supply signals at an increased subscriber base, stating:-

"At this Vuyyuru town another Cable Net Work by the name M/s. Sri Sai Balaji Satellite Communications, T Shiva Rama Krishna has taken the permission from KCP Colony existing Operator, Vuyyuru, and with the help of some staff members obstructing our existing OFC Cable Net Work and our connectivity area. We have lodged a complaint with the customers in the villages (1) VEERAKILAKU (2) KAPILESWARA PURAM, there by those customers are not able to view "GEMINI CHANNELS". To overcome this problem we have requested to your Vijayawada Distributor to supply stand by decoders. Your Vijayawada Distributor Mr. P V Siva Prasad has informed us that the matter is in process.

On 01.08.2009 M/s. Sri Sai Balaji Satellite Communications has stopped our existing signal and supplied their signal to KCP Colony existing Operator, Vuyyuru.

On 05.08.2009 we purchased this following areas in Vuyyuru:

<u>S. No.</u>	<u>Operators Name</u>	<u>Address</u>
1	T Saradhi	AGK Nagar, Kobbari Thota, Sivalayam Street



15. In the said petition, the alleged rival MSO of petitioner was also impleaded as a party.

16. During pendency of the said petition, the parties hereto met on or about 6.10.2009.

17. We may notice the Minutes of the Meeting of the said date which reads as under:-

“Mr. Gopalakrishna requested to issue the new decoder boxes.

Mr. Naidu agreed to provide the new decoder boxes and renew the old agreement in the area of Pamidimukla for 450 connectivity on based upon the splitting letter given by Mr. Gopalakrishna.

Mr. Gopalakrishna requested to send a person for verification of ground reality.

Mr. Naidu replied that we are updating the ground operations in the area of Vuyyuru town and other areas and also receiving current information's through our executive, Area Manager and Distributor, so there is no need to send any person for ground verification.

Mr. Naidu said that we have a valid proof that you are pirating our signals in the area of Vuyyur town and requested to stop the piracy in the areas of Vuyyuru town.

Mr. Gopalakrishna replied that he is not pirating our signals.

Mr. Gopalakrishna asked to send a invoice in the month of September 2009 which was not received till date.

Mr. Naidu replied that we have already sent the invoices in the areas of Pamidimukla and Kapaleswarapuram in the month of September 2009.”

18. Having regard to the aforementioned settlement, the petitioner sought to withdraw Petition No. 199-(C) of 2009, which was objected to by respondent no. 2.

19. We may notice in this regard, the ‘Proceeding sheet’ dated 14.12.2010.

“Having heard the parties, the respondent is directed to produce the original agreement dated 30.10.2009 before this Tribunal. This application is allowed.

So far as the M.A. No. 321 of 2010 is concerned, the prayer of the applicant that the respondent be called upon to produce agreements and invoices, which are said to have been entered into by and between the respondent broadcaster and 3-4 MSOs, being vague having not been named and furthermore, the same being a matter of evidence, the respondent, cannot be at this stage, directed to produce the invoices and the agreements. This Tribunal, like the court of law, as is well known, shall not encourage the phrasing evidence. The learned counsel for the petitioner, however, has drawn our attention to the proceeding sheet dated 30.7.2010 as also Para-5 of the application to contend that now reliance on the said documents have been established. We are afraid that only because Mr. Srinivas in his cross examination has chosen to answer to a particular question in a particular manner, the same by itself does not become either a fact in issue or a relevant fact. This Tribunal must examine issues arising in the petition as also the application in the context of the Indian Evidence Act as also the CPC. The petitioner cannot be permitted to file application after application, after the cross examination of the party’s witnesses are over. This application is dismissed with costs of Rs. 5000/-.

M.A. 322 of 2010 –

The applicant herein has, inter-alia prayed for a direction on the respondent to obtain additional document being reply dated 4.11.2010 issued by the Post Master of Raipalli Town as contained in Annexure appended thereto.

Ms Setia appearing on behalf of the respondent denies the delivery of the letter which is said to have been served by Speed Post to it on 9.11.2009 as also the identity of letter in question.

