

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated 08.2.2012**

**Petition No.400 (c)/2010**

Harika Cable Vision

... Petitioner

Vs.

Ushodaya Enterprises 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.Balaji Srivastava, Advocate.

## J U D G M E N T

S.B. Sinha

Petitioner is a Multi Service Operator. Respondent is a broadcaster. Parties hereto entered into an agreement in respect of the town of Tenali, District Guntur.

The said agreement, we are informed, has been renewed on 3.6.2011.

With a view to expand its area of operation, the Petitioner made a request in terms of Clause 3.2 of the Regulation to the Respondent on or about 9.4.2010.

Alongwith the said letter of request, a map showing the area in which it intended to expand its area of operation had also been annexed. A response thereto was made by the Respondent on 13.4.2010.

Another request was made by the Petitioner on or about 13.4.2010, to which the Respondent on or about 19.2.2010, replied in the following terms: -

"2. That as per the terms & conditions of subscription agreement and TRAI Regulations you are not supposed to transgress the signals outside your network. Please desist

from encroaching the areas of Kolluru Village and Avulavaripalem, Kollur Mandal of Guntur District which are beyond your network area as mentioned in the subscription agreement and avoid causing disturbance in the ground immediately and confirm by return mail else you will be driving us to initiate necessary action against you for deactivating the signals.

3. You are hereby informed that if you do not stop transgression signals of ETV & ETV-2 Telugu channels immediately, we have no other option except to invoke Regulations 4.3 of the Tele Communication (Broadcasting and Cable Services) Interconnection (3<sup>rd</sup> amendment) Regulation (10 of 2006) of TRAI for disconnection of signals of ETV & ETV-2 Channels to your Network by issuing Public Notice."

It is not in dispute that Mr.K.V. Rao, is the proprietor of the Petitioner concern. However, he has executed a General Power of Attorney in favour of Mr.K. Anil Kumar. It is also not in dispute that Mr.K.Anil Kumar runs a proprietary concern known as M/s Harika Cable Network.

The parties met on 16.4.2010.

The minutes of the said meeting read as under :-

"M/s Ushodaya Enterprises Pvt. Ltd. (TV Division) and M/s Harika cable vision has agreed to sign a new subscription agreement based on the following conditions:

M/s Harika Cable Vision agreed to enter a new subscription agreement for areas they are operating a list of SLR in Tenali town under Guntur District for a sub base of 3066 (three thousand sixty six only) with 25 members of Sub operators duly signed by Mr. K. Venkateswara Rao is

submitted to UEPL. The present tariff of Rs.11.12/- per subscriber per month shall be payable for the 2900 subscriber base with effect from activation of signals to their network i.e. 15.12.2009. Any other ETV Network channel provided shall be charged as per the prevailing tariff as declared to TRAI.

M/s Harika Cable Vision shall operate only in the areas as agreed in the enclosed list of SLR. However, it is further stated that if M/s Harika Cable Vision if intends to extend its areas of operation in future, they shall intimate the same to the Broadcaster i.e. M/s Ushodaya Enterprises Private Limited (TV Division) and upon executing a necessary agreement/understanding pay the subscription amounts accordingly.

The prices of the ETV Network channels in future may change as per the guidelines of Telecom Regulatory Authority of India (TRAI) and M/s Harika Cable Vision shall pay accordingly.

M/s Harika Cable Vision accepted to clear the monthly subscription charges on or before 20<sup>th</sup> of every month of the English Calendar year from 1<sup>st</sup> month of the subscription agreement.

In case if M/s Harika Cable Vision fails to pay, the said subscription within the prescribed time limit as stated in this MOM, the signals shall be terminated and no correspondence or papers will be exchanged and M/s UEPL will proceed to recover Dues legally.

M/s Harika Cable Vision agreed that ETV Telugu will be placed in the prime band i.e. between E 5 & E 12 except terrestrial frequency, if any and ETV-2 Telugu will be placed in Colour band i.e. between S7 & S11 No. carriage/placement charges will be paid by M/s Ushodaya Enterprises Pvt. (TV Division) (ETV Network) to M/s Harika Cable Vision during the period of the subscription agreement or in future in case if the agreement is renewed.

M/s Harika Cable Vision shall not shift the channels from the above agreed band and frequency and also will not transgress in to the areas other than those mentioned in the agreement.

Without any written confirmation from M/s Ushodaya Enterprises Private Limited (TV Division), M/s Harika Cable Vision not authorized to telecast ETV-Telugu and ETV 2 signals in other areas except the areas mentioned in Agreement.

M/s Harika Cable Vision does not fulfill the above terms and conditions automatically and with immediate effect the above understanding will lapse."

