

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated : August 14, 2012

1. Petition No.50(C) of 2012

Sree Konark Digital Systems ...Petitioner

Vs.

M/s MAA Television Network Ltd. ...Respondent

2. Petition No.51(C) of 2012

Sree Devi Digital Systems ...Petitioner

Vs.

M/s MAA Television Network Ltd. ...Respondent

BEFORE:

**HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON
HON'BLE MR.P.K. RASTOGI, MEMBER**

For Petitioner : Mr.Sharath Sampath and Mr. Manikya
Khanna, Advocates

For Respondent : Mr.Rajagopala Rao and Ms. Vismai Rao,
Advocates

J U D G M E N T

1. These petitions involving similar questions of fact and law were taken up for hearing together and are being disposed of by this common judgment.

2. The Petitioners herein are Multi Service Operators; whereas the Respondent is a Broadcaster. Their respective areas of operation are Srikakulam (Urban and Rural) and Ankapalli respectively.

3. The Petitioner in the first case is a partnership firm; whereas in the second, it is a proprietary concern.

We may, however, notice the broad facts of the matter from the petition of Sree Konark Digital Systems.

A letter of request was sent by the Petitioner to the Respondent requesting it to supply the signals of its channels on or about 5.8.2011. It however, stands admitted that with the said letter, no document was annexed.

4. An e-mail was also sent on 6.8.2011 wherewith copies of some documents being the deed of partnership, postal registration certificate, a map showing the cable network of the Petitioner and its area of operation, a subscriber line report and the list of equipments installed at the headend of the Petitioner were enclosed.

5. A reminder was sent thereto on or about 17.11.2011.

Along with the said letter also the Petitioner annexed the same documents.

Indisputably, the aforementioned letters of request/reminder were received by the Respondent herein.

The Present Proceedings

6. On the premise, that the Respondent did not respond to the said requests, these petitions have been filed on or about 25.1.2012.

7. On a suggestion having been made by the learned counsel for the Respondent, this Tribunal in its order dated 30.1.2012 observed as under:

“Pendency of this Petition shall not stand in the way of the parties hereto to meet at a mutually convenient place

and on a mutually convenient date to consider the Petitioner's request for supply of signal to its network by the Respondent herein."

8. Pursuant to or in furtherance of the said observations, the parties met on or about 21.2.2012.

Minutes of meeting was also drawn up, which reads as under:

"MEMBERS PRESENT:

1. Mr. K. Siva Adinarayana & Mr. M. Suresh Varma from Maa Television Network Limited.
2. Mr. I. Ramakrishna Raju from M/s Sree Konark Digital Systems, Srikakulam

MINUTES OF THE MEETING:

In pursuance to the directions of the Hon'ble TDSAT in petition No.50(C) of 2012 both parties have met in the office of Maa TV. The minutes of the meeting has been recorded as follows:

1. Maa TV requested to provide Detailed Subscriber Line Report (SLR) and LCO's agreement copies with M/s. Sree Konark Digital Systems.
2. Mr. I. Ramakrishna Raju on behalf of M/s. Sree Konark Digital Systems has also agreed to provide the required documents.

9. It is not in dispute that pursuant to or in furtherance of the said minutes of meeting, the necessary documents and informations sought for by the Respondent had been supplied to the Respondent by the Petitioner.

Despite the same no settlement could be arrived at.

10. The Respondent, however, despite the fact that it had sought for supply of only two documents, in its reply stated as under:

"4. The answering respondent most humbly submits that the present petition filed before this Hon'ble Tribunal by the petitioner claiming to be a Multi System Operator praying for the decoders and signals of the Respondent Television Network deserves to be dismissed outright for non-disclosure and suppression of material facts and for non-compliance of Clause 9.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation, 2006. It is further submitted that the petitioner is at present not retransmitting any

pay channels and his infrastructure and equipment are not conducive for the purposes of retransmitting the signals of the respondent television network. Further, the answering respondent most humbly submits that there is nothing on record to show:

i) That the alleged affiliated Cable Operators are validly registered Cable Operators under the Cable Television Networks Regulation Act in as much as no postal registration certificates have been produced by the petitioner pertaining to its LCOs;

ii) That the petitioner is indeed retransmitting its signals to the alleged Cable Operators in the absence of any agreements on record to that effect;

iii) The list of channels being retransmitted by the petitioner at present has not been furnished;

iv) Cable Laying Permission or Municipal Permission to erect poles;

v) Proof of the location of petitioner since no lease/rent agreement has been furnished; and

The answering respondent submits that in the absence of the above particulars and documents, it is impossible for the respondent television network to verify the details of the petitioner and ascertain its true connectivity and affiliated cable operators."

