

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

**Dated: 31<sup>st</sup> October, 2012**

**Petition No. 374 (C) of 2011**

**Gurunanak Cable Network & Ors. : Petitioner**

**Vs.**

**M/s. Fastway Transmission Pvt. Ltd. & Ors. : Respondent**

**BEFORE:**

**Hon'ble Mr. Justice S.B. Sinha, Chairperson  
Hon'ble Mr. P.K. Rastogi, Member**

**For Petitioner : Mr. Bajaji Srinivasan, Advocate**

**For Respondent : Mr. Navin Chawla, Advocate**

**Judgement**

The petitioners herein, who are local cable operators, have filed this petition against the respondents herein, who are operating in the town of Jalandhar in the capacity of Multi System Operators (MSO) being engaged in the business of distribution of television channels through various cable networks in the entire State of Punjab, praying inter alia for the following reliefs.

1. "Order directing the respondent No. 2 to adhere to the terms of transmission of signals under the agreement and to maintain good quality and continuous supply of signals to the petitioners' network.
2. Order directing the respondent no. 2 not to disrupt signals in petitioners' network.

3. Direct the respondent no. 2 to comply with the Interconnect Regulation No. 10 of 2006.
4. Direct the respondent No. 2 to provide a copy of the agreement with the petitioner as per the Interconnect Regulation.
5. Direct the respondent No. 2 to issue valid invoices to the Petitioners as per the Interconnect Regulation.”

2. One of the contentions raised in support of the aforementioned reliefs prayed for by the petitioner is that the respondents herein having been enjoying the status of a monopoly as a Multi Service Operator operating in the entire town of Jalandhar have taken recourse to not supplying good quality of signals to the networks of the petitioners despite several complaints made in that behalf.

3. The petitioners contend that the aforementioned acts of indiscretion on the part of the respondents amount to disconnection and/or disruptions of the signals and the same is in direct conflict with the provisions of the Telecommunications (Broadcasting and Cable services) Interconnection Regulations, 2004 as amended from time to time (hereinafter called and referred to for the sake of brevity as ‘the said Regulations’).

4. The petitioners furthermore submit that the respondents having not complied with the mandatory regulations necessary to disconnect supply the signals of its channels of which it is the distributor within the meaning of the aforementioned provisions, viz issuance of notices as envisaged under Clause 4.1 and 4.3 of the Regulations, must be held to have acted illegally.

5. The respondents on the other hand in their reply would interalia contend that:

(1) They have all along been and still are supplying good quality of signals without any disruption whatsoever to the Petitioners' networks.

(2) The respondent no. 2 pursuant to an order passed by this Tribunal having furnished a copy of the agreement as also the latest invoice for the month of September, 2011 on or around 18.9.2011 and the invoices having continued to be supplied on a regular basis, this petition has become infructuous.

(3) The petitioners have been making underdeclaration of their respective subscriber bases and in fact this petition has been filed only to achieve the purpose of not supplying the Subscribe Line Report (SLR) to which they are obligated to under the law.

6. This Tribunal in its order dated 9.9.2011 noted the submissions made on behalf of the respondent that good quality of signals had been and would continue to be supplied to the petitioners' network.

7. Having regard to the pleadings of the parties, the following issues have been framed.

“(i) Whether the Respondent No.2 has not been supplying continuous and good quality signals to the petitioner?

(ii) Whether the petition has been filed by the petitioner with malafide intention of not declaring true and

correct subscriber base and accordingly pay subscription fee?

- (iii) Whether the petition suffers from misjoinder of parties?
- (iv) What relief, if any, the petitioner is entitled to?"

An additional issue was also framed interalia on the premise that the petitioners intend to dispute the stand taken by the respondent that in fact agreement in writing had been entered into by and between the parties hereto, which is to the following effect.

“Whether the Respondent MSO is guilty of forging documents and producing backdated agreements and invoices?”

On the aforementioned issues the parties went to trail.

The petitioner, however, did not file any rejoinder or additional pleadings.

