

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated : June 18, 2012

1. Petition No.258(C) of 2011

Solan Sat TV ...Petitioner

Vs.

STAR DEN Media Services Pvt. Ltd. & Anr. ...Respondents

2. Petition No.259(C) of 2011

Bridge View Broadband Network Pvt. Ltd. ...Petitioner

Vs.

STAR DEN Media Services Pvt. Ltd. & Ors. ...Respondents

3. Petition No.260(C) of 2011

Solan Communication ...Petitioner

Vs.

M/s MSM Discovery Pvt. Ltd. ...Respondents

BEFORE:

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

For Petitioner : Mr.Vineet Bhagat and Ms. Neha Jain,
Advocates

For Respondent (Star Den) : Mr. J.S. Bhatia, Mr.Manu Shrotriya, Mr.
Samir Srivastva and Mr. Sahil Sethia,
Advocates

For Respondent : Mr. Navin Chawla and Ms. Nidhi
(Fastway Transmission Pvt. Parashar, Advocates
Ltd.)

For Respondent : Mr.Jasmeet Singh, Advocate
(MSM Discovery Pvt. Ltd.)

J U D G M E N T

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

2. The basic fact of the matter, however, would be considered from Petition No.259(C) of 2011.

3. Petitioners are Multi Service Operators operating in the State of Himachal Pradesh.

Inter alia, on the premise that the Respondent No.4 Fastway Transmissions Pvt. Ltd. (hereinafter called and referred to for the sake of brevity as `Fastway') had been retransmitting signals unauthorisedly in the towns of Shimla and Solan in the State of Himachal Pradesh and with regard whereto despite complaints made to the Respondent Nos.1, 2 and 3 namely Star Den Media Services Pvt. Ltd., MSM Discovery Ltd., Zee Turner Ltd. who are content aggregators/broadcasters of different group of channels, had not taken any effective step, these petitions have been filed.

4. The prayers made in one of the petitions read as under:

- (i) Direct the Respondent Nos.1-3 to take immediate actions against the Respondent No.4 to ensure that unauthorized retransmission of its signals in the Authorized Areas is stopped.
- (ii) Direct the Respondent No.4 to not to illegally encroach upon the authorized areas of the Petitioner;
- (iii) Direct the Respondent Nos.1-3 to give credit of the Subscription Amount for the duration during which the piracy of signals continued in the authorized Area of the Petitioner by the Respondent No.4;
- (iv) Award costs of the litigation;
- (v) Pass any other such order as this Tribunal may deem fit and proper in the facts/circumstances of the present case.

5. The broadcasters in their replies, inter alia, contended:

- (a) Respondent No.4 has not committed any act of piracy.
- (b) By reason of these petitions the Petitioner indirectly had sought for down gradation in the amount of subscription fee payable to them which could not be done directly.
- (c) Zee Turner furthermore says that the Petitioner is a defaulter.

6. Fastway in its reply moreover stated:

"4. That without prejudice to the above, it is most respectfully submitted that the answering Respondent has only recently applied and obtained registration with the concerned Authorities for

operating Cable Television Services in the town of Shimla and Solan.

5. That the Petitioner thereafter had started the process of negotiating Subscription Agreements with various Broadcasters, but not to limit itself only to the Respondent No.1 to 3 in the present petition."

7. It is not in dispute that the Respondent No.4 had got itself registered before the concerned authorities in terms of the Cable TV Network Regulation Act, 1995 and Cable TV Network (Regulation) Rules 1994 only on 8.6.2011.

8. The Petitioner in support of its plea that `Fastway` in fact had been unauthorisedly casting cables without entering into any agreement with the concerned broadcasters herein filed some CDs.

9. The Respondents have denied and disputed the contents thereof, terming them to be false and fabricated.

10. The Petitioner raised the plea of acts of piracy on the part of `Fastway` with `Star Den` by way of an e-mail dated 19.4.2011, addressed to one Rajeev (an officer of Star Den).

It reads as under:

"As you are aware from 2nd April, 2011 Fastway is doing piracy in Shimla even after requesting you end number of times on phone since 2nd April & even meet your seniors in your Gurgaon office to help us out, nothing has been done so far by your organization. Now they had started doing piracy in Solan too from 16th April 2011 due to which we are not able to do ground collection in both the cities it is

affecting our business as well its going to suffer your business too. Sir I request you to do the needful.”

A similar e-mail was also sent to Shri Vikas Raj of Zee Turner on the same day.

11. A message was furthermore sent on 20.4.2011 providing the numbers of the boxes allegedly used for the said purpose by 'Fastway' in Shimla being Zee TV: 015009 19496 and Zee Cinema 0150019492.

12. The Petitioner furthermore by a letter dated 26.4.2011 sought to ascertain the stand of the Star Den on it's complaint of piracy against 'Fastway'.

13. A first information report was lodged by Shri Vikas Kapur of MSM Discovery Ltd. against one Mohit Goel, the relevant portions whereof read as under:

“1. That I am the authorized representative of M/s MSM Discovery Pvt. Ltd. and duly authorized by the company to file a complaint /FIR on behalf of the company. Copy of the power of Attorney is annexed herewith as annexure A-1.

2. That it came in the notice of the company recently that one Sh. Mohit Goel prop of One Communication, running his cable business from Set No.3 Second Floor, Gurish Building Daisy Bank Estate, Lower Jakhoo, Shimla who is even not the Distributor of the company is showing the paid Channels of the Company illegally from his cable network which is totally against the Cable Television Network Regulation Act 1995 and Copy Right Act 1957, and is also doing theft of lacs of Rupees from the company.

The copies of Section 2, 63, 63-A of Copy Right Acts 1957 and Section 16 and 17 of Cable Television Network Programme Act, 1995 are annexed herewith as Annexure A-2 and A-3.

