

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 13TH MARCH, 2012

Petition No.488(C) of 2011

Praja Cable Net ... Petitioner

Vs.

Sun 18 Media Services South Pvt. Ltd. ... Respondent

BEFORE:

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

For Petitioner : Mr. Yoginder Handoo, Advocate

For Respondent : Mr. Nittin Bhatia, Advocate

ORDER

Petitioner is a Local Cable Operator operating within the town of Proddatur in the state of Andhra Pradesh. Respondent is a Broadcaster within the meaning of the provisions of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004 as amended from time to time (The Regulations).

2. Petitioner by reason of a letter dated 8.10.2011 requested the Respondent for supply signals of its channels stating:-

“Dated 8.10.2011

Praja Cable Net

Respected Sir,

The above cable network started a cable network at Proddatur and telecasting programmes. In the interest of the Public we need your channels and we want to do business with your well known Telugu channels. So we are requesting you to provide your pay channels of Gemini, Teja decoders and Sim Cards.

Yours faithfully”

3. It is stated reminder thereto was sent by a letter dated 19.10.2011.

On the premise that his aforementioned requests were not responded to, this petition was filed on 19.12.2011.

Petitioner with this petition annexed a copy of the Registration Certificate granted by Head Post Office, Proddatur on or about 12.12.2011 as also a Subscriber Line Report showing its subscriber base at 1632.

4. *Inter-alia* on the premise that the Petitioner has been supplying signals of VISSA TV Network a copy of the invoice issued by the said

Broadcaster for the month of November, 2011 for a sum of Rs.5,008/- has also been produced before us. A map showing its area of operation within the municipal limits of the town Proddatur has also been annexed to the petition.

5. Keeping in view the admitted fact that with its request, the Petitioner did not annex any document relevant for obtaining supply of signals of the channels of the Respondent, in its reply it raised the question of maintainability of this petition contending it to be premature.

6. Parties did not adduce any oral evidence in this case.

7. Mr. Yoginder Handoo, learned counsel for the Petitioner would contend that keeping in view the fact that the Respondent had not performed its statutory obligations in either acceding to the request of the Petitioner by offering the terms of interconnection, it has a legal right to approach this Tribunal.

Learned counsel in support of its contention has placed strong reliance on a judgment of this Tribunal dated 29.9.2010 passed in Petition No. 156 (c) of 2010, titled Sree Devi Enterprises Vs. Channel Plus.

8. Mr. Nitin Bhatia, learned counsel appearing for the Respondent on the other hand, would urge that this petition is premature.

9. The Regulations were framed by Telecom Regulatory Authority of India in exercise of its power conferred on it under Section 11 (1) (b) of the Telecom Regulatory Authority of India Act, 1997.

The Regulations cover arrangements amongst service providers for Interconnection. Clause 3.2 of the Regulations contains 'a must provide' clause in terms whereof the Broadcasters are obligated to supply signals of its TV channels on reasonable terms and on a non-discriminatory basis.

Clause 3.5 of the Regulation reads as under :-

“3.5 Any broadcaster, multisystem operator or HITS operator, as the case may be or any agent/ any other intermediary of the [broadcaster, multisystem operator or HITS operator, as the case may be to whom a request for providing TV channel signals is made, should either provide the signals on mutually agreed terms to the distributor of TV channels who is seeking signals, or specify the terms and conditions on which they are willing to provide TV channel signals, in a reasonable time period but not exceeding sixty days from the date of the request. In case, the broadcaster, multisystem operator or HITS operator, as the case may be or any agent/ any other intermediary of the broadcaster, multisystem operator or HITS operator, as the case may be to whom a request for

providing TV channel signals is made, turns down the request for TV channel signals, the reasons for such refusal must also be conveyed within sixty days from the date of the request for providing TV channel signals so as to enable the distributor of TV channels to agitate the matter at the appropriate forum.”

10. The time frame of sixty days must have been put in the Regulations with a salutary purpose. It, however, does not contain any penal consequences. The remedy of the aggrieved party is merely to approach this Tribunal for an appropriate order.

Would it mean that while making a request, the distributor of TV channel need not supply the basic informations required under the REgulation?

In our opinion, it is not so.

11. Clause 3.2 of the Regulations provide for an exception to the law of contract. A Local Cable Operator before asking a broadcaster to supply signals of its channels must be a Registered Cable Operator as envisaged under Section 3 of The Cable TV Network (Regulation) Act, 1995 and the rules framed thereunder.

12. There are some other statutory requirements which must also be complied with, before a person seeking signals is held to be entitled therefor. It must be in a position to re-transmit the signals of the channels to its subscribers. For the purpose of retransmission of signals, it must first acquire a right in that behalf wherefor an agreement in writing as provided for in Clause 4.A of the Regulations must be entered into.

The agreement may not only contain general and technical terms, it must be for consideration and upon specification of the commercial terms which are required to be negotiated between the parties. Regulations contemplate that supply of signals to a distributor of TV channel by the Broadcaster should be on reasonable terms. It must be on a non-discriminatory basis.