8. In course of the hearing of these proceedings, the petitioners made allegations to the effect that its witnesses had been threatened and infact were also assaulted, wherefor a First Information Report (FIR) had been lodged.

With regard to that aspect of the matter, the only observation that can be made by this Tribunal is that the law shall take its own course.

9. The petitioners in support of its case examined Mr. Ranjit Singh, the proprietor of Petitioner No. 1 only.

The other petitioners did not examine themselves.

10. According to the said witness;

(a) The petitioner had entered into an agreement with M/s. Citizen Cable Network Pvt. Ltd. from 2005 which allegedly merged with the first respondent, as a result whereof a monopoly was created;

(b) A signed copy of the agreement had not been supplied by the respondent No. 2 which had been entered into with the aforementioned Citizen Cable network although they had been receiving the supply of signals to their network. A copy of the said subscription agreement had been supplied only on 20.12.2010;

(c) Even thereafter no invoice had been raised wherefor communications by way of SMSs were being sent.

The said witness had also stated to have received death threats.

11. The respondent examined one Mr. S. Joybir Singh Kataria, who in his affidavit stated that Ranjit Singh had been running cable business in the name of Manga Cable Network and his accounts had been maintained only in that name.

12. According to the said witness the invoices were being sent to Manga Cable Network C/o. G.S. Cable, Jalandhar, a copy whereof has been annexed to his affidavit and is marked as RW1/6.

13. The said witness furthermore contended that Manga Cable Network owed a sum of Rs. 1,23,191/- to the respondents upto 13.10.2011.

14. A notice in terms of Clause 4.2 of the Regulations had been served on Manga Cable Network on 1.12.2012 and on Jalandhar Cable Networks also on the same date.

15. A public notice was issued in two newspapers which have been marked as RW1/56.

16. Mr. Balaji Srinivasan, Ld. Counsel appearing on behalf of the petitioner would contend that the respondents for reasons best known to them did not file the agreement with Manga Cable Network and the agreement filed before this Tribunal merely shows that somebody had been running a network in the name of Gurunanak Cable Network.

17. It would appear from the reply of the respondent that the subscriber base of the of Guru Nanak Cable as on 21.12.2010 was said to be 295; whereas from the invoice dated 16.9.2011 it would appear that the same was unilaterally raised to 219.

18. The letter of the respondents dated 29.9.2011 would furthermore reveal that the joint survey was proposed to be conducted in the case of Jalandhar Cable Network (Billa) and Kakku Cable to which the petitioner replied.

19. It was furthermore urged that the respondent having not cross examined PW1 on the statements made by him that the respondents are dominant players, the same would be deemed to have been admitted.

20. Drawing our attention of the evidence of RW1, it was urged that the said witness with reference to the statement of account/balance sheet of the petitioner did not state that no agreement had been entered into with Gurunanak Cable Network.

21. Mr. Navin Chawla, Ld. Counsel appearing on behalf of the respondents, on the other hand submitted that;

- (i) PW1 having deposed as regards the fact pertaining to its own network and not that of the others, it must be held that the petitioners' no. 2 to 6 did not lead any evidence whatsoever.
- (ii) Mr. Ranjit Singh on the cause title as also paragraph 3.1 of the petition was said to be representing the petitioner No. 1 only and not others.
- (iii) The respondents' no. 2 to 6 having not examined themselves, no dispute can be said to have been raised with regard to the genuineness of the agreements, invoices or ledgers in regard to their networks.
- (iv) In paragraph 7 of his affidavit, according to him, he had signed the copy of the agreement which is said to have not been furnished.

22. We may for better appreciation of the aforementioned contentions notice the depositions of the said witnesses in their respective cross-examinations.

PW-1 stated that; all along he was the proprietor of Petitioner No.1 but according to it the Petitioner No. 1 is the partnership firm; Mr. Jagdev Kumar being its partner.

