

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

DATED 10.05.2011

Petition No. 112 (C) of 2011

Sangani Cable Network

...Petitioner

Vs.

Star Den Media Services Pvt. Ltd.

...Respondent

BEFORE:

HON'BLE MR. JUSTICE (RETD.) S.B.SINHA, CHAIRPERSON

HON'BLE MR. G. D. GAIHA, MEMBER

HON'BLE MR. P. K. RASTOGI, MEMBER

For Petitioner

: Mr. Yoginder Handoo

For Respondent

: Mr. Gopal Jain

Ms. Garima Sharma

Mr. Arjun Natrajan

J U D G E M E N T

S. B. Sinha

The petitioner herein is a Multi Service Operator. The respondent is a content aggregator of various channels of several broadcasters.

The parties indisputably entered into a subscription agreement in terms whereof respondent was to supply signals of the channels of which it is the content

aggregator in order to enable the petitioner to retransmit the same to the networks of various local cable operators.

The said agreement came to an end on or about 31st March, 2008. As the parties could not arrive at a settlement with regard to renewal thereof, the petitioner filed a petition before this tribunal which was marked as Petition No. 33 (C) of 2010.

On the premise that the public notice issued by the respondent herein need not be given effect to as respondent was ready and willing to enter into an agreement with the petitioner in terms of its letter dated 22.01.2010, this Tribunal expected that the parties would be entering into a fresh agreement for renewal of the old one within two weeks from the date.

The petitioner, however, did not approach the respondent for some time. It sent a letter to the Respondent on or about 30th April 2010, contending:

“In this connection, I would like to mention here that owing to my father's illness, I have to stay here i.e. at Junagadh to look after him. Hence, to enter into the agreement within the stipulated time limit, I had suggested to send the required papers to your authorised distributor, stationed at Junagadh and I'm ready to sign the agreement at the office of your distributor at Junagadh.

But, it is stated with much regret that your distributor of Junagadh, sometimes not available at the office and sometimes their office remain closed. Hence, the working of completing the agreement remains pending since last one month and 7 days. As the work of finalising the agreement is of time limit nature, I'm requesting you, once again, to please advise your authorised distributor of Junagadh in the above matter suitably and advise them to remain present at their office for the above important work. Also, please forward the necessary papers of the agreement at the office of your authorised distributor of Junagadh, under intimation to me. Further, please intimate your distributor of Junagadh to inform me well in advance the date and time as to enable me to finalise the Deed.”

With the said letter, the Petitioner enclosed a cheque for sum of Rs. 202052.14. Similar letters were issued by the Petitioner on various other dates inter alia on 07.01.2011, 31.05.2010, 28.07.2010, 30.08.2010. The Respondent however, did not respond to the said letters. The Petitioner sent eight such letters including the ones referred to hereinbefore and continued to send cheques for the aforementioned amount of Rupees 202052.14, the last of them being dated 8th January 2011.

The Respondent, by reason of a letter dated 7th January 2011, however sought to put the blame on petitioner, stating:

"2. Upon expiry of subscription agreement for 2008, we had sent sangani cable a letter dated January 15th, 2009 for renewal of subscription agreement for the year 2009. However, despite repeated requests you did not come forward & the Subscription Agreement for 2009 a year outstanding dues. "

It alleged that the petitioner has indulged in unauthorised cable casting in some areas for which it was not authorised to transmit.

The relevant paragraphs of the said letter reads as under:

"Apart from above we also note that you have been unauthorisedly providing signals of our channels in the areas of Vishavdar Town, Moniya, Sarsay, Bardiya, Lalpur, Magnath, Pipali, Vajdi, Nanakotda, Sukhapur, Desay Vadala, Nvaniya, Pipaliya, Bilkha, Madlikpur and Vadarvad ("Unauthorised Areas") which are not included in Areas unauthorised under your Subscription Agreement."

The said notice was directed to be treated as one under Regulation 4.1 of the Telecommunication (Broadcasting and Cable Services) Regulations, 2004 as amended from time to time (the Regulations). Curiously enough, two other such notices on identical language were issued. A public notice was issued on 31st January, 2010.

This petition was filed on or about 21st February, 2011 by petitioner claiming interalia the following reliefs:

- “a) declare that the action of the Respondent, threatening the disconnection of signals to the Petitioner is not in terms of the TRAI Regulations; and*
- b) set aside the public notice dated 02-02-11 issued by the respondent; and*
- c) direct the respondent to henceforth sign the subscription agreement with the Petitioner on non-discriminatory and reasonable basis.”*

It is now accepted that from July 2010, the subscription amount has not been paid as the cheques tendered by the petitioner have not been encashed by the respondent. The contention of the respondent however is that it has all along been ready and willing to enter into the aforementioned agreement but despite the reminder issued by it from time to time, petitioner did not come forward to execute the agreement.

It may however, be of some interest to notice that respondent, by a letter dated 28th January 2011 for the first time, annexed the copy of the subscription agreement for the purpose of execution thereof by the Petitioner. It however asked the Petitioner to treat the said letter also to be a notice under Clause 4.1 of the Regulations.

The said agreement was to remain valid for the period January, 2009 and December, 2009.

The respondent does not state as to why it sent a format of the agreement for renewal only for the aforementioned period and not for the subsequent years as even the period mentioned in the said agreement had expired.

Before, however, we advert to the rival contentions raised by the parties, we may notice that by an order dated 3rd March 2011, this tribunal had directed the Petitioner to file a map showing its area of operation as also the nature in which those connections have been laid out.

