TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 10 May, 2016

Broadcasting Petition No.611 of 2015
(With M.A. No.429 of 2015 & 71 of 2016)

UCN Cable Network India Pvt. Ltd. .....Petitioner

Versus

Raj Cable Network & Anr. .....Respondents

ALONG WITH

Broadcasting Petition No.176 of 2015

Manthan Broadband Services Pvt. Ltd. .....Petitioner

Versus

Rajarhat Cable Broadband Services & Anr. .....Respondents

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER

For Petitioner (B.P. 611/2015)	:	Mr. Vineet Bhagat, Advocate Ms. Radhika Gupta, Advocate
For Respondent No.1	:	Ms. Nidhi Mohan Parashar, Advocate Ms. Anumita Chandra, Advocate
For Respondent No.2	:	Ms. Jaikriti S. Jadeja, Advocate
For Petitioner (B.P. No.176/2015)	:	Mr. Navin Chawla, Advocate Mr. Anurup Narula, Advocate

For Respondent : Mr. Diggaj Pathak, Advocate
Ms. Shweta Sharma, Advocate

ORDER

By Aftab Alam, Chairperson – Is a proceeding for recovery of money due for supply of TV signals maintainable under section 14A of the Telecom Regulatory Authority Act, 1997 in the absence of a written interconnect agreement between the parties? This is the question that the Tribunal is urged to consider once again in these two cases.

The facts of the two cases are brief and simple.

Broadcasting Petition No.176 of 2015 is filed by a multisystem operator (MSO) called, M/s Manthan Broadband Services Pvt. Ltd. It is stated on behalf of the petitioner that respondent no.1, Rajarhat Cable Broadband Services which is a Local Cable Operator (LCO) has been receiving from it TV signals for retransmission. It is alleged that the LCO has a large amount as dues of subscription fees and it is further alleged that it is shifting to another MSO (respondent no.2) without payment of the petitioner's dues and without giving the notices as required under the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations 2012 (DAS Interconnection Regulations). On these pleas, the petitioner mainly seeks (i) a direction to the LCO to pay to the petitioner the sum

of Rs.67,70,433/- as dues of subscription charges up to 31.03.2015 and another sum of Rs.3,35,96,000/- for the set top boxes (STBs) given to it by the petitioner, (ii) direction to pay interest on the aforesaid amounts @ 18% per annum from the date of filing of the petition till the date of payment and (iii) an order of injunction restraining the LCO (respondent no.1) from receiving signals from another MSO (respondent no.2) and restraining respondent no.2 from giving its signals to respondent no.1 until the latter makes payment of the petitioner's dues and terminates the arrangement with the petitioner by giving due notice as stipulated under the regulations.

The matter comes from an area under the DAS regime and is, therefore, governed by the provisions of the DAS Interconnect Regulations, 2012.

The proceedings of the case began with a controversy regarding the genuineness of a statement of account said to have been drawn up on reconciliation of accounts and purported to be signed by the representatives of the two sides that showed that respondent no.1 owed to the petitioner a much smaller amount of Rs.39,16,407/- and not the amount as claimed in the petition. That controversy, however, was allowed to come to an unresolved dead end and it is no longer germane to the issue under consideration. In the next stage, the Tribunal, by an interim order passed on 15.05.2015, directed respondent no.1 to return to the petitioner around 16000 STBs which were admittedly in its possession having been

given by the petitioner. In pursuance of the order, respondent no.1 returned a large number of STBs to the petitioner in presence of an Advocate Commissioner appointed by the Tribunal. It was then submitted on its behalf that the STBs were given to it against security deposit and it was entitled to its refund on return of the STBs. Even as the claim of respondent no.1 for refund of the security deposit was under consideration, it came to light that there was never a written agreement between the petitioner and respondent no.1 and the entire claim of the petitioner was based on an oral arrangement. By that time, the Tribunal had dismissed a number of petitions filed for recovery of dues of subscription fees on the ground that the claim was not based on a written agreement. When it was pointed to Mr.Chawla, counsel for the petitioner, he requested for a hearing on the question of maintainability and consenting to his request, we have heard the issue of the maintainability of a claim petition sans a written agreement in some detail.

