

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

Dated:- 3rd April, 2014

Petition No. 482(C) of 2012

M/s Praja Cable Net

... Petitioner

Versus

M/s Eenadu Television Pvt. Ltd.

... Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON

HON'BLE MR. KULDIP SINGH, MEMBER

For Petitioner : Mr. Sunder Khatri, Advocate

For Respondent : Mr. K. Vijay Kumar, Advocate

ORDER

By Aftab Alam, Chairperson - M/s Praja Cable Net, the petitioner, is a registered cable operator in the area of Proddatur, YSR District, Andhra Pradesh. It is located at 3/1495, Holmespetta, Proddatur – 516360 and its registration number is TV/127/11-12. It claims a connectivity of 1632 customers. It is a proprietary

concern and its proprietor is one Konireddy Sobha Rani, wife of Sri Shiv Chandra Reddy.

The petitioner seeks a direction to the respondent, which is a broadcaster of TV channels, to enter into an Interconnect Agreement with it for supply of ETV channels in terms of regulation 3.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004.

According to the petitioner, it made the request for supply of signals and de-coder boxes for the respondent's ETV channels but despite reminders and repeated requests the respondent declined to give its signals and the de-coder boxes to the petitioner. Hence, the petitioner is forced to come to the Tribunal in this petition. The details in regard to the requests made by petitioner to the respondent and the reminders in connection with the request are given in the petition and those need not be stated here.

At this stage it would be appropriate to note that the same petitioner came to the Tribunal in petition no.327(C) of 2012, seeking the signals from another broadcaster of some popular South Indian channels, namely, M/s SUN 18 Media Services. In that case, with some persuasions from the Tribunal, the parties finally entered into a settlement under which SUN 18 agreed to give its TV channels to the petitioner. A reference to that case is made here only to indicate that the petitioner satisfies the statutory and technical requirements for operating as a local

cable operator and there is no need to go into that aspect of the matter all over again, more so, as the plea taken by the respondent for refusing to give its signals to the petitioner is not based on the petitioner's competence as local cable operator.

The only objection raised by the respondent is that the petitioner's husband, namely, Shiv Chandra Reddy is a defaulter against whom there are dues of the respondent and hence, the "must provide" clause in regulation 3.2 shall not apply to this case and the respondent is not obliged to enter into any relationship with the petitioner and to give its signals to her.

Regulation 3.2 and its proviso, relevant to the present, are as under:

"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 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:]"

Provided that this provision shall not apply in the case of a distributor of TV channels having defaulted in payment.

Provided xxxxxxxxxxxxxxxxxxxx

[Provided xxxxxxxxxxxxxxxxxxxx]

[Explanation xxxxxxxxx]"

The pleadings made by the respondent in this regard are to be found in paragraphs 4 and 5 of MA no.255 of 2013 which was filed by way of reply to the petition. These two paragraphs are as under:

“4. It is respectfully submitted that Petition is filed and verified by one Mrs. Sobha Rani, who is no other than the wife of Mr. Siva Chandra Reddy. (See page 9 and 10 of petition). As stated above, said Mr. Siva Chandra Reddy to overcome the default has established firm in the name of his wife Mrs. Sobha Rani (Petitioner). Thus the Respondent **has reasons to believe** that this petition has been filed with the sole intention of defrauding it (Respondent) once more. Therefore, on this sole ground this petition is liable to be dismissed.

5. Thus, from these documents it is apparent that M/s Praja Cable Network is a Benami established by Mr. Siva Chandra Reddy to outcome of his default to the Respondent. The Petitioner Firm is established to make-believe and nothing more than a cloak.”

(emphasis added)

The documents that are referred to in paragraph 5 of the reply are (i) copy of the accounts summary of Shiv Chandra Reddy from 08.09.2004 to 10.11.2009 and (ii) copies of demand notices sent to him. These are annexed as annexures A-1 and A-2 to the MA.

In a lay discussion the averments made in the respondent's reply may give rise to some suspicion about the petitioner's bona-fides but in a judicial proceeding the rights of a person, be she the wife of a defaulter, cannot be denied on the basis of mere allegations and vague suspicion. The allegation that the proprietor of the

petitioner establishment is acting as *benami* for her husband and was being used by her husband as a front to avoid payment of the respondent's dues is a serious allegation and needs to be established by leading evidence. But curiously the respondent has not led any evidence in the case and the reason assigned for refusal to give signals to the petitioner thus does not go beyond the unsubstantiated allegations.

