

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

**Dated 23.9.2011**

**Petition No.275(C) of 2010**

M/s D.K.N.R. Enterprises ... Petitioner

Versus

M/s Star Den Media Services Pvt. Ltd. ...Respondent

**BEFORE:**

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

For Petitioner : Mr.Tejveer Singh Bhatia,  
Advocate

For Respondent : Mr.Gopal Jain, Advocate  
Mr.Arjun Natarajan, Advocate

## J U D G M E N T

**S.B. Sinha**

By our order dated 4.4.2011, we have directed as under: -

“ A couple of questions of some importance have been raised. However, keeping in view the urgency of the matter, we are of the opinion that at this stage interest of justice would be subserved if the respondent is directed to carry out the survey of the subscribers on the basis of SLR furnished by the petitioner in its rejoinder which are at pages 83-93 of the paper book. The survey be conducted in the Ordinance Factory at Dehradun within a period of two weeks from date.

The petitioner shall also, within a period of one week from date, supply the last invoice which was raised on it by New Entertainment Network.

The parties thereafter shall meet for the purpose of executing an agreement.

Detailed order in support of our order shall be assigned later. The petition is disposed of.”

These reasons are being assigned in support of the said order.

The petitioner is a Local Cable Operator. It made a request for supply of signals of the channels of the respondent on or about 20.3.2010.

As it did not receive any response thereto, a reminder was sent on or about 6.5.2010. As despite the said request the respondent failed and/or neglected to commence supply of signals of its channels on an analog mode to the network of the petitioner, this petition was filed on 27.8.2010.

Before, however, we consider the reply of the respondent, it may be noticed that the petitioner which is a partnership firm got itself registered in terms of the Cable TV Network Act, 1995 with the Post Master, Dehradun for the town of Dehradun.

The said registration certificate expired on 31.3.2011.

An Operator on the fixed platform WWIL had been supplying signals to a Multi Service Operator in the town of Dehradun known as New Entertainment. It is, however, not in dispute that the said WWIL withdrew supply of signals from its platform on and from 31.1.2010. This led to the petitioner's making a request to the respondent herein for supply of signal of its channel.

The respondent in its reply raised two contentions, (i) none of the letters of request said to have been sent by the petitioner were

received, (ii) the petitioner has been catering to 1650 subscribers and thus its subscriber base should be treated to be 1650.

The petitioner in its rejoinder furnished the details of the subscribers to whom it had been supplying the signals. It also annexed a copy of the partnership deed, the Entertainment Tax challans etc.

The petitioner furthermore supplied the last invoice received from WWIL.

Indisputably during pendency of this petition, the parties had met on several occasions. It furthermore transpires that the respondent has also inspected the head end of the petitioner. What remained to be done was verification of the subscriber base of the petitioner.

Mr.Gopal Jain and Mr.Arun Natarajan, learned counsel appearing on behalf of respondent, however, would submit that (a) the contention of the petitioner that it had been supplying signals only to 354 persons cannot be correct as would appear from a reply given by the authorities of the Ordnance Factory to one Mr.Sashi Bhushan Sharma in response to a RTI query. It would appear that in the said Ordnance Factory the number of quarters, bungalows and flats are

1684 besides three guest houses containing 6, 12 and 12 rooms; (b) the petitioner having not made a valid request, having not supplied the Subscriber Line Reports as required under Clause 9.1, the request must be held to be invalid and the same cannot be validated by supplying signals with a retrospective effect; (c) the matter relating to supply of signals being within the regulatory framework and the same being contrary to the common law of contract principles, the statutory rules must be strictly followed, (d) a premature adjudication in a case of this nature should not be encouraged. Strong reliance in this behalf has been placed on a judgment of this Tribunal in M/s. Disco Cable vs M/s. SUN TV Network and Sun Distribution Service (Channel Plus) being Petition No.172 (C)/2010, wherein it was held :-

“Secondly, the respondent has denied the receipt of letters dated 08.01.2008, 16.06.2009, 21.10.2009. The petitioner has failed to show the receipt of these letter to the respondent. Even if these letters have been sent to the respondent, a perusal of these letters does not show that petitioner has supplied full information as required under the Regulation 9.1 of the Interconnect Regulations.”

