TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 23rd February 2024

Broadcasting Petition No. 570 of 2015

Prasar Bharati (Broadcasting Corporation of India) …Petitioner

Vs.

M/s Pan India Network Infravest Private Ltd. …Respondent

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Ms. Shruti Sharma, Advocate
Ms. Shreya Sharma, Advocate

For Respondent : Ms. Ritwika Nanda, Advocate
Ms. Swasti Misra, Advocate
Ms. Maitry Bhandari, Advocate

JUDGEMENT

1. This Petition, under Section 14, of the Telecom Regulatory Authority of India Act, 1997, (hereinafter after said to be 'the Act') has been filed by Petitioner, Prasar Bharati (Broadcasting Corporation of India) against M/s Pan India Network Infravest Private Limited, Respondent, with a prayer for a decree of damages @ 5 times of the license fee, for the period of 04.06.2009 to 31.08.2015, amounting to Rs. 1,66,89,773/- (Rupees One Crore Sixty Six Lakhs Eighty Nine Thousand Seven Hundred Seventy Three only), with arrear of license fee, including delayed payment interest, amounting to Rs 6,13,936/- (Rupees Six Lakhs Thirteen Thousand Nine Hundred Thirty Six only), along with, pendentelite and future interest, at the contractual rate, with any other relief, which this Tribunal deem fit.

2. In brief, Petition contends that Petitioner Prasar Bharati, is a statutory corporation, established under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 and this Petition has been filed through its General Manager (Commercial). Petitioner is the Public Service Broadcaster in India, having Broadcasting Networks for running Doordarshan and All India Radio Networks in the country. Petitioner is a Licensor, in terms of Section 2(e) of the TRAI Act. Respondent, a Company incorporated under the Companies

Act, 1956, has its registered office at 135, Continental Building, Dr. Annie Besant Road, Worli, Mumbai-400018, which inter alia, is engaged in the broadcasting business. In the year 2005, the Government of India had invited bids, for auction of FM Radio Transmission slots, in respect of various cities. A copy of the tender document, issued by the Government of India, is annexed as **ANNEXURE P-1** to Petition. Respondent was a successful bidder, in respect of eight cities, namely, Agra, Jalgaon, Amritsar, Nanded, Allahabad, Patiala, Varanasi and Akola. The Government of India had executed an agreement called "Grant of Permission Agreement" (GOPA), with each entity to which it granted FM License in respect of each station. In respect of the city of Agra, a Grant of Permission Agreement dated 30.11.2006, was executed on 30.11.2006, between Government of India and Respondent Company, which is **ANNEXURE P-2** to Petition.

3. As per conditions specified in the tender document by the Government of India, the successful bidder would have to set up transmission facilities on land, as well as tower to be provided by the Petitioner. Pursuant thereto, and for that purpose, an agreement dated 03.04.2006, was got executed between Petitioner and the Respondent, for Licensed Infrastructure at Agra, located at HPT Doordarshan, Samsabad Road, Barodi, Agra (UP)-282001. The

licensed infrastructure was comprised of open space, provided by the Petitioner and tower aperture. This agreement dated 03.04.2006, is annexed as **ANNEXURE P-3** to Petition.

4. In terms of the agreement dated 03.04.2006, the Respondent was liable to pay a yearly license fee, amounting to Rs. 11,25,000/-, per year to the Petitioner. In terms of clause 3.2, the License Fees was to be enhanced by 10% every two years, for open/covered space and common facilities, with 2.5% per year for the tower. Clause 10.3 of the agreement, provided that Respondent had the right to terminate the agreement, by giving an advance notice of three months, or paying an amount equivalent to three months' license fee in lieu of the notice, to the Petitioner. The Respondent gave a Notice for Termination, dated 27.02.2009, for the License Agreement w.e.f. three months from the date of such notice, which is annexed as **ANNEXURE P-4** to Petition. In terms of the Notice for Termination, dated 27.02.2009, the License Agreement, dated 03.04.2006, came to an end on 03.06.2009 and Respondent became liable to remove its equipment from the site. Clause 7.7 of the agreement provided that in the event the Respondent does not remove its equipment from the site, on the termination of the agreement, it will be liable to pay damages quantified, at five times the

annual rent per sq. meter on pro-rata basis. The agreement dated 03.04.2006 was provided that if GOPA, executed between the Government of India and the Respondent, is terminated, the agreement dated 03.04.2006, between Petitioner and Respondent, would stand terminated automatically. The Government of India had terminated this GOPA w.e.f. 31.03.2010, which is **ANNEXURE P-5** to Petition.

