

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 10.2.2012

Petition No.253 (C)/2011

M/s Adarsh Cable Network

... Petitioner

Vs.

Digicable Network India Pvt. Ltd & Anr.

... Respondents

BEFORE:

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

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

For Petitioner : Mr.Vikram Singh, Advocate
Mr.Kamal Kapoor, Advocate
Mr.Bhanu Pant, Advocate.

For Respondent No.1 : Mr.Tushar Singh, Advocate for
Mr.Navin Chawla, Advocate.

J U D G M E N T

S.B. Sinha

Petitioner is a Local Cable Operators (LCO). It, on or about 14.12.2010, got itself registered under Section 3 of Cable TV Network Act, 1995.

Respondent no.1 is a Multi Service Operator (MSO) within the meaning of the provisions of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 as amended from time to time (Regulations).

Respondent no.2 at the material point of time was the distributor of the Respondent no.1.

Petitioner made a request to the Respondent no.1 herein to supply signals of the channels of different broadcasters for which it was authorized in respect of the areas commonly known as Panch Mukhi Hanuman Mandir and Lal Darwaja, in the town of Hyderabad.

An advance of Rs.18,000/- was said to have been received by the Respondent no.1 on or about 1.3.2011 towards subscription fee.

Allegedly the Respondent no.2 under instructions from Mr.T.P. Saxena (RW-1), commenced supply of signals to the Petitioner's network. Petitioner contends that an agreement in writing had also been entered into by and between the parties hereto but no copy thereof was supplied to the Petitioner. While the matter stood at that, the Petitioner received a letter from the Respondent no.1. on or about 22.3.2011 conveying to it that signals cannot be supplied to its network, stating :-

"We wish to inform you that, we are not in a position to provide you with our signal feed, as requested by you, for the areas of "Panch Mukhi Hanuman Temple, Laldarwaza". Since upon verification by our field staff, we have come to know that, there are serious disputes relating to the operational area of your network and there are several objections, complaints from neighbor cable operators and Shah Ali Banda Division Cable Operators Association, alleging that, you have encroached into neighbor cable operator's areas, so in a situation like this, we have no other option but to return you the advance amount paid by you vide receipt dated 1st March, 2011."

The amount of advance received on 1.3.2011 was also returned.

By a letter dated 29.3.2011 the Petitioner responded thereto as under :-

"In reply to your letter dt. 22.3.2011 I am shocked to know that a Unilateral decision of stopping the signal feed to my concern i.e. M/s Aadarsh Cable Networks, Laldarwaza, Hyderabad, Allocated area i.e., Panchmukhi Hanuman Temple, Laldarwaza, Hyderabad is totally unjustified thus caused me a loss nearing of Rs.5,00,000/- (Rs. Five Lakhs only), the allegations that I have encroached the neighbourhood area in the Shah-alibanda division is not true. Therefore, in the circumstances your acts and deliberate, mischief and criminal breach of trust for which purpose for future case of action I impress upon you to give me copy of the agreement entered between me and your company within two days from the date of receipt of this reply, failing which for Redressal and for unethical practice which constitute restrictive trade practice I would be approaching the Government authorities to cancel your authorization for running cable services, a future course will be initiated subject to restoring of service.

You have deliberately disconnected the Feeder signal and because I have not paid high amounts which you demanded because of the World Cup. Now more than 500 subscribers are suffering by such non supply of signal.

Therefore, restore the signals immediately and I am willing to pay the refunded amount immediately.

Respondent No.1, however, by a letter dated 1.4.2011, denied and disputed that any agreement had been entered into, by and between the parties hereto, stating:-

"We are in receipt of your both above referred letters and first of all strongly deny your allegation that, we

have discontinued our signal services to your network from 10.00AM on 25.3.2011, for the reason that, the question of disconnection arises had there been a connection of your network.

Your first communication dt.26.3.2011, apparently addressed to us after receipt of our communication dt.22nd March, 2011 on 24th March, 2011, vide your postal acknowledgement, enclosing along with it, Demand Draft, returning the advance amount paid by you mentioning in it the reasons for such action, without a whisper about the same, clearly disclosed that you have deliberately, mischievously and dishonestly addressed the same as if you are totally unaware of our above said communication with all false allegations of discontinuation of signal services to your network...."

Respondent in its reply stated that the amount of advance was received by the Respondent no.2 and handed over to it after three days, during which time the complaints having been filed by the Cable Operators Association, the decision to connect the signal to feed the Petitioner's network was kept in abeyance.