In this view of the matter, we are of the opinion that the letter of the Post Master concerned should be allowed to be brought on record as the same was not brought within the knowledge of the respondent and which he could come to know only upon the receipt of the letter. The petitioner may, therefore, summon the Post Master of the aforementioned Post Office and/or any person competent to prove the said letter. The requisite costs for summoning the said witness may be deposited. It is made clear that the petitioner must himself serve the summons on the witness concerned.

Registry to issue notice to the learned counsel for the petitioner by 16.12.2010. Steps for such service of notice upon the concerned person may be effected by 3.1.2011.

The witness concerned may be summoned for appearing before this Tribunal on 11.01.2011 for cross examination.”

20. However, according to the petitioner, he executed a blank agreement at his village and the same was handed over to the representative of respondent. An agreement was entered into on or about 30.10.2009, a copy of which was received by the petitioner on or about 6.11.2009.

21. By reason of a letter dated 7.11.2009, petitioner asked respondent to include the surrounding villages as its area of operation, the details of which were provided it to have been served in its distributor's office at Vijaywara.

22. The said letter reads as:-

"We and our customers are thankful to you providing the decoder boxes of your channels for transmitting your channel signals in the areas of Vuyyuru village and surrounding villages of the Vuyyuru. As for your instructions given at the time of issuing new decoders we are withdrawing the case before the Hon'ble TDSAT on the next hearing date that the matter was settled. I like to bring to your notice that in the agreement you had not mentioned the details of the areas in which we are transmitting your channels signals. I request you to mention the details of the areas in which we are transmitting your channels signals in the agreement and please send us a Xerox copy of the agreement to.

We are once again thank full to you from us and also from our customer to you and to your network for issuing new decoders and for permitted to the extending the area beyond the Vuyyuru village that is the surrounding villages which were provided by us to your persons in your distributor's office at Vijayawada."

23. The said letter is said to have been despatched by speed post.

24. We may, however, notice that respondent denies and disputes the receipt thereof. Proof of delivery of the said letter, however, has not been filed.

25. The petitioner has brought on record various agreements with several other broadcasters namely Zee Turner, ESPN and Ushodayya to contend that the subscriber base shown/ disclosed in the agreements of the said

broadcasters was 3,250. So far as, Marc TV is concerned, the connectivity has also been shown as 3,250.

26. By way of example, petitioner has brought to our notice the area of its operation so far as the 'Zee Turner' is concerned, viz the agreement dated 1.8.2009, wherein not only Vuyyuru but also another Mandal known as Venanklanh was also added as also the areas surrounding it. According to the petitioner, the respondent, however, shifted its office for the purpose of carrying out its transactions in the State of Andhra Pradesh, at Hyderabad. By a letter dated 18.3.2010, the petitioner brought it to the notice of respondent its area of operation as also the number of subscribers, which reads as under:-

"Your A S M Sreenivas requested us to providing our cable network subscription (3250) related existing area operators list. Previously at the time of entering into the subscription agreement at Vijayawada at your distributor's office the details of the agreement subscription (3250) for our network's existing area operators list and connectivity with area wise was handed over personally. But again yours A S M Sreenivas requested us to provide the details of our cable network existing area operator's list and area wise connectivity. We are sending this letter for bringing to your knowledge and also by this letter to A S M Sreenivas with relating to our network subscription (3250) operators list and area wise connectivity in the following.

S.No.	Operators Names	Area	Connectivity
1	K Gopala Krishna	Vuyyuru	2130
2	Paladugu Venkata Ramana	China Ogirala	100
3	Gondhi Nagamalleswara Rao	Gandigunta	150

4	Kona Venkata Krishna	Kadavakollu	60
5 6	Tirumalasetti Srinivasa Rao	Yakamuru Garikaparru	160
7	Kanumuru Nagamani	Kummamuru Kanakavalli Penamakuru	300
8	Madu Krishna Prasad	Gurajada	50
9	Pandalaneni Sree Ramana Raj Kumar	Mantada Tadanki	200
10	Gummadi Sambasiva Rao	Gopuvanipalem Kanumuru	100