5. On the termination of the agreement dated 03.04.2006, Respondent was liable to remove its equipment from the site, in terms of Clause 7.7 of the agreement, but it was not complied with, nor premises was got vacated from licensed infrastructure, at Agra. Hence, it became liable to pay damages, quantified at five times the annual rent per. sq. meter on pro-rata basis, to the Petitioner.

6. Respondent, was in arrears of License fee for the period 30.10.2008 to 03.06.2009, on the date of termination of agreement dated 03.06.2006 and this outstanding amount towards license fee including delayed payment interest was in the tune of Rs.6,13,936/-. The license fee per year, on the date of this termination, was Rs. 14,55,414/-, and damages quantified at five times the annual rent per sq. meter on pro-rata basis, was payable by

Respondent. On 20.05.2011 Mr. Shajan Jacob, the representative of the Respondent sealed the room, in which all its equipment were lying, by affixing a seal of Respondent, on the lock. **Annexure P-6**, **Annexure P-7**, and **Annexure P-8,** are the inventories of this action. Repeatedly, Respondent was called upon to vacate the licensed infrastructure and remove its equipment, as well as to make payment of outstanding dues, but of no avail. Hence, a demand notice dated 23.3.2012, for making payment of outstanding amount, in the tune of Rs. 75,05,150/- was issued, which is **Annexure P-9** to Petition. But this was of no response. Though, Clause 12 of the agreement, dated 03.04.2006, provides for arbitration and this exercise was made by Petitioner, but as this Tribunal was having special jurisdiction, to entertain this dispute, hence, Ministry of Information and Broadcasting, did not appoint Arbitrator. More so, this was opposed by Respondent too, by way of its reply, dated 08.06.2013. Hence, the amount payable by Respondent, towards arrear of license fee and damages, as per detailed sheet of calculation, annexed as **Annexure P-13,** on 31.08.2015, was Rs. 1,73,03,709/-. Hence, a cause of action had arisen, within the period of limitation, under the jurisdiction of this Tribunal. Hence, this Petition, with above prayer.

7. Respondent in its reply, primarily, objected the maintainability of this Petition and this too, for want of jurisdiction. This Petition does not fall within the provision of Section 14 of TRAI Act. Rather, Petitioner being neither a licensor, nor a service provider, in so far as the alleged cause of action, and the relief so sought, in the Petition, is concerned, it is not entitled at all to maintain the present Petition, before this Tribunal. Rather, the dispute is of nature of recovery of rental from the property, which is beyond the jurisdiction of this Tribunal. This suit, ought to be filed before a Court of Civil jurisdiction, and not before this specialized Tribunal. The suit is also barred by law of limitation, because the recovery of alleged dues is beyond three years, from the date of termination of agreement, between the Petitioner and Respondent. Hence, it was barred by Limitation. Termination notice was of date 27.02.2009, and this Petition is of year 2015 i.e. much belated. There was Clause 12 in the agreement, providing for arbitration clause, which was not availed. Agreement dated 03.04.2006, between Petitioner and Respondent, is in nature of lease and license agreement, which requires its registration, but it is not a registered document. Hence, as per Registration Act, this Petition is not maintainable and agreement is not to be taken in account. Ministry of Information and Broadcasting, through its letter dated 31.03.2010, revoked GOPA, thus, the

reliance of clause 7.7 was misconceived, and misleading. There had been a clause of Force Majeure in clause 8 of agreement. Whereby, damages may not be claimed, in case of act of State or any other cause, beyond control, etc.