Broadcasting Petition No.611 of 2015 is filed by UCN Cable Network India Pvt. Ltd., a MSO. It is filed for recovery of Rs.28,09,195/- as dues of subscription fees and cost of STBs from the respondent, Raj Cable Network (respondent no.1) which is a LCO. The petitioner, in this case too, makes similar allegations against respondent no.1 which is that the respondent is moving away to another MSO (respondent no.2) without making payment of the petitioner's dues and without any notices as required under the regulations. The only difference in this case is

that the petitioner had an interconnect agreement with respondent no.1 (in the form of a memo of understanding) that came to end on 31.08.2012. Nonetheless, the supply of signals continued beyond the term of the agreement and the dues claimed by the petitioner are computed up to September 2015.

The present petition was filed on 05.11.2015. Hence, any dues for the period of the MoU is plainly barred by limitation and any claim for recovery of dues beyond that period is liable to rejection as being not based on any interconnect agreement.

The area of operation and the period of the claim in this case relate to transmission in analogue mode. This case is, therefore, governed by the provisions of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations 2004 (Interconnection Regulations, 2004).

By the time this petition came up before the Tribunal, a direction was already made in Broadcasting Petition No.176 of 2015 for being listed for hearing on the issue of maintainability. This petition too was, accordingly, listed along with Broadcasting Petition No.176 of 2015 and the two petitions were heard together on the question of maintainability.

Both the Interconnect Regulations 2004 and the Das Interconnect Regulations 2012 contain almost identical provisions prohibiting distribution of TV signals for re-transmission without entering into an agreement *in writing*.

Mindful of the above provisions in the Regulations governing interconnection, the Tribunal, in a number of cases, has taken the view that a distributor of TV channels acting in blatant disregard and deliberate disobedience of the regulations framed by TRAI in exercise of its powers under the Telecom Regulatory Authority of India Act, 1997 cannot seek, for recovery of its dues, the aid of the Tribunal set up under the same Act. Mr. Chawla, however, submitted that he wished to bring to the notice of the Tribunal certain principles of the Contract Act and some decisions of the Supreme Court that were not adverted to in the earlier orders. The two cases were accordingly heard at some length on the question of maintainability. In course of hearing, counsel supporting the rival views, brought to our notice, a number of decisions that were not considered in the earlier judgements and thus the question of maintainability was reconsidered against a much broader canvass than before.

Mr. Chawla submitted that notwithstanding the provisions in the DAS regulations mandating an agreement in writing, trading in TV signals or giving TV signals for retransmission is not *per se* illegal. He further submitted that giving TV signals for onward distribution is not forbidden by law. According to him, it, therefore, followed that though there was no agreement, the petitioner would still be entitled to adequate compensation for supply of TV signals to the respondent in terms of section 70 of the Indian Contract Act, 1872.

In support of the submission, Mr. Chawla relied upon a decision of the Supreme Court in State of *West Bengal Vs. B.K. Mondal & Sons*[1]. In *BK Mondal* the plaintiff-respondent claimed payments for making some civil constructions for the use of the Civil Supplies Department of the State of Bengal on the directions of some junior officers of the department. The structures after construction were put to use by the department. The constructions, however, were made without execution of a contract in terms of section 175(3) of the Government of India Act, 1935. The Supreme Court affirmed the decision of the High Court that having regard to the provisions of section 175(3) there was no valid and binding contract between the plaintiff and the State of Bengal. But went on to hold that it was precisely for that reason that section 70 of the Contract Act would get attracted to the facts of the case and the plaintiff could legitimately invoke the provision requiring the State of Bengal to make compensation to him in respect of the constructions made by him.

Ms. Nidhi Mohan Parashar, counsel appearing for the respondent no.1 in Broadcasting Petition No.611 of 2015 brought to our notice a single judge decision of the Andhra Pradesh High Court in *Rakurti Manikyam Vs. Medidi Satyanarayana*[2], in which on a set of facts closer to the case in hand, it was held that the decision in *BK Mondal* would have no application and section 70 of the

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[1] AIR 1962 SC 779
[2] AIR 1972 AP 367

Contract Act would be of no help to the claimant. In *Rakurti Manikyam* the appellant, under an oral agreement, sold bags of paddy to the respondent at the rate of Rs.34.25 per bag (plus Re.1/- as transportation charge). The sale price was fixed in violation of the Price Control Order under which the price of paddy was fixed at the rate of Rs.18/- per bag. The trial court allowed the appellant's claim partially, holding that the defendant was bound to pay the pay the price at least at the control rate of Rs.18/- per bag. On appeal, the appellate court held that the contract was unlawful and, therefore, the appellant could not recover from the defendant any price for the paddy supplied by him. In the second appeal before the High Court, on behalf of the appellant strong reliance was placed on the Supreme Court decision in *BK Mondal*. Chinnappa Reddy J. (as his Lordship was at that time) repelled the submissions, holding that *BK Mondal* had no application in the facts of the case. The relevant passage in the decision in *Rakurti Manikyam* is as under:

