

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 28 January 2016

Broadcasting Petition No.534 of 2014
(With M.A. No.45 of 2015)

Bharath DishPetitioner
Versus
M/s Shirdi Sai Baba International Dish AntennaRespondent

BEFORE:

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

For Petitioner : Mr. Vadivelu Deenadayalan, Advocate

For Respondent : Mr. Abhishek Malhotra, Advocate
Mr. Tushar Singh, Advocate

ORDER

For failure of the respondent to comply with the order of the Tribunal dated January, 16, 2015, proceedings under section 20 of the TRAI Act were initiated against it vide order of the Tribunal dated February, 9, 2015.

The petitioner is a Local Cable Operator (LCO) providing cable TV service in some areas of Tadipatri town in Anantapur District of Andhra Pradesh. The respondent is a Multi System Operator (MSO). The petitioner came to the Tribunal on 18th December, 2014 alleging disconnection of its signals arbitrarily by the respondent, without any notice as required under the interconnect regulations.

The respondent refused to accept the notices sent to it *dasti* through courier, as well as by the registry of the Tribunal. As none appeared on its behalf, an *ex parte* interim order was passed by the Tribunal on 16 January, 2015, as under:

“The notice issued to the respondent from the Registry has come back on refusal. In the previous order, it was noted that the *dasti* service that was sent to the respondent through courier was refused to be accepted by him. It is thus evident that the respondent is adamant in its refusal to accept the notices issued by the Tribunal and is not coming forward to answer the allegations made against it by the petitioner.

In the aforesaid circumstances, there is no option but to make the interim direction *ex parte*, asking the respondent to restore the supply of its signals to the petitioner without any delay and in any event, not later than a week from today.

It is made clear that any violation of the order will make the respondent liable to be proceeded under section 20 of the Telecom Regulatory Authority of India Act, 1997.

It is also made clear that having complied with the interim order, the respondent may appear and may make an application for vacating and/or modifying the interim order.

Put up under the same heading on 09.02.2015.”

When the matter came up again before the Tribunal on 9 February, 2015, Mr. K. Parameshwar, Advocate, put in appearance on behalf of the respondent requesting for some time to file *vakalatnama*. He also admitted that the interim direction given by the Tribunal on 16 January, 2015, had not been complied with

by the respondent. The Tribunal was, therefore, constrained to initiate proceedings under section 20 of the TRAI, Act. The respondent was put to notice as to why action may not be taken against it as provided in law.

On February, 13, 2015, an application, being M.A. No. 45 of 2015, was filed under section 151 of the CPC praying for vacating the interim order dated 16.01.2015. The respondent stated in the application that it has no business relations with the petitioner and that it never entered into any agreement with the petitioner. It was alleged that the petition is based on forged documents, concocted facts and false allegations. The respondent also submitted that it came to know of the pendency of the petition and the orders passed therein only on 03.02.2015. It was further stated that the respondent was busy in connection with the marriage of his daughter and on enquiries it found out that its office staff had refused to receive the notices issued by the Tribunal.

When the matter came up again on 25 March, 2015, Mr. Parameshwar, on the basis of instructions received, stated that the respondent had restored the supply of signals to the petitioner on March, 24, 2015. As this statement was contested by Mr., Deenadayalan, Ld. Advocated for the petitioner, Mr. Parameshwar was asked to file an affidavit stating what was said verbally before the tribunal. However, on 7 April, 2015, when the matter next came up, no affidavit was filed by the respondent till that date and to our surprise and dismay, Mr. Parameshwar submitted a written request before us for a discharge from the

case. Fresh notices were issued to the respondent who is now represented by a fresh set of lawyers.

