

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 09.09.2011

Petition No.91 (C)/2011

Bareilly City Cable TV Network, UP

... Petitioner

Vs.

MSM Discovery Pvt. Ltd. & Anr., Gurgaon

... Respondents

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.Nitin Bhatia, Advocate

Respondent No.2

Mr.Vibhav Srivastava and
Ms.Prabhjot Kaur, Advocates

J U D G M E N T

S.B. Sinha

In this petition the petitioner has inter alia prayed for issuance of a direction that the respondent supplies signals of its channels to the network of petitioners.

The petitioner was a Local Cable Operator (LCO).

It had been taking supply of signals from respondent no.2 which was allegedly disconnected for which it made a complaint to the Telecom Regulatory Authority of India (TRAI). The said complaint is still pending.

The petitioner is said to have obtained a Postal Registration Certificate and has set up a new headend. Inter alia on the premise that it intended to obtain supply of signals of the channels of respondent no.1, it made a request therefor on or about 7.8.2010. The said letter does not contain the address of respondent no.1.

It was allegedly sent under certificate of posting at the following address:-

“MSM DISCOVERY (P) LTD.
UNIT NO.5/6/7 & 8, GROUND FLOOR
TIME TOWER, MG ROAD
GURGAON – 2
TEL.- 1244848700”

On the premise that it did not receive any response thereto, a purported e-mail was sent to one Mr.Ruchir Mathur of respondent.

In this petition, the petitioner had filed a Postal Registration Certificate issued to it for 12 months on 24.3.2009.

The respondent, however, by a letter dated 15.12.2010 sought for supply of the following documents from the petitioner :-

- “1. Postal Registration Certificate
2. 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).
3. List of cable operators who are/ will be getting signals from your network along with their subscriber base.

4. A detailed diagram/map of your cable network as well as the locations of your head ends/ control rooms.

5. Details of your existing areas of your operations you are requested to specifically mark your existing area of operation on the diagram/city map as referred to above.

6. Declaration before Entertainment/Service Tax Authorities.

7. Please also provide details of the Mode of transmission of signals (whether overhead or underground) and the copy of permissions from competent authorities in this regard.

8. Certification showing the equipments used by you and your franchisee cable operators as prescribed under CATV Act 1995.

9. A copy of other documents for eg, Partnership Agreement, Joint Venture Agreement, Right to Use Agreement, MOA/AOA, etc.

The petitioner, it appears, did not send all the aforementioned documents to the respondent before filing of this petition, to which we will advert to a little later.

This petition was filed on 7.2.2011.

The petitioner in para 5 of the petition has contended that it had supplied the postal registration certificate, income tax return and the receipt of entertainment tax payment, the list of equipments as also list of cable operators and subscribers to the respondent.

In paragraph 18 of the petition, the petitioner stated as under:-

“That to avoid any sort of confusion or controversy in the future, the Petitioner immediately met the officials of Respondent No.1 with the duly filled in application for affiliation alongwith another copy of the necessary documents on 20.12.2010. The Respondent No.1 however, stated that they have already received the requisite documents from the Petitioner and the Application for Affiliation was just a mere formality which was not necessary to be submitted by the Petitioner. The Petitioner, therefore, handed over the filled application for affiliation dated 20.12.2010, copy whereof is annexed hereto and marked as ANNEXURE-P9.”

The said statements have been verified by the petitioner as having been derived from the official records.

Even if there was an oral assurance on the part of the respondent no.1, it is difficult to conceive as to how the verification

thereof could have been based on official record as in support of the said statement no record has been or could be produced.

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

The respondent no.1 in its reply inter alia would contend :-

- (i) The petitioner has failed to provide the necessary informations as sought for by the respondent no.1 in terms of the interconnection regulations.
- (ii) It is not concerned having no knowledge so far as the allegations made in the petition relating to the purported illegal disconnection of signals by respondent no.2 are concerned.
- (iii) Despite receipt of the respondent's letter dated 14.12.2010, no reply was given thereto but instead this petition has been filed.
- (iv) It is incorrect to contend that the respondent no.1 had given any false assurance to the petitioner to delay the grant of boxes as alleged or at all.

- (v) The petitioner has not sent any e-mail on 12.12.2010.

The respondent no.2 in its reply raised the following contentions: -

- (i) The petitioner is liable to pay an outstanding amount of Rs.95,115/-;
- (ii) The respondent no.2 does not have any complete monopoly in the area.
- (iii) The respondent no.2 did not switch off signals of the petitioner's network arbitrarily and without notice as alleged or at all.
- (iv) It is incorrect to contend that the petitioner has made all payments to the MSO till the alleged date of disconnection of the signals.
- (v) The respondent no.2 has filed its reply before TRAI in response to a notice issued by it on complaints made by the petitioner dated 25.12.2010 and 5.1.2011.