11. Several issues, thus, were raised for the first time in its reply by the Respondent despite the specific stand taken by it in the said meeting.

The petitioner filed a rejoinder thereto.

In the said rejoinder it had been contended that keeping in view the delay in supply of signals as also updated SLR that a large number of cable operators had left its network and it had only 26 cable operators attached to its network.

12. It has further been contended that in law no permission is required to be obtained from the Municipal Authorities for laying overground or

underground cables. With its rejoinder it has annexed a large number of documents including the agreements entered into by and between it and the local cable operators. The Petitioner furthermore furnished the details of all subscribers taking supply of signals from the LCOs attached to its network.

13. The Petitioner has also filed a new postal registration certificate as also a certificate issued by the Commissioner of Srikakulam Municipality to contend that the address contained in the earlier postal registration certificate was not correct in view of the fact that the house number stated therein bore an old number.

14. It also supplied the number of channels in respect whereof it had been retransmitting the signals, as also the SLR and the list of operators.

Issues

15. In view of the respective pleadings of the parties, this Tribunal although framed several issues, the core questions which arise for our consideration are as under:

1. Whether in the facts and circumstances of this case, the petitioner is entitled for a direction upon the respondent to supply signals of its channels to its network?
2. Whether the petitioner has furnished all the requisite informations and documents to the respondent as envisaged under the 2004, Regulations ?

Evidence

16. The disputed question of fact, in the opinion of this Tribunal, is limited.

Before, however, we enter into the merit of the matter, it may be noticed that in support of their respective cases, one RamaKrishnam Raju, examined himself as PW-1; whereas the Respondent examined Shri K. Siva Adinarayana, its Senior General Manager, Corporate Services.

Clause 3.2 of the Regulations : Pre conditions of invoking

17. It is now almost well settled by various decisions of this Tribunal that the MSOs/LCOs have a statutory right to obtain supply of signals from the Broadcaster, subject of course to compliance of certain essential Conditions.

18. In Petition No.121(C) of 2009 M/s Digicable Network (India) Pvt. Ltd. vs. M/s Star Den Media Services (P) Ltd., disposed of on 2.2.2011, this Tribunal held as under:

“32. Clause 9.2 indisputably is one of the conditions precedent for invoking Clause 3.2. On a plain reading of the said provision, it would be evident that even for entering into an interconnection agreement for the first time, the Multi System Operator is required to furnish a list of cable operators “who will be getting signals from its network along with their subscriber base”. So far as the proposal of the ‘Distributor of TV channel’ to make available the signals by way of retransmission is concerned, we are of the opinion that SLRs, as laid down in sub-clause 9.1 of the Regulations, are required to be furnished. As at present advised, no case has been made out for reading down the said provision. It has not been stated that for a new comer to the field, it is imposible to comply with the said provision.”

50. It is now a well settled principle of law that a statute, unless there exists any anomaly and/or leads to an 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.”

19. Yet, again in Sky vision vs. MSM Discovery Pvt. Ltd., Petition No.273(C) of 2011 disposed of on 4.8.2011, it has been held that when a MSO had complied with the requirements of the Regulations by not only

supplying a list of cable operators but also the details of the subscribers, the Broadcaster has an obligation to supply signals on the request made by Multi Service Operators in terms of Clause 3.2 of the Regulations, opining:

“Ordinarily having regard to the provisions contained in Clause 3.5 of the Regulations, the broadcaster is to offer supply of signals of its channels to the seekers thereof within a period of 60 days from the date of receipt of such request.

The Regulations, thus, mandate a broadcaster to supply signals subject of course to the MSO of not being a defaulter and its furnishing its subscriber base as envisaged under Clause 9 of the Regulations.”