8. The present Respondent having discontinued its FM Radio business, due to non-feasibility of the project and the advance notice pertaining therewith already given to Petitioner, and this contract GOPA, already terminated by Respondent, may not be permitting this Petition to survive. Respondent remained at the mercy of the Petitioner, while seeking release of its equipments/goods, as the Petitioner taking undue advantages of the Respondent's inability to have independent possession of the said equipment, this unreasonable and penal demand, is being raised. The Respondent has been compelled to sign agreement dated 03.04.2006 because of grant of GOPA dated 30.11.2006. This was owing to dominant position of Petitioner, which forced the Respondent, having no bargaining power, with no option, but to execute the aforesaid agreement dated 03.04.2006, with the Petitioner. Clause 7.7 was a coercive clause, added in the agreement under above dominant position. Agreement has already been terminated, due to non-feasibility of project and the termination notice had

been sent by Respondent, while invoking Clause 10.3 of the aforesaid agreement, through its letter, dated 27.02.2009. It was requested in above notice to adjust the license fee for the period of 07 months i.e., from November 2008 to May 2009, against Respondent's security deposit, with a further request to refund the balance amount as per Annexure-1 thereof. But it was not complied with, because correspondences, entered in between, have not been placed with Petition. Rather, it was suppressed with wilfully. Hence, wrongful omission or commission, may never entail any liability for payment of damages, claimed as above. It was specifically denied that amount of Rs. 1,66,89,773/-, was ever due against Respondent. Petition was prayed to be dismissed.

9. Rejoinder-cum-Replication by Petitioner, reiterating the contention of Petition and negating the contention of reply was filed.

10. Learned Registrar of this Tribunal, vide its order dated 29.09.2016, framed following issues :

(i) Whether the Petition is maintainable before this Hon'ble Tribunal?

(ii) Whether the use and possession by the Respondent of the infrastructure of All India Radio is illegal and contrary to the License Agreement between parties?

(iii) Whether the Respondent is liable to pay damages to the Petitioner and, if so, for what period and at what rate?

(iv) Whether the Respondent is liable to pay arrears of license fee including interest as claimed by the Petitioner in the respective Petitions?

(v) Whether any force majeure events had arisen and the claim is hit by the force majeure clause?

11. Evidence by way of affidavit, for and on behalf of Petitioner, by Sri Sanjay Kumar Mishra, was filed by Petitioner and this witness was cross examined by counsel for Respondent. Evidence for and on behalf of Respondent was of Mr. Virender Singh Thakur, subsequently changed by evidence by way of affidavit of Sri Girish Kumar Kaul for and on behalf of Respondent.

12. Written submission by Petitioner was filed. Heard learned Counsel for both side and gone through material placed on record.

13. Vide Order of this Tribunal dated 23.05.2016, the equipments and fixtures of the Respondent, were finally removed by Respondent, from the site of Petitioner, which is an undisputed fact. Hence, the claim was till

above date of removal, with regard to damages. The damages five times of the annual license fee per sq. meter on pro-rata basis, from 04.06.2009 to 31.08.2015, was said to be in tune of Rs. 1,66,89,773/- and arrear of license fee Rs. 6,13,936/-, till this cause of action and filing of Petition. The relief claimed regarding declaration of unauthorized occupation became infructuous, because equipments were removed upon the application of Respondent, vide order of this Tribunal dated 23.05.2016.

14. Hon'ble Apex Court in Anil Rishi Vs. Gurbaksh Singh – AIR 2006 SC 1971 has propounded that onus to prove a fact is on the person who asserts it. Under Section 102 of the Indian Evidence Act, initial onus is always on the plaintiff to prove his case and if he discharges, the onus shifts to defendant. It has further been propounded in Premlata Vs. Arhant Kumar Jain- AIR 1976 SC 626 that where both parties have already produced whatever evidence they had, the question of burden of proof seizes to have any importance. But while appreciating the question of burden of proof and misplacing the burden of proof on a particular party and recording of findings in a particular way will definitely vitiate the judgment. The old principle propounded by Privy Council in Lakshman Vs. Venkateswarloo – AIR 1949 PC 278 still holds good that burden of proof on the pleadings never shifts, it always remains

