

Pradesh which is a non-DAS area. It has filed this application, in a disposed of petition, with the prayer to punish respondent no.2, M/s Harika Cable Vision, A.P. (Harika) and impose fines on it, in terms of section 20 of the Telecom Regulatory Authority of India Act, 1997, for wilfully violating the order of the Tribunal and committing breach of its undertaking given to the Tribunal.

Siti Guntur earlier came to the Tribunal in Petition no.420(C) of 2014 alleging that Harika, another Multi System Operator was illegally retransmitting the signals of the channels of the broadcaster MAA Television Network Ltd (MAA TV) in the area of Guntur where it did not have any interconnect agreement with the broadcaster. When the petition was taken up on 13 October 2014, there was no one appearing on behalf of Harika. However, counsel for MAA TV who was present, admitted that there was no subscription agreement between Harika and MAA TV for the Guntur area and Harika was apparently indulging in piracy by re-transmitting its signals received outside the Guntur area into Guntur. On those statements made before it, the Tribunal passed the following interim order:

“In those circumstances, we restrain respondent no.2 from re-transmitting any channels of respondent no.1 in Guntur area.

It is made clear that any violation of this order will invite proceeding under section 20 of the TRAI Act.”

On the next date (30 October 2014) it was stated on behalf of Harika that it had not been re-transmitting, either directly or indirectly the channels of

MAA TV in the area of Guntur. Further, an undertaking was given that in future too Harika shall not transmit either directly or indirectly the channels of MAA TV in Guntur, as long as it does not enter into an interconnect agreement with MAA TV for the area of Guntur. Recording the statement made and the undertaking given on behalf of Harika, Petition no.420(C) of 2014 was disposed of by passing the following order, in presence of the counsel for Siti Guntur and MAA TV:

“Mr. Sharath Sampath, Advocate puts in appearance on behalf of respondent no.2, namely, Harika Cable Vision and on instructions received from Mr. K. Anil Kumar, the authorised representative of respondent no.2 (who is present in court) states that the respondent (Harika Cable Vision) has not been re-transmitting either directly or indirectly, the channels of MAA TV. Mr. Sampath also gives the undertaking that in future too the petitioner shall not transmit either directly or indirectly, in the area of Guntur, the channels of MAA TV as long as it does not enter into an interconnect agreement with MAA Television.

The statement made by Mr. Sampath satisfies the cause of action for the petition. It is accordingly disposed of with the caution that in case of violation of the undertaking respondent no.2 shall bear the consequences.”

Shortly thereafter, on 5 November 2014, Harika filed Petition no.478(C) of 2014 seeking a direction to MAA TV to renew its interconnect agreement for Tenali area and also to supply the signals of its channels to Harika for re-transmission in the area of Guntur Mandal, by entering into a fresh agreement for the Guntur area. It then transpired that Harika had been trying to get the signals of MAA TV in Guntur since the year 2010 but was denied the signals by

the broadcaster on one pretext or the other. At around the same time, the present application was filed on 13 November 2014, for initiating a proceeding of contempt against Harika. The object is not far to see and it is clear that Siti Guntur, that till that time had the virtual monopoly for distributing MAA TV channels in Guntur was opposed to Harika entering that area as a competitor. Siti Guntur and MAA TV thus appeared to have common interest in denying the channels of MAA TV to Harika.

In the application it is alleged that after the interim order was passed on 13 October 2014, Harika stopped the unauthorized transmission of MAA TV channels but after a short while resumed un-authorized re-transmission of MAA TV channels in Guntur. The re-transmission of MAA TV channels by Harika were recorded on CDs by Siti Guntur men on October 18, 24 and 25, 2014 in three different areas of Guntur town. It is stated that Siti Guntur had the CDs and a petition containing the relevant statements ready with it but it was not filed before the Tribunal on 30 October 2014 as its petition was disposed of on that date after recording the undertaking given on behalf of Harika. It is further alleged that even after the order passed on 30 October, Siti Guntur continued to receive complaints that Harika was engaged in transmission of MAA TV channels in Guntur. It, accordingly, engaged the services of a cameraman who along with a technician from Siti Guntur visited a subscriber's house at 3rd Lane, Balaji Nagar in old Guntur having electricity service connection no.SC-