> 3. Miss Maruthi then urged that assuming that the contract was void the plaintiff was nonetheless entitled to be compensated in respect of paddy actually delivered by him to the defendant. She relied on S. 70 of the Indian Contract Act and on the decisions of their Lordships of the Supreme Court in State of West Bengal v. B. K. Mondal & Sons., News Marine Coal Co. v. Union of India, Mulamchand v. State of M. P., and P. Dhunji Shaw v. Poona Municipality, Section 70 of the Contract Act is as follows:
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> > "Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

In the four cases cited by Miss Maruthi their Lordships of the Supreme Court held that notwithstanding the fact that a contract was invalid because of non-compliance with the mandatory provisions of Section 175 (3) of the Government of India Act, 1935 or other analogous provisions, a claim for compensation based on Section 70 of the Contract Act would still be maintainable. In the first case Gajendragadkar, J., observed:

> "Therefore, in cases falling under Section 70 the person doing something for another or delivering something to another cannot sue for the specific performance of the contract nor ask for damages for the breach of the contract for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. All that Section 70 provides is that if the goods delivered are accepted or the work done is voluntarily enjoyed then the liability to pay compensation for the enjoyment of the said goods or the acceptance of the said work arises. Thus, where a claim for compensation is made by one person against another under Section 70, it is not a on the basis of any subsisting contract between the parties, it is on the basis of the fact that something was done by the party for another and the said work so done has been voluntarily accepted by the other party. That broadly stated is the effect of the conditions prescribed by Section 70."

4. It must be observed that there certainly exists a distinction between a contract which is void because the consideration or the object of the agreement is unlawful and a contract which is void for other reasons including failure to observe some technical requirement. Section 2 (g) of the Contract Act says, "an agreement not enforceable by law is said to be void." An agreement may be void for any of the reasons mentioned in the several provisions of the Contract Act such as Sections 19, 20, 23, 24, 25, 26, 27, 28, 29 and 30. An agreement may also be void for non-compliance with certain technical requirements imposed by enactments like the Registration Act, Stamp Act, Section 175 (3) of the Government of India Act of 1935, Article 299 of the Constitution and the like. Out of the several agreement which are void one is an agreement, the consideration or the object of which is unlawful. Section 23 says:

> "The consideration or object of an agreement is lawful unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.
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> In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

Apart from Section 23 the only other provision of the Contract Act which uses the word 'lawful' is Section 10 and it is as follows:------

> "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.
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> Nothing herein in India, and not hereby any law in force in India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence or witness, or any law relating to the registration of documents."

It will be seen that both in Sections 10 and 23 the word 'lawful' is used to qualify the consideration or object of an agreement and Section 23 states what consideration or object is lawful and what is not lawful. If this is borne in mind it becomes clear that the word 'lawfully' occurring in Section 70 and qualifying the doing or delivery of anything must have reference to the doing or delivery of those things which are stated to be lawful in Section 23 of the Contract Act. In other words, the doing or delivery of anything must not be 'forbidden by law' or 'of such a nature, that if permitted, it would defeat the provisions of any law or is fraudulent', or must not involve or imply 'injury to the person or property of another' or must not be that which may be regarded by the Court as 'immoral or opposed to public policy'. I am therefore of the view that, for a contractor under Section 70 of the Contract Act the contract found to be void should not be one whose consideration or object is not lawful within the meaning of Section 23 of the Contract Act. Miss. Maruthi relied on the following sentence in :-----

> "Therefore, in our opinion, all that the word 'lawfully' in the context indicate is that after something is delivered or something is done by one person for another and that thing is accepted and enjoyed by the latter, a lawful relationship is born between the two which under the provisions of Section 70 gives rise to a claim for compensation."

And argued that the word "lawfully" referred only to the relationship created as a result of the acceptance and enjoyment by a person or a thing done or delivered by another. She argued that the word "lawfully" had no reference to the lawful or unlawful nature of the doing of a thing or the delivery of a thing. I do not agree. The observations of their Lordships were made in the context of an argument which was advanced to the effect that the word "lawfully" referred to a pre-existing relationship between the parties which would justify a person doing a thing or delivering a thing to look for compensation for it from the person for whom it is done or to whom it is delivered. I do not think that their Lordships meant to extend the applicability of Section 70 to unlawful contracts.