The Petitioner's proprietor in his cross-examination has also accepted that he was acquainted with the proprietor of the Respondent no.2 for more than three years being the brother of a friend of his and he had approached him first, whereafter only, he took him to the office of Respondent no.1 for discussions.

It furthermore appears that a copy of the Distribution Agreement entered into by and between the Respondents inter se

have been provided to the Petitioner by the proprietor of the Respondent no.2. Why the same was done, and/or what was the necessity therefor has not been explained.

This petition was filed on or about 18.5.2011 praying inter alia for the following reliefs :-

- (a) Direct the Respondent No. 1 to immediately restore the signals of the Petitioner either through itself or through Respondent No. 2;
- (b) Direct the Respondent to supply the copy of the Subscription Agreement entered by the parties;
- (c) Restrain the Respondent from in any manner disconnecting or deactivating or disturbing the signals of the Petitioner;
- (d) pass an ad-interim ex-parte order in terms of prayers made above;

Respondent No.1 in its reply inter alia contended that the Petitioner is guilty of commission of acts of piracy, having obtained unlawful connections from the Respondent no.2.

Respondent No.1 furthermore brought to the notice of this Tribunal that the Petitioner had filed a suit for declaration and mandatory injunction in the court of Junior Civil Judge, City Civil

Court, Hyderabad, wherein it, inter alia, contended that the parties had entered into an oral agreement.

In its rejoinder, the Petitioner, while accepting that it was wrongly advised to file a suit, stated that the same was withdrawn on or about 5.4.2011.

It was moreover, stated that the statement to the effect that an oral agreement has been entered into was a mistaken one.

In view of the rival pleadings of the parties, this Tribunal by an Order dated 11.8.2011 framed the following issues :-

- “(i) Whether the subscription agreement between the Petitioner and the Respondent No.1 is subsisting and if so, the effect thereof?
- (ii) Whether the Respondent No.1 has energized the signals of Petitioner and if so, the effect thereof?
- (iii) To what relief, if any, the Petitioner is entitled to?”

In support of its case the Petitioner examined its proprietor Mr.Sanga Vijay Nath (PW-1), Mr.P. Naresh Jaiswal, the Senior

Technician of the Respondent no.1 (PW-2) and Mr.Govnid Rajulu, Technician of the Respondent no.2 (PW-3).

PW-2 and PW-3 in their affidavits contended that supply of signals to the Petitioner's network was provided under the instructions of Mr.T.P. Saxena (RW-1).

Mr.Vikram Singh, learned counsel appearing on behalf of the Petitioner would contend that the Respondent No.1 was statutorily obliged to supply signals of the broadcasters in regard whereto it is a Multi Service Operator (MSO) and, thus, could not accept the untenable contentions of the Cable Operators Association, inasmuch and save and except on the ground of default, it could not have refused to supply signals of the channels of its broadcasters, and, thus, the impugned action on the part of the Petitioner must be held to be bad in law.

Moreover, any unreasonable term imposed for the purpose effecting supply of signal would amount to refusal to supply signal to the Petitioner's network by the Respondent.

Drawing our attention to various provisions of the Competition Act, 2002, learned counsel would contend that the Petitioner being guilty of abuse of its dominant position, this Tribunal should refer the matter to Competition Commission in terms of Section 21 thereof.

Mr.Singh submitted that in terms of the Distribution Agreement dated 8.11.2008, entered into by and between the Respondents hereto, the Respondent no.2 was an agent of the Respondent no.1 and in that view of the matter there cannot be any doubt or dispute that it could grant supply of signal to the Petitioner's network. In any event, the 'must provide' clause contained in Clause 3.2 of the Regulations being a continuous process, this Tribunal should issue requisite directions to the Respondent no.1 to do so.

Mr.Thushar Singh, learned counsel appearing on behalf of the Respondent No.1, on the other hand, would contend that the Petitioner is guilty of suppression of the following material facts :-

- (a) It filed a suit before the Civil Court

(b) It filed writ petition before the Delhi High Court aggrieved by and dissatisfied with the order of this Tribunal dated 19.5.2011, wherein the Respondent No.2 voluntarily appeared.

It was furthermore urged: -

- (i) Petitioner having contended that the parties hereto had entered into an oral agreement, must be held to have changed its stand in this petition that an agreement in writing had been entered into but a copy thereof had not been supplied to it.
- (ii) Collusion by and between the Petitioner and the Respondent no.2 is evident from several circumstantial evidences including the fact that the affidavits filed by PW-2 and PW-3 with the petition did not bear any date.
- (iii) Before the High Court of Delhi, although, according to the Petitioner, no notice was

served on the Respondent no.1, it voluntarily appeared in the aforementioned writ petition.

