

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 07th September, 2011

Petition No.292 (C) of 2011

Sristi Cable TV Network, West Bengal

Petitioner

Vs.

Zee Turner Ltd., Noida

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. Tejveer Singh Bhatia, Advocate
Mr. Vadivelu Deenadayalan, Advocate for
Mrs. Prathiba M. Singh, Advocate

JUDGMENT

S.B. SINHA

The petitioner is a Multi Service Operator. It, in the said capacity made a request to the respondent herein, which is a 'broadcaster' within the meaning

of the provisions of The Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004 (The Regulations) for supply of signal of its channels in terms of Clause 3.2 thereof. The respondent having not favourably responded thereto, a petition was filed before this Tribunal by the petitioner, which was marked as Petition No. 6 (C) of 2008.

2. By an order dated 14.01.2008, the said petition was disposed of, directing:-

“The learned counsel for petitioner submits that without prejudice to the petitioner's stand that it has applied to the respondent in accordance with the regulations for supply of decoders, the petitioner is willing to supply further information as indicated by the learned counsel for respondent and if anything further is required as per the regulations. After the petitioner meeting these requirements, the respondent will process the request of the petitioner expeditiously in accordance with the regulations.”

3. Concedingly pursuant thereto or in furtherance thereof, a meeting was held on or about 20.02.2008. However, no agreement was entered into. Several correspondences passed between the parties. The petitioner, at one point of

time, agreed to enter into an agreement on the subscriber base of 3000, but by a letter dated 21.02.2009, minimum guarantee of 2000 points was offered, although according to it, its subscriber base was only 150, which was expected to rise upto 300 in the first phase of expansion of its business. The said request of petitioner was not acceded to, resulting in petitioner's filing another Petition before this Tribunal, which was marked as Petition No. 344 (C) of 2010.

Parties went into the trial.

One of the questions, which arose for consideration therein, was as to whether the offer of petitioner for payment of a minimum guaranteed amount satisfies the requirements of Clause 9.2 of the Regulations.

4. This Tribunal having regard to the order dated 04.02.2011 passed in Petition No. 121 (C) of 2009 (M/s. Digi Cable India Pvt. Ltd. Vs. Star Den Services Ltd.), directed as under :-

“Following the aforementioned decision of this Tribunal, I am of the view that the interest of justice shall be sub-served if the petitioner is directed to supply the names of the proposed operators with their subscriber base at an early date on receipt whereof the parties may negotiate and enter into a subscription agreement on such

subscriber base as may be agreed upon as expeditiously as possible and not later than three weeks from date of furnishing of the said informations by the petitioner.

I have issued the aforementioned direction as minimum guarantee of the number of connectivity by itself is not a substitute of clause 9.2 of the regulations nor the list of operators working with the petitioner in the CAS area will be indicative of the proposed LCOs with whom the petitioner intends to enter into an agreement.”

5. Pursuant to or in furtherance of, the observations made in the said judgment and order dated 23.02.2011, the petitioner while enclosing a list of proposed LCOs and their respective areas of operation asked for supply of signal of the channels of respondent. Respondent herein disputed the SLR of petitioner. A joint verification also took place.

Several discrepancies in the list of subscribers and their area of operation in the first phase were pointed out by respondent in terms of its letter dated 30.3.2011, stating :-

“During the discussion our representative pointed out to you the anomalies (as detailed in Annexure A) in the said SLR accordingly, it was manually agreed that parties would jointly visit the networks/ LCOs mentioned in the SLR on 28th March’11 to undertake ground verification of the proposed LCOs.

Even during the joint ground verification conducted on 28th March’11, we could not locate three networks out of a list of 8 LCOs/networks given by you. Besides, address & name of View Point, address of Sat Vision (mentioned in Sl. No. 2 of your SLR) & name of Third Eye were found incorrect. Detailed report of joint ground verification conducted on 28th March’11 is annexed herewith as Annexure-B.