Apart from the very good reasons given for not applying the decision in *BK Mondal* to the facts in *Rakurti Manikyam,* in our view sufficient indications are to be found in *BK Mondal* itself as to the kinds of cases to which the decision would have no application. In paragraph 14 it is stated as under:

> "14. It is plain that three conditions must be satisfied before this section can be invoked. The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. When these conditions are satisfied s. 70 imposes upon the latter person, the liability to make compensation to the former in respect of or to restore, the thing so done or delivered."

It was then said in paragraph 17 of the judgement as under:

> "16. It is true that s. 70 requires that a person should lawfully do something or lawfully deliver something to another. The word "lawfully" is not a surplus age and must be treated as an essential part of the requirement of s. 70. What then does the word "lawfully" in s. 70 denote? Mr. Sen contends that the word "lawfully" in s. 70 must be read in the light of s. 23 of the said Act; and he argues that a thing cannot be said to have been done lawfully if the doing of it is forbidden by law. However, even if this test is applied it is not possible to hold that the delivery of a thing or a doing of a thing the acceptance and enjoyment of which gives rise to a claim for compensation under s. 70 is forbidden by s. 175(3) of the Act; and so the interpretation of the word "lawfully" suggested by Mr. Sen does not show that s. 70 cannot be applied to the facts in the present case."

We shall presently see how far the supply of TV signals without entering into a written agreement can be said to be lawful or unlawful.

Mr. Chawla next relied upon the Supreme Court decision in *Nutan Kumar & Others Versus IInd Additional District Judge & Others*[3]. In this case, the landlord, who was the appellant before the Court had let out the tenanted premises in violation of Section 11 of the UP Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 that prohibited letting any buildings except in pursuance of allotment order issued under Section 16 of the Act. He brought an action for eviction of the tenant on grounds of default in payment of the monthly rent. The trial court recorded findings in regard to the amount of monthly rent and non-payment of the rent by the tenant in favour of the plaintiff but dismissed the suit on the ground that the contract of tenancy was entered into in contravention of the Rent Act and, therefore, the landlord was not entitled to any relief. The revision filed against the trial court judgement was also dismissed. The landlord then challenged the judgements of the trail court and the revisional court in a writ petition filed before the High Court. In the High Court, the matter was referred to a full bench in view of certain conflicting decisions on the issues arising in the writ petition. The full bench, by a majority judgement, found the writ petition liable to be dismissed holding as under:

> "1. An agreement of lease between the landlord and the tenant for letting and occupation of a building in contravention of the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is void.

[3] (2002) 8 SCC 31

> 2. The said agreement is unenforceable in law and no decree for ejectment of the tenant can be passed in favour of the landlord on the basis thereof."

In arriving at its decision, the majority judgement of the full bench referred to a number of Supreme Court decisions and observed that those decisions since those decisions took conflicting views, the High Court was free to follow the judgement of the Apex Court which appeared to it to state the law correctly and elaborately.

The Supreme Court in *Nutan Kumar* castigated the High Court for its approach and for not following the Supreme Court decision in the case of *Nanak Ram Vs Kundalrai*[4]. The Supreme Court said that the view taken by the High Court that there was conflict between the decisions in *Nanak Ram* and some other decisions of the Supreme Court was misconceived and wrong. The Supreme Court explained *Nanak Ram* as holding as under:

> "In the case of Nanakram V. Kundalrai the question was whether a lease in violation of statutory provisions was void. It was held that in the absence of any mandatory provision obliging eviction in case of contravention of the provisions of the Act the lease would not be void and the parties would be bound, as between themselves, to observe the conditions of lease. It was held that neither of them could assail the lease in a proceeding between themselves. This authority was in respect of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949, whereunder also the landlord was obliged to intimate a vacancy to the Deputy Commissioner of the district and the Deputy Commissioner could allot or direct the landlord to let the house to any person. The provisions were more or less identical to the provisions of the said Act. This authority has directly dealt with the questions under consideration and answered them."