constant. Factually proving of a case in his favour is cost upon plaintiff when he fulfils, onus shifts over defendants to adduce rebutting evidence to meet the case made out by plaintiff. Onus may again shift to plaintiff. Hon'ble Apex Court in State of J & K Vs Hindustan Forest Co. (2006) 12 SCC 198 has propounded that the plaintiff cannot obviously take advantage of the weakness of defendant. The plaintiff must stand upon evidence adduced by him. Though unlike a criminal case, in civil cases there is no mandate for proving fact beyond reasonable doubt, but even preponderance of probabilities may serve as a good basis of decision, as was propounded in M. Krishnan Vs Vijay Singh- 2001 CrLJ 4705. Hon'ble Apex Court in Raghvamma Vs. A Cherry Chamma – AIR 1964 SC 136 has propounded that burden and onus of proof, are two different things. Burden of proof lies upon a person who has to prove the facts and it never shifts. Onus of proof shifts. Such shifting of onus is a continuous process in evaluation of evidence.

15. In all civil cases, required degree of proof is preponderance of probabilities.

16. **Issue No. 1**.

Learned Counsel for Respondent had opposed the jurisdiction of this Tribunal for deciding present Petition, because the agreement in between, which is the basis of this Petition, was not an agreement qualifying the essential ingredients for constituting jurisdiction of this Tribunal, as per Section 14 of TRAI Act. The second ground, was that the agreement in question, was a simple agreement of lease requiring its registration, as per Registration Act, and because of being not registered one, the same could not be taken in the evidence, in adjudication of this civil natured Petition. The third basis was that the GOPA entered in between, Union of India as well as Respondent, was of later date, from the date of entering into contract, being said by Petitioner, with Petitioner. Hence, this agreement with Petitioner, was a lease deed only. Merely by writing it as a license, it never becomes a license deed. The Prasar Bharati, Petitioner was argued to be a statutory authority, constituted as a Corporation, being different from the Union of India, and as per judgment propounded by Hon'ble Apex Court in (2007) 9 Supreme Court cases 539, Prasar Bharati and ors. Vs Amarjeet Singh and ors. Prasar Bharati was not with the same fora, as of Central Government of India. Rather, Prasar Bharati was an organization

incorporated in an Act and its employees were of not the Central Government.

17. Learned Counsel for Petitioner had vehemently argued that from the very perusal of impugned admitted agreement, **Annexure P-3,** it is apparent, that this agreement, was executed on 03.04.2006, between Prasar Bharati and Respondent, for Licensed Infrastructure at Agra. The Licensed Infrastructure, was located at the premises of HPT Doordarshan, Samsabad Road, Barodi, Agra (UP)-282001, which was comprised of open space, provided by the Petitioner and tower aperture, for co-allocating the business of FM Radio, at Agra, in action of GOPA agreement, dated 30.11.2006, executed between Government of India and Respondent i.e., **Annexure P-2,** and this agreement, itself reveals that it was an agreement of license with a specific recital of license, Petitioner, Prasar Bharati, being licensor and Respondent M/s Pan India Network Infravest Private Limited, being a licensee and this was in view of FM Radio Policy Phase II, announced by the Government of India, that a successful bidder had to co-locate transmission facilities with existing infrastructure of the licensor, and common facilities had to be integrated by M/s Broadcast Engineering Consultants India Limited (herein after referred to as BECIL). In the circumstances, the licensee has

