

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 15-05-2009

CORAM

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA

AND

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

O.S.A.No.230 OF 2008

New Galaxy Netcom
represented by its Proprietor
Mr.A.N.Sathyanarayanan. Appellant/Applicant/Defendant

-vs-

S.C.V.,
represented by its Authorised Signatory,
Mr.J.Rajesh. Respondent/Respondent/Plaintiff

Appeal against the fair order and decretal order dated
02.04.2008 made in Application NO.1253 of 208 in C.S.No.179 of
2008 on the file of this Court.

For appellant : Mr.M.Sundar
For respondent: Mr.Vijay Narayanan,
Senior Counsel,
for Mr.Girish Neelakandan.

J U D G M E N T

V.DHANAPALAN, J.

Respondent is the plaintiff, who filed the suit for a permanent injunction against the appellant/defendant restraining him from in any way acting in violation of the Franchisee Agreement dated 14.04.2003 and refraining from disconnecting the link or discontinuing the transmission or signals or from in any way taking signals or links from third parties to carry on any competing business directly or indirectly either by themselves or in association with any other persons or through their subsidiary affiliates or by joint venture for the purpose of broadcast or distribution or transmission of any satellite television channels through Community Antenna Television System other than that of the respondent and for costs.

2. Respondent is a Multi System Operator, distributing satellite television channels in Tamil Nadu through Cable Operators by supplying signals to them through the cables installed by him, for which purpose he entered into a Franchisee Agreement with the Cable Operators.

3. Under the Franchisee Agreement, the appellant had undertaken not to discontinue the facility provided by the respondent and not to take the link and distribute the signals of any third parties during the currency of the agreement. Since the appellant, according to the respondent, attempted to commit a breach of the obligations under the Franchisee Agreement, the suit was filed for the relief stated supra.

4. Pending suit, ad interim injunction was granted and, after service of notice in the application for injunction, the appellant filed Application No.1253 of 2008, seeking rejection of the plaint, which was dismissed by a learned single Judge. Aggrieved over the said order of dismissal, this O.S.A. is filed.

5. The one and only contention of the learned counsel for the appellant is that the suit is hit by Sections 15 and 27 of the Telecom Regulatory Authority of India Act, 1997 and, therefore, the plaint is liable to be rejected. The learned counsel has relied upon the following decisions :

(i) Cellular Operators Association of India and Others v. Union of India and Others, 2003 (3) SCC 186 :

"8..... It is not necessary for us to notice all the decisions cited by the learned Attorney-General in order to arrive at the conclusion as to what is the extent of jurisdiction of the Appellate Tribunal under Section 14 of the Act. Suffice it to say, Chapter IV containing Section 14 was inserted by an amendment of the year 2002 and the very Statement of Objects and Reasons would indicate that to increase the investors' confidence and to create a level playing field between the public and the private operators, suitable amendment in the Telecom Regulatory Authority of India Act, 1997 was brought about and under the amendment, a tribunal was constituted called the Telecom Disputes Settlement and Appellate Tribunal for adjudicating the disputes between a licensor and a licensee, between two or more service providers, between a service provider

and a group of consumers and also to hear and dispose of appeal against any direction, decision or order of the Authority. The aforesaid provision was absolutely essential as the organizations of the licensor, namely, MTNL and BSNL were also service providers. That being the object for which an independent tribunal was constituted, the power of that Tribunal has to be adjudged from the language conferring that power and it would not be appropriate to restrict the same on the ground that the decision which is the subject-matter of challenge before the Tribunal was that of an expert body. It is no doubt true, to which we will advert later, that the composition of the Telecom Regulatory Authority of India as well as the constitution of GOT-IT in April 2001 consists of a large number of eminent impartial experts and it is on their advice, the Prime Minister finally took the decision, but that would not in any way restrict the power of the Appellate Tribunal under Section 14, even though in the matter of appreciation the Tribunal would give due weight to such expert advice and recommendations. Having regard to the very purpose and object for which the Appellate Tribunal was constituted and having examined the different provisions contained in Chapter IV, more particularly, the provision dealing with ousting the jurisdiction of the civil court in relation to any matter which the Appellate Tribunal is empowered by or under the Act, as contained in Section 15, we have no hesitation in coming to the conclusion that the power of the Appellate Tribunal is quite wide, as has been indicated in the statute itself and the decisions of this Court dealing with the power of a court, exercising appellate power or original power, will have no application for limiting the jurisdiction of the Appellate Tribunal under the Act. Since the Tribunal is the original authority to adjudicate any dispute between a licensor and a licensee or between two or more service providers or between a service provider and a group of consumers and since the Tribunal has to hear and dispose of appeals against the directions, decisions or order of TRAI, it is difficult for us to import the self-contained

