

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated : September 26, 2012

Petition No. 484(C) of 2011

M/s Raghavendra Cable Network ...Petitioner

Vs.

M/s Sun 18 Media Services South Pvt. Ltd. ...Respondent

And

Petition No. 134(C) of 2012

M/s Raghavendra Cable Network, AP ...Petitioner

Vs.

M/s MAA Television Network Limited ...Respondent

BEFORE:

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

For Petitioner : Mr.Sunder Khatri, Advocate

For Respondent (P.No.484(C): Mr.Abhishek Malhotra & Mr. Nitin Bhatia,
of 2011) Advocates

For Respondent(P. No.134(C): Mr. Y.Rajagopala Rao, Advocate
/2012)

J U D G M E N T

1. These two petitions being inter-related were taken up for hearing together and are being disposed of by this common judgment.

We may, however, deal with the facts involved in Petition No.484(C) of 2012 at the first instance.

2. The Petitioner is a Multi Service Operator. The Respondents herein are broadcasters.

3. The Petitioner has approached this Tribunal in Petition No.9(C) of 2010, Raghavendra Cable Network vs. Channel Plus, AP, inter alia, praying for the following reliefs:

"INTERIM PRAYER

- (i) Direct the Respondents to continue the signals to the petitioner network, as provided by the Respondent services prior to the public notice dated 6.01.10, during the pendency of the present petition.

PRAYER

- (i) Direct the Respondent to provide uninterrupted good quality signals its Gemini, Teja, Gemini Music, Gemini News, Navvula TV and Khusi TV channels to the petition network;
- (ii) Direct the Respondent to enter into the an agreement with the petitioner for extension of area of operation to Manglagiri, Guntur District;
- (iii) Direct the Respondent to enter into a proper agreement as required by law without any discriminating for the extended area;
- (iv) Direct the Respondent to provide the proper and legal Written Agreement duly signed by both parties; and
- (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."

4. The Petitioner in the aforementioned petition sought for direction upon the Respondent to enter into an agreement in respect of an expanded area of operation being on Mangalgiri in the district of Guntur.

5. The factual matrix involved in Petition No.134(C) of 2012 may now be noticed hereinafter.

In that petition inter alia, a contention was raised by the Respondent that the Petitioner had been transgressing its area of operation.

6. A notice in terms of Clause 4.1 and a public notice in terms of Clause 4.3 of the Telecommunication (Broadcasting and Cable) Services Interconnection Regulations, 2004 were issued on or about 17.11.2011 on the ground of piracy.

7. By an order dated 17.2.2012 the said petition No.9(C) of 2011 was disposed of directing:

“The petitioner has filed this petition inter alia for a direction upon the respondent to enter into an agreement in respect of the expanded area of operation, Mangalgiri in the district of Guntur apart from the agreed area as mentioned in Annexure A-I to the petition along with the subscriber points mentioned in the agreement dtd. 15/10/2009.

Indisputably, the said agreement was for the period of one year and has expired on 14/10/2010. The period of three months as envisaged under the proviso appended to clause 8.1 of the telecommunication (Broadcasting and Cable Services Interconnect Regulations, 2004 as amended from time to time has also expired. In that of view

the matter for a fresh/renewal of the agreement the parties are required to negotiate the terms as has been noticed by this Tribunal in Petition No. 31(C) of 2010 Tamizha Cable Network Vs. Sun Distribution Services disposed on 06/01/2011.

Mr. Maninder Singh, the learned senior counsel appearing on behalf of the respondent, however, makes an offer to the petitioner that for a period of four weeks, the interim order passed by this Tribunal on 19/01/2010 shall continue and during the said period the parties would hold negotiations for renewal of the existing agreement as also for considering the petitioner's request for expansion of the area. The said offer has been accepted by the learned counsel for the petitioner.

The petitioner may supply the details of its subscriber base in the expanded area including the information as to whether it proposes to serve any local cable operator and/or the subscribers of the local cable operators as also the numbers of direct connectivity with sufficient particulars of the subscribers. Other requisite details which are usually required to be furnished made also be furnished. However, in the event the negotiations between the parties do not fructify into a settlement for any reason whatsoever, the respondent shall ever serve fresh notice upon the petitioner under clause 4.3 of the Interconnect Regulations.

In view of the aforementioned agreement between the parties and subject to the leave granted to them to approach this Tribunal if any fresh cause of action arises, I am of the opinion that the interest of justice would be subserved if this petition is disposed of on the above terms.

