

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

**Dated 11<sup>th</sup> March, 2015**

**Petition No.478(C) of 2014**

Harika Cable Vision, A.P.

...Petitioner

Versus

MAA Television Network Ltd., Hyderabad

...Respondent

**BEFORE:**

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

For Petitioner

: Mr. Jayant Mehta, Advocate  
Mr. Sharath Sampath, Advocate  
Mr. Manikya Khanna, Advocate

For Respondent (MAA TV) :Mr. Y. Rajagopala Rao, Advocate  
Mr. P. Sudheer Reddy, Advocate

For Respondent (Siti  
Guntur)

:Mr. G.T. Rao, Advocate

**ORDER**

The petitioner, Harika Cable Vision (Harika), is a multi-system operator. It has filed this petition against the respondent, MAA Television Network (MAA), which is a broadcaster, seeking a direction to it to renew its interconnect agreement with the petitioner for Tenali area and also to supply its signals to the petitioner for retransmission in the area of Guntur Mandal, by entering into a fresh agreement for Guntur area.

Harika has been trying to get the signals of MAA in the area of Guntur since 2010 and this is the third round of litigation in that connection. It first filed petition no.401(C) of 2010 seeking the signals of MAA for the areas of Chebrolu and Guntur Mandals. That petition was disposed of by order dated 27 July 2011 in the following terms:

“We, therefore, are of the opinion that interest of justice would be sub-served, if this petition is disposed of with a direction upon respondent to enter into a negotiation with petitioner on the basis of the offer made by the former as also on the basis of the evidence which it may produce at a meeting with respondent with regard to the subscriber base in the light of Clause 9.2 of the Regulations.

The respondent may also consider the question keeping in mind the areas in which petitioner is said to have laid the cable but has not started any operation as yet which of course is a large one. There cannot be any doubt or dispute that petitioner must also place before respondent all evidences that it is otherwise entitled to operate in the expanded area in accordance with law and the broadcaster would be in a position to transmit signals of its channels on reasonable terms and on a non-discriminatory basis.

This petition is disposed of on the above terms but in the facts and circumstances of this case without any order as to costs.”

The negotiations, as directed by the Tribunal, did not yield any favourable result for Harika and it once again came to the Tribunal in petition no.523(C) of 2011. In this proceeding, the Tribunal found that Harika had supplied a list of five cable operators to MAA and had also submitted copies of the letters given to Harika by those cable operators stating that, at that time, they did not have any pay channels and they were willing to take signals from Harika. The Tribunal, however, noted that the petitioner had not produced any evidence to prove those documents and hence, the documents submitted by the petitioner could not be relied upon. On the other hand, MAA had stated that those cable operators were already getting its signals from other multi-system operators. The Tribunal observed that MAA had been able to prove its case by leading

cogent evidence which clearly showed that the cable operators in question were already getting MAA's signals from another multi-system operator. The Tribunal thus found and held that Harika had failed to fulfill the conditions as required under clause 9.2 of the Interconnect Regulations 2004 for seeking signals for the first time. It, accordingly, dismissed Harika's petition by judgment and order dated 9 October 2012.

At this stage it may be noted that in this back ground one M/s Siti Guntur Digital Network Pvt. Ltd.(Siti) which is a multi-system operator, operating in Guntur from before, had filed petition no.420(C) of 2014 making the allegation that Harika, the present petitioner (impleaded in that petition as respondent no.2), was unauthorisedly retransmitting MAA's channels in Guntur, even though it had no agreement with the broadcaster. In that case, counsel for Harika denied the allegation of any unauthorized retransmission of MAA's channels by it in Guntur and recording the statement made by the counsel for Harika, petition no.420(C) of 2014 was disposed of by passing the following order on 30 October 2014:

“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 authorized 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, the present petition was filed on 5 November 2014. On 13 November 2014, Siti filed an application (MA no. 308 of 2014) in the disposed of Petition no.420(C) of 2014 alleging violation of the undertaking given by Harika and praying for initiating a proceeding of contempt against it under section 20 of the TRAI Act. Since the allegation made by Siti appeared to have a bearing on the prayer made in the present petition, the MA filed on its behalf was directed to be heard along with the present petition and Siti was added as an intervening respondent to the proceeding.

