

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI**

**DATED 08.6.2011**

**Petition No.364(C) of 2010  
(With M.A. No.347 & 348 of 2010)**

Shalini Zen TV Network.	...	Petitioner
	v.	
Sumangali Cable Vision.	...	Respondent

**BEFORE:**

**HON'BLE MR.JUSTICE (RETD.) S.B. SINHA, CHAIRPERSON  
MR. P.K.RASTOGI, MEMBER**

For Petitioner	:	Mr. Jayant Mehta, Advocate Mr Nasir Hussain, Advocate Mr. Sukant Vikram, Advocate
For Respondent	:	Mr. Arun Katpalia, Advocate Ms. N.K. Sibal, Advocate Ms. Gauri Setia, Advocate

**J U D G E M E N T**

**S.B. Sinha**

The petitioner is a multi service operator. It's area of operation is Thanjavur in the State of Tamil Nadu. It consisted of two MSOs, Shalini Cable System (Shalini) and Zee Max Entertainment Network (Zen).

2. Indisputably, it had been supplying signals to about 164 cable operators in the said town. The petitioner had a control room whereat it used to receive the signals of various channels of the broadcasters wherefor it was supplied with their respective IRD boxes.

3. The respondent herein is also a Multi Service Operator. It is said to be belonging to the Sun group of broadcasters and content aggregators. It had its head end in the town of Trichy. It started supply of signals in the town of Thanjavur sometimes in November/December, 2009. It was supplying signals in the said town through a Railtel fibre link (Railtel) from Trichy.

4. Indisputably, petitioner entered into negotiations with respondent as according to it, the latter had started interfering with and damaging its network by disrupting the cables. The respondent allegedly, according to petitioner, made attempts to make inducements to its cable operators.

5. It is also not in dispute, that one Quality Vision Associate was earlier a part of the petitioner's network. It switched over to respondent's network. In the aforementioned negotiations between the parties, as suggested by respondent, petitioner had two options, namely:

*“Option 1:*

- *One single head end at Thanjavur to be set up and maintain by SCV*

- *SCV will bill Amulraj, Illamparuthi, Gopi, Killi, R P Network and QTV directly if they are willing to continue with SZ and allowed to go back to SZ*
- *SCV will bill C Shalini Zen as one single bill every month including a service charge of Rs. 10 per month per subscriber.*
- *Shalini Zen will get the revenues of 6 private channels excluding SZ and Karan*
- *SCV will not much is a Headend in wires of SZ*

*Option 2:*

- *SCV to purchase head end and wires of SZ*
- *SCV will bill all operators in Thanjavur directly*
- *SCV will be responsible for all dues payable to all pay channels by recovering from operators*
- *SZ partners will be compensated for their efforts with a goodwill as a one-time settlement- were as SZ has requested for a monthly compensation”*

The petitioner is said to have exercised the first option.

An oral arrangement was entered into in terms of which, petitioner in stead and in place of taking supply of signals from the broadcasters started supply of signals from respondent.

6. The petitioner contends that on some misrepresentation, respondent obtained exclusive possession of its control room. Admittedly, respondent started its own control room in the town of Thanjavur on or about 05.04.2010. On that day, the petitioner allegedly discovered that respondent

had removed about 17 decoder boxes of various channels which were being distributed by its sister concern SDS from its control room.

7. Contention of the petitioner is that respondent, on the one hand, had dishonestly induced it to take signals from it and on the other crippled petitioner's control room and ability to restart the same.

According to the petitioner, respondent had also been inducing the cable operators to discontinue their arrangements with it. It is now admitted that about 150 local cable operators migrated to the network of respondent.

8. Sometimes in late July and early August, petitioner's network was disconnected without issuance of any notice either under Regulation 4.1 of the Telecommunication (Broadcasting and Cable Services) Interconnect Regulations, 2004 as amended from time to time (the Regulations) and/or Regulation 4.3 there of. According to the petitioner, the decoder boxes which had been removed from its control room by respondent included those of Sony, AXN, Discovery, Set Max, Animal Planet, Animax, Ten Sports, NDTV Channels as well Sun TV, K-TV, Sun News and Sun music etc.

It is furthermore the contention of the petitioner that sometime in March, 2010 an offer was made by respondent to purchase its network which, however, did not fructify.

9. The petitioner, sent a telegram to the Chief Minister of State of Tamil Nadu on or about 03.8.2010, contending :-

*“we have been doing cable TV Business in Thanjavur Town and adjoining areas for 15 years AAA. Now Sumangali Cable Vision is trying to capture our business AAA. Survival of 300 operators, thousand five hundred technicians and employees, ten thousand family members will be affected AAA. Timely defer S.C.V activity at Thanjavur AAA. Save our life and family members AAA. Praise your intervention”*

A letter was also issued on or about 04.08.2010 to the Chief Minister with copies to various authorities, stating :-

*“We have been doing cable business in the name of Shalini Zen TV Network for the past 15 years as MSO (Multisystem Operator) at Thanjavur. We have been doing this cable business in Thanjavur town and some urban areas of Thanjavur. In our network, we are giving link to nearly 300 operators, who give employment for nearly 1500 persons including technician and administrative staff. By this way of a business, we are giving employment to the staff, who is breadwinner of 10,000 persons nearly 1500 families.*

*In the meantime, during November, 2009 Sumangali cable vision entered into an agreement orally to do the cable TV business jointly with our network at Thanjavur.*

*Having faith that Mr Vittal, M.D of SCV we have been doing cable TV business with SCV for the past 9 month using all our channel decoders. Now they are deviating with their assurance,*

*but also forcing & threatening us to sell our entire network with them.*

*We could not accept the demand of SCV because of heavy financial loss, and then we asked them to return our Sun Network receiver decoders, Vijay TV and Sony Group decoders list attached. But they have return to us the unused boxes list enclosed new list keeping our original boxes with them.*

*The SCV give false complaint to the West police station Thanjavur using their political and finance power. The case was registered as FIR No: 423/2010 in the name of a managing partner S. Shanmuga Prabhu, Ashokan and 18 staff of our network.*

*Kindly we request you to help us to get our decoder boxes to see you our business and our Network. We humbly request you to defer the activities of SCV at Thanjavur and saved the life of out partners, Employees and Operators.”*

10. The petitioner intended to lodge a First Information Report. It was not recorded. The respondent had also lodged a first information report against petitioner for which it's managing director had to pray for and granted anticipatory bail.

