

M/S Ganesh Cable Vision Vs. Maa Television Network

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Court : Telecom Disputes Settlement and Appellate Tribunal TDSAT

Decided On : Apr-16-2010

Judge : S.B. SINHA, CHAIRPERSON, HONOURABLE MR. G. D. GAIHA, MEMBER & HONOURABLE MR. P.K. RASTOGI, MEMBER

Appeal No. : Petition No.136(C) of 2009 (M.A. No.23 of 2009)

Appellant : M/S Ganesh Cable Vision

Respondent : Maa Television Network

Advocate for Pet/Ap. : FOR THE PETITIONERS: B.S. SAI, ADVOCATE. FOR THE RESPONDENT: VISMAI RAO, ADVOCATE.

Judgement :

S.B. Sinha

The petitioner is a cable operator; whereas the respondent is a broadcaster.

The petitioner, inter alia, on the premise that despite request, the respondent has not been supplying signals of its channels for retransmission to its customers, has filed this petition claiming inter alia the following reliefs:

“(i) Direct the Respondent to provide uninterrupted signals of Respondent MAA TV channel to the Petitioner Network;

(ii) Direct the Respondent to provide decoders, viewing cards of the Respondent MAA TV channel to the Petitioner Network;

(iii) Direct the Respondent to enter into an agreement with the Petitioner in the area of Vijayawada (Urban and Rural);

(iv) Direct the Respondent to enter into a proper agreement is required by law without any discriminating terms as per the present subscribing connectivity;

(v) Direct the Respondent to furnish the Agreement entered upon between both parties;

(vi) Direct the Respondent to provide the proper and legal written agreement duly signed by both parties;”

The fact of the matter is as under:-

The petitioner supplies signals of the channel of Gemini TV.

It applied for supply of signals of the channels of the respondent.

It is not in dispute that such a request was made by the petitioner.

According to the petitioner, the respondent had asked for an advance for a sum of Rs.1,00,000/- which was paid by it in four instalments of Rs.25,000/- each i.e. on 18.06.2006, 28.06.2006, 15.09.2006 and 28.11.2006.

It is also not in dispute that the petitioner has paid a sum of Rs.3,000/- towards the price of decoder boxes issued by the respondent on or about 30.08.2006.

Indisputably a request for supply of signal was made by the petitioner sometime in August, 2006.

The respondent, however, contends that the decoder boxes supplied to the petitioner was activated in August, 2006 itself, and the same continued upto December, 2007.

It is the case of the respondent that the petitioner was supplied with the signals immediately after it had made the request therefor but the petitioner except for a sum of Rs.1,10,000/- did not make any other payment whatsoever towards the subscription fee.

We may, however, notice that although according to the respondent, the petitioner had made payment of a sum of Rs.1,00,000/- towards the subscription, the petitioner denies and disputes the same.

According to the petitioner, for the purpose of obtaining supply of signal from the respondent, it had not only made payment of a sum of Rs.1 lakh by way of advance in the manner as noticed heretobefore, but also had issued letters dated 28.08.2006 and 08.09.2006 for the said purpose. It's proprietor is also said to have also been meeting the representatives of the respondent from time to time.

We may, however, notice that according to the learned counsel appearing on behalf of the respondent the said letters are forged and fabricated ones.

Mr.Sai, the learned counsel appearing on behalf of the petitioner has drawn our attention to the letters dated 28.08.2006, 08.09.2006, 25.01.2007 and 29.04.2009 as also the purported visiting slips dated 29.04.2009 and 08.09.2006 to contend that the petiton had been meeting the officials of the respondent for obtaining supply of signals of its channels.

The petitioner admittedly had served a legal notice upon the respondent on or about 10.05.2009.

Ms.Vismai Rao, the learned counsel appearing on behalf of the respondent, on the other hand, would contend:

(i) The letters in question are forged and fabricated.

(ii) The receipt for service of the purported letter dated 28.04.2006 is denied but it would appear that is evident on as the same date a demand draft for a sum of Rs.25,000/- was sent but from a perusal of the said letter it would be evident that the same was not a forwarding letter therefor. According to the learned counsel the other notices purported to have been issued by the petitioner wherefor purported proof of service have been filed were only in respect of the payments made by the petitioner by demand drafts.

(iii) Although the petitioner served a legal notice upon the respondent, but from a perusal thereof it would appear that no mention of the letters purported to have been issued by the petitioner had been made, which would also cleaerly establish that the letters in question are fabricated.

We have noticed hereinbefore the petitioner has been supplied with the decoder boxes wherefor it has deposited a sum of Rs.3,000/-. Indisputably the respondent has granted not only a receipt in respect thereof but also had shown payment of the said amount in its ledger.

