

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

DATED 15.11.2011

Petition No. 245 (C) of 2011

M/s. Sristi Cable TV Network Ltd., West Bengal Petitioner

Vs.

MSM Discovery Pvt. Ltd., Mumbai

.... Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON

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

For Petitioner

Mr. Vineet Bhagat, Advocate

Ms. Neha Jain, Advocate

For Respondent

Mr. A C Mishra, Advocate

J U D G M E N T

The petitioner, who is a Multi Service Operator and admittedly operates in the CAS areas in the town of Calcutta, has filed this petition inter-alia for a direction upon the respondent to supply signals of its channels to its network.

The petitioner allegedly had been making such requests since 2008. It filed a petition before this Tribunal against the respondent which was marked as petition no. 14 (C) of 2008.

By an order dated 25.1.2008, the said petition was disposed of, directing: -

“ The dispute which appears to me in the present case is about supply of information as per Regulations for getting signals. The respondent says the petitioner has not supplied the requisite information while the petitioner insists that he has done so. In my view, the best solution to the problem is for parties to meet so that the controversy can be sorted out. If some information remains to be supplied by the petitioner, the petitioner should supply the same so as to enable the respondent to proceed with the matter. The petition is disposed of accordingly.”

Thereafter various correspondences passed between the parties inter-alia on the premise that the respondent had failed to comply with its statutory obligations under Clause 3.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations 2004, as amended from time to time (The Regulations). A complaint was made before Telecom Regulatory Authority of India (TRAI). It, however, now appears that for some reason or the other, the case was closed by the TRAI sometimes in May 2009.

The Petitioner thereafter made another detailed request to the Respondent on or about 23.4.2009. It, with the said letter, annexed a Registration Certificate under the Bengal Finance Act, its Income Tax Returns, the Map of the town of Calcutta, documents showing payment of tax to Kolkatta Municipal Corporation etc.

The Respondent admittedly received the said request as would appear from the cross examination of Mr. Alok Choudhary, which reads as under: -

“Attention of the witness is drawn to page no. 74 of the Paper Book.

It is correct that this letter contains the receiving seal of our Kolkatta office.

Q.10: Please inform whether the documents enclosed with this letter from page no. 75 to 107 are available in your file?

A: Yes, they are available.

Q.11: Are these the documents which were required by you to process the application of the petitioner for supply of signals?

A Not only these there were other documents also.

Vol. Even the map which was provided to us which is a part of these documents are not legible."

The petitioner was asked to produce the Affiliation Form filed by the respondent which was complied with. The same was forwarded to the respondent by it along with a forwarding letter dated 13.11.2009. As it had not received any response to the said request, reminders were sent on or about 5.10.2009, 22.12.2010 and 25.2.2011 (Wrongly mentioned as 25.2.2010.) It along with another letter dated 21.3.2011 also annexed a copy of the SLR which reads as under: -

SRISTI CABLE TV NETWORK LTD.

LIST OF THE PROPOSED LCO, PROPOSED SLR AND THEIR AREA OF OPERATION- 1ST PHASE.

S.N.	Name of the Proposed LCO	Proposed SLR	Contact Person	Address of the Proposed LCO
1	View Point	150	Mr. Prasanta	Kabir Road, Kolkata-700026

2	Sat Vision	150	Mr. Deepak Lohria	10/1/D, Nepal Bhattacharya Street, Kolkata- 700026
3	KVSTR	150		1, Bakulbagan Road, Majumder Bhawan, Kolkatta- 700025
4	Vagabond	150		12B, Bakulbagan Road, Kolkata- 700025
5	New Cable Vision	150	Mr. Swapan Das	144A, Ashutosh Mukherjee Road, Kolkata- 700025
6	Third Eye	150	Mr. Diswadeep Ganguly	62, Raja Basanta Roy Road, Kolkata- 700026
7	MSTR	150	Mr. Kalyan Majumder, Mr. Sujoy Nandy	52A, Rashbehari Avenue, Kolkata- 700026
8	Planet Network	150		56V, Purna Das Road, Kolkata- 700029.
	TOTAL	1200		

The respondent, however, by reason of a letter dated 6.4.2011 while denying and disputing the allegation of the petitioner that it had not been responding to the petitioner's request, stated as under: -

"1. You have not provided us with the details of your cable operators with their

addresses and their respective area of operation with their connectivity/subscriber base, SLRs submitted to you by your franchisees, sub operators, interestingly, you have categorically admitted to a subscriber base of minimum 1500 but you are not willing to disclose their details.

2. As communicated to you in our earlier correspondence also that we would be requiring a Certificate showing the equipments used by you and your franchisee cable operators as prescribed under CATV Act 1995 but the same was not provided due to reasons best known to you.

