

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

Dated 17th October, 2012

Petition No. 473(C) of 2011

M/s Vision Digital CablePetitioner
Vs.
M/s Media Pro Enterprises India Pvt. Ltd.Respondent

BEFORE:

HON'BLE MR. P.K.RASTOGI, MEMBER

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

For Respondent : Mr.Saurabh Srivastava, Advocate
(for Sai Krishna & Associates)

JUDGEMENT

This petition has been filed by the petitioner against the respondent praying for :

- (i) Direct the Respondent to renewal the agreement with the Petitioner as per Hon'ble Tribunal directions dated 10.08.2011 in Petition No. 108(c) of 2011.
- (ii) Direct the Respondent to apply the same ratio, which are applicable to the other 3 MSOs in the area and enter into a fresh agreement with the Petitioner for the area of Vijayawada (Urban & Rural) and Mangalagiri;

- (iii) Direct the Respondent to enter into a proper agreement is required by law without any discriminating terms as per Hon'ble Tribunal directions dated 10.08.2011 in Petition No. 108(c) of 2011 for considering the volume discount viz. similar to the other 3 MSOs in Vijayawada;
- (iv) Direct the Respondent to furnish the Agreement entered upon between both parties;
- (v) Pass such other order or orders as this Hon'ble Tribunal may deem just and proper under the facts and circumstances of the matter.

2. The petitioner is a Multi System Operator and the respondent is a broadcaster. The petitioner had started its network on 19.11.2007. It had signed an agreement with the respondent on 19.04.2010 on the basis of a direction of this Tribunal on 11.01.2010 in Petition No. 81 (c) of 2009. In this judgment, the Tribunal had directed the Star Den to supply signals of the respondent's channels directly to the petitioner without insisting that the petitioner must take supply of signals through respondent no. 2.

3. Based on this judgment, a joint survey was conducted and an agreement was signed on 19.04.2010. The IRD boxes were made

available to the petitioner but activated on different dates between 30.04.2010 and 30.05.2010, however, the invoices raised with effect from 30.04.2010 only.

4. According to the petitioner, it had raised objections to the invoicing and sought implementation of the same ratio which the respondent was applying to other three MSOs in the Vijayawada (Urban and Rural) area. Even after repeated reminders from the petitioner, the respondent did not respond, but got issued 4.3 notice on 9.10.2010. Fearing disconnection, the petitioner paid the invoices on 22.10.2010 and again sought implementation of the billing ratio on the same lines which the respondent was applying for other three MSOs in Vijayawada.

5. On 14.1.2011, the respondent asked the petitioner to supply certain informations including SLR for signing a fresh agreement. The petitioner supplied necessary data for signing of the agreement and sent a reminder also.

The petitioner submitted that as there was no response from the respondent, it filed Petition No. 108(c) of 2011 against the respondent on 15.02.2011 for renewal of the agreement on the same lines as with

the other three MSOs.

6. The respondent filed its reply on 13.4.2011, however, it issued 4.1 notice on 18.4.2011 and public notice under clause 4.3 on 19.4.2011. This matter was heard by this Tribunal and on 10.5.2011, the petitioner was directed to pay Rs. 2.38 lakhs to the respondent. The signals of the petitioner were disconnected by the respondent from midnight of 10.05.2011. The very next day, this Tribunal ordered for restoration of the signals.

7. This Tribunal gave its final judgment in Petition No. 108(c) of 2011 on 10.08.2011. In this Petition, the petitioner had requested this Tribunal for issuance of following directions :

- (I) Direct the Respondent to sign the fresh agreement with the Petitioner similar to the other 3 MSOs agreement in the area;
- (II) Direct the Respondent to apply the same ratio, which are applicable to the other 3 MSOs in the area and enter into a fresh agreement with the Petitioner for the area of Vijayawada (Urban & Rural);

(III) Direct the Respondent to enter into a proper agreement is required by law without any discriminating terms as similar to the other 3 MSOs in Vijayawada;