If the petitioner's contention that it had paid a sum of Rs.1 lakh by way of advance in four instalments; the last

being only in November, 2006, we fail to understand as to how it, in its letter dated 28.08.2006 had asked the respondent to activate the decoders.

The petitioner, in the said letter dated 28.08.2006 had made assertions which go against its contention that it was to pay a sum of Rs.1 lakh by way of advance.

We may notice the contents of the said purported letter:

“Sub: Activation For Decoders – Reg.

Herewith we inform you that we congratulating for issuing decoders of MAA TV. We are paid for MAA TV decoders for Rs.3000/-, Receipt No.21322 dated 16.08.2006. But you are not activating with that decoders till now. On 17.08.06 we went to your office near about 30 times, but till date our decoders were not activate. As per JMD Janaki Rama Raju discussions I had already paid 50 Thousand rupees for advanced deposit. The details are Cash Date: 16.8.06, Receipt No: 21321, Amount : 25,000/-, DD No.336629, Bank : AB, Amount: 25,000/-, Date: 28.08.06. So, please activate our MAA TV decoders.”

It, however, stands admitted that the petitioner on 28.08.2006 also sent a demand draft, the reference whereof had not been made in its letter dated 28.08.2006. It is, therefore, possible that the petitioner in fact had sent the said demand draft on the said date and not the letter. The second letter, according to the respondent was issued on 08.09.2006. Similar are the contents thereof. We may also notice the same:

“Sub: Activation For Decoders – Reg.

Respected Sir,

Herewith we inform you that we congratulating for issuing decoders of MAA TV. We are paid for MAA TV decoders for Rs.3000/-, Receipt No.21322 dated 16.08.2006. But you are not activating with that decoders till now. You are asking 1 lack rupees but we are already paid 50 Thousand rupees for advanced deposit. The details are Cash Date: 16.8.06, Receipt No: 21321, Amount : 25,000/-, DD No.336629, Bank : AB, Amount: 25,000/-, Date: 28.08.06. Another remaining advanced deposit amount 50,000/- will be paid within two months. So, please activate our MAA TV decoders. This is for your information.”

Yet again, to the similar effect are letters dated 25.01.2007 and 29.04.2009.

For the sake of completion of narration of facts, we may also notice the said letters:

“Date: 25.01.2007

To

The Managing Director

MAA Television Network Ltd.

Punjagutta

Hyderabad

Sub: Activation For Decoders – Reg.

Respected Sir,

Herewith we inform you that we congratulating for issuing decoders of MAA TV. We are paid for MAA TV decoders for Rs.3000/-, Receipt No.21322 dated 16.08.2006. But you are not activating with that decoders till now. On 17.08.06 we went to your office near about 30 times, but till date our decoders were not activate. As

per JMD Janaki Rama Raju discussions I had already paid 50 Thousand rupees for advanced deposit. The details are Cash Date: 16.8.06, Receipt No: 21321, Amount : 25,000/-, DD No.336629, Bank : AB, Amount: 25,000/-, Date: 28.08.06, DD No.337493, Bank: AB, Amount:25,000/-, Date: 15.09.06, DD No.439192, Bank: AB, Amount: 25,000/-, Date: 28.11.06. So, please activate our MAA TV decoders.

Date: 29.04.2009

To

The Managing Director

MAA Television Network Ltd.

Punjagutta

Hyderabad

Sub: Activation For Decoders – Reg.

Respected Sir,

Herewith we inform you that we congratulating for issuing decoders of MAA TV. We are paid for MAA TV decoders for Rs.3000/-, Receipt No.21322 dated 16.08.2006. But you are not activating with that decoders till now. On 17.08.06 we went to your office near about 30 times, but till date our decoders were not activate. As per JMD Janaki Rama Raju discussions I had already paid 50 Thousand rupees for advanced deposit. The details are Cash Date: 16.8.06, Receipt No: 21321, Amount : 25,000/-, DD No.336629, Bank : AB, Amount: 25,000/-, Date: 28.08.06, DD No.337493, Bank: AB, Amount:25,000/-, Date: 15.09.06, DD No.439192, Bank: AB, Amount: 25,000/-, Date: 28.11.06. So, please activate our MAA TV decoders activate immediately. This is for your information.”

We may, furthermore notice that the petitioner is said to have visited the respondent’s office personally on or about 29.04.2009 and 08.09.2006.

Mr.Sai would contend that the case of the respondent cannot be relied upon as would appear that on the purported invoices which have been served upon the petitioner the date of agreement was shown to have stated to be September 2006 to 31st March, 2007 as would appear from the invoices for the month of September 2006 to March 2007 but from the invoices issued for the billing period 01.04.2007 to 30.04.2007, it would appear that the agreement was said to be valid till 2009.

