

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

Dated 5th February 2016

Broadcasting Petition No. 14 of 2016

Sun Distribution Services Pvt. Ltd. ...Petitioner

Vs.

Asianet Satellite Communications Ltd. ...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON

HON'BLE DR. KULDIP SINGH, MEMBER

HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER

For Petitioner : Mr. Abhishek Malhotra, Advocate
Mr. Rijul Taneja, Advocate

For Respondent : Mr. Navin Chawla, Advocate
Ms. Shirin Khajuria, Advocate

ORDER

The petitioner, SUN Distribution Services Pvt. Ltd. (SUN) is a broadcaster of TV channels. The respondent, Asianet Satellite Communications Ltd. (Asianet) is the distributor of the petitioner's signals on the basis of an interconnect agreement executed by the two sides.

SUN filed this petition agitating the grievance that Asianet had discontinued the supply of its signals on its network without any notice and in violation of the Regulations.

The petition was filed on 14.01.2016 but when it came up before the Tribunal on 15.01.2016, it was stated that the broadcast of channels was resumed on the respondent's network but their placements were changed causing much prejudice to the petitioner. Noticing thus the grievance of the broadcaster, the petition was adjourned to enable the counsel for the respondent to get proper instructions in the matter.

Thereafter, on behalf of SUN an affidavit was filed on 28.01.2016 and its reply was filed by the respondent on 29.01.2016. Parties were then heard on the petitioner's prayer for restoration of its three channels, namely, Surya, Kiran TV and Surya Music to their original placements.

It is an admitted position that earlier the three channels, Surya, Kiran TV and Surya Music were at LCN 107, 144 and 146 respectively and after the hiatus of a few days when those were off air (according to the respondent, due to some technical glitches), the three channels are now being shown at LCN 648, 664 and 668.

Mr. Abhishek Malhotra, counsel for SUN strongly contended that the action of the respondent in changing the placements of the channels was in violation of the Regulations and the terms of the agreements and it was causing much prejudice to the petitioner.

Mr. Navin Chawla, counsel appearing for the respondent on the other hand submitted that there was no violation of any Regulations or the terms of agreement in shifting the positions of the three channels and the respondent was fully entitled to place the channels as and where it suited its interests.

Some of the relevant facts that are not in dispute are as follows.

The two sides have been in interconnect relationship for the past several years. In the past, the agreements between the two sides were based on mutual negotiations and the petitioner's three channels were consistently placed at LCN 107 (Surya), 144 (Kiran TV) and 146 (Surya Music). The parties executed a fresh agreement on 31.12.2015. The agreement comes into effect from 01.01.2016 and it covers the State of Kerala that came under the DAS regime in Phase-III (i.e. on 01.01.2016). The present agreement, unlike the previous agreements, is based on the petitioner's RIO. It is well known that a distributor accepts the RIO based agreement only as a measure of last resort.

Mr. Malhotra submitted that the three channels, Surya, Kiran TV and Surya Music belong to “GEC (Malayalam)”, “Movies (Malayalam)” and “Music (Malayalam)” genres respectively and the respondent was legally obliged to put them in the genres to which each of them belonged. He further submitted that at LCN 107, 144 and 146, the three channels were rightly placed in their respective genres but at LCN 648, 664 and 668, those channels are placed among channels which do not belong to their respective genres.

Mr. Chawla submitted that earlier the three channels were put in Malayalam Package-I and now the three channels are put in Malayalam Package-II, among all the Malayalam language channels and the only grouse of the petitioner is that it has been assigned distant numbers.

The earlier groupings of channels and the present groupings of channels were shown to us. We find that in the earlier groupings, Surya which is stated to be a “GEC (Malayalam)” channel, had a neighborhood that had a number of GEC channels. In its present grouping, the number of GEC channels in its neighborhood has become relatively fewer. Mr. Chawla sought to justify the change by stating that it was open to the respondent to make language based groupings rather than content based groupings and all the three channels of the petitioner’s continued to be in the Malayalam group.

Mr. Malhotra in support of the submission that a channel must be placed in the genre to which it belongs, invited our attention to Regulation 5[14(A)], [14(B)] and [14(C)] of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (First Amendment) Regulations 2012. The Regulations are as under:

“14(A) Every broadcaster shall declare the genre of its channels and such genre shall be either News and Current Affairs or Infotainment or Sports or Kids or Music or Lifestyle or Movies or Religious or Devotional or General Entertainment (Hindi) or General Entertainment (English) or General Entertainment (regional language).

14(B) The multi system operator shall place the channels of a broadcaster in the genre declared by such broadcaster.

14(C) No broadcaster shall demand from the multi-system operator to assign a particular number of its channels.”

The Regulations relied upon by Mr. Malhotra support the legal proposition advanced by him and prima facie, it is difficult to accept Mr. Chawla’s submission that the distributor is free to make linguistically based groupings of channels regardless of the genres to which those channels belong.

The difficulty, however, is that there is nothing to show that SUN made the declaration regarding the genres of the three channels to the distributor at the time of execution of the agreement.

In the interconnect agreement executed by the two sides there is no mention of the genre to which each of the three channels belong. The petitioner's RIO that forms the basis of the agreement is also silent as regards the genres of the channels.

Mr. Malhotra, however, relied upon the Return dated 23.03.2015 submitted by the petitioner before TRAI in terms of clause 4 of the Telecommunication (Broadcasting and Cable) Services (Second Tariff) (Fourteenth Amendment) Order 2015. In the Return, of course, the three channels are shown to belong to the genres as stated before us but there is nothing to indicate that a copy of the Return was given to the respondent or it was in any other way made aware of the genres to which the three channels belong. Having thus failed to comply with the requirements of Regulation 5[14(A)], the petitioner cannot insist on the enforcement of sub-regulation 14(B) of Regulation 5.

Mr. Malhotra then invited our attention to a term in the interconnect agreement which stipulates that the subscriber operator would ensure that no subscribed channel would be disadvantaged or otherwise treated less favourably with respect to the competing channels on a genre basis. Whether or not the change in placement has caused any disadvantage or amounts to inferior

treatment with respect to competing channels on a genre basis is a pure question of fact which can be gone into only after evidences are led by the two sides.

At this stage, on hearing counsel for the parties, we are satisfied that no case is made out for any direction to the respondent to restore the LCN placements of the petitioner's three channels by way of an interim order. The prayer for interim relief is accordingly rejected.

The respondent is directed to file its reply within three weeks from today. Rejoinder, if any, may be filed within two weeks from the date of receipt of a copy of the reply.

Put up before the Registrar's court on 17.03.2016 for getting the pleadings completed, framing of issues and taking evidences.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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(B.B. Srivastava)
Member

