

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 22nd AUGUST 2012

Petition No.488 (C) of 2012

Conscious Citizen Forum ...Petitioner

Vs.

DEN Network Ltd. & Ors. ...Respondent

BEFORE:

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

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

For Petitioners : Mr. Vinod D. Gangwal, Advocate

For Respondent Nos. 1 to 9 : Mr. Vibhav Srivastava, Advocate

ORDER

The maintainability of this petition is in question.

2. The Petitioner is said to be a group of consumers.

It is registered under the provisions of Bombay Public Trust Act. The first two Respondents are companies incorporated and registered under the Indian Companies Act, 1956. The Respondent Nos. 3 to 9 are Directors and / or Officers of the Respondents No. 1 and 2. The

Collector of the Thane district has been arrayed as Respondent No. 10; whereas the Commissioner of Police, Navi Mumbai has been arrayed as Respondent No.11.

3. The substance of the allegations in the petition is that Petitioners No. 1 and 2, who are Multi Service Operators and thus are required to obtain Postal Registration Certificate in terms of Section 3 of the Cable Television Networks (Regulation) Act, 1995 and Rule 3 of the Cable Television Networks Rules, 1994, had been broadcasting a local channel known as NM TV illegally and unauthorizedly.

4. Respondent in its short reply contended that the Petitioner has for self same reliefs filed a writ petition before the Bombay High Court which was marked as Writ Petition No. 2824 of 2010; wherein by an order dated 8.4.2010, it was directed as under:-

“In this PIL, the Petitioner has alleged that there are certain persons who are unauthorized cable operators. it has been submitted in the petition that he is unable to give names of those persons because there are chances that those persons might harm the Petitioner.

2. In the above-referred circumstances, we have directed the Petitioner to give a list of persons who are unauthorized cable operators to the learned Additional Government Pleader.

3. *The learned advocate appearing for the Petitioner has handed over the list of such persons to the learned Additional Government Pleader who shall hand over the same to Respondent No.8 so that Respondent No.8 can look into the allegations and if the allegations are found to be correct, he shall take action in accordance with law.*

4. *We hope that respondent No.8 shall look into the matter as soon as possible and preferably within three months from today.*

5. *In view of the above direction, petition stands disposed of.”*

5. On the premise that the Commissioner of Police did not comply with the said order, a contempt petition was filed which was marked as Contempt Petition No. 410 of 2010 wherein by an order dated 20.1.2012 the same was disposed of directing:-

“2. Perused the affidavit of Dattatraya Tulshidas Shinde, Deputy Commissioner of Police (Crime Branch), Navi Mumbai. The affidavit sets out the steps taken by the Department after receiving a list of illegal cable operators. Reference is made to a legal opinion sought from the JS (Film and Broadcasting), Ministry of Information and Broadcasting Information of the Union

of India and the communication received from the Ministry. Apart from what is set out upto Paragraph 18 of the affidavit, from paragraph 19 onwards, the various steps taken by the Department have been set out.

3. The grievance of the Petitioner is that a stringent action is not taken. Suffice it to say that the affidavit discloses substantial compliance with the directions of this Court. If the Petitioner has any grievance regarding failure to take action in any individual case, it is for the Petitioner to adopt appropriate proceedings in that behalf.

4. subject to what is observed above, no case is made out to proceed further under the Contempt of Courts Act, 1971. The Contempt Petition is disposed of.”

6. It is not in dispute that the Petitioner has filed a criminal complaint against some of the Respondents herein in the Court of learned Magistrate, First Class, CBD, Belapur, Navi Mumbai purported to be against Mr. Ravi Subiaah, Mrs. Zeba Warsia, who are directors of NMTV; Mr. Mahesh Lal, Mr. Sanjeev Gupta, who are partners of ACE Network; Mr. Jagjit Singh Kohli, Mr. Yogesh Shah, who are Directors of Digi Cable Network Pvt. Ltd.; Mr. Shankar Devrajan, Mr. S.N. Sharma, Mr. Devendra Naik, Mr. Rajesh Brijlal

Kaushal, Mr. Dinesh Singh, who are Directors of Den Network Pvt. Ltd.; Mr. Nagesh Chabaria, who is CEO of IndusInd Media and Communications Ltd.; Mr. Mansukhani, Director of IndusInd Media and Communications Ltd and other unknown accused persons purported to be for commission of offences under section 190 (1) (a) of Criminal Procedure Code and under Section 467, 468,471, 120(B), 506(II), R/w 34 IPC.