13. The Broadcaster for the aforementioned purpose must be informed about the subscriber base of the signal seeker. It is for that end in view, the Regulator has incorporated Clause 9 in the Regulations.

Making of a request cannot be premised on the *ipse-dixit* of the signal seeker. Broadcasters must have in its hand the basic informations.

It cannot without any effective request cannot be mandated to respond to the distributors of TV channels.

If any other view is taken, the same in our opinion would mean that even a one line request made by a person who intends to start a business (may not be with all seriousness), can also do so, whereupon, the entire onus would be on the Broadcaster.

14. Law, as is well known, must be construed reasonably.

It cannot be given a literal meaning if it becomes unreasonable or unworkable.

15. In Sree Devi Enterprises (Supra), the Local Cable Operator annexed with its request not only a Postal Registration Certificate but a list of affiliates Cable operators alongwith their affidavits, Service Tax Registration, Partnership Deed and Photocopy of the Pan Card. A large number of documents were sought for from the Local Cable Operator.

Contentions raised therein, inter alia were:-

“The petitioner having furnished the required details to the respondent which were necessary for the purpose of grant of fresh signal of its channels to the network of the petitioner, irrelevant questions had been asked and

irrelevant details had been sought for which is not contemplated in law.”

16. According to learned counsel for the Respondent, the informations were necessary.

17. This Tribunal noticed:-

“The Regulations has prescribed a ‘must provide’ clause on a broadcaster. Indisputably, a content aggregator being a distributing agency of a broadcaster will come within the purview of the definition of the terms broadcaster as contained in Section 2(e) of the Regulations. It is not in dispute that the petitioner had undertaken the business of retransmission of signal services to more than 50 cable operators in the town of Kakinada and surrounding areas. It is, furthermore not in dispute that the petitioner has been supplying the signals of ‘free-to-air channels’ only and it having not entered into any agreement with any of the broadcasters, the question of its receiving any invoice and/or paying any amount to any broadcaster would not arise.

The petitioner indisputably has complied with the requirements of clause 9.2 of the Regulations as it had furnished all the details of the cable operators it had been serving in a around the town of Kakinada.”

18. It was observed:-

“The Regulations provide for a ‘must provide’ clause directing the broadcaster to provide signals to a distributor of TV channels. There cannot, however, be any doubt or dispute that such a provision has been made by the independent regulator in contra-distinction with the ordinary law of contract, namely, the parties in order to arrive at a binding contract must be ad idem on the details thereof including the terms and conditions of contract. The regulatory regime in this behalf, in the considered opinion of this Tribunal, must be ascertained upon reading the Regulations in its entirety.”

19. It is on the aforementioned premise, the following observations upon which Mr. Handoo relies upon were made:-

“Often, on behalf of the broadcasters, an argument is advanced that a request must carry the requisite details. This may be so but even for the purpose of getting the petitioner know about the deficiencies made by it, it is expected, that the broadcaster would respond to the request made to it and/or the inadequacies thereof . In this case, not only the details of the operators have been furnished, as indicated hereinbefore even the affidavits affirmed by the respective operators had also been furnished. The list of the operators in effect and substance complies with the requirements of clause 9.2 of the Regulations.”

20. What would be the relevant informations so as to impose a liability on the Broadcaster to supply signals to the Local Cable Operator network was the subject matter of consideration in the said petition.

Sree Devi Enterprises (Supra) does not lay down any law that all types of requests, even bereft of the basis and relevant informations, must necessarily be attended to by the Broadcaster.

21. This aspect of the matter has been considered in Digicable Network (India) Pvt. Ltd. Vs. Star Den Media Services (P) Ltd. in Petition No. 121 (c) of 2009 disposed upon 02.02.2011.

Upon noticing Sree Devi (Supra) it was held:-

“It is now a well settled principle of law that a statute should, unless there exists any anomaly and/or leads to any absurdity, should be given a plain and literal meaning. A statute should be construed also in the text and context thereof. If an exception has been created to main provision, there is absolutely no reason as to why it should not be given its full effect.

Each case, therefore, must be decided on its own facts but the basic principle of law is required to be followed.”

22. There is another aspect of the matter. Petitioner got itself registered on 12.12.2011.

Mr. Handoo, learned counsel for the Petitioner would, relying on the statements made in Para 3 of the petition, submit that it had been granted a Postal Registration Certificate even prior thereto. We would assume the same but it ought to have annexed atleast a copy of the said Registraton Certificate alongwith its letters of request. It failed and/or neglated to do so.

23. It furthermore appears that even the pole permission for laying the overhead cables were sought for on 07.12.2011 and was granted on 08.12.2011. The Municipality also granted its permission to run the said network in the premises in question only on 10.11.2011. Prior thereto the Petitioner even did not have the requisite documents to run the said network.

24. We, therefore, are of the opinion that Petitioner has not made out any case for issuance of any direction. However, the petitioner will be at liberty to apply to the Respondent afresh with all the requisite documents and furnish all the necessary informations as required under the Interconnection Regulations and the Respondent will take action as obligated under the relevant provisions.

25. This petition is disposed of accordingly with the aforementioned observations. 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

HKC/rkc