8. In this petition, a joint survey had been conducted and it was found that there were 1453 subscribers and the agreement was also signed for the same number of subscribers. This Tribunal in its judgment dated 10.08.2011 had observed :

"14. While the petitioner contends that the respondent is charging on the basis of 7500 subscriber base against total number of 1,70,000 subscribers of other MSOs, the petitioner is paying for 1400 subscribers base for the same number of subscribers. We agree with the contention of the petitioner that the viewer-ship of the non Telugu channel cannot be 100%. We are of the opinion that subscriber base of the respondent channel will be on similar lines as in the case of other MSOs. The only difference is that the respondent may provide volume discount to bigger MSOs in accordance with the prescribed regulation. As the petitioner is not operating in the entire area of Vijayawada(Urban and Rural), the subscriber base should be negotiated for its area of operation on the same lines as is applicable to other MSOs exception being volume discounts, subject to the statutory mandate.

16. In view of the aforementioned reasons, we are of the opinion that the interest of justice shall be sub-served, if a direction is given to the parties to enter into the new agreement in terms of the Regulation. The petitioner will supply the SLR of each month, if not already supplied. The petitioner should have the registration from postal department for the area for which signals are to be supplied, proposed connectivity and LCOs including the area of operation. The respondent may give volume discount based on the total number of subscribers. The

respondent may verify the same and conduct joint survey, if felt necessary and execute the agreement. However, joint survey, if required should be completed expeditiously and not later than 15 days.

17. During pendency of the petition, the respondent had issued disconnection notice under Regulation 4.1 and 4.3 on 12.07.2010 and on 09.10.2010 respectively. By our interim order dated 10.5.2011, we directed the petitioner to pay a sum of Rs. 2,38,000/- to the respondent. The petitioner paid the said amount and on 11.05.2011 the respondent was directed to restore the supply of signals to the petitioner. The interim order is made absolute, subject to determination of subscriber base i.e., the subscription amount payable by the petitioner be fixed from the date of expiry of the existing agreement on that basis.

18. The petition is partially allowed in terms of aforementioned directions. In the circumstances of the case, there shall be no order as to costs."

The finding of this Tribunal was the negotiated subscriber base of the respondent's channel will be on the lines as with the other 3 MSOs with only difference that the respondent may give volume discount in accordance with the appropriate regulation.

9. According to the petitioner, it had supplied all the informations and relevant documents including SLR to the respondent but the respondent was not willing to renew the agreement as per this Tribunal's directions. Therefore, this petition has been filed to seek redressal of its grievances.

10. The respondent, on the other hand, submitted that the petitioner admittedly had 1668 subscribers. Earlier, the petitioner and the Star Den Media Services Private Limited (Star Den) had entered into subscription agreement on 19.04.2010 for 1400 subscriber base and the same stands expired on 31.12.2010. The respondent is willing to sign/renew the subscription agreement on the basis of 1500 subscriber base after giving 10% discount on the subscriber base of 1668. The respondent further submitted that with effect from 1.7.2011, the right to distribute the channels which were earlier being distributed by Star Den and M/s Zee Turner Ltd. has been vested with the respondent herein.

Earlier the petitioner had entered into subscription agreement on 19.04.2010 with Star Den for 1400 subscribers which was expired on 31.12.2010. Thereafter, the petitioner and the Star Den were into discussions with respect to the renewal of the agreement. This Tribunal had given a direction to the Star Den on 10.08.2011. However, aforesaid order was not applicable to the respondent since it was not a party in the earlier petition.

11. The respondent further submitted that Interconnection Regulations given full freedom to the respondent to negotiate terms of

the contract with any MSO including subscriber base. The respondent has not given any discount to any MSO as alleged by the petitioner for the area of Vijayawada. The petitioner is currently receiving signals for the channels, Star Movies, Star Plus, Star World, Star Gold, Channel V, National Geography, Star News, Star Vijay and Fox History. These channels are very popular channels in India and most of the subscribers prefer to watch these channels, irrespective of their local language. In India, most of the people understand Hindi and / or English and therefore, these channels are in much demand, irrespective of local languages and are preferred by people in Vijayawada.