During the joint exercise it has also come to our notice that you have furnished names of LCOs/Networks without taking their consent. It would not be incongruous to state that either some of the LCOs do not exist or those that exists could not be located at the address mentioned in the alleged SLR. Needless to mention the proposed SLR furnished by you is a false, fabricated & sham document.”

6. Annexure 1 & 2 appended to the said letter will clearly show that not only the particulars furnished by the petitioner in its alleged SLR were incorrect, even in some cases, network did not exist.

We may notice the said annexures as also the list of proposed LCOs furnished by petitioner to respondent :-

*“List of the Proposed LCO, Proposed SLR and their area of operation
– 1st Phase*

<i>Sl. No</i>	<i>Name of the Proposed LCO</i>	<i>Proposed SLR</i>	<i>Contact Person</i>	<i>Address of the Proposed LCO</i>
1.	<i>View Point</i>	150	<i>Mr. Prasanta</i>	<i>Kabir Road, Kolkata-700026</i>
2.	<i>Sat Vision</i>	150	<i>Mr. Dipak Lohria</i>	<i>10/1/D, Nepal Bhattacharya Street, Kolkata-700026</i>
3.	<i>KVSTR</i>	150		<i>1, Bakulbagan Road, Majumdar Bhawan, Kolkata-700025</i>
4.	<i>Vagabond</i>	50		<i>12B, Bakulbagan Road, Kolkata-700025.</i>
5.	<i>New Cable Vision</i>	150	<i>Mr. Swapan Das</i>	<i>144A, Ashutosh Mukherjee Road, Kolkata-700025.</i>
6.	<i>Third Eye</i>	150	<i>Mr. Biswadeep Ganguly</i>	<i>62, Raja Bassanta Roy Road, Kolkata-700026.</i>
7.	<i>MSTR</i>	150	<i>Mr. Kalyan Majumdar, Mr. Sujoy Nandy</i>	<i>52A, Rashbahari Avenue, Kolkata-700026.</i>
8.	<i>Planet Network</i>	150		<i>56V, Purna Das Road, Kolkata-700029.</i>
	<i>TOTAL</i>	1200		

The above Area of operation and SLR are produced to you with best of our knowledge and belief (market survey).”

“Annexure-A

<i>Proposed SLR submitted by Sristi Cable on 7th March'11</i>					<i>ZT Remarks</i>
<i>Sl. No.</i>	<i>Name of the Proposed LCO</i>	<i>Proposed SLR</i>	<i>Contact Person</i>	<i>Address of the proposed LCO</i>	<i>ZT Remarks</i>
1.	<i>View Point</i>	150	<i>Mr. Prasanta</i>	<i>Kabir Rd., Kolkata-700026</i>	<i>Ground verification reports of ZT</i>
2.	<i>Sat Vision</i>	150	<i>Mr. Dipak Lohria</i>	<i>10/1/D, Nepal Bhattacharya Street, Kolkata-700026</i>	<i>Did not find the network at the given address.</i>
3.	<i>KVSTR</i>	150		<i>1, Bakul Bagan Road, Majumdar Bhawan, Kolkata-700025</i>	<i>No network found by this name at given address</i>
4.	<i>Vagabond</i>	150		<i>12B, Bakul Bagan Road, Kolkata-700025</i>	<i>No network found by this name at given address</i>
5.	<i>New Cable Vision</i>	150	<i>Mr. Swapan Das</i>	<i>144A, Ashutosh Mukherjee Road, Kolkata-700025</i>	<i>Mr. Swapan Das has expired, network is now run by Pradip Dey/Bapi Das/Tarun Das</i>
6.	<i>Third Eye</i>	150	<i>Mr. Biswadeep</i>	<i>62, Raja Basanta Roy</i>	<i>Name changed to I Net</i>