From the orders passed by the Hon'ble Bombay High Court, it is evident that the Petitioner could move the Bombay High Court with regard to the events which had taken place subsequently.

7. Mr. Gangwal, learned counsel appearing on behalf of the Petitioner appears to be a Director of A Plus Television Pvt. Ltd.

In his said capacity, he had addressed a letter to the Senior Public Inspector, CBD Belapur, Navi Mumbai stating:-

"We have received a letter from Conscious citizen forum, where they have approached to the Hon'ble High court and court has passed an order to take action against illegal channel and cable operators.

We are a local channel relaying local news since last 4 year, new director Vinod Gangwal has just taken company in last year from Mr. Bhupesh Gupta and Mr.

*Mahesh Lal, Mrs. Suvarna Chaudhari, Mr. Chetan Satta,
Mr. Raju Karnik etc.*

Please clarify on contempt order, temporarily we are switching off our channel for some time till we get clearance from Ministry of Information and Broadcastingor consent from the court. We also request you to not to make us party for the contempt. If need I am ready to become Govt. witness. Any earlier illegal act would be liability of earlier Directors.”

8. The purported illegal acts on the part of the private Respondents herein, are said to be that they had been running an illegal TV channel without obtaining any license from the Ministry of Information and Broadcasting as also purported to be in terms of the Postal Registration Certificates granted in their favour for a period of three years which per se is illegal. It is furthermore the contention of the Petitioner that without obtaining the requisite certificate from the Censor Board under the Cinematograph Act, 1952 the channel could not have been telecasted.

9. The matter relating to the issuance of a certificate by the Postal Authorities is governed by the provisions of 1995 Act and 1994 Rules. Section 2(1) defines a ‘competent officer’ in the following terms:

“2. Definitions : In this Act, unless the context otherwise requires,-

(a) “authorised officer” means, within his local limits of jurisdiction;-

(i) a District Magistrate, or

(ii) a Sub-divisional Magistrate, or

(iii) a Commissioner of Police,

and includes any other officer notified in the Official Gazette, by the Central Government or the State Government, to be an authorised officer for such local limits of jurisdiction as may be determined by that Government.”

We may also notice Sections 11 and 12 of the said Act, which reads as under:-

“11. Power to seize equipment used for operating the cable television network – (1) If any authorised officer has reason to believe that the provisions of section 3,4A, 5, 6 or 8 have been or are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network. (2) No such equipment shall be retained by the authorised officer for a period exceeding ten days from the date of its seizure unless the approval of the District Judge, within the local limits of whose jurisdiction such seizure has been made, has been obtained for such retention.

12. Confiscation :- The equipment seized under sub-section (1) of section 11 shall be liable to confiscation

unless the cable operator from whom the equipment has been seized registers himself as a cable operator under section 4 within a period of thirty days from the date of seizure of the said equipment.”

10. Rule 3 and Rule 6 (6) of the 1994 Rules, references whereto have been made before us, read as under:-

“6. Programme Code. – (1) *No programme should be carried in the cable service which:-*

(f) Contains anything amounting to contempt of court;

Explanation – For the purpose of this clause, the expression “unrestricted public exhibition” shall have the same meaning as assigned to it in the Cinematograph Act, 1952 (37 of 1952);

(6) No cable operator shall carry or include in his cable service any television broadcast or channel, which has not been registered by the Central Government for being viewed within the territory of India.”

11. The question as to whether a local channel which is not telecasted through the medium of satellite will come within the purview of the Rules 6(6) of the aforementioned Rules was the subject matter of some correspondences between the concerned officers. The Deputy Commissioner of Police, Crime Branch, CBD, Belapur by a letter dated 23.7.2010 sought for information thereabout from the

Joint Secretary (Film and Broadcasting) as to whether a local channel will come within the purview thereof.

The channel run by the Respondent being NM TV also finds a reference therein.

12. We may notice the relevant paragraphs of the said letter:-

“The above mentioned channels are running their own news channels. These news channels are not enlisted within the list of registered channels on the website of Ministry of Information and Broadcasting. Sub section 6 of section 6 of Cable Television Network Rules 1994, state as follows:-

“No cable operator shall carry or include in his cable service any television broadcast or channel, which has not been registered by the Central Government for being viewed within the territory of India”

The provisions of Cable Television Network Rules 1994 is apparently not being met with by local Cable news channel. It is further stated that all these 9 local channels are transmitting their news to the huge local cable network in the area. It is therefore required to kindly opine on following points-

(i) Is it mandatory for anybody to register with Ministry of Information and Broadcasting even for transmitting local news channel through their cable network?