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[4] (1986) 3 SCC 83

In *Nutan Kumar* the concluding paragraphs 11, 12 and 13 are significant and these paragraphs are, therefore, extracted below:

> "11. It is thus to be seen that the principles laid down in Nanakram case still hold the field. There is no contrary or conflicting decision or authority. The Full Bench was bound by the authority in Nanakram case and could not have taken a contrary view.
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> 12. As Nanakram case was decided by three Hon'ble Judges of this Court, it would also be binding on us. We are therefore not going into the question of correctness or otherwise of such a view. We may however mention that the impugned judgment dated 20.5.1993 of the Full Bench, is not correct for another reason also. Section 13 of the said Act specifically provides that a person who occupies, without an allotment order in his favour, shall be deemed to be an unauthorised occupant of such premises. As he is in unauthorised occupation he is like a trespasser. A suit for ejectment of a trespasser to get back possession from a trespasser could always be filed. Such a suit would not be on the contract / agreement the parties and would thus not be hit by principles of public policy also.
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> 13. In this view of the matter the decision of the Full Bench dated 20.5.1993 cannot be sustained and is set aside. It is held that the law, as laid down in Nanakram case still holds the field. Thus unless the statute specifically provides that a contract contrary to the provisions of the statute would be void the contract would remain binding between the parties and could be enforced between the parties themselves. Consequently, the judgement dated 20.9.1993 (sic 20.5.1993) dismissing the writ petition is set aside. The matter is sent back to the High Court for deciding the writ petition in accordance with law."

It may, thus, be seen that the Supreme Court (in para 12) found that the tenant being a trespasser was anyway liable to be evicted. It may also be noticed that in *Nutan Kumar* as well as in *Nanakram*, there is no reference to Section 70 (or Section 695) of the Contract Act. The decision in *Nutan Kumar* proceeds on a basis completely different from *B.K. Mondal*. *B.K. Mondal* held that precisely because no contract came into existence, section 70 of the Contract Act would get attracted to the facts of the case. In *Nanakram* and *Nutan Kumar* it is held that

unless the statute specifically provides that a contract contrary to the provisions of the statute would be void, the contract would remain binding between the parties and could be enforced between the parties themselves.

We shall presently examine how far it would be appropriate to apply the decisions in a case of ejectment to a case of supply of TV signals.

Mr. Chawla next relied upon the decision in *Gherulal Parakh Vs Mahadeodas Maiya & Others*[5]. In *Gherulal* it was held that wagering contracts though void and unenforceable in terms of Section 30, are not unlawful or against public policy as contemplated under Section 23 of the Contract Act. We see no application of this decision to the matter in hand.

Apart from the Supreme Court decisions discussed above, Mr. Chawla also placed reliance on two earlier judgements of the Tribunal.

In the case of *UCN Cable Network Pvt. Ltd. Vs. Nagpur Entertainment News Network*[6], the Tribunal noted the provision of Clause 4A of the Interconnect Regulations 2004 and in the following paragraph 12 observed as under:

> "12. It is difficult to appreciate as to how despite the said clear provision in the Regulations, parties had been continuing to transact businesses on the basis of an oral agreement only.

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[5] AIR 1959 SC 782
[6] Decided on 15 February 2012

> Be that as it may, the petitioner contended that rate for supply of signal was Rs.225/- per month, as would appear from para 8 of the petition, however, from a letter dated 27.12.2010, it would appear that the petitioner had allegedly been charging Rs.150/- per connection for 520 connections per month. Petitioner, therefore, must be held to have not proved the rate of subscription fee was Rs.225/- per month per subscriber."

That is all that is said on the issue under consideration before us.

A little later, in the case of *S.R. Cable Pvt. Ltd Vs. Gulabchand Panjre*[7], the Chairman, sitting singly, noticed the provision of Clause 4A of the Regulation but went on to observe as under:

> "12. It has been held in a number of decisions that although an agreement in writing is required to be entered into from March, 2009 in terms of clause 4A which was inserted by Telecommunication (Broadcasting and Cable Services) Interconnection (5th Amendment Regulations 2009), having not laid down any consequences, therefore, the local cable operators are bound to pay a reasonable amount to the distributors of the TV channel having regard to the provisions contained in Section 65 and Section 70 of the Indian Contract Act as supply of signals was not made gratuitously. In a case like this nature, the doctrine of restitution shall also come into play.
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> 13. Moreover, in this case the fact that Petitioner has been supplying signals to the Respondent from January, 2009 is not in dispute.
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> That being the factual position, the 2009 Amendment to the Regulations would have no application in the instant case."

The decision then refers to sections 65 and 70 of the Contract Act and referring to an earlier decision of the Tribunal in Petition No.435(C) of 2010 disposed of on 3.6.2011 held that the absence of an agreement in writing would not be a bar against recovery of dues.