The said judgment, in my opinion, should be read as a whole. The statements made in paragraphs 20 to 22 are the contentions raised by the respondent and not a finding of this Tribunal.

The findings in the said matter were :-

“23. The other objection of the respondent for supply of signals to the petitioner relates to the pendency of the criminal case against the petitioner for piracy of signals. We find from the records that the case is still pending and it is not yet proved that the petitioner was involved in the piracy. As pointed out by the petitioner, there was one more accused Mr. Jaiprakash in that particular criminal case and the said person was given signals by the respondent. We are of the view that the pendency of a case against the petitioner before the Judicial Magistrate’s Court should not come in the way for seeking signals from the respondent. Respondent was liable to supply the signals to the petitioner in non-discriminatory basis.

24. In view of the aforementioned observations, we are of the view that the petitioner is not a registered cable operator and not supplied the information as required under the regulations and he is not entitled to receive signals from the respondent. However, the petitioner will be free to approach the respondent again after fulfilling all the necessary requirements as per Regulations 3.2 and 9.1 of the Interconnect Regulations. The respondent is directed to invite the petitioner for discussion within 15 days of receipt of the information from the petitioner. The respondent may seek additional information as required under the regulations so as to enable it to supply signals on reasonable terms and on non-discriminatory basis.”

It is true that the petitioner at the initial stage has not annexed the SLRs.

We may, however, notice Clause 3.5 of the Regulations which reads thus :-

“3.5 Any broadcaster/multi system operator or any agent/ any other intermediary of the broadcaster/multi system operator to whom a request for providing TV channel signals is made, should either provide the signals on mutually agreed terms to the distributor of TV channels who is seeking signals, or specify the terms and conditions on which they are willing to provide TV channel signals, in a reasonable time period but not exceeding sixty days from the date of the request. In case, the broadcaster/multi system operator or any agent/ any other intermediary of the broadcaster/multi system operator to whom a request for providing TV channel signals is made, turns down the request for TV channel signals, the reasons for such refusal must also be conveyed within sixty days from the date of the request for providing TV channel signals so as to enable the distributor of TV channels to agitate the matter at the appropriate forum.”

From a bare perusal of the aforementioned Regulation, it is evident that any other information which the broadcaster required should be sought from the MSO/LCO as the case may be. There cannot be any doubt or dispute that the ‘must provide’ Clause 3.2 of the Regulation prevails over the general law of contract. However, the same casts an obligations on the part of the broadcaster to supply signals on reasonable terms and on a non-discriminatory basis.

The petitioner has sent the aforementioned request on 6.5.2010 as also 31.5.2010 by speed post. The speed post receipts have been filed. The said requests refer to an agreement entered into with the Ordnance factory. The petitioner, it is now not disputed, had been supplying signals only to the residents of the Ordnance factory.

How many quarters/bungalows/flats are vacant and/or how many residents take supply of the signals from the DTH operators and how many of them had been receiving signals from the petitioner is a matter which could have very well be verified by the respondent.

The Telecom Regulatory Authority of India (TRAI) has issued an Explanatory Memorandum to the said Regulation ; paragraph 7 whereof reads as under: -

**“Access to content**

7. The purpose of laying down a time limit for responding to a request for signals gets defeated if the distributor of TV channels making a request for signals is referred by the broadcaster/ multi system operator to its agent/ intermediary or vice versa just before the expiry of the time limit and the time limit starts afresh. Moreover, it is easy for a service provider to respond to the request before the expiry of the time limit by asking for some details and then prolong the process by asking for supplementary details. Hence, it is necessary to lay down a time limit wherein either the signals are provided to the distributor of TV channels or the specific terms &

conditions are informed on fulfilment of which the signals are to be provided.”

The provisions contained in clause 3.5 of the Regulations and paragraph 7 of the Explanatory Memorandum would clearly go to show that Regulations postulate that the entire process must be completed within 60 days, subject of course to the fact that the signal seeker must satisfy the basic requirement therefor.

If the respondent was not satisfied with the SLRs supplied by the petitioner it could have done a survey.

Mr.Jain, in our opinion, is not correct in contending that this petition is premature. This petition has been filed 60 days after making the request. Moreover, the respondent in its reply at two places, namely, paragraphs 13 and 17 categorically stated that it was ready and willing to enter into an agreement with the petitioner subject, of course, to compliance of the provisions of the Regulations.