A FIR, however, was recorded in respect of an incident which is said to have taken place on 30 July 2010 containing the following allegations:

*“Next day morning i.e 30.07.2010, before arrival of our network partners, the SCV, manager Dharmalingam have started cutting our optical fibre cable (OFC) with his labours. Then, we went to the Tanjore West Police Station and gave complaint regarding theft of our decoder boxes and cutting off cables of SCV people. The police constable asked me to give a complaint only for cutting*

*of OFC cables by SCV after making correction in the complaint. As instructed by the station constable I corrected the complaint and submitted. Knowing that we have made a complaint to the police station, the manager SCV Dharmalingam gave false complaint against our partners and employees. At the police station they have informed that they will conduct an enquiry inviting both parties in the evening. Having faith with the police returned to our office.*

*But the same day evening police came to office in search of our network partners and staff. The police came and informed me that they have registered a case against our network people and asked us to come to the station before night.*

*In view of the above, the SCV manager Dharmalingam not only theft our decoder boxes but also cut our OFC cable with the help of the staff as per instruction of the SCV managing director, Vittal Sampathkumaran, so kindly take necessary action registering case against them and recover our decoder boxes and oblige. The value of 17 decoder boxes which were in working condition is Rs. 5,00,000/- and the value of OAC cables cut and destroyed by them is Rs. 2,00,000/- Thanjavur.”*

11. Yet again, a notice was issued on 17.08.2010 addressed to Mr. Dharmalingam, Manager of respondent stating :-

*“9. if you insist our operators to make the payment directly bypassing us will be considered as breach agreement. We believed your oral agreement of doing a business jointly using our control room equipments, our decoder boxes and our optical fibre network which is covering radius of 30 km in and around the town of Thanjavur and adjoining areas.*

10. *In view of the above facts, don't give connection to our operators directly and collect the link amount from them by breaching the mutual agreement. Kindly return our decoder boxes taken by you from our control room without our knowledge immediately as our business is suffering so badly and we have tremendous pressure from our cable operators.*

11. *You kindly correct the invoice dated 01.08.2010 and return to us by making necessary correction in the outstanding amount column for immediate payment by us. Your early reply within two days is appreciable.*

12. *As per our mutual agreement, our local channel Shalini Zen TV and your local channel Karan TV are to be given in our network without charging any carriage fees. But without any intimation and notice to us you have stopped the relay of our Shalini Zen TV which is a breach of our mutual agreement. So you should immediately relay our channel as per our earlier agreement without charging any payment. We are facing a lot of problem and tremendous pressure from our viewers in addition the revenue loss of Rs.3 to 4 lakh per month.”*

The last page of the aforementioned letter, purported to be addressed to some officer of respondent, however, had not been received by respondent. Some additions were said to have been made therein by petitioner purporting to show that some copies had been sent to the

addressees thereof only for the purpose of attributing the figures in relation to carriage fee.

We will deal with the said issue at an appropriate stage.

Another notice was issued on 30.09.2010.

12. On the said contentions, this petition was filed on or about 26.10.2010 praying inter alia for the following reliefs :-

*“a) direct the respondent to sign an execute a written agreement with the petitioner on a fair, transparent and non-discriminatory basis for uninterrupted supply of good quality signals to the petitioner's network;*

*b) direct the respondent are maintain true, fair, correct and proper accounts of the dealings of the petitioner;*

*c) restrain the respondent, its agents, employees and assignees from interfering in any manner directly or indirectly with the network of the petitioner and from approaching and/or inducing any of petitioner's cable operators to leave the network of the petitioner and further re-strain respondent from collecting, directing or indirectly, any subscription amount from the cable operators of the petitioner;*

*d) direct the respondent to uninterruptedly relay the local channel of the petitioner namely Shalini Zen TV in the network area of operations of the petitioner in Thanjavur;*

*e) direct the respondent to return the decoder boxes and viewing cards of the petitioner illegally taken over by it on 5.04.2010”*

13. The Respondent, in its reply, inter alia contended:-

- i. This petition is not maintainable.
- ii. From January 2010, it had started supplying signals to some of the local cable operators including Quality Vision Associates, an erstwhile partner of petitioner. The respondent had been supplying signals through Railtel link from the month of January 2010.
- iii. It installed its own control room in the town of Thanjavur in the month of April 2010.

From April 2010, petitioner started taking signals for which it was provided with an account number being 4070019. Invoices were being raised therefor. However, the invoice for the month of August, 2010 was inadvertently issued, which was reversed.

- iv. Two cheques issued by respondent for sums of Rs.7 Lacs and 50,000 were dishonoured.
- v. Disputes between the parties hereto started in July 2010 as some link operators who had earlier been associated with petitioner were being asked to rejoin it as it was desirous of restarting its head end.
- vi. On 30<sup>th</sup> July, 2010 petitioner itself cut the fibre-optic cable connecting its control room with the head end of respondent wherefor a First Information Report was lodged as petitioner instigated an attack with 30 people in its office and damaged its

property and picked up its decoders. In that view of the matter, respondent had to ask the broadcasters for replacement of the decoders.