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[7] Decided on 18 October 2012

As the discussion at the proper place in this judgment would show, the view taken in *S.R. Cable* does not lay down the correct law and it is not to be followed.

Mr. Vineet Bhagat, counsel for the petitioner in Broadcasting Petition No.611 of 2015 took the same line of arguments as Mr. Chawla. Mr. Bhagat relied upon the Supreme Court decision in *Mulamchand Vs. State of Madhya Pradesh*[8]. In *Mulamchand,* on similar set of facts the Supreme Court followed the earlier decision in *BK Mondal*. Mr. Vineet Bhagat also tried to press into service the principle of *quantum meruit* and relied upon the decisions in *V.R. Subramanyam Vs. B. Thayappa & Others*[9] (paragraph 5) and *Food Corporation of India & Others Vs. Vikas Majdoor Kamdar Sahkari Mandli Limited*[10] (paragraphs 19 and 20). In view of the clear prohibition against supply of TV signals without an agreement in writing, we fail to see any application on the principle of *quantum meruit*.

Ms. Parashar in her counter arguments invited our attention to a decision of Supreme Court of *Kuju Collieries Ltd. Vs. Jharkhand Mines Ltd. and Ors.* In *Kuju Collieries* the plaintiff appellant had taken a mine on lease on payment of Rs.80,000/- to respondent no.1. The appellant failed to get possession of the leased mine and it was eventually taken over by the State under the Bihar Land Reforms Act. The appellant had instituted a suit for recovery of possession of the mine

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[8] AIR 1968 SC 1218
[9] AIR 1966 SC 1034
[10] (2007) 13 SCC 544

along with mean profit and in the alternatives for refund of the sum of Rs.80,000/- and certain other sums.

The Trial Court held that since the Mineral Concession Rules of 1949 rendered any stipulation for payment of salami illegal, the lease taken out by the appellant was illegal and the plaintiff was not entitled to claim relief under Section 65 of the Contract Act. The Trial Court dismissed the suit and the appeal against the Trial Court judgement was dismissed by the High Court. The appellant in its appeal before the Supreme Court confined its claim only to refund of Rs.80,000/- paid by it at the time of execution of the lease. The Supreme Court examined a number of earlier decisions and upholding the decisions of the Trial Court and the High Court dismissed the appeal holding as under:

> "13. The Mineral Concession Rules came into force on 25.10.1949. As the lease came into force on September 7, 1950 and money was paid on that date, the fact there was an earlier unregistered contract does not make any difference to the question at issue. Section 4 of the Mines and Minerals (Regulation and Development) Act, 1948 provides "no mining" lease shall be granted after the commencement of this Act otherwise than in accordance with the rules made under this Act, and any mining lease granted contrary to the provisions of Sub-section (1) shall be void and of no effect". Under Rule 45 of the Mineral Concession Rules, 1949 "no prospecting license or mining lease shall be granted except to a person holding certificate of approval from the Provincial Government having jurisdiction over the land in the respect of which the concessions required." The plaintiff had no certificate of approval from the State Government under Rule 49 "no grantor of a prospecting license or a mining lease shall charge any premium in addition to or in lieu of the prospecting fee, surface fee, surface rent, dead rent or royalty specified in such license or lease." There was a stipulation for payment of a premium under the lease deed in favour of the plaintiff. Therefore, clearly the lease in favour of the plaintiff was contrary to the provisions of the Mines and Minerals (Regulation & Development) Act, 1948 and the Mineral Rules 1949 and as such void.

> 14. The further question is whether it could be said that this contract was either discovered to be void or became void. The facts enumerated above would show that the contract was void at its inception and this is not a case where it became void subsequently. Nor could it be said that the agreement was discovered to be void after it was entered into. As pointed out by the Trial Court the plaintiff was already in the business of mining and had the advantage of consulting its lawyers and solicitors. So there was no occasion for the plaintiff to have been under any kind of ignorance of law under the Act and the Rules. Clearly, therefore, this is not a case to which Section 65 of the Contract Act applied. Nor is it a case of Section 70 or Section 72 of the Contract Act applied. The payment of the money was not made lawfully, nor was it done under a mistake or under coercion."

In our view the decision in *Kuju Collieries* applies with greater force to the facts of the case in hand than the decisions relied upon on behalf of the petitioner.