			<i>Ganguly</i>	<i>Road, Kolkata- 700026</i>	<i>Communication</i>
<i>7.</i>	<i>MSTR</i>	<i>150</i>	<i>Mr. Kalyan Mazumdar/ Sanjay Nandi</i>	<i>52A, Rashbehari Avenue, Kolkata- 700026</i>	<i>Met Sujay Nandi who acknowledged his friendship with Mr. Raj Narayan Choudhary, but said Sristi has not discussed the issue of signals with him</i>
<i>8.</i>	<i>Planet Network</i>	<i>150</i>		<i>56V, Purna Das Road, Kolkata- 700029.</i>	<i>Network does not exist at given address</i>
		<i>1200</i>			

“Annexure-B

<i>Proposed SLR submitted by Sristi Cable</i>					<i>Joint ground verification report conducted on 28.03.2011</i>
<i>Sl. No.</i>	<i>Name of the Proposed LCO</i>	<i>Prop osed SLR</i>	<i>Contact Person</i>	<i>Address of the proposed LCO</i>	
<i>1.</i>	<i>View Point</i>	<i>150</i>	<i>Mr. Prasanta</i>	<i>Kabir Rd., Kolkata- 700026</i>	<i>Since we did not find any network at the given address, Mr. Raj Narayan Choudhary took us to 32, Lake Temple</i>

					<i>Road, Kolkata-29 & found a network by the name of Netway Communication. We could not meet Mr. Prasanta.</i>
2.	<i>Sat Vision</i>	150	<i>Mr. Dipak Lohria</i>	<i>10/1/D, Nepal Bhattachary a Street, Kolkata-700026</i>	<i>Address given by Sristi in their letter is residential address of Mr. Dipak Lohria. Office address is - 5B, N.B. Street, Kolkata-26, since office was closed, could not meet anyone.</i>
3.	<i>KVSTR</i>	150		<i>1, Bakul Bagan Road, Majumdar Bhawan, Kolkata-700025</i>	<i>Could not find the network in the ground</i>
4.	<i>Vagabond</i>	150		<i>12B, Bakul Bagan Road, Kolkata-700025</i>	<i>Could not find the network in the ground</i>
5.	<i>New Cable Vision</i>	150	<i>Mr. Swapan Das</i>	<i>144A, Ashutosh Mukherjee Road, Kolkata-700025</i>	<i>Did not visit today.</i>
6.	<i>Third Eye</i>	150	<i>Mr. Biswadeep Ganguly</i>	<i>62, Raja Basanta Roy Road, Kolkata-700026</i>	<i>Third Eye Network is now I Net Communication, having its office also at : 1/1, Bompus</i>

					Road, Kolkata-700029.
7.	MSTR	150	Mr. Kalyan Mazumdar/ Sanjay Nandi	52A, Rashbehari Avenue, Kolkata-700026	Did not visit today.
8.	Planet Network	150		56V, Purna Das Road, Kolkata-700029.	No network found by the name of Planet Network at address 56V, Purna Das Road, Kolkata-700029. Mr. Raj Narayan Choudhury took us to 40/2H, Lake Road, Kolkata-700029 Near Kamala Girl's School, where we met Mr. Malay Nandi, his Network name is Malay Nandi (Earlier it was Channel 18).
		1200			

7. On receipt of the said letter dated 30.3.2011 along with the aforementioned annexures, the petitioner by a letter dated 04.04.2011, while acknowledged that the list of proposed operators furnished in terms of its letter dated 07.03.2011 constituted the original operators' list known to them. It was

contended that there was no compulsion to have any talks (marketing negotiation) with the proposed operators without having signal in its hand.

A fresh list of proposed operators and SLRs, as amended, was furnished in the said letter, which reads as under :-

“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.”*

The areas of operation of the said proposed operators were, however, not mentioned.

