

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 2ND NOVEMBER 2012

Petition No. 168 (c) of 2012

Vennela Cable Networks ...Petitioner

Vs.

Maa Television Network Ltd. ...Respondent

BEFORE:

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

For Petitioner : Mr. B.S. Sai, Advocate

For Respondent : Mr. Y. Rajagopala Rao, Advocate
Mr. Hitendra Nath Rath, Advocate

JUDGMENT

The Petitioner is a Multi Service Operator. The Respondent is a Broadcaster.

2. The Petitioner with a view to obtain supply of signals of the channels of the Respondent made a request to it herein on or about 08.2.2011.

As the said request was not acceded to, the Petitioner filed a petition which was marked as Petition No. 316 (c) of 2012. This Tribunal by an order dated 2.2.2011 directed the Parties to enter into an agreement, in the event the Petitioner was ready and willing to enter into an agreement on a subscriber base of 3,000.

The parties hereto, however, entered into an agreement on 24.2.2011 on a subscriber base of 1076. Annexure – 3 appended to the said agreement in stead and in place of mentioning the area of operation of the Petitioner mentioned the said subscriber base stating “as per SLR”.

3. Alleging transgression of the signals of the Respondent on the premise that the Petitioner has been supplying signals to other subscribers also, a notice was issued on 23.6.20012.

The Petitioner while denying the said allegation, filed his SLR on 30.6.2011.

On 29.7.2011 the Petitioner informed the Respondent that its subscriber base has increased to 1400 and tendered the subscription fees on the said basis, of which was accepted by the Respondent without any demur whatsoever. The subscription fees was paid on the said increased subscriber base also on 20.10.2011 which was accepted by the Respondent.

4. According to the Petitioner, it filed another petition for supply of signals to its channels against M/s Zee Turner Ltd. wherein an Advocate Commissioner was appointed.

The said Advocate Commissioner also estimated the universe of the Petitioner at 1718.

The Petitioner by a letter dated 30.11.2011 intimated the Respondent about the said fact and on that basis paid a sum of Rs.25,000/- by way of a Demand Draft.

Similar exercise was undertaken by the Petitioner on 31.12.2011 by showing the number of subscribers at 1718 wherefor a payment for a sum of Rs.26,000/- was made. On 6.1.2012, the Petitioner had shown the subscriber base of 1814.

A request was also made by the Petitioner to renew the said agreement, whereupon another notice under Clause 4.1 of the Regulations was issued on the premise that the Petitioner has transgressed its area of operation. By a letter dated 23.1.2011, the Petitioner denied and disputed the same. By another letter dated 29.2.2012, Petitioner sent its SLRs and payment on the basis thereof.

5. A public notice was issued under Clause 4.3 of the Regulation on the same ground. This petition was filed on 23.9.2012.

6. An ad-interim order of injunction was passed on 30.3.2012. Upon hearing the parties by an order dated 4.4.2012, it was directed:-

“set out”

“Having heard the learned counsel for the parties, we are of the opinion that interest of justice would be sub-served if for the time being the Petitioner is directed to pay monthly subscription charges to the Respondent on a subscriber base of 2000 whereupon the supply of signals to the Petitioner’s network shall continue without prejudice to the rights and contentions of the parties and subject to any other or further order that may be passed by this Tribunal. Liberty is given to the Respondent to apply for vacation, variation and/or modification of this order.”

7. It is not in dispute that the said order has been complied with.

8. The network of the Petitioner was disconnected on 24.8.2011. It was, however restored on the Petitioner’s agreeing to increase the subscription fees calculated at a subscriber base of 1700. The Petitioner again increased its subscriber base to 1718.

9. Notices under Clause 4.1 and a Public Notice under Clause 4.3 of the Regulations thereafter was issued.

10. In its reply, the Respondent contended:-

“ (i) That this Hon’ble Appellate Tribunal vide it’s order dated 8.2.2011 passed in Petition No. 316 (C) of 2010 was pleased to direct this respondent to enter into an agreement with the Petitioner for a subscriber base of 3000. But the respondent entered into an agreement with the Petitioner only for a subscriber base of 1076 relying on the SLR submitted by the Petitioner stating that the Decoders of the respondent have been issued as per the SLR provided by the Petitioner with an understanding that the Petitioner shall inform the respondent whenever the Petitioner transmitting signals in any new area other than the SLR provided by the Petitioner. The SLR provided by the Petitioner was made as part of the agreement. The said fact has been suppressed by the Petitioner and the SLR has not been filed along with the copy of the agreement.”

