

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated 7th November, 2013

Petition No. 794(C) of 2012

Communication Cable Network ... Petitioner
Vs.
Maa Television Network Ltd. ... Respondent

Petition No.795(C) of 2012

Communication Cable Network ...Petitioner
Vs.
M/s Sun Distribution Services Pvt. Ltd. ...Respondent

Petition No.796(C) of 2012

Communication Cable Network ...Petitioner
Vs.
Eenadu Television Pvt. Ltd. ...Respondent

Petition No.797(C) of 2012

Communication Cable Network ...Petitioner
Vs.
Media Pro Enterprise India Pvt. Ltd. ...Respondent

BEFORE:

HON'BLE MR. KULDIP SINGH, MEMBER

For Petitioner : Mr. SharathSampath, Advocate
For Respondent [in : Mr. Y. Rajagopala Rao, Advocate
P.No.794(C) of 2012]
[in P.No.795(C) of 2012] : Mr.Nittin Bhatia,Advocate
[in P.No.796(C) of 2012] : Mr. K. Vijay Kumar, Advocate
[in P.No.797(C) of 2012] : Mr.Upender Thakur,Advocate for
Mrs.Prathiba M. Singh,Advocate

J U D G E M E N T

These petitions involve similar questions of facts and law and were, therefore, taken up for hearing together and are being disposed of by this common judgment.

2. The petitioner is a Multi System Operator operating in the area of Guntur, Andhra Pradesh. It is a proprietorship concern with Mr. ShaikAhammadBasha as the sole proprietor. The petitioner has been seeking the signals of the respondents, who are broadcaster in terms of Telecommunications (Broadcasting & Cable Services) Regulations, 2004 (13 of 2004). The present petition has been filed inter-alia to direct the respondent to enter into a subscription agreement with the petitioner for supply of their signals.

3. The followings are broad facts of the case in Petition No. 794 (C) of 2012:-

- (i) The petitioner addressed a letter dated 07.02.2012 to the respondent requesting it for its signals along with the decoder boxes and Sim Cards. As there was no response from the respondent, the petitioner again sent request letters dated 23.02.2012 and 29.02.2012. Subsequently, there was some exchange of correspondence between the parties. While

acknowledging the receipt of letters from the petitioner, the respondent asked for certain more documents which were supplied as per the petitioner. The present petition has been filed when the petitioner failed to obtain signals of the respondent.

- (ii) The Tribunal vide its order dated 06.11.2012 asked the representatives of both the parties to meet at Hyderabad office of the respondent on 09.11.2012. On 9.11.2012 meetings were held between the petitioner and the respondent wherein the respondent asked for certain clarifications from the petitioner. As per the petitioner, these were provided vide letter dated 12.11.2012.
- (iii) Subsequently, the Tribunal vide its order dated 17.12.2012 observed that the disputes and differences between the parties have not yet been resolved and directed the parties to further meet at the Hyderabad office of the respondent on 26.12.2012 at 11:00 AM to settle their disputes. However, the disputes between the parties have still not been resolved.

4. The learned counsel for the respondent referred to the letters dated 07.2.2012 and 23.2.2012 written by the petitioner and stated that in these letters the request was for supply of channels of M/s Media Pro Enterprises and not Maa TV, the respondent in this case. He argued that a valid request as

per the Regulations is mandatory and therefore the petition is not maintainable. However, this contention of the respondent is not acceptable due to the simple reason that it had acknowledged the request of the petitioner vide letter dated 6.3.2012 (which is at page 91 of Paper Book) While acknowledging the letter, certain information was asked but no such objection as to letter not being addressed correctly was raised. The relevant portion of this letter is as under:-

“This has reference to your letter dated 29.02.2012, wherein you have requested us to issue decoder of MAA TV for transmission of Maa TV programmes through your network. To process your application and issue decoder you are requested to furnish the following information.

