

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

Dated 10th March, 2010

APPEAL No.1(C) OF 2009

(M.A.No.60 of 2009)

M/s Polimer Cable Network ...Appellant

Vs.

Telecom Regulatory Authority
of India & Ors.

...Respondents

BEFORE:

HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON

HON'BLE MR. G. D. GAIHA, MEMBER

For Appellant : Mr. Ajay kumar, Advocate

For Respondent No.1 (TRAI) : Mr. Saket Singh, Advocate

ORDER

S.B. Sinha

1. Jurisdiction of Telecom Regulatory Authority of India (TRAI) to adjudicate on a dispute between one MSO with the LCO's affiliated with it, is in question in this appeal.

2. The said question arises in the following factual matrix:-

- (a) Appellant is a MSO engaged in the business of providing signals of various channels in the city of Salem. The respondent Nos. 2, 3, 4 & 5 are LCOs

affiliated to the appellant and have been getting feed/signals from it.

- (b) The said Respondents filed a Civil Suit against the appellant in the Court of District Munsif, Salem inter alia for grant of a decree for temporary and permanent injunction.
- (c) Restraining the appellant from disconnecting the signals of their Cable Networks, an ex-parte order of injunction was passed therein, whereagainst the appellant preferred an appeal in the court of the Subordinate Judge, Salem. By an order dated 2/7/2008, the operation of the said order of injunction was directed to be stayed. The said suit was ultimately dismissed on the ground of lack of jurisdiction of the Civil Court.
- (d) In the meanwhile the respondents filed a complaint petition before the Commissioner of Police, Salem who having opined that the dispute between the parties were required to be adjudicated by this Tribunal, did not entertain the same.

The respondent thereafter made a representation before the Telecom Regulatory Authority of India TRAI on or about 10.07.2008. TRAI also in terms of its letter dated 28.7.2008 opined that they should approach this Tribunal, stating:

“After examining the matter, it appears to be a case of dispute on payment of subscription amount between M/s Suganya Cable Networks and M/s Polymer Cable Networks. The resolution of dispute of this nature comes under the purview of the Hon'ble Telecom Disputes Settlement and Appellate Tribunal (TDSAT) established under the Telecom Regulatory Authority of India Act, 1997. You may consider approaching the Hon'ble TDSAT in case you feel that this is appropriate or any other court or forum if so advised.”

- (e) The respondent thereafter approached the High Court of Madras aggrieved and dissatisfied with by the said order by way of a writ petition. The appellant was arrayed as a respondent therein.
- (f) By an order dated 10.07.2008 the High Court of Madras, without giving an opportunity of hearing to the petitioner, directed TRAI to consider and dispose of the said representation, stating:

"2. Considering the limited prayer sought for by the learned counsel for the petitioners, without going into the merits of the case, the 1st Respondent is directed to consider the dispose of the representations of the petitioners dated 10.07.2008, after hearing the petitioner and the 4th respondent, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

3. This order is passed without hearing the 4th respondent and if he is aggrieved by this order, liberty is given to him to approach this court.

4. With the above directions, these writ petitions are disposed of, at the admission stage itself. No costs. Consequently, the connected MPs are closed."

- (g) Pursuant to or in furtherance of the said observations made by the High Court of Madras, the respondent No. 1 issued the following directions on or about 31st October, 2008:

"Now, therefore, in exercise of the powers conferred upon the Telecom Regulatory Authority of India under Section 13, read with clause (b) of sub-section (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of

1997) and for the reasons mentioned in the preceding paragraph, the Telecom Regulatory Authority of India hereby directs that M/s Polimer Cable Network shall, ---

- (i) Immediately on receipt of this Direction, restore the cable television signals to the cable television networks of the complainants, namely, M/s Kadal TV 50-H, South Pilliar Koil Street, Karugalpatty, Salem - 6. M/s Ramesh Cable Net Works 85, Tagore St, Dadagapatty, Salem - 636006, M/s Amman Cable Net Works 144/79, Ammal Yeri Road, Dadagapatty, Salem - 636006, and M/s Saganya Cable Net, Dadagapatty, Salem - 636006.
 - (ii) Furnish a compliance report to the Authority within ten days from the date of issue of this direction;
- (h) Indisputably on the premise that the appellant herein had not complied with the said direction, a show cause notice was issued to it on or about 19th February, 2009 by TRAI, stating :-

