



## **ORDER**

Interpretation of an order of this Tribunal dated 02.5.2012 falls for consideration in this M.A., wherein an objection has been filed to the learned Advocate Commissioner's report, arises for consideration herein.

2. By reason of the order of the said date, this Tribunal directed as under:-

*"Having heard the learned counsel for the parties, we are of the opinion that interest of justice would be sub-served, if in the facts and circumstances of these cases, the learned District and Sessions Judge, Pune is requested to appoint an Advocate Commissioner on such terms and conditions as he may think fit, to carry out a survey of the subscribers of the Petitioner to ascertain its universe.*

*For the present, learned Advocate Commissioner may carry out joint survey in respect of the 14 areas within the town of Pune which according to the learned counsel appearing for the Petitioner is the area of the Petitioner's operation by way of direct connectivity, the details whereof has been stated at page no. 123 of the paper-book. It is made clear that apart from the same, the Petitioner has in its network Local Cable Operators also.*

*The Petitioners shall supply copies of the paper-books in both the matters to the learned Advocate Commissioner. Learned Advocate Commissioner would be well advised to hold a meeting with the authorized representatives of the Petitioners as also the Respondent herein for evolving a procedure for the purpose of carrying out a survey.”*

3. Pursuant thereto or in furtherance thereof, the learned District and Session’s Judge, Pune appointed one Shri Unmesh G. Dindore Advocate as a Commissioner. The learned Commissioner submitted a report before the learned District Judge, Pune.

The relevant portions of his report which are necessary for the purpose of determining the objection thereto are as under:-

*“In the meeting dated 01.6.2012, there were certain differences between the representatives of the Petitioners and the Respondents in respect of the order of the Hon’ble TDSAT as to the extent of survey. The Respondents submitted that, as per the order dated 02.5.2012, the survey had to be conducted in entire households situated in the 14 areas whereas, the Petitioners insisted that, as per the order, the survey had to be restricted to 1736 households only.*

*Finally, the parties agreed that, the survey could be taken up in 1736 identifiable households and that the Respondents would raise objections, if any, as to the extent of survey at appropriate time.*

*MSM Discovery Pvt. Ltd. vide its letter dated 14.6.2012 raised objection to conducting survey of 1736 households only and suggested the advocate Commissioner to conduct survey in all the households in 14 areas of Pune. To this, the Petitioners raised strong objections inviting my attention to the reliefs sought in the Petition in respect of the joint survey and contending that what was contemplated was joint survey in respect of 1736 households only. The Petitioners insisted that, the survey should be limited to 1736 households only.*

*There was no consensus between the parties on the interpretation of the order and as to the extent of the survey. Since, I am a stranger to the proceedings before the Hon'ble Tribunal and not competent enough to interpret the orders of the Hon'ble Tribunal, I thought it wise to advise the parties to seek appropriate directions/clarification from the Hon'ble TDSAT. Accordingly, I sent my reply dated 20.6.2012 advising the*

*parties to raise the said objection before the appropriate forum.*

*Further, Media Pro Enterprises Pvt. Ltd. had filed an application dated 20.6.2012 before the Hon'ble District Court, Pune seeking directions to the Court Commissioner to conduct survey in all the households in 14 areas. However, no such specific order was passed by the Hon'ble District Court on the application.*

*Till date, none of the parties have communicated to me any further orders of the Hon'ble TDSAT on the issue.*

*In the circumstances, in view of the agreement between the parties in the meeting dated 01.06.2012, I have limited my survey to the extent of 1736 households mentioned in six lists annexed to page 123 of the paper book though, it is more of a process of verification of the subscribers of the Petitioners.”*

4. The Respondents herein, however, filed objections to the said report inter-alia contending that:-

- (i) Having observed that he was not competent enough to interpret the order of the Tribunal, the learned Commissioner could not have limited the survey to the

extent of 1736 households mentioned in the six lists appearing at page 123 of the paperbook.

(ii) The learned Commissioner also acknowledged that exercises were to be undertaken to undergo the process of verification and not a joint survey.

5. Mr. Mishra and Mr. Bhatia, learned counsel appearing on behalf of the Respondents - objectors would contend that the interpretation of the learned Commissioner of the order of this Tribunal dated 02.5.2012 being absolutely erroneous, the same cannot be sustained.

6. Ms. Vandana Jai Singh, learned counsel appearing on behalf of the Petitioner, however, urged that on a plain reading of the order of this Tribunal dated 02.5.2012, it would be evident that this Tribunal directed verification of the 1736 subscribers whose names appeared at page 123 of the paperbook.

In any event the parties having agreed to the aforementioned interpretation, the Respondents cannot now be heard to say that this Tribunal directed otherwise.

7. Interpretation of an order of the Tribunal as noticed by the learned Advocate Commissioner himself should have been the subject matter of an application before this Tribunal only.

