

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

Dated 4th February 2015

Petition No. 185(C) of 2013

(With M.A. No. 119 of 2013)

Cable Combine Communication Pvt Ltd. ...
Petitioner
Vs.
Media Pro Enterprise India Pvt. Ltd.& Ors ... Respondents

BEFORE:

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

For Petitioner : Mr.Vineet Bhagat,Advocate
Ms. Neha Jain, Advocate

For Respondents - : Mr. Tejveer Singh Bhatia, Advocate
Media Pro Enterprise India : Mr. Upender Thakur, Advocate
Pvt. Ltd and M/s Taj for Singh & Singh Law Firm LLP
Television India Pvt. Ltd.

For Respondent- M/s Star : Mr. Saurabh Srivastava, Advocate
India Pvt. Ltd.

JUDGMENT

Kuldip Singh :

The dispute in the present petition pertains to the Subscriber Line Report (SLR) on the basis of which subscription agreement for the signals of the respondents is to be renewed between the parties.

The petitioner is a Multi System Operator (MSO) providing cable TV services in the area of Siliguri. When the petition was filed, M/s Media Pro Enterprise India Private, who was an agent of broadcasters supplying the signals of Star and Zee channels Limited, was the sole respondent. Subsequent to the filing of the petition, The Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 was modified vide notification No. 6-11/2014- B & CS dated 10.2.2014. As a consequence of which, Media Pro Enterprise India Private Limited stopped supplying the signals of Star and Zee channels. On an oral request made by both sides, M/s Star India (P) Ltd and M/s Taj Television (India) Pvt. Ltd. were impleaded as parties vide order of the Tribunal dated 25.9.2014.

The petitioner and M/s Media Pro, had entered into a subscription agreement dated 18.9.2012, the term of which was from 1.4.2012 to 31.3.2013. As per the agreement, the petitioner was to pay a sum of Rs. 32,04,106.29, excluding taxes, per month to the respondent as subscription fee for its signals.

On 14.6.2013, the respondent issued notice to the petitioner under clause 4.1 of the Interconnect Regulations asking it to clear the outstanding of an amount of Rs. 1,00,42,312/- and also to come forward with correct subscriber base details for renewal of the

subscription agreement. A public notice was also issued by the respondent under clause 4.3 of the Regulations. The present petition was filed on 15 July 2013 seeking, inter alia, a declaration that the notices issued by the respondent were premature and illegal and a direction to the respondent to renew/sign the subscription agreement on reasonable and non-discriminatory terms.

It is the contention of the petitioner that after signing of the subscription agreement dated 18.9.2012, a few LCOs of the petitioner left it to join the rival MSO, namely, Digi Cable Comm. Pvt. Ltd. As per the petitioner, it wrote a letter to the respondent on 28.12.2012, requesting it to delete these migrated LCOs from its records and raise the invoices accordingly. Further as per the petitioner, its letter to the respondent was not replied to but it, however, continued to communicate with the respondent with regard to action taken on its request. Instead of considering and taking any action on the request for down-gradation in the SLR, the respondent issued the notices under clause 4.1 and 4.3 of the Regulations.

The Tribunal vide its order dated 17.7.2013 restrained the respondent from disconnecting the signals to the petitioner subject to the petitioner paying the admitted amount to the respondent. It was also directed by the Tribunal that the representative of the respondent

may visit the petitioner's office on July 22, 2013 for conducting a joint survey to ascertain the number of local cable operators who continued to remain with the Petitioner on that date. The relevant portion of the order is as under :

- i. *"The Respondent is restrained from disconnecting the signals to the Petitioner in furtherance of the impugned notice.*
- ii. *The Petitioner must pay to the Respondent the admitted dues amounting to Rs. 3,840,579.07/- in course of the week. Here it needs to be clarified that the aforesaid amount is arrived at after discounting Rs. 1,491,750.00/- in regard to which it is stated by the Petitioner (vide Annexure-P/17) that a cheque for that sum is handed over to the Respondent which the Respondent has so far not encashed. In other words, the amount of Rs. 3,840,579.07/- is computed, taking the sum of Rs. 1,491,750.00/- as having been paid to the Respondent if that is not so, the outstanding amount which the Petitioner must pay to the Respondent would include the additional sum of Rs. 1,491,750.00/- apart from the admitted amount of Rs. 38,40579.07/-.*

During the pendency of this Petition Mr. Bhatia is agreeable to hold a joint survey to ascertain the number of local cable operators who continue to remain with the Petitioner as on date. The representative of the Respondent may visit the Petitioner's office on July 22, 2013 for conducting the joint survey."