It was stated:

*“it is stated that as the petitioner deliberately and with mala fide intentions de linked with itself from the respondent by cutting of its fibre link connecting it to the control room of the respondent, the same has not been reconnected and the petitioner has not till date sought to be reconnected. That as the petitioner's operators are suffering on account of not receiving signals they approached the respondent and sort link from it. Many operators made written requests to the respondent taking signals from the respondent. The respondent has entered into agreements with these operators and is supplying signals to them.”*

- vii. No agreement in writing had been entered into and the parties hereto had merely entered into an oral arrangement.
- viii. The petitioner, in March 2010 expressed its interest in selling its network to respondent which it agreed to consider. A draft agreement was also made. However, petitioner changed its mind later on.

14. The petitioner, in its rejoinder inter alia, referred to a news paper report to which we would refer to a little later.

15. The core question which arises for consideration is as to whether the disconnection in the supply of signal to the network of petitioner was at the instance of respondent or petitioner itself?

16. Before, however, we advert to the respective contentions of the parties, it may be noticed that in view of the stand taken by respondent, that it was petitioner who had cut the cable from the network of respondent to its network, petitioner made an offer that it would at its own expense repair the same which was permitted by an order dated 29.11.2010.

The respondent, however, filed a writ petition before the Madras High Court questioning the said interim order dated 29.11.2010. The operation of the said order was stayed.

We, however, do not intend to venture an answer to the question, being not necessary, as to whether the interim order passed by the Madras High Court is still in force or not as it is stated that respondent has filed an application for vacation of the said interim order of stay in the month of December itself but the said application has not yet been taken up for hearing, and, thus, whether in a situation of this nature and if the contention of petitioner is correct, the provisions of Clause 3 of Article 226 of the Constitution of India would be attracted or not.

17. The petitioner, in support of its case has examined two of its managing directors, representing Shalini and Zen, i.e Shri Arumugham and Shri. Shanmugha Prabhu. It also examined Shri Jyoti Sivanandan, its manager.

The respondent has examined Shri Vittal Sampatkumaran, its Managing Director.

Mr. Sampatkumaran, during his cross-examination was asked to produce various documents, which he did on or about 07<sup>th</sup> April 2011 including some which are said to contain confidential commercial informations. The said documents have been marked as Ex. RW-1A to Ex. RW-1E.

18. Mr Jayant Mehta, learned counsel appearing on behalf of petitioner, urged :-

- (a) Although there is no, nor could there be any, direct evidence to prove the fact that respondent had cut the cables running from its head end to petitioner's head end, enough circumstantial evidences have been brought on record by the parties to show that nobody else other than respondent could have done so, which are :-
  - (i) the petitioner did not have any captive consumer
  - (ii) it was totally and fully dependent upon the supply of signals by respondent

- (iii) it is respondent alone who had derived 100% gains from the same.
- (iv) the petitioner had suffered 100% loss of business
- (v) in the town of Thanjavur, at present, apart from respondent no other MSO is operating.
- (vi) admittedly, 150 LCO's, as would appear from the chart filed by respondent's witness, had joined the network of respondent without even making any payment of the dues of petitioner as a result whereof all links between petitioner and the cable operators have snapped.
- (vii) from the evidence of Mr Vittal Smapatkumaran (RW1), the Managing Director of respondent, following facts emerge :-
  - (a) his assertion that petitioner had cut the said cable was based on information received from his manager, Shri Dharmalingam, who in turn had heard from its technicians;
  - (b) Shri Dharmalingam or the said technicians have not been examined by respondent;
  - (c) the First Information Report by petitioner having been lodged against Shri Dharmalingam, it is wholly unlikely that he would furnish correct informations to RW1;

- (d) admittedly, only in August 2010, respondent had completed the second phase of the network namely, laying of cables connecting their head ends and in that view of the matter, the ulterior motive on its part stand proved.
- (e) the respondent, in none of his letters has made any reference that petitioner had cut the fibre link.
- (f) RW1, in his cross examination merely stated that respondent had made an effort to repair the said cable but petitioner did not allow the same, which must be held to be an afterthought.
- (g) It was respondent alone who had the motive to disrupt the supply of signals to its network.
- (h) If the contention of respondent is correct, then there was absolutely no reason as to why it questioned the order of this Tribunal dated 29th November, 2010 before the Madras High Court as it had not suffered any prejudice thereby.
- (i) In a case of this nature, this Tribunal will only be concerned with the doctrine of preponderance of probabilities. The said test is to be applied and the materials bought on record by the parties are to be considered.

- (j) There is absolutely no reason why respondent did not enter into an agreement in writing with the petitioner despite Clause 4A of the Regulations which came into force from 17<sup>th</sup> march, 2009.

19. Mr Arun Kathpalia, learned counsel appearing on behalf of respondent, on the other hand, submitted :-

- (a) The petitioner not being registered as a partnership firm in terms of Section 69 of the Indian Partnership Act, this petition is not maintainable.
- (b) Having regard to the admitted fact that respondent had been supplying signals to at least 7-8 link operators including the erstwhile partner of petitioner as well as petitioner, there was absolutely no reason as to why possession of the control room would be handed over to the former.
- (c) No evidence has been brought on record to show that petitioner had handed over both the keys of its control rooms to RW1.
- (d) No evidence has been brought on record to show that respondent had any access/exclusive possession of the control room or it in fact has been controlling the head end of petitioner.
- (e) No evidence has been brought on record by petitioner to show as to why it had been possessing any IRD box which must have been supplied to it by various broadcasters as it had admittedly been taking supply of signals of all the broadcasters, through respondent alone.

- (f) The petitioner had not brought on record any evidence to show that the broadcasters had been raising invoices on it in respect of any IRD boxes till August 2010.
- (g) It is absurd to suggest that petitioner came to know only in July/August 2010 that IRD boxes have been stolen by respondent way back on 05.04.2010.
- (h) No evidence has been adduced on behalf of petitioner to show that any inducement was given to any LCO by respondent.
- (i) Nothing has also been brought on record to show that respondent is responsible for disconnecting the supply of signals.
- (j) In the contemporaneous correspondences/notices including the telegram and letters issued to the Chief Minister of the State of Tamilnadu and/or the legal notice, no reference has been made with regard to the action on the part of respondent in cutting the cable connection.
- (k) Had disconnection been in fact caused by respondent, petitioner immediately thereafter would have demanded reconnection/relaying of the cables in one of its letters, inasmuch as at least 25 letters had been issued by petitioner, the only grievances being taking away the decoders by it.
- (l) As the alleged disconnection had taken place in July or August 2010, there was absolutely no reason why only in October 2010, petitioner has filed this petition.