The parties shall pay and bear their own costs."

8. Pursuant thereto or in furtherance thereof, an agreement was executed between the parties on or about 9.8.2011. The areas of operation specified therein with their respective connectivities were stated in Annexures A appended thereto which is as follows:

ANNEXURE - A

<u>SL. NO.</u>	<u>AREA NAME</u>	<u>CONN.</u>	<u>SL. RANGE</u>
1	Sarada Colony	354	1-354
2	Saketa Furam	36	355-390
3	Rama Buildings	11	391-401
4	Arundati Nagar	16	402-417
5	Anjaneya Pet	28	418-445
6	Amaravati Road	10	446-455
7	Anjaneya Pet	31	456-486
8	Vinayak nagar	1	437-487
9	Hanumaiah Nagar	27	438-514
10	Library Road	10	515-524
11	Saibaba Road	10	525-534
12	Shanti Nagar	42	535-576
13	Sai temple	4	577-580
14	Kalyani Road	28	531-608
15	Chaitanya Puri	17	609-639
16	Vidya Nagar	14	626-639
17	Koritapaiu	86	640-725
18	Vinayaka Nagar	10	726-735
19	Koritapaiu	14	736-749
20	Saibaba Road	2	750-751
21	Koritapaiu	63	752-812
22	Chaitanya Puri	21	813-833
23	Goutami Nagar	13	834-846
24	Ramannapet	145	847-993
25	Chaitanya purl	52	994-1045
		Total - 1045"	

9. The Petitioner approached this Tribunal again by filing a petition which was marked as Petition No.453(C) of 2011.

10. By way of a short affidavit M/s Sun 18 Media stated that the Petitioner had been distributing signals unauthorisedly in the following areas:

- a) "Nehru Nagar
- b) Nalla Cheruvu
- c) Gunturuvari Thota

- d) Potturivari Thota
- e) Old Guntur (RTC Bus stand Road)”

11. The said petition was also disposed of by an order dated 8.12.2011 in the following terms:

“We have heard the learned counsel for the parties at some length. However, an undertaking has been given by the Petitioner through its learned counsel that the Petitioner shall keep its operation strictly confined to 25 areas mentioned in Annexure ‘A’ appended to the MoU/Agreement dated 9.8.2011.

A further undertaking has been given by the Petitioner that it shall remove the optical fibre as also all banners and hoardings in the additional areas namely the areas within the district of Guntur including the area of Mangalagiri.

Mr.Nittin Bhatia, appearing on behalf of the Respondent states that in view of the aforementioned undertaking, the Respondent shall not give effect to the public notice for the present. However, in the event it is found that the petitioner has violated the said undertaking, the public notice may be given effect to.

Mr.Sunder Khatri appearing for the Respondent has drawn our attention to the fact that in this Petition, a prayer has also been made to the effect that the Respondent be directed to enter into a fresh agreement in respect of other areas of the district of Guntur and Mangalagiri.

Our attention in this behalf has been drawn to a letter of the Respondent dated 9.11.2011. A perusal of the said letter would show that the same does not contain essential informations therewith the requisite documents for the purpose of obtaining the supply of signals for new areas have been annexed.

In that view of the matter, we are of the opinion that the interest of justice would be subserved if this Petition is disposed of on the

aforementioned undertaking given by the Petitioner and the statement made before us by Mr.Bhatia, leaving the Petitioner to enforce its right in terms of Clause 3.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation,2004 (as amended from time to time) to make fresh request to the Respondent for expansion of the areas open. The Respondent may consider the request made by the Petitioner to the aforementioned effect as and when received in terms of the aforementioned Regulations.”

12. It is not in dispute that no joint survey between the parties has taken place.

A controversy has been raised in this petition that the Petitioner despite its undertaking has not removed its optical fiber cables as also the advertisements.

13. We may in this connection notice the affidavit filed by the proprietor of the Petitioner, which is in the following terms:

“I, T. Madhusudhana Rao, S/o Sh. Venkateshsulu, aged about 36 years Proprietor of M/s. Raghavendra Cable Network C/o. D. NO. 4-14-102, Main Road, Anjaneyapeta, Amaravathi Road, GUNTUR -522 007 (Andhra Pradesh), presently at New Delhi, do hereby solemnly affirm and declare as under: -

1. Vide order dtd. 08/12/2011 passed by this Hon’ble Tribunal in the Petitioner No. 453(C) of 2011, on the basis of undertaking on behalf of the petitioner for removal of fiber cables and banners or hoarding and the respondent undertook that they shall not give effect to the public notice for the present.