12. Clause 3.2 of "The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004" as amended from time to time provides that :

"3.2 Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator; [HITS operators and multi system operators shall also, on request, re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators."

13. In this petition the main dispute seems to be on what basis the agreement should be signed between the parties when the total connectivity has already been determined by the joint survey.

14. In Petition No. 108 (c) of 2011, this Tribunal has already dealt the aspect on what basis the agreement has to signed :

"13. It is seen from the records that there was a joint survey between the parties and it was found that there were 1453 subscribers where the amount is being charged for each subscriber. In non-CAS area, the channels are distributed to the subscriber on the basis of viewer-ship of the channel, which is negotiated. The viewer-ship may depend upon the language, popularity of the particular channel etc. Generally, the viewer-ship will be same in a particular area. However, there is a provision in the Regulation to provide volume based discounts.

The relevant clause 3.6 reads as under :

"3.6 The volume related scheme to establish price differentials based on number of subscribers shall not amount to discrimination if there is a standard scheme equally applicable to all similarly based distributors of TV channel(s).

Explanation

"Similarly based distributor of TV channels" means distributors of TV channels operating under similar conditions. The analysis of whether distributors of TV channels are similarly based includes consideration of, but is not limited to, such factors as whether distributors of TV channels operate within a geographical region and neighbourhood, have roughly the same number of subscribers, purchase a similar service, use the same distribution technology.

For the removal of doubts, it is further clarified that the distributors of TV channels using addressable systems including DTH, IPTV and such like cannot be said to be similarly based vis-à-vis distributors of TV channels using non addressable systems."

15. The petitioner has enclosed a copy of the agreement executed between the petitioner and the respondent on 18.11.2011. This agreement shows that the subscriber base for Zee Telugu channel is 3000 and for Zee Tv Bouquet-II (It is a bouquet of non-regional language language channel) is 300 i.e. 10% of the subscriber base of Zee Telugu channel.

16. The petitioner has enclosed a copies of the invoices of 3 MSOs in Vijayawada with Channel Plus-AP to show that these MSOs have a subscriber base of 83300, 44200 and 42500 for Gemini bouquet channel, a regional local language and popular channel just to show a huge subscriber base of 1,70,700 in other MSO's.

17. The petitioner has contended that the respondent has signed agreement with these three MSOs for the subscriber base of 7500 only. This has not been rebutted by the respondent.

18. Agreement signed by the respondent with the petitioner for Zee TV has not been denied by it and has been admitted in the evidence by its witness Mr. M. Prasad, Assistant Manager of Media Pro Enterprise India Pvt. Ltd. :

"Q. Do you know that the petitioner had entered into an agreement with Media Pro in the month of November 2011?"

A. Yes

Q. What was the subscriber base of the petitioner in the above agreement?"

A. It was for Zee Turner with 3000 subscriber base for Zee Telugu.

Q. Is it correct that petitioner have agreement with the respondent for non regional Zee channels on the subscriber base of 300.

A. Yes it is correct. It was the mutual negotiations.

Q. Is it correct that the Media Pro is having agreements with MSOs for subscriber base lesser than the actual subscriber base of the MSO for non regional channels?"

A. No. It depends upon the ground realities and connectivities.

Q. Can you produce the other three MSOs agreement with the Media Pro in Vijayawada town?"

A. I will have to discuss with my superiors."

19. I am of the opinion that Star group of channels can be treated on similar lines as that of non Telugu Zee TV Channel. The respondent contends that Star Group of Channels are very popular in non Hindi area also. If the petitioner is happy to sign subscriber base of 300 for Zee Turner channels, popularity of Star Group of channels cannot be

more than the double of the Zee TV channels. Therefore, I am of the opinion that end of justice will be subserved, if the parties are directed to sign the agreement on the subscriber base of 600 for Star group of channels.

20. This petition is partially allowed in terms of the aforementioned directions. However, in the facts and circumstances of the case, there shall be no order as to costs.

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(P.K. Rastogi)
Member