The respondent, moreover even after the said rejoinder was filed, expressed its intention to enter into an agreement with the petitioner.

We may notice the contents of the proceeding sheet dated 8.12.2010 in this regard which reads as under: -

“It is accepted that the petitioner has furnished the requisite details. We are of the opinion that the petitioner may visit the office of the respondent for holding negotiations with its authorised representatives. Such negotiations may be held on 16.12.2010.”

If it was accepted at the bar that the requisite details have been furnished; what was left was verification of the said informations. The respondent itself having accepted the receipt of all the informations which were necessary for the purpose of entering into an agreement cannot be permitted to raise a contention contrary thereto or inconsistent therewith.

From the order sheet dated 5.1.2011 it would furthermore appear that not only the petitioner had met the respondent earlier but were to meet again on 6.1.2011.

The parties, however, met on 7.1.2011.

The witness of the respondent Mr.Subodh Thapaliyal in his cross-examination clearly stated as under :-

“Q: Have you ever done physical verification of the petitioner’s network?

A: No.

VOI. I have done physical verification of the control room of the petitioner.

Q: If you have not done physical verification of the petitioner’s network then on what basis are you saying that the petitioner has under declared its subscriber base?

A: Somewhere in the end of September 2010, I had visited Raipur Ordinance Factory and inquired from the market outside the ordinance factory about the number of households in the ordinance factory and I also received one copy of the document which is marked as Ex. RW1/P7 (Object to by Learned Counsel for the Petitioner on the ground that the said document is a photocopy and can not be exhibited and should only be marked.) from the Distributor of the Respondent. Further the petitioner is the only operator catering to the entire area of Ordinance Factory.

Q: Have you stated the above in your affidavit?

A: No.

It is incorrect to suggest that I had never visited Raipur Ordinance Factory in the end of September 2010 or that I had not inquired about the subscriber base of the petitioner.

Q: To whom the document Ex. RW1/P7 is addressed?

A: Mr. Shashi Bhushan Sharma.

Q: Do you know Mr. shashi Bhushan Sharma?

A: No.

VOI. I received the copy of this document from my distributor.

Q: What is the name of your distributor in Raipur, Dehradun?

A: M/s. Shiva Enterprises.

Q: Who is the owner of M/s. shiva Enterprises?

A: Mr. Romi Shiv.

Q: Is Mr. Romi Shiv or any of his family members also a MSO in District Dehradun?

A: No.

Q: Is it correct that the letter Ex. RW1/P7 speaks only about the households in the area and not about the connections of the petitioner in the said area?

A: It is correct.

Q: Will it be correct to say that since you have not surveyed the network of the petitioner inside the Ordinance factory, you can not tell the exact subscriber base of the petitioner?

A: It is incorrect.

VOI. He is the only operator in the area in question and in the meetings held with the petitioner, petitioner had reiterated that he is the only operator catering the area in question."

We fail to see any reason that if the petitioner has allowed physical verification of the control room by the authorised representative of the respondent why the subscriber base could not be

verified as all the subscribers are located only within the premises of the Ordnance factory.

The said witness has gone to the extent of saying that the respondent has not received the said requests but in his cross-examination he accepted that he was not working in the region concerned at the relevant point of time. We may notice the said cross-examination :-

“Q: What is your area of operation?

A: Western UP, Garwal region in Uttranchal.

Q: Since when you are operating in these areas?

A: Since mid of September 2010.

Q: Who was looking after the above areas prior to September 2010?

A: Mr. Rohit Singh, to whom I am now reporting.

Q: Did you receive any communication pertaining to the above regions prior to September 2010?

A: No.

Q: Are you aware of the dealings of the above region prior to September 2010?

A: No.

It is also correct that prior to September 2010 nobody would meet me for the above regions.”

Mr. Jain has raised another issue, namely, that the petitioner has filed a forged invoice.

The minutes of the meeting dated 16.12.2010 in this connection, may be noticed: -

“ 1. Both parties met today in order to explore the possibility of amicably resolving the issues pending between them.

2. STAR DEN once again requested the DKNR to provide various information and documents to enable it to process DKNR's request for signals. In this regard, STAR DEN explained to DKNR that unless and until DKNR provides complete and correct information and documents mentioned below, its request cannot be considered to be complete. During the meeting STAR DEN requested DKNR to provide :

(i) Agreement entered into between DKNR and the WWIL.