2. I say that I have been transmitting the signals under the agreement dtd. 09/08'2011 in which 25 areas mentioned in Annexure A (at Page 57 of Petition) or keeping its operation confined to 25 areas.

3. I say that I have not transmitted the signals other than the prescribed area mentioned in Annexure A, after passing the order dtd. 08/12/2011 in the Petition No. 453 (C) of 2011 or transmitting the signals as per the agreement dtd. 09/08/2011.

4. I say that I have not violated the Undertaking given on 08/12/2011 before this Hon'ble Tribunal.

5. I say that the banners and hoardings as alleged by the respondent does not belong to petitioner's network or has never applied for their placement from corporation or any authority."

14. Inter alia, on the premise that the Petitioner has violated the said undertaking, allegedly in terms of the said order dated 19.12.2011, the public notice dated 17.11.2011 was given effect to.

The Petitioner's network was thereafter, disconnected.

This petition has been filed, inter alia, praying for the following reliefs:

- a. "Quash the public notice dtd. 17/11/2011 under clause 4.3 of Telecom (Broadcasting & cable services) Interconnection Regulation 2006 in the newspaper Andhra Jyoti published/issued by the respondent – null and void ; and
- b. Direct the respondent to restore the signals of the petitioner's network as per the agreement dtd. 09/08/2011 executed between the parties ; and
- c. Pass any other relief(s) which this Hon'ble Tribunal may deem fit and proper in favour of the petitioner and against the respondent."

15. The Respondent in a short affidavit filed before this Tribunal on an interim prayer made by the Petitioner filed CDs as also original tapes to show that the Petitioner had been continuing with the transgression of its area of operation. However, the original tapes could not be viewed. The authenticity of the CDs was also in question.

This Tribunal by an order dated 16.1.2012 directed as under:

“8. However on viewing the CDs, it appeared that it cannot definitely be concluded in absence of any assistance rendered in that behalf by the parties by way of evidence that the Petitioner had in fact been distributing supply of signals of the channels of the Respondent from its network in the aforementioned areas which are admittedly beyond the areas for which undertaking had been furnished.

9. We, therefore, for the time being, direct the Respondent to continue to supply signals of its channels in terms of this Tribunal’s Order dated 10.12.2011 with liberty to the parties hereto to conduct joint verification of the areas in question.

Further, keeping in view the facts and circumstances of this case, hearing of this petition is expedited.

The contentions raised by the Respondent herein in its short Affidavit, it goes without saying, shall be considered at an appropriate stage and/or final hearing of the petition.”

16. It is conceded at the Bar that no joint survey has been conducted. It is also accepted that the agreements entered into by and between the parties hereto have expired on 8.8.2012 and 31.3.2012 respectively.

17. By reason of an order dated 19.1.2012, the following issues were framed:

- i) "Whether the Public Notice dated 17.11.2011 issued by the Respondent under Clause 4.3 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 is liable to be set aside?
- ii) Whether the Petitioner is entitled to a mandatory injunction directing the Respondent to restore the supply of signals?
- iii) Whether the Petitioner has violated the undertaking given by it in Petition No.453(C) of 2011 to the Tribunal?
- iv) Whether the Petitioner has indulged into illegal transmission of signals to the Respondent'?
- v) Whether the Respondent was entitled to disconnect the signals of the Petitioner on 13.12.2011?
- vi) What relief, if any, the petitioner is entitled to?"

18. Whereas the Petitioner in support of its contention has examined Mr. Madhusudan Rao, its proprietor, the Respondent SUN 18 examined one Shri K. Srinivas.

An authorized representative of the Petitioner Mr. Ravipati Venubabu who had videographed the purported acts of piracy on the part of the Petitioner and Shri Y. Hari Hara Rayalu an Advocate who had accompanied the said cameraman and others when the same was being recorded has been examined on behalf of the Respondent.

19. Mr. Sunder Khatri, learned counsel appearing on behalf of the Petitioner would contend that having regard to the fact that not much evidence has been brought on record by the Respondents herein in

support of their case of commission of piracy by the Petitioner, the interim order passed by this Tribunal may be made absolute.

