

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated : September 22, 2011**

**Petition No.318(C) of 2011**

Sri Ayyappan Cable Network

...Petitioner

Vs.

SUN 18 Media Services South Pvt. Ltd. ...Respondent

**BEFORE:**

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

For Petitioner : Mr.Sukant Vikram, Advocate

For Respondent : Mr.Nitin Bhatia, Advocate

**J U D G M E N T**

**S.B. Sinha**

The petitioner is a local cable operator registered under the Cable Television Networks (Regulation) Act, 1995 and the Rules framed thereunder.

The respondent is a distributor of the SUN Group of Channels.

With a view to obtain supply of signals of the Channels of SUN TV, SUN Music and KTV channels, the petitioner made a request to one Shri Neil George of SUN Network Ltd. on or about 21.2.2011, inter alia, contending that it had been supplying signals of 43 channels to 150 customers in the town of Tirupattur. Along with said request the petitioner enclosed a copy of its postal registration certificate, the names and addresses of 150 customers and an area map.

The said request was sent under registered cover with acknowledgment due. It was received by somebody for and on behalf of the said addressee.

It, however, now transpires that the respondent herein became the distributor of the SUN TV Group of channels as a successor in interest of SUN Distributor Services Ltd. long time back.

The respondent on the premise that it had not received the said request did not respond thereto.

This petition has been filed on 11.7.2011 i.e. after expiry of the period of 60 days from the date of the alleged receipt of the

request as envisaged under Clause 3.5 of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004 (13 of 2004) as amended from time to time (The Regulations).

The notice in the matter was issued to the respondent by this Tribunal on 13.7.2011. The respondent did not file any reply within the period specified therefor. One week's more time was granted to the respondent as was prayed for, by an order dated 12.8.2011. When the matter was listed again on 29.8.2011 a prayer was made to file reply by 1.9.2011, which was allowed. Rejoinder thereto was to be filed within ten days thereafter. The parties were also given liberty to file additional documents.

A submission was made before this Tribunal that no oral evidence need be adduced on behalf of the petitioner. Even on that date the learned counsel appearing for the respondent did not contend that any evidence would be adduced on its behalf.

The matter was listed for hearing on 16.9.2011. As the learned counsel for the respondent was not available at the first call the matter was passed over once. On the second call of the matter Mr. Bhatia appeared and submitted that the reply was ready and the same would be filed in the course of the day.

Having regard to the fact that the respondent had not filed any reply despite three opportunities having been given therefor, the prayer of Mr. Bhatia to file reply was declined. Further prayer of Mr. Bhatia that the respondent may be allowed to adduce oral evidence was also declined on the ground that no reply was filed, no issue was framed, no additional document was also filed and in any event the petitioner has declined to adduce any oral evidence.

Mr. Sukant Vikram, learned counsel appearing on behalf of the petitioner at the outset has drawn my attention to the fact that a mistake has been committed at the Bar as on 12.8.2011 it was stated that the parties had met, although in fact the parties had not met.

Submission of Mr. Sukant Vikram is that essential requirements of the provisions of the Regulations having been complied with, the respondent may be directed to supply signals of its channels on reasonable terms and on a non-discriminatory basis.

Mr. Bhatia would, however, contend that the purported request having been made to a wrong person, the same must be held to be not a proper one. It was furthermore pointed out that

the petitioner has shown names of different subscribers residing at the same address and, thus, no credence thereto can be given.

Clause 3.2 of the Regulations reads as under:

"3.2 Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator; multi system operators shall also on request re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators.

*Provided* that this provision shall not apply in the case of a distributor of TV channels having defaulted in payment.

*Provided* further that any imposition of terms which are unreasonable shall be deemed to constitute a denial of request"

The said provision is an exception to the common law of contract as also the provisions of the Indian Contract Act. It is, therefore, necessary for the seeker of signals to comply with the basic requirements as laid down under the Regulations by showing that :

1. it is not a defaulter.

2. it has furnished a list of subscribers to whom it proposes to retransmit the signals of the channels of broadcasters; and
3. it is otherwise entitled to obtain signals on reasonable terms which may be offered by a broadcaster.

The petitioner is a registered cable operator.

On a query made by the Tribunal Mr. Sukant Vikram stated that the petitioner does not re-transmit signals of pay channels as it had been supplying signals only of free to air channels. It is also not known whether it has installed its equipments so as to enable it to supply signals of a pay channel. It has also not been shown whether it pays any entertainment tax or service tax.

Be that as it may, it is now not in dispute that the purported request of the petitioner was made to a wrong person. Mr. Sukant Vikram would contend that the address of SUN TV Network and the respondent company is the same. That may be but the same would not mean that an employee of SUN TV Network to whom the letter was handed over would be an authorized representative to receive the letter on behalf of the respondent also. The request was made to an officer of SUN TV

Network. It has not been shown that the said officer is also attached to the respondent.

Moreover, the SLR, furnished by the petitioner, prima facie, appears to be containing some mistakes as four of the addressees whose names appear at Serial No.13 to 16 have been shown to have the same address.

In a small town like Tirupattur, it is unlikely. To the same effect is the names appearing at Serial Nos. 25 and 26 having a common address. Although the respondent has not been permitted to file any reply, according to Mr. Nitin Bhatia, upon verification of the list of subscribers the respondent has found a lot of discrepancies.

I am, therefore, of the opinion that interest of justice will be subserved, in the peculiar facts and circumstances of the case, if the respondent is directed to consider the contents of the present petition as a request made to it and deal with the matter appropriately in terms of Clause 3.5 of the Regulations. It will be open to the respondent to supply a copy of its reply to the learned counsel for the petitioner so as to enable it to furnish such other document or documents as might ~~had~~<sup>be</sup> ~~been~~<sup>en</sup> asked for and/or negotiate the subscriber base for arriving at a settlement.

It is expected that the respondent shall discharge its statutory duties in a fair and reasonable manner and within the time stipulated under the Regulations so as to avoid any future litigation.

This petition is disposed of with aforementioned observations with no order as to costs.

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

**September 22, 2011**  
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