"13. And whereas the Authority, on the basis of letter dated 31st October 2008 of M/s Polimer Cable Network and the letters dated 3rd November 2008 of the said four

complainants as mentioned in the preceding paragraph, found that there was an apparent contradiction between the position as stated by M/s Polimer Cable Network and as stated by the four complainants and, therefore, with a view to ascertaining the real position on the ground as to compliance of the Authority's Direction dated the 21st October, 2008 as referred to in paragraph 11 above by M/s Polimer Cable Network, vide its letter No. 11-48/2008-B&CS dated the 12th November, 2008 (copy enclosed as **Annexure-IV** to this Show Cause Notice) referred the matter to the Commissioner of Police, Salem City, who is an Authorised Officer under the provisions of the Cable Television Networks (Regulation) Act, 1995, to have the matter investigated and send a report to the Authority;

14. And whereas, in response to the Authority's letter dated the 12th November, 2008 as referred to in the preceding paragraph, a report has been received by the Authority from the Inspector General of Police/Commissioner of Police, Salem City vide letter No. C.No. G2/986/13694/2008 dated the 16th December, 2008 (copy enclosed as **Annexure V** to this Show Cause Notice) wherein it has been reported, *inter alia*, that M/s Polimer Networks "... has disconnected the existing link provided to the LCO's without any valid reasons ..." and that "M/s Polimer Networks have

disconnected the OFC cable in the booster which was kept at CTA Hotel Near Pillukadai, Dadagapatty. But however a link wire is found hanging in front of the control room which belongs to the petitioner from which they have not taken any signal for onward transmission..... Considering the version of the petitioners the signal was tested by using the spectrum analyser which showed a drop of signal in the wire which was said to be provided to the petitioners by M/s Polimer Networks” and that “the signals/links were not provided from the main stream OFC but a Domestic link was given to the petitioner from M/s Polimer’s Network.”;

15. And whereas from the report of the Inspector General of Police/Commissioner of Police, Salem City, as referred to in the preceding paragraph, the Authority has observed that by not restoring the cable television signals to the cable television networks of the complainants, M/s Polimer Cable Network has, prima facie, failed to comply with the Direction of the Authority dated the 21st October, 2008 as referred to in paragraph 11 above;

16. And whereas, as per section 29 of the Telecom Regulatory of India Act, 1997 (24 of 1997), if a person violates directions of the Authority, such person shall be punishable with a fine which may extend to one lakh rupee and in case of second or subsequent

offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which the default continues;

17. Hence M/s Polimer Cable Networks is hereby required to show cause, within three weeks from the date of issue of this notice i.e. on or before 12th March 2009, why action should not be initiated against them, and why a complaint should not be filed by the Authority, as contemplated by section 34 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), before the court to take cognizance of violation of the Direction of the Authority dated the 21st October 2008 and if no written statement of explanation is received within the time so allowed, the matter will be proceeded with on the presumption that M/s Polimer Cable Networks has nothing to offer in defence.

3. Questioning the aforementioned direction of TRAI dated 21st October, 2008 and issuance of the said show cause notice dated 19.02.2009 the appellant has preferred this appeal praying inter alia for the following relief:

“(a) pass orders quashing and setting aside the direction dated 21.10.2008 and the show cause notice dated 19.02.2009 issued by the respondent No.1 as the same is without jurisdiction and is void ab initio.”

4. Mr. Chauhan the learned counsel appearing on behalf of the appellant in support of this appeal would contend that TRAI having no jurisdiction to adjudicate a private dispute by and between two MSOs, the impugned directions as also the show cause notice must be wholly illegal.

5. Mr. Saket Singh the learned counsel appearing on behalf of the respondent No. 1 on the other hand, urged :-

1. The respondent No. 1, in view of the observations made by the Madras High Court, had no other option but to issue the impugned direction.
2. The appellant if aggrieved by and dissatisfied with observations made by the High Court of Madras could have approached it for requisite modification of its order in terms of the liberty granted to it.
3. The representation of the respondent Nos. 2-5 could not have been ignored by the respondent No. 1, having regard to the fact that in terms of Section 13 the Telecom Regulatory Authority of India Act, 1997 (1997 Act) it is legally obligated to ensure compliance of its regulation.

4. By asking the appellant herein to comply with the regulations made by it, the respondent No. 1 did not usurp the jurisdiction of this Tribunal nor did it adjudicate upon any dispute between the parties.