- (m) From the legal notice issued on behalf of petitioner, it would appear that all arrangements entered into by and between the parties stood terminated and, thus, no case has been made out for supply of signals at its instance relying on or on the basis of old arrangements.
- (n) In its various letters including the letters dated 31.07.2010, 04.08.2010, 07.08.2010, 17.08.2010 and 13.09.2010, all complaints made by petitioner related to theft of decoders and stoppage of channels and, thus, it must be held that the entire edifice on which petitioner based its case is flawed.
- (o) In the facts and circumstances of the case, the question of petitioner having any active decoder does not and cannot arise.
- (p) Even if it be assumed that it had active decoders, it should have filed
- (i) *invoices raised by the broadcasters*
  - (ii) *agreement between it and the broadcasters*
  - (iii) *letters requesting immediate replacement of the decoders by the broadcasters*
- (q) It is wholly incorrect to say that petitioner had handed over the exclusive possession of the control room to respondent as it is wholly unbelievable that both the keys of its control room would be handed over to its representative without any letter or receipt and on its mere asking and that too when both the parties belong to two rival political parties.

- (r) The petitioner accepted in the petition that the arrangement between the parties was only an oral one and in any event no agreement in writing was executed by the parties hereto as would appear from all the correspondences, including the one dated 17<sup>th</sup> August, 2010.
- (s) It was the bounden duty of petitioner to show before this Tribunal as to on what document(s) they had appended signatures and sent the same to respondent for its signature.
- (t) The petitioner itself had disconnected the supply of signals as it owed a sum of Rs. 81 Lacks to respondent.
- (u) The petitioner itself, in paragraph 17 of the petition has made out a case that it had paid a sum of Rs. 60 lakh to respondent, but on a bare arithmetical calculation, it would be evident, that the subscription fee for seven months would be more than Rs. 80 lakhs. The petitioner had itself raised a contention that it was entitled to reduction of the payment of carriage fee as the Zee group of channels as also ESPN group of channels had gone out of the bouquet of respondent as also its alleged due towards carriage charges, for which no evidence has been adduced. Even on those issues, respondent had changed its stand.

At the outset, we may deal with the preliminary issue raised by Mr Kathpalia that this petition is not maintainable as petitioner firm is not registered under Section 69(2) of the Indian Partnership Act. It is not denied or disputed that both the parties hereto are service providers within the meaning of the Regulations. Respondent itself has raised many issues relying on or on the basis of the Regulations. The relationship between the

parties, thus, principally is governed by Regulations in terms whereof respondent was bound to supply signal to petitioner.

Right and liabilities of the parties beginning from formation of contract ending with the termination thereof are governed by the provisions of Regulations. Petitioner herein has rested his grievances inter alia on violation of the provisions of Regulations and in particular Clause 4.1 and Clause 4.3 thereof. Issues raised herein by both the parties, therefore, would have to be determined on facts keeping in view the provisions of Regulations in mind.

20. The core question which arises for consideration in this petition is as to whether petitioner or respondent was responsible for cutting the fibre cable linking their respective headends.

The basic fact of the matter as noticed heretobefore is not in dispute. Whatever be the backdrop of commencement of its operation in the town of Thanjavur by respondent herein, the parties hereto agree that they have entered into an oral arrangement, so as to enable petitioner to take supply of signals from the network of respondent. That arrangement was entered into sometime in January, 2010.

Why no contract in writing was entered into has not been explained. According to petitioner, a draft agreement was signed by it but admittedly,

respondent never executed the same. We would, therefore, proceed on the basis that ultimately petitioner, may be contrary to the terms of the Regulations, has been taking supply of signals from the network of respondent only on the basis of an oral arrangement.

The petitioner in a number of documents had referred to oral arrangement although in the petition it has been contended that a draft agreement was drawn up on which petitioner put his signature and send the same to respondent.

The fact that the private channels were also to be carried by the respective parties is also not in dispute. However, in a case of this nature where petitioner had 163 link operators attached to its network and had also been carrying private channels in its network, it is difficult for us to conceive that despite their political rivalry, they entered into only an oral arrangement in regard to sharing of revenue in respect of broadcast of private channels.

It has been accepted that the headend of petitioner is situated in the ground floor of a huge building. Only from April, 2010 respondent had set up its head end in the first floor of the said building. The situation of these two head ends, however, is not as such, which would only require a few metres of cable to connect the two networks. The building in question being a very big one, in between two headends, there are about 10 shops, if not more, as it appears from the photograph of the building filed by petitioner. The headends are also situated on two different floors.

It stands admitted that neither of the parties before disconnecting the signal (whosoever may be responsible therefor) had served any notice either in terms of Regulation 4.1 or 4.2, as the case may be, far less any public notice as required under Regulation 4.3 of the Regulations.

The petitioner, however, contends that on a misrepresentation, respondent took exclusive possession and/or gained access to its control room.

21. We, for the following reasons, are not in a position to accept the said contention.

In Paragraph 6.2 of the petition, a mere statement in that behalf was made :-

*“that by making dishonest representations and misleading the petitioner, the respondent got possession of the keys of the petitioner's control room.”*

No other or better particulars have been furnished. No fact leading thereto has been brought on record. Why such an arrangement became necessary has not been disclosed. No independent evidence in this behalf has been led.

Admittedly, no letter of possession was exchanged nor any receipt therefor was taken. The aforementioned statement in the petition has not been verified by the deponent as true to his knowledge.