- 1. Subscriber Line Report (SLR list)*
- 2. Network Details with Photo's.*
- 3. No. of other Free to Air (FTA) and Pay channels*
- 4. Copies of Invoices of existing pay channels.*
- 5. Track Record of Pay channels.*
- 6. Service tax details.*
- 7. POL Tax & Entertainment tax details*
- 8. Certificate of Incorporation of firm*
- 9. Address proof*
- 10. Details of other operators in the area*
- 11. Income Tax returns for the last three (3) years.*
- 12. Fiber Root Map.”*

During the cross-examination of Mr. K. Siva Adinarayana, the respondent's witness, in response to a question on this objection, the witness stated that they were not objecting but were only asking for a clarification. The relevant part is as under:-

“Q14: I put it to you that you were well aware of the petitioner making requests for the channels provided by the respondent and it is for that reason that you responded to the letter dated 29.2.2012, however, you have taken this objection on meeting dated 9.11.2012 to somehow delay the grant of signals to the petitioner.

A: It is incorrect

Vol: We were not objecting. We were only asking for clarification”

Further, during the meeting on 9.11.2012, the respondent had asked for a fresh request letter from the petitioner and subsequently, the petitioner addressed letter dated 12.11.2012 requesting the respondent for its signals.

5. The second submission made by the learned counsel for the respondent was regarding the area of operation of petitioner being not specified in the map. He submitted that even in the prayer clause, no area of operation has been mentioned. However, the learned counsel for the petitioner submitted that its network is spread in local areas of Guntur and the same is very much part of the petition at page 2 of the paper book. The relevant portion is as under:-

“The Petitioner has its cable network spread in the local areas of Guntur, with its control room set up in the premises bearing D.No.24-31-83, 20/2, Indira Gandhi Nagar, Guntur, Andhra Pradesh and has been receiving signals of various free to air satellite channels and retransmitting the same to its direct subscribers at present.”

6. Mr. Y. Rajagopala Rao, learned counsel for the respondent further submitted that the petitioner has not furnished any list of local cable operators. Learned counsel for the petitioner, however, submitted that the same is not mandatory as per the Regulations. In this regard, Sub-Clause 9.2 of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004 specifies as how the first agreement between the MSO and broadcaster would be entered. The same is as under:-

“In non-addressable systems, while executing an interconnection agreement for the first time between a multi system operator and a broadcaster, the multi system operator shall furnish a list of the cable operators who will be getting signals from its network alongwith their subscriber base. The parties to the agreement shall take into account the subscriber base of cable operators connected to the multi system operator while negotiating the subscriber base of the multi system operator. For the consumers proposed to be directly served by the multi system operator, the procedure as laid down in sub-clause 9.1 of the regulation shall be followed.”

The clause is very clear that if the consumers are proposed to be directly served by the MSO, the procedure as laid down in sub-clause 9.1, would be followed. The sub-clause 9.1 is as under:-

“In non-addressable systems, while executing an interconnection agreement for the first time between a multi system operator and a cable operator, the parties to the agreement shall taken into account the subscriber base of the cable operator on the basis of the Subscriber Line Report (SLR) where such SLR exists. Where such SLR does not exist, this shall be negotiated on the basis of the evidence provided by the two parties on the subscriber base, including the subscriber base of similarly placed cable operators and local survey.”

As per the sub-clause 9.1, the parties to the agreement shall take into account the subscriber base of the cable operator on the basis of the Subscriber Line Report (SLR) where such SLR exists. In the instant case, the petitioner has submitted a detailed subscriber base giving the address as well as area and the same is available in the paper book from pages 94 to 105.

In view of the above, I am not convinced that the supply of list of local cable operators is a Mandatory requirement in the present case.

