

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated ⁰⁷ 21 December, 2018

M.A.No.154 of 2018

IN

Broadcasting Petition No. 177 of 2018

VenkataSai Entertainment Pvt. Ltd. and Anr. ... Petitioners
Versus
Bhimavaram Community Cable Network and Ors. ... Respondents

M.A.No.153 of 2018

IN

Broadcasting Petition No. 178 of 2018

VenkataSai Entertainment Pvt. Ltd. and Anr. ... Petitioners
Versus
Bhimavaram Community Cable Network and Ors. ... Respondents

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioners : Mr. Meet Malhotra, Senior Advocate
Mr.Diggaj Pathak, Advocate
Mr. Ravi S.S. Chauhan, Advocate
Ms.Shweta Sharma, Advocate
Mr. Qasim Ali Khan, Advocate

For Respondent No. 1 : Mr. Ramji Srinivasan, Advocate
Mr.ManikyaKhanna, Advocate
Mr. Sharath Sampath, Advocate
Ms.ShivangiDham, Advocate
Ms. A. Tulsi Raj Gokul, Advocate

For Respondent Nos. 2 & 3 : Mr. Saket Singh, Advocate
Mr.Kunal Vats, Advocate

For BECIL : None



ORDER

A K Bhargava, Member – BP No. 177/2018 pertains to the area of Kakinada while BP No. 178/2018 pertains to Rajamundry. Both matters are tagged together and a common order is being passed.

The petitioner came to this Tribunal on 19-4-2018 with the following prayers

“(a) Direct the respondents to jointly and severally compensate the petitioner to the tune of Rs. 46,24,85,000/- (Rupees forty six crores twenty four lakhs eighty five thousand only) towards damages caused due to the illegal actions of the respondent.

“(b) Pass an order of permanent injunction restraining the respondent no. 1 from providing any feed in un-encrypted form in the territories which have been digitized.

“(c) Pass any other or further order/orders which your lordships may deem fit and proper in the interest of justice.”

Petitioner also made interim prayers which are as follows

“Pass an ad-interim ex parte order restraining the respondents from retransmitting signals in un-encrypted manner in territories which digitalisation has taken place.”

After hearing both the parties, this Tribunal passed the following orders on 23-4-2019

“In view of the stand of the parties noted above and particularly that of respondent no. 1, we think no harm will be caused to any party if we direct what is required to be done by law that no one will disseminate signals in un-encrypted form from the STBs of the petitioner until further orders.”

Subsequently, the petitioner has filed these MA No. 153/2018 and 154/2018 under Section 20 of the TRAI Act with the following prayers

“Hold that the respondent no. 1 is guilty of wilful disobedience of the order dated 23.4.2018 of this Hon’ble Tribunal and impose a penalty of Rupees one lakh and further penalty of Rupees two lakhs per day till the time the order is complied with, in terms of Section 20 of the TRAI Act, 1997.

ii. direct the respondent to immediately stop the transmission of un-encrypted signals through STBs of the petitioner in the territory of Kakinada.

iii. Appoint a Local Commissioner to submit a report after proper verification from the subscribers about the signals being supplied by respondent.”



While considering these MAs, the Tribunal appointed BECIL to conduct an Audit as well as inquiry on the basis of materials supplied by both the parties to find out, if possible -

1. Whether or not unencrypted signals are being supplied to STBs of the petitioners?
2. If unencrypted signals are being supplied to STBs of the petitioners, what is the source?

BECIL submitted its report on 29-6-2018. In its report, BECIL has explained its methodology and made the following observations

(I) BECIL's team conducted field inspection at Rajamundry and Kakinada on 28th and 29th May, without informing R1 of the field inspection. The petitioner had taken BECIL team to 3 locations to carry out field inspection and audit in Rajamundry. The team found that digital cable feed was being retransmitted on petitioner's STB in un-encrypted mode. TS analyser was used for verification of unencrypted feed transmission by BECIL. Fingerprints of seven channels in Rajamundry are documented and the Broadcasters have also confirmed that they match with the respective decoder which was issued to R1. Presence of three unencrypted local channels of R1 is also recorded. Similar observations are recorded in respect of Kakinada.

(II) R1 confirmed that they have distribution points (DP) in both the locations, i.e. Rajamundry and Kakinada. BECIL's team conducted inspection of R1's DP (managed by its distributor named m/s Kakinada Cable Company) in Kakinada on 30th May, without informing petitioner. During the inspection, it was found that the feed is encrypted except some un-encrypted local channels inserted locally. Similar observation is there in respect of Kakinada.

The conclusion of the BECIL is as follows

*11.1 TDSAT query 1 : Whether or not unencrypted signals are being supplied to STBs of petitioner?
BECIL audit / Inquiry conclusion : Yes, the unencrypted signals are being transmitted on the STBs of the petitioner.*

11.2 TDSAT query 2 : If unencrypted signals are being supplied to STBs of the petitioner, what is the source ?

BECIL audit / Inquiry conclusion : The source of unencrypted signals belongs to the respondent i.e. M/s Bhimavaram Community Network.

