

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 13TH MARCH, 2012

Petition No.376 (C) of 2011

Shri Hanuman Communications	...	Petitioner
Vs.		
Sun 18 Media Services South Pvt. Ltd.	...	Respondent

Petition No.377 (C) of 2011

Shri Hanuman Communications	...	Petitioner
Vs.		
Maa Television Network Ltd.	...	Respondent

Petition No.378 (C) of 2011

Shri Hanuman Communications	...	Petitioner
Vs.		
Ushodaya Enterprises Pvt. Ltd.	...	Respondent

BEFORE:

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

In Petition No. 376 (C) of 2011

For Petitioner : Mr. Yoginder Handoo, Advocate

For Respondent : Mr. Nitin Bhatia, Advocate

In Petition No. 377 (C) of 2011

For Petitioner : Mr. Yoginder Handoo, Advocate

For Respondent : Ms. Vismai Rao, Advocate

In Petition No. 378 (C) of 2011

For Petitioner : Mr. Yoginder Handoo, Advocate

For Respondent : Mr. Balaji Srinivasan, Advocate

J U D G E M E N T

Petitioner, a Multi Service Operator operating in the town of Shadnagar in the State of Andhra Pradesh, has filed these petitions inter-alia praying for a direction upon the Respondents herein to supply signals of their respective channels to its network as provided under Clause 3.2 of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004, as amended from time to time ('The Regulations').

2. We would notice the factual matrix involved in Sun 18 Media Services Pvt. Ltd. case.

Petitioner made a request to the predecessor in interest of the Respondent on or about 20.4.2011. However, the same was addressed to a wrong entity namely M/s. Sun Distribution Systems. Along with the said purported letter, several documents were said to have been annexed. Respondent, however, denies and disputes the receipt thereof.

3. A reminder thereto was sent on 05.6.2011, wherewith also no document was annexed. Reference, however, was made therein to the purported letter of request dated 20.4.2011. A second reminder was sent to the Respondent on or about 28.6.2011, wherewith again no document was annexed.

Inter-alia on the premise that the Respondent has failed and/or neglected to comply with their statutory obligations, as is provided under Clause 3.5 of the Regulations, this petition has been filed on or about 19.9.2011.

4. Respondent in its reply, inter-alia, contends that on receipt of the documents annexed to the petition for the first time, it made verification thereof, whereupon it was found that the LCOs of the Petitioner do not have the

requisite infrastructure to run their respective networks and in fact some of them have illegally been set up in their residential houses.

Some of the subscribers, according to the Respondent, have been obtaining supply of signals from another MSO namely M/s. Shadnagar Communications, which goes to show that the informations furnished by the Petitioner were wrong.

5. Maa TV and Ushodaya Enterprises, beside raising discrepancies in various documents filed by the Petitioner, contend that the Registration Certificate possessed by it is illegal having been granted by the Postal Authorities for a period of two years, which is impermissible in terms of Rule 3 of the Cable Television Networks (Regulation) Rules, 1994.

6. By reason of an order dated 17.10.2011 having regard to the pleadings of the parties, the following issues were framed :-

- (i) *Whether the petitioner has provided the contact details to the respondent in terms of the TRAI Regulations?*
- (ii) *Whether the respondent has denied supply of its signals to the petitioner?*

7. The parties hereto have adduced their respective evidences.

Whereas the Petitioner has examined Shri G. Srinivas Yadav, Sun 18 has examined Mohd. Amer Siddique, Ushodaya has examined Shri A. Sadanandam and Maa TV has examined Shri K. Siva Adinarayana.

8. Mr. Handoo, learned counsel appearing on behalf of the Petitioner, would contend :-

- (i) Petitioner having supplied to the Respondent requisite documents including Registration Certificate, List of equipments, SLRs, Cable Registration Certificate of the LCOs, the map showing the manner in which the cable has been laid as also the subscription agreement with Zee Turner Ltd., there is absolutely no reason as to why they should not be directed to supply signals of their respective channels to its network;
- (ii) In terms of Clause 3.5 of the Regulations, the Broadcaster being under a statutory obligation to respond to such request within a period of 60 days and except Ushodaya, no other Respondent having done so, it must be held that they failed to perform their statutory obligations.