27. Receipt of this letter is not denied.

28. The respondent, however, on receipt of the said letter, by its letter dated 18.5.2010 stated as under:-

“This is to inform you that you are liable to pay the pending subscription due amount of Rs. 43,394/- (Rupees Forty three thousand three hundred and ninety four) till date. Further you have entered into an agreement on 30<sup>th</sup> October 2009 with us in the area of Vuyyuru town only for 3250 connectivity. We have already given a copy of the said agreement to you at the time of entering the said agreement. However once again we have enclosed herewith a copy of the said agreement for your reference. In addition to that you are illegally transmitting our signals in the areas of Mantada, Tadanki, Tadanki, Gopuvanipalem, Kanumuru, Kadavakollu, Veravalli, Gandigunta, Chinavogirala, Yakamuru, Garikaparu, Kommumuru, Kanakavalli, Penamakuru, Hanumanthapuram areas without getting any authorization from us.

Hence, we hereby once again call upon you to stop the illegal transmitting of our signals in the above said areas immediately and to pay the pending subscription dues of Rs. 43,394/-

immediately on receipt of this notice, failing which we will be constrained to disconnect the signals presently being provided to you.”

29. The petitioner in its petition contended as under:-

“It is submitted that on 21.10.2009 the respondent issued new decoders for their channels to the petitioner from their distributor’s office at Vijayawada. At the time of issuing new decoders the petitioner produced the details of the areas and connectivity where the petitioner operating his cable network. At the time of issuing new decoders on 21.10.2009 the respondent’s distributors office at Vijayawada. On 21.10.2009 when the respondent issued a delivery challan for the new decoders. The number of the delivery challan was AP-03349. The true copy of the delivery challan dated 21.10.2009 with number AP-03349 is annexed here and marked as Annexure P-4.

On 14.05.2010 the respondent has displayed message on their channels that “unauthorized usage please stop to avoid deactivation”. On 22.05.2010, the petitioner has received a letter dated 18.05.2010 from the respondent that the petitioner is transmitting signals of the respondent in the areas of Mantada, Tadanki, Gopuvanipalem, Kanumuru, Kadavakollu, Veeravalli, Gandigunta, Chinavogirala, Yakamuru, Garikaparu, Hanumanthapuram areas without getting any authorization from the respondent and to stop the transmission of the signals of the respondents channels if so not the respondent will disconnect its channels signals. True copy of the letter dated 18.05.2010 is marked and annexed as Annexure P-9.”

30. The respondent, however, in its reply inter alia contended:-

“In response to the contents of para 10 it is stated that the Petitioner was issued decoders by the Respondent on 21.10.2009 for some of the channels of the Respondent, for transmission of signals in the town of Vayur. It is stated that on the Petitioner filled in all details and blanks in the relevant columns of the agreement and then signed on the agreement only after fully satisfying himself. Subsequently the duly

signed copy of the agreement was given to the Petitioner. It is stated that the agreement was executed for the supply of the connectivity of 3250 in the town of Vayyur. It is denied that the Petitioner gave any list of area of operation and connectivity at the time of signing agreement. It is submitted that the Petitioner stated that it only had operations in the town of Vayyur and would be operating only in the area of Vayyur town. It is stated that on enquiry it undertook to submit regular SLRs. However the petitioner never did the same. It is stated that the copy of the agreement has been annexed by the petitioner as Annexure P5.

It is stated when the Petitioner did not respond to the requests, the Respondent issued a scroll again requesting the Petitioner to stop the “unauthorized transmission”. It is stated that the Respondent did send a letter dated 18.05.2010 once again requesting the Petitioner to stop illegal transmission from the areas of Mantada, Tadanki, Popuvanipalem, Kanumuru, Kadavakollu, Veravalli, Gandigunda, Chinavogirala, Yakamuru, Garikaparu, Kommumuru, Kanakavalli, Penemakuru, Hanumanthapuram.”

31. The respondent, furthermore, denied and disputed that petitioner had signed a blank copy of the agreement or the same had not been delivered to it immediately after its execution.