The said statement, amongst others was verified as true to the knowledge of the deponent and information derived from the official records maintained in due course of its business.

The respondent, in its reply denied and disputed the said contentions, stating :-

*“6.2 the contents of paragraph 6.2 are false and denied as such. It is denied that the respondent made any dishonest representations and/or mislead and has got possession of the keys of the petitioner's control room. It is stated that the respondent has never taken any keys of any control room or otherwise from the petitioner.”*

22. In his oral evidence, Shri Arumugham was confronted with the question as to whether taking of possession of the control room was necessary by respondent keeping in view the fact that it had been operating by providing signals through Railtel.

We may notice the relevant portions of the said cross-examination:-

*“Q: if the signals were being provided through Railtel, then would I be correct in understanding that there is no necessity of a control room?”*

*(Counsel for the petitioner objected to the question on the ground that the opinion of the witness is being sought)*

*Ans: the control room was required as the quality of the signals from Railtel was not good and because Thanjavur local channels had to be mixed.*

*Q: did you ever complain in writing about the quality of signals being received through Railtel?*

*Ans: we did not take any link when signals were being transmitted through Railtel in November, 2009. We were informed by M/s Q TV technical staff that the quality of the signals were not good. We have taken signals only from a control room after negotiations.*

*Q: how did the signals of the respondent reach your control room in January-February, 2010?*

*Ans. The respondent used our control room.*

*(Shown Para 3, page 1 of the affidavit)*

*Q: are you aware as to from where M/s Q TV was receiving signals in January-February 2010.*

*Ans. Q TV was also receiving signals from our control room, which was used by SCV, in January-February 2010.*

*Q: Is there any agreement by which the respondent was authorised to use your control room?*

*Ans: there is no written agreement. It is only oral.*

*Q: was the respondent paying you any consideration for the use of your control room?*

*Ans: there was no consideration. The respondent requested for the control room and we obliged.*

*Q: I put it to you that you were receiving signals through Railtel from January-March 2010?*

*A: it is incorrect.*

*VOI. We were getting signals from our control room which was used by SCV.*

*(Shown Para six of the affidavit)*

*Q: to whom were the keys handed over?*

*Ans. The keys were handed over to Mr. Dharmalingam, local manager of the respondent.*

*VOI. A meeting was held on 12.12.2009 at the office of the petitioner, in which Mr Vittal Sampathkumaran requested for the use of control room and said his staff would collect the keys of the control room.*

*Q: did you take any receipt when you handed over the keys to Mr. Dharmalingam?*

*Ans. No*

*Q: I put it to you that no keys were handed over as alleged by you?*

*Ans. It is incorrect.*

*Vol. how could the respondent operate our control room without the keys.*

*It is wrong to suggest that the respondent was not operating our control room.”*

The respondent, before this Tribunal has proved a receipt for a sum of Rs 15,99,350 granted by the Railtel Corporation of India Ltd for using its network. It is dated 06.02.2010 and has been marked as Exhibit RW – 1.

The said amount was paid to Railtel Corporation for using 57 km cable for the period 15<sup>th</sup> of December 2009 to 13<sup>th</sup> December 2010. The fact that respondent had been supplying signals to 8 operators including petitioner is not in dispute.

If that be so, then it might not have been necessary for respondent to enter into an arrangement with the petitioner for taking possession of the control room of the size of only 200 sq. ft. to 250 sq. ft.

Petitioner's witness No.2, Shri Shanmugha Prabhu stated that he had handed over the keys personally to Mr Dharmalingam and they lost control thereover. The said witness stated:

*“Q: I put it to you that it is incorrect that the managing director of the respondent made a suggestion that the respondent be allowed access to petitioner's control room?”*

*Ans. It is incorrect.*

*Vol. the managing director came to or control room and requested for access to petitioner's control room.*

*Q: how many keys other of your control room?*

*Ans. There are two keys.*

*Q. How many keys did you hand over to the respondent?*

*Ans. Both the keys.*

*Q: have you taken a receipt in lieu thereof?*

*Ans. No.*

*Vol. based on faith on the respondent and faith in God, he has handed over the keys to the respondent.*

*Q: when did you regain your access to the control room in 2010?*

*Ans. I asked for the keys in 5.4.2010. I do not remember the exact date when we got the access.*

*Vol. I went and asked Mr Dharmalingam for the keys, who stated that he has to get the permission of Mr Vittal Sampathkumaran, only then he handed over the keys.”*

It is difficult to rely on the testimony of the said witness, particularly in view of the fact that no such case has been made out in the contemporaneous documents.

23. The petitioner would furthermore contend that in July, 2010, it came to light that respondent had removed 17 of the decoder boxes issued to it by various broadcasters names of whom have been noticed by us heretobefore.

According to PW-1 the said 17 decoder boxes occupied about a full rack. All the decoders, according to petitioner were stolen. At that point of

time, nobody had been working in the control room on behalf of petitioner. From which place, its administration manager who used to take care of bill collection and other office staff along with other people had been working has not been disclosed. Why petitioner could come to learn of the alleged theft of decoders only late July or in early August has not been explained.

PW-1 merely stated :-

*“Ans. On 5.4.2010, the respondent started its own control room. That is why, I say that the decoders were taken away on 5.4.2010. we also saw finger printing on the television, it also confirmed that the decoders were ours which were being used by the respondent.*

*Q: when did you see this finger printing?*

*Ans. April-May-June 2010 onwards.*

*Q. If you saw this finger printing in April-May 2010, did you not immediately write in protest with the respondent?*

*Ans. It was not necessary for us to ask as they were using our control room and boxes for all channels.*

*Q: if your decoders were being used as you say, broadcasters must have been raising invoices on you for the decoders?*

*Ans. We have been receiving invoices.*

*Q: have you placed on record?*

*Ans. No*

*Vol. it is not necessary. However, I can produce if called upon.*

*(Shown page 24 of the affidavit)*

*Q: why is it that in this letter you make no reference to any theft of decoders by the respondent?*

*Ans. In this letter, I asked for my decoders back, which means that they had illegally taken them away. I have not used these words out of decency.”*

24. There are two other aspects of the matter, which must also be taken note of.

- i. If the petitioner had been taking supply of signals only from respondent's network and not from the broadcasters directly, it would not require the decoders.
- ii. If still the decoders were being used and had not been transferred to respondent, it would keep on receiving bills from the broadcasters, but no invoice has been produced despite having been called upon to do so.