In view of the prayer made by the petitioner that a meeting be fixed with the representative of the respondent, it was directed that the parties may meet on 23.3.2011 at the Gurgaon office of the

respondent. Pursuant thereto and in furtherance thereof the parties have met.

The petitioner appeared to have supplied the following documents to Mr.Ruchir Mathur :-

1. "Application For Affiliation Form (Not Completely Filled Up) (photocopy)
2. Registration Certificate
3. Map of Area of Operation
4. Contract Subscribe Line Report"

The petitioner, however, has supplied a renewed registration certificate dated 24.3.2011 on the said date.

Mr.Singh, learned counsel appearing on behalf of the petitioner would contend :-

- (i) The petitioner having categorically made a statement that the respondent had received all the documents and thus when a meeting took place by and between the representatives of the respondent

with its proprietor it was asked merely to fill up an application form by way of a formality.

(ii) Even from the evidence brought on record, it would appear that although the petitioner had supplied all the requisite documents, the respondent failed and/or neglected to respond thereto.

(iii) The respondent having not communicated about the alleged non-existence of headend at the address mentioned in the certificate of registration cannot be permitted to raise any objection in regard thereto.

(iv) So far as the verification of the informations supplied by the petitioner is concerned, the witness of the petitioner having not been cross-examined, it must be held that no verification in fact was made.

Mr. Nitin Bhatia, learned counsel appearing on behalf of the respondent, on the other hand, would urge:

(i) The petitioner did not have the requisite permission to run its network in terms of the provisions of the Cable

TV 1995, the 1994 Rules inasmuch as it has changed its headend and obtained a new certificate only on 24.3.2011, although this petition was filed in February, 2011.

(ii) The petitioner admittedly having not obtained any pole permission and in any event, having not supplied the same as was asked for by the respondent no.1 in its letter dated 14.12.2010, no direction as has been prayed for by the petitioner can be issued.

(iii) PW-1 having filed the registration certificate as also area map only during his cross-examination, no cognizance thereof can be taken by this Tribunal.

(iv) PW-1 in his cross-examination having admitted that only Kamal Kumar Mishra as its LCO, although, he had taken the name of Raj Kumar Gupta earlier as one of its LCOs also and having failed to prove any register maintained by it in this behalf must be held to have suppressed the number of LCOs it intends to serve.

(v) Although the petitioner is said to have taken permission in terms of Provisions of UP Cable Television Network (Exhibition) Rules, 1997 no document in that behalf having

been produced, no direction as has been prayed for can be granted.

(vi) The petitioner, having not filed the 'no objection certificate' from the MSO from which it had been taking supply of signals and/or furnished the last invoice is not entitled to any relief from this Tribunal.

(vii) The letters of the respondent No.1 dated 24.4.2011 and 20.5.2011 having been sent under speed post and through courier service 'Blue Dart' and the letter having been received and the petitioner having not responded thereto, its contention that the respondent no.1 has not communicated the deficiencies in granting connection must be held to be not correct.

Mr. Srivastava, learned counsel appearing on behalf of the respondent no.2 urged:

(i) The respondent no.2 having no privity of contract with respondent No.1 as its agent or otherwise and being only a Multi Service Operator it has unnecessarily been impleaded as a party;

(ii) The petitioner having lodged a complaint against respondent No.2 and the matter being pending before TRAI; it is not entitled to maintain this petition.

(iii) The petitioner having been acting under different names only for the purpose of avoiding payments of its dues to the MSOs can be shown no indulgence.

It was furthermore submitted that the respondent has unnecessarily raised the question of identity of Mr. Neeraj Pal Singh.

The petitioner with its request did not file all the requisite documents. In the purported SLR, so far as the direct connectivity is concerned, the petitioner has not disclosed the names of the areas in which the subscribers reside. So far as the list of cable operators is concerned, the petitioner has disclosed the name of only one Mr. Kamal Mishra having 50 connections having his address at C-95, Patel Nagar Bareilly.

The total number of direct connectivity according to the petitioner is only 65.

Even during the pendency of the petition, the petitioner has not brought on record the details of its direct connectivity as was

required by respondent no.1 in its letter dated 14.12.2010. It has also not provided a detailed diagram of its cable network as also the locations of its headend. It furthermore failed to provide the mode of transmission of signals.

The petitioner in support of its petition has examined Mr.Neeraj Pal Singh, its proprietor.