20. Noticing the definition of ‘Subscriber Base’ and ‘Subscriber Line Report’ as contained in Clauses 2(p) and 2(q) of the Telecommunication (Broadcasting & Cable Services) Inter Connection Regulations, 2004, it was opined:

“The aforementioned provisions, therefore, take care of both the situations namely where the MSO would retransmit the signals of the broadcaster to the local cable operators as also to the subscribers directly. Whereas by reason of the first part, in the absence of the ‘Subscriber Line Report’ the ‘subscriber base’ would have to be negotiated on the basis of evidence provided by both the parties in regard thereto including the subscribers base of similarly placed cable operators or local survey; in terms of the second part the MSOs are required only to furnish a list of cable operators who would be getting signals from its network along with their subscriber base.

The term ‘Subscriber Base’ having been defined, it is difficult to accept the submissions of Mr. Mishra that in terms of the provisions of the said Regulations, the MSOs were bound to disclose their entire Universe. When a Multi Service Operator retransmits signals through the local cable operator, they enter into negotiations for determining the subscriber base. The MSO is statutorily obligated only to disclose the subscriber base as negotiated and not the details of all the subscribers of LCOs.

In this case the petitioner has not only furnished the list of the local cable operators but also their addresses and area of operation as also the details of its direct connectivities. So far as the direct connectivity is concerned, according to the petitioner, it has 1,000 subscribers. Their details including house numbers sectorwise have been disclosed. Each sector of the town of Chandigarh are divided into four subsectors. Even the details of the same have been provided.

It is, therefore, difficult to accept the submission of Mr. Mishra that a verifiable SLR was not furnished by petitioner. The petitioner furthermore has supplied a map showing its area of operation being Chandigarh, Mohali Industrial area, Manimazara and Panchkula. It has also some connections, as it appears, in some of the neighbouring areas in the States of Punjab and Haryana.

But the area of operation of petitioner can very well be found out from the said map.

The area of operation indisputably plays an important role in determining the subscriber base as has been stated by the Regulator in paragraph 11 of the Explanatory Memorandum appended to the Regulation.”

21. In Eswara Communications (S Channel) vs. Maa Television Network Ltd. Petition No.395(C) of 2010 disposed of on 18.7.2011, and Eswara Communication (S Channel) vs. Zee Entertainment Enterprises Ltd. Petition No.397(C) of 2010 disposed of on 14.2.2012, this Tribunal estimated the subscriber base of the Petitioners thereof on which reliance has been placed by Mr.Sharath Sampath, on the basis of the materials available on record including the subscriber base disclosed by them for entering into agreements with other broadcasters.

22. Reliance has also been placed by Mr. Sampath on a decision of this Tribunal in K.R.K Cable Network vs. Channel Plus, Petition No.23(C) of 2010 disposed of on 8.4.2011, wherein it was observed:

“17. However, the petitioner may approach the respondent after obtaining the Postal Registration Certificate at the new address from where it is operating its headend as well as submit a SLR of the cable operators who are having a valid Postal Registration Certificate for obtaining Cable TV Business alongwith other requirements as per Regulations 9.1. The respondent is directed to invite the petitioner for discussion within 15 days of the receipt of the information from the petitioner. We are confident that respondent being a reputed broadcaster in the Southern area would consider the request of the petitioner for grant of signals on reasonable terms and non-discriminatory basis to provide signals in a time bound manner.

Application of the said principles in the present case

23. Having noticed the broad principles of law contained in the aforementioned decisions, this Tribunal is called upon to determine the question as to whether the Petitioner is entitled to any relief prayed for by it.

24. Mr.Rajagopala Rao, learned counsel appearing on behalf of the Respondent would submit that the Petitioner did not make any valid request.

This contention cannot be accepted. From the decisions noticed by us heretobefore, it is evident that the relevant consideration for supply of signal apart from the question as to whether the seeker of signals is a defaulter or not, is its subscriber base.

25. There are several other conditions also which are required to be fulfilled to which we shall refer to a little later.

26. It is true as has been contended by Mr.Rajagopala Rao that the Petitioner did not annexe any document with its letter of request dated 5.8.2011 but admittedly it did so with its e-mail dated 6.8.2011 as also its reminder dated 17.11.2011. We therefore, are of the opinion that these Petitions cannot be dismissed only on the aforementioned ground.