8. From a bare perusal of the said report, it would be evident that there was no agreement between the parties as regards the extent of survey but the parties agreed that the same should be confined to the 1736 households at the first instance.

It may also be placed on record that the Respondent in Petition No. 440 (C) of 2011 filed an application on or about 20.6.2012 before the learned District Judge, Pune with regard to the extent of survey required to be conducted by the learned Advocate Commissioner. The said application was misconceived. The Order of this Tribunal dated 2.5.2012, in our considered opinion, is absolutely clear and unambiguous.

9. The Petitioner itself contended that it retransmits signals to the 1736 customers directly and thus, a prayer was made that the Respondents be directed to enter into agreements on provisional basis on the aforementioned subscriber base only.

The Respondent did not agree thereto. It raised a contention that apart from the local cable operators, the number of subscribers of the Petitioner must be on a higher side, keeping in view the fact that the Petitioner No. 2 had been retransmitting signals of its channels to the consumers located in 14 thickly populated areas of the town of Pune.

10. The order to conduct joint survey was issued keeping in view the aforementioned backdrop of the case.

The first paragraph of the order clearly points out that the Advocate Commissioner was appointed to carry out a survey of the subscribers of the Petitioner to ascertain its universe. It did not say that the 1736 direct points of the Petitioner should be treated to be final. Had it been so, the necessity of directing a joint survey would not have arisen.

11. Ms. Vandana Jai Singh would, however, contend that this Tribunal having made a critical observation that the survey be conducted in respect of those direct connectivities, the details whereof have been stated at page 123 of the paperbook would be clear indicative of the fact that the joint survey was to be limited to that extent only.

We regret that the said contention of Ms. Jai Singh cannot be accepted for more than one reason.

Firstly because, as indicated heretofore, joint survey was to be conducted to ascertain the universe of the Petitioner which would mean that the total number of subscribers to whom it had been retransmitting its signals of the channels of different broadcasters so

as to enable the parties hereto to negotiate the commercial terms of the agreement on the basis thereof.

Secondly because this Tribunal in the aforementioned order merely recorded the contention of the Petitioner and that far and no further.

12. It is now well settled that a judgment and/an order of a court of law must be read reasonably and in its entirety.

The purpose which is required to be achieved in passing such an order must also be taken into consideration.

It must be borne in mind that an order is not to be passed when it would result in a futile exercise.

13. Appointment of an Advocate Commissioner in terms of or analogous to the provisions of Order XXVI Rule 9 of the Code of Civil Procedure is directed to be made by a court of law only when there exists an uncertainty.

The report of the learned Advocate Commissioner is to be treated as evidence, if no objection thereto is filed, as provided for in Order XXVI Rule 10 of the Code.

14. We wish that the parties hereto had approached this Tribunal for a direction so that the learned Advocate Commissioner could have proceeded to carry out his job effectively. It may further be noticed that a procedure was required to be evolved for the purpose of carrying out a survey.

This Tribunal was aware that it may be very difficult for the learned Advocate Commissioner to make a door-to-door survey which would take a long time. What was intended was that a sample survey should be conducted. The mode and manner, in which such samples should be conducted, could have been the subject matter of consensus between the parties. In absence, however, of any consensus between the parties in that behalf, the learned Commissioner was at liberty to evolve its own procedures.

15. For the aforementioned reasons, the report of the learned Commissioner cannot be sustained. It is set aside accordingly.

16. Learned counsel for the parties were to place before this Tribunal their suggestions as to how and in what manner, random joint survey has to be conducted.

17. The Respondent, M/s Media Pro Enterprise India Pvt. Ltd. has submitted the proposal.

The said proposal reads as under:-

*“The following is the proposal on behalf of the Respondent – Media Pro for conducting joint survey in letter and spirit of the order dated 22.08.2012 passed by this Hon’ble Tribunal:-*

*i) A fresh survey may be conducted by a fresh Advocate Commissioner to be appointed by this Hon’ble Tribunal.*

*ii) Since areas to be surveyed are huge, at least two blocks/colonies could be identified by the Respondent in each of 14 areas and the survey conducted on door to door basis in these areas be taken as a sample survey;*

*or*

*iii) Otherwise, out of given 14 areas at page 123, five areas as identified by this Hon’ble Tribunal may be surveyed on door to door basis and the said survey may be taken as a sample survey.”*

18. Now, we are of the opinion that out of the 14 areas in which the Petitioner is said to have been re-transmitting signals on direct connectivity basis on door to door basis in respect of the TV household, a survey may be conducted in two largely populated areas, viz, Vidya Nagar and Pratik Nagar. The result thereof with regard to

the subscriber base thereof may be taken to be the basis for arriving at the subscriber base of the Petitioner in all the 14 areas.

19. The learned Advocate Commissioner is hereby requested to carry out the survey in the aforementioned manner, as expeditiously as possible.

20. Put up after six weeks.

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

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

*HKC/*