Before us, the respondent Nos. 2 to 5 despite service of notice have not appeared.

6. Indisputably there existed a contract by and between the appellant and the respondent Nos. 2 to 5.

The question, which therefore arises for our consideration is as to whether having regard to the existence of the said contract by and between the appellant and respondent No. 2 to 5 which indisputably governed by the regulations framed by the respondent No. 1, in exercise of its powers under section 36 of the 1997 Act, the respondent No. 1 could have exercised its jurisdiction to adjudicate a dispute between the parties hereto.

We have noticed heretobefore that at the first instance, TRAI itself was of the opinion that the respondent No. 2 to 5 should approach this Tribunal. It evidently did so being of the view that it had no jurisdiction in the matter.

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Before the Madras High Court, the appellant was not heard. The observations made by the Court, therefore, were not binding on it.

It is conceded that TRAI has no adjudicatory function to perform for the purpose of determining a dispute between two service providers. This has been so held by this Tribunal inter alia in BSNL Vs. TRAI being Appeal No. 2 of 2004 and disposed of on 21.4.2004.

The jurisdictions of TRAI and this Tribunal emanate from the 1997 Act. The 2000 Amendment Act was enacted to confer such jurisdiction exclusively in this Tribunal by taking away the same from TRAI.

Section 14 of the Act confers power upon this Tribunal to adjudicate on a dispute between one service provider and the other. The jurisdiction of this Tribunal is of wide amplitude. It exercises appellate jurisdiction over the decision of respondent No.1 also. TRAI is a statutory authority. It must therefore, exercise its jurisdiction within the four corners of the Act. It must do so following the procedures laid down therein and not otherwise.

Powers and functions of TRAI are contained in Section 11 (b) and 11 (c) of the 1997 Act. Indisputably it has the

power to make regulations in exercise of its functions enshrined in Section 11(b) by following procedure as laid down in Section 36 of the Act in the matters specified therein. It furthermore is required to ensure compliance of the regulations upon issuance of direction as envisaged under Sub Section 4 of Section 12 of the Act read with Section 13 thereof.

We would assume that TRAI has the requisite jurisdiction to issue directions, in the event, the regulations framed by it are not complied with by the players in the field.

This, however, in our considered view would not mean that the respondent No.1 can enter into a dispute by and between the parties and in particular those who had entered into a binding contract.

Supply of signals to a network of one MSO by another is a matter of contract. Terms and conditions of such contract are being binding on the parties, subject however to the condition that the regulations shall prevail thereover. The Regulations framed by TRAI are part of the contract in the sense that no terms can be laid down in the contract ignoring the provisions thereof.

If a party to a contract commits breach of a term thereof, it would be liable to the consequences therefore. Thus, where a party in contract is in breach of the terms of a contract it would suffer the consequences irrespective of the fact as to whether such breach emanates from the violation of regulation or otherwise.

When a party to the contract violates the provisions of regulations, it, in relation to the performance thereof, violates the terms of the contract and not the regulations per se, in the event a dispute arises in relation thereto. The provisions of the regulations are not such, violation whereof would lead to nullification thereof. The effect of violation of a regulation which became a part of the contract would be required to be determined by a competent authority. A direction in other words, should not emanate out of any adjudication thereof by TRAI.

If any other interpretation is given in a situation of this nature, the same may lead to an absurd result that whereas TRAI would be entitled to implement the regulation, it may not have jurisdiction to issue a consequential relief to which, the party approaching the same may be held to be entitled to.

A judicial Tribunal or a Court of law exercises some discretion while exercising its jurisdiction. A court of law

while upholding the right of a party to the contract, qua contract, may not grant any relief to it in view of its conduct and/or with a view to do complete justice between the parties. It can in a given case even adjust the equities between the parties. It may find, having regard to the provision of the Specific Relief Act, 1963 that it would not be entitled to specific performance of contract, but only to damages. A statutory authority like the respondent No.1 may not have such jurisdiction. Thus, it is possible for this Tribunal while issuing a direction upon a party which is alleged to have committed a breach of contract to restore supply of signals in the event, it is found that the provisions of the regulations have been violated but at the same time it may be possible that the other party to the contract either may be asked to pay the amount due from it, if it is a defaulter or pass such other order or orders as may be found to be necessary in the interest of the consumers. A judicial Tribunal, thus, would have the jurisdiction to mould the relief, while a statutory authority would not be entitled thereto.