3. It is pertinent to mention that the area of operation as per your filed up application for affiliation form is very vague and ambiguous as it mentions the area of operation as KMDA and its allied areas. Therefore, it is requested that specific areas of operation and also the map demarcating the exact areas should be provided.

4. As communicated to you in our earlier correspondence also that we would be requiring the copy of permission from competent authorities of the mode of transmission but the only confirmation we got from your side was that your transmission is overhead and you are ready to apply for the same if required. Therefore, you are once again requested to please provide us a copy of the said permission obtained from local authorities.

5. As informed to you earlier also by our regional office that your Registration Certificate has expired and a renewed

certificate is required for verification, but the same has not been provided till date to unknown reasons."

By a letter dated 25.4.2011, the petitioner in response thereto furnished the following details: -

"Reference to the above we are to inform you that we have directed calling you and to meet you and your concerned persons several times pursuant to the above letter but you have been avoiding meeting with us to negotiable the Agreement for signals to our Network. May we also remind you that we have already provided you the necessary material on number of occasions, which is mentioned again in your queries in your above mentioned letter.

We thank you for pointing out that the date mentioned in our letter of 25.02.2011 was mentioned as 25.02.2010, which may be read correctly as 25.02.2011.

Be that as it may, may be reply point wise to your demand for additional information.

Insofar as Point No. 1 is concerned, please find once against the list of our Operators. The same was supplied to you vide our letter dated 21.03.2011 but you are, on one pretext or the other unnecessarily delaying the matter to frustrate our purpose.

Insofar as Point No. 2 is concerned, please find attached herewith the list of equipment. Your request for equipment is merely a pretext to delay the matter to frustrate our purpose. Even otherwise,

we have always invited you to visit our Headend to see for yourself the facilities that we have installed.

Insofar as Point No. 3 is concerned, please note that our request of area remains the same i.e. KMDA and its allied areas. Please find attached herewith the map of the area under request.

Insofar as Point No. 4 is concerned, your request is not bonafide. Even otherwise, the same is not within your domain and the same is not necessary for you to process our application for grant of signals.

Insofar as Point No. 5 is concerned, we have informed you that we had already applied for renewal of the Certificate and hence the same is automatically and impliedly current. It is to your knowledge also that the process of renewal in Kolkata takes time and that the Certificate is dispatched by the Postal Authorities after few months of processing it, but nonetheless it does not affect the continuity of the same. However, as we have got the copy of the same license now, we are enclosing herewith this letter the copy of the same license.

We, therefore, call upon you to kindly close the deal within 7 days from the receipt of this letter.

In the event of your failure to comply with the above, we have already given instructions to our counsel to move before the competent forum accordingly, which is deem fit and proper, for ends of justice."

This petition was filed on 09.05.2011.

The respondent in its reply inter-alia contended that the petitioner had not furnished true and correct informations as are required in terms of the provisions of Clause 3.2 of the Regulations. It also referred to an order of this Tribunal dated 23.3.2011 passed in Petition no. 344 (C) of 2010 Sristi Cable TV Network Pvt. Ltd. Vs. Zee Turner contending that the negotiated subscriber base of a Multi Service Operator vis-a-vis one Broadcaster cannot be thrust upon another broadcaster.

The petitioner in support of its case has examined one Mr. Raj Narayan Choudhary, one of the Directors of the petitioner company.

He in his cross examination stated: -

“Q.12: Have you applied for signals in Non CAS areas from other broadcasters?

A: Yes, I have applied to all the major broadcasters.

It is correct to state that I could not furnish any SLR as I am yet to commence my operations in Non CAS areas. However, I have given a proposed SLR.

Q. 13: Have you filed the said SLR with your petition?

A: Yes.

Q.14: Can you show from the records where have you filed the SLR?

(Witness goes through the records)

A: It is at Page 123 (Main Folder) typed copy at Page 124 of the Petition. (Annexure P-21)."

He further contended that as in the town of Kolkata no LCO pays for more than 150 connections by way of subscriber fee, the maximum subscriber base has been taken into consideration in the proposed SLR. According to him, the monthly pay out on that basis would be Rs.1,50,000/.

He, however, admitted that he had not checked the monthly SLRs of the eight named LCOs in the proposed SLR. According to him, he was aware of the areas of operation of the concerned LCOs. He, however, denied and disputed the suggestion that the map provided by the petitioner was not legible, stating: -

"We had provided a clear copy to the respondent. However, may be in the petition a dim copy has been enclosed due to photocopying as it was a coloured map."

The respondent in support of its case has examined one Mr. Alok Choudhary, who is its Area Manager and said to be looking after Kolkata and South Bengal for all the sales related activities, meaning thereby "service of the existing clients, collection from the existing client, providing services to the new clients as and when required by the distributors". He met the petitioner's representative only in July 2011. According to him, the request received by the respondent for supply of its signals is very rare as 90 % of the market has been consolidated by 5 MSOs.