According to PW3, respondent had returned 4 out of 17 boxes on 29 July 2010.

If respondent had already a control room and had entered into separate arrangements with the broadcasters, it is wholly unlikely that the decoders of petitioner, even assuming that they were in existence in April 2010, would remain activated and petitioner would continue to pay the requisite charges to the broadcasters besides feed charges to respondent.

In any event, petitioner could have asked for supply of the duplicate decoders as an interim measure. If it had decoders but did not require the same in January 2010 it must have terminated the agreement with the broadcasters soon thereafter. If not, as indicated hereinbefore, the broadcasters would have raised invoices. The petitioner has also not bought on record any agreement with the broadcasters to show the terms thereof.

The petitioner, as noticed heretofore, has failed to produce any reliable evidence to show that it had any subsisting agreement from January, 2010 onwards with any of the broadcasters so as to enable it to continue to possess the decoders. If the decoders were not there or otherwise not activated, evidently respondent would not gain anything by taking away the decoders.

25. At the end of the argument, however Mr. Mehta, on instructions, stated that petitioner in fact had been served with invoices by the broadcasters concerned for the period January to May, 2010. Such oral contentions at the fag-end of the hearing, in the opinion of this Tribunal, cannot be accepted.

Mr. Mehta would also submit that return of decoders is a non-issue as the matter is pending investigation in a criminal case. It is so, but whether even in the criminal case, the decoders in question has been recovered or not is not known. We are also not aware whether petitioner has asked the

broadcasters to supply decoders. Involvement of respondent in the matter of committing theft of decoders on Mr. Mehta's own submission being pending on the criminal side, it would not be proper for us to arrive at any conclusion thereabout.

26. So far as cutting of cable to the petitioner's control room is concerned, the said witness stated in his cross examination as follows :-

*“Q: is it correct that the respondent cut the cable connecting to the petitioner's control room?”*

*A: it is incorrect*

*Q: who could it?”*

*A: the petitioner himself.*

*Q: since you were not personally present when the cable was cut, on what basis do you say that it was cut by the petitioner?”*

*A: I was informed by Mr Dharmalingam that he had received message from our technicians that the cable of the petitioner was cut.*

*Q: was Mr Dharmalingam personally present in the cable of the petitioner was cut?”*

*A: no*

*Q: did the respondent lodge any police complaint regarding such cutting of cable?”*

*A: no*

*Q: did you write to the petitioner about such cutting of cable?”*

*A: no*

*Q: when did you learn about cutting of the cable?”*

*A: I do not remember the exact date. I think it was around 30.7.2010”*

The dispute between the parties must be determined keeping the doctrine of preponderance of probability in mind. Has any evidence being brought on record to show that none else other than respondent had cut the cable, is the question?

Motive of a party to the contract to perform or not to perform its part of a contract cannot be decisive. A party alleging a breach of contract on the part of the other party must plead and prove the same. Moreover, the story set up by petitioner must be considered as a whole. Petitioner developed its story on the following basis :-

- (a) it, along with another MSO had almost a monopoly in the business of retransmission of signals to the LCOs in the town of Thanjavur.
- (b) The respondent started its business in Nov, 2009
- (c) it, before entering into an agreement with it has taken exclusive possession of its control room in December, 2009
- (d) it entered into a contract with petitioner in January, 2010 while it had stolen the decoders and/or used the same for its benefit without the knowledge and consent of petitioner
- (e) it cut cable connecting the two networks without issuing any notice under clause 4.1 or a public notice under clause 4.3.
- (f) the decoders were stolen so that petitioner cannot restart its business.

Cutting of cable, therefore, would only assume great significance provided the other parts of the petitioner's story can be found to be in place.

The immediate reaction of petitioner in this matter is a telegram to the Chief Minister of the State of Tamil Nadu and the letter issued on 04.08.2010.

The principal grievance raised therein was that it had been forcing and threatening petitioner to sell its network to it. What was stated therein was that despite request, the decoders of Vijay TV and Sony were not returned. What had been returned, were unused boxes keeping the original boxes with them.

Even in the First Information Report, the principal allegations had been made only against Shri Dharmalingam with regard to the theft of decoder boxes. Incidentally, cutting of OFC cables has also been mentioned.

If, the story of theft of decoder and, in fact, entrustment of decoders for exclusive use of respondent by petitioner is not believed, it is exceedingly difficult for us to arrive at an inevitable conclusion that respondent was guilty of cutting of the cables with a view to terminate the agreement without issuance of any notice.

27. Mr. Mehta, however, would urge that it is incorrect to contend that prior to filing of this petition, petitioner has not raised contention regarding cutting of cable, theft of decoders etc in any other contemporaneous documents.

Reliance in this behalf has been placed on the First Information Report dated 23.08.2010 wherein the following allegations as have been made :-

*“in view of the above, the SCV manager Dharmalingam not only theft our decoder boxes but also court our OFC cable with the help of his staff as per the instruction of the SCV managing director, Mr Vittal Sampathkumaran, so kindly take necessary action registering case against them and recover our decoder boxes and oblige.”*

28. The officers of respondent are accused therein in their personal capacities. So far as the alleged commission of the theft of the decoder boxes as also cutting of cable is concerned, the primary liability therefor has been thrust on Mr. Dhamralingam with the help of his staff and said to be under the instructions of Mr. Vital Sampatkumaran. Apart from the general observations that we have made heretobefore relating to the said matter being involved in a criminal case, suffice it to point out that when allegations are made, a court determining a civil dispute between the parties would consider the contemporaneous documents as also the conduct of the parties.