Petitioner asked for supply of a draft agreement so that it may expand its area of operation.

Mr.K. Anil Kumar both in his capacity as the proprietor of M/s Harika Cable Network and power of attorney holder of M/s Harika Cable Vision wrote a letter to the Respondent on or about 15.5.2010.

This petition has been filed on or about 19.11.2010 on the premise that the Respondent has failed to discharge its statutory obligation to enter into an agreement with regard to proposed areas of operation of the Petitioner, namely, Chebrolu and Guntur Mandal on reasonable terms.

Respondent in its reply inter alia contended :-

- (i) Petitioner despite having been requested to confine its operation within the stipulated area as contained in the agreement, it had transgressed the same.

(ii) Petitioner is a defaulter both in respect of its own network as also that of M/s Harika Cable Network.

By reason of an order dated 31.3.2011, the following issues were framed :-

- (i) Whether the Respondent is obliged in terms of the Telecom Regulatory Authority of India Interconnect Regulations to provide signals to the Petitioner for the proposed new areas?
- (ii) Whether the Petitioner has provided the requisite details to the Respondent for entering into an agreement for the new areas?
- (iii) Whether the petition is maintainable?
- (iv) To what relief, if any, the Petitioner is entitled to?

Petitioner in support of its case has examined Mr.K. Anil Kumar. He has also filed an additional affidavit on or about 18.8.2011.

Respondent in support of its case has examined one Mr.P.V. Ramana to prove a C.D. for the purpose of establishing that on 24.5.2011, 25.5.2011, 27.6.2011 and 11.7.2011, he as an employee of the Respondent having received information that the Petitioner had been retransmitting singles of ETV and ETV-2 in several areas informed thereabout to the Manager.

He received instructions to record the same, which was complied with.

A compact disc in support thereof has been filed before us.

One Mr. Shiv Kumar, Asst. Manager, Legal Department of the Respondent was also examined.

It is not in dispute that the Petitioner during the pendency of this petition has filed :-

- (i) Its Registration certificate
- (ii) Entertainment Tax proceedings
- (iii) A diagram
- (iv) List of subscribers both in respect of Tenali as also Chebrolu and Guntur being 3019 and 289, respectively.

It is accepted that the total amount due from the Petitioner would be about Rs.35000/- as far its network into Tenali is concerned.

It is furthermore accepted that a sum of Rs.34,205.79paise is the monthly subscription fee in respect to the Tenali network.

We may furthermore place on record that on or about 31.3.2011, the Petitioner gave an undertaking before us to pay the outstanding amount, if any, upon reconciliation of accounts.

Thereafter the existing agreement was signed. It may also be placed on record that Mr.Handoo, counsel appearing for the Petitioner stated that even now the Petitioner stands by the said undertaking.

Two questions in view of the rival contentions of the parties arise for our consideration; one of them being as to whether the Petitioner is guilty of commission of acts of piracy.

We have noticed heretobefore that in support of the said plea the Respondent has produced a CD.

It, however, has not been proved as is required under Sections 65A and 65B of the Indian Evidence Act.

Mr.Balaji Srinivasan, leaned counsel appearing on behalf of the Respondent would, however, contend that the Petitioner has admitted its acts of retransmission of signals in the disputed areas in the Minutes of Meeting dated 4.1.2011.

We may notice the same :-

“Minutes of the Meeting held on January, 4, 2001 between the parties in petition no.400 (1) of 2010 at Ramoji Film City, Hyderabad at 1.00 pm.

For Petitioner :

(i) Petitioner : Mr.Anil Kumar

For Respondent :

(i) Manager Mr.Ch.Chowdary Musunuru

(ii) Executive Mr.G. Rajendra Babu

Petitioner represented by Mr.Anil Kumar has conveyed his case to Respondent. Respondent, on verification of petition, states as under :

1) Sought for a clarification with regard to the relief, as per the petition of M/s Harika Cable Vision and/or M/s Harika Cable Network at the first instance.

2) Outstanding of an amount of Rs.2,75,894.85ps (Rupees Two Lakhs Seventy Five Thousand Eight Hundred and Ninety Four and Eighty Five Paise only) is due and payable by M/s Harika Cable Network.

3) On verification it was noticed subscription agreements of M/s Harika Cable Vision as well as M/s Harika Cable Network were expired, as such required to submit a true SLR for entering into a fresh agreement.