The joint survey, as directed by the Tribunal, could not take place due to some dispute regarding area of operation of the petitioner. Thereafter, on the direction of the Tribunal, a list of areas was provided by both the parties and it was jointly requested that a Local Commissioner should be appointed to conduct the survey of the

subscriber base of the petitioner. The Tribunal, vide its order dated 16.12.2013 directed that a survey of 10% of the areas selected at random from the list given by the petitioner, may be conducted to ascertain the subscriber base of the petitioner in these areas. It was made clear that this survey on a random sample basis shall be used to ascertain the SLR of the petitioner. CMD, BSNL was requested to appoint a suitable officer from Siliguri / Jalpaiguri as a Local Commissioner to conduct the survey. The relevant part of the order is as under:

"After hearing the counsel for the parties, it is directed that a survey of 10% of the areas selected at random from the list given by the petitioner may be conducted to ascertain the subscriber base of the petitioner in these areas. It is made clear that this survey on a random sample basis shall be used to ascertain the SLR of the petitioner. If the subscriber base in these areas is found to be more, as alleged by the respondent, the overall SLR projected by the petitioner shall be increased by the percentage by which it is found more in the sample areas. The survey shall also be conducted in the areas in which the respondent is alleging that petitioner is operating additionally and if these allegations are found true, the SLR for these additional areas shall be determined by the Local Commissioner.

CMD, BSNL is requested to appoint the suitable officer from Siliguri / Jalpaiguri to be appointed as a Local Commissioner and to conduct the survey. The cost of the Local Commissioner may be determined by the CMD and the survey shall be conducted as expeditiously as possible for which both the parties shall extend full cooperation."

The survey as directed by the Tribunal could not be carried out due to one reason or the other and on 30.5.2014, Mr. Sharath

Sampath, Advocate was appointed as Commissioner to carry out the survey as directed earlier vide order dated 16.12.2013.

On 2.7.2014, the report of the joint survey was submitted by the Advocate Commissioner. However, as the two sides were interpreting figures mentioned in the survey report differently, it was felt necessary to examine the agreements between the respondents and Amar Cable in respect of Siliguri and Jalpaiguri and other areas in the same vicinity, if any. On 13.10.2014, the Tribunal directed Mr. Tejveer Singh Bhatia, learned counsel appearing for Media Pro and Taj Television to submit the agreements in a sealed cover.

We may note that in case of Analogue regime, the signals of all the channels are supplied to all the subscribers and the subscribers cannot choose the channels that they may want to see. Though the total subscriber base of distributor of signals (MSO or LCO) may be ascertained with a reasonable accuracy, there is no objective way to find which subscriber views which particular channel. It is possible that a popular channel may be viewed by a high percentage of subscribers whereas a niche channel may be viewed by only a few subscribers. The agreements in this case are negotiated between the parties based on the popularity of the channels in the particular area and the perception of the broadcasters regarding the amount that

these may fetch. There is no scientific method to determine the SLR¹ objectively. A survey of the subscriber base of the seeker may provide an estimate of the same. This is also generally disputed by the parties.

We may also note that the agreement dated 18.9.2012 between the parties prescribed different SLR for different bouquets of channels, as given under:

Bouquet	Subscriber base	Subscription fees (Rs.)
Bouquet – II	5072	464645.92
Bouquet – III	862	95552.70
Bouquet – V	24097	2643440.90

It is seen from the report of the Advocate Commissioner that the petitioner was operating in 222 areas, out of which approximately 21 localities were picked at random and surveyed by the Advocate Commissioner in the presence of representatives of both the parties.

It is further seen that representative of the petitioner had informed the Advocate Commissioner that they provide two types of

¹ SLR (Subscriber Line Ratio) is the number of subscribers based on which the agreement for a particular channel or a bouquet of channels is entered into.

packages to its customers namely, Cable Combine Communication (CCN) – Pay package, which consists of all pay channels along with Free to Air channels and Cable Combine Communication (CCN) – FTA package, which consists of only Free to Air channels.

The Advocate Commissioner, however, during the course of survey, found that two packages claimed by the petitioner to be pay package and FTA package was incorrect and in fact both packages contained pay channels. While FTA package contained only some important pay channels, the pay package contained all the pay channels. The relevant portion of the report is reproduced as under :

"10 a) The representatives of the petitioner had informed me that they provide 2 types of packages to its customers i.e., Cable Combine Communication (CCN) – Pay package, i.e. a package consisting of all pay channels alongwith Free to Air channels and Cable Combine Communication (CCN) – FTA package, i.e. a package which consists of only Free to Air channels. However, during the course of survey it was found that the two packages claimed by the petitioner to be pay package and FTA package was incorrect and infact both packages contained pay channels and the alleged FTA package contained only some important pay channels whereas the pay package contained all the pay channels. However, for the purposes of the present case, it was found that the only pay channels of the respondent which were being retransmitted by the petitioner in its FTA package were Star Jalsa, Zee Bangla, Pogo and Cartoon Network. The same seems to be due to the popularity of the said channels in the area of operation of the petitioner."