Ms. Parashar also brought to our notice some decisions of the High Courts and some consultation papers and explanatory memoranda issued from time to time by TRAI that according to her support the point canvassed by her. We, however, do not see any need to set out those here in any detail.

We may at this stage advert back to the statutory position. Interconnection Regulations, 2004 were issued by the Telecom Regulatory Authority of India (TRAI) vide notification issued on 10 December 2004 in order to cover arrangements for interconnection and revenue sharing among service providers in the broadcasting sector. On 17 March 2009 a notification was issued incorporating clause 4A in the body of the Regulations. Clause 4A lays down as under:

> **"4A. Interconnection Agreements to be in writing.**
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> **4A.1** It shall be **mandatory** for the broadcasters of pay channels and distributors of TV channels to reduce the terms and conditions of all their interconnection agreements to writing.

4A.2 No broadcaster of pay channels or **distributor of TV channels, such as multi system operator** or headend in the sky operator, **shall make available signals of TV channels to any distributor of TV channels without entering into a written interconnection agreement**.

4A.3 Nothing contained in regulations 4A.1 or 4A.2 shall apply to any supply of signals or continuance of supply of signals of TV channels by a broadcaster or distributor of TV channels, such as multi system operator or headend in the sky operator, in pursuance of or in compliance with any order or direction or judgment of any court or tribunal, including any order or direction or judgment of any court or tribunal on any proceeding pending before such court or tribunal.

4A.4 It shall be the responsibility of every broadcaster of pay channels who enters into an interconnection agreement with a distributor of TV channels to hand over a copy of signed interconnection agreement to such distributor of TV channels and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement and, **similarly, it shall be the responsibility of every multi system operator** or headend in the sky operator, as the case may be, **who enters into an interconnection agreement with a cable operator to hand over a copy of signed interconnection agreement to such cable operator and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement**."

(emphasis added)

Provisions identical to the above are to be found in the Das Interconnection Regulations in causes 5 (17) to 5 (20) which are as under:

5. General Provisions relating to interconnection agreements –

(17) It shall be **mandatory** for the multi system operator to reduce the terms and conditions of the interconnection agreements into writing.

(18) **No multi system operator, shall make available signals of TV channels to any linked local cable operator without entering into a written interconnection agreement.**

(19) Nothing contained in regulations (17) or (18) shall apply to any supply of signals or continuance of supply of signals of TV channels by a multi system operator in pursuance of or in compliance with any order or direction or judgment of any court or tribunal, including any order or direction or judgment of any court or tribunal on any proceeding pending before such court or tribunal.

(20) It shall be the responsibility of every multi system operator to hand over a copy of signed interconnection agreement who enters into an interconnection agreement with a linked local cable operator/s to hand over a copy of signed interconnection agreement to such cable operator and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement.

(emphasis added)

As may be seen, these provisions, phrased in the negative plainly forbid any supply of TV signals for redistribution in the absence of an interconnect agreement in writing. Apart for the rigor of these provisions, it is also important not to look at these provisions in isolation but as a part of the overall regulatory framework.

The preamble to the TRAI Act reads as under:

"An Act to provide for the establishment of the Telecom Regulatory Authority of India and the [Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of the telecom sector, **to promote and ensure orderly growth of the telecom sector**] and for matters connected therewith or incidental thereto."

(emphasis added)

It is further to be noted that the scheme of interconnections for distribution of TV signals as set out under clause 3.2 of both the Interconnect Regulations, 2004 and the DAS Interconnect Regulations, 2012 rests on the principle of "must provide on a **non-discriminatory**" basis.

Further, clause 9 of the DAS Regulations, 2012 casts the obligation of reporting to TRAI all Interconnect agreements. Clause 9 provides as under:

"**9. Reporting Requirements.** – (1) Every multi system operator shall submit to the Authority information, in the proforma specified in Schedule-III to these

> regulations, all interconnect agreements entered into by it with the broadcaster and local cable operator and subsequent modifications made therein.
>
> (2) Every existing multi system operator shall submit to the Authority by 31st July, 2012, all interconnect agreements entered into by it and amendments made therein prior to the date of notification of these regulations.
>
> (3) Every multi system operator commencing its services after the notifications of these regulations shall submit to Authority its interconnection agreement within thirty days of entering into the agreement or 31st July, 2012 whichever is later. (4) Every broadcaster shall furnish the details of carriage fee paid by him to the multi system operator along with the information furnished by him under the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004 (15 of 2004), as amended from time to time. Such information henceforth shall also include details of carriage fee paid to the multi system operator by the broadcaster."