requested the licensor, to permit it to avail of its infrastructure facilities i.e., tower aperture, open space (Land)/ covered space (Building) and other facilities situated at Agra, (hereinafter referred to as the licensed infrastructure). Meaning thereby, it was a clear cut license. The rights and responsibility of licensor and licensee, were also enumerated in it. There was a specific mention in Clause 7.5 that "the permission granted by this agreement constitutes a bare license to use and no right, title or interest in the licensed infrastructure is transferred thereby to the licensee. The ingress to and egress from the licensed infrastructure, shall remain in the ultimate control of the licensor". Hence, in so many words, it is a deed of license, with no creation of any right in the property of infrastructure. Hence, as per Registration Act, there is no need of any registration of this deed. The same matter in question, was there in previously decided BP No. 174 (c) of 2010 (Clear Media (India) Private Limited Vs. Prasar Bharati and Anr., decided by Full Bench on 21.04.2011, as well as in BP No. 226 (c) of 2011 with MA No. 45 of 2013, decided by Division Bench of this Tribunal, on 04.03.2015, having the same matter in question, regarding the same tender of co-allocation of infrastructure of Prasar Bharati, in view of operating FM Radio's by other bidder, and it was very well decided that this agreement was a license and the matter in issue was with regard to jurisdiction, under

Section 14 of the TRAI Act. Hence, the very argument raised by learned Counsel for Respondent, regarding the agreement in question, being a lease requiring its registration, is of no substance.

18. This Tribunal itself in Broadcasting Petition No.652 of 2016, Prasar Bharati (Broadcasting Corporation of India) Vs. M/s Chinnar Circuit Limited decided on 13.04.2023, has held that Prasar Bharati is a statutory Corporation, established under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990, which is a public service broadcaster in India, having its broadcasting network for running Doordarshan and All India Radio Networks, in the country, which is a Licensor, in terms of Section 2(e) of the TRAI Act. Issue of jurisdiction was also raised in Broadcasting Petition No. 226 (C) of 2011, Muthoot Broadcasting Private Ltd. Vs. Union of India and Ors. wherein, the Tribunal had taken in account the proposition of Full Bench of this Tribunal, given in Broadcasting Petition No. 174(C) of 2010, Clear Media (India) Private Limited Vs. Prasar Bharati and Anr., supra and had held that this Tribunal is having jurisdiction, for deciding the present matter and issue, because of being the same dispute, as was raised by Respondent No. 1 in its reply in Petition No. 174(C) of 2010, on the basis of which, an issue with regard to jurisdiction was framed. By an elaborate

discussion, the contention of Respondent was not accepted and jurisdiction was held to be there. These two previously decided petitions, where with same cause of actions, arising out of agreement, entered for co-location of infrastructure and aperture tower of Prasar Bharati for FM Radio Operation in view of GOPA, drawn with regard to same tender, in question. Hence, this issue is being decided in favour of Petitioner with this categorical finding, that this Tribunal had got jurisdiction to decide this Petition.

19. **Issue No. 2.**

The Petition was filed with a relief at prayer (a) declare and hold that the use and possession of the Respondent of the licensed infrastructure at HPT Doordarshan, Samsabad Road, Barodi, Agra (UP)-282001, is unauthorized, illegal and contrary to license agreement, dated 03.04.2006, and direct the Respondent to forthwith remove its equipment therein. This fact was of no dispute, because on the basis of the pleadings, it was very well admitted fact that a notice of termination, was given by Respondent, on 27.02.2009 **(Annexure P-4),** under Clause 10.3 of agreement, Annexure P-2 and this notice, after a mandatory period of three months, became effective on 04.06.2009. Meaning thereby, there was end of this agreement on 04.06.2009. Though it is also undisputed that Government of India had

terminated GOPA, **Annexure P-5** to Petition, executed between Government of India as well as Respondent, for all remaining locations and this termination notice given by Respondent after three months mandatory period of effect, became effective on 04.06.2009. In view of Clause 7.7 of agreement, the Respondent became liable to remove its equipment from the premises of Petitioner, and to redeliver possession of licensed infrastructure, in proper condition, to Petitioner, which was not delivered so, till the order of this Tribunal, dated 23.05.2016. Hence, the Clause 7.7 of agreement was of this provision that Respondent was to take away its equipments, from the site and get the site vacated, but admittedly, this was not vacated, until the order of Tribunal on 23.05.2016. Hence, the written statement itself admits, the vacation of site in compliance of order of Tribunal on 23.05.2016. Hence, for all those period from 04.06.2009 to 23.05.2016, the site and equipment licensed to be used by Respondent, was not vacated. Hence, for this, it was an unauthorized occupation, and finally, it got vacated, after order of this Tribunal. Hence, the first relief regarding a direction, for getting the site vacated had become infructuous, because of the admitted situation.

