

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 22nd September, 2011

Petition No.232 (C) of 2011

Sri Sivakami Amman Cable TV **...Petitioner**

Vs.

Star Den Media Services Pvt. Ltd. **...Respondent**

BEFORE:

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

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

For Petitioner

Mr. Jayant K Mehta, Advocate
Mr. Sukant Vikram, Advocate

For Respondent

Mr. Saurav Srivastava, Advocate

JUDGEMENT

The Petitioner is a Local Cable Operator operating in the town of Chinnamanur in the State of Tamilnadu. It is a Registered Cable Operator within the meaning of the provisions of Cable Television Network (Regulations) Act, 1995 and the Rules framed thereunder.

The Respondent is a Distributor of Star Group of Channels. The petitioner, it is stated, has entered into subscription agreements with Sun Group of Channels and Jaya Group of Channels.

It also re-transmits a large number of free to air channels.

By reason of a letter dated 08.02.2011, the petitioner is said to have made a request to the respondent for supply of signals of its channels stating:-

“At present I am having all pay channels of Sun Network and Jaya TV package in full sending the copy of my network’s postal licence also herewith enclosed.

To be genuine, sender the copy of the invoice of M/s. Sun 18 Media Services for the month of January 2011. Feb 2011 invoice not yet received. So, the latest one in hand is for January 2011. Please accounted.

You please let me know the names and rates of your channels i.e. channel wise or bouquet wise. I am glad to note that myself is ready to get all of your channels to show from my network if the rate is with my reach.

I do hope and in anticipation that you will justify everything by your fair deal. Now I am showing 43 channels is total (FTA and pay channels).

Kindly let me know the payment for IRDS and monthly subscription amount for every channel or packages.”

The said letter was allegedly sent through courier services. No response thereto having been received, another request was sent on or about 17.02.2011 wherewith again the petitioner sought to annex a copy of the invoice of M/s. Sun18 Media Services for the month of January 2011.

This petition was filed on or about 27.04.2011.

The petitioner, however, in this petition has neither disclosed its area of operation nor its subscriber base.

It has also not supplied to the respondent the list of its subscribers with the requisite details so as to enable it to verify the same. Even the invoice issued by Jaya TV Networks was not furnished.

A reply has been filed wherein the respondent, inter-alia, has raised the following contentions:-

1. The request of the petitioner is not valid.
2. It has not complied with the mandatory requirements of the provisions of Clause 9.2 of the Telecommunications (Broadcasting and Cable Services) Interconnection Regulations, 2004.

A rejoinder to the said reply has been filed wherein it has been contended:-

“The Regulation 9 provides that in case the Subscriber Line Report (SLR) does not exist then the subscriber base of the Cable Operator shall be negotiated on the basis of the evidence provided by the parties on the subscriber base. It is stated that since the SLR was not available with the Petitioner he had diligently provided a valid and cogent evidence of his subscriber base, by enclosing the latest invoice raised on him by another broadcaster i.e. M/s. Sun TV along with the first ‘request’ dated 8.2.2011 admittedly received by the Respondent.”

The parties hereto have not adduced any oral evidence.

Mr. Jayant Mehta, learned Counsel appearing on behalf of the petitioner would urge:-

1. The respondent having not denied or disputed the receipt of the aforementioned letters of request dated 08.02.2011 and 17.02.2011, must be held to have failed to perform its statutory duties in responding thereto within a period of 60 days as provided for under Clause 3.5 of the Regulations.
2. Had the respondent sought for any other or further informations and/or asked the petitioner to furnish any other or further documents, it could have done so.
3. The Regulations having not laid down any procedure for making a request, the Broadcaster was entitled to only such informations which are necessary to it for supplying signals of its channels on reasonable terms and on a non-discriminatory basis.

Mr. Saurav Srivastava, learned Counsel appearing on behalf of the respondent, on the other hand, submitted that the request of the petitioner is not a valid one in so far as the same did not contain the informations/documents which are pre-requisite for consideration at the hands of the Broadcaster.

The petitioner is a signal seeker. It has filed its petition for obtaining directions upon the respondent to supply the signals of specific

channels mentioned in the prayer portion thereof namely Star Vijay, Star Movies and Star Gold.

We have noticed heretofore that the petitioner, however, had asked for the names and rates of the channels either channel-wise or bouquet-wise. It furthermore was ready and willing to get all channels of its network, if the rate was within its reach. Perusal of the purported requests dated 08.02.2011 and 17.02.2011 would clearly demonstrate that except an invoice for the month of January 2011 issued by Sun 18 TV Networks, no other document was enclosed. Even the invoice of Jaya TV was not furnished.

The petitioner did not disclose as to what was its subscriber base. In its rejoinder, it proceeded on the basis that it had no SLR to be furnished, although admittedly it had been taking supply of signals of two Regional Channels.

It is now well settled that a signal seeker must furnish the requisite informations which are necessary for a Broadcaster to supply signals of its channels, including compliance of Clause 9 of the Regulations.