9. Mr. Nitin Bhatia, learned counsel appearing on behalf of Sun 18 Media Services South Pvt. Ltd., urged :-

- (i) Petitioner having not made a valid request, the purported letter dated 20.4.2011 having been addressed to a wrong person, this petition must be held to be pre-mature;
- (ii) It is incorrect to contend that despite receipt of the letter of request, the Respondent did not make any effort to verify the informations supplied by the Petitioner, as PW-1 himself has categorically stated that a reply from the Respondent had been received;
- (iii) Some of the LCOs/subscribers having taken supply of signals from another MSO, no direction as has been sought for by the Petitioner, should be issued;
- (iv) Petitioner having not supplied the details of the agreement with Zee Turner, nor having proved the same in accordance with law, no reliance can be placed thereupon;

- (v) RW-1, Mohd. Amer Siddique having clearly proved that the premises, from which the LCOs are stated to have been operating, are situated in a residential area and some of them are not even in habitable conditions, the Petitioner is not entitled to any relief;
- (vi) Even the Municipal authorities having clearly stated that no cable operation business having been going on from the premises in question, the Petitioner's case must be held to be incorrect.

10. Ms. Vismai Rao, learned counsel appearing on behalf of Maa TV, submitted :-

- (i) The Cable Registration Certificate having been granted in favour of the Petitioner for a period of two years, although in terms of the Rule, it could have only be granted only for twelve months, it must be held to be not possessing any valid certificate after 07.6.2011;
- (ii) From a comparison of the documents filed by the Petitioner and, in particular the Registration Certificates of the LCOs which were granted on the same day on 18.3.2011 vis-à-vis the franchise agreements which have been entered into by

and between the Petitioner and the said LCOs being dated 28.3.2011, it would appear that as LCOs were being supplied signals three months prior thereto i.e. at a point of time when they did not possess valid Registration Certificates, which would clearly go to show that the agreements are forged and fabricated ones;

- (iii) Petitioner, having not filed the pole permissions nor having supplied the photographs of its network, is not entitled to any relief as prayed for or otherwise;

11. Mr. Balaji Srinivasan, learned counsel appearing on behalf of Ushodaya Enterprises, pointed out :-

- (i) As on the Petitioner's own showing, the equipments installed in its Headend do not satisfy the standard specified by the BIS, no relief should be granted in its favour;
- (ii) From the certificate issued by the Customs & Excise Department, it would appear that the proprietor of the Petitioner concern is Shri G. Srinivas Yadav, but the Pan Card being in the name of Shri Srinivasulu Gaddam, it is evident that the Petitioner is not a person with whom business relationship can be grown.

12. The core question herein is as to the validity of the Registration Certificates issued by the Postal Authorities under the 1994 Rules.

Petitioner was granted a certificate on 08.6.2010 by the Post Master, Jedcharla, which reads as under :-

“Shri Hanuman communication Represented by G. Srinivas Yadav Resident of Shadnagar is Registered as a Cable Operator individual for running the Cable Television Network at the following address : H. No.3-56/ 14/2 Satellite Channels Maa TV, ETV & Gemini TV for a period of Twelve months with effect from 08.06.2010 to 07.06.2012.His Registration Number is 38.

This Certificate is only valid for the premises stated as above.

This Certificate is not transferable.

This Certificate shall remain valid for the period.”

13. Grant of such certificate is governed by a Parliamentary Act known as Cable Television Networks (Regulations) Act, 1995.

The term ‘prescribed’ has been defined in Section 2 (f) of the said Act to mean ‘prescribed under the rules made’ thereunder.

Sections 3 and 4 of the said Act occurring in Chapter II thereof, read as follows :-

“3.Cable television network not to be operated except after registration.-No person shall operate a cable television network unless he is registered as a cable operator under this Act:

Provided that a person operating a cable television network, immediately before the commencement of this Act, may continue to do so for a period of ninety days from such commencement; and if he has made an application for registration as a cable operator under section 4 within the said period, till he is registered under that section or the registering authority refuses to grant registration to him under that section.

4.Registration as cable operator.-*(1) Any person who is operating or is desirous of operating a cable television network may apply for registration as a cable operator to the registering authority.*

(2) An application under sub-section (1) shall be made in such form and be accompanied by such fee as may be prescribed.

(3) On receipt of the application, the registering authority shall satisfy itself that the applicant has furnished all the required information and on being so satisfied, register the applicant as a cable operator and grant to him a certificate of such registration:

Provided that the registering authority may, for reasons to be recorded in writing and communicated to the applicant, refuse to grant registration to him if it is satisfied that he does not fulfill the conditions specified in clause (e) of section 2.”

14. Rules were framed by the Central Government in 1994 known as Cable T.V. Networks (Regulation) Rules, 1994, in terms of Section 22 of the Cable Television Networks (Regulation Ordinance), 1994.

We may notice Rule 3 of the said Rules :-

“3. Application for registration as a cable television network in India.—

(1) Every application for registration as a cable television network in India shall be made in writing in Form 1 and shall be renewable after every twelve months.