But the damages, being claimed for that unauthorized occupation, is to be discussed in Issue No. 3. Hence, this issue No. 2 is being decided in favour of Petitioner.

20. **Issue No. 3**

The decree for payment for damages @ of five times of the license fee for period from 04.06.2009 to 31.08.2015, amounting Rs. 1,66,89,773/-, has been claimed and this was with further damages of Rs. 24,83,115/- from 01.09.2015 to 05.08.2016. The very contention of the Respondent that Petitioner had not allowed the Respondent to remove its equipments from its premises, since the termination of agreement by instructing the local authority to ensure that the equipment of Respondent is not removed from its site, is not of any avail, because, the intermediate situation was with regard to termination of agreement, by Respondent itself. There is a specific contention in Petition that infrastructure was got sealed by the authorized personnel of Respondent. Though, there is undisputed fact that Respondent vide its letter dated 14.05.2010, **Annexure R-1,** requested Petitioner to take over the Respondent's equipment, at appropriate cost and to adjust the same, against rental payment, and this request of the Respondent was considered by the Petitioner, but was not accepted and vide a letter dated 23.03.2012, i.e., **Annexure P-9**, the Petitioner called upon the Respondent to

pay the damages, due to Petitioner, in terms of Clause 7.7 of the agreement. But Respondent never removed its equipment from the Petitioner's premises nor did pay the damages, due to Petitioner. There had been a counter offer, by Respondent made to Petitioner, for purchase of the infrastructure of Respondent, lying at the site and this was not accepted by Petitioner and this letter was communicated on 23.03.2012 to Respondent. Even then the equipment were not removed and Clause 7.7 was not complied with, until the order of this Tribunal on 23.05.2016, in view of which, this premises was got vacated and handed over to Petitioner on 05.08.2016.

21. Hence, the very contention of Respondent is of no substance with regard to non-vacating of the site, and infrastructure after the termination of the agreement, in lieu of Clause 7.7 of the agreement. Hence, the damages for that, was to be paid by Respondent. What will be quantum of damages, is the second part of this issue. Hon'ble Apex Court in M/s Construction and Design Services Vs. Delhi Development Authority, Civil Appeal No. 1440, 1441 of 2015, arising out of SLP (C) Nos. 35365 – 35366 of 2012, pressed by learned Counsel for Respondent, has argued that the specific pleading of damages and the loss suffered by Petitioner, is to

pleaded and proved. No doubt, for damages under Contract Law, for Breach of Contract, once it is not determined, the same is to be performed. But where specific damages, with a specific quantum, has been given in the term of agreement, in case of breach and the breach is there, then the terms are to be complied with. No doubt, specific damages has not been pleaded or proved, but the terms had quantified the damages. But the law cited by Counsel for Petitioner itself in M/s Construction and Designs Services Vs. Delhi Development Authority, supra, the Apex Court had held that "in a given case, when highest limit is stipulated instead of a fixed sum, in absence of evidence of loss, part of it can be held to be reasonable compensation, and the remaining by way of penalty. The party complaining of breach, can certainly be allowed reasonable compensation, out of said amount, if not, the entire amount. If the entire amount is stipulated, is genuine, pre estimate of loss, the actual loss need not be proved". This Tribunal in its judgment in Prasar Bharati (Broadcasting Corporation of India) Vs M/s Chinnar Circuit Limited, delivered in Broadcasting Petition No. 652 of 2016, has held that "in the matter of like nature as present one, with regard to same bid and transaction, and having no stipulated or proved specific damages, has held that a penalty of five times of license fee, in case of failure to remove equipment, has been given in terms of agreement, but the

damages are to be reasonable and fair, and Hon'ble Apex Court had awarded half of the claimed damages, as reasonable one, in case of no specific loss. In present case, Rs. 30,000,00/-, claimed as damages appears, to be just reasonable damage, to be awarded to the Petitioner", and had awarded Petitioner, for above amount i.e., half of the claim made by Petitioner. This judgment of the Tribunal, has been upheld by Hon'ble Apex Court in Civil Appeal No. 5144 of 2023 (@ Diary No. 27937/2023), Chinnar Circuits Limited Vs. Prasar Bharati (Broadcasting Corporation of India).