At the outset, we may notice that, although, Mr.Vikram Singh took us through various provisions of the Competition Act, 2002 having regard to the width of the jurisdiction of the Tribunal, we are of the opinion, that it is not necessary to refer thereto as no case has been made out for this Tribunal to exercise its jurisdiction under Section 21 thereof.

With a view to appreciate the rival contentions of the parties, we may notice certain undisputed facts.

A sum of Rs.18,000/- was said to have been paid in advance by way of subscription fee for 3 months on or about 1.3.2011. Alongwith the petition itself Mr.Naresh Kumar and Mr.Govind Rajulu affirmed their affidavits, the former contending that he had received instructions from the management of the Digicable to connect the network of the Petitioner and at that time, Mr.Govind Rajulu was present; but the latter stated that upon obtaining instructions from Mr.Naresh Kumar, he had gone to PW-2 to connect the network of the Petitioner with the signals of the Digicable.

Before this Tribunal, the Respondent no.2 has appeared. It had sent its reply by post wherein it was contended: -

"2. That it is also respectfully stated that on the instructions of Mr.T.P. Saxena on 1.3.2011, official of Respondent No.1 , my staff Mr.C. Govind Rajulu along with Mr.P. Naresh Jaiswal, technician of Respondent went to connect the signals of the Petitioner after doing the thorough inspection of Petitioner's network.

3. That so far as prayer (a), made in the Petition, I have no hesitation in giving the signals to the Petitioner if Respondent No.1 permits me to do this in writing in the alternative, if the Hon'ble Tribunal directs me to supply the signals."

Petitioner does not deny or dispute that a suit was filed by it in the Court of Civil Judge, Junior Division City Civil Court, Hyderabad. It is also not in controversy that in various paragraphs of its plaint the Petitioner pleaded oral agreement between the parties hereto.

It is also beyond any doubt or dispute that the Petitioner has not brought on record any document to show that it had made a request in writing furnishing the requisite informations as is required under Clause 3.2 of the Regulations.

One of the questions, which arises for consideration is as to whether the Respondent no.2 in terms of the `Distribution

Agreement' dated 8.11.2008 was entitled to energise the Petitioner's network.

Clauses 3.1, 3.2 and 3.11 of the said agreement, to which our attention has been drawn by Mr. Vikram Singh, read as under :-

"3. Duties and Responsibilities of the Distributor :

The Distributor shall:

3.1 Liaise with Cable TV Operators and help to resolve technical, commercial, and other complaints that may be received from the Cable TV Operators so as to ensure uninterrupted transmission of programs. The Distributor shall execute the standard Franchise Agreement with the Cable TV Operators of his territory for the purpose of availing input feed from the **Company** and the **Company** shall be a confirming party to the agreement.

3.2 Cater the products and services supplied by the **Company** from time to time to existing and new local Cable TV Operators in the area.

3.11 Be responsible for timely collection of Subscription revenue from the Franchisee and feed charges from his sub-operators, if any, by the crossed cheques drawn in favour of the 'DIGICABLE NETWORK (INDIA) PRIVATE LIMITED along with the cash collection. The Distributor shall be responsible for collecting the Subscription revenue in the name of the **company**. Further, the Distributor shall endeavor to implement the increase in the Subscription, as may be decided from time to time by the **Company**. Subscription from direct subscribers should be collected by cheque as far as possible. Cash collection, if any, should be deposited in Bank account of DNIPL maintained

area-wise. Daily collection report of operator/direct subscriber wise will be forwarded to finance department of DNIPL.

Respondent no.2, however, in his reply specifically stated that it would have no objection in supplying signals to the Petitioner's network, if it receives instructions in writing from the Respondent no.1.

PW-2 and PW-3 neither in their affidavits annexed to the petition nor in their depositions before this Tribunal raised any contention, nor PW-1 produced any document to show that at any point of time, such an instruction in writing had been issued.

Respondent no.1 affirmed an additional affidavit contending that the Respondent no.2 was hand in gloves with the Petitioner and on having come to learn about the stand taken by it, the distributorship agreement has been terminated.

As far as the receipt of the amount of advance is concerned, RW-1 in his evidence has stated as under: -

"Q.4: Whether as per agreement Ex. PW-1/D1, Respondent no. 2 is authorized to collect the

subscription amount, enter into the agreement and give the signals to any cable operators?