32. This petition was filed on or about 17.6.2010.

33. Admittedly, the parties during pendency of the proceeding met on 16.6.2010, the Minutes of the Meeting whereof, which was drawn up by respondent reads as under:-

“Mr. Naidu states that Channel Plus has entered into an agreement with G K Communications for 3250 connectivity in Vuyyuru town only. Further Mr. Naidu states that Mr. G K Communications has illegally extended their area of operations

in the rural areas of Mantada, Tadanki, Tadanki, Gopuvanipalem, Kanumuru, Kadavakollu, Veeravalli, Gandigunta, Chinavogirala, Yakamuru, Garikaparu, Kommumuru, Kanakavalli, Penamakuru, Hanumanthapuram.

Further Mr. Naidu requested Mr. Gopalakrishna to stop the piracy and remove the wires in the above said piracy areas immediately. Mr. Gopalakrishna replied that he is not doing piracy in the above said areas. Mr. Gopalakrishna also requested to conduct the joint survey in above mentioned areas to find out the piracy.

Mr. Naidu agreed to conduct the joint survey in the above said piracy areas on 21<sup>st</sup> June 2010 to find out the piracy and Mr. Gopalakrishna agreed for the same.

Further Mr. Naidu requested to remove the wires in piracy areas if anything found at the time of conducting joint survey and Mr. Gopalakrishna agreed for the same.

Also Mr. Naidu requested Mr. Gopalakrishna to clear the pending subscription dues of Rs. 12,542/- in ID-30001183, Mr. Gopalakrishna agreed to clear the same, within two days.”

34. Inter alia on the premise that the petitioner did not sign the said MOU, the respondent by a letter dated 17.6.2010, sent a copy thereof, stating:-

*“You are aware that as per the Hon’ble TDSAT order dated 28.05.2010; we have requested you to come for meeting on 02.06.2010 in our Chennai Office at 11.00 am, along with all the related documents to discuss and sort out the issues, but you have failed to come for the meeting on 02.06.2010. subsequently you have sent a letter dated 31.05.2010 and requested us to postpone the meeting after 10.06.2010. Accordingly, we have fixed the next meeting on 16.06.2010.*

*On 16.06.2010, you have attended the meeting and discussed various issues. Finally we have reduced all the discussions in writing and prepared the minutes of the meeting, to be filed before Hon’ble TDSAT as an evidence of*

*meeting being conducted, but you have refused to sign the minutes of the meeting dated 16.06.2010 and forwarding the same to you for your signature.*

*We hereby request you to sign the said minutes of the meeting dated 16.06.2010 and send it to us immediately to be filed before Hon'ble TDSAT, failing which we will be constrained to file the minutes of the meeting unsigned by you before the Hon'ble TDSAT."*

35. The petitioner by a letter dated 22.6.2010 contended that the contentions raised in the said letter dated 17.6.2010 did not reflect the correct state of affairs, interalia stating:-

*"On 21.06.2010 we received a letter from your office dated 17.06.2010 along with one copy stated as minutes which was enclosed with the letter.*

It is once again to bring to your knowledge, that on 16.06.2010 we had a meeting in your office at Chennai.

On 21.10.2009, your Channel decoders were given to us at your distributor's office at Vijaywada. At that time we had given the Areas and Connectivity list for the Vuyyuru and its surrounding villages. At that time your distributor's office persons obtained my signatures on blank agreement copy. Later I received the copy of the agreement. It was surprising to me that in the column of area it was mentioned as Vuyyuru only. On 07.11.2009 I sent a letter to you requesting to mention the details of the areas and connectivity in the agreement copy.

There was no response from you once again on 18.03.2010 I sent a letter to you're a P Head Mr. A Sreenivasan. So, I requested you to mention the areas and connectivity of Vuyyuru and its surrounding villages in the agreement. In the meeting I submitted the copies of invoices of E-TV and MAA TV and also the agreement copies of Zee Network and ESPN and submitted that all other broadcasters entered into agreement for the areas of Vuyyuru and its surrounding villages.

I request you to mention the areas of Vuyyuru and its surrounding villages mention the areas of in the agreement copy. And also I submitted that if you are interested for joint survey you can conduct joint survey.

For which you had opposed and refused to prepare minutes.

Surprisingly you had prepared minutes for which we had not discussed at the time of meeting and you are requesting me to sign on the minutes.

The minutes copy which was sent to me was not in accordance of the meeting. So, I am refusing to sign on that minutes copy.”