23. According to him he has been running his cable business for the last five to six years under the name of M/s Gurun Nanak Cable Network, located at Ekta Market, Pacca Bagh, Jalandhar.

He asserted although he had not entered into any agreement in writing with the Respondent No.2, it was for the latter to state as to on what basis signals have been provided to him.

Evidently no such case has been made out in his pleadings.

On the question as to whether he possesses any postal registration certificate prior to the one dated 5.9.2011, he stated that he would have to check whether even the same was at his office.

He denied that he has received any invoice.

He also denied a suggestion that the Respondents do not enjoy a monopolistic status. According to him he had been paying a sum of Rs.40,149/- but prior thereto he was paying about Rs.30,000/- to Rs.32,000/- by way of subscription fee to the respondent.

He furthermore stated that he was forced to pay a higher subscription fee due to “gundagardi” of the Respondents.

The assertion of the said witness, however, is that he used to make complaints about bad signals only on telephone. He reiterated that his colleague was attacked and threats were issued.

He denied a suggestion that he had been underdeclaring the subscriber base or the Respondent had requested for a joint survey.

24. The petitioner filed a Miscellaneous Application being MA No.98 of 2012 to recall himself wherefor an additional affidavit was filed on 28.2.2012.

With the said application the petitioner annexed a letter dated 1.2.2012 issued by a different company namely Fastway Citizen Cable Network Pvt. Ltd. which is said to be a notice under Clause 4.2. of Regulation.

It is only thereafter the Petitioner was cross-examined again on 28.3.2012 by a different counsel.

To a question with regard to the registration certificate he stated that he could produce the registration certificate but he did not renew the registration certificate for sometime and the certificate dated 5.9.2011 was his current registration certificate.

According to him some papers have been misplaced.

He denied a suggestion that he had been working in the name of Manga Cable. He although knew one Bhupinder Singh but according to him he was not aware that he has been operating as a local cable operator in the name of Guru Nanak Citi Cable.

He stated that he had never received any invoice. He, however, accepted that his nick name is 'Manga'. When confronted with the public notice issued under Clause 4.3, he, furthermore, admitted that the same had been issued to him.

As the said notice was in the name of Manga Cable, an inference can be drawn that has used to run his cable operation in the said name.

25. RW-1 although denied holding of any shares by the Respondents No.3 in some other companies, but admitted that after one Hatway Sukhamarit Cable and Datacom Pvt. Ltd. came into being, the LCOs were divided between Respondents No.1 and 2 and the said company. It is admittedly also a distributor of WWIL.

26. He, however, failed to prove the service of invoices in respect of Manga Cable.

According to him from RW-1/6A to RW-1/10A it would appear that somebody had accepted the said invoices and acknowledged the receipt of the invoices.

27. However, it appears that he has not made any statement in paragraph 4 of his evidence at page 77 wherein such a claim was made.

28. According to the said witness as Mr. Ranjit Singh was not accepting as the notice the name of Guru Nanak Cable was mentioned so that he accept the same. No such statement appears to have been made in his affidavit.

29. So far as the RW-1/53, RW-1/54 and RW-1/55, are concerned, he could not identify as to whether the same were sent in the envelopes of Fastway Transmission Pvt. Ltd. (letters sent to the other Petitioners).

30. He did not produce any agreement between the Second Respondent and Manga Cable despite the fact that it was so stated in Ex.PW-1/9.

31. Ex.RW-1/11 although was not a system generated document but the same did not bear the seal of the Respondents.

We may furthermore notice the following statements made by the said witness in his cross examination:

“Attention of the witness is drawn to exhibit RW1/20  
(page no. 97 to 107 of evidence folder)

Q: Can you go through the agreement and say the subscriber base for which the agreement has been signed with petitioner no. 3?

A: 99.

There is no other agreement with the petitioner no. 3

Vol. We called Mr. Jaswant Singh that his ground connections have increased. We demanded his connection list. So he came to us and mutually enhanced subscriber base to 107. We again wanted his subscriber list so that is why to blackmail us he has filed the present petition to pressurize us to downgrade his subscriber base. Sometime before, he also filed one case just to downgrade his subscriber base after that he had withdrawn the case. They only have bad intentions to blackmail us to downgrade the subscriber base.