7. Mr. Nittin Bhatia, learned counsel appearing for Sun Distribution Services Pvt. Ltd. the respondent in Petition No. 795 (C) of 2012, made the following submissions:-

- (i) The Postal certificate of registration (page 203 of paper book) specified the address as Door No.24-31-83 21/2 whereas the same in the Memo of Parties is shown as Door No. 24-31-83 20/2. Mr.SharathSampath, learned counsel for the petitioner submitted that this postal certificate of registration was attached with the rejoinder as the earlier postal certificate of registration had expired and this is a renewal of the certificate of registration which was annexed with the rejoinder. D. No. 24-31-83 21/2 is a typographical error and the same has been corrected by the Post Master, Guntur. He produced the corrected copy of the same.
- (ii) The learned counsel for the respondent further submitted that the petitioner has only 65 number of poles to which the counsel for the petitioner replied that for the purpose of their present operation, these many number of poles are sufficient and further permission can be taken as and when required. It was further submitted that the petitioner has provided an Optical Fibre Cable (OFC) map showing whole of Guntur and it was contended that the petitioner has not laid the said Optical Fibre Cable as it has not provided the

details of the same to the respondent. The petitioner has denied the same in the rejoinder filed by it. The relevant portion is cited as under:-

“It is denied that the petitioner has not laid down any optical fibre cable in the areas where it proposes to supply signals. It is denied that the petitioner is not capacitated to transmit/distribute the channels of the respondent. It is most respectfully submitted that the Optical fibre Cables of the petitioner were stolen from certain areas, which were thereafter relaid and hence, the allegations of the respondent are baseless and without any physical verification whatsoever.”

Further during the cross-examination of Mr. ShaikAhammadBasha, sole Proprietor of the petitioner, the witness in response to the questions regarding Optical Fibre Cable, categorically answers that its Optical fibre Cable are starting from his control room at point 18 in the map and are spread in entire Guntur. Some invoices regarding the purchase of Optical Fibre Cable are annexed with the rejoinder by the petitioner (page 209 to page 213 of the paper book). In view of the above, I am of the view that no case is made out that the petitioner does not have the Optical Fibre Cable or permission for the poles to carry out his operations.

(iii) The other contention raised by the respondent is with regard to the

BIS certification of the equipment. It is the contention of the respondent that petitioner does not have BIS certification for his equipment. In this regard, the cross-examination of the respondent's witness RW-1 is as follows:-

“Q13: What as per you are the BIS standards for equipments pertaining to cable and broadcasting?”

(Ld. Counsel for the respondent objects to the question as it pertains to the opinion of the witness on a legal issue.)

A: I do not have technical knowledge and hence I am unable to answer.

Vol: Some companies have got BIS standard certificates and qualities.

Q14: Does the BIS issue certificates for equipment pertaining to the cable and broadcasting industry?”

A: Yes.

Vol: They issue certificate stating that the equipment is as per BIS standards.

Q15: What is the basis of the voluntary statement made above?”

A: I don't know.

Q16: Have the other MSOs in the area also provided these BIS standards certificates to you prior to obtaining signals?”

A: The earlier MSOs have not submitted the BIS standards certificates as we did not ask earlier, however, now we are asking.

Q17: As you say that the earlier MSOs have not been asked for the BIS certificate and you also say that the BIS issues certificates, would I be correct in saying that you have seen

such certificates issued by BIS and are in the possession of the respondent?

A:No.

It is incorrect to suggest that the certificates submitted by the petitioner at pages 214 to 219 are compliant to BIS standards.

Vol: Those documents are vendors documents.”

From the cross examination of the respondent's witness, it is clear from answer to question 16 that they have not been asking BIS certificates from MSO earlier. The witness also does not appear to be clear about the same. In this regard Section 9 of the Cable TV Network Regulations Act, 1995 reads as under:-

“9. Use of standard equipment in cable television network – No cable operator shall, on and from the date of the expiry of a period of three years from the date of the establishment and publication of the Indian Standard by the Bureau of Indian Standards in accordance with the provisions of the Bureau of Indian Standards Act, 1986 (63 of 1986) use any equipment or digital addressable system in his cable television network unless such equipment or digital addressable system conforms to the said Indian Standard.”