On 20 May, 2015, Mr. Anand Mahajan, Ld Counsel appearing on

behalf of the respondent reiterated that the respondent had restored it supply of signals to the petitioner on 24.03.2015. An affidavit to this effect was also filed on behalf of the respondent on 29.04.2015. A list giving the names and addresses of some of the subscribers of the petitioner, who according to the respondent were receiving its signals through the network of the petitioner, was also filed. This, however, was strongly denied by Mr. Deenadayalan. After hearing the counsel for the parties at some length and in view of the contrary stands taken on an issue of fact, it was felt that the dispute can be resolved through spot inspection by a technical person. The District Magistrate of Anantapur District was accordingly requested for the same. The relevant part of the order passed on 20 May, 2015 is as under:

"We, accordingly, request the District Magistrate of Anantapur District to have an inspection of the respondent's head-end as well as the petitioner's control room at Tadipatri Town be made by some suitable technical person of his choice. We may indicate here that the person making the inspection will have to check at the head-end of the respondent, the central pole (pole no. YO/B3) and the single pole No. 1209088510/002 [as indicated in the respondent's affidavit dated 29.4.2015] to which the optical fiber goes from the respondent's head-end and where the optical fiber gets split-up into the multi strands that then go to the different cable operators. From the central pole and the single pole, the technical person will have to visit the control room of the petitioner to check the nodes installed there to verify whether the respondent's signals are reaching till the nodes in the petitioner's control room.

It needs to be emphasized that the person making the inspection must go to the respondent's head-end without prior intimation or fixing a date from before and from there conduct the inspection as indicated above".

The report from the D.M. came after much delay and even when it came, it was not of any help in coming to a clear finding as to whether or not respondent was giving its signals to the petitioner. Hence the Tribunal deemed fit to appoint an Advocate Commissioner vide order dated 14.10.15. to make the necessary enquiry. This order is as under:

“Though the matter required immediate attention, the report from the District Magistrate dated 21.8.2015 came after four months and was received in the Tribunal on 2.9.2014. From the report it appears that in the enquiry conducted no attention was paid to certain vital aspects of the matter as required by the order passed on 20.5.2015. Though we are informed that the enquiry team had visited the petitioner’s control room, there is no mention of the fact in the report and the report is completely silent as to whether or not the respondent’s signals were coming to the petitioner’s control room. All that appears from the report is that the enquiry team visited the houses of 10 persons from the list of 42 subscribers given by the petitioner and found that the signals were coming on their TV screens. The report further states that the respondent is the only authorized MSO in the town and any TV viewer can watch TV only from the signals supplied by the respondent. The report also informs that when the supply of signals was stopped from the respondent’s head-end, the TV screens at the 10 houses visited by the enquiry team stopped getting signals. However, as noted above, the crucial fact as to whether or not the 10 houses that the enquiry team visited, were getting the respondent’s signals through the petitioner’s network or not, is not at all clear from the report.

It was faintly argued on behalf of the respondent that the enquiry team had examined the central pole and the single pole as mentioned in the Tribunal’s order. Further, the 10 houses where the enquiry team visited were the petitioner’s subscribers on its own showing. It must, therefore, be presumed that the respondent was supplying its signals to the petitioner and it was through the petitioner’s network that those 10 subscribers were receiving their signals.

Mr. Deenadayalan explains that he was left with only 40 subscribers, a list of which was filed before the Tribunal on 20.5.2015 but since they were not receiving signals from the petitioner’s network eventually everyone of them shifted to some other LCOs and on the date of the inspection, the 10 subscribers were not receiving their signals from the petitioner’s network but as would appear from the report, according to Mr. Deenadayalan, they were getting their signals directly from the respondent.

The report received from the District Magistrate is of no help in arriving at any finding as to whether or not the respondent is giving its signals to the petitioner as

stated on its behalf. We are, therefore, left with no option but to appoint an Advocate Commissioner to make the same enquiry as indicated in the order passed on 20.5.2015.

We, accordingly, appoint Mr. Anoop Narula as Advocate Commissioner who will visit Tadiparti, Anantapur District, Andhra Pradesh. He would go there without informing either the respondent or the petitioner and would inform them about his arrival only on reaching Tadiparti. He will first visit the petitioner's control room and find out whether the respondent's signals are being received there following this he would make a thorough enquiry as directed in the order dated 20.5.2015. He would also visit some of the 40 subscribers whose list was given by the petitioner on 20.5.2015 and find out from them whether on 24.03.2015, they were the petitioner's subscribers and whether on that date they were able to watch their TVs through the petitioner's network; whether on the date of enquiry they continue to be the petitioner's subscriber or they take their signals from some other LCOs. In case, they are no longer the petitioner's subscribers, the date from which they shifted to some other LCOs."