20. Mr. Nitin Bhatia, learned counsel appearing on behalf of M/SUN 18 Media, on the other hand, would urge:

1. From the deposition of Shri Madhusudhana Rao PW-1 himself, it would be evident that he has failed and/or neglected to comply with his own undertaking and thus, the Petitioner is not entitled to any relief.
2. The Petitioner having not only filed the original tapes which was used for the purpose of videography, but also the CDs thereof having been prepared and from a perusal thereof, it would be evident that the Petitioner has extended its agreed area of operation in the following areas:
 - (i) "Nehru Nagar
 - (ii) Nalla Cheruvu
 - (iii) Gunturuvari Thota
 - (iv) Potturivari Thota
 - (v) Old Guntur (RTC Bus stand Road)"

21. Mr. Rajagopal Rao, learned counsel appearing on behalf of MAA TV had also taken us through the deposition of the witnesses examined on behalf of the Respondent.

Mr.Ravipati Venubabu along with the short affidavit of the Respondent, had filed an affidavit, inter alia, stating:

"I state that I started the Video recording at the footage of Minutes 00:00Secs on a DV cassette. I have appended my signature on the DV cassette in

order to identify the same. I identify my signatures on the DV Cassette.

1. I state that I have recorded at the footage of Minutes 00.00 sec from S.B.H.ROAD, A.T.AGRAHARAM AREA, GUNTUR, Andhra Pradesh and covered the OFC CABLE.
2. I state that I recorded the news paper "THE HINDU" showing the date of "Monday, December 19,2011" at the footage of Minutes 17:31 Sec.
3. I have also recorded the voice of Mr Krishan Reddy, Operator, Sriram Nagar, A.T.Agraharam Area of DIGI CABLE at Minutes 17:31
4. I hereby affirm that the video recording in the DV Cassette is without any editing and / or modification."

22. Similar affidavits have also been filed in respect of other areas in question.

One additional affidavit has been filed on 9.1.2012 affirmed by Mr. K. Srinivas therewith annexing the original cassettes purporting to evidence illegal transmission of the signals of the Respondent by the Petitioner.

23. The Petitioner, however, in its rejoinder contended that :

"5. It is stated that the fiber cable for Manglagiri area has already been removed as per the undertaking given by the petitioner on 8/12/2011 before this Hon'ble Tribunal.

6. That the petitioner has been transmitting the signals of ETV for the connectivity of 1724 customers in the area GUNTUR town and the respondent having the agreement of 1045 customers. The petitioner already applied with the respondent for extension of the area in said application, the respondent with malafide intention or ulterior motive making the case of piracy. The petitioner is transmitting the signals of

respondent within the area specified @ page 57 of the paperbook.”

24. The Tribunal’s attention has been drawn to the following statements made in cross-examination by Shri Madhusudan Rao.

“Q: Can you name the areas where you have taken the videography ?

A: 12th December, 2011 – Balaji Nagar, Kummari Bazar, Guntur Vari Thota, Puttari Vari Thota, Nalla Cheru. 19th December,2011 – Patnam Bazar. Firstly videographies taken thereafter affidavits were prepared.”

.....

“Q: In which house you have taken the videos, can you tell the address of that house?

A: I do not remember the address of the house only showed me some landmarks to house where I have taken the videos.

Q: Can you tell me the name of the videos.

A: No.

Q: How many DV cassettes were prepared by you?

A: I do not remember the number the DV cassettes but I have signed on the cassettes which I have shoot.”

.....

“Q: Have you done this kind of videography for any other channel?

A: I have done for MAA TV, ETV and Gemini.

Q: Have you filed any other affidavit for any other broadcast?

A: No.

It is incorrect to suggest that I have not done the videography to any house.”

.....

“Q: Have you taken any shoot regarding the newspaper ?

A: Yes.

Q: Can you tell me the shoot regarding the newspaper?

A: I do not remember.

Q: After talking the videography have you edited the videos?

A: No edited, no mixing has been done by me only transferred the DV cassette to CD."

.....

"Q: How many videography do you do on an average in a month?

A: 15.

Q: Did Mr. K. Srinivas ask you to conduct videography for more than one day?

A: Yes. Two dates on 12.12.2011 and 19.12.2011."

25. Shri Y. Hari Hara Rayalu, a learned Advocate, who had accompanied the cameraman in his cross-examination stated:

"Q: Have you appeared for any other broadcaster as a witness?

A: No.

Q: How much time was taken on 12.12.2011 to shoot the video?

A: Around 5-6 hours.

Q: Can you tell me the name of the camera man accompanying with you?

A: We call him as Mr. R. Venu.