3. That M/s MSM Discovery Pvt. Ltd. has only given the distributorship in the City of Shimla to M/s New Satellite Net Work and Bridge View Broad Band Pvt. Ltd. to show the paid channels of the company from their cable network for which company is receiving nearly Rs.8,000,00/- per month from these two distributor, whereas Sh. Mohit Goel is illegally showing all the paid Channels of M/s MSM Discovery Pvt. Ltd. and collecting lacks of Rs. from general Public of Shimla City and not paying the single penny to the company which is totally against the law.

4. That it is further requested that in order to safe guard the monetry losses of the Company and the Government, the Cable Network of Sh. Mohit Goel along with the Decoders of the Company may kindly be seized with immediate effect to avoid the further day to day theft done by Sh Mohit Goel. Moreover, Shri Mohit Goel may also be restrained to run the pay channels of the company from his cable through optical fiber signals coming from outside the state of H.P. It is, therefore, most respectfully prayed that Complaint under Copy Right Act 1957. Cable Network Act 1995, and u/s 379 of IPC may kindly be lodged against Sh. Mohit Goel and any other person who is involved with Mohit Goel in this scam. Any other action which deem fit and proper may also be taken in the interest of justice and fair play."

14. The Petitioner has also filed an additional affidavit, wherewith it annexed three letters dated 30.5.2011 addressed to the three broadcasters asking them to send to it the finger print timing of the respective channels for the complete network.

15. Star Den India by an e-mail of the said date, however, refused to divulge the same on the premise that the same was strictly confidential and could easily be used to mask the fingerprinting. The Petitioner, however, contended as would appear from its e-mail sent at 6.42 p.m. that the same had been asked for only with a view to help the broadcaster from stopping the piracy but "it seemed you are masking the piracy which Fastway is doing in Shimla".

16. The Petitioner by another e-mail dated 30.5.2011 stated as under:

"We also understand that your stakes are higher with fastway as they pay you around 2.75 crore per month whereas we pay 17 lakhs per month.

Where as Punjab got tam cities whereas in himachal Pradesh is not in tam list. So your favoring to fastway we understand."

17. Another MSO operating in the State of Himachal Pradesh viz New Satellite Communications by an e-mail dated 29.3.2011 also brought the subject of alleged piracy of the channels of the Star Den to the notice of Shri Rajeev of Star Den in the following terms:

"This has reference to the discussion with you on dated 27.03.2011 regarding boxes of STAR TV running in the Free to Air network of Mr. Mohit Goel, as per our discussion you said these boxes were not issued by you and as per your direction given by you, we have sent you the fingerprinting (NO. of fingerprinting STAR PLUS – 000C3EC8, STAR ONE – 000CB2BC, NGC-000AAF52) of the boxes to you but

nothing has happened yet. This is also to inform you that the said network is spoiling the market by reducing the rates and our customers are being influenced by the party at the lower rates. Kindly do the needful very urgently.”

Several other letters were also issued in this behalf by the Petitioner.

18. The Petitioner in support of its case has filed affidavits affirmed by several persons to contend that piracy of `Star TV channels' and `Zee TV channels' had been continuing in Shimla.

The said affidavits have been affirmed by

- (a) Shri S.N. Khanna of M/s New Satellite Network;
- (b) Mr. Kalyan Pinta, a resident of Himachal Pradesh.

19. The Petitioner, as noticed heretobefore, has also filed several CDs. It has also brought on record a brochure issued by one Rajan Verma to show that 92 channels @ Rs.100/- per month was available to the customers including the channels of Sony, Star, Zee, Discovery, Sports, News, Music, Movies, Colors.

The Respondent on the other hand denied and disputed that `Fastway' had committed any acts of piracy.

20. In view of the rival pleadings of the parties, the following issues were framed:

- i) "Whether in the facts and circumstances of this case and having regard to the prayers made in the petition, this petition is maintainable?
- ii) Whether respondent Fastway has indulged in acts of piracy of signals of the broadcasters in the areas of Simla and Solan and if so, whether the broadcasters have taken steps against it to stop piracy of signals of their channels?
- iii) Whether the petitioner, by reason of alleged acts of piracy on the part of Fastway, has suffered any loss?
- iv) To what relief, if any, the petitioner is entitled to?"

21. Petitioner in support of its case has examined Shri Gagan Bashambo.

The Respondent Media Pro Enterprises has examined one Shri Rajeev Kumar; whereas Fastway has examined one Hans Raj Sharma. No oral evidence has been adduced by MSM Discovery or independently by Star Den or Zee Turner.

22. The Petitioner in its cross examination did not confront the witness of the 'Fastway' with the said CDs but Rajeev of Media Pro has extensively been confronted therewith.

We would refer to the said CDs at an appropriate stage.

23. Mr. Vineet Bhagat, learned counsel appearing on behalf of the Petitioners would contend:

- (a) `Fastway' although started its acts of piracy in April, 2011, it obtained the license under 1995 Act only in June, 2011 and thus, it must be held to have committed the acts of piracy.
- (b) Till 2012, `Fastway' did not enter into any agreement with the broadcaster;
- (c) From the conduct of the parties it would be evident that all broadcasters are siding with `Fastway,' in so far as, no action had been taken on tuning the TVs and also taking fingerprinting which were necessary to establish acts of piracy on the part of the `Fastway'.
- (d) The CDs prepared on different dates will clearly show that `Fastway' had been committing the acts of piracy.
- (e) From the cross-examination of the witnesses of the Respondent Nos.1 to 3 themselves it would appear that the `Fastway' had been taking over the business of other MSOs and have been creating new companies or changing the names thereof.
- (f) From various materials brought on record it has been proved that the Respondent had commenced retransmission of signals in the town of Shimla and Solan and then captured 65% of the market.

- (g) This Tribunal having regard to the provisions of 1997 Act and Cable TV Network Regulation Act, 1995 has the requisite jurisdiction to issue necessary directions either to the TRAI or to other competent officers to make necessary enquiries so far as the monopoly established by Fastway in the market is concerned.