(ii) The last generated Invoice on DKNR by WWIL.

(iii) The bills for the charges due and payable by such subscriber for each month generated by DKNR on its subscribers.

(iv) Signed receipts issued by DKNR to its subscribers for the payments received from each such subscriber every month.

(v) A true and correct list of subscribers of DKNR with their complete contact details such as their contact telephone numbers.

STAR DEN has also requested DKNR that it shall inspect the network of DKNR on the next date of meeting.

3. DKNR has agreed to provide all the information and documents and also allow STAR DEN to inspect its network, as requested by STAR DEN, on the next date of meeting as scheduled by the parties on 27.12.2010. The Parties agreed that they will render all possible assistance to each other so as to avoid joint survey of subscribers.

4. STAR DEN has also informed the Affiliate that a physical inspection of the network of the Affiliate shall be conducted on 27.12.2010.

5. Both parties agree to meet next on 27.12.2010 in order to explore the possibility of amicably resolving the issues pending between them."

It appears that in the said agreement the signatures of the authorized signatory of the WWIL as also PW-1 Shri Rajendar Bhatt, appears. The said Rajendar Bhatt was also the partner of the 'New Entertainment'. The said signature has been proved.

PW-1, Mr. Rajendar Bhatt in this behalf denied that Exhibit PW-1/R-2, namely, the agreement was a forged document. So far as the invoice on which allegedly slips were pasted he stated:

“It is incorrect to suggest that Exhibit PW 1/R-2 has been forged by me.

It is correct that I had given copies of two Performa invoices on 7.1.2011 to the respondent.

(The witness is shown the 2 Performa invoice which he admits to have given to Respondent on 7.1.2011. witness admits his signatures at points A, B, C on Exhibit PW 1/R-3 and at points A, B, C, D on Exhibit PW 1/R-4)

It is correct that these invoices were raised on NEO Entertainment.

It is incorrect to suggest that I had subsequently pasted a slip with petitioners name at circle X on Exhibit PW 1/R-3 and at Circle Y on Exhibit PW 1/R-4.

It is correct that these 2 invoices are relating to procurement of STBs and Viewing Cards.

It is wrong to suggest that petitioner has forged and fabricated these invoices.”

Mr. Subodh Thapliyal stated as under: -

“It is incorrect to suggest that Ex.PW-1/R 2 to Ex.PW-1/R4 are tempered by me and I had obtained signatures of Mr.Bhatt after tampering the same.

It is incorrect to suggest that I had filled blanks in document Ex.PW-1/R2 at points B and C after Mr.Rajinder Bhatt had given me the same and subsequently I had obtained signatures of Mr.Bhatt on the said documents.

It is incorrect to suggest that the petitioner had given invoices in the name of Neo Entertainment and that I had subsequently interpolated the same in the name of D K N R Enterprises and thereafter obtained the signatures of Mr.Rajinder Bhatt on the same.

It is incorrect to suggest that since Mr.Rajinder Bhatt had realized my mischief he had refused to sign the minutes of meeting between the parties held on 7.1.2011.

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It is incorrect to suggest that when Ex.PW-1/R2 Ex.PW-1/R4 were handed over to me that the same did not bear any signature of Mr.Rajender Bhatt.

Vol. Signatures at point A of Ex. Ex.PW-1/R2 already existed when he handed over the documents. However, at points Y1 to Y7 on Ex.PW-1/R2 signatures were obtained after handing over of the said document. Similarly, in Ex.PW-1/R3 and Ex.PW1/R4, I had obtained signature of Mr.Rajinder Bhatt at points A to D subsequent to handing over of the said documents."

Keeping in view the aforementioned statements made by the witness, it is difficult to come to a conclusion that the said documents were forged and fabricated.

In this view of the matter, we are of the opinion that on the respondent's verification of the subscriber base and the petitioner's furnishing the last invoice of the MSO from whom it had been taking supply, the respondent should enter into an agreement on the subscriber base as may be found either by reason of a verification, failing which a survey can be made.

The process must be completed within 2 weeks, whereafter, the agreement should be entered into.

These are the reasons in support of our order dated 04.04.2011.

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

**September 23, 2011**  
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