36. In view of the aforementioned rival contentions, by an order dated

30.7.2010, this Tribunal framed the following issues:-

“1. Whether the petitioner has violated the terms of the agreement dated 30.10.2009 and if so, whether it is entitled to any relief, as has been prayed for?

2. Whether this Tribunal, for the purpose of determining the subscriber base of the petitioner, should issue any direction upon the parties to conduct a joint survey?

3. Whether the petitioner had been illegally transmitting the signals of the respondent's channels upon transgression of the area mentioned in the agreement namely Vuyyuru village?

4. Whether the letter dated 7.11.2009 is a fabricated document and has been created for the purpose of this case?

37. The petitioner in support of its case has examined Shri Kagitha Gopalakrishna, its Proprietor; whereas respondent has examined one Shri K Srinivas, its Area Manager as also Shri Chandershekhar Naidu, its Manager (Operations).

38. The respondent in support of its contention that the petitioner has committed acts of piracy in various villages, has also filed a recorded CD. It relied upon a statement by Shri I Shanker, who is said to have been directed by Shri Chandershekhar Naidu to take 'video recording' for the purpose of showing as to in which areas, signals of Gemini TV, Teja TV or Sun TV were being distributed.

39. However, it appears, that inter alia on the premise that necessary certificates therefor by the competent authority in respect of the said CD being Ext. No. RW-16, RW-17 and RW-18, RW-2, was not filed and no said CD having been filed with the reply, the same on an objection raised by Learned Counsel for the petitioner, was not pressed for being treated as an Exhibit.

40. It was so recorded in this Tribunal's proceeding sheet dated 25.11.2010.

41. It would appear from the said order that the petitioner had also filed a Miscellaneous Application before this Tribunal being M.A. no. 321 of 2010 on the premise that one witness namely PW-2 had inter alia made certain statements in respect whereof it was necessary to adduce evidence contra.

42. The said application was however dismissed by an order dated 14.12.2010.

43. The petitioner had furthermore filed an application for examining the Postmaster, Raipalli to prove delivery of the said letter dated 7.11.2010, which was allowed.

44. However, Mr. Veerajaneyulu, the learned Counsel appearing on behalf of the petitioner would urge that the said CD should be seen by us, from a perusal whereof it would appear that in the 27th minute to 30th minute, as also the 57th minute, the respondent herein had sought to block the screen of the TV with a message "Unauthorized use, please STROKE to avoid the deactivation".

45. The said CD had been recorded during pendency of the earlier petition, being Petition 191-C of 2009 and not during currency of the said petition. It is otherwise in absence of any certificate as required under Section 65B of the Indian Evidence Act is inadmissible in evidence.

46. The short question, which arises for consideration in this petition, is as to whether the parties hereto had in fact entered into the aforementioned agreement dated 30.10.2009, so far as the villages in question, in respect whereof the petitioner is alleged to have been committing acts of piracy of signals are concerned.

47. There are certain admitted facts which have been noticed by us heretobefore namely the filing of the aforementioned Petition No. 191-C of 2009, the minutes of meeting dated 13.10.2009 and the consequent agreement dated 30.10.2009.

48. The fact that Petition No.191-C was withdrawn on or about 2.12.2009, is not in dispute. We have noticed heretobefore that according to the petitioner on receipt of a copy of the said agreement, it called upon respondent to include the surrounding villages by a letter dated 7.11.2004.

49. The fact that the petitioner had sent the said letter is in controversy. We may notice that Shri Gopalkrishnan in his affidavit before this Tribunal with regard to the said letter dated 7.11.2009 stated as under:-

*“On 7.11.2009 I send a letter to the respondent requesting the respondent to mention the details of the areas and connectivity where I was transmitting the signal of the respondent channels and to provide a copy of the agreement and also stated that I was withdrawing the case before the Hon’ble TDSAT as for the instruction of the respondent given at the time of issuing the new decoders.”*

50. The respondent's witness, however, in his evidence stated as under:-

*“I state that I have not received any letter dated 07.11.2009 from the Petitioner.”*

51. The postal registration receipt has been placed on record by the petitioner.

52. The petitioner had also examined Shri P Parisudharao, the Assistant Superintendent of Post Office of Repalli Sub Division, Repalli.