He in his cross-examination admitted that the documents were handed over to Mr.Ruchir Mathur only on 20.12.2010.

In his cross-examination Mr.Neeraj Pal Singh, the proprietor of the petitioner concern has categorically admitted that he has not obtained permission from the competent authorities sofar as the mode of transmission of signals is concerned. It has also not provided a certificate showing the equipments owned by it and that its franchisee cable operators satisfy the statutory requirements of Cable TV Network Act, 1995 and the Rules framed thereunder.

Mr.Ruchir Mathur of the respondent no.1 in answer to the petitioner's e-mail dated 5.4.2011 stated as under: -

"....It is denied in toto that you have been requesting for signals of our channels since last 8 months. In

fact, it is you who till date have not replied to our letter dated 14.12.2010. It is only during the meeting dated 25.3.2011 at our regional office that for the first time you provided some of the documents as required for supplying signals to you which are currently being verified from our end. The same has been mentioned in the minutes of meeting which has been duly signed by you.

It is pertinent to note that no such assurance was made from our end of replying to you within two (2) days from the date of meeting. It was clarified to you during the said meeting that verification of the documents would require sometime as the same needs to be scrutinized.

Please note that the matter is already sub judice before the Hon'ble Tribunal and we have put our case on record and you are required to file appropriate documents."

In terms of the provisions of the Cable TV Network Act, 1995 and Cable Television Network Rules, 1994, indisputably a Local Cable Operator or a Multi Service Operator is statutorily enjoined to obtain a certificate from the concerned Post Master.

The 1994 Rules provide for the mode and manner in which an application is required to be filed being in Form-II whereupon the certificate is to be granted being in Form-III.

In terms of provisions of Section 3 of the 1995 Act and Rule 3 of the 1994 Rules, a certificate would be valid only for the premises as

mentioned therein, namely, the premises from which the network is operated.

The certificate produced by the petitioner before this Tribunal as also supplied to the respondent was in the name of Mr. Neeraj Pal Singh as a Director of M/s Bareilly Cable TV Network having its headend at 47A, Nala Road Subhash Nagar, Bareilly.

It is not a case of renewal of registration inasmuch as admittedly the petitioner in his evidence has produced a certificate for running a network from another address, namely, Sita Kiran Plaza, Barielly.

For all intent and purport, the certificate granted to it was in respect of a new headend. It is only in that view of the matter RW-1 Shri Ruchir Mathur in his cross-examination stated that on verification, no headend was found running at the address mentioned in the certificate.

A question arises as to whether the certificate dated 24.3.2011 was supplied to Shri Mathur on 25.3.2011. The petitioner applied for grant of the registration certificate at Bareilly. He came to Delhi for having a meeting on 25.3.2011. It is not the case of the petitioner that he obtained the registration certificate on 24.3.2011 itself across the counter. If the registration was sent to him by post, even on 24.3.2011, which ordinarily would have been done by the postal authorities he could

not have received the same on that date itself. Moreover the said purported certificate dated 24.3.2011 has not been brought on record. It was obligatory on the part of the petitioner to file the same.

A witness in his cross-examination without the leave of the Court cannot produce a document by way of adduction of additional evidence.

An appropriate application ordinarily should be filed therefor and allowed. It is not a case where a witness is confronted with a document without bringing the same on record at the time of his cross-examination. The petitioner, therefore, as has rightly been submitted by Mr. Bhatia did not produce any certificate showing that he was entitled to operate from its present headend.

Moreover, the State of UP has made Rules, known as Uttar Pradesh Shasan Kar Evam Nibandhan Anubhag-6, Rule 3 whereof reads thus:

“ Permission to provide Cable Service

3 (1) No person shall provide cable service without prior permission of the District Magistrate.

(2) Any person who desires to provide cable service under the act may apply to the District Magistrate for permission to provide such service.

(3) Application under sub-rule (2) shall be given in Form-1.

(4) On receipt of the application the District Magistrate shall satisfy himself that the applicant has furnished all the requisite information and on being so satisfied, grant to the applicant such permission in Form 2 for a period of three financial year at a time.

Provided that the District Magistrate may, for reasons to be recorded in writing and communicated to the applicant refuse to grant the permission.

(5) The District Magistrate shall, as far as may be, within sixty days from the date of the receipt of the application, pass an order Sub Rule (4)“

The petitioner contends that he has taken the requisite permission in terms of the said Rules but he has not produced any document in that behalf.

Moreover, the petitioner for the purpose of enforcing his right under Clause 3.2 of the Regulation was bound to produce before respondent no.1 the last invoice which he had received from his earlier MSO.