Q: How many DV cassettes were prepared?

A: Five.

Q. Have you seen all DV Cassettes.?

A: Yes I have seen all DV cassettes and signed on them.

It is incorrect to suggest that Mr. K. Srinivas instructed me before 8.12.2011 to accompany during the videography.

It is incorrect to suggest that Mr. K. Srinivas informed me regarding the pendency of the petition before this Tribunal."

26. We may also notice the cross-examination of Shri Srinivas who had also accompanied the videographer.

"I do not remember the house number and the name of the owner where the videography has been conducted.

My boss instructed me orally to conduct the videography.

I have filed authority letter issued in my favour by my company.

(Witness is confronted with the file/court record to show the authorization letter.)

Witness shows the authorization letter dated 1.12.2010 (Part-II) from the record. The same is a photocopy.

It is incorrect to suggest that I am deposing falsely or that the petitioner is not indulging in piracy.

After the execution of the agreement, petitioner never asked the respondent for extension of its area. However, petitioner asked for the same prior to execution of the agreement.

It is incorrect to suggest that petitioner is not pirating the signals in the areas namely Gunturuvari Thota, Potturivari Thota, Nehru Nagar, Nalla Cheruvu and Old Guntur."

27. Indisputably, both the Respondents disconnected supply of signals to the Petitioner's network upon service of requisite notice under Clause 4.3 of the Regulations.

We may notice Clause 8.1 of the Regulations:

"8.1 Parties to an interconnection agreement for supply of TV channel signals shall begin the process of negotiations for renewal of existing agreement at least two months before the due date of expiry of the existing agreement.

Provided that if the negotiations for renewal of the interconnection agreement continue beyond the due date of expiry of the existing agreement then the terms and conditions of the existing agreement shall continue to apply till a new agreement is reached or for the next three months from the date of expiry of the original agreement, whichever is earlier.

However, once the parties reach an agreement, the new commercial terms shall become applicable from the date of expiry of the original agreement.

Provided further that if the parties are not able to arrive at a mutually acceptable new agreement, then any party may disconnect the retransmission of TV channel signals at any time after the expiry of the original agreement after giving a three weeks notice in the manner specified in clause 4.3. The commercial terms of the original agreement shall apply till date of disconnection of the signals."

28. The Respondents took recourse to the remedies available to them under the Regulations.

29. The Petitioner, however, had been enjoying the supply of signals to its network only by reason of an interim order passed by this Tribunal on 19.3.2012.

30. It may be noticed that whereas RW-1 in the case of MAA TV had accompanied the videographer and categorically stated about the photographs taken of the different areas which were beyond the purview of the agreement entered into by and between the parties

hereto, his evidence may not be held to be admissible in view of the fact that the requirements of Section 65B of the Evidence Act have not been complied with. However, we have also noticed heretofore that SUN TV has not only examined the photographer but also the two persons who had accompanied him.

31. Moreover, the Petitioner's proprietor deposing before this Tribunal as PW-1 was taken through the said CD.

In respect of the channel being shown in the TVs in the areas which were outside the area of operation under the said agreement, the Petitioner's witness identified the places.

32. Therefore, whereas in the case of SUN 18 Media the original tape and the CDs have been proved, in the case of MAA TV it has not been.

Section 65B(2) and (4) read as under:

"65B. Admissibility of electronic records.- (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduced or is derived from such information fed into the computer in the ordinary course of the said activities.

.....

(4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

a) identifying the electronic record containing the statement and describing the manner in which it was produced;

b) giving such particulars of such device involved in the production of electronic record as maybe appropriate for the purpose of showing that the electronic record was produced by a computer.

c) Dealing with any of the matters to which the conditions mentioned in Sub-section (2) relates, and purporting to be signed by the person

occupying a responsible official position in relation to the operation of the relevant device or management of relevant activities (whichever is appropriate) shall be evidence of any matters stated in the certificate; and for the purpose of this section it shall be sufficient for a matter to be stated to best of knowledge or best of belief of the person stating it.

33. The interpretation of the aforementioned provisions came up for consideration recently in Solan Sat TV vs. STAR DEN Media Services Pvt. Ltd. & Anr. Petition No.258(C) of 2011, wherein this Tribunal noticed a passage from Phipson on Evidence on the following terms:

“86. Storage, interpretation and reproduction of data having regard to the modern technology is admissible in evidence subject to compliance of the statutory requirement therefor. If a document is created without intervention of the human mind, the same would be the real and not hearsay. [See Phipson on Evidence paragraphs 28-28 at page 879.]