8. According to the petitioner, respondent having not replied thereto, a reminder was sent on 12.4.2011, stating :-

“We have supplied you the list of our proposed LCOs and their respective SLR and also clarified vide our letter dated 04.04.2011. Regarding SLR of the respective LCOs, we have given you the original and maximum declared SLR/sub-base of the very beginning. It is well known fact that there have been revamp twice only on the rates of the broadcasters and not on the sub-base. The revamp was made on the basis of the inclusion of non popular channels keeping parity with the sub-base. It is impertinent to mention that 150 SLR/sub-base for a single operator is too high, because the pay out will be over Rs.80000.00 per month.

Kindly note that the order passed by the Hon’ble Tribunal is “I have issued the above mentioned direction as minimum guarantee of the number of connectivity by itself is not a substitute of Clause 9.2 of the regulation”. So violating the order, you have suomoto visited the

LCO's from our proposed list, who are presently running the signal of other MSO. Due to your these sorts of act and activities these operators are feeling very much insecured, reason known to all.

As per the above mentioned order, a final bottom line has to be drawn on 28.03.2011, but unfortunately it is observed that the entire proceedings started only on 28.03.2011 and still lingering. You have given us two dates on which finalization has to be made, but in vain.

Lastly you had said that Mr. Harish was going to sit with us regarding the final negotiation on Monday the 11th of April, 2011 and then when we called you at 10 A.M., we got an SMS telling that Mr. Harish will join office at 2 P.M. and we waited till 7 P.M. and came to know that Mr. Harish is still busy in a meeting. Again when we called you on 12th April, 2011 you told us that Mr. Harish left station and the said meeting might take place only after a week. This is how the days are passing by and the net displacement is zero.

So you are therefore requested not to drag this matter unnecessarily and which is also the contempt of the Honourable TDSAT.”

9. Respondent by a letter dated 30.4.2011, however, contended that petitioner had offered subscriber base of 7500, although it had 25,000 to 30,000 subscribers. The other petitioner was having a subscriber base of 180 for all the local cable operators, which was rejected. It was, however, accepted that no meeting could take place and as such petitioner was asked to visit its

Zonal Office on 03.5.2011 at 3.00 P.M. for discussion and negotiation. The said communication was received by petitioner on 05.05.2011 and, thus, no meeting could take place on 03.5.2011. By its letter dated 10.5.2011, the petitioner alleged malafide on the part of the respondent.

By a letter dated 11.5.2011, the respondent replied thereto inter-alia contending :-

“It would not be incongruous to mention here the proposed SLR furnished by you vide letter dated 7th March’11 was re-corrected and sent to us vide letter dt. 4th April’11 after joint ground verification & remarks made in our reply dt. 30th March’11. Further, during the joint ground verification it has also come to our notice that you have furnished names of LCOs/Networks without taking their consent. Needless to mention the proposed SLR furnished by you vide letter dated 7th March’11 was/is a false, fabricated & sham document.

Further, in your letter dated 4th April’11, you have stated LCOs mentioned in serial no.3 & 4 are now under Mr. Uday Roy Choudhary at 83, Harish Chatterjee Street, Kolkata-700025 but you have once again failed to mention the name of the network correctly.

As regards your plea that we are well aware that you have no relationship with any other Broadcaster as of today as far as Non-CAS Zone is concerned and hence the mention of commercial terms with other broadcasters is little out of place, we would like to state that we have quoted what was stated by you during the meeting. It is apparent that you have been making claims of settlement of

commercial terms with other broadcasters only to mislead us about your viability.

It is denied you have ever stated during the discussion the highest number of SLR of non-siti cable operator is not more than 150. It would be too remote for you to know the subscriber base mentioned in the SLRs furnished by MSOs or LCOs in Kolkata in view of the fact that details mentioned vis-à-vis the proposed SLR were found incorrect during the joint ground survey.

Kindly note, we had mentioned since the ground connectivity of said operators is much higher, hence we request to you to re-consider your offer of 7500 subs. At no point, we have requested you to enter into subscription agreement at the said connectivity. In fact, we have always been open for negotiation after due consideration of ground connectivity and reach of operators. Accordingly, we requested you to visit our Kolkata office on 3rd May'11 at 3 pm for discussion & negotiation in terms of directions of Hon'ble TDSAT."