11.3 In summary, BECIL found the allegation made by the petitioner on respondent is true whereas the respondent was unable to substantiate its allegations made on petitioner during conduct of an audit and inquiry by BECIL.



Both the parties have used the BECIL report to argue their case. Petitioner relies squarely on the BECIL's conclusion to submit that R1 was indulging in retransmission of un-encrypted feed to the petitioner's STB. R1 also relies on BECIL's inspection report which records that it was transmitting signals in encrypted form and submits that there is no proof that BECIL's earlier observations could be attributed to R1, even if the fingerprinting was that of R1. Learned counsel for the R1 submits that it could have been done by anyone and alleges that it perhaps could have been done by the petitioner. When this observation was made by BECIL on 28th, it did not visit DP at Rajamundry to verify whether un-encrypted signals were emanating from the R1's DP and when DP at Rajamundry was inspected on 30th, BECIL did not verify that those three STBs were indeed getting un-encrypted or encrypted feed. In view of such stand, the Tribunal asked the BECIL to appear before the Tribunal to answer queries and explain the report in correct perspective, which they did on 1-11-2018. The experts could not add anything more than what was already available in the report. As per submission of learned counsel for the petitioner, swapping was more or less completed around May end and no further enquiry from ground would have been useful.

In order to gain more clarity, we asked few more questions on 1-11-2018, which are as follows

"The respondent will submit on affidavit the date of operation in two cities, the date of operation of OFSC linking from Bhimvaran to these cities, the type and capacity of equipment at distributing points and details of the location of distributing points in both the cities.

The petitioner will submit on affidavit the date of disconnection of their feed to these two locations and details of locations and type and capacity of the equipment which were being used when their services were utilised by concerned distributors and also the details relating to the STBs whether they are capable of taking un-encrypted as well as encrypted signals and whether they were certified STBs and when did they stop giving feed to these entities?"

On the basis of affidavits filed in response to above queries, both the parties were heard again on 12-12-2018. The petitioner in its affidavit has submitted that it has never disconnected the feed and it was R3 who suddenly stopped retransmitting the signals of the petitioner. The exact date of respondent's disconnection was 28-3-2018 when the petitioner gained knowledge through market sources. It is also around this time that the R1 established its connectivity to these two places. Learned counsel for the petitioner has also taken the stand that it would be



logistically impossible to supply all the channels in unencrypted form from any other source and only practical possible way is that R1 has supplied the unencrypted feed from its Headend. It is stated by the petitioner that any channel or a group of channels (package) can be encrypted at the Headend, within a few minutes without any glitch or interruptions in the signals of any authorized STB. Similarly, decryption can also be done within a few minutes. Petitioner alleges that since R1 was informed prior to the BECIL's visit of its Headend and DPs, R1 conveniently encrypted its signals and accordingly BECIL found the feed in encrypted form at R1's Headend and DPs. Learned counsel terms these allegations as a matter of conjecture. R1 has also submitted that its operations in some of the areas in Rajamundry commenced in the year 2016, whereas in Kakinada operations commenced in the month of March, 2018 and OFC lease lines were also obtained in the same period. R1 claims to have 3 DPs in these areas having same type of equipment, namely "EDGECOM" which distributes the encrypted signals further to LCOs and/or direct subscribers. The said DPs also have encoders for insertion of local channels upto maximum of 8 local channels and supply of local channels in un-encrypted form is an industry practice and not challenged. Learned senior counsel for R1 has submitted that it has seeded its STBs in the normal course and has supplied only encrypted signals to them. He also submits that the BECIL report talks of only 7 channels being found in un-encrypted form which is not logistically difficult to supply from a different source. Thus, all the contentions of the petitioner are a matter of trial. He contends that Section 20 of the TRAI Act cannot be applied since there is no definite evidence provided by the petitioner that R1 has indeed violated the Tribunal's orders and hence MAs need to be rejected.

In normal cases of swapping, usual prayer by the petitioner is for recovery of outstanding and/or STBs and/or to restrain the other parties from further swapping. The main prayer and interim prayer in this petition is to restrain the respondent from providing any feed in un-encrypted form. BECIL report shows that on 3 STBs belonging to the petitioner, there indeed was un-encrypted feed and the fingerprinting leads to R1. Without going into the question of sample size and who led to these STBs etc., what remains to be demonstrated is that this feed was indeed supplied in un-encrypted form from R1's Headend and DP. In this regard, lot of



information has been supplied along-with explanations from both the sides. Conclusion from such information and explanations must await trial. Therefore, in view of the arguments noted above, all the contentions of both the parties are kept open. In view of this, we are of the opinion that these MAs also be dealt with at the time of final hearing. Accordingly, let the matter be posted before learned Registrar for making the case ready for final hearing expeditiously.



(S. K. Singh, J)
Chairperson

(A.K. Bhargava)
Member