A plain reading of the above, shows that the equipment used must confirm to the said Indian Standard. However, the Act does not put any requirement on the cable operator to get any certification done from the BIS. The petitioner has attached letters from the vendors with the

rejoinder (pages 214 to 219 of the paper book). The relevant part from the letter of the M/s Cyber Optics is as under:-

“We have supplied “FIBTRON Analogue Adjacent channel Modulator – 4000” to many MSO’s in Andhra Pradesh where they have downloaded “ALL BROADCASTERS” signal from same modulators and transmitted the same to their respective operators (LCOs). We have faced any objection till date from any broadcaster regarding the said modulators.

We certify that all our headend products are inline and complied with BIS requirements and also with the identical international standards.”

Another letter from M/s Fibtron (page 215 of paper book) states that their digital and analog cable TV products comply with the International Standards like ISO & IEC. The learned counsel for the petitioner argued that the BIS standards flow from ISO standards such as ISO 9000, ISO 14001-2004, etc. The letter also categorically states that the equipment are also in conformity with specifications prescribed by the Bureau of Indian Standards. The learned counsel for the respondent states that these letters are from the vendors and the petitioner has bought equipment from some other suppliers. In my view, the compliance with standards has to be issued by the manufacturer/vendors of equipment and not the distributors or the end

users, for e.g, a TV of a particular make may be sold by many distributors and used by many consumers but the compliance to the relevant standards has to be ensured only by the manufacturer of that particular TV brand.

8. Mr. K. Vijaya Kumar, learned counsel for Eenadu Television Pvt. Ltd., the respondent in Petition No. 796 (C) of 2012 raised the same issues regarding letter requesting for signals not addressed to the right respondent and that the address in the postal certificate of registration is different. As regards the letter not addressed correctly, in view of the meetings between the parties as per the directions of the Tribunal and clarifications of the Petitioner, this issue no longer survives. The counsel also raised the issues that rent deed supplied by the petitioner is not registered. He further raised the same issues of BIS certificate and the petitioner not having sufficient Optical Fibre Cable.

9. Mr. U. Thakur, the learned counsel for Media Pro Enterprises India Pvt. Ltd., the Respondent in Petition No. 797 (C) of 2012, in addition to the points raised by the earlier respondents also referred its letter dated 20.4.2012 (page 88 of paper book). As per which it had asked certain documents and an application to be filed by the petitioner. The learned counsel for the petitioner in turn referred to letter dated 28.4.2012 (page 90 of paper book) wherein he

had enclosed the various documents.

10. During the course of arguments, my attention was drawn to two judgments of the Tribunal (i) KRK Cable Network Vs. Channel Plus – Petition No. 23 (C) of 2010; and (ii) SreeKonark Digital Systems Vs. Maa Television Network – Petition No. 50 (C) of 2012 & Sree Devi Digital Systems Vs. Maa Television Network Ltd. – Petition No. 51 (C) of 2012.

In case of KRK Cable Network Vs. Channel Plus, the certificate of registration required as per Section 3 of the Cable Television Network (Regulations) act, 1995 was issued for a different address. There was no Postal Registration Certificate for the new address from where the petitioner was to operate. The Tribunal had held that the petitioner may approach the respondent after obtaining the Postal Registration Certificate at the new address from where it was operating as well as submit a SLR of the cable operators.

In the 2nd case the contention of the respondents that the petitioner did not make any valid request, was not accepted. In this regard, the Tribunal observed as follows :-

“26. It is true as has been contended by Mr.Rajagopala Rao that the Petitioner did not annexe any document with its letter of request dated 5.8.2011 but admittedly it did so with its e-mail dated 6.8.2011 as also its reminder dated 17.11.2011. We therefore are of the opinion that these Petitions cannot be dismissed only on the aforementioned ground.”

However, in this case the petitioner was yet to obtain the certificate from the municipal authorities and/or electricity undertaking. Moreover, in this case the petitioners had local cable operators and there was no basis on which the Tribunal could assess the subscriber base of the petitioner even on provisional basis.

