

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 4th August, 2015

Petition No.191(C) of 2015

Prabhu Cable Network ...Petitioner
Vs.
Sun Distribution Services Pvt. Ltd. ...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE MR. KULDIP SINGH, MEMBER
HON'BLE MR. B.B. SRIVASTAVA, MEMBER

For Petitioner : Mr. Sharath Sampath, Advocate

For Respondent : Mr. Abhishek Malhotra, Advocate

ORDER

The petitioner, *interalia*, is seeking activation / reactivation of its signals, as well as a direction to the respondent to enter into a subscription agreement with the petitioner. The respondent, on the other hand, is alleging piracy of its signals by the petitioner.

Earlier, while considering the prayer of the petitioner for interim relief, this Tribunal found it appropriate to appoint an Advocate Commissioner who would make a surprise check of the petitioner's control room to find out whether the petitioner was engaged in an unauthorised transmission of the respondent's signals.

As per the Advocate Commissioner's report, no piracy of signals was found during the surprise check conducted by the Advocate Commissioner. On 6th July 2015, after considering the Advocate Commissioner's report, the Tribunal observed that the veracity of the allegation made on behalf of the respondent can be decided only on the basis of a proper trial in which both sides are given opportunities to lead evidences in support of their respective cases. Considering the materials on record and especially in view of the Advocate Commissioner's report, the Tribunal directed the respondent to supply its signals to the petitioner subject, however, to the final result of the proceedings. The relevant part of the Tribunal's order dated 6th July 2015 is as under :

"The report of the advocate commissioner indicates that on 26.6.2015 when the advocate commissioner made a surprise check at the petitioner's head-end, it was not transmitting the respondent's signals. Mr. Malhotra, counsel appearing for the respondent does not dispute the advocate commissioner's report but states that the advocate commissioner's report does not prove that in the past the petitioner did not indulge in piracy of the respondent's signals. The veracity of the allegation made on behalf of the respondent can be decided only on the basis of a proper trial in which both sides are given opportunities to lead evidences in support of their respective cases. However, on the materials on record, especially in view of the advocate commissioner's report, we see no justification in not allowing the petitioner's request for the respondent's signals as an interim measure. We, accordingly, direct the respondent to supply its signals to the petitioner subject, however, to the final result of this proceeding. The respondent will enter into a provisional interconnect agreement with the petitioner on the same monthly payment as was being made by the petitioner under the previous agreement.

It is stated by Mr. Sampath, counsel for the petitioner that during the interregnum, the petitioner has lost about 900 subscribers and he requests for a joint survey to ascertain the petitioner's present SLR.

We see the request reasonable and we, accordingly, direct both sides to make a joint survey to ascertain the petitioner's present SLR."

Subsequent to the interim order passed by the Tribunal, the respondent has again produced a CD recording that shows the respondent's channels being shown on the network that also carries the petitioner's channels. As per the respondent, the petitioner is clearly once again indulging in piracy and it was only for a short period that it refrained from doing so while awaiting surprise visit of the Advocate Commissioner.

The petitioner on the other hand states that it is M/s C.K. Cable Network, who is a competitor of the petitioner that is engaged in piracy of the petitioner's channel and showing the same to some of its customers, including Mr. Dilli Prakash, where the latest CD is recorded. The relevant part of the affidavit submitted by Mr. D. N. Prabhu, who is the sole proprietor of the petitioner is as under :

"3. I state that on verification of the CD and the affidavit it was operator Neeli Magan who is affiliated to my network. I state that the said operator is not supplying signals to Mr. Dilli Prakash nor is he supplying signals to the said street where Mr. Dilli Prakash resides. I state that Mr. Dilli Prakash is receiving signals of the cable operator Mr. Dhamu who is the cable operator affiliated with the

competitor of the petitioner i.e. M/s C.K.Cable Network. Further it is clear from the SLR submitted by the petitioner at the time of filing of the present petition as well as the updated SLR submitted to the Advocate Commissioner that Mr. Dilli Prakash is not the subscriber of the petitioner or its cable operator.

4. I have noticed that the entire case of the respondent is that as the finger print belonging to the channel "colors" shown in the recording belongs to my network, I am indulging in piracy. I state that infact it is M/s C.K.Cable Network who is pirating signals of the channel "colors" to show it to their own customers including Mr. Dilli Prakash. I state that I am in the process of taking appropriate action against M/s C.K.Cable Network and Mr. Dilli Prakash for piracy of signals and making false statements on affidavit.

5. I reiterate that I am not indulging in any piracy from my network as alleged or at all and the same has also been established by the surprise inspection done by the Advocate Commissioner on 26.6.2015. I state that it was on the report of the Advocate Commissioner that the order dated 6.7.2015 came to be passed and is willfully not complying with the orders of the Hon'ble Tribunal."

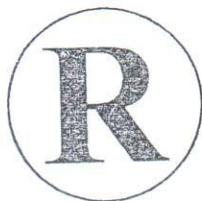
On going through the allegations and counter allegations, we once again reiterate our view that the whole controversy can only be put to rest after a proper trial and taking evidences of both parties.

We, however, must balance the equities keeping in view the balance of convenience of the parties.

At this interim stage, we note that if the petitioner is not given signals during pendency of the trial, even if it succeeds subsequently, it may lose its subscriber base and business in the meanwhile. On the other hand, if later on, the allegation on behalf of the respondent regarding piracy by the petitioner, is found to be true, the respondent

can not only be compensated monetarily but other consequences of indulging in piracy by the petitioner would follow.

Keeping this in view, we do not see any reason or merit to modify/recall our order dated 6.7.2015.



.....
(Aftab Alam)
Chairperson

.....
(Kuldip Singh)
Member

(
(B.B. Srivastava)
Member

/NC/