“2. The respondent entered the agreement with the Petitioner based on the SLR submitted by the Petitioner with a specific understanding that the Petitioner would not transgress any other areas other than the areas specified in the SLR. The SLR was made part of the agreement but the same has not been produced along with the agreement copy. The Petitioner changing the subscriber’s base time to time. The respondent got issued notice dated 23.6.2011 alleging transgression of signals for which the Petitioner got issued a reply dated 30.6.2011 stating that it’s subscriber’s base was only 1076. Surprisingly, the Petitioner vide its letter dated

29.7.2011 declared 1400 subscribers. In its further letter dated 31.12.2011, it has declared 1718 subscribers. Whereas, it has disclosed vide letter dated 30.1.2012, a subscriber base of 1814. This shows that the Petitioner did not come forward with true facts and it is suppressing the real facts and it's transgression of new areas and in order to cover up the transgression of new areas and in order to cover up the transgression, it has declared different subscriber's base at different times."

11. It was furthermore stated that a verification of the subscriber base of the Petitioner was carried out whereupon it was found that several persons named therein had also been taken supply of signals from the Petitioner's network. Allegedly affidavits of the said persons were obtained. A CD was also prepared.

However, the Respondent has not filed the said affidavits nor produced the aforementioned CD.

12. On the contrary the Petitioner filed affidavits of the same persons whose names were disclosed in the said reply whereby and whereunder it was stated that the Petitioner had not been re-transmitting signals of the Respondent's channels. But even the Petitioner did not examine them and, therefore, the same is inadmissibly in evidence.

13. The sole question which arises for consideration is as to whether in terms of the said agreement, the Petitioner could increase the number of subscribers.

14. The Petitioner in support of its case, examined one Mr. Moturi Kankeswara Rao, Managing Partner of the Petitioner's firm; whereas the Respondent examined one Mr. K. Siva Adinarayana, its Senior General Manager, Corporate Services.

15. It has been noticed heretofore that even according to the Respondent, the Petitioner continued to supply its SLR to the Respondent. The Petitioner had also been paying the subscription fees on the basis of its increased subscriber base. The Respondent had also been accepting payments, the subscription fees on an increased subscriber base disclosed by the Petitioner from time to time without any demur whatsoever.

In fact, the network of the Petitioner was restored when the Petitioner agreed for increase of its subscriber base to 1700.

16. Mr. Sai, learned counsel for the Petitioner would contend that the Respondent has acted mala-fide; whereas Mr. Rajagopala Rao would urge that it was obligatory on the part of the Petitioner to obtain prior approval of the Respondent before granting signals to any

consumer other the ones specified in the SLR annexed to the agreement.

17. The agreement in question is in writing.

It is not the case of the Respondent's that the terms and conditions of the agreement dated 23.6.2011 had been changed. The parties are bound thereby.

The agreement clearly shows that the subscriber base of the Petitioner was 1076. It is not the case of the Respondent nor has any material been brought on record to show that the cable homes of the subscribers of the Petitioner was confined to a specified geographical area.

18. If the Respondent intended to restrict the Petitioner to the subscriber base of 1076, it could have explicitly been so stated in the agreement. If the terms of the agreement are capable of two interpretations, the one which favours the MSO should be adopted. Moreover, subsequent conduct of the parties also clearly go to show that they understood the said agreement in the aforementioned context.

Moreover, the Respondent in view of its conduct; as noticed heretofore, is stopped from raising any other plea.

19. The Respondent as noticed heretobefore itself in its reply stated so. There is no reference in the agreement that prior permission of the broadcaster was necessary to be taken by the MSO.

20. For the reasons aforementioned , the impugned notices under Clause 4.1 dated 6.1.2012 and the public notice under clause 4.3 dated 10.3.2012 cannot be sustained. They are set aside accordingly.

21. However, the parties may meet for the purpose of holding negotiations for entering into a renewed agreement.

22. This petition is allowed with the aforementioned directions. There shall, however, be no orders as to costs.

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(S.B. Sinha)
Chairperson

HKC/