

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 09.09.2011

Petition No.90 (C)/2011

Bareilly City Cable TV Network, UP ... Petitioner

Vs.

Star Den Media Services Pvt. Ltd & Anr., ... Respondent
Gurgaon

BEFORE:

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

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

For Petitioner

Mr.Tushar Singh, Advocate

For Respondent No.1

Mr.Praveen Phauja and

Mr.Arjun Natarajan, Advocates

Respondent No.2

Mr.Vibhav Srivastava, Advocate

J U D G M E N T

S.B. Sinha

The petitioner is a Multi Service Operator (MSO) operating in the town of Bareilly.

It had been taking supply of signals from respondent no.2 herein. Inter alia on the premise that the said supply of signals was discontinued and the petitioner had set up a new headend, it made a request to the respondent for supply of signals of its channels by a letter dated 7.8.2010. The address of respondent no.1 in the said letter has not been furnished. It appears from the postal receipt that it was sent to Star India and not to Star Den India, said to be having its postal address at plot No.17, Institutional Area, Sector 32, Gurgaon, Haryana, which now appears to be not the correct address of respondent no.1.

Moreover, the said purported request neither contained the details of the informations/documents which are necessary for a broadcaster to consider the request of a MSO to supply signals of its

channels in terms of Clause 3.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 as amended from time to time (the Regulations). Inter alia on the premise that the petitioner has not received any response to the said request, it sent an e-mail to one Mr.Rohit Singh. It also stands now admitted that the e-mail id of the said Mr.Rohit Singh was not correct.

Respondent no.1, on the said premise denies and disputes the receipt of the aforementioned letters dated 7.8.2010 and 27.8.2010.

The respondent inter alia contends that the petitioner did not supply its certificate of registration, the Subscriber Line Report and Area Map, which are absolutely essential for considering the request of a MSO for supply of signals of its network.

This petition was filed on or about 7.2.2011.

Although, the petition as was filed was not maintainable; having regard to the fact that no request had been made to the respondent for supply of signal of its channels to its network, this Tribunal by an order dated 17.3.2011 on a prayer made by the

learned counsel for the petitioner directed fixation of a meeting with the respondent for discussions of various issues relating to the grant of signals directed on 22.3.2011 at 11.00 am in the Gurgaon office of respondent.

Pursuant thereto or in furtherance thereof, a meeting was held on the aforementioned date.

Vide letter dated 22.3.2011, the respondent asked the petitioner to supply the following documents :-

- “(a) Postal Registration Certificate
- (b) Details of direct connections/ details of subscribers, Subscriber Line Report (SLR) and in case there is no SLR then please provide evidence to corroborate your subscriber base (including local survey).
- (c) List of cable operators who are/ will be getting signals from your network along with their subscriber base.
- (d) Copy of the latest monthly invoice showing the dues, if any, from the presently affiliated MSO, or from any agent/ any other intermediary to show that no payment are due.
- (e) Your exact area of operation.

- (f) Entertainment tax registration number and returns filed with entertainment tax authorities.”

It was also stated :-

“ We are also enclosing herein an ‘Application Form’. May we request you to kindly complete the enclosed form and return to it to us (together with relevant documents) in order to enable us to process and forward your request to the concerned Department (s).

Please note that neither this communication nor your submission of the ‘Application for Affiliation’ detailed above purports to admit your eligibility or entertainment to receive the STAR channels directly from us.

We look forward to hearing from you.”

In response to the said letter, the petitioner allegedly sent the following documents to the respondents: -

- “1. Copy of P.O. Registration
2. Pan Card
3. Map of Area
4. Invoice
5. IT Return of 3 years. 3 pages
6. Bank Statement 1 year 4 pages

7. List of direct connections.
8. SLR
9. Channel list 2 pages.
10. Equipment/ Hardware list
11. Entertainment Tax Chalan in 3 bunches of 31 pages
12. Letter about FALSE case"

The respondent, however, denies and disputes the receipt of the said documents.

Before us also apart from a postal receipt and a copy of the filled up form and a purported certificate, no other or further document has been filed.

The petitioner, however, despite the same on or about 3.4.2011 asked the respondent to provide all packages of Star channels to it. Yet again a purported reminder was sent with an attachment by the petitioner by an e-mail dated 18.4.2011. The said attachment has also not been produced before us.

The petitioner has examined its proprietor Mr. Neeraj Pal Singh. The respondent no.1 has examined Mr. Rohit Kumar Singh and respondent no.2 has examined Mr. Vivek Sharma.

It now stands admitted that the petitioner had also filed a complaint against the respondent no.2 herein as regards the alleged non-compliance of the provisions of the Regulations in disconnecting the supply of signals to its network. The said matter is pending before the Regulator.

The respondent no.2 contends that the petitioner owes a sum of Rs.95,115/- to it which despite of service of invoice has not been paid apart from some other dues.

In this case as indicated heretofore the petitioner had not made any valid request. Apart from the fact that it sent a request to a wrong entity and reminder on a wrong e-mail i.d., no document whatsoever was annexed therewith. The respondent no.1 furthermore denies and disputes the receipt of the said request and reminder. In any event no document having been annexed therewith, question of considering the petitioner's request for supply of signals to its network did not arise.

The petitioner furthermore has unnecessarily dragged the respondent no.2 before this Tribunal having regard to the fact that it made a request directly to respondent no.1 for supply of signals; evidently respondent no.2 had nothing to do therewith.

Despite the fact that this Tribunal had gone out of its way in directing holding of a meeting between the representatives of the parties hereto, the petitioner evidently has not supplied all the requisite documents which are necessary in terms of the provisions of the Regulations and in particular the last invoice served on it by the MSO or a 'No Dues Certificate' and a Subscriber Line Reports as envisaged under Clause 9 of the Regulations. Even before us, the petitioner has not produced all the documents.

Mr.Singh, when questioned, submitted that all the relevant documents must have been received by the respondent keeping in view the weight of the contents of the envelopes mentioned in the postal envelopes i.e. 250 gms and, therefore, the same has not been filed.

We are not satisfied with the said answer. If the petition itself was premature and could have been dismissed at the threshold,

this Tribunal has made an exception in the case of the petitioner so as to enable the broadcaster to consider the request of the respondent even during the pendency of this litigation. The petitioner could not have withheld the requisite documents from this Tribunal. A litigant cannot be permitted to file truncated documents.

This Tribunal as a matter of exception could have directed the respondent to consider the petitioner's application for grant of signal provided it was, prima facie, satisfied that the petitioner had supplied all the requisite documents. That being not the position, question of issuance of any such direction does not arise.

This petition is, therefore, dismissed. There cannot be, however, any doubt or dispute that in the event the petitioner supplies all the documents to the respondent no.1, the same shall be considered in accordance with law.

The petitioner is also liable to pay costs to the respondent no.2 quantified at Rs.25,000/-.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

September 9, 2011/`ns'