27. Mr.Rajagopala Rao furthermore contends that the agreements and other documents which have been filed by the Petitioner with its rejoinder are got up ones.

28. Yet again we do not agree to the said contention as the said documents have been sent to the Respondent herein in terms of the aforementioned minutes of meeting dated 21.2.2012, whereupon the Respondent itself has placed reliance.

29. The contention of learned counsel, so far as the genuineness of the documents is concerned, although there may be some substance therein, in view of the order proposed to be passed by us, the same will not have any ultimate bearing on the subject matter of this petition.

30. However, we may place on record that the meeting between the parties hereto took place on 21.2.2.2012; the stamp papers were purchased on 22.2.2012 and all the agreements were entered into on 23.2.2012. However, the concerned LCOs have also affirmed affidavits before the notary public at Visakhapatnam and not at Srikakulam or Ankapalle on 22.2.2012 stating that they had a subsisting agreement between the Petitioner and themselves which is not correct.

31. It furthermore appears that PW-1 has also not proved the said documents in accordance with law.

He admittedly was not present when the affidavits were being affirmed or the agreements were executed.

He has not proved the handwritings of the LCOs or the handwritings of his partner.

The fact, however, remains which is not denied or disputed that the Petitioner had supplied those documents to the Respondent.

32. One of the questions which arises for consideration in this petition is as to whether the Respondent having satisfied itself with the veracity and/or contents of the aforementioned documents annexed with its letter dated 30.11.2011 by the Petitioner and having asked for only two other documents in the meeting held on 21.2.2012, is it open to the Respondent herein to ask for various other documents?

33. It is evident from the record that the Petitioner has obtained clarifications with regard to his house number mentioned in the postal registration certificate.

We would assume for the sake of argument that so far as the postal registration certificate of the LCOs of the Petitioner is concerned, the same had been obtained on 16.3.2012 and thus the said LCOs did not have any valid registration certificate at that point of time.

34. But we cannot be oblivious of the fact that had such a question been raised by the Respondent in the said meeting, the Petitioner could have satisfied it that the LCOs to whom Petitioner had proposed to retransmit the signals of the channels of the Respondent have valid registration certificates even at that point of time.

35. We may, however, assume that the contention of the Respondent in this regard is correct.

36. Section 3 of the Cable TV Networks Act, 1995 and the Rules framed thereunder merely postulate that no broadcaster or multi Service operator shall transmit/retransmit signals unless the concerned LCOs have obtained the requisite postal registration certificate.

The Petitioner wanted supply of signals at its own risk. If at the time of making the request some of its proposed LCOs did not have any postal registration certificate, it could not have retransmitted the signals of the channels of the Respondent only to them.

37. But the situation as it prevails now, there does not exist any such restriction and therefore there is no legal bar in directing the Respondent to supply signals to the Petitioner's network as contended by the Respondent or otherwise.

Partnership Registration of the Firm - Issue

38. Mr.Rajagopala Rao submitted that the Petitioner being not a registered partnership firm on the date of making of the request this petition is not maintainable.

We do not agree with the learned counsel on the said question.

39. Section 69 of the Partnership Act merely forbids filing of a suit by an unregistered firm. The requirements contained in the said provision would stand satisfied, if the Plaintiff obtains a registration certificate before filing of the suit.

40. In this case moreover the Petitioner was not required to satisfy the requirements of Section 69 of the Partnership Act as it intends to enforce a legal right contained in Clause 3.2 of the Regulations. Enforcement of such a

right cannot be equated with a right under a contract. Section 69 of the Act prohibits enforcement of a contract by filing a suit without registration but not a statutory right.

Pole Permission Issue

41. However, there is some substance in the contention of Mr.Rajagopala Rao that the Petitioner must produce the permission of the Municipal authorities or the Electrical Undertaking to lay overground or underground cable.

42. Mr. Sarath Sampath submitted that the Municipal Authorities did not respond to a query made by the Petitioner under the RTI Act as to whether there exists any law or statute requiring the MSO/cable operators to obtain a certificate.

