

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 27th AUGUST 2012

Petition No.327 (C) of 2012

Praja Cable Net ...Petitioner

Vs.

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

BEFORE:

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

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

For Petitioner : Mr. Yoginder Handoo, Advocate

For Respondent : Mr. Nittin Bhatia, Advocate

JUDGEMENT

The Petitioner, a Multi Service Operator within the meaning of the provisions of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004 as amended from time to time (The Regulations), being desirous of obtaining the supply of signals of its channels of the Respondent has approached this Tribunal, *inter-alia* for a direction upon the Respondent herein to enter into a subscription agreement with it on reasonable terms and on a non-discriminatory basis.

2. The basic fact of the matter is not in dispute.

The Petitioner moved this Tribunal for a similar relief marked as Petition No.488 (C) of 2011, which was dismissed by a judgment and order dated 13th March, 2012 inter-alia on the premise that it was required to perform certain obligations for the aforementioned purpose, which having not been complied with, no such direction could be issued.

It was, however observed:-

“We, therefore, are of the opinion that Petitioner has not made out any case for issuance of any direction. However, the Petitioner will be at liberty to apply to the Respondent afresh with all the requisite documents and furnish all the necessary informations as required under the Interconnection Regulations and the Respondent will take action as obligated under the relevant provisions.”

3. Pursuant to or in furtherance of the said liberty granted to this Petitioner, it made a fresh request in terms of the provisions of the said Regulation on or about 17.3.2012.

With the said letter of request, the following documents were enclosed:-

- “1. The postal license dated 12.12.2011*
- 2. The list of affiliate cable operators alongwith their subscriber base and their address.*
- 3. The map of our network.*
- 4. We are currently supplying free to air channels and VISSA, RAJ TELUGU MUSIC pay channels.*
- 5. The copy of the PAN card and the service tax registration.*
- 6. The copy of entertainment tax registration.*
- 7. The copy of pole permission.*
- 8. This is the proprietorship of K. Shobha Rani (PRO) Praja Cable Net and since this is a new network there are no income tax returns for the present network.”*

4. The said letter of request having not been responded to, a reminder was sent on or about 9th April, 2012.

5. The Respondent does not deny or dispute the receipt of the said letters.

By a letter dated 18th April, 2012, it, however, sought for details in respect of certain matters, the principal amongst them being, as under:-

“1. The list of operators provided by you, does not provide the addresses at which the same are located, nor does it specify the exact area of operations nor provides the detailed SLR of their subscribers. Besides, the postal registrations of these operators nor the agreements entered into with you are also not annexed. Hence, you are requested to please provide for the same.

4. Though you have provided an estimation of your control room which deals with the amounts spent by you on equipments, we are however, unaware about the actual equipments installed at your headend and whether the same meet the BIS standards.

5. The Optic Network map provided by you is unreadable and would request you to kindly send us an elaborate and legible map, pin pointing the location of nodes/amplifiers/splitters etc with the distance between the same so as to enable us to verify the said details.

6. Since you have stated that you are already supplying Vissa channels in to your subscribers, we request you to please provide a copy of the agreement entered into between you and Vissa TV for the current year.”

6. Pursuant to or in furtherance of the directions contained in the said letter, the Petitioner on or about 1st May, 2012 supplied the following documents:-

1. *“Affidavits of all linked operators, their list of customers those are receiving signals through our linked operators, agreement with linked operators and postal registration of respective cable operators, who are linked with us.*

2. *Receipt of Entertainment Tax dtd. 24.4.2012 in favour of M/s Praja Cable Net having E.Tin No. 28171732339 showing the payment of entertainment tax and no arrears.*

3. *Pole permission issued by Southern Power Distribution Company of A.P. Ltd. for utilization of poles in Proddatur town and its rural areas and a receipt for payment deposited to the concerned department.*

4. *Details of equipments of our control room/headend containing details of control room*

estimation, studio estimation, office room equipments and staff, office staff, all meet the BIS Standards. The details are duly notarized.