22. Hence, in present case too, there is no specific pleading of specific damage nor any evidence for proof of same, except the condition of five times of license fee. Under above proposition of law, the fair and reasonable damage from 04.06.2009 to 05.08.2016, which has been claimed for open space and infrastructure, in the tune of Rs. 1,91,72,888/- (Rs. 1,66,89,773+Rs.24,83,115) @ of five times of the licensed fee, will be half of the above amount, which comes to Rs. 95,86,444/-, with 9% p.a. simple interest, from above date 05.08.2016 till actual date of payment. This issue is being decided in favour of Petitioner, accordingly.

23. **Issue No. 4**

Para 12 of the Petition, specifically mentioned that on the date of termination of the agreement, dated 03.04.2006, the Respondent was in arrear of License fee for the period 30.10.2008 to 03.06.2009. As such the outstanding amount towards license fee, including delayed payment interest was Rs.6,13,936/-. The notice dated 23.03.2012, **Annexure P-9** to Petition, was with specific mention of same. The answer to this contention was that there was no arrear of license fee payable by Respondent to Petitioner. Whereas, the rejoinder was with same reiteration and the evidence filed by Petitioner, was with same contention, regarding arrear of license fee payable by Respondent to Petitioner. The notice dated 23.03.2012 sent by Speed Post for and on behalf of Petitioner, by Shri Rajeev Sharma, Standing Counsel for Prasar Bharati, and the proof of its delivery exhibited, as Exhibit P - 1/9 has been there at the affidavit. The notice demanding damages was inclusive of arrear of license fee. The witness was cross examined at length by Learned Counsel for Respondent Company. But the main thrust was with regard to knowledge of this witness for present matter in question. Whereas, the witness has categorically answered all the questions, with no improbability of the above contention, made in its Examination-in-Chief. Rather, the statement of account has been filed by

Petitioner. The evidence by way of affidavit of Respondent, is not substantiating the contention with regard to notice of arrear of license fee. Hence, the Respondent is to make the payment of arrear of license fee, including interest of SI 9% p.a. from the above date, including pendentelite and future interest SI @ of 9% p.a, for above arrear of license fee from Respondent to Petitioner. This issue is being decided in favour of Petitioner.

24. **Issue No. 5**

The termination of GOPA by Union of India is being said to be the reason for non-fulfillment of agreement with regard to FM Radio at Agra and this was said to be a ground of force majeure. This very argument is against the argument of Learned Counsel of Respondent, because prior to termination of GOPA by Union of India, there is admitted issuance of notice of termination by Respondent, explaining its inability and non-feasibility to proceed with the project and this resulted, termination of contract, after expiry of three months' scheduled period, which is prior to termination of GOPA by Union of India. Hence, it can never be the ground of force majeure. Hence, this issue is being decided against the Respondent.

25. On the basis of discussions made above, this Petition merits to be decreed for arrear of license fee till filing of the suit given as Rs. 6,13,936/- and the damages, held as just and reasonable in disposal of issue No. 3 i.e., Rs. 95,86,444/-, with a pendentelite and future simple interest @ S.I. 9% p.a, from 05.08.2016 till actual payment.

ORDER

Petition is being decreed. Respondent is being directed to deposit, within two months from the date of Judgment, in the Tribunal Rs. 95,86,444/-, towards damages and Rs. 6,13,936/-, as arrear of license fee, in total Rs.1,02,00,380/-, with addition to simple interest @ 9% p.a. for above amount from the date of Petition till actual date of payment, for making payment to Petitioner.

Formal Order / decree be got prepared by office, accordingly.

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(Justice Ram Krishna Gautam)
Member

23.02.2024
/NC/