24. Mr. Tejveer Singh Bhatia, learned counsel appearing on behalf of MediaPro Enterprises, on the other hand, urged:

- (a) Petitioner having been permitted to file a First Information Report, there was no reason, why it did not do so keeping in view the fact that the provisions of the Copyright Act, 1952 do not in any way inhibit a third party from filing a criminal complaint.
- (b) The fact that a First Information Report was lodged against a cable operator and not against the Respondent No.4 itself shows prima facie that no case of piracy has been made out against the latter.
- (c) The contentions of the Petitioner that the Respondent has not supplied to it with the requisite papers to enable it to prosecute Fastway is incorrect as there is nothing on record to show that it had made any attempt to lodge a First Information Report.

- (d) Zee Turner Ltd. issued a letter to `Fastway' asking it to stop supply of signals.
- (e) It may be true that Fastway is the dominant player in Punjab but Petitioner is also the dominant player in Himachal Pradesh.
- (f) Petitioner has failed to prove any loss or damage suffered by it having not filed any document and/or provide any data in this regard.
- (g) It may be true that `Fastway' in its application for obtaining postal registration certificate had stated that it had been supplying signals of various channels of Star Group of channels and Zee Group of Channels as also MSM Group of channels but the same must have been done keeping in view its future prospects.
- (h) So far as the CDs produced by the Petitioners are concerned, the persons who recorded the same and/or the concerned photographers having not been examined; they are inadmissible in evidence particularly in view of the fact that the requirements of Section 65B of the Indian Evidence Act have not been complied with.

- (i) The Evidence of RW-1 in respect of the CDs should be read, if at all, having regard to the question of their inadmissibility in evidence.
- (j) There is absolutely no reason as to why the witness of Fastway had not been confronted with CDs and, thus, no reliance can be placed thereupon.
- (k) From the evidence of RW-1 it would be evident that the CDs were not continuous ones and the recordings have been tampered with.
- (l) The electronic evidence adduced by the Petitioner being a secondary evidence and not a primary one is not admissible. If the CDs which are produced are to be relied upon on their own, from the CDs produced by the Respondent also, it would appear that in fact the Petitioner itself had been committing acts of piracy.

25. Mr. Jasmeet Singh, learned counsel appearing on behalf of MSM Discovery, submitted:

- (i) No specific allegations having been made against his client this petition is not maintainable.
- (ii) In any event the Petitioner having been given an authority to lodge a First Information Report and the same having been lodged in respect of commission of acts of piracy on

the part of accused named therein for Shimla only, the allegations made in the petition that Respondent No.4 had been committing acts of piracy at Solan also should not be believed.

(iii) From the E-mail dated 3.5.2011 sent by one Narinder Kashyap, it would appear that no document had been asked for by the Petitioner so as to enable him to lodge a First Information Report.

(iv) From the reply filed by the Respondent in Petition No.260(C) of 2011, it would appear that the parties have entered into an agreement for the areas of Solan on or about 6.6.2011.

26. Ms. Nidhi Prashar, learned counsel appearing on behalf of Respondent No.4 submitted:

(a) Having regard to the provisions of Section 37 of the Copy Right Act, the Petitioner being not an aggrieved party, it is not entitled to maintain this petition.

Reliance in this behalf has been placed on Northern Plastics Ltd. vs. Hindustan Photo Films Mfg. Co. Ltd. & Ors. 1997(4) SCC page 452 and Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed & Ors. (1976) 1 SCC 671.

- (b) In view of the fact of that the Respondent No.4 had entered into agreements with the broadcasters, this petition has become infructuous.
- (c) The pamphlet filed by the Petitioner, which is at page 32 of the paper book does not show as to whether the same relates to Shimla or Solan and thus no reliance can be placed thereupon.
- (d) Nothing having been brought on record to show as to how the Respondent No.4 is connected with the pamphlet of Shri Mohit Goel, this petition should be dismissed.
- (e) From the suggestions given to the witness of the Respondent by the counsel for the Petitioner being Question No.26 at page 43L of the Evidence Folder of Petition No.258(C) of 2011, it would be evident that it has been suggested therein that Shri Mohit Goel was owner of New Satellite and in that view of the matter it defies any logic as to how the first information report could be filed by New Satellite against itself.

27. Mr. Srivastava appearing on behalf of Star TV would contend that this petition is not maintainable having regard to the provisions contained in Sections 39 and 41 of the Specific Relief Act, 1963.

These petitions pose complex questions.

28. The Petitioners have commercial relationship only with the broadcasters i.e. Respondent Nos.1, 2 and 3. It has no contractual relationship with `Fastway`.

If that be so could it maintain this petition?

In our opinion, it could.

29. In Northern Plastics Ltd. (supra) whereupon Ms. Nidhi Prashar has placed reliance, the Supreme Court of India while considering the provisions of the Customs Act, 1962 opined that an appeal can be maintained only by a person who was a person aggrieved and not by a third party.

30. There cannot be any doubt or dispute that the term `aggrieved person` has a definite connotation. It, however, does not mean that the person aggrieved for the purpose of preferring an appeal must be the one who was a party in the original proceedings.

31. The words `person aggrieved`, in various decisions, have been held to mean a person aggrieved by the order.

In the Northern Plastics (supra) itself reference has been made to a judgment of the Supreme Court in *Adi Pherozshah Gandhi v. H.M. Seervai*, 1970(2) 484, wherein it was held:

"Innumerable statutes both in England and in India give the right of appeal to "a person aggrieved" by an order made and the provisions of such statutes have to be construed in each case to find out

whether the person preferring an appeal falls within that expression. As was observed in *Robinson v. Currey* the words "person aggrieved" are ordinary English words which are to have the ordinary meaning put upon them'. According to Halsbury's Laws of England (Third Edition, Vol. 5) page 29 footnote 'h':

".....the expression is nowhere defined and must be construed by reference to the context of the enactment in which it appears and all the circumstances.'

Attempts have however from time to time been made to define the expression in various cases. In *Sidebotham, Re, ex p Sidebotham* (Ch D at p 465) it was observed by James, L.J. :

"But the words 'Person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something."