87. What is of real concern is the accuracy of data base.

If the data is not proved to be accurate these treatments will have no probative value at all.

In Lakshma Reddy Cable Network vs. Channel Plus A.P. and Anr., Petition No.367(C) of 2010 decided on 3.6.2011, it was stated:

“34. Mr. Tushar Rao on a query made by us as to whether the said CD has been proved in terms of the provisions contained in Section 65B of the Indian Evidence Act very fairly stated that, no certificate has been proved as is required there under.

35. Apart from other objections raised by second Respondent as regards admissibility of

the said CD, there cannot be any doubt or dispute that in absence of any certificate as envisaged under Section 65B of the Indian Evidence Act, the CD cannot be said to have been proved. It is, thus, inadmissible in evidence.”

In S.S. Cable Network vs Hathway Bhaskar Multinet Pvt. Ltd., Petition No. 368(C) of 2010 disposed of on 12.9.2011, it was stated:

“58. It is, therefore, difficult to accept that the CD has been proved in accordance with law. An electronic document must be proved in terms of the provisions of Section 65B of the Indian Evidence Act. The person who has prepared the CD must say so clearly as it pertains to a matter which related to a criminal proceeding. It was, thus, obligatory on the part of the Petitioner to scrupulously follow the procedures laid down under the law.”

34. For the purpose of comparing the CDs with the original tapes, the matter was referred to the Advisor of this Tribunal.

An opportunity was given to the learned counsel for both the parties to view the same.

The report of the learned Advisor is as under:

“As directed, the contents of the CDs annexed to the main Petition No. 484 (C) of 2011 were cross checked with the contents of the mini DVCs available along with the petition on 5th September, 2012 and on 6th September, 2012. To enable play these mini Digital Video Cassettes (DVCs) the help of the counsel for the respondent company was sought who arranged for the handycam for playing these mini DVCs. The counsel for both the parties were asked to be present during the cross checking of the CDs with the mini DVCs. However, after seeing a portion of one of the mini DVC and CD, they left stating that the undersigned can see and they will go by the report of the undersigned.

In all, there are 11 CDs enclosed with the main petition bearing numbers 92 to 102 and there are 15 mini DVCs. It was possible to compare 7 out of the 11 CDs with the contents of the main DVCs and the contents of the CDs matched with the contents available in the main DVC.

S. No.	CD No.	Brief Details of the Mini DVCs with date as per newspaper videographed	Remarks
1.	92	Date: 02/12/2011 Showing Gemini channel and Gemini Movies foot prints with time in the CD. Showing date from the newspaper	The Contents of the CD are matched with the contents of the mini DVC. Both are similar.
2.	96	Date: 02/12/2011 Showing Gemini channel and Gemini Movies foot prints with time in the CD. Showing date from the newspaper	The Contents of the CD are matched with the contents of the mini DVC. Both are similar.
3.	97	Date: 02/12/2011 Showing Gemini channel and Gemini Movies foot prints with time in the CD. Showing date from the newspaper	The Contents of the CD are matched with the contents of the mini DVC. Both are similar.
4.	98	Date: 12/12/2011 Showing Gemini channel and Gemini Movies foot prints with time in the CD. Showing date from the newspaper	The Contents of the CD are matched with the contents of the mini DVC. Both are similar.
5.	99	Date: 12/12/2011 Showing Gemini channel and Gemini Movies foot prints with	The Contents of the CD are matched with

		time in the CD. Showing date from the newspaper	the contents of the mini DVC. Both are similar.
6.	101	Date: 12/12/2011 Showing Gemini channel and Gemini Movies foot prints with time in the CD. Showing date from the newspaper	The Contents of the CD are matched with the contents of the mini DVC. Both are similar.
7.	102	Date: 12/12/2011 Showing Gemini channel and Gemini Movies foot prints with time in the CD. Showing date from the newspaper	The Contents of the CD are matched with the contents of the mini DVC. Both are similar.

The CD bearing No. 100 was cracked.

8.	100	Date: 12/12/2011 Showing Gemini channel and Gemini Movies foot prints with time in the mini DVC. Showing date from the newspaper	As the CD was cracked, it was not possible to match the contents; however the mini DVC was played.
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There are 3 CDs bearing numbers 93, 94 and 95 for which no corresponding mini DVCs are available in file.