It, however, appears to us that on petitioner's own showing, it intended to start its own control room and, this, its own business once over again. For the aforementioned purposes only, the decoder boxes were necessary.

However, this Tribunal is not concerned with the other question namely, the question of the criminality aspect of the matter.

29. Mr Kathpalia would draw our attention to a newspaper report, which petitioner itself had annexed with its rejoinder.

The statements made in the said rejoinder read as under:

*“it is inconceivable that it could have started providing signals without setting up its office and head end. A newspaper daily, Dinamani, published a report dated 05.02.2010 in which it was stated that there was a sudden stoppage of cable TV at Thanjavur on 4.02.2010. In this report, there was a suspicion raised that signals were telecast through the office and the control room of the Petitioner. A translated copy of the newspaper report dated 05.02.2010 is annexed herewith as Annexure A2. During the period which the respondent had access and possession over the control room of the petitioner it illegally, fraudulently and dishonestly remote the decoder boxes.”*

It is of some interest to notice the said purported news item :-

*“there was a (sudden) curiosity among the public owing to the sudden stoppage of telecasting of cable TV at Thanjavur.*

*Cable TV telecasted was as has been done by the SQZ network for years together. There was a rumour/talk few days back that the SCV group which belongs to Sun TV has bought the cable network of SQZ.*

*It appears that there was a dispute in the agreement between the existing network group and the SCV group which entered Thanjavur recently. On account of the dispute, the existing SQZ network people shut down the office and the control room from where the signals were being originated in telecasted and Thanjavur.*

*Due to this dispute and action, the telecasting was stopped in the entire area of Thanjavur town. The viewers of TV serials and the viewers of other programs were suffered owing to the stoppage and shut down of the control room. This incident has created curiosity in the town of Thanjavur and adjoining areas.”*

However, we are of the opinion that said newspaper report, keeping in view the nature of statement made in the rejoinder by petitioner, is not admissible in evidence.

30. The petitioner, in its petition categorically stated that in a meeting which was held between the parties in December, 2009 it had chosen the first option. It, therefore, became a franchisee of respondent. It did not want to sell its network as has been noticed by us from averments made in the petition. Offers were said to have been made by Mr Sampatkumaran, the Managing Director of respondent.

The petitioner had about 164 link operators. The said link operators, despite the provisions of the Regulations admittedly were not being issued with any invoice. Only receipts were used to be granted. In petitioner's office, there were about 18 employees. It has been accepted that separate receipts had been issued to the link operators by Shalini Cable only as one of the constituents of petitioner.

31. Shri Jyoti Sivanandan, however, stated about issuance of receipts by both the constituents of petitioner firm separately. Reference in this behalf has been made to paragraph 2 of his affidavit. We, however, do not find that any such statement has been made.

The said witness, when asked as to whether any receipt had been granted in the name of petitioner has been able to point out to only one receipt, which was marked as Ext. PW-1/11.

The said receipt also stands in the name of Shalini Cable being dated 23.11.2009 for a sum of Rs. 45,000. Both the constituents of petitioner allegedly have been showing the same amount as contended by PW1 in his evidence.

32. Mr Mehta, however, has taken us through the cross examination of Mr. Vittal Sampatkumaran extensively. The said witness was cross-examined on 1<sup>st</sup> March, 23<sup>rd</sup> March and 31<sup>st</sup> March. He was called upon to

produce documents, which he did, whereafter again he was cross-examined on 07<sup>th</sup> April, 2010.

Mr Mehta submitted that respondent has not produced the documents/agreements to show so as to show the extension of its area of operation from Trichy to Thanjavur.

33. Mr Mehta would draw our attention to some contradictions in the statements of the said witness, Shri Sampathkumaran, in regard to the number of link operators that petitioner had, the matter relating to handing over a copy of the draft Subscription Agreement, valuation of the assets of the petitioner etc. But most of them, in our opinion, are not really relevant, as the proposal to the effect that petitioner would sell its network to respondent, did not fructify.

34. Our attention has been drawn by Mr. Mehta to an e-mail from one Mr. Vittal Sampatkumaran of Sun Network to Shri Rajesh of Zee TV and its response thereto, which are in the following terms :-

*“Dear Rajesh,*

*we have been informed by operators of M/s Shalini Zen that they have made payments directly to ZEE Turner bouquet for the months of January 2010 to July 2010. Kindly confirm.”*

*“Dear Sir,*

*as discussed we can assure that we have not received any payment from M/s Shalini TV network for the period Jan 2010 to July 2010.”*

Contention of Mr. Mehta is as to why the Managing Director of respondent sent such an e-mail which would go to show to that petitioner has been making payments to Zee Turner. It, however, appears that petitioner at least so far as Zee Turner is concerned had made payments only upto December, 2009. If the petitioner intended to raise a contention that it had been making payments to the other broadcasters after December, 2009 and at least to Zee Turner, it could have filed the requisite invoices and /or proof of payments made to the broadcasters.

Submission of Mr. Mehta is that sufficient materials have been brought on record to show that respondent had to do a lot of groundwork which was required by way of preparation to start supply of signals in the town of Thanjavur. There cannot be any doubt or dispute in regard to the said contention particularly in view of the fact that RW1, Mr. Vittal Sampatkumaran has clearly stated that at least for one month, he camped in the town of Thanjavur where-after only Mr Dharmarajan took over.

Each case, however, must be decided on its own facts. It is difficult for us to arrive at a firm conclusion that only for the aforementioned purpose, the control room on the mere asking of the RW-1 was handed over by the petitioner. A submission was also made that a control room was also

necessary not only for the purpose of enhancing the quality of the signals, but also for mixing the private channels with the channels of the broadcasters. It may or may not be so. But it does not appear that such a case has been made out by petitioner in its petition or evidence.