32. In *Jasbhai Motibhai Desai* (supra), the Supreme Court explained the term of 'aggrieved person' in the context of a prayer for issuance of a Writ of Certiorari, opining:

"13. This takes us to the further question: Who is an "aggrieved person" and what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad, tentative manner. Its scope and meaning depends on diverse, variable factors

such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or 'standing' to invoke certiorari jurisdiction."

33. In that case, however, keeping in view the provisions of the Bombay Cinemas Regulations Act, 1953 it was held that the Appellant therein had no locus standi to file an objection and thus, he could not have maintained the appeal.

34. The situation in this case, however, to us appears to be different. The Petitioner has entered into valid agreements with three prominent broadcasters in terms whereof it obtained a right to retransmit signals of their channels.

35. It is true that the said right was a non-exclusive one. The Respondent Nos.1 to 3 in terms of Clause 3.2 of the Regulations or otherwise could have granted similar right(s) to other MSOs to retransmit signals of their channels, but therefore, agreements in writing were required to be entered into as envisaged under Clause 4A of the Regulations.

36. It is, however, evident from the materials brought on record by the parties that no such agreement had been entered into by and between the Broadcasters and the Respondent No.4 at the material times. It appears somewhat strange that the broadcasters were not interested in stopping the piracy.

37. They have raised various technical grounds together with the Respondent No.4 so as to defeat the cause of the Petitioner.

If the broadcasters, as has been contended by Mr. Srivastava, have the sole locus to maintain an action in respect of acts of piracy and not the Multi Service Operator, would that mean that they can be choosy in taking that objection only with regard to a section of operators and not at the instance of others from whom it earns a huge revenue? In law such a position cannot be envisioned. It's action must be fair and non-discriminatory.

38. The market force in respect of the cable services will have its own role to play. The Local Cable Operators and the Subscribers would evidently desire to have commercial relationship with such MSOs who charge lower subscription fees than the others.

39. When a Multi Service Operator does not have to pay the subscription fees to the broadcasters, it would invariably be in a position to retransmit the signals to other LCO's at a lower cost.

Normally, such a course of action would be necessary with regard to the business activities of a lawful service provider.

40. It was, therefore, expected that the broadcasters would have dealt with the question of piracy alleged to have been committed by the Respondent No.4 with all seriousness that deserved.

41. There are a large number of instances where a broadcaster has disputed the right of even small LCO's to supply signals of their channels in terms of Clause 3.2 of the Regulations on the ground that it had been committing acts of piracy.

42. The TRAI in its Explanatory Memorandum also said so in the following terms:

"14. In this context it must be recognized that certain basic criteria must be fulfilled before a service provider can invoke this clause. Thus the service provider should be one who does not have any past dues. Similarly provisions for protection against piracy must be provided. However, the content provider must establish clearly that there are reasonable basis for the denial of TV channel signals on the grounds of piracy."

43. The field of `Broadcasting and Cable Services' is governed by a regulatory regime.

Broadcasters are bound to provide for a level playing field to all the MSOs in terms of the decision of the Apex Court in Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd., reported in (2007) 8 SCC page 1.

44. Broadcasters even in terms of the subscription agreements have an implied duty to perform. It was, thus, bound to see that MSOs are given due protection, wherever necessary.

They were also expected not only to comply with the terms of the Regulations framed by the Telecom Regulatory Authority of India but to see that they are not violated.

Blatant acts of piracy disturbs the market. It causes an imbalance.

45. The broadcasters, thus, cannot show any favouritism to a big player who is yet to enter into the field legally.

The Postal Authorities, are also obliged to make enquiries, if it comes to their notice that some MSOs have been retransmitting signals of a large number of channels without any authority as envisaged under Section 3 of the 1995 Act and Rule 3 of the 1994 Rules, keeping in view the fact that the same is a punishable offence.

46. What would be the effect of provisions of the Copy Right Act, 1952 may now be considered.

Whereas Mr. Bhatia and Mr. Srivastva appearing on behalf of Media Pro would contend that that the Petitioner itself could have lodged the first information report as regard violation of the Copyright Act as noticed heretobefore, Ms. Nidhi Prashar, appearing on behalf of Respondent No.4, however, urged that it had no locus standi to do so.

47. A distinction is sought to be made with regard to the offences under the said Act vis-à-vis the special right as envisaged under Sections 57 and 60 of the said Act.

48. Our attention has been drawn by Ms. Nidhi Prashar to Section 37 thereof. It provides for the broadcasting reproduction right. The Broadcasting Organization has special rights in relation thereto. What would amount to infringement of the said right has been specified in subsection 3 thereof.

49. Section 63 however, provides for an offence for infringement of a copy right or other rights. It was however, contended that in terms of Section 61 of the Act, the owner of a copyright must be made a defendant in which event, he shall have the right to dispute the claim of the exclusive licensee.

50. According to Mr. Srivastava, unlike provisions of various other Special Acts as for example Negotiable Instruments Act, no provision exists in the Copyright that the complaint petition can be filed only by the owner of copyright.

We may for this purpose assume to be so.

51. But there cannot be any doubt or dispute that an owner of a copyright who has been granted a special right in terms of the provisions of the Act ought to have taken all steps in this behalf, particularly, when the same was requested for. At least it should have

made enquiries to satisfy themselves. It is amazing that all the broadcasters stood by and acquiesced in the illegal acts of `Fastway`

52. The least they could have done was to investigate or cause an investigation to be made. In view of the repeated requests of the Petitioner and other it could not have ignored the same.

53. The Respondent No.4 appears to be occupying a dominant position in the State of Punjab. It had been making attempts to enter into the market of Himachal Pradesh. It is entitled to do so, but in a legal manner.

54. Admittedly it had rented the Railtailcable upto Shimla. In the first information report lodged against Mr. Mohit Goel allegations were made that `optical fibre signals carrying (sic from) outside the State of Himachal Pradesh`.

55. Indisputably it has captured 65% of the market in the towns Shimla and Solan.

It has taken over many networks. It has entered into partnership with Mohit Goel against whom the First Information Report was lodged.

56. MSM at least should have enquired as to when the relationship between `Mohit` and `Fastway` commenced.

57. This Tribunal cannot also ignore the materials brought on record that `Fastway` started strategic relationship with several networks including Rajan Verma.