He, however, denied the suggestion that only under pressure of the said MSOs, no other operator is being supplied with signals. So far as the steps taken by the witness to verify the informations supplied by the petitioner is concerned, he stated: -

"I went through all the documents which are available in the file in the office and spoke to my colleagues who are there in the system for long in that particular market."

So far as supply of Postal Registration Certificate is concerned, he made inconsistent statements. At one stage he stated that no copy of Postal Registration Certificate was available but when his attention was drawn to page 130 of the Paper Book, he contended that

verification of the Postal Registration Certificate was being done by the Operations Team of the company and he had given the same to them for verification.

The witness when confronted with the letters issued by the petitioner accepted that all the relevant requests of the petitioner being dated 13.11.2009, 5.10.2009, 25.2.2011, 21.3.2011 and 25.4.2011 have been received.

It, therefore, can safely be presumed that all the documents annexed with the said letters also been received by the respondent.

So far as the SLR furnished by the petitioner is concerned, we may notice his statement.

“Q.12: I put it to you that the letter at page no. 121 enclosed the SLR at page no.123?

A: Yes it is.

Vol. The SLR which was provided to us was not appropriate as area of operations were not mentioned and even the proposed subscriber base was 150 against all the proposed LCOs.”

In answer to a question as to whether he had taken any step to verify the requisite informations supplied by the petitioner, he denied and disputed the same.

He, however, accepted that none of the LCOs have been contacted on the premise that the contact details had not been made available. Curiously enough he admitted that as a part of the Sales Team, it is his duty to verify the LCOs on the SLR provided by the MSOs.

He, however, volunteered: -

“ Current LCOs they are running the signal of other MSOs and till the time they join Sristi Cable we cannot verify the details.”

He, however, on the ground of confidentiality refused to divulge the names of the MSOs from whom the cable operators have been getting signals.

He, however, admitted that the details of those LCOs including their connectivity and area of operation were available in the office of the respondent.

We may notice that to a question as to whether after receiving the SLR from the petitioner, he has contacted those LCOs personally to check with them as to whether they had proposed to join it on its getting signals from them, he stated: -

“A: I could not do that because that would be a breach of contract with other

operators from where they are getting the signals currently.”

He, however, stated: -

“ Q.22: Please inform us the SLR for these LCOs as supplied by other operators from where they are getting the signals currently?

A: That is confidential.

Q.23: Would it be correct to say that you are aware of the SLR given by the other MSOs with respect to these LCOs but you cannot disclose the same because of confidentiality?

A: Yes, it is correct.

Q.24: What is the percentage of the market to which the petitioner caters to in Kolkata?

A: Answer for this question cannot be given as the petitioner has not provided us the appropriate SLR and even the map which has been given to us is not at all clear and its not showing the area of operation of the petitioner.”

We may also notice the following questions and answers: -

“Q.26: What is the area for which the petitioner has applied to you for supply of signals in non CAS zone?

A: KMDA area.

Q.27: I put it to you that the respondent is not interested in providing signals to the petitioner and for this reason you

have not taken any steps to even verify the information supplied by the petitioner?

A: It is incorrect.

Q.28: Please inform the steps you have taken if my above suggestion is incorrect?

A: We have always replied to their letters and asking for the proper documentation and details of the area which we have not received as on today. Again said "area of operation."

Mr. Vineet Bhagat, learned counsel appearing on behalf of the petitioner would contend: -

1. The respondent, having been supplied with all informations and documents necessary for supply of signals of its channels to petitioner's network, could not have refused to do so.
2. The respondent even otherwise being aware of the details of the LCOs, their connectivity and areas of operation in all fairness ought to have verified the SLRs furnished by the petitioner.
3. The respondent's witness in a situation of this nature ought to have verified the SLRS, the Area Map etc.

Mr. Amit Mishra, learned counsel appearing on behalf of the respondent, on the other hand, submitted:-

1. This Tribunal having dismissed the petition of the petitioner against Zee Turner Ltd. being Petition no. 292 (C) of 2011 disposed off on 7.2.2011, this petition should also be dismissed.
2. There is absolutely no reason as to why the petitioner failed and neglected to furnish the requisite informations as were required in terms of Clause 9.2 of the Regulations.
3. From a perusal of the Judgment dated 07.09.2011, it would be evident that petitioner having not even negotiated with the LCOs, its action can not be said to be bonafide.

It is evident from the records that the petitioner had been making requests to the respondent for supply of signals of its channels to its network since 2008. Ordinarily, we would have expected the parties hereto to abide by the directions issued by this Tribunal in its order dated 25.1.2008. From what has been noticed by us heretobefore it is evident that for all intent and purport, the petitioner has supplied all the requisite informations.