The supply of TV signals on an oral arrangement, therefore, does not only flout the statutory injunction but viewed in the larger perspective such an arrangement cuts at the very roots of the statutory scheme of interconnections. Any oral arrangement for supply of TV signals without an agreement in writing is antithetical to both orderly growth of the sector and non-discrimination in interconnect arrangements with different distributors.

Here it would be relevant to note that clause 5(16) of the DAS Interconnect Regulations 2012 (corresponding to clause 8 of the Interconnect Regulations 2004) allowed, after expiry of an agreement, three months' time to the parties to negotiate the terms of the fresh agreement (which on being executed would relate back to the date of expiry of the previous agreement). The provision was widely misused, especially under DAS transmission, and supply of TV signals would be continued, in many cases for long periods of over a year after the existing agreement came to

end. The Regulator clearly viewed it as an abuse of the regulation and by notification issued on 07.01.2016 amended clause 5(16) of the DAS Regulations 2012 with effect from 01.04.2016. In terms of the amended regulation, no supply of signals can be made for a single day unless a fresh agreement is executed to replace the previous agreement on its expiry. The change brought about in the Regulations clearly shows the importance attached by TRAI to an agreement for interconnection in writing.

In our view, in a case for recovery of dues for supply of TV signals the Tribunal, unlike a court established under the Code of Civil Procedure, cannot view the matter as purely a private dispute concerning the rights of two individuals. This Tribunal set up under the TRAI Act is duty bound to also examine whether or not the relationship between the parties from which the claim arises was lawful and in case the relationship was not lawful, its likely impact and consequences on the broadcasting sector as a whole.

Cases coming to the Tribunal show a clear pattern. When a major MSO wishes to enter a market, it poaches upon the LCOs, affiliated with other MSOs operating in the area from before by offering them much lower rates. As the LCOs shift to the new entrant in large numbers, conflicts arise between the LCOs and the MSO from which they earlier received signals. The new entrant gives its own

STBs to the LCOs shifting to it for having the boxes seeded at the subscribers' places. After LCOs in substantial numbers come under it and a large number of its boxes are seeded, the new entrant starts increasing its rates and then there is another round of conflict between the new entrant and its poached LCOs. All the arrangement is oral and without any interconnect agreement. Hence, when the matter comes to the Tribunal, it is the word of one side against the word of the other side. In the past months, a large number of such cases have come to the Tribunal. It is obvious that such practices based on oral arrangements, besides being in violation of the regulation, vitiate the market and disrupt the orderly growth of the sector.

In light of the discussions made above, we confirm the view taken in the earlier cases and answer the question framed at the beginning of the judgement in the negative. Resultantly both the applications are liable to be dismissed as not maintainable. These two petitions are accordingly dismissed.

However, in Broadcasting Petition No.176 of 2015, the respondents were made to return a large number of STBs by an interim order passed by the Tribunal. The interim order was passed at a time when the Tribunal was not aware that the relationship between the parties is not based on any agreement in writing and hence, the petition itself is not maintainable. In other words, the interim order was

wrongly passed by the Tribunal, unaware of all the relevant facts, in a petition that was not even maintainable before the Tribunal. The petitioner must, therefore, be directed to restore the position as it stood at the time of the filing of the petition and return all the STBs that it received from the respondent by virtue of the Tribunal's order. At this stage, it needs to be clarified that the petitioner's STBs may no longer be of any use to the respondents and hence, if so advised, the parties may settle for a monetary payment by the petitioner to the respondent in lieu of the STBs received by it. In case, however, no settlement is arrived within a period of 30 days, the direction to the petitioner to return the STBs will become operative and enforceable.

Before concluding, it needs further to be clarified that normally STBs are supplied by the MSO as part of the interconnect arrangement. In such cases, in the absence an agreement in writing, neither any claim for recovery of money dues nor the claim for return of STBs would be maintainable in light of this judgement. In some cases, however, the STBs may be supplied under an altogether separate agreement. The issue of maintainability of a claim for return of STBs is left open in cases where the claimant is able to show that STBs were supplied, not as part of the interconnect arrangement but clearly and distinctly under a separate agreement.

In the result, the two applications are dismissed. Broadcasting Petition No.176 of 2015 is dismissed also with directions as made above.

There will be no order as to costs.

(AftabAlam)
Chairperson

(B.B. Srivastava)
Member

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