5. *Area map specifically marked the location of nodes/amplifiers/splitters and their distances.*

6. *Invoice dtd.09.2.2012 raised by VISSA Television Network Ltd. and mode of payment by Demand Draft and its proof.*

You have asked the details in six paras as per aforementioned letter, we hereby submitting the para-wise reply alongwith documentary proof or the details has been asked to provide, same has been annexed herewith to pursue our request to supply the signals to our network.

We also would like to request you not to delay our request and you are free to visit our network with prior intimation.”

7. Undisputedly, the Petitioner had substantially complied with the legal requirements for the purpose of obtaining the supply of signals to its network by the Respondent.

In its reply, however, the Respondent contended:-

- (i) The Petitioner's husband is facing a criminal case in respect of a transaction by and between him and one Mr. Maruti Prasad Reddy for accepting the monetary consideration for sale of his network with an undertaking not to be involved in the cable business either directly or through any family member.
- (ii) The Petitioner despite receipt of the Respondent's letter dated 09.4.2012 failed and/or neglected to provide its true and complete details in terms of the Interconnection Regulations with its letter dated 18.4.2012.
- (iii) According to the Respondent, further informations were sought for by a letter dated 24.5.2012, but even prior thereto this petition has been filed.

8. Mr. Handoo, learned counsel appearing on behalf of the Petitioner would contend that the pendency of a private petition cannot by itself be a ground on the part of a broadcaster to refuse to supply the signals of its channels, particularly when the Petitioner has not only furnished the requisite informations / documents as required under the Regulations but also has supplied a list of equipments, the entertainment tax receipts, the details of the payment of service tax and proof of sending the same to the Respondent.

9. Mr. Duggal, learned counsel appearing on behalf of the Respondent, on the other hand, urged that the equipments installed in the headend of the Petitioner do not satisfy the standards laid down under by the Bureau of India Standard, as is provided for under section 9 of the Cable Television Networks (Regulation) Act, 1995.

It was also urged that this petition is pre-mature, keeping in view the fact that the Respondent had sought for various informations but the Petitioner did not comply therewith but filed this petition.

10. The short question which arises for consideration is as to whether in a situation of this nature, the Petitioner is entitled to obtain a direction upon the Respondent directing it to supply the signals of its channels to the Petitioner's network.

11. In this case, the Petitioner a Multi Service Operator although was legally liable only to supply the details of its LCOs, has gone a step forward in filing affidavits of the said LCOs with the details of their respective customers.

12. The Respondent by a letter dated 24.5.2012 sought for confirmation as to whether those LCOs in fact were registered operators in terms of the provisions of the 1995 Act and the 1994 Rules.

Evidently, the same is a condition precedent for supply of signals of the channels.

13. It may be placed on record that the Petitioner had invited the Respondent herein to visit its network and also conduct a joint survey in respect of its subscriber base. Assurances were also given for cooperation in the aforementioned matter.

14. In a case of this nature, it is difficult to appreciate that only because the Petitioner's husband is involved in a criminal case, the stage of which is also not known, it can be deprived of its legal right.

15. Constitutionally speaking, an entrepreneur cannot be deprived of this said legal right only because a purported undertaking had been given by her husband not to carry out similar business.

The effect of such undertaking, however, being pending consideration before a competent court of law, this Tribunal refrains itself from making any observations with regard thereto.

16. Having satisfied ourselves that the Petitioner has substantially complied with all the requirements necessary for supply of decoders to its network, we are of the opinion that interest of justice would be subserved if the following directions are issued:-

- (i) The Respondent may visit the network of the Petitioner for the purpose of inspecting the equipments installed therein. It may further verify as to whether the Petitioner had been re-transmitting signals to the LCOs either of Free to Air channels or of any pay channel.
- (ii) Verification of the subscriber base of the Petitioner as disclosed in various documents appended to the petition and/or otherwise brought on record must be carried out by the Respondent as early as possible ~~as~~ and not later than two weeks from date.
- (iii) If the said legal requirement is complied with, the parties may enter into an effective and meaningful dialogue so as to be able to enter into a subscription agreement on usual terms.

17. This petition is disposed of with the aforementioned directions with costs.

Advocate's fee assessed at Rs.10,000/-.



(S.B. Sinha)
Chairperson

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(P.K.Rastogi)
Member