4) It was noticed M/s Harika Cable Vision and/or M/s Harika Cable Network is providing signals to villages viz. Manchikalapudi village in Duggiral Mandal, Sivaluru, Siripuram, Pidaparru villages in Kollipara mandal, Kancharlapalem, Nelapadu, Eerukalapudi villages in Tenali Mandal, Bodduluripadu village in Kolluru mandal, Alapadu, Mandur, Ambedkarnagar villages in Tsundur mandal, Pedapudi, Vamanaguntavaripalem villages in Amarthaluru mandal, Buthumalli, Champadu villages in Vemuru mandal and other areas in Tenali town which are beyond the network area as mentioned in the expired agreement hence amounting to transgression.

5) Advised to seize and desists transgression of the signals of ETV & ETV-2 of the aforesaid areas by M/s Harika Cable Vision and M/s Harika Cable Network, which are beyond the areas mentioned in the expired subscription agreement.

6) List of LCO's and their respective postal registrations, if any, for the proposed areas of expansion as per the petition along with necessary documents, no due certificates from their erstwhile MSO who were earlier providing the signals such as :

(i) Respective permission from the statutory authorities like Grama Panchayat, PWD, NHAI, Town planning, Electricity department etc. and registration certificates of Entertainment department, Service tax department and other similar authorities, clear demarcation of the area (proposed) with node points modus operandi of cables, distance from start point to end point, no. of electricity department poles used and no. of personal poles used, transmission of signals.

(ii) In case of river, railway track, bridges, over bridges, tunnels and under process in such proposed area necessary permission of the concerned authorities.

(iii) Subscription agreement of other regional channels agreements for such proposed areas.

(iv) Details of equipments and operators used necessary insurance, certification of BIS, identification of cable etc. on the line/ pole and projection of your business for three years on quarterly basis.

7) Upon concluding points no.1 to 5 mentioned above and receiving the information sought point no.6 along with subscriber base of your LCO's and direct connections of proposed area and IRS & NRS Cable and Satellite Homes, Respondent shall move forward.

Petitioner and Respondent have agreed to meet no sooner Petitioner compliance on the above."

A bare perusal of the said minutes of meeting would clearly go to show that by reason thereof merely the statements of both the parties were recorded. They were to meet on subsequent occasions if the conditions were complied with.

We do not find that any explicit admission has been made by the representative of the Petitioner in the said minutes of meeting dated 4.1.2011.

We may furthermore, place on record that in a connected matter which is also being disposed of today being P.No.347 (C)/2011, by an interim order this Tribunal prohibited the Respondent from transgressing its area of operation.

Mr.Srinivasan, would contend that Mr.Anil Kumar in his cross-examination also has admitted the contents of the said minutes of meeting. The relevant statements made by him are as under :-

"It is correct that I have affixed my signatures in the minutes of the meeting held between the Petitioner and Authorized Representatives of Respondent.

Some of the contents of the minutes of the meeting dated 4.1.2011.

I have protested about the contents of the minutes of the meeting."

From a perusal of the said statements also it is evident that Mr.Anil Kumar has not made any admission.

The only question which survives for our consideration is as to whether the Petitioner is a defaulter.

Petitioner admittedly had been paying the due subscription amounts.

He might not have paid only for the month of January, 2012. He is directed to pay the same.

Sofar as the purported outstanding amount of Rs.2,93,813.83 paise is concerned, apart from the fact that the aforementioned Harika Cable Network is admittedly a separate concern as stated by Mr.Shiv Kumar in para 3 of his affidavit, he is his cross-examination accepted that the Respondent has not filed any statement of accounts.

He furthermore stated :-

"It is incorrect to suggest that the Petitioner has no outstanding towards the Respondent Harika Cable Network has no outstanding towards the Respondent.

Vol- The entire dispute is between Harika Cable Vision and Ushodaya Enterprises (P) Ltd. Harika Cable Network is no way connected to this present litigation.

It is incorrect to suggest that Petitioner does not have any outstanding towards the Respondent.

I have not filed any statement of account with my evidence."

However, the submissions made by Mr.Handoo having been noticed, we have no doubt in our mind that in the event the accounts are

reconciled, M/s Harika Cable Network also would pay the outstanding amount, if any.

This Petition is, therefore, allowed with the following directions :-

- (i) The parties hereto shall enter into an agreement in respect of the cable operators whose names find place in the documents annexed with the evidence of Mr. Anil Kumar being at pages 161, 167, 173 and 179 as also in respect of the direct connectivities, if any, subject however to the condition that the Respondent shall be entitled to make verification thereabout.
- (ii) In the event it is found that the list of cable operators and/or direct subscribers of the Petitioner are on the higher side, the parties may negotiate the terms and conditions of the supply of such signals.
- (iii) The entire process must be completed within a period of 30 days from date.

This petition is allowed with the aforementioned directions with no order as to costs.

**(S.B. Sinha)**  
**Chairperson**

**(P.K. Rastogi)**  
**Member**

**February 8, 2012**  
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