53. His evidence reads as under:-

“Q: Do you have any records to show that the Article in question delivered on 9.11.2009, as mentioned in Exhibit 1?

A: The witness produces two documents (1) Track Article – in my office attested by Superintendent. Tenali Post Office and another a copy of the letter SSPO, City, South Division, Chennai addressed to SPO, Tenali. The witness also produces a report of web based customer Grievance handling system.

Q: Have the details mentioned in 1/C has been made by the complainant?

A: The data would be entered and updated in the website at the time of booking of the article.”

54. There cannot, therefore, be any doubt or dispute that the petitioner has been able to show that the article in question had been sent to the respondent's witness No. 2 on 9.11.2009, which has been received.

55. Mr. Maninder Singh, however, made an endeavour to show that on or about 5.11.2009, the petitioner had sent a letter of greetings to the said witness which has been filed before us. However, we can not look to the contents of the said letter as the same had neither been legally been brought on record nor even mentioned in the reply of respondent. We accept that the petitioner in fact

had sent the said letter dated 5.11.2009 as the same was served on the respondent.

56. There are certain attending circumstances which moreover must be noticed by us.

57. An agreement had been entered into by and between the parties during pendency of another petition. In the said petition, serious allegations have been made against respondent. Even the petitioner's rival multi service operator was impleaded as a party. The parties admittedly met on 9.10.2009. Allegations of piracy on the part of the petitioner were made but denied. Even piracy was alleged to have been committed by petitioner in the town of Viyyuru. He was asked to stop the same, which petitioner declined.

58. The fact of issuance of invoices in respect of the village Pamitmukala and Kapeleshwarampuram Network's is not in dispute. The said villages are said to be situated at a distance of 2 kms from Vayurru. The number of connectivity so far as Pamitmukala is concerned is said to be 450. Evidently the petitioner was obtaining supply of signals in its two networks. It may not, therefore, be correct to contend that petitioner had been asked to supply signals of the channels of respondent in another network which had been operated by him namely G K Network.

59. It may also be noticed, that the subscriber base for which the agreement had been entered into was 2350.

60. If, however, the petitioner had a serious grievance against respondent that it had not included all the surrounding villages in the agreement, the least which could be done was to bring the same to the notice of this Tribunal.

61. If according to the petitioner the terms of the agreement were required to be modified or the same did not correctly reflect the terms of settlement which had in fact been entered into by and between the parties, we fail to understand as to why the petition was withdrawn simplicitor. If at that stage, there was any dispute with regard to the nature and/or extent of the settlement, this Tribunal could have gone into the aforementioned question. In fact such a question could have been gone into only in that proceeding and not in a fresh one.

62. Can the petitioner be permitted to raise the self same questions in another petition, although the cause of action therefor arose during pendency of the said Petition No. 191(C) of 2009, is the question.

63. The answer thereto, in our opinion, must be rendered in the negative having regard to the provisions contained in Order XXIII Rules 1 and 3 of Code of Civil Procedure, 1908.

64. The petitioner did not obtain any leave of this Tribunal to file a fresh petition in the earlier proceedings. It did not ask this Tribunal to go into the question of validity and/or extent of settlement. It even did not bring to its notice the aforementioned letter dated 7.11.2009.

65. Mr. Veerajaneyulu would invite us to go into the question of validity of the said agreement on the premise that the blanks have been filled up by several persons in different pens. It was furthermore contended that even a forgery has been committed by respondent in respect of receipt of a copy of the said agreement.

66. Apart from the fact that petitioner ought to have drawn the attention of this Tribunal before withdrawing the said petition, it did not pray for any leave to file a separate petition on the same cause of action.

67. Once the petition was withdrawn on the basis of the aforementioned agreement dated 30.10.2009, in our opinion, petitioner cannot be permitted to question the genuineness or otherwise of the said settlement or a part thereof.

68. The matter might have been different, had the petitioner purchased the network of those local cable operators, who had been operating in the villages in question.

69. Admittedly they had been operating in the village Vaiyyuru only. The petitioner merely contends that it had extended its area of operation.

70. For doing so, it did not seek for any approval of the respondent. Area of operation plays an important role. The TRAI also laid emphasis on the area of operation in Paras 10 and 11 of its Explanatory Memorandum.