As per the report of the Advocate Commissioner, the signals of the respondent were reaching a common pole from where they are distributed to different LCOs, and though, they were available on a number of single poles that as per the petitioner used to belong to it, these were not reaching the control room of the petitioner. When he visited and questioned some of the subscribers whose list was given by the petitioner, he found that the subscribers were receiving the signals of the respondent and the money for the same was being collected from them by the representatives of the respondent for the past 8 to 10 months in some cases and 5 to 6 months in some other cases.

As per Mr. Malhotra, since the respondent was providing the signals at the central pole, it was for the petitioner to take it from there to its control room. He argued that since the signals were available on the single poles belonging to the petitioner, it cannot deny receiving the signals of the respondent. Mr. Deenadayalan, on the other hand stated that its network as well as its subscribers

have been taken over by the respondent who is providing signals directly to its erstwhile subscribers bypassing the petitioner's control room. When we asked Mr. Malhotra how the representatives of the respondent were collecting the money from the petitioner's subscribers, he could not give any satisfactory reply but insisted that the respondent never had any business relationship with the petitioner. We may also note from the additional affidavit filed on behalf of the respondent that it is the case of the respondent that it had made arrangement to provide signals up to the petitioner's node independently through a separate pole as the provision of same through the central pole was not successful. In view of this, the availability of the signals at the central pole is of no relevance to the issue.

Be that as it may, we feel that the issue, whether the petitioner has been getting the signals of the respondent since 24.03.2015 or not, requires to be considered further at the time of the trial when the evidences of the parties are taken. However, admittedly, the respondent had not complied with the orders of the Tribunal dated 16.01.2015 till 24.03.2015. Mr. Malhotra submitted that an order obtained fraudulently by suppressing material facts cannot be legal and form basis of contempt proceedings. In regard to his submission, he relied on Adhir Ranjan Kar vs. Atanu Kumar Mondal and ors.¹ We are not inclined to agree with him on this. We may note the conduct of the respondent as can be seen

¹ (2015) 2 CALL T408 (HC)

from the foregoing paragraphs. Firstly, it refused to accept the notices sent to it by the Tribunal and appeared before it only when an ex-parte order was passed against it. Secondly, the order dated 16.01.2015 clearly required the respondent to restore the signals of the petitioner within a week and after complying with the order it might appear and seek vacation/modification of the same. It was also mentioned in the order that a failure to comply with the same will make it liable for proceeding under section 20 of the TRAI Act. Admittedly, the respondent did not comply with the order till 24.03.2015. We have already noted how the earlier counsel appearing for the respondent did not file the affidavit as required by the Tribunal and instead sought discharge and we do not wish to comment further on the circumstances under which the same was sought.

Section 20 of the TRAI Act provides penalty for willful failure to comply with orders of the Tribunal as under:

“20 Penalty for wilful failure to comply with orders of Appellate Tribunal

If any person wilfully fails to comply with the order of the Appellate Tribunal, he shall be punishable with fine which may extend to one lakh rupees and in case of a second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which such default continues.]”

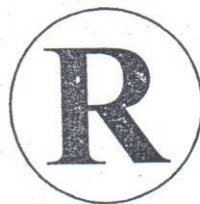
The respondent admittedly continued with the default till 24.03.1015 even after it appeared before the Tribunal. Though the conduct of the respondent calls for an exemplary penalty, considering the plea of the respondent that it did not come to know about the order passed by the tribunal, and taking a lenient view, we impose a fine of Rs. One lakh till 09.02.2015 when it first appeared before the

Tribunal. For the continuing default from 09.02.2015 till 24.03.2015, when the respondent claims to have switched on the signals, we impose on it a fine of Rs. 25,000/- per day totalling Rs. 10,75,000/2-. Out of the total amount of Rs. 11,75,000/-, Rs. 10,50,000/- shall be paid to the petitioner and the balance shall be deposited with the Tribunal for the TDSAT Employees Welfare Society.

The respondent is directed to pay the above amounts within 15 days of this order.

(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member



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(B.B. Srivastava)
Member