11. After hearing the counsel for the petitioner and various counsels for the respondents, in my view, the core issue which needs to be addressed at this stage is with regard to the SLR and the area of operation of the petitioner. No doubt, the certificate of registration with the postal authorities is a mandatory statutory requirement but in my view, the address of the postal certificate of registration at the time of renewal appears to be a typographical error. However, this issue can be easily sorted out by directing the petitioner to provide a corrected copy of the same to all the respondents.

In view of the evidence produced before me, capability of the petitioner with regard to the equipment and Optical Fibre Cable as well as the permission for the poles cannot be doubted. I also agree with the contention of the petitioner that when it can take permission for 65 poles, nothing prevents it to take permission for further poles, if and when required. It is no doubt that for a new MSO to enter into the business of distribution of TV signals, the main issue comes with regard to SLR. However, Regulations in this regard are very

clear. In the present case, the petitioner categorically states that he does not want to have any LCOs and wants to supply signals directly to the consumers. The Regulations permit him to do so and therefore I do not agree with the contention of the respondents that a list of LCOs is mandatory. It is evident that the petitioner has supplied a comprehensive list of subscribers with addresses and areas clearly mentioned. Though it is pointed out that in some places the address is left blank, it is the contention of the learned counsel for the petitioner that there are some housing societies, etc where Door No., etc is not provided as the same does not exist.

12. Be that it may, I fail to see that even if a subscriber is wrongly shown, how it is prejudicial to the interest of the respondent since the petitioner is willing to pay as per the subscriber list provided. When the counsel for respondents were specifically questioned about this, their reply is that they apprehend that the petitioner may resort to piracy. The petitioner, however, cannot be denied signals based on apprehension. Moreover, the respondents had enough time to verify the subscriber base for which the list was available but they choose not to do so. A reading of the Clause 9.1 of the Regulations, which is applicable in this case, shows that the respondents could have also produced evidence of the subscriber base of similarly placed cable operators or other MSOs but no such evidence has been produced. The learned counsel for the respondents also argued that subscriber base of 1006 claimed by the petitioner at present is too less for the area of Guntur. A consideration of the

list of subscribers provided by the petitioner shows that there are about 23 areas of Guntur in which the petitioner has shown its subscriber base. It is natural that if the petitioner were to provide service in other areas of Guntur its subscriber base would definitely increase. In my view, the agreement based on a negotiated SLR must also specify the area of operation clearly for the agreement to be meaningful. Therefore, the interest of justice will be subserved if the same is done in the present case. As per the SLR of the petitioner, the areas of Guntur are as follows:-

- (i) *“Nallacheruvu*
- (ii) *Sampath Nagar*
- (iii) *Menkagandhi Nagar*
- (iv) *D.S. Nagar*
- (v) *Gandhi Nagar*
- (vi) *Old Guntur*
- (vii) *ButchaiahThota*
- (viii) *A.B. Pet*
- (ix) *Mothilal Nagar*
- (x) *Nehru Nagar*
- (xi) *Mangaldas Nagar*
- (xii) *Madiralal Nagar*
- (xiii) *Basavatarak Nagar*
- (xiv) *Gaddipadu*
- (xv) *Ganesh Nagar*
- (xvi) *Kakumanuvarithota Quarters*
- (xvii) *V. Puram*
- (xviii) *Vallurivarithota*
- (xix) *BongaralaDeedu*
- (xx) *Abudhanagar*
- (xxi) *N.T.R. Colony*
- (xxii) *Rajaswara Colony*
- (xxiii) *Gudusawr Colony”*

13. In view of the foregoing, the petitioner has made out a case

under the regulations for supply of signals by the respondent.

It is accordingly directed as follows:-

- (i) The petitioner shall furnish a corrected copy of the postal certificate of registration from the postal authorities to the respondents.
- (ii) Subject to (i) above, the respondents shall enter into the agreement within two weeks with 1006 as subscriber base.
- (iii) The area of operation of the petitioner shall be limited to those specified in para 12 in the area of Guntur.

All the above petitions are allowed with the above directions. In view of the facts and circumstances of the cases, there will be no order as to costs.

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(Kuldip Singh)
Member