(ii) What legal action can be taken against these local news channel if they are not registered with the Ministry of I&B?

(iii) Which are the different controls, Censors for these local channels?

(iv) Which are the authorities to take action in this regard?

(v) What is the difference between television broadcast and channel?

(vi) Whether a channel added by cable operator having huge Networks over big cities like Navi Mumbai is "channel" for the purposes of section 6(6) of Cable Television Network Rules 1994?

It is requested to kindly opine on above issues at the earliest in view of urgency related to Writ Petition pending in High court of Judicature at Bombay."

13. The Ministry of Information and Broadcasting by its letter dated 10.8.2010 as regards the applicability of Rule 6(6) of the Rules stated as under:-

“Point 6: As already mentioned a local cable channel of an MSO/Cable Operator is not the channel for the purposes of Rule 6(6) of the Cable Rules. The channel referred is the TV channel received by cable operator via satellite for which a system of registration/permission has been put in place of per the uplinking/ downlinking policy of the Government.”

14. Mr. Gangwal, however, has raised a question with the Ministry of Information & Broadcasting as regards the right of the local cable operators to run a local channel; whereto the following reply was given by the concerned officer in terms of its letter dated 6.9.2010:-

“Point (1), (2) and (4): Registered Cable Operator in its Cable Network as per section 2(g) of Cable Act, 1995 in its area broadcast the Local Cable News Channel and there is no provision to register such channels. All such channels are bound to follow the various sections of programme and advertisement code and Rules. All such channel registered cable operator relay in its own cable service area.”

15. Prima-facie, therefore Sub Rule 6 of the Rule 6 of 1994 Rules will have no application in the instant case.

Assuming that the concerned Respondents herein have violated the provisions of the 1995 Act or 1994 Rules, the authorized officer alone could have initiated a criminal proceedings against the concerned MSOs.

16. As noticed heretofore, the Petitioner obtained an order in that behalf from the Hon'ble Bombay High Court.

17. It tried its luck also by filing an application under the Contempt of Courts Act.

18. This petition appears to have been filed by the Petitioner being unable to obtain an order from the Bombay High Court. If the Petitioner was aggrieved by the replies as regards the applicability of 1995 Act and the 1994 Rules, they could have filed a separate writ petition.

19. A group of consumers could not have maintained a petition against the licensor.

20. So far as the question of validity of purported Postal Registration Certificate is concerned, the concerned postmaster is not a party to these proceedings.

The Postal Registration Certificate is granted in the name of one Mr. Ravi Subiaah. He has not been arrayed as a party herein although in the criminal contempt, he had been made an accused. Mr. Subiaah has taken the certificate purporting to represent Navi Mumbai Television Pvt. Ltd. The said company has also not been impleaded as a party in this petition.

21. It is the contention of Mr. Gangwal that the Respondents are operating beyond the area of operation as mentioned in the said Registration Certificate. The area of operation of a distributor of TV channels would appear from a copy of the application, wherein the area of operation is required to be mentioned. The certificate contains merely the address.

The person to whom the said certificate has been granted is not a party to these proceedings and in any event the said question otherwise cannot be gone into.

It is not necessary for us to refer to the decision of this Tribunal in Sri Hanuman Communications Vs. Sun 18 Media Service South Pvt. Ltd. being Petition No. 376 (C) of 2011 on which reliance has been placed by Mr. Gangwal.

22. So far as submission of Mr. Gangwal that the provisions of the Cinematograph Act, 1952 has been violated, we are of the firm view that violation of the provisions of the said Parliamentary Act cannot be a subject matter of determination by this Tribunal in terms of Section 14 of the TRAI Act, 1997.

23. A mere perusal of 1995 Act and the 1994 Rules would clearly go to show that any criminal action could have been taken for violation of the said Acts only by the competent officers and not by any other person.

24. For the reasons aforementioned, we are of the opinion that the Petitioner has indulged in forum shopping and this petition is not maintainable.

It is dismissed accordingly with costs quantified at Rs.50,000/-.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

HKC/