We may, therefore, rely upon the `brochure` published by him. It is argued that it is not proved as to whether the same related to Shimla or Solan. As would appear from the deposition of Mr. Hansraj Sharma, Mr. Rajan Verma was partner of Fastway in respect of its operation at Solan. Similarly, Mr. Mohit Goel is a partner of `Fastway` at Shimla. The fact remains that Rajan Verma has a business relationship with `Fastway`.

58. We will deal with this aspect of the matter in some details a little later.

Various technical objections, as noticed heretobefore, have been taken by the broadcasters, the reasons wherefor are not very far to seek.

59. Mr. Srivastava would also urge that no relief can be granted in favour of the Petitioner having regard to the clear bar in relation thereto contained in Sections 39 and 41 of the Specific Relief Act, 1963.

Sections 39 and 41 of the Specific Relief Act read thus:

“39. Mandatory injunctions.-When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is

capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.”

“41. Injunction when refused.-An injunction cannot be granted-

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

60. We do not see that any bar has been created to the effect that a party to the contract cannot be directed to comply with its contractual obligations read with a statute.

61. If in terms of Clause 3.2 of the Regulations, the broadcasters have derived a right to refuse to agree to supply the signals of its channels in certain situations, it is expected that while it had entered into any agreement with a MSO, it would protect the franchisee’s interest and consequently its own.

62. It is not a case where in the event a direction is issued, the same would amount to monitoring the implementation thereof by the Court.

63. It is difficult to appreciate as to why the broadcasters in this case are reluctant to invoke their statutory right which otherwise

is always resorted to. In many cases before us, the broadcasters had even refused to enter into an agreement with a party who has committed the acts of piracy.

64. In this case the collusion by and between the broadcasters and the Respondent No.4 is evident. It became apparent at all the stages of the trial.

We may with the aforementioned backdrop notice the materials brought on record.

65. Fastway examined one Mr. Hansraj Sharma; whereas on behalf of MediaPro, one Mr. Rajeev Kumar has been examined.

The following excerpts from the deposition of Mr. Hansraj Sharma may be noticed at the first instance:

"We are working together in Solan. Mr. Rajan Verma is partner of Fastway Communications in Solan. I do not know what Mr. Rajan Verma used to do before becoming Partner with Fastway Communications. I cannot tell when he became Partner with Fastway.

Ms. Poonam Verma is probably his wife. I am not sure.

I know Mr. Mohit Goel. He is also our associate partner in Shimla.

I do not know if Mr. Rajan Verma used to run a network in the name of Maharaj ji Cable at Solan which was in the name of his wife Ms.Poonam Verma before becoming partner with Fastway.

The name of the partnership firm where Mr. Rajan Verma is our partner is Fastway Transmission Pvt. Ltd."

I know Mr. Mohit Goel. He is our partner in Fastway Transmission Pvt. Ltd.

Q20: Out of the three MSOs that you named above for Shimla which were operating before Fastway came to Shimla, which operator was operating from this address?

A: I do not know.

Q21: I put it to you that before Fastway, Mohit Goel was operating as MSO in the name of One Communication from the above address at Shimla?

A: I do not know.

We have applied for Postal Registration for Shimla in May or June 2011.

We have an existing agreement with MSMD for Shimla.

I will have to check with the company regarding the date of this agreement.

It is correct that decoder boxes are delivered after execution of the agreement.

Q22: If you are in Operations, I believe that you will receive the decoder boxes?

A: Anyone from our company can receive those decoder boxes.

Q23: Since you have informed that you are heading the Operations for Shimla and Solan, you would know the date on which the decoder boxes were received. Please inform us the date on which the decoder boxes were received in your office at Shimla?

A: I will have to check the company policies whether I can disclose this information or not.

We have released the feed of pay channels in Shimla after execution of the agreement."

"We charge Rs. 130/- - Rs. 150/- from our subscribers in Shimla.

We have not entered into subscription agreement with Star, Zee and Media Pro for Shimla.

In Shimla our local channels are `Him Darshan` and `Himachal Hits`.

It is incorrect to suggest that we are showing Hindi Hits, Punjabi Hits, HW Movies and Fastway News through our headend in Shimla.

I have not noticed whether India Talkies is being transmitted through our headend at Shimla.

I am not (aware) whether India Talkies is a cable channel or whether it is broadcasted or transmitted through satellite.

Q25: Whether you have any other JV or partnership in Shimla except Mr. Mohit Goel?

A: I will have to check the company policies whether I can disclose this information or not.

Q26: What percentage of market do you control in Shimla?

A: Right now 65 %.

Q27: I put it to you that majority of the subscribers that you have joined in Shimla were receiving signals from Bridgeview Broadband Networks Pvt. Ltd. (city channel)?

A: It is incorrect."

"Q31: Are you aware of the company by the name of Fastway One Communication Pvt. Ltd.?

A: No.

In Shimla, I have personally applied for the Postal Registration for Fastway Transmission Pvt. Ltd.

Q32: Have you mentioned Star Channels and Zee channels in the list provided by you while applying for postal registration in Shimla?

A: Yes. But, keeping in view future prospects.

I do not know as to how many local channels does Bridgeview Broadband transmits/shows in Shimla.

Q33: Whether the number of pay channels that you show in Shimla and Solan is same? If not, what is the difference.

A: We show around 90 channels and there could be a difference of 1-2 channels in Shimla and Solan.

Q34: How come with the same content you have been able to capture 65 % market in Shimla and only 5 -10 % in Solan?

A: We have recently taken over New Satellite Cable Network and for this reason our share is 65 % in Shimla.

Q35: Does that mean that Fastway have two headends operational in Shimla at present?

A: I will have to check the company policies whether I can disclose this information or not.

It is incorrect to suggest that I am deposing falsely.”

66. This witness is thoroughly unreliable. He has avoided to answer a large number of questions on the plea that he had to take instructions from the company as to whether he can disclose the information. He has taken recourse to suppressio veri and suggestio falsi. An adverse inference must be drawn against him and consequently the Respondent No.4.