There are 7 other mini DVCs out of which 5 DVCs are showing R channel banners in different areas, one is showing overhead cables. One mini DVC showing Gemini channel and Gemini Movies foot

prints with time in the CD. It also shows date of 22/12/2011 from the newspaper.

(D.P. De)

Advisor

6th September, 2012"

35. Apart from the oral evidence brought on record by the parties, the electronics evidence also show that the Petitioner has transgressed its area of operation.

36. There is another aspect of the matter which cannot also be lost sight of.

The Petitioner in the previous round of litigation filed an undertaking. Allegations have been made that the Petitioner had failed and/or neglected to abide by the said undertaking, it was for the Petitioner to show that it had not been retransmitting any signal of the channels of the Respondent beyond the agreed area.

37. In fact if he was to remove the entire fiber cable from the area in question, it is difficult to comprehend as to how he has been retransmitting the signals of other broadcaster and/or supplying the signals of its own channel commonly known as R.TV.

38. Existence of any proof of retransmission of supply of signals in any of those areas would not have been there, had the Petitioner abided by the said undertaking.

39. An agreement was entered into by and between the Petitioner and MAA TV on or about 17.10.2011. It was valid upto 31.3.2012.

Clause 2 of the said agreement defines 'area' to mean the areas stated in the Annexure-III within which the petition was the distribute the service:

"2. AREA:

a. The term "Area" shall mean the areas stated in the **Annexure – 'III'** within which the Licensee shall distribute the Service to the subscribers through the distribution system. The details of Link Operators/Sub Operators/Cable Operators/Last Mile Operators/Franchisee Operators/Agents (include Network of the Head End Partner) (Hereinafter referred to as the "Sub Operators") are also mentioned in **Annexure 'III'**.

From a perusal of Annexure-III appended to the said agreement, it appears that the same was directly co-related to Service Line Report appended thereto.

40. Indisputably, as per the said SLR only 2043 subscribers were obtaining the benefit of retransmission of signals from the Petitioner's network.

The Petitioner, therefore, could not have given connection to any other subscriber.

41. The said agreement contends anti piracy obligations on the part of the Petitioner being Clause 8 thereof. It reads as under:

"8. ANTI-PIRACY OBLIGATIONS

a. The Licensee shall, at its own expenses, take all necessary steps to prevent and stop unauthorized or illegal use of the Service or signals thereof as described below.

b. The Licensee represents, warrants and undertakes that the systems, processes and controls in place

regarding the distribution of Smart Cards so as to ensure that they are only leased within the Area by the Licensee or by its authorized dealers and such lease is only made to bona-fide subscribers residing in the Area and installations are made at a adequate address and necessary steps taken to ensure adequate systems, processes and controls shall include, without limitation, the Licensee;

c. In the event the Licensee is found to be in reach/violation of the terms and its obligation under this Agreement, the Licensor shall be entitled to deactivate/de-authorize the Service after following the procedure laid down in the regulations/directions/orders of the TRAI or any other statutory authority.”

42. The clause relating to the term and termination of the agreement reads as under:

“13. TERM AND TERMINATION:

This Agreement is valid for a fixed period of One Year, with effective from to 17th Oct., 2011 to 31st March, 2012. It is agreed between the Parties hereto that upon expiry of the above period this Agreement shall come to an end. Thereafter, if the Parties agree to extend the term, a fresh Agreement or addendum to this Agreement shall be executed upon such fresh terms and conditions.

a) Without prejudice to the rights of termination set forth elsewhere in this Agreement either of the parties may, subject to clause below, terminate this Agreement at any time by giving at least one month prior written notice to the other party in the event of a breach of any of the undertaking and obligations of such party under this Agreement, bankruptcy or insolvency of the either party, breach of any undertaking, representations and warranties given by either party hereto, which is not cured within such one month period.

b) If the Licensee fails to adhere to its obligations mentioned herein, it shall be in breach of the Agreement and the Licensor shall be entitled to terminate the Agreement and disconnect/deactivate the Service with one month notice.

c) Notwithstanding the provisions of clause above, the Licensor shall have the right to, forthwith; terminate this Agreement without notice to the Licensee, upon non-payment of subscription fee as contemplated above.

d) The Licensor may terminate this Agreement, at any time, without liability, with prior notice to the Licensee, if it believes in good faith and reasonable judgment that it is threatened by or may be subject to legal, government or together adverse action under applicable treaties, tariffs, laws, rules, regulations or orders that may restrict the right of the Licensor to provide the Service or any part thereof to the Licensee or limit the Licensor's right or authorization to offer the Service.