A: Respondent no. 2 was authorized to collect the subscription amount. Respondent no. 2 was also authorized to give the signals and enter into an agreement with the cable operators after obtaining approval from Respondent no.1.

Vol. Respondent no. 1 used to give in advance to Respondent no. 2, the signed blank receipt book for the purposes of collecting the monthly subscription amount from any cable operator.

Q.5: Whether Petitioner ever approached Respondent no. 1 for signals?

A: Yes."

Mr.Vikram Singh would, however, contend that it is inconceivable that a public limited company like the Respondent No.1 would issue blank signed receipts. It may or may not be so but the same is not of much significance in as much as the refund of the said amount is not denied or disputed.

As far as the receipt dated 1.3.2011 is concerned, the said deponent stated as under :-

"I further state that the Respondent no.2, being our distributor, certain blank signed slips were always lying with it. I state that in the instant case, the Respondent No.2 without our prior consent, and due to friendly relations with the Petitioner, issued a receipt acknowledging receipt of Rs.18,000/0 (Rupees Eighteen Thousand Only) towards advance

subscription amount for the months of March, April and May 2011. I further state that the information regarding the same was passed on to our office by the Respondent No.2 after three days seeking approval for connecting the signal feed, but, since by then, as there were already oral complaints against the Petitioner from the office bearers of the Shah Ali Banda Division Cable-operators Association, the decision to connect the signal feed to the network of the Petitioner was kept in abeyance on the instructions of the Respondent no.1."

We may notice that the interim relief prayed for by the Petitioner was refused. A typographical error, however, had crept in this Tribunal's order dated 19.5.2011 insofar as instead and in place of the word 'connected' the word 'disconnected' was typed.

Petitioner filed a petition before the High Court of Delhi which was marked as WP (C) No.4045/2011. Before us a copy of the order of the Delhi High Court dated 2.6.2011 has been produced, from a perusal whereof it appears that one Mr.J.S. Lamba, Advocate appeared for the Respondent no.2 therein.

The said fact was brought to the notice of this Tribunal and has been in the order dated 26.7.2011, in the following terms :-

"It is stated by Mr.Vikram Singh, learned counsel appearing on behalf of the Petitioner that notice on

Respondent No.2 has been served yesterday. An affidavit of service may be filed within one week. Within the aforementioned period rejoinder must also be filed.

Mr.Navin Chawla, learned counsel appearing on behalf of the Respondent No.1 has brought to our notice observations made by the High Court in WP(C) No.4045/2011 Adarsh Cable Network V. Digicable Network India Pvt. Ltd., from a perusal whereof it appears that the Respondent No.2 had appeared before the High Court. The Petitioner, therefore, may serve a notice upon learned Advocate for Respondent No.2 that it would be required to file reply, if any, within two weeks.

Let the matter appear on 11.8.2011 for framing of issues. The learned counsel for the Petitioner should have drawn our attention to the order of the High Court on 7.7.2011 when the matter was listed for hearing.

Put up the matter on 8.8.2011 under the same heading."

Only thereafter, the Respondent no.2 had sent a reply by post to the Tribunal which was received by it on or about 5.8.2011.

Petitioner had approached this Tribunal after a period of about two months. In the meantime, it indulged in forum shopping by approaching the City Civil Court.

Mr.Singh would contend that the Petitioner was not aware of the remedies available to it. It is difficult to accept the said contention as even in its letter dated 29.3.2011, the Petitioner alleged violation of the provisions of the Competition Act and threatened the Respondent no.1 that it would approach the concerned authority of the Central Government for cancellation of the permission granted in its favour.

In any event the Petitioner cannot be permitted to raise a contention before this Tribunal that despite the fact that the Regulator in 2009 specifically provided that all agreements shall be in writing; on what premise an oral agreement between the parties was entered into.

Mr.Singh would urge that evidence of PW-2 Mr.P.Naresh Jaiswal should be believed.

It is difficult to agree with learned counsel.

At every stage, Mr.Jaiswal had been siding with the Petitioner. He is a wholly unreliable witness.

His evidence, that he received telephonic instructions from RW-1 to grant signals to the Petitioner's network as far back as on 1.3.2011, cannot be believed.

He in his cross-examination, it is relevant to mention, stated as under: -

"Q.: What is the procedure of connecting signals of R-1 to any new operator?

A: After laying optic fiber cable till the network of the new operator, we splice the same and thereafter use a patch card and then connect it to the node already present at the head-end of the new operator.