341718, in the evening hours on 8 November 2014. The cameraman conducted the video recording of the illegal transmission of MAA TV signals by Harika. It was further alleged that this was being done with the consent and connivance and fully within the knowledge of Anil Kumar who was said to be a habitual offender, disobeying the orders passed by Tribunal. A copy of the CD made on 8 November 2014 was also enclosed with the application.

Since the allegation made by Siti Guntur in the present application appeared to have a bearing on the prayer made by Harika in Petition no.478 (C) of 2014 filed on its behalf, this application filed on behalf of Siti Guntur was directed to be heard along with Petition no.478 (C) of 2014 and Siti Guntur was added as an intervening respondent in that proceeding.

On 15 December 2014, the following order was passed in that case:

“As an initial stage of the proceedings, another MSO, namely, M/s Siti Guntur Digital Network Pvt. Ltd. was also directed to be added as an intervening respondent in the case, having regard to its allegation that the petitioner was engaged in piracy of MAA TV channels in Guntur area where it has no interconnect agreement with the broadcaster. It was alleged that the petitioner was doing piracy by tapping on the network of Siti Guntur Digital Network and unauthorisedly taking away the MAA TV channels from the Siti Guntur Digital Network. Mr. G. Tushar Rao, counsel for the intervening respondent gives illustration of a certain house in the Guntur area where on a certain date, MAA TV channels were being viewed through Harika Cable Network.

Needless to say that the petitioner strongly denies the allegation.

However, having regard to the nature of the allegation and the fact that the allegation is sought to be supported by affidavits and

CDs which Mr. Rao proposes to file, we think that the best course would be to have a spot inspection made in the case.

We, accordingly, appoint Mr.Vibhav Srivastava, as the Advocate-Commissioner who would visit the house where allegedly the MAA TV channels were being shown through Harika Cable. Mr.Srivastava would give intimation regarding the date of his visit to all the three sides and on inspection Mr.Srivastava will submit the report to the Tribunal on 22.12.2014.”

Mr. Srivastava, the Advocate-Commissioner submitted his report dated 21 December 2014. The report does not support the allegation of piracy and in paragraphs 10 and 11 of the report, it is stated as under:

“10. That the undersigned along with representatives of all parties visited the house where the alleged piracy was recorded.

11. That lady names Usha wife of Venketshwar Rao only speaks telgu therefore I requested representatives to translate my question in telgu so that she can understand and give answer. The same was translated by representatives of parties and she answered in telgu which was conveyed to me that she was Siti Guntur Costomer. She also said that due to fight between two operators her signals were disconnected and now she is having DTH. Then suddenly she started shouting and therefore to avoid any untoward incident I went back as I was unable to understand what she was speaking in high volume and her neighbours had also reached on the spot.”

It is thus to be seen that as per the Tribunal’s directions the Advocate Commissioner visited the house where MAA TV channels were allegedly being shown through Harika network. But the Advocate Commissioner was informed by the lady of the house that she was a customer of Siti Guntur and not of Harika.

Here it may be noted that Siti Guntur has filed a rejoinder affidavit to the reply filed by the respondent in which a number of allegations are levelled against the Advocate Commissioner.

After the submission of the report by the Advocate Commissioner, Petition no. 478(C) of 2014 came up for hearing. In course of hearing of that case counsel for both MAA TV and City Guntur strongly opposed Harika's request for supply of MAA TV channels to it for transmission in Guntur town. The opposition was based *inter alia* on the ground that it was engaged in unauthorised transmission of MAA TV channels there. That petition was, however, allowed by judgment and order dated 11 March 2015 and MAA TV was directed to enter into an interconnect agreement with Harika and to give its signals to Harika for transmission in Guntur town. We are informed that an appeal preferred against that judgment by MAA TV is admitted but the Supreme Court declined to grant stay of the Tribunal's judgment.

