

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 01ST MARCH, 2012

**M.A. No. 55 of 2012
IN**

Petition No.490 (C) of 2011

Goswami Cable Network ... Petitioner
Vs.
Den Fateh Marketing Pvt. Ltd. ... Respondent

BEFORE:

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

For Petitioner : Mr. Sharath Sampath, Advocate
Mr. Manikya Khanna, Advocate

For Respondent : Mr. Vibhav Srivastava, Advocate

ORDER

This application has been filed by the Petitioner herein for modification of this Tribunal's order dated 04.01.2012 to the extent that after the words "civil area of" the word "and" may be inserted or in the alternative the word shall be changed from "Bazaar" to "Cantt".

The second prayer made by the Petitioner is as under :-

“b) reduce the subscription amount payable to the Respondent by the Petitioner from Rs.30,600/- to a reasonable amount as deemed fit by this Hon’ble Tribunal from February 2012 onwards without prejudice to the rights and contentions of both the parties and subject to the final outcome of the present case.”

2. Petitioner is a Local Cable Operator. Respondent is a Multi Service Operator. Petitioner entered into an agreement with Bareilly Media Corporation for obtaining supply of signals of various channels of the Broadcasters. The said concern has been taken over by Den Fateh Marketing Pvt. Ltd. and now it is being run and operated by the Respondent herein.

3. The town of Bareilly has Civil as well as Cantonment areas.

Petitioner was re-transmitting signals of the channels of various Broadcasters upon receiving transmission thereof from the MSOs.

Indisputably, the authorities of the Cantonment Area have entered into an agreement with the Respondent herein. According to the Petitioner, by reason of said disconnection as far as re-transmission of signals in the Cantonment Area is concerned, it was entitled to reduction in the quantum of subscription fee.

4. Disputes and differences arose between the parties. Correspondences were exchanged. Petitioner raised its grievances before various authorities including the District Magistrate.

5. This Petition has been filed inter-alia on the premise that on or about 01.11.2011 the Respondent wrongfully disconnected the signals and on 09.11.2011 the same was again disconnected.

Petitioner, inter-alia, in this Petition has prayed for the following reliefs :-

- “(a) Direct the Respondent to forthwith reconnect the signals of the Petitioner herein;*
- (b) Restrain the Respondent from in any manner interfering/ disrupting or disconnecting the signal services being provided to the area of operation of the Petitioner once reconnected until disposal of this petition;*
- (c) Direct the Respondent to reduce the subscription fee of the Petitioner to the extent of the connections being returned by it to the Respondent i.e. approximately 50% or on such terms and conditions as may be deemed just and reasonable by this Hon’ble Tribunal.”*

6. Respondent filed a short reply on or about 03.01.2012, wherein inter-alia it was contended :-

- (a) Petitioner is guilty of forging its Cable Registration Certificate.
- (b) It is a partner of one Bareilly City Cable Network, which had filed a petition before this Tribunal being Petition No. 90 (C) of 2011 and 91 (C) of 2011, but the same had been dismissed with costs.
- (c) Respondent had never disconnected supply of signals to the Petitioner's network.
- (d) Petitioner is only authorised to re-transmit signals of the Respondent in the Sadar Bazar area.
- (e) It is a defaulter and till December 2011, a sum of Rs.63,800/- is outstanding.

7. On an interim prayer made by the Respondent, this Tribunal heard the learned counsel for the parties on 04.01.2012.

On the said date, the following order was passed :-

“Having heard the learned counsel for the parties, we are of the opinion that there being a dispute as to whether the Petitioner's network has been disconnected with effect from 9.11.2011, interest of justice would be sub-served if the Petitioner's Proprietor and Senior Technician of the Respondent visit the Petitioner's Network at Sadar Bareilly at 3:00 p.m. today. The learned counsel for the parties shall inform their respective clients on phone.

The petitioner shall visit the office of the Respondent at 3.00 p.m. today whereafter the Senior Technician of the Respondent would accompany him.

If it is found, for one reason or the other, that no retransmission of signals is possible to be done from the Petitioner's network, the Respondent shall see to it that the requisite steps are taken for rectification of defect in the line, if any, upto its node and/or restore supply of signals to the Petitioner's network up to the node of the Respondent.

It is made clear that the Petitioner shall confine its area of operation within the civil area of Civil area of Sadar Bazar, Bareilly."

8. Respondent filed a reply to the main Petition, rejoinder whereto has been filed by the Petitioner on 08.02.2012.

Issues arising in this petition have also been framed.

9. This Application for modification of the Order dated 04.01.2012 has been filed on or about 27.01.2012.

10. Mr. Sharath Sampath, learned counsel appearing on behalf of the Petitioner/Applicant has taken us through various documents to show that the authorities of the Cantonment Area had recognized that the Petitioner had been supplying signals to its subscribers in the entire town of Bareilly and, thus, it was entitled to supply signals to the Civil Area of the said town, which as per a Certificate issued by the Colonel, Administrative Commandant dated 30.12.2011, consists of B.I. Bazaar, Sadar Bazaar, Postal Colony and Civil Bungalows.

So far as the agreement with the Respondent is concerned, it was stated as under :-

“Para 4 & 5. The agreement with M/s. Den Fateh Marketing Private Ltd. includes all Defence Units/Institutions/other military set up/Accn in the entire Cantt Area which are under the control of Station Headquarters, Bareilly. Other civilian areas/bungalows/institution are not included in the agreement.”