Mr.Sai would contend that no reliance, thus, can be placed upon the invoices. It was furthermore contended that the respondent has not been able to prove service of the said invoices upon the petitioner. In this behalf, our attention has been drawn to the following portion of the cross-examination of the witnesses of the respondent, Mr.K. Balaji, its General Marketing Manager, which is as under:

“We raise invoice by 15th of each month after supply of the decoders. From the next month also we raise invoice by 15th of each month.

The first invoice was raised so far petitioner is concerned on 1st September, 2006.

Ques: Can you show the proof of invoices?

Ans : The witness shows the invoices at pages 73 to 84.

We serve the MSOs by hand delivery through our field staff.

We do not have however any receipt to show service of the invoices.”

Ms.Rao, on the other hand, in our opinion has rightly submitted that there is absolutely no reason as to why the petitioner has paid a sum of Rs.3,000/- towards the decoder boxes which has not been disputed or denied in August 2006 itself. It was also, in our opinion rightly submitted that there was absolutely no reason as to why the petitioner had not filed its petition for more than two years.

The burden of proof that the respondent has failed and/or neglected to comply with the 'must provide' clause as contained in Regulation 3.2 of The Telecommunication (Broadcasting and Cable Services) Interconnect Regulations 2006, in a situation of this nature is on the petitioner, it on the petitioner.

We have noticed heretofore the contradictions and self-inconsistencies in the petitioner's case. If, according to the petitioner, he was to make the payment of advance of Rs.1 lakh, it did not lie in his mouth to contend that even after making deposit of only a sum of Rs.50,000/- it became entitled to the decoders supplied to it activated. Moreover, if the petitioner's contentions are correct, we do not see any reason as to why the respondent without obtaining the entire advance payment had supplied the decoders to it.

The respondent is a broadcaster. We would assume that it had not been serving the invoices upon the petitioner regularly, although the respondent's witness in his evidence categorically stated that the invoices were being served and the ledger account was being maintained in ordinary course of business. Before us the respondent has also filed the said ledger account.

All the payments made by the petitioner have been duly recorded therein.

The petitioner does not deny or dispute the dates on which the payments have been made and the entries in respect of thereof in the ledger account.

As noticed hereinbefore the only dispute is with regard to the payment of a sum of Rs.10,000/-. The said payment was made by way of a demand draft. The respondent in its reply has categorically taken a stand that all payments made by the petitioner were towards the subscription fees and not by way of advance. The payment was made almost every month at the rate of Rs.25,000/-. The invoices also show that subscription fee exclusive of the taxes was Rs.25,000/- per month. It is too much to believe that the respondent would accept the payment of a sum of Rs.10,000/- apart from the receipt the sum of Rs.1 lakh in four instalments.

If the petitioner was correct in its contention that the aforementioned sum of Rs.10,000/- had not been paid to the respondent, it could have summoned its bankers to show that the demand draft in question has not been issued at its instance. We have noticed heretofore that the petitioner as on 28.08.06 and 15.09.06 had issued two letters on which dates demand drafts had also been issued. It had also made payment for a sum of Rs.25,000/- each on the aforementioned amount on those two dates. The possibility of sending the aforementioned demand drafts by speed post cannot be discarded. If it had in fact sent the said letters, it was expected that the petitioner who had started the cable operation way back in 2001 would mention thereabout in its letter dated 28.06.2006 and 15.09.2006.

Furthermore, if the petitioner was so keen to obtain signals from the respondent, it is beyond anybody's imagination as to why such payments have not been made it at one go. If the petitioner was not in a position to satisfy the demand of the respondent so far as the purported claim of Rs.1 lakh by way of advance is concerned in one lump, it is difficult to believe the story of the petitioner that as far as back in August 2006, the decoders boxes would be supplied to it.

It is also difficult to conceive that despite the fact that in terms of clause 3.2 of the Regulations, the respondent was bound to make the signals available within a period of 60 days from the date of making of the request, the petitioner being a local cable operator and had been in the business since 2001, would not approach this Tribunal immediately after a period of two months.

It may be true that the petitioner has been meeting the representatives of the respondent. But the fact that it had met the representative of the respondent in support whereof two visiting slips have been brought on

record, in our opinion, would not by itself be sufficient to establish the case of the petitioner that on those dates either he had served some letters also on the respondent.

Petitioner furthermore has not explained the delay in filing this petition before us. Having regard to the facts and circumstances of the case, we are of the opinion that the petitioner has not been able to prove its case.

We have not gone into the validity and/or genuineness of the invoices sent by the respondent being of the opinion that it would not be necessary so to do as we have stated hereinbefore that it was for the petitioner to prove its case but it has failed to do so.

For the reasons aforementioned, this petition is dismissed. However, in the facts and circumstances of the case there shall be no order as to costs.

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