(2) The application shall be addressed to the Registering Authority and delivered to his officer in Form 1.

(3) (a) Every application for registration or renewal of registration shall be accompanied by—

¹(i) a fee of rupees five hundred only; and

(ii) the requisite documents mentioned in Forms 1 and 2.

(b) Every application for issue of duplicate certificate of registration shall be accompanied by—

(i) a fee of rupees two hundred and fifty only; and

(ii) the requisite documents mentioned in Form 1.

(4) The amount of fee shall be deposited under the Head Post Office where the application for registration or renewal of registration or issue of duplicate certificate of registration is being made.

(5) The amount of the fees shall be deposited under the head ‘un-classified receipts (U.C.R.);’”

15. Form 1 issued under Rule 3(1) prescribes the manner in which an application is to be filed. Clause 4(a) provides for the amount of fee paid for registration/renewal/issue of duplicate certificate.

Clause 10 provides for enclosure of a copy of the Registration Certificate to be filled in, only for renewal of registration.

Clause 12 provides for declaration in Form 2 both for registration and renewal thereof.

We may notice Clauses 4 (b), 5 and 6 of Form 1 prescribed under the Rule as under :-

- “4.(b) Name of Head Post Office (Attach copy of challan vide which the fees have been deposited)*
- 5. Area in which cable television network is working/ proposed to be set up.....*
- 6. Date from which the cable television network is operating/proposed to be set up.....”*

16. The Registration Certificate is granted in Form 3.

It clearly provides that the same is to be granted for a period of twelve months.

17. For all intent and purport, the Registration Certificate is a licence to a cable operator to run its cable business. No person can carry on such a business without such a certificate. The Act, when rule is validly framed and

forms are prescribed thereunder, must be construed harmoniously to provide effective meaning thereto.

(See Chief Conservator of Forests (Wild Life) and Others Vs. Nisan Kher 2003 (4) SCC 595. See also Francis Bennion, Fifth Edition, Page 263-264).

It is now well settled that licence is granted so as to permit a person to do something, which is not otherwise permissible. When an occupation or a business is governed by a statute, the same cannot be carried out except in terms thereof.

18. Requirements for prescription of rules are well known. It is necessary having regard to the increasing complexity of mode of administration. It is now a normal feature.

19. The reasons for delegated legislation are :-

“(i) Pressure on parliamentary time. In these days of intensive legislation Parliament can only concentrate on essentials, leaving the details to be worked out, subject to suitable parliamentary control, by the various Ministers and

their departments. This was very apparent in the nationalization Acts of 1946-48.

(ii) Technical character of modern legislation. A body of 600 members (to take the House of Commons alone) is not well fitted to deal with matters of technical detail, which are often quite unconnected with political considerations.

(iii) Need for flexibility. The law must be capable of rapid adjustment to meet changing circumstances. In an official minute in 1893, Sir Henry Jenkyns, First Parliamentary Counsel, wrote: "Statutory rules are in themselves of great public advantage because the details...and minuteness and with better adaptation to local or other special circumstances than they can possibly be in the passage of a Bill through Parliament. Besides, they mitigate the inelasticity which would otherwise make an Act unworkable and are susceptible of modifications...session and its processes involve delay, so that any rapid adjustment of the law by direct legislation to meet unknown future conditions is not normally feasible. "The method of delegated legislation permits of the rapid utilization of experience and enables the results of consultation with interests affected by the operation of new Acts to be translated into practice...It also permits of experiment being made and thus affords an opportunity, otherwise difficult to ensure, of utilizing the lessons of experience."

(iv) Emergency powers. In modern times the national need may call for sudden legislative action which Parliament of itself cannot provide. Often the possibility of the emergency can be

foreseen and legislation is passed in anticipation, making immediate action by departments possible the moment the emergency arises: cf. Emergency Powers Act 1920 and Emergency Powers (Defence) Act 1939.”

(Craies on Statute Law pg. 291)

20. The Act provides for verification of the details furnished by the Applicant in his application. Such verification, keeping in view the renewal clause, is necessary to be carried out every twelve months. A fixed fee therefor has been prescribed.

21. Mr. Handoo would contend that when a certificate is granted for a period of two years, the only requirement is to pay two years' fees namely Rs.1,000/- in stead and in place of Rs.500/-.

It is difficult to accept the said proposition.

22. A statutory authority, as is well known, must act within the four corners of the statute. Any act done by a statutory authority, which is not specified in the statute, must be held to be ultra-vires and, thus, coram non-judice. The statutory authority, therefore, could not have granted a certificate having duration of two years, only on payment of an enhanced registration fees.