11. Our attention has also been drawn to various documents annexed to the rejoinder including a Certificate issued by one Shashi Kant Jaiswal, Vice President of Cantonment Board, Bareilly dated 25.01.2012, which reads as under :-

“This is to certify that Mr. Kehari Giri Goswami Proprietor, M/s. Goswami Cable Network was providing cable T.V. Signals of Den Fateh Marketing Pvt. Ltd. in D.C.A. Colony, J.L.A., Cantonment

Board area, B.I. Bazar, Postal Colony and Civil Bungalows, out of which DCA colony and JLA are parts of army cantt. till October 2011 and he was realizing cable charges for the same.

Goswami Cable Network was providing signals of Bareilly Media Corpn. to the above mentioned area since last 14 years and from March 2008 Signals of Fateh Marketing Pvt. Ltd. were being given which was then changed to Den Fateh Marketing Pvt. Ltd. No objection as to authorization or otherwise has ever been raised by Den Fateh Marketing Pvt. Ltd. towards Goswami Cable Network till stoppage of supply of Signals by Den Fateh Marketing Pvt. Ltd. in the end of October 2011.”

12. Our attention has also been drawn to the receipts granted by the Petitioner against various payments made by the said Army authorities as also communications to contend that the Petitioner had not only been receiving the agreed amount from the said authorities but had also been granting connections to the bungalows of the Army people.

According to the learned counsel, Petitioner has even paid the Licence Fee for operating in the Cantonment area.

13. We may notice that the District Magistrate, Bareilly by a letter dated 22.12.2011 addressed to the Respondent, passed the following order :-

“Shri Kehari Giri Goswami is working as your authorized franchisee in the area of Sadar Cantt, Bareilly and he has obtained permission of cable operation from this office after getting himself registered in the post office and he is making payment in due time under one time tax settlement scheme for this financial year.

In view of the above, you are ordered in the interest of public at large that there should be no impediment in cable operation by Goswami Cable Network Sadar Cantt. of Sri Kehari Giri Goswami. Together with this, you make available all details in the office of the undersigned about the terms and conditions of business between you and Sri Goswami and about the cause of present dispute.”

14. Mr. Vibhav Srivastava, learned counsel appearing on behalf of the Respondent, however, would urge that the Petitioner is authorized to operate within the area of Sadar Bazar only.

15. The Parliament enacted The Cable Television Networks Act, 1995, Section 3 whereof reads as under :-

“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 his 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.”

16. Rules were framed by the Central Government in the year 1994 in terms of the said Act, Rule 3 whereof reads as under :-

“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”

In terms of Rule 3(I) of the said Rules, Form 1 has been prescribed, paragraph 6 whereof reads thus :-

“6. Date from which the cable television network is operating/proposed to be set up....”

17. The Certificate issued to the Petitioner in terms of its application filed in prescribed form 1 reads as under :-

“INDIAN POSTAL DEPARTMENT

PRAPATRA-3

(See Rule-5)

Government of India

Head Post Office Bareilly

Post Registration Certificate for cable television network

- 1. Shri K.G. Goswami S/O Desh Giri Goswami operator that (add)M/s. Goswami cable t.v. network in this add is permitted from 1-04-2011 to 12 months for run our network in sadar bazaar Bareilly cantt only one operator through Registration no. 78/I.B.C.O./2011-12.*
- 2. This Post registration certificate for use only operate that area.*
- 3. This post registration certificate is not transferable.*
- 4. This post registration certificate for only run cable t.v. network for the period of show in this certificate and this certificate is certified by presiding officer.”*

18. The application in form 1 in Hindi vernacular shows that the Petitioner confined its area of operation to Sadar Bazar Cantt.

19. Mr. Sharath Sampath would urge that the said paragraph refers to address from which the local cable operator is to operate. It, however, appears

that there is a separate column therefor being para 2(a), which shows that the Petitioner's address was 9-D, Sadar Bazar, Delhi Cantt.

20. We may, furthermore, notice that the Petitioner also lodged a First Information Report on or about 12.11.2010, wherein he categorically stated that he had been carrying on business of Dish (operation cable network) in Sadar Bazar Cantt. and Army area.

Yet again, from a certificate dated 28.6.2011 issued by Shri A.S. Rana, S.O. (A) of Administration Cantt. addressed to the Respondent herein, the following would appear :-

“1. As agreed by you to pay all outstanding dues of M/s Bareilly Media Corporation, Bareilly while taking over the Cable Network services of Bareilly Cantt., hence you are requested to pay Rs.32,500/- outstanding against Bareilly Media Corporation, Bareilly.

2. In addition, you are also requested to pay Rs.15500/- as rebate for the month of Jun 2011 at the earliest.”

Respondent took over its operations from M/s. Bareilly Media Corporation.

21. There is, thus, a dispute as to whether the Petitioner is authorized to operate beyond the Sadar Bazar Cantt.

Prima-facie, we are of the opinion that there are enough materials to show that it is not entitled to operate beyond the said area. Provisions of the 1995 Act and the Rules being imperative in character, the registration granted by the statutory authorities must be presumed to be correct and for the said purpose, the application of the Petitioner itself is relevant.

22. The form prescribed in terms of Rule 3 should be read as a part of the Rules. Rules framed by the Central Government without any challenge having been made in this behalf must also be held to be a part of the Parliamentary Act.

Moreover, it is not possible for us to determine the actual area of operation of the Petitioner on the basis of the materials brought on record at this stage.

We, therefore, are of the opinion that the Petitioner should keep its operation confined to Sadar Bazar Cantt. area only.

23. No case has, furthermore, been made out to modify our order dated 04.01.2012, so far as the quantum of subscription fee payable by the Petitioner to the Respondent is concerned.

24. This Application is, therefore, dismissed.

There shall, however, be no order as to costs.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

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