10. Petitioner responded thereto by its letter dated 30.5.2011 and accepted the offer to attend a meeting to be held on 16.5.2011.

11. This petition was filed on 02.6.2011. No averment has been made as to whether pursuant to its aforementioned offer, it visited the office of respondent or any meeting was held on that date or not.

In this petition, the petitioner has prayed for a direction upon the respondent to enter into a subscription agreement on reasonable terms & conditions.

12. Respondent, in its reply while dealing with the contention of petitioner as regard the subscriber base of 8 local cable operators vis-à-vis their respective areas of operation and subscriber base, contends that as per its information, the cable operators had 30,000 subscribers.

According to it, the local cable operators have proposed to join the network of respondent at a subscriber base of 3500 to 7000, the gist whereof reads as under :-

<i>Sl. No.</i>	<i>Name of the Proposed LCO</i>	<i>Ward No.</i>	<i>Areas of Operation</i>	<i>Address of the proposed LCO</i>	<i>Appx. Ground connectivity</i>
1.	Netway Communication	87	Bompus Road, Kabir Road & Lake Temple Road, Dr. Satyanand Road,	32, Lake Temple Road, Kolkata-29 & also at 86, Raja Basanta Roy	6000

			<i>Prasar Road, Dr. Sarat Banerjee Road, Gadu Nath Sarkar Road</i>	<i>Road, Kolkata-29</i>	
2.	<i>Sat Vision</i>	88	<i>Nepal Bhattacharya St.</i>	<i>5B, N.B. Street, Kolkata-26 & residential address-10/1/D, Nepal Bhattacharya Street, Kolkata-700026.</i>	7000
3.	<i>Home View Channel (Formerly Kabstar)</i>	72	<i>Towensend Road, Shyma Nanda Road, Ramesh Mitra Road, Gaur Ghosh Road, Bakul Bagan Road, Bijoy Mukherjee Road, Binoy Bose Road</i>	<i>83, Harish Chatterjee Street, Kolkata-25</i>	
4.	<i>Home View Channel (Formerly Vagabond)</i>	72	<i>Priya Nath Malik Road, Bijoy Mukherjee Road & Lane, Girish Mukherjee Road, Kali Mohan Banerjee Lane, Indira Nath Lane, Rakhil Mitra Lane, Beltola Road, Nafar Kundu Road, Townsend Road, S.P. Mukherjee Road</i>	<i>83, Harish Chatterjee Street, Kolkata-25</i>	5300
5.	<i>New Cable Vision</i>	71, 73	<i>Ashutosh Mukherjee Road, S.P. Mukherjee</i>	<i>144A, Ashutosh Mukherjee Road, Kolkata-700025.</i>	3500

			Road, Kalighat Road, Govindo Ghoshal Lane, Kedar Bose Lane, Balaram Ghosh Ghat Road.		
6.	I Net Communication (Third Eye)	87, 90	S.P. Mukherjee Road, Sardar Sankar Road, Rash Behari Avenue, Raja Basanta Roy Road	62, Raja Basanta Roy Road, Kolkata-700026 also at 1/1 Bompus Road, Kolkata-700029	3500
7.	MSTR	83, 88	Tarak Mitra Lane, Pratapaditya Road, Shah Nagar Road, Nepal Bhattacharya 1 st Lane, Nepal Bhattacharya 2 nd Lane, Mukherjee Para, Tollygunge Road, Shri Mohan Lane, Gopal Banerjee Lane, Kali Lane, Mahamaya Lane.	52 A, Rashbehari Avenue, Kolkata-700025	6000
8.	Malay Nandi (formerly networks's name was Channel 18)	86, 87, 90	Purna Das Road, Southern Avenue, Keya Tala Road & Lane, Jatin Das Road, Jatin Bagchi Road, Lake View Road, Sarat Bose Road.	40/2H, Lake Road, Kolkata-700029 Near Kamala Girl's School	5000
			TOTAL		30,000

13. The core question, which arises for consideration, is as to whether the petitioner has fulfilled the statutory requirements for obtaining supply of signals of its channel?