43. The question, therefore, which arises for consideration is as to whether in the facts and circumstances of the case the Petitioner can be said to have transgressed its area of operation. The Petitioner did not make any statement that it has not added any other customer to its network.

Paragraph VIII of the petitions reads as under:

"VIII. It is pertinent to mention here that the petitioner is operating its network in the prescribed area under the agreement as executed on 17/10/2011, he has not transmitted the signals of the area other than the prescribed area or running its network as per the agreement."

44. The Respondent, however, in its reply would contend:

"11. The answering respondent most humbly submits that thereafter, the executives of the Respondent Television Network, namely Sri M. Sateesh, Area Manager, Maa Television Network and Sri K.K. Rama Rao, Assistant Manager, Maa Television Network. Ltd. conducted a meticulous enquiry in the Guntur Area and it was found that the petitioner is illegally supplying signals to the following areas outside of its SLR submitted to the respondent:

- i) Rajeev Gandhi Nagar, III Lane: Door No. 7-6-847/3
- ii) Rajeev Gandhi Nagar, III Lane: Door No. 7-6-849/1
- iii) Gunturi Vari now V Lane: Door No. 13-6-32
- iv) Gunturi Vari Thota V Lane: Door No. 13-6-40
- v) Vinobha Nagar Main Road: Door No. 15-6-71
- vi) Vinobha Nagar Main Road: Door No. 15-6-54
- vii) Vinobha Nagar Main Road: Door No. 15-6-42/1
- viii) Vinobha Nagar Main Road: Door No. 15-6-42/2
- ix) Vinobha Nagar Main Road: Door No. 15-6-254
- x) Maachiraju Vari Street: Door No. 16-22-30
- xi) Maachiraju Vail Street: Door No. 16-22-26
- xii) Anjaneyal Pet: Door No. 4-14-102
- xiii) Nallacheruvu, Guntur: Street No-23, House No.2242 & 2243
- xiv) Nandhi Velugu Toad, Old Guntur: Door No. 16-1-11
- xv) Kothapeta Area
- xvi) Ganeshrao Pet: Street No.2, Guntur
- xvii) Pothuruvari Thota
- xviii) Butchaiah Thota
- xix) Maddirala Colony
- xx) Gaddipadu
- xxi) Balaji Nagar

It is pertinent to note that the areas of Gaddipadu, Maddirala Colony and Kothepeeta areas have not been mentioned in the SLR List, yet the petitioner is illegally without the permission of the respondent transmitting signals therein.

12. That Sri K.K. Rama Rao, Assistant Manager, Maa Television Network Ltd. along with a professional Cameraman/Videographer, namely Sri K.K. Vara Prasad specifically engaged for this purpose by the answering respondent, took a video recording of the premises at which the petitioner is supplying the signals of the respondent television network illegally.

45. It is neither in doubt nor in dispute that the Petitioner had made a request for expansion of its area of operation. It is also not in controversy that the signals to the Petitioner's network was discontinued which was directed to be restored by this Tribunal by an order dated 19.3.2012.

Although in support of the said plea CDs filed before this Tribunal, the cameraman having not been examined and only Mr. K. Rama Rao (RW-2) who had been working as Assistant Area Manager, MAA Television Network Ltd. only accompanied him. The said witness, however, independent of preparation of the said CD, made an enquiry and found that the Petitioner had transgressed its area of operation.

46. He has not been cross-examined on that point. He had been cross-examined only on the videography.

This Tribunal is, therefore, of the opinion that keeping in view the oral evidence brought on record, the Respondent must be held to have proved its case that the Petitioner had resorted to piracy.

47. Besides RW-2, RW-1 Shri K. Siva Adinarayana had also made statements in that behalf.

Nothing has been pointed out as to why no reliance should be placed on his testimony.

Moreover, the agreements in question have expired.

The Petitioner ought to have held negotiations for renewal of the agreements.

48. There is nothing on record to show that any informations/ documents as are required in terms of Regulation 11 of the Regulations have been furnished to the Respondent.

49. In absence of the same, it is difficult to comprehend as to how and in what manner a case for renewal thereof has been made out.

For the reasons aforementioned there is no merit in these petitions. They are dismissed with costs. Advocate's fee assessed at Rs.10,000/- in each case.

(S.B. Sinha)
Chairperson

September 26, 2012
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