**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**

**Deepthi.M vs Sankara Narayanan**

**Deepthi.M vs Sankara Narayanan**

**SooperKanoon Citation** : sooperkanoon.com/1869837

**Court** : Kerala

**Decided On :** Mar-29-2019

**Judge** : Honourable Mrs. Justice Anu Sivaraman

**Appeal No.** : Con.Case(C)/392/2019

**Appellant** : Deepthi.M

**Respondent** : Sankara Narayanan

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN FRIDAY ,THE 29TH DAY OF MARCH 2019 / 8TH CHAITHRA, 1941 Con.Case(C).No. 392 of 2019 IN WP(C) 42465/2018 AGAINST THE ORDER DATED 21.12.2018 IN WP(C) 42465/2018 PETITIONERS:

1 DEEPTHI.M AGED 52 YEARS W/O.SURESH KUMAR.K.K., CABLE T.V.OPERATOR, MALABAR VISION, FIRST FLOOR, THALIKKARA, KUTTIADI, VADAKARA, KOZHIKODE DISTRICT, RESIDING AT DARSANA KATHIROOR, KOZHIKODE DISTRICT. 2 P.T.OUSEPH AGED 1 YEARS CABLE TV OPERATOR, NEW VISION NETWORK, TOLANUR, ROOM NO.23/348, ALATHUR, PALAKKAD DISTRICT. 3

DIVYA SANTHOSH CABLE TV OPERATOR, RESHON CABLE NETWORK, ROOM NO.5/248, TALANUR, ALATHUR, PALAKKAD DISTRICT. 4 ANNAMMA CABLE TV OPERATOR, M/S.J.M.NETWORK, EDAKODE, OTTAPPALAM, PALAKKAD DISTRICT. 5 GOPI GOPIKAS CABLE TV OPERATOR, RIGHT VISION COMMUNICATIONS, CHELAKKARA, PAZHAYANNUR, THRISSUR DISTRICT. 6 SANTHOSH CABLE TV OPERTOR, ADN NETWORK, SHORNUR, PALAKKAD DISTRICT. BY ADVS. SRI.ANOOP.V.NAIR SRI.M.S.SANDEEP SUDHAKARAN

RESPONDENTS:

1 SANKARA NARAYANAN AGE AND FATHERS NAME NOT KNOWN TO THE PETITIONER, CHIEF EXECUTIVE OFFICER, ASIANET SATELLITE COMMUNICATIONS LTD., REGISTERED OFFICE 2A, 2ND FLOOR, LEELA INFORK, TECHNOPARK, KAZHAKKOOTTOM, KARYAVATTOM P.O., THIRUVANANTHAPURAM - 695 581. 2 SANKARA NARAYANAN AGE AND FATHERS NAME KNOWN TO THE PETITIONER, CHIEF EXECUTIVE OFFICER, ASIANET DIGITAL NETWORK PVT.LTD., REGISTERED AND CORPORATE OFFICE, 2ND FLOOR, LEELA INFO PARK, TECHNO PARK, KAZHAKKOOTTOM, KARYAVATTOM P.O., THIRUVANANTHAPURAM - 695 581. BY ADV. SRI.SAJI VARGHESE

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD ON 13.03.2019, THE COURT ON 29.3.2019 DELIVERED THE FOLLOWING:

## JUDGMENT

1. This contempt of court case is filed alleging non-compliance with interim order dated 31.12.2018 in W.P.(C).No.42465 of 2018.

2. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents.

3. The contention of the learned counsel for the petitioners is

that Exhibit A1 interim order was directing respondents 5 and 6 therein not to disrupt the supply to the petitioners without giving notice as provided in Telecom Regulatory Authority of India (TRAI) guidelines. It is also stated that in case the petitioners continue to pay the amounts fixed and to be fixed in the TRAI Regulations/agreement between the parties, the supply of the petitioners shall not be disrupted for a period of three months.

4. A counter affidavit is placed on record by the respondents. It is stated that pursuant to the judgment of the Hon'ble Apex

Court upholding the TRAI Regulations, Exhibit R1(a) press release dated 3.7.2018 had been issued by the TRAI granting 180 days time for migration of subscribers to the new framework under the Telecommunication (Broadcasting and

Cable) Services Inter Connection (Addressable Systems) Regulations, 2017. It is stated that since the migration could not be completed as on 29.12.2018, as provided in Exhibit R1(a), Exhibit R1(b) press release was issued by the TRAI providing that no service provider shall disconnect any signal/feed to any MSO/LCO/subscriber till 31 st January, 2019

and all existing packs/plans/bouquets will continue uninterrupted till 31.1.2019. It is stated that the respondents were providing all the 142 Pay Channels and 125 Free to Air channels, as before, to the petitioners, who are the local cable operators, at the rate of Rs.38/-, including tax per subscriber per month till 31.1.2019, which the petitioners were selling to

their subscribers for an amount of 250/-. It is stated that Exhibit R1(c) circular was issued by the Indian Broadcasting Foundation (IBF) in which majority of broadcasters are members. Fixing different rates for each pay channel w.e.f. 1.2.2019, it is stated that the charges for 142 Pay Channels which are provided by the respondents to the petitioners as per Exhibit 1(d) list would entail the cost of Rs.711 plus GST to the respondents. It is stated that Exhibit R1(f) press release dated 12.2.2019 had been issued by the TRAI stating that the subscribers who do

not submit option as sought for should be migrated to a Best Fit Plan to be designed by the Distribution Platform Owners (DPO for short) who have not exercised such option. Paragraphs 5 and 6 of Exhibit R1(f) read as follows:-

> 5.The Authority noted that though the new framework promotes consumer choice and enables the subscribers to pay for what they wish to view but non-exercise of the option' should not create any inconvenience to the subscribers. Accordingly, the Authority requests all DPOs to create 'Best Fit Plan' for its subscribers who have not exercised their options yet.
>
> 6.The Best Fit Plan shall be designed based on Consumers' usage pattern, language spoken and popularity of channels. It should preferably be a blended combination of various Genre, while making 'Best Fit Plan' for a subscriber, DPOs should ensure that payout per month of the 'Best Fit Plan' generally does not exceed the payout per month of existing tariff plan of the subscriber.