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

“At 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 para 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 named 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 neighbors had also reached on the spot.”

(emphasis added)

In course of hearing, however, both Mr.Gopala Rao, counsel for MAA and Mr.G.T. Rao, counsel for Siti strongly stated that on 18 March 2014, the Deputy Manager of MAA TV Network lodged 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 Section 16 of 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 in the remand note 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 report being 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 it was, therefore, not entitled to get any signals from MAA on the basis of a legitimate interconnect agreement.

Mr.Gopala Rao further submitted that the petitioner's request for supply of signals in Guntur area could not be considered further for the reason that it had not made any formal request in that regard to MAA. In support of the submission he relied upon the decisions of the Tribunal dated 21 October 2011 in Petition no.396(C) of 2010 and dated 13 March 2012 in Petition no.488(C) of 2011. He further submitted that no direction, as asked for by the petitioner, can be issued also for the reason that it had not submitted to MAA, the SLR as required under clause 9.2 of the Interconnect Regulations 2004.

On hearing Mr.Jayant Mehta, counsel appearing for the petitioner, Mr.Gopala Rao, counsel for MAA and Mr.G.T.Rao,

counsel for Siti, we are unable to sustain the respondents' objections 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 at the stage of final hearing of this petition, MA no.308 of 2014 in Petition no. 420(C) of 2014 was desegregated and was directed to be dealt with separately.

Appropriate orders on the MA will be passed on hearing the parties in due course.

Coming now to the other two objections raised by Mr.Gopala Rao, it is true that unless the distributor makes a formal request for supply of signals to the broadcaster, the broadcaster is not obliged to give him any signals and further, without making a formal request to the broadcaster, a distributor cannot directly approach the Tribunal for direction to supply the signals. But at the same time, we cannot shut our eyes to the facts of the present case. As noted above, the petitioner is demanding the signals of MAA for the past five years and in this connection has come to the Tribunal twice before. In those circumstances, it will not be correct to say that no formal request for signals has been made to MAA and the petition is, therefore, liable to be rejected on that ground alone.

Coming now to the third and the last objection raised on behalf of MAA concerning the non-submission of SLR, it is to be noted that a detailed SLR is enclosed with the petition as Annexure-E (from page 45 to page 140) giving the details of all the petitioners' subscribers who are 2152 in number. In this connection, it may also be noted that Harika had filed Petition no.400(C)/2010 against

another broadcaster, namely, Eenadu seeking its signals in Guntur area. In that case too, there was a dispute over the petitioner's SLR and in order to resolve the dispute, a survey was directed to be made under the supervision of an Advocate-Commissioner appointed by the Tribunal [vide order dated 28 October 2014 on MA no.252/2014 in Petition no.400(C) of 2010]. The Advocate-Commissioner reported that in course of survey, the two sides agreed on 1900 being the petitioner's subscriber base (vide order dated 8 December 2014).

In light of the above, it will be open to the respondent to enter into an interconnect agreement with the petitioner for Guntur Mandal area on the subscriber base of 1900 or on the basis of the SLR submitted by the petitioner in the present case, subject to verification, if the respondent so desires.

In case the respondent wishes to verify the SLR submitted by the petitioner, it may do so within two weeks from today.

In conclusion, the respondent MAA Television Network Ltd. is directed to renew the petitioner's interconnect agreement for Tenali on the subscriber base mutually agreed upon through negotiations and also to execute a fresh interconnect agreement with the

petitioner for Guntur area within three weeks from today either on the subscriber base of 1900 or on the figure as may be arrived at on verification of the SLR submitted by the petitioner.

In the result, the petition is allowed but with no order as to costs.

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**(Aftab Alam)**  
**Chairperson**

.....  
**(Kuldip Singh)**  
**Member**

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