67. A witness examined before a court on oath must state the truth. No person can suppress the truth. [See Maria Margarida Sequeria Fernades & Ors. vs. Erasmo Jack De Sequeria (Dead)

Through L.Rs. 2012(3) SCALE 550] He for any reason, except just exceptions, cannot withhold any information from the Court.

68. Keeping in view the nature of the controversy involved in these matters, the witness examined by Respondent No.4 in support of the defence raised in this behalf could not have refused to answer the questions only on the ground that he has to check the company policies. Either he knows thereabout or he did not. It was obligatory on the part of the Respondent No.4 to examine a witness who was competent therefor. It could not have examined a person who either did not know the fact or was tutored not to disclose the same. A tutored witness, it is a trite law, cannot be relied upon.

69. Piracy on the part of the Respondent No.4 was brought to the notice of the Respondents No.1, 2 and 3 in April, 2011.

At that point of time admittedly it did not get itself registered with the postal authorities, as is required under Cable TV Network Regulation Act, 1995 and the Rules framed thereunder. Indisputably in terms of the proviso to Section 3 of the 1995 Act and Rule 3 of 1994 Rules, it was obligatory on the part of the 'distributor of a TV Channel' to obtain the requisite certificate from the concerned post office; in absence whereof it is not permitted to carry on its business in cable services.

Admittedly the Respondent No.4 obtained the postal registration certificate only on or about 8.6.2011.

70. In terms of the said Rules the application for registration is required to be filed in the prescribed form, namely, Form No.1, paragraph 7 whereof reads thus:

“7. Number of channels being provided/proposed to be provided (with names).....”

71. Respondent No.4 in its application, inter alia, stated that it had been transmitting the signals of the following channels:

1. DD National
2. DD News
3. DD Shimla
4. DD Jagran
5. Star Plus
6. Star Movie
7. Star World
8. Star News
9. History
10. Star Utsav
11. NGC
12. Star One
13. NDTV Hindi
14. Disney
15. Toon Disney
16. India TV
17. Hungama
18. Sony
19. Aaj Tak
20. Discovery
21. AXN
22. Set Max
23. Pogo
24. CN
25. Saab TV
26. Set PIX

27. Zee TV
28. Zee News
29. Zee Music
30. Zee Jagran
31. Zee Smile
32. Astha
33. Sahara Samay]
34. MCL
35. Bollywood
36. UTV Action
37. NDTV TV Imagin
38. Srra TV
39. SUK TV
40. Colour
41. CNN IBN

72. It is, therefore, evident that the Respondent No.4 had been transmitting signals of the channels of the Respondents No.1, 2 and 3 apart from its own channels as also the other local channels.

73. Surprisingly, Mr. Bhatia appearing for Media Pro contended, as indicated heretobefore, that the Respondent No.4 might have been contemplating to do so in future.

74. If any explanation was to be offered in that behalf, it should have been offered by the Respondent No.4 and not by the broadcasters. Mr. Sharma said so in his cross-examination but not in his affidavit.

75. Keeping in view the admissions made by the Respondent No.4, it was for it to explain the same by bringing on record substantive documentary proof backed up by pleadings as to how mistake, if any, had been committed by its employees. It could have

also brought on record some evidence to establish that it had in fact not been retransmitting the signals of any of the channels of Respondents No.1,2 and 3.

76. We may also refer to the cross-examination of Mr. Rajiv Kumar. From his deposition, it appears that he too was evading answers as he did not even identify the signature of Shri Anil Mecwan who at the relevant time was Vice President of Star Den (Pg 15 B) or name the network which was conducting piracy (Pg 15 C).

77. He even did not identify the Special Power of Attorney allegedly given to Bridgeview.

He moreover did not answer against whom the allegations of piracy were made despite the fact that he admitted that he had received 5-6 e-mails with regard thereto.

78. He even did not remember that his complaints in relation thereto was made against Fastway or his J. V. partners. We may notice a part of his deposition:

“Q11: Did you receive this e-mail dated 19th April, 2011?

A: Actually I don't remember. This mail was actually sent to one Mr. Jagraj and was 'CC'ed to me and there is a possibility that I've not checked it.

Q12: Please see this e-mail and tell me against whom I have made a complaint for piracy?

A: This e-mail was against Fastway. But as told by me earlier, we have received these type of mails from Bridgview whereafter we have checked and not found any piracy conducted by Fastway.

Q13: Do you go to the ground to check piracy?

A: Yes.

Q14: Which areas did you check for piracy?

A: What piracy?

Q15: Did you personally go to check piracy on the ground?

A: I have gone once or twice, otherwise we send our staff to check piracy.

Q16: Do you remember the name of the staff you sent to check piracy?

A: It could be anybody from the distributor staff and I do not remember exactly as to who went to check piracy."

It is stated that Fastway itself was the distributor. He evaded to answer very crucial questions with regard to checking of piracy as would appear from the following:

Q17: On what dates did you go to the ground to check piracy?

A: I do not remember.

Q18: Did you check piracy in Shimla or Solan?

A: Depends on the complaint. If it was for Shimla, I would have checked in Shimla, if it was Solan, I would have checked in Solan.

Q19: When you went to check piracy, who accompanied you?

A: I do not remember.

Q20: Did anybody from Bridgview accompany you when you went to check piracy on the ground?

A: I do not remember.

Q21: Did you prepare any report when you went to check piracy?

A: Since there was no piracy, there was no necessity to prepare any report.

Q22: When you go to check piracy, did your senior ask you to go and check piracy?

A: When we received those e-mails which were marked to me also I would go after consultation with my seniors.

Q23: Can you tell us the name of the senior?

A: Mr. Jagraj Sandhu.

Q24: Did you report to him after you came back after checking piracy?

A: Yes, I report to him that there was no piracy happening.

Q25: Is there any written communication in this regard, like e-mail or any other written communication regarding your report to your senior?

A: I don't remember.

Q26: Can you check and let us know?