It is only on that premise, the Parliament must have thought of defining the jurisdiction of this Tribunal vis-à-vis TRAI.

It is accepted by Mr. Saket Singh that TRAI will have no jurisdiction to determine a dispute as regards claim of one

MSO on the other with regard to arrears of subscription fee on the basis of which disconnection notices for supply of signals to the network has been issued. There can be a variety of disputes between two MSOs.

There may also be a situation in regard to performance of contract which may make a MSO supplying the signals to another to contend that the other party intends to migrate to another MSO without clearing its dues as a result whereof a direction for payment of the arrears of dues may be sought for or for issuance of an order of injunction. Even such reliefs cannot be granted by TRAI.

Hierarchy of a court or a Tribunal is determined by a statute. Multiplicity of proceeding is not to be readily inferred while interpreting a statute enacted by the Parliament. Save and except in exceptional cases, existence of concurrent jurisdiction should also not be presumed.

In terms of Section 14 of the Act, this Tribunal also exercises original jurisdiction. Its decision is final and binding subject of course to the decision by the Supreme Court of India on determination of a substantial question of law.

If the argument of Mr. Singh is to be accepted, the party to a dispute under a contract may make a complaint before

TRAI, which would be entitled to pass an order or issue a direction or render a decision thereupon and an appeal against such order or decision or direction shall lie before this Tribunal.

This Tribunal although exercises both original and appellate jurisdictions, but in case of determination of any dispute by TRAI, the same may result in some anomaly in as much as in such a situation be, it may have to exercise both the jurisdictions which cannot be contemplated.

There is another aspect of the matter which cannot be lost sight of. This Tribunal has wide jurisdiction to determine a dispute between two MSOs in its original jurisdiction to entertain a claim and counter claim. TRAI will have no jurisdiction to entertain a counter claim. If, that be so, early resolution of all the disputes between the parties would not be possible to be achieved. To our query as to whether TRAI can exercise a concurrent jurisdiction in such a matter Mr. Saket Singh answered in the negative. It is, thus, evident that in a case, when this Tribunal has the jurisdiction to determine a dispute, TRAI will have no jurisdiction to do so.

In the matter of exercise of jurisdiction of Tribunals having different hierarchy, there can be three situations in terms of the provisions of the Act: -

1. TRAI has the exclusive jurisdiction;
2. This Tribunal has the exclusive jurisdiction;
3. Both have the concurrent jurisdiction.

In our opinion, in a situation of this nature, TRAI neither has any exclusive jurisdiction to determine a dispute nor a concurrent jurisdiction.

Breach of a contract gives rise to civil liability. In the event it is found that a party to the contract has suffered breach of contract, he may claim damages also. The Act does not envisage exercise of jurisdiction by the Tribunal both original and appellate in relation to the same nature of dispute. It also does not contemplate, that for one grievance, an aggrieved party may approach TRAI and for another, this Tribunal.

Statutory provisions, as is well known, must be read in their entirety. It must be read chapter by chapter, section by section and clause by clause to give effective meaning to the words employed.

The Act does not envisage different results from different Tribunals. We have noticed heretofore that breach of a contract gives rise to a civil liability. If however for such a breach, a party to the contract approaches TRAI, which may

issue direction, and in the event of breach of such direction wherefor report of the Police Authority may have to be called for, TRAI may take recourse to action under Section 29 of the Act which provides for a criminal liability. A provision leading to a penal consequence must be construed strictly.

We are, therefore, of the opinion that unless the statute otherwise provides for, in case of breach of the terms of a contract, two different kinds of liabilities ordinarily should not be faced by the same person viz. civil liability & criminal liability.

In our opinion having regard to the provisions of Section 14 of the Act the Parliament intended that a party to breach of a contract should face civil liability and not a criminal liability.

We, therefore, for the foregoing reasons, have no other option but to hold that the respondent No.1 had no jurisdiction to issue the impugned direction.

If the respondent No.1 had no jurisdiction, the decisions rendered by it and the consequential show cause notices issued by it, must be held to be illegal and without jurisdiction. They are, therefore, void ab initio.

We, for the reasons aforementioned, are of the opinion that the impugned order cannot be sustained. They are set aside accordingly.

This appeal is allowed. In view of the fact that the Respondent Nos. 2 to 5 have not appeared, there would be no order as to costs.

.....J
(S.B. Sinha)
Chairperson

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(G. D. Gaiha)
Member