5. It is stated that DPOs should continue to provide user-friendly methods for subscribers to exercise their choice. The subscribers, who have taken long term packs, will continue to avail the services for the contract period. All DPOs were directed to migrate subscribers, who do not exercise their option to a 'Best Fit Plan'.

6. Paragraph 9 of Exhibit R1(f) states as follows:-

> In view of the larger public interest, the Authority directs all DPOs that those subscribers who do not exercise their options shall be migrated to a 'Best Fit Plan'. The subscribers' old plan shall continue till either subscriber exercise his/her option, or he/she is migrated to the 'Best Fit Plan'. The Authority hereby, vide this press release, extends time up to 31 st March 2019 for exercising the option by such subscribers who have not exercised options yet. Subscribers will be free to change their 'Best

Fit Plan' at any date and time on or before 31st July 2019 and DPOs shall convert their 'Best Fit Plan' into the desired pack (channel/Bouquet) within 72 hours from the time choice exercised by the Subscriber. It is clarified that there will be no 'lock-in-period' for the subscribers till 31 st March, 2019, who has been migrated to Best Fit Plan' by DPOs.

7. Relying on the provisions of Exhibit R1(f), the petitioners would contend that the respondents are duty bound to provide the same plans as were being availed by them earlier, till 31.3.2019.

However, the contention of the learned counsel for the respondents is that a reading of Exhibit R1(f) would make it clear that what is contemplated is the creation of Best Fit Plans and the migration of the subscribers to such Best Fit Plans at the instance of the service providers. Once such migration is effected, the subscribers have the option to change the Best Fit Plans allotted to them by the service provider. The Best Fit Plan has clearly to be designed by the DPO, taking note of the usage and the amounts paid by the subscribers and by avoiding least inconvenience to the petitioners.

8. The contention of the petitioners is that the respondents have blacked out the channels to the petitioners without complying

with the interim order. The interim order directed only the continuance of the channels in accordance with the TRAI Regulations. The TRAI Regulations 2017 and the Tariff Orders had been upheld by the Apex Court. What remains to be done is the migration of the subscribers to the new framework. Exhibit R1(f) provides the modality for such migration till options are duly exercised by the subscribers. The learned counsel for the respondents would contend that Best Fit Plan has been formulated by the respondents and the subscribers have been migrated to such plans. The plan is designed taking note of the amount paid by the Local Cable Operator per subscriber also into

account. I am of the opinion that the said action does not

**amount to violation of the interim order, since the interim order**

directs only that the supply to the petitioners shall not be disrupted without giving notice and in case the petitioners continue to pay the amount fixed and to be fixed in the TRAI Regulations/agreement between parties. In view of the fact that the petitioners are paying to the respondents only at the rate of Rs.38/- per subscriber and since the subscribers have been migrated to Best Fit Plans by the respondents, the petitioners cannot contend that they are entitled to be provided all Pay Channels as was being done earlier in view of the revision of the rates applicable by the TRAI guidelines. The extension of time as provided in Exhibit R1(f) is only for the exercise of the option by the subscribers. The migration of the subscribers to the Best Fit Plans as formulated by the DPO cannot be held up indefinitely by Exhibit R1(f). I am of the opinion that the action of respondents does not amount to contempt of court. The contempt of court case is therefore dismissed. Sd/- Anu Sivaraman, Judge

sj APPENDIX PETITIONERS' EXHIBITS: ANNEXURE1 CERTIFIED OF THE INTERIM ORDER DATED RESPONDENT'S EXHIBITS: EXHIBIT R1 A TRUE COPY OF THE PRESS RELEASE NO. 71/2018 PUBLISHED INT HE TRAI WEBSITE ON 3/7/2018 EXHIBIT R1 B TRUE COPY OF THE PRESS RELEASE NO. 127/2018 PUBLISHED IN THE TRAI WEBSITE ON 28/12/2018 EXHIBIT R1 C THE PRESS RELEASE DATED 13/2/2019 ISSUED BY THE INDIAN BROADCASTING FOUNDATION (IBF) IN WHICH MAJORITY OF THE BROADCASTERS ARE MEMBERS EXHIBIT R1 D THE DETAILS OF THE RATES EFFECTIVE FROM CHANNELS WHICH ARE PROVIDED BY ASIANET TO THE PETITIONERS BEFORE EXHIBIT R1 E TRUE COPY OF ONE OF E-MAIL SENT TO THE PETITIONER NO. 31 DATED 4/2/2019 EXHIBIT R1 F TRUE COPY OF THE PRESS RELEASE NO. 11 OF 2019 DATED 12/2/2019 ISSUED BY TRAI. EXHIBIT R1 G REQUEST MADE BY PETITIONER NO. 31 FOR KLSD-02 PLAN, FOR HIS CUSTOMERS WHERE THERE ARE 10 PAY CHANNELS AND 150 FTA CHANNELS EXHIBIT R1 H TRUE COPY OF THE LETTER F.NO.16-3/2019-B AND CS

(PT) DATED 14/2/2019 ISSUED BY TRAI TO HEAD CORPORATE LEGAL, HATHWAY CABLES AND DATA COM LTD. EXHIBIT R1 I THE REPLY FROM TRAI IN RESPECT OF THE PRESS RELEASE DATED 12/2/2019 True copy PS to Judge

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**