If such an argument is accepted, an application can also be filed for grant of certificate for a number of years.

23. Rule 3 specifies that the application should be renewable every twelve months, which is itself suggestive of the fact that initial certificate must also be for a period of twelve months and not more.

We are not unmindful of the fact that right of renewal is a valuable right, but such a right has to be exercised. Renewal in an ordinary parlance would mean a fresh grant. For obtaining the renewal, it must undergo the same procedure unless the statute otherwise specifies, which were required for the purpose of original grant. The statutory authorities, therefore, in our opinion, could not have granted a certificate which was valid for more than twelve months, the law, having prescribed otherwise.

24. Petitioner, therefore, does not possess any valid certificate. Moreover, the phraseology used in Section 3 of the Act is absolutely clear and unambiguous. No person is permitted to carry on with the cable TV business without obtaining a registration certificate.

Section 3, moreover, is couched in negative terms. It uses the words 'shall' and 'unless', which also clearly goes to show that the same is imperative in character.

Section 4 postulates the mode and manner in which the application is to be filed. The procedures are laid down in the rules.

25. Mr. Handoo, however, would contend that from a perusal of Sections 11 and 12 of the Act it would appear that in the event a person is found to be carrying on the cable TV business without obtaining a valid registration certificate, his equipments may be seized but the same shall not be confiscated if he obtains a registration certificate within four weeks from the date of seizure thereof.

26. Submissions of Mr. Handoo cannot be accepted for more than one reason. Firstly, because violation of the provisions of Section 3 of the Act entails penal consequences as envisaged under Section 16 thereof, which itself is a pointer to the fact that obtaining of a cable registration certificate is imperative in character; secondly because, Section 13 provides that non-seizure or non-confiscation would not be a ground for not proceeding against the person carrying on business in Cable TV from criminal prosecution.

27. An act, which is violative of the provisions of the Statute, would be non-est in the eye of law. It has, however, been correctly submitted that the certificate has not been contended to be a forged one. It may be so, but, if a certificate has been granted contrary to the provisions of a statute, the consequences arising therefrom shall ensue.

28. Petitioner may be a victim of a mistake committed on the part of the Postal Authorities, but when the same has been brought to the notice of this Tribunal, it is its duty to see that no order is passed which would violate the provisions of a validly made statute or statutory rules.

29. Petitioner, so far as Sun TV is concerned, did not supply all the documents. Keeping in view that such documents were required to be supplied to the broadcaster, which had been annexed with the petition, as the same would enable it (the Broadcaster) to verify the same and, thus, in absence of any basic information, clause 3.5 of the Regulations could not have been complied with. We would have made an exception in the case of the Petitioner; but, there are other aspects of the matter which cannot be lost sight of. As indicated heretofore, the Petitioner as a Multi Service Operator is bound to comply with the other statutory requirements. It, in terms of law, cannot permit an LCO to do something which is otherwise prohibited.

30. It may be true that the photographs filed by the Respondent have not been proved.

It has, however, been stated that some of the LCOs have been carrying on the business from a premise which are not commercial establishments.

Moreover, as has rightly been pointed out by Ms. Vismai Rao that the agreements entered by and between the Petitioner and the LCOs raise suspicion about their genuineness.

If the stipulations made therein are correct, the parties have been carrying on business even prior to obtaining the registration certificate. The registration certificate of the affiliates and the affiliate agreements, therefore, are discrepant.

PW-1 in his deposition has clearly admitted that he does not have the pole permission from the competent authority. He made inconsistent statement in his cross-examination as firstly he stated that he had obtained such permission, then stated that he had not and supplemented the same with an explanation that the same was not required.

Such pole permission from the Electricity authorities are required, as has been held by this Tribunal in Sree Devi Enterprises Vs. Channel Plus (**Petition No. 156 (C) of 2010**).

31. There is another aspect of the matter.

A discrepancy has also been pointed on the identity of the Petitioner being the proprietor of the Petitioner concern vis-à-vis his Pan Card Number.

According to PW-1, he got the Pan Card modified, but he did not produce the same although according to him, he had been carrying it with him.

If Pan Card issued to him stands corrected, he should have produced it, particularly when he had been carrying the same.

Moreover, he did not have any certificate to show that the equipments installed at his Headend satisfy the standards laid down by the Bureau of Indian Standards.

32. For the reasons aforementioned, there is no merit in these petitions, which are dismissed. However, there shall be no order as to costs.

33. We may, however, observe that this order shall not stand on the way of the Petitioner to obtain supply of signals of the channels of the Respondents herein if a valid request is made in terms of the Regulations.

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

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

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