Q.: Whether the node referred by you above is supplied by R-1?

A: No. Earlier R-1 used to supply but later on it is a general practice that operators purchase node at their own.

There is no specific node required to connect the signals. It can be energized through any node.

The patch card is provided by R-1.

I have not taken any receipt receiving from the Petitioner for the patch card.

Q.: Does R-1 issue material to the operators without any acknowledgment of receipt for the same?

A: No, they do take acknowledgment.

Vol. On the day, the Petitioner's connection was to be energized, Mr. Saxena was not present in the office and on his telephonic instructions, I went ahead and

connected the Petitioner with the equipment lying with me in stock.

Q.: Do you have any authority to take the receiving of the material supplied by R-1 to any new operator?

A: Yes.

Patch card does not possess any model number.

It is incorrect to suggest that every patch card provided by R-1 has its model number.

It is incorrect to suggest that Mr. Saxena never gave me instructions to connect the signals of the Petitioner.

It is incorrect to suggest that I in connivance with Mr. C Govind Rajulu and the Petitioner have made a false case against R-1."

If he was aware of the procedure for grant of connection to a new operator's network, it is difficult to see any reason as to how he without acknowledgement of a vital material/ equipment could go to the Petitioner's network and provide connection. He did not elaborate as to whether he had talked to Mr.Saxena or later did.

The conduct of the said witness throughout and in particular the manner of preparation of his affidavit make him a thoroughly unreliable witness. His statement that after he came to Delhi, he incurred all the expenditure by himself, although, he is a dismissed employee leads to the conclusion that he is not a truthful witness.

According to the said witness, although, he had come to depose at the instance of the Petitioner, he had been bearing his own expenses of food, travel and lodging etc.

With regard to his discharge from services, he made the following statements: -

“I was discharged of my services with R-1 after R-1 disconnected the signals of the Petitioner.

Again said I have no intimation of such discharge.”

Sofar as his affidavit annexed to the petition is concerned, he admitted that he had signed in front of his Advocate Mr.Asim Aggarwal at the distributor’s office. The said Advocate happens to be his cousin. According to him, he signed the affidavit after disconnection of the signals of the Petitioner.

We may also notice that according to RW-1 on the relevant date he was on leave which, of course, was denied and disputed by the RW-2.

Petitioner, therefore, in our opinion has failed to prove that any agreement had been entered into by and between the parties

hereto or pursuant thereto or in furtherance thereof its network started receiving signals from the Respondent No.1

PW-1 in his deposition proceeded on the basis that the alleged supply of signals continued for a period of about 22 days.

Petitioner contends that it received the notice dated 22.3.2011 on or about 23/24.3.2011, whereas in the plaint filed before the Civil Court it was contended that the notice was received on 28.3.2011.

The date of the receipt of notice played a significant role inasmuch as in the event it had not received the said notice dated 22.3.2011, it could not have raised a contention that the network has already been disconnected.

In his cross-examination as far as the receipt of the said letter is concerned, PW-1 stated as under :-

“I received the letter dated 22.03.2011, marked as Ex. Pw-1/5 on around 23/24.3.2011.”

PW-2 Mr.P. Naresh Jaiswal in his cross-examination had gone to the extent of contending, although he was only a technician, that all the agreements with new Operators were signed in his presence. Admittedly he has not signed the agreement as a witness or otherwise.

PW-3, as has been noticed heretobefore, has contradicted the statements of PW-2, although, he was the technician of the Respondent no.2.

He has betrayed his ignorance about the procedure to be followed to energise a new connection contending that he was not a technician but merely a helper.

As regards the question as to who explained to him the contents of the affidavit as he did not know English; his answer was Mr.Rajinder Yadav, his employer.

He furthermore stated that the affidavit was prepared by some Advocate who was a friend of his employer but he was not aware of his name. He even could not say as to when the same was

prepared, or the date or month when the same was prepared. He did not say that he was an illiterate person.

Mr. Vikram Singh, however, would contend that RW -1 had clearly admitted that the procedure to energise a network begins with the agreement followed by connectivity based on its performance only and the payment is accepted only after giving signals on execution of the agreement, which would go to show that an agreement had in fact been entered into.

It is, however, difficult to accept the said contention inasmuch as from the very beginning the stand of the Respondent no.1 was that no agreement had been entered into and the Petitioner had been receiving signals illegally and/or unauthorisedly in collusion with the Respondent no.2.