A: I wouldn't be able to do it right now. It would be difficult to check now because the e-mail id of Star Den has been freezed by the Company and I have to check with them if the data can be retrieved which will take some time.

79. He admitted that on the date of his cross-examination i.e. on 25-01-2012, no agreement was entered into with Fastway. He despite being senior officer of Star Den even feigned his ignorance with regard to existence of Rajan Verma and Maharaji Network.

He even evaded to answer material questions as would appear from the following:

"Q.6:Where are the signals of Fastway being transmitted in Himachal Pradesh?

A: I am not aware.

Q.7: You would be aware that Fastway has its operations in Shimla?

A: I do not know.

Q.8: If I show you the CD, will you recognize the area where the recording has been done?

A: It depends. I am not aware of every nook and corner.

(At this stage, Ld. Counsel for the petitioner requests to run the CD as at Annexure P-9 (Ex. PW-1) of the Paper Book. The said CD has been taken from Chairman's folder and is played on the system.)

Q.9: What was the area shown in the CD?

A: Sanjoli, Shimla.

Q.10: Was there any break in the recording?

A: I can not say.

Q.11: I put it to you that it was a continuous recording and there was no break from start to finish?

A: I can not say.

Q.12: Is this the logo of Fastway?

A: It seems to be.

Witness identifies the following channels on the CD:-

Zee Cinema (but it is not clear), Star Gold, Filmly, Star One, Zoom (not clear but looks like Zoom), 9X, Zee TV (but not very clear), Star Plus, Colors, Imagine, Sahara One, Zee Smile, Star Utsav, Bollywood Nonstop, India Talkies, Firangi, Star Movies, HW Hollywood (I have never seen this channel before), Zee News, Star News (Date being shown as 4.5.2011), IBN 7, NDTV India, India TV, Lok Sabha, Sadhna, PTC News, Zee business, ET Now, CNBC TV 18, Times Now, Hungama, Aastha, Sanskar, P-24, MTV, VH1, Discovery, I can see FW but I am not sure if it is the logo of Fastway and if it is Fastway, then how come Himachali songs are being played on the said channel.

Vol.: Quality of the recording is not clear."

80. He in the DVD shown to him refused to identify the channel of Fastway although, he admitted that the CD and DVD, which were shown to him related to Sanjoli Shimla. He admitted that the channels of Media Pro and the MSM discovery were being shown

81. He again in the DVD dated 1st June, 2011 admitted that not only the channels of the Respondents no 3 and 4 but also of 'Fastway' were being shown.

He even identified Maharaji Cable in the DVD.

82. We may also notice the following from his deposition:

"Witness identifies the following channels on the DVD:-

Pogo (Black Screen for sometime), B4U movies (camera moved and black screen for sometime), Maharaj Jee Cables label on TV (music video in the background), during shuffling of channel logo of airtel appears on the Centre of the Screen, Zee Cinema, sadna News, Star Utsav, MTV, Set Max, Sony, Sab, Sahara One (not clear), Star One (recording freezed), Star Movies (recording freezed), National Geographic, Zee News, Colors, Zee Tv, Star Plus, MJC (not clear), Star Gold, Neo Cricket, Sony Pix, Ten Cricket, Aajtak (showing time as 17:41), Aastha, Zee Smile, Divya, Zee Business, Hindi Hits (Scroll appears on the screen which reads as – "Dear all the ministry has mandated the digitalization throughout the country. For digitalization, Fastway is offering set top boxes at a refundable security deposit of Rs. 500 and a rental of Rs. 30 per month per STB. Condition apply"), Punjabi hits, AXN, Mahua (not clear), Imagine, Star News (showing date as 7th November and time as 05:47), BBC World News, India TV (showing time as 17:48), Bollywood Non stop (Scroll appears on the screen which reads as – "Dear all the ministry has mandated the digitalization throughout the country. For digitalization, Fastway is

offering set top boxes at a refundable security deposit of Rs. 500 and a rental of Rs. 30 per month per STB. Condition apply"), HW Desi Tadka, Ten Sports.

83. It was not necessary to notice his statements made in this behalf as in our opinion, the DVDs cannot be taken into evidence but we have noticed his statements as the same would clearly go to show that only when he was confronted with the documentary/electronic evidence, he thought it necessary to answer the same but mostly he evaded the other questions.

84. Upon a close analysis of the materials brought on record, the following facts emerge:

1. The Respondent No.4 had started its operation in Shimla and Solan from April, 2011.
2. On or about 8.6.2011 it had applied for grant of a Postal Registration Certificate.
3. In the said application it had clearly been stated that it had been running a large number of channels including the Star Group of Channels, Zee Group of Channels and MSMD Channels. No credible explanation has been offered as to how such channels were being run without obtaining the postal registration certificate and without entering into any agreement with three prominent broadcasters of India.

4. A pamphlet was issued by one Rajan Verma offering 92 channels. The said Rajan Verma evidently has entered into some commercial arrangement with the Respondent No.4 in respect of its Solan network.
5. Respondent No.4 has also taken over the network of Mr. Mohit Goel's Shimla network.
6. Whereas it allegedly entered into an agreement with MSMD on or about 8.6.2011, no agreement was entered into in respect of the channels of the MediaPro i.e .Star Group of Channels and Zee Group of Channels, at least till his cross examination on 20.12.2011. However, except making a statement in the reply to that effect. The said purported agreement has not been produced.
7. Shri Hansraj Sharma has not only failed to state the truth before this Tribunal, he deliberately and intentionally refused to answer a large number of questions, but also till the date of his cross-examination namely, 20.12.2011 he has failed to answer the questions on the plea that he has to check as to whether he can answer the questions put to him.
8. Respondent No.4 has also entered into an arrangement with New Satellite as also the Maharaj Jee Cable Network and it had been transmitting the local channels of the said name.

85. Although PW-I in his deposition as also Shri Rajiv Kumar in his cross-examination clearly admitted, the contents of CDs produced before this Tribunal, Mr. Bhatia would contend that the said CDs are not admissible in evidence in terms of Section 65B of the Indian Evidence Act.