43. It may be true that it is for the Municipal Authorities to make the requisite rules and/or bye-laws in this behalf.

However, there cannot be any doubt or dispute that the laying of overhead cable whether by erection of independent poles and/or using the electric or other poles of which either the Municipality or the concerned Electricity Undertakings being owners, the permission therefor, would thus, be necessary.

44. Moreover, laying of such overhead cables must satisfy the provisions contained in Section 10 of the Cable TV Network Act, 1995. If the Petitioner has laid any underground cable, it was required to seek its `right of way' from the Municipality and/or the other concerned authorities.

45. It, without such permission, cannot lay any cable on the land belonging to the Municipality and/or cut the roads unless it obtains a right of way. Such right of way having not been conferred upon the Petitioner in terms of the provisions of any statute and/or the license issued in its favour, it must comply with the said requirement.

46. In *Sree Devi Enterprises vs. Channel Plus*, Petition No.156(C) of 2010, the Tribunal directed:

“It may, further, be asked to disclose the details of infrastructure of the cable rooms running cables and equipments and mode of transmission as also the fact as to whether the petitioner in laying down the cables had obtained the requisite permission of the competent authorities or not.”

47. The said decision has been noticed by this Tribunal in *Sri Hanuman Communications vs. Sun 18 Media Service South Ltd.*, Petition No.376(C) of 2011. Therein also it was directed:

“Such pole permission from the Electricity authorities are required, as has been held by this Tribunal in *Sree Devi Enterprises v. Channel Plus*.

48. Moreover in *Praja Cable Network vs. Sun 18 Media Services South Pvt. Ltd.*, Petition No.488(C) of 2011, it was opined:

“39. It furthermore appears that even the pole permission for laying the overhead cables were sought for on 7.12.2011 and was granted on 08.12.2011. The Municipality also granted its permission to run the said network in the premises in question only on 10.11.2011. Prior thereto the Petitioner even did not have the requisite documents to run the said network.”

Subsequent Events

49. This Tribunal, so far this aspect of the matter is concerned, may while determining a dispute between a broadcaster and a service provider, take into consideration all subsequent events. [See *M/s P.V.R. Entertainment vs.*

Sun 18 Media Services Ltd. South Pvt. Ltd., Petition No.386(C) of 2000 disposed of on 3.6.2011.

50. It may be true as was submitted by Mr. Sampath that nine postal registration certificates of the LCOs of the Petitioner were granted on or about 25.7.2011, but 15 others had obtained their respective certificates only on 16.3.2012.

Conclusion

51. We would, therefore, dispose of this petition by issuing the following directions:

1. The Respondent must inspect the headend of the Petitioner in order to ascertain as to whether the equipments installed therein are compliant of the BIS standards or not within one week from date.

2. It may also verify the subscriber base of the Petitioner vis-à-vis the local cable operators, whether in terms of the agreements relied upon by the Petitioner and filed with its rejoinder or otherwise in terms Clause 9.2 of the Regulations within a period of three weeks from date.

3. In the event the Respondent is satisfied that the Petitioner has complied with all the statutory requirements it would enter into an effective or meaningful negotiation on the subscriber base of the Petitioner within a period of one week thereafter.

4. On arriving at a consensus on the issue of the subscriber base of the Petitioner, an agreement to the said effect may be entered by and between the parties within a week thereafter.

5. Submission of Mr. Sharath Sampath that in the meanwhile this Tribunal may direct the Respondent to enter into a provisional agreement on a subscriber base estimated by it, in our opinion, cannot be accepted.

The Petitioner is yet to obtain the certificate from the municipal authorities and/or the owners of the electricity undertakings.

6. Submission of Mr. Sampath to the effect that pole permission is not necessary is stated to be rejected as this Tribunal in Sree Devi Enterprises vs. Channel Plus, Petition No. 156(C) of 2010 disposed of on 29.9.2010 clearly held that such pole permission would be necessary.

7. Moreover apart from the agreements purported to have been entered into by and between the Petitioner and its LCOs, there is no basis on which, this Tribunal may assess the subscriber base of the Petitioner even on a provisional basis.

52. These petitions are disposed of with the aforementioned directions but without any order as to costs.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

August 14, 2012
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