The petitioner has been working under various names. He was operating in the name of Magic City Cable and then Bareilly Media Corporation from 2003. He started a company under the name and style of Coral Entertainment Pvt. Ltd. with Shri Kamal Kumar Mishra and Shri Pawan Kumar Bajaj. The aforementioned Kamal Kumar Mishra is said to be his LCO and Mr. Pawan Kumar Bajaj was a shareholder in Den Fateh

Marketing from whom the petitioner's network had been obtaining supply of signals.

The petitioner has also been operating under the name of Balaji Cable Network. It now operates in the name of Bareilly City Cable Network.

Keeping in view the fact that apart from the company as noticed hereinbefore all other concerns were his proprietary concerns and in that view of the matter he would continue to be a defaulter, if at all, in respect of his past dues with a MSO.

Although, Mr. Srivastva has taken us through the cross-examination of PW-1 to establish that the petitioner was a defaulter, we are of the opinion that we need not go into the aforementioned question as the respondent No.2 has not filed any counter claim.

There cannot, however, be any doubt or dispute that a signal seeker must comply with the statutory requirements as contained in Explanation-I appended to the Regulation 3.2 of the Regulations.

For the purpose of enforcing a right under Clause 3.2 of the Regulation, the signal seeker must also show compliance of Regulation 9.

The petitioner is said to have one LCO which is one of the Directors in the said company, having 50 subscribers.

The petitioner has given a list of 65 subscribers as part of its SLR.

The said purported SLR does not contain the details and addresses of the subscribers.

The petitioner has also failed to supply the pole permission which is required to be issued by either the concerned municipality or the owners of electricity poles depending on the mode and manner in which the cable is laid.

A cable operator has no statutory right of way. In that view of the matter it is expected that permission from the competent authority was required to be obtained.

The petitioner has also not complied with other requirements as noticed heretobefore.

Mr. Singh is also not correct in his contention that the respondent has failed to prove the service of its letters dated 24.4.2011 and 20.5.2011.

The letter dated 24.4.2011 was sent through speed post. A copy of the receipt has been proved and marked as RW-1/4.

It is not the case of the petitioner that the said letter was not tendered to the postal authority. So far as the letter dated 20.5.2011 is concerned it was sent to the petitioner through a courier Blue Dart. The respondent has brought on record documents to prove delivery of the shipment.

In both the letters the respondent's categorically contended that the petitioner has not supplied the other requisite details.

Coming to the case of the petitioner so far as the respondent No.2 is concerned, we may notice that the prayer of the petitioner against it is confined to prayer –C which reads as under:

"Restrain Respondent No.2 in any manner preventing the Respondent No.1 from giving its decoder/IRD boxes to the Petitioner and entering into the Subscription agreement with the Petitioner."

No such order of injunction could be granted in favour of the petitioner inasmuch as Mr.Singh himself has contended that cause of action so far as the respondent No.2 is concerned was its alleged collusion with respondent No.1 to continue a monopoly status. The prayer made in the petition is not consistent with the said contention.

No plea of collusion has been raised. The only relevant allegations which has been made in this behalf according to Mr. Singh are contained in paragraphs 24 and 28 of the petition which read as under:

"24. That the petitioner has tried its level best to request the Respondent No.1 to supply its signals to the Petitioner and enter into a subscription agreement for the same however to no avail. The Petitioner has always been ready and willing to abide by the terms and conditions as mutually agreed between the parties, however, the Respondent No.1 is neither co-operating with the Petitioner, nor entertaining any requests of the Petitioner. It is intentionally delaying the grant of signals at the behest of the Respondent No.2 so that the monopoly of the Respondent No.2 can be maintained."

28. That the Respondent No.1 is acting in this malafide manner in not granting signals to the Petitioner with the sole motive of retaining the monopoly of its favoured MSO in the area of Bareilly i.e. the Respondent No.2."

The said paragraphs has been verified as being based on legal advice believed by the deponent Shri Neeraj Pal Singh to be true and correct. There is no foundational fact to prove malice on the part of the respondent No.1 and respondent No.2.

No credence, therefore, can be placed on the said statements.

We, therefore, agree with the contention of Mr.Srivastava that respondent No.2 has unnecessarily been dragged by the petitioner in this litigation.

For the reasons aforementioned no relief can be granted to the petitioner in this petition. It, however, goes without saying that in the event the petitioner makes a valid request to the respondent No.1 upon complying with the statutory regime, it shall consider the same in accordance with law and within the prescribed period of time.

This petition is, therefore, dismissed with costs.

The petitioner shall pay costs quantified at Rs.25,000/- to respondent No.2.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

September 09, 2011
`ns'