It reads as under:

“65B. Admissibility of electronic records.- (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was

regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

.....

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

86. Storage, interpretation and reproduction of data having regard to the modern technology is admissible in evidence subject to compliance of the statutory requirement therefor. If a document is created without intervention of the human mind, the same would be the real and not hearsay.

[See Phipson on Evidence paragraphs 28-28 at page 879.]

87. What is of real concern is the accuracy of data base.

If the data is not proved to be accurate these treatments will have no probative value at all.

In Lakshma Reddy Cable Network vs. Channel Plus A.P. and Anr., Petition No.367(C) of 2010 decided on 3.6.2011, it was stated:

“34. Mr. Tushar Rao on a query made by us as to whether the said CD has been proved in terms of the provisions contained in Section 65B of the Indian Evidence Act very fairly stated that, no certificate has been proved as is required there under.

35. Apart from other objections raised by second Respondent as regards admissibility of the said CD, there cannot be any doubt or dispute that in absence of any certificate as envisaged under Section 65B of the Indian Evidence Act, the CD cannot be said to have been proved. It is, thus, inadmissible in evidence.”

In S.S. Cable Network vs Hathway Bhaskar Multinet Pvt. Ltd., Petition No. 368(C) of 2010 disposed of on 12.9.2011, it was stated:

"58. It is, therefore, difficult to accept that the CD has been proved in accordance with law. An electronic document must be proved in terms of the provisions of Section 65B of the Indian Evidence Act. The person who has prepared the CD must say so clearly as it pertains to a matter which related to a criminal proceeding. It was, thus, obligatory on the part of the Petitioner to scrupulously follow the procedures laid down under the law."

88. Section 65B was inserted in the Indian Evidence Act by the Information Technology Act, 2000 with effect from 17.10.2000.

Before an electronic record is taken in evidence the same must satisfy the legal requirements as envisaged under Section 65B(2) of the Evidence Act.

Evidence of PW-1 does not contain any certificate. He did not state that he took any part in the preparation of the CDs or DVDs.

The CDs, therefore, have not been legally brought on record.

89. Moreover, the conditions laid down in Subsection 4 of Section 65B were also required to be complied with viz identifying the electronic record containing the statement and describing the manner in which it was proved; giving particulars of the device involved in the production of a particular product.

90. In R. (on the application of `O Shea)v Coventry Justices [2004] EWHC 905 QB at [25] it was, however, stated:

"The purpose of the computer printout was in fact to show what was recorded. It was not evidence of the truth of what was recorded... [T]his computer evidence was admissible as real evidence and qualifies as real evidence as described in Spiby and I the other cases", per Gage J. The accused's email address and credit card were the same as those appearing in the computer printout. From this it could be inferred (at least prima facie) that it was the accused who had keyed the information into the computer."

91. In this case the Petitioner should have proved the CDs in accordance with law.

92. What would however, be the effect of the cross-examination of respondent's witness No.2 Rajeev based on the same CDRs vis a vis the other evidences brought on record?

93. While holding that the CDs filed by the Petitioner as such are inadmissible in evidence, the other evidence may lead to proof of the retransmission of the signals by the Respondent No.4 and/or its associates.

94. The question which arises for consideration is as to whether the Petitioner has been able to prove wrongful casting of channels by the Respondent No.4 and its associates otherwise.

95. Keeping in view the application filed by the Respondent No.4 before the postal authorities as also the pamphlet issued and other evidences as mentioned heretofore, we are satisfied that the Petitioner has been able to make out such a case.

In that view of the matter we have no other option but to deprecate the stand taken by the Media Pro Enterprises Ltd. as far as the same relates to its connivance with the Respondent No.4.

96. Sufficient materials have been brought on record to show that the Respondent No.4, having regard to the fact that it has been paying a huge amount of subscription fee to them, and/or for other reasons which it had not disclosed, the Respondent Nos. 1 and 2 must be held to have acted wrongfully.

97. In this case however, we are not concerned with the actual down gradation of subscription fee of the Petitioner, as such a question must be raised by it with the Respondent Nos.1 to 3 in terms of Clause 10.2 of the Regulations.

98. The question which remains to be considered is as to what relief the Petitioner is entitled to.

In a situation of this nature, we are of the opinion that interest of justice would be subserved if copies of this judgment are directed to be sent to the Post Master, Shimla, Post Master, Solan, the authorized officer being the District Magistrate of Shimla and Solan as also Telecom Regulatory Authority of India for appropriate action on their part.

99. The concerned Post Masters having been delegated with the power to issue licenses to the cable operator are statutorily

enjoined to make enquiries as to whether the Respondent No.4 had been retransmitting channels of the signals of the Respondent Nos.1 to 3 even without obtaining a license as contemplated under 1995 Act and 1994 Rules; the same being a punishable offence.

100. We have no doubt in our mind that the concerned Post Masters would take appropriate action as is permissible in law.

The learned authorized officer may also consider the desirability of taking such action against the Respondent as is permissible in law.

101. We are sending a copy of this order to the Regulator only for the purpose of considering as to whether it is possible for them to enquire as to how the Respondent No.4 which is said to be dominating the field of broadcasting and cable services in the State of Punjab had been permitted with the connivance of the broadcasters to sneak in the State of Himachal Pradesh to start its services without entering into any proper subscription agreement with the Broadcaster and by the process acquired 65% of the market.

102. To us, it appears that the Respondent No.4 had been able to acquire the market by reason of adopting a wrongful method for the purpose of frustrating any competition amongst the service providers which was the objective of the Parliament as also of the Regulator.

103. This Petition is disposed of with the aforementioned directions with costs.

Having regard to the fact that the witness of the Respondent No.4 has resorted to suppressio veri and has not answered a large number of questions and thus taking that fact into consideration, we are of the opinion, an exemplary cost of Rs.1.00 lakh should be imposed on it.

104. The Respondent No. 1 to 3 shall also pay a sum of Rs.25,000/- each to the Petitioner.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

June 18, 2012
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