Out of 21 areas surveyed by the Advocate Commissioner, 14 areas were surveyed by counting the connections of a sample size decided by the Advocate Commissioner along with the representatives of the parties. A chart of the survey was prepared and is available at page 8 of the Advocate Commissioner's Report.

As per the chart, out of 1152 subscribers surveyed on random sample basis, 487 subscribers were subscribing to CCN pay package of the petitioner and 186 subscribers were subscribing to CCN FTA package of the petitioner. 101 subscribers were found as subscribers of Hathway and 136 as that of Amar Cable (DEN). This shows that out of 1152 subscribers, 673 (487+186) belong to the petitioner, which is about 6.7 times that of Hathway and 4.9 times of Amar Cable.

Mr. Vineet Bhagat, Ld. counsel for the petitioner submitted that though as per the Advocate Commissioner the free to air channels also contain some pay channels, this is so only in few cases. He further submitted that in some of the areas, the cable operators moved completely to Hathway.

Mr. U. Thakur, learned counsel appearing for the respondents, however, argued that there are some areas in which only the petitioner is operating.

While it is true that as per Advocate Commissioner's report, cable operators in some area have wholly moved to Hathway, it is also seen from the report that in case of 'Mal Cable Network' and 'Cable for you', who are cable operators in Malbazaar, Jalpaiguri District, the petitioner was the only MSO.

Though Mr. Bhagat claimed that there are only few customers of FTA channels who were shown pay channels, it is seen from the report of the Advocate Commissioner that signals of many customers for some channels especially Star Jalsa and Zee Bangla were disconnected a few days ago and the reasoning of the petitioner was not found satisfactory by him. The relevant portion of the report is as under:

"10 e) That during the course of the survey many customers had complained that the signals of some channels especially Star Jalsa and Zee Bangla were disconnected a few days and / or few hours ago. In other cases the customer complained that the channels had been completely displaced from their original positions. On questioning the representatives of the petitioner about the same, it was stated that the same had to be due to certain technical difficulties and would be fixed shortly. This explanation given by them to me was not satisfactory however, the same did not create any problems during the survey as majority of the customers knew which MSO's signal was being received by them and what was the monthly subscription paid by them to the cable operator."

Be that as it may, we may note that the areas of sample survey were selected on completely random basis and in consultation with the representative of both the parties. Sampling is an established

statistical method of estimating the parameters of a population using sample statistics. Ideally, to know about the characteristics of a population, the whole population should be enumerated but since this is both time consuming and costly, statisticians use carefully chosen samples from the population to estimate the parameters of the population with a reasonable level of confidence. We may further note that in terms of Tribunal's order dated 16.12.2013, it was made clear that the survey on sample basis will be used to ascertain the SLR of the petitioner.

We have also seen the agreements between respondent no.1 and (i) Den Network for the period 1/10/2013 to 31/3/2014, (ii) Hathway Cable for the period 1.2.2014 to 31.3.2014. These agreements were provided to us in sealed cover and keeping in view their sensitive commercial information we are not giving the details here. However, we have carefully gone through these agreements and keeping in view the SLR as well as the bouquet rates on which they were entered into, as well as the report of the Advocate Commissioner, we do not find that the petitioner has made out a sufficient case for downgrading of the SLR. The interest of justice will be sub-served if the parties are directed to renew the agreement on the same SLR and at the same bouquet rates as in the agreement dated 18 September 2012, that is for the same channels and the same

consolidated subscription rate. Further, respondent no.1 is no longer supplying the channels of respondents' no. 2 and 3. In the case of Star India Pvt. Ltd., Mumbai Vs. Hathway Cable & Datacom Ltd., Mumbai² it was observed that the proportion of subscription paid to M/s Media Pro was 50.4% for Star channels (respondent 2 in the present case), 47% for Zee channels(respondent 3 in the present case) and 2.6% for NDTV, ABP & MGM. The petitioner shall accordingly enter into agreement with respondent no. 2 for 50.4% of the amount and with respondent no.3 for 47% of the amount, this being the proportion in which the amount payable to M/s Media Pro, respondent no.1, is shared by the respondents 2 and 3 .

Parties to bear their own costs.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

/NC/

² Judgment in Petition No. 47(C) of 2014,etc., delivered on 25th September, 2014