In the judgment by which Harika's petition was allowed, dealing with the allegation of unauthorised transmission by Harika, it was observed as under:

“In course of hearing, however, both Mr.Gopala Rao, counsel for MAA and Mr.G.T. Rao, counsel for Siti strongly alleged that on 18 March 2014, the Deputy Manager of MAA TV Network lodged an FIR no.158/2014 at Kothapet P.S. in regard to the offence committed on 14 March 2014 under section 63 and 65 of the Copyrights Act and section 4A read with the Cable Television Networks Regulation Act citing Harika Cable Vision Multi-system Operator, Tenali as the accused. The FIR gave rise to Crime no.158 of 2014 in which two accused were arrested. A-3 was described as “the partner to Anil Kumar who is the owner of Harika Cable Vision”.

Again on 31 July 2014 the Deputy Manager of MAA TV Network lodged another FIR no.353/2014 at Lalpet P.S. citing as accused Mr.Karumachi Anil of M/s Harika Cable Multi-system Operator, Tenali.

The two FIRs, it was submitted were sufficient to prove that Harika was indulging in piracy of MAA signals in Guntur area and was, therefore, not entitled to get any signals from MAA on the basis of a legitimate interconnect agreement.

On hearing Mr.Jayant Mehta, counsel appearing for the petitioner, Mr.GopalaRao, counsel for MAA and Mr.G.T.Rao, counsel for Siti, we are unable to sustain the respondents' objection against supply of MAA's signals to Harika in Guntur area.

First, the issue of piracy – It is noted above that the Advocate-Commissioner who was appointed for the purpose and who made enquiries in presence of both sides, did not find any evidence of piracy by Harika. The institution of first information reports and certain arrests made on that basis cannot be accepted as proof of piracy. And further, any one off instance of piracy in the past, though may visit the offender with all the penal consequences, may not be a sufficient ground for denial of signals if the distributor satisfies the requirements of the Regulations..... So far as the criminal cases arising from the two FIRs are concerned, they will undoubtedly proceed in accordance with law without being in any manner affected by any direction or observation made in this judgment.”

Here it may be stated that in course of hearing of Petition no. 478 (C) of 2014, the present application was desegregated from that petition and was directed to be dealt with directly.

After disposal of Petition no. 478 (C) of 2014, the present application came up for hearing separately.

Mr. G T Rao, counsel for Siti Guntur was quite critical of the Advocate Commissioner's report. He referred to the statements made in the Siti Guntur's

rejoinder affidavit, and submitted that the report was not fit to be accepted for the reasons stated in therein. Mr. Rao further submitted that the CDs tendered by Siti Guntur were sufficient to prove the transmission of MAA TV channels through the network of Harika in Guntur town. He repeatedly requested that the CDs submitted by Siti Guntur should be sent to a FSL for confirming its veracity.

On hearing Counsel for the parties we are not impressed by Mr. Rao's submissions. The report of the Advocate Commissioner demolishes the allegation of un-authorised transmission of MAA TV channels by Harika on 8 November 2014. The Advocate Commissioner is a member of the TDSAT Bar. He is very knowledgeable in the technical aspects of broadcasting and he is totally impartial to all concerned. We cannot brush aside the report of the Advocate Commissioner, merely because it does not suit the interests of one of the contending parties.

On a careful consideration of the matter, we are satisfied that there is no sufficient material to hold Harika guilty of flouting the Tribunal's directions and/or committing breach of its undertaking to the Tribunal.

We accordingly dismiss the application. It is however made clear that the dismissal of this application will have no effect on any criminal cases pending between the parties and those cases will proceed in accordance with law without

being in any manner affected by any direction or observation made in this judgement.

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(AftabAlam)
Chairperson

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(Kuldip Singh)
Member

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