From the order-sheet of the case, it appears that initially an attempt was made to help the parties to resolve their disputes through negotiations. However, when no settlement could be arrived at and the case was proceeded with on merits, it was noted that no reply was filed despite several opportunities granted to the respondent. Accordingly, by order dated 12 October 2012 the petitioner was directed to file its evidence on affidavit and produce its witness for cross-examination and the respondent was allowed cross-examination of petitioner's witness only on the contents of the petition and not on any defense that may be raised by it. However, by order dated 2 November 2012, the earlier order of 12 October 2012 was recalled and the respondent was allowed to file its reply subject to payment of Rs.10,000/- as costs. The crucial order is of 6 November 2012 which records as under:

“Mr. K. Vijay Kumar appears on behalf of the Respondent states that there is no need to adduce any oral evidence in this case.

List this case for hearing on the date fixed.”

There is thus no evidence to show that the proprietor of the petitioner concern is acting *benami* for her husband and the bar of the proviso of regulation 3.2 applies to this case.

At this stage, it needs to be pointed that there could be ample evidence to support the respondent's plea. The respondent could have shown that the petitioner is using the same net-work through which her husband used to operate; that the head-end of the petitioner operates from the same premises where the head-end of the husband was located; that the present net-work has the same kind of poll permissions as the earlier one or that the present petitioner has the same subscribers as those of her husband. But no steps are taken to bring anything on record.

Here it may be noted that the counsel for the petitioner placed great reliance on the order of the Tribunal dated 11 December, 2013 in petitions nos.76(C) to 83(C) 2013 by a common petitioner. In those petitions, the Tribunal rejected the claim of the local cable operator for supply of signals from different broadcasters that were impleaded as respondents in the eight petitions. But the broadcasters in those cases were careful to lead detailed evidence showing that the local cable operator (the petitioner in that case) had merely changed the internal arrangement

for non-payment of its earlier dues. The relevant finding in the judgment is as under:

“The counsel for the petitioner argued that it is a different legal entity and therefore may not be held responsible for the default of Apna Incable or Mr. Kuldeep Sahani who in any case was acting on behalf of the company. Be that it may, I am not convinced with the case of the petitioner as its conduct raises significant doubts not only as to its real identity but also to its capability to provide the service and meet its obligations independently of Mr. Kuldeep Sahani. Let me look into the conduct of the petitioner. It is a partnership firm which originally had close relatives of Mr. Kuldeep Sahani as partners but by an amendment to the same, all of them leave the firm without assigning any convincing reasons. The partnership is totally dependent upon the resources of Mr. Kuldeep Sahani or his son Mr. Tilak Sahani. The premises from which the petitioner wants to operate is leased by Mr. Tilak Sahani on such favourable terms that it is difficult to believe that it is a genuine lease. Interestingly, Mr. Tilak Sahani, himself a student, acquired the ownership of the same when he was a minor. The electricity connection is transferred from the same Apna Incable in the name of Mr. Tilak Sahani. There is nothing on record that would convincingly show the financial and other capabilities of the partners of the petitioner firm on their own. The petitioner knowing fully well the serious doubts raised both with regard to its real identity as well as its capability should have come in the witness box and dispelled these doubts once and for all. From the failure of the petitioner to do so, only an adverse inference can be drawn that compounds these doubts.

In view of the above facts of the case, I am not convinced that the petitioner has made out a case for the signals of the respondents herein. Accordingly, all these petitions must fail and are disallowed. The parties shall bear their own costs for litigation.”

Needless to say, that the findings in the above quoted judgment were arrived at by the Tribunal on the basis of detailed evidences adduced by the respondents in

those cases. In this case, as noted above, there is absolutely no material to arrive at a finding that the present petitioner is not acting in her own right but is simply a front for her husband. We thus find the objection raised by the respondent completely without any basis and, therefore, unacceptable.

In light of the discussions made above we allow the petition and direct the respondent to enter into an Interconnect Agreement with the petitioner on the same SLR on which the petitioner has got an agreement with M/s SUN 18 Media Services. The Interconnect Agreement as directed above should be executed within two weeks from today failing which the provisions of section 20 will get attracted.

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(AftabAlam)
Chairperson

.....
(Kuldip Singh)
Member

/sks/