I am making this statement for the first time.”

32. The instant case appears to have certain peculiarities which clearly depicts as to how unsystematically the cable industry in the State of Punjab is being run.

The Petitioners have alleged and for all practical purpose established that the Respondent enjoys a monopoly.

33. This case appears to have been conducted haphazardly. Although the petition is supported by affidavits of each of the Petitioners, for reasons best known to them, no witness other than PW1 was examined.

34. The question as to whether the Petitioners have validly been taking supply of signals bears a big question mark.

35. The Respondents did not produce any agreement so far as the First Petitioner is concerned, although it has produced agreements entered to by and between the Respondent No. 2 and some other cable operators.

36. In the facts and circumstances of this case although the respondent ought to have filed the agreement with Manga Cable, the PW-1 also did not say as to on what basis supply of signals were being disrupted. The burden of proof in this behalf being on the Petitioners, PW1 it should have clearly stated so.

37. The status of the First Petitioner also appears to be doubtful. In his evidence PW-1 claimed that it was a partnership firm although in the petition as also in the bank account produced by him, the same appears to be a proprietorship concern.

38. A subscription agreement dated 20.12.2012 has been filed which has been entered into by and between Respondents No.1 and 2 and Guru Nanak Citi Cable, which according to the Petitioner is not the Petitioner No.1 before us. Although in the public notice the name of Guru Nanak Cable Network does not appear, PW-1 has accepted that the name of Manga Cable Network appears, which is his not own.

The parties, therefore, have prevaricated their respective stands from time to time.

It has also rightly been submitted by Mr. Chawla that it furthermore appears that although the agreements produced by the Respondents were to be questioned in the rejoinder to the reply filed by the respondents to be forged and fabricated, no such rejoinder has been filed.

It is, therefore, difficult to go into the aforementioned question.

39. So far as the registration certificate of the petitioner no. 1 is concerned, evidently he did not prove that he had been operating before 2011 under the name and style of petitioner No.1.

40. Evidently the same was required of him to produce with a view to show that the Petitioner in fact had been running its network under the name of M/s Manga Cable.

An adverse inference, therefore, must be drawn against the petitioner No. 1.

41. Keeping in view the fact that in terms of the provisions of the Cable TV Network Regulations Act, 1995 and the Rules framed thereunder the certified copies of the certificates can also be obtained, the petitioner No.1 could have shown that he had been operating throughout in the name of the petitioner No.1.

42. It is possible that at certain point of time he had started operating in the name of Petitioner No.1 although according to the Respondent he obtained the said certificate only for the purpose of filing this petition.

43. Moreover there are certain subsequent events namely issuance of notice under Clause 4.2 and a public notice under Clause 4.3 of the Regulations which ought to have been challenged. If the same had not been done, this Tribunal cannot go into the question of legality and/or validity thereof as submitted by Mr. Balaji Srinivasan.

44. We, however, may make an observation that the Respondents in future should conform to the provisions of Clause 4A of the Regulations as amended in the year

2009. It is moreover enjoined with a duty to supply a copy of the agreement within 15 days from the date of execution thereof.

45. The parties, if the said Clauses 4.2 and 4.3 have not been given effect to may enter into a fresh subscription agreement keeping in view the provisions of Clause 8.1 of the Regulations.

46. It appears to this Tribunal that no such agreement in writing on a negotiated subscriber base has been executed between the petitioner No. 1 and the respondent No. 2.

47. There cannot be any doubt or dispute that in view of the statements made by the respondents till the Petitioner's network are not disconnected the same shall continue to be supplied with good quality of signals.

48. Subject to the observations made hereinbefore no relief as has been prayed for can be granted to the Petitioners.

This petition is disposed of accordingly without any order as to cost.

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

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

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