restrictions and limitations of a court under the judge-made law to which reference has already been made and reliance was placed by the learned Attorney-General. By saying so, we may not be understood to mean that the Appellate Tribunal while exercising power under Section 14 of the Act, will not give due weight to the recommendations or the decisions of an expert body like TRAI or in the case in hand, GOT-IT, which was specifically constituted by the Prime Minister for redressing the grievances of the cellular operators. We would, therefore, answer the question of jurisdiction of the Appellate Tribunal by holding that the said Tribunal has the power to adjudicate any dispute between the persons enumerated in clause (a) of Section 14 and if the dispute is in relation to a decision taken by the Government, as in the case in hand, due weight has to be attached both to the recommendations of TRAI, which consists of an expert body as well as to the recommendations of GOT-IT, a committee of eminent experts from different fields of life, which had been constituted by the Prime Minister."

(ii) Union of India v. Tata Teleservices (Maharashtra) Ltd., 2007 (7) SCC 517 :

"Normally, a right to make a claim would also include a right to make a cross-claim or counterclaim. If a subject-matter is capable of being raised before TDSAT by the Central Government or the State Government by way of a claim by making an application under Section 14 of the Act, it would not be logical to hold that the same claim could not be made by way of a counterclaim when the other side, namely, the licensee or consumers, had already approached TDSAT with a claim of their own and the Central Government is called upon to defend it. It is therefore held that TDSAT has jurisdiction to entertain a counterclaim in the light of Sections 14 (1) and 14-A of the Act."

(iii) Star India (P) Ltd. (1) v. Sea TV Network Ltd. and Another, 2006 (4) Supreme Court Cases 130 (1) :

"2. Without prejudice to the claims that are being examined in these appeals, let Star India Pvt.Ltd. provide the connection to Sea TV Network Ltd. on receiving payment of Rs.5,00,000 (rupees five lakhs only). A bank draft of Rs.5 lakhs has been handed over to learned counsel for Star India Pvt.Ltd. The signals shall be given by tomorrow. Further, Star India Pvt.Ltd. shall consider the grievance of the respondent Sea TV Network Ltd. and explore the possibility of an acceptable arrangement. It shall hear the respective views of Sea TV Network Ltd. and Moon Network Pvt.Ltd. and if possible work out the details as to in which way the claim of Sea TV Network can be worked out keeping in view the objective of the 2004 Regulations i.e., the non-discriminatory treatment and non-prejudice in competition. The decision to be taken by Star India Pvt.Ltd. shall be placed before us on the next date of hearing."

(iv) Star India (P) Ltd. (2) v. Sea TV Network Ltd. and Another, 2006 (4) Supreme Court Cases 130 (2) :

"1. One of the issues raised by learned counsel for the appellant is that cable operators and MSOs do not give a complete and accurate list of ultimate subscribers and their area of operation. The respondent Sea TV Network Ltd. submitted that it would be in the interest of all concerned to have the details of subscribers of the cable operators correctly identified, provided that such identification is done uniformly and in the non-discriminatory manner. It was submitted that in the prevalent circumstances, the only manner in which the same can be achieved is through the deployment of an addressable system which is commonly known as the conditional access system (in short "CAS"), which would identify the number of subscribers accessing a particular channel. CAS permits the subscriber to also exercise his choice to have only those pay channels which he chooses to watch.

2. Keeping in view the nature of the controversy and its likely impact on the broadcasting/TV industry as a whole, we are of the view that it would be necessary to give adequate opportunity to all stakeholders concerned to file their submissions. For this purpose, an appropriate advertisement shall be published by TRAI in two leading newspapers as well as on its own website informing the Associations of Cable Operators, MSOs and subscribers of the next date of hearing in this case, which is fixed to 2-5-2006.

4. It is brought to our notice that TDSAT is also hearing the question as to the directions which can be given to the Association of Cable Operators and MSOs for disclosing particulars of their subscribers. Pendency of these matters before this Court shall not stand in the way of TDSAT hearing those cases and in fact it would be of assistance to have the views of TDSAT before