We must have a broad view of the matter. Comments were also made by Mr. Mehta that with that object in view only from April, 2010, respondent hired a room in the same market complex in which petitioner was running its control room. We are not in a position to accept the said contention as no pleading has been raised in this behalf.

It has also been pointed out that there are some disputes between the parties with regard to carriage of the private channels, but, in relation thereto respondent did not produce some documents despite having been called upon to do so.

35. Mr Mehta would also point out that as admittedly 150 link operators have joined the network of respondent, they should have at least been asked to file no objection certificates to show that no payment was due to petitioner.

We do not think that in this case the said question really assumes any importance.

Although a contention has been raised on behalf of respondent that petitioner owed a sum of Rs. 81 Lakhs, in view of the fact that no counter claim has been filed, we are of the opinion the said question need not be gone into by us at this stage.

36. The petitioner rested its case on circumstantial evidences alone.

We have noticed heretobefore that the entire case of petitioner rests on inferences. From given circumstances, some inferences can be drawn. The inferences, however, in a case of this nature particularly the contention of petitioner that respondent had cut of its cable to completely destroy its business cannot be judged in isolation. It has to be judged along with other materials bought on record.

Appreciation of cases of the parties to a lis must rest on the principles of law as adumbrated in different provisions of the Evidence Act. In this case, the burden of proof was on petitioner having regard to the provisions contained in Ss 102 and 103 of the Evidence Act.

It is difficult to accept that although petitioner had been transmitting the signals of private channels to as many as 64 LCOs with no direct connectivity it will not have a control room of its own. We have noticed heretobefore that petitioner has not adduced any evidence nor indeed any pleading has been raised as to under what circumstances it had to part with

the possession of the control room without any agreement. There is also no proof of handing over the keys of the control room and/or use thereof by respondent from January, 2010 to July, 2010.

37. It is true that respondent may be the ultimate gainer and the petitioner may be the ultimate loser, but in absence of petitioner and/or its third erstwhile partner, the local cable operators probably had no other option but to join the network of the respondent.

Evidence of Mr Vittal Sampatkumaran may be a hearsay one but petitioner also has not adduced any better evidence. If hearsay evidence was inadmissible, inferences solely based on some purported circumstances cannot also form the basis for determination of any seriously disputed fact like cutting of optical fibre cable joining the two networks.

It is difficult for us to arrive at a firm conclusion only on the basis of some events which took place subsequent to disconnection of supply of signals. It is, in our opinion, idle to contend that an inference should be drawn only on the basis of the omission on the part of respondent in its letters to petitioner that it had cut the fibre link.

In fact, it was for petitioner to assert the same in its letters. If respondent had not entered into a written agreement in terms of Clause 4 A of the Regulations which came into force with effect from March, 2009 it was for petitioner to take appropriate steps in relation thereto. It could have

approached the TRAI or this Tribunal. During the subsistence of the agreement, it was happy with the oral arrangement. It did not make any complaint. It, did not raise any issue in relation thereto. In its legal notice and other materials brought on record, it referred to the oral arrangement and only in the petition reference has been made to alleged signing of an agreement by petitioner and sending the same to respondent.

The burden of proof was on the petitioner.

38. It has made serious allegations against respondent. It has alleged that there was a well thought out plan to take over the network of petitioner which for all intent and purport is a monopoly in the said town. The petitioner therefore should have pleaded and proved the same. It ought to have placed the entire relevant records before this Tribunal; at least those materials which were absolutely necessary for proving the circumstances referred to heretobefore.

39. We find some force in the submission of Mr. Kathpalia that petitioner started developing one story after the other.

The dispute between the parties started with disconnection of signals on 31.07.2010. Prior thereto, there was no allegation in regard to the fact leading to disconnection. No request was even made to respondent for reconnection. No complaint had been made. The petitioner did not raise vital

issues even in its letter and telegram to the Chief Minister of the State of Tamil Nadu and other high-ranking officers.

40. The petitioner itself issued a legal notice on or about 07.08.2010 stating :-

*“that we also put you to notice that in the event that our original decoder boxes with our cable operator are not returned by you, we would have no option except to file legal proceedings against you. Our business is suffering very badly and we under tremendous pressure from all cable operators. Please treat this as a final notice of determination of any and every understanding that we could be said to have with you. You have played fraud on us. You have illegally take away our decoder boxes and also taken away our cable operators.”*

By reason thereof, therefore petitioner expressed its unequivocal intention to give a final notice of termination of each of the understanding that it had with respondent which would mean that all contracts were brought to an end. If that be so, petitioner having itself terminated the contract cannot now turn around and ask for restoration of connection. In any event, the term of the agreement is also over.

If petitioner wants a fresh connection, it has to apply therefor. No doubt, respondent being under a statutory obligation in regard thereto must respond to such request. The law operating in the field in such an event, shall come into play.

41. Mr. Mehta submitted that respondent has not issued any notice under Clause 4.1 and 4.3 of the Regulations. Nothing has been brought on record to show that respondent was responsible for disconnection of the supply of signals in violation of the statutory provision. In any event, petitioner is not entitled to any relief on that account keeping in view the fact that it had itself terminated the contract.

Mr. Mehta submitted that there was absolutely no reason as to why respondent has filed a Writ Petition against the interim order of this Tribunal dated 29.11.2010.

We are not in a position to make any comments on the said contention as the grounds in the Writ Petition are not before us.

42. We, therefore, are although not in a position to grant any relief to the petitioner herein, have no doubt in our mind that in the event petitioner makes a request either to the broadcasters directly or first respondent herein for supply of signals of their channels in terms of Clause 3.2 of the Regulations, the same shall be considered within the time prescribed under Clause 3.5 thereof with an open mind and on a reasonable and non-discriminatory terms.

43. The petition is dismissed with the aforementioned observations with no order as to costs.

44. This order shall not prejudice the rights and contentions of the parties in the criminal proceedings.

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

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

//Shree/rkc//