We have noticed heretofore Clauses 3.1 and 3.2 of the Distribution Agreement dated 8.11.2008. Clause 3.1 clearly demonstrates that, although, the Respondent no.2 was entitled to grant connection, and enter into an agreement, the Respondent no.1 was required to be the confirming party therein.

We have furthermore noticed heretobefore that even the Respondent no.2 in his reply before us categorically stated that he in his capacity as a distributor could supply signals of the channels of the Respondent no.1 to the Petitioner's network subject to the condition that consent in writing to that effect was issued by it.

From whatever angle the matter is considered, it is difficult to accept that any agreement far less an agreement in writing had been entered into by and between the Petitioner and the Respondent no.1.

We, therefore, are of the opinion that the Petitioner has failed to prove its case.

Submission of Mr.Singh is that the right of LCO to receive supply of signals not only emanates from Clause 3.2 of the Regulations but also from Clauses 4.1 and 4.3 thereof.

Learned counsel contends that keeping in view the submissions made in the petition, the Petitioner is at least entitled to a direction on the Respondent to supply signals to its network.

Petitioner intends to make out a case which gives rise to three different situations :-

- (i) A broadcaster/ MSO has not complied with the request of an LCO in respect whereof an enforceable statutory right as contained in Clause 3.2 of Regulation has arisen;
- (ii) The MSO having imposed a term which is unreasonable and discriminatory in nature, the same would amount to refusal to accede to the request of LCO and, thus, this Tribunal is entitled to declare such terms to be illegal and;
- (iii) A valid subscription agreement had been entered into but the MSO has taken recourse to illegal disconnection of supply of signals.

These different situations, in our opinion, cannot be applied to a same set of facts being inconsistent with each other.

Petitioner, it is trite, must fall or succeed on its own case. Grant of relief to a party would depend upon the case. He pleads and proves. The Petition cannot be allowed only on the ground of weakness of defence. (see Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (D) & Ors. 2007 (6) SCC 737 at 742)

A party to the lis can raise alternative pleas but the same should not be destructive of each other.

For the purpose of enforcing its claim the Petitioner strongly relied upon the Respondent no.1's letter dated 22.3.2011.

The said letter has to be read as a whole.

By the said letter, the Respondent no.1 stated that it was not in a position to provide the Petitioner with its signals, as requested by it.

This reinforces the case of the Respondent no.1 that no agreement had been entered into.

Petitioner for the first time in his letter dated 29.3.2011 made out a case of disconnection in the supply of signal and asking the Respondent no.1 to furnish a copy of the agreement.

It will bear repetition to state that in the plaint filed before the learned Senior Civil Judge, the Petitioner made out a case of oral agreement and not an agreement in writing, which, according to PW-2, had been executed by the parties in his presence.

Mr. Singh would urge that the Petitioner is entitled to the relief in equity. We do not think so.

It is now a well-settled principle of law that he who seeks equity must do equity.

Moreover :

- (i) The Petitioner is guilty of suppression of fact.
- (ii) It has resorted to suppression of material fact, namely, filing of a suit before the Civil Judge Junior Division, City Civil Court, Hyderabad, although, according to PW-1 the same had been brought to the notice of his Advocate.
- (iii) He has made inconsistent and contradictory statements with regard to the nature of contract.
- (iv) Petitioner is, thus, also not entitled to any equitable relief.

Mr.Singh submitted that the Civil Court's jurisdiction being barred in terms of the provisions of Section 15 of the TRAI Act, 1997, the statements made in the plaint are not relevant.

We are afraid that such a contention cannot be permitted to be raised as the statements made in any pleadings not only may constitute admission within the meaning of Section 58 of the Indian Evidence Act, but also would be admissible in terms of Section 145 thereof.

The Petitioner is also guilty of obtaining signals in collusion and conspiracy with the Respondent no.2 and PW-2.

It is also not a case where this Tribunal can exercise its jurisdiction under Clause 3.2 of the Regulations. We do not have before us any valid letter of request from the Petitioner addressed to the Respondent no.1 or to Respondent no.2.

We, moreover, do not know as to whether the Petitioner has complied with the provisions of Clause 9 of the Regulations. Other

and further particulars which may be necessary for the purpose of obtaining supply of signals are also not before us.

Keeping in view of the facts and circumstances of the case, we are of the opinion that no case has been made out for grant of any relief to the Petitioner.

This petition is dismissed with costs. Advocate's fee quantified at Rs.25,000/-.

It, however, goes with saying that if a fresh request is made by the Petitioner for supply of signals, the Respondent no.1; would consider the same in terms of Clause 3.2 of the Regulations.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

February 10, 2012
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