Whether the SLRs furnished by the petitioner as indicated hereinbefore meets the requirement of law is the core question?

Apart from the fact that it is wholly unlikely that the subscriber base of all the LCOs operating in a thickly populated area of the town of Kolkata would be the same, it appears from the aforementioned judgment dated 7.9.2011, that even a fresh list of SLRs supplied by the petitioner to Zee Turner Limited was different as would appear from the comments of the petitioner itself: -

“List of Proposed Operators and SLR, as amended hereunder :-

1. View Point was the earlier name, but currently known as Netway Communication and shifted from its earlier address from Kabir Road, Kolkata – 700026 to 32, Lake Temple Road, Kolkata-700026. The operator Mr. Prasanta is same. SLR – 150.
2. Sat Vision, operator name Mr. Dipak Lohria, Residential address 10/1/D, Nepal Bhattacharya Street, Kolkata-700026, Office address is 5B, Nepal Bhattacharya Street, Kolkata-700026, SLR – 150.
3. Kab-Star (KVSTR) is now under Mr. Uday Roy Choudhury, 83, Harish Chatterjee Street, Kolkata-700025. SLR – 150.
4. Vegabond is now under Mr. Uday Roy Choudhury, 83, Harish Chatterjee Street, Kolkata – 700025. SLR – 150.
5. New Cable Vision was previously owned by Late Swapan Das and now run by Mr. Bapi Das and

Associates at 144A, Ashutosh Mukherjee Road, Kolkata-700025. SLR – 150.

6. Third Eye is now I Net Communication and apart from having

their office at 62, Raja Baanta Roy Road, Kolkata-26, they have

also one office at 1/1, Bompus Road, Kolkata-29. The operator is Mr. Biswadeep Ganguly. SLR – 150.

7. MSTR is at 52A, Rashbehari Avenue, Kolkata-26. Contact person Mr. Kalyan Mazumdar/Mr. Sujoy Nandi. SLR – 150.

8. Planet Network/Channel 18 – Mr. Malay Nandi of 40/2H, Lake Road, Kolkata-700029, runs this network area. SLR – 150.”

Like the case in Zee TV (Supra), moreover the areas of operations of the said operators had not been mentioned.

Be that as it may, it is difficult to comprehend as to on what basis the respondent’s witness raised a bogey of confidentiality.

An agreement entered into by and between a Multi Service Operator and a Local Cable Operator containing the subscriber base as also area of operation can not be a matter which would attract the confidentiality clause. Migration of a Local Cable Operator from a network from one MSO to another is common. It is acknowledged

under the Regulations. The pre-conditions for such migration have also been laid down in the Regulations.

The respondent, therefore, evidently failed and/or neglected to properly respond to the petitioner's request as was expected from it in view of the Regulatory provisions operating in the field.

The fact that petitioner operates in CAS area is not in dispute. The existence of its head-end has also not been controverted. The petitioner may have an ambitious scheme of extending its area of operation throughout the length and breadth of Kolkata Metropolitan Development Area and its 'allied' (meaning thereby adjoining areas) areas but in absence of any statutory interdict laid down in this behalf, the same by itself could not have been a ground to refuse to verify the details furnished by the petitioner.

Evidently, the respondent had not responded to the earlier requests of the petitioner and/or its reminders. Its first response thereto was by reason of a letter dated 6.4.2011. It had asked for certain details which to some extent might not have been necessary as the said documents have already been supplied by the petitioner. In any event, the same had been again been supplied to the respondent by the petitioner in terms of its letter dated 25.4.2011.

It has been noticed heretofore that the area of operation of the petitioner is the core issue. Mr. Bhagat submitted that the petitioner's area of operation for the purpose of entering into an agreement with the respondent shall be confined to the areas of operations of the said 8 LCOs. The respondent now knows about the particulars of the said LCOs as it itself has relied upon the aforementioned order of this Tribunal dated 7.9.2011 in the case of Zee Turner.

The petitioner in view of the same may furnish the names of its proposed LCOs with their subscriber base.

The parties shall meet within one week after furnishing of the said documents.

The respondent, inter-alia on the basis of the documents which are within its power and possession of vis-à-vis the said details, may hold negotiations.

It is made clear that for the purpose of holding negotiations, the respondent shall not take recourse to the alleged confidentiality clause as for the said purpose what is necessary is to determine only the subscriber base as disclosed by the said LCOs as also their respective area of operation.

It is on that basis, the negotiation, we believe, should be completed in one or two sittings. The parties hereto may enter into an agreement on the aforementioned basis as expeditiously as possible and not later than four weeks from the date of communication of this Order.

This Petition is disposed of on the aforementioned terms with no order as to costs.

(S.B.Sinha)
Chairperson

(P.K.Rastogi)
Member

November 15, 2011
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