71. It is possible that other broadcasters and in particular Ushodayya TV and also Maa TV which also broadcast its channels in the Telugu language entered into agreements with it on a subscriber base of 3250 not only for the town of Veeruyu but also for other areas. However, even in the agreement of Ushodayya, names of only two Mandals have been mentioned and not so many Mandals.

72. It is true that the words "surrounding villages" have been mentioned therein. But which are those villages and with are the villages surrounding of those two Mandals in respect whereof allegations have been made by respondent that it had been committing acts of piracy, has not been established.

73. More significantly, as to whether any agreement entered into with another broadcaster shall be treated to be evidence to construe the terms of a contract with another broadcaster is the question.

Answer thereto must be rendered in the negative.

74. Only because the subscriber base has been mentioned in the said agreements as 3250 which corresponds to the subscriber base on the basis of which the parties hereto had entered into an agreement by itself may not be sufficient to arrive at a conclusion that petitioner must have entered into an agreement with respondent on the same subscriber base for all the areas in question.

75. We have noticed heretobefore that an allegation of piracy was made against petitioner even in respect of the village of Viyyaru. The petitioner had asked for a joint survey to establish its network which was not accepted by respondent. Having regard to the fact that it was aware of the ground realities, even at that point of time, petitioner could have brought to the notice of respondent that in fact it had been supplying signals to the villagers of the villages in question by expanding its network.

76. What would have been the effect thereof, cannot be a subject matter of any surmise. The parties had negotiated on the terms of the agreement. Admittedly, they have entered into an agreement for the village Viyarru. What should be the correct area of operation, thus, can not be determined by us, keeping in view the factual matrix involved in the matter, vis-a-vis the legal implication in relation thereto.

77. Mr. Maninder Singh, would however, submit that any modification in the terms of the contract was to be effected in writing. That is so, but, in this petition we are not called upon by petitioner to issue any direction for modification of the agreement in question.

78. We, therefore, are of the opinion that the petitioner has not made out any case for our interference in the matter. We have noticed heretobefore that during pendency of this proceeding, the parties had again met. The subject matter of discussion in the said meeting, however, is in dispute.

79. Mr. Veerajaneyulu submitted that from a perusal of the draft minutes of the meetings sent by respondent to petitioner, it would be evident that it had asked it to take off the 'works of supply' meaning thereby the optical fiber cable, which could not be done keeping in view the fact that it had been supplying signals of other broadcasters, may be correct, but suffice it to point out that the petitioner in its letter dated 22.6.2010, which we have noticed heretobefore, did not say so.

80. It merely reiterated its stand that the agreement had been entered into not only for the village of Viyyaru but also for the surrounding villages.

81. For the views, we have taken, it is not necessary for us, to consider the contents of the CD and/or the question as to whether respondent has wrongly stated that a copy of the agreement had been served upon it.

82. We may incidentally mention that Mr. Veerajaneyulu submitted that respondent has pressed before this Tribunal two different copies of the agreements, from a comparison whereof, it would appear that whereas in one there is no endorsement with regard to receipt of a copy thereof, but in the other there exists one.

83. Mr. Maninder Singh, in our opinion, has however, rightly pointed out that whereas the first agreement is a copy of the one which has been annexed to the petition by the petitioner itself, the second one is a copy of the original.

84. However, keeping in view the fact, that the petitioner has admittedly received a copy of the said agreement if not on 30.10.2009 but a few days later through its distributor being not in dispute, it is not necessary for us to go into the aforementioned question.

85. There is, therefore, no merit in this petition, which must be dismissed.

86. Moreover, the agreement in question has come to an end. The petitioner, therefore, in the event makes a request to respondent to supply signals of its channels in respect of its expanded area apart from the village Viyarru, we are sure that, having regard to the fact, that other broadcasters including Maa TV and E TV had been doing so, it would consider the desirability of entering into negotiations with petitioner on that basis in a time bound manner, on reasonable and non discriminatory terms and conditions, particularly in view of the fact that petitioner is not a defaulter.

87. This petition is dismissed with the aforementioned observations. However, in the facts and circumstances of the case, there shall be no orders as to 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**

/NS/