The said provision reads thus:

“9. Finalising Subscriber Base at the time of first agreement

First agreement between Multi System Operator and Cable Operator

9.1 In non-addressable systems, while executing an interconnection agreement for the first time between a multi system operator and a cable operator, the parties to the agreement shall take into account the subscriber base of the cable operator on the basis of the Subscriber Line Report (SLR) where such SLR exists. Where such SLR does not exist, this shall be negotiated on the basis of the evidence provided by the two parties on the subscriber base, including the subscriber base of similarly placed cable operators and local survey.

Explanation

The Subscriber Line Report (SLR) is only an indicative basis for arriving at the subscriber base and the subscriber base as mutually agreed by the two parties could be more than or less than the number indicated by the SLR.

First agreement between Multi System Operator and Broadcaster

9.2 In non-addressable systems, while executing an interconnection agreement for the first time between a multi system operator and a broadcaster, the multi system operator shall furnish a list of the cable operators who will be getting signals from its network along with their subscriber base. The parties to the agreement shall take into account the subscriber base of cable operators connected to the multi system operator while negotiating the subscriber base of

the multi system operator. For the consumers proposed to be directly served by the multi system operator, the procedure as laid down in sub-clause 9.1 of this regulation shall be followed.”

A Multi Service Operator which would come within the purview of definition of terms “Cable Operator and Distributor of TV Channels”, (if transmission of signals takes place through cables), may supply signals to the Link Operators or the subscribers directly.

Clause 9.2 of the Regulations provides for the manner in which a Multi Service Operator must furnish informations with regard to its subscribers whether by way of re-transmission of signals to a Local Cable Operator or direct subscribers; whereas Clause 9.1 provides for supply of informations by a Local Cable Operator to a Multi Service Operator.

A Multi Service Operator or a Local Cable Operator to a Broadcaster or a Multi Service Operator, as the case may be, while making a request in terms of Clause 3.2 of the Regulations, is required to fulfill the statutory conditions, there can not be any doubt or dispute that Clause 9 must be read harmoniously with the interpretation clause defining ‘Cable Operator’ as contained in Clause 2 (g) and ‘Distributor of TV Channels’ as contained in Clause 2 (j) of the Regulations vis-à-vis Clause 3.2 thereof.

Clause 9 of the Regulations, in our opinion, covers all types of distributors of TV channels. An invoice issued by another Broadcaster may have to be supplied for the purpose of meeting the requirements as contained in the Explanation-1 appended to Clause 3.2.

In *Nalanda Cable TV Network Vs. The One Alliance*, Petition No. 15 (C) of 2011, disposed of on 09th April, 2011, it was stated:-

“Clause 3.2 mandates a broadcaster to provide on request signals of its TV channels on non-discriminatory terms. So as to enable a broadcaster to enter into an agreement on the commercial terms as may be agreed to by the parties thereto, the essential ingredients thereof as laid down in the Regulations must be satisfied that is to say:

- 1. It is not a defaulter.*
- 2. It has complied with the requirements of Regulation 9.2 of the Regulations; and*
- 3. Must furnish the requisite details so as to enable the broadcaster to verify and/or satisfy itself about the efficacy of the supply of the signals.”*

(See also Petition No. 90 (C) of 2011 titled as “*Bareilly City Cable TV Network, UP Vs. Star Den Media Services Pvt. Ltd. & Anr., Gurgaon*”, disposed off on 09.09.2011.)

In any event, the petitioner has filed truncated documents before this Tribunal which cannot be encouraged.

Before a direction is issued to a Broadcaster to supply signals of its channels, this Tribunal must be satisfied that a cause of action has arisen therefor. It may not insist on hyper-technicalities but ordinarily the court must ensure that the request of the Operator of TV channels satisfies the basic statutory requirements.

As the petitioner has not disclosed its area of operation, the details of its subscribers and/or subscriber base, we are of the opinion that the petitioner must do so.

Mr. Jayant Mehta states that all the requisite documents shall be supplied within one week from date. The respondent would be entitled to verify the list of the direct subscribers of the petitioner and/or other details furnished by it, if any. It may for the purpose of supplying signals of its channels on reasonable terms and non-discriminatory basis may ask for any other or further information(s) from it.

We have in this case proceeded on the assumption that the petitioner being a franchisee of Sun TV and Jaya TV have not only installed

the requisite equipments but also have the modes of transmission of signals in place. We shall also presume that it has laid cable upon compliance with the local laws, if any.

We may also assume that the petitioner has regularly been paying service tax etc. We hope and trust that on supply of the requisite documents and informations by the petitioner, the respondent shall commence supply signals of its channels to its network upon execution of a requisite agreement therefor as is required under the provisions of the Regulations as expeditiously as possible and preferably within a period of 30 days from the date of receipt of the informations and/or verification of the subscriber base and other details but not exceeding a period of 60 days.

This petition is disposed off with the aforementioned directions with no orders as to costs.



(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

.../GM/