The matter relating to grant of interim relief was also considered but no interim order was passed. It is stated that taking advantage of the aforementioned position, respondent disconnected the supply of signals to the petitioner's network.

Mr. Handoo, the learned counsel for the petitioner urged that as the public notice dated 31st January 2010 has already been given effect to, respondent may be directed to treat the request of petitioner for renewal of the agreement as a request for supply of fresh signals as envisaged under Clause 3.2 of the Regulations.

We, however, are not in a position to accept the said submission of learned counsel.

The petitioner had been enjoying the supply of signal by respondent herein despite pendency of this petition and despite issuance of notices under Regulation 4.1 and the public notice under 4.3 of the Regulations. As on the date of institution of the case before this Tribunal, the petitioner had been enjoying supply of signal, in our opinion, it is not a case which can be considered to be one for supply of fresh signals in terms of Clause 3.2 of the Regulations.

The core question which, therefore, arises for consideration is as to whether in the peculiar facts and circumstances of this case, petitioner is entitled to any relief.

The respondent, in this case, appears to have taken a strange stand.

As noticed heretofore, in the aforementioned Petition No 33(C) of 2009, it categorically agreed to renew the agreement. The agreement was to be renewed not only for the year 2009, but also for the year 2010. It is true that there was some delay on the part of petitioner but it could have been informed that in view of the delay caused by the petitioner itself, it was not interested in renewing the

agreement. It did not do so. It continued to supply signals to the petitioner's network. It, however, for reasons best known to it did not encash the cheques tendered by the petitioner.

The respondent, we may notice by a letter dated 15.01.2009 stated as under:

"We request you to renew subscription agreement at the earliest, which will going forward determine the terms of business in relation to provision of signals of the STAR DEN channels to your network.

Meanwhile, pending execution of a mutually acceptable agreement, we would request you to pay subscription fees in terms of the erstwhile Subscription Agreement.

For the purpose of renewal/execution of fresh subscription agreement, you can contact the following individual(s), whose contact details are provided below:"

Mr. Arjun Natrajan, the learned counsel appearing on behalf of the respondent would contend that in view of the aforementioned letter, as also various other letters issued by the respondent from time to time, it should be held that respondent was not at fault. We do not agree with the said contention.

The petitioner as noticed heretofore, beginning from 30th April, 2010 till 8th January, 2011 had issued eight letters. We would have expected a broadcaster keeping in view the order passed by this Tribunal to respond thereto at an early date.

It defies all logic as to how in February, 2011 the format of the agreement could be sent to petitioner for 2009 only. Unless respondent sends a copy of the format of the agreement so as to enable petitioner to execute the same, the question of entering into an agreement would not arise. If that be so, we have no other alternative but to hold that primarily respondent alone was to be blamed for such a stalemate.

However, the petitioner's conduct is also not free from blemish.

It purported to have tendered the cheques repeatedly. We do not intend to make an enquiry as to why the said cheques had not been encashed. It, however, stands admitted that even in terms of the 2008 agreement, the petitioner was not entitled to retransmit the signals of the channels of the respondent in the areas in respect whereof it has been accused of unauthorised cable casting.

Mr Handoo, on a query made by us conceded that petitioner, having regard to the supply of signal by respondent to its network is not only bound to pay the stipulated monthly subscription charges as contained in the agreement of the year 2008 for the areas covered under the agreement but would also be liable to make payments in respect of the areas in which it had unauthorisedly been casting cable.

Mr Handoo however, urged and in our opinion not without force that respondent had all along the knowledge thereabout.

In the notices issued under Regulation 4.1 and Public Notice, the only reason for deactivation has been stated to be non-payment of dues and non-signing of the agreement. The respondent did not state that petitioner was guilty of commission of acts of piracy.

In the peculiar facts and circumstances of this case, we are of the opinion that interest of justice would be subserved if this petition is disposed of with the following directions:

1. The Petitioner shall pay to respondent all lawful dues including the subscription charges for the areas in which it has been retransmitting signals which are not covered under the 2008 agreement.

2. The petitioner shall, on an ad hoc basis/provisionally pay to the respondent at the rate of 2,50,000/- per month.
3. Such payment shall be made in three equal installments, the first of which shall be paid within one week.
4. The parties shall meet for the purpose of holding negotiations primarily on the basis of SLRs submitted by petitioner but in the event respondent is not satisfied therewith, they may undertake a joint survey and the total subscriber base shall be determined upon negotiation not only in respect of the areas which were covered under the 2008 agreement, but also the expanded areas.
5. The petitioner must pay the dues of respondent on the aforementioned basis subject of course to the determination of the actual subscriber base vis-à-vis the declared subscriber base in terms of the 'Regulations' at a later date.
6. The parties for the purpose of entering into an agreement must start negotiations within one week from date wherefor petitioner would send its authorised representative to the Gurgaon/Mumbai office of the respondent and/or any other office which respondent may specify on a date and time mutually convenient to them.
7. The respondent shall restore the supply of signals to the petitioner's network within 24 hours from the time of receipt of the first installment.
8. The petitioner must file an affidavit, undertaking to pay the arrears of the amount in terms of this order subject of course to determination of the subscriber base and/or reconciliation of the accounts, if any.

9. The petitioner shall supply a copy of the plan as directed by this Tribunal in its order dated 3rd March, 2011.

This petition is disposed off with the aforementioned directions.

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

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

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(G. D. Gaiha)
Member

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

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