14. Mr. Bhagat, learned counsel appearing on behalf of petitioner, urged :-

- (i) One of the operators of the respondent being a rival MSO, with whom the existing local cable operators are attached, it is impossible to negotiate with them and enter into an agreement.
- (ii) The petitioner having offered the highest subscriber base in respect of each of the link operators, respondent acted illegally in not acceding to its request for supply of signal of its channel to the network of petitioner.
- (iii) Respondent should have produced the record to show that the cable operators, whose SLRs were being filed by it or by the concerned MSOs, had subscriber base of more than 150.

15. Shri Tejveer Singh Bhatia, learned counsel appearing on behalf of respondent, on the other hand, submitted :-

- (i) The approach of petitioner tantamounts to offering a minimum guarantee indirectly which it could not do directly;

- (ii) Subscriber base disclosed by petitioner is not acceptable to the respondent;
- (iii) Petitioner admittedly having not held any negotiation with the local cable operators cannot be said to have fulfilled the statutory requirements as laid down in Clause 9.2 of the Regulations.

16. The effect and interpretation of Clause 9.2 of the Regulations, as made by this Tribunal in Petition No. 344 (C) of 2010, has recently been considered in Petition No. 401 (C) of 2010 – Harika Cable Vs. Maa TV, wherein it was held as under :-

“In a given case the provisions contained in the proviso appended to Clause 3.2 as also Clause 9.2 of the Regulation may create some hardship but the same, in our opinion, is not sufficient for this Tribunal to make an endeavour to allow a party to wriggle out from the rigors thereof, particularly when the provisions appear to us to be imperative in character.”

Upon considering some of the decisions rendered by this Tribunal, it was opined :-

“It is now a well settled principle of law that a statute should, unless there exists any anomaly and/or leads to any absurdity, should be given a plain and literal meaning. A

statute should be construed also in the text and context thereof. If an exception has been created to main provision, there is absolutely no reason as to why it should not be given its full effect. Each case, therefore, must be decided on its own facts but the basic principle of law is required to be followed”.

Similarly in Shiristi Cable Vs. Zee Turner Ltd. Noida, Petition No. 344 (C) of 2010 disposed on 3rd February, 2011, this Tribunal held as under: -

“It is, therefore, not correct to contend that it is not possible for an operator to furnish any data whatsoever to the broadcaster so as to meet the requirements of Clause 9.2.”

Considering the decision of this Tribunal in Digicable (Supra), it was held:-

“Following the aforementioned decision of this Tribunal, I am of the view that the interest of justice shall be subserved if the petitioner is directed to supply the names of the proposed operators with their subscriber base at an early date on receipt whereof the parties may negotiate and enter into a subscription agreement on such subscriber base as may be agreed upon as expeditiously as possible and not later than three weeks from date of furnishing of the said informations by the petitioner.

I have issued the aforementioned direction as minimum guarantee of the number of connectivity by

itself is not a substitute of clause 9.2 of the regulations nor the list of operators working with the petitioner in the CAS area will be indicative of the proposed LCOs with whom the petitioner intends to enter into an agreement.”

17. Subscriber Line Report has been defined as under :-

“2.q. “subscriber line report” or “SLR” means a monthly statement wherein, in a non-addressable system, a multi system operator and a cable operator agree upon the subscriber base for that month.

Subscriber base has been defined in Clause 2(p) of the Regulations and reads as under :-

“(p) “subscriber base” means the number of subscribers –

(i) as agreed to by two service providers in a non-addressable system on the basis of which payments are made by one service provider to the other, or

(ii) as reflected by the Subscriber Management System, where addressable systems are employed.”

18. From a bare perusal of the aforementioned Clauses, there cannot be any doubt or dispute that even for the purpose of fulfilling the principal condition laid down in Clause 9.2 of the Regulations, a tentative SLR is required to be furnished on the basis whereof only negotiation can commence. Petitioner in this case has taken recourse to *suppresio veri* and *suggestio falsi*. Admittedly, it did not enter into negotiation with any of the LCOs. We do not find any justification in not doing so having regard to the statutory requirements. It even did not raise any such contention in the earlier petition.

It, having acceded to the judgment of this Tribunal, was bound to comply therewith so as to enable respondent to consider its request in terms thereof. The petitioner, at one point of time, was not even aware about the establishments of the LCOs that : (i) some of them became non-existent; (ii) some of them underwent changes in the names of their concerns, and (iii) some of the operators transferred their networks.

19. The purported amended SLRs supplied to respondent with its letter dated 04.04.2011, thus, did not conform to the order of this Tribunal vis-à-vis Clause 9.2 of the Regulations.

20. In view of the decisions of this Tribunal in the case of petitioner itself as also Harika Cable (Supra), it must be held :-

- (i) The requirement of Clause 9.2 of the Regulations must be complied with for supply of signal being statutory in nature;
- (ii) In absence of any details, no agreement can be entered into in view of the fact that no effective negotiation could take place;
- (iii) So as to enable the broadcaster to verify the subscriber base, relevant materials should be supplied;
- (iv) The area of operation of each of the cable operators should be furnished.

21. In its judgment dated 20.02.2011, this Tribunal has opined that petitioner intends to expand its area of operation in phases.

Its activities were, therefore, not necessarily to be confined to the number of 'wards' mentioned by respondent in its reply, but upon receipt or supply of signal. The petitioner intended to expand its area of operation and increase its activities to almost the entire town of Kolkata. The petitioner evidently, as is evident from its conduct, as noticed heretofore, did not satisfy the statutory requirements. Apparently, joint survey was conducted. In one of the cases,

respondent pointed out that the cable operators categorically stated that although petitioner was his friend, he would not take supply of signals from it, which not only was not denied and disputed but even the establishment of the said LCO was not visited.

The petitioner, it appears to us, intended to take supply of signals by entering into an agreement, although it did not fulfill the requirements of Clause 9.2 of the Regulations. It is suggested that although area of operation of the link operators would be different, the localities concerned may have very big population wherein people of different communities or speaking different languages resides and, thus, irrespective of the capacity of the LCOs vis-à-vis link of cables, subscriber base would not be the same in each case.

We have noticed heretofore that according to respondent, operators concerned have subscriber base varying from 3500 to 7000. It's estimation may not be correct but it's opinion that universe of all the LCOs being different, the subscriber base would necessarily be different cannot be said to be unreasonable.

The petitioner was expected to establish, in view of the statutory requirements that it had substantially complied with the requirements of furnishing the list of proposed cable operators. Subscriber base in each of those cases would be directly linked with the result of negotiation. For the said

purpose it ought to have entered into negotiation with the LCOs. It could have shown as to in which area it had laid cables to reach the last mile connectivity.

The burden of proof was on the petitioner to show what should be the reasonable subscriber base of the concerned LCOs. It cannot call upon respondent to disclose the figures without sharing his informations with the broadcaster as regards the details of the LCOs and their respective subscriber base.

22. Petitioner seeks to achieve its goal indirectly which it could not do directly, namely entering into an agreement on a minimum guaranteed basis.

23. We are, therefore, of the opinion that petitioner must be held to have not fulfilled the requirements of the Regulations for the purpose of invoking Clause 3.2 thereof.

24. On the premise aforementioned, the petitioner may make a fresh request to respondent to supply signal of its channels strictly in accordance with law, which may be considered on its own merit.

25. This petition is dismissed with the aforementioned observations.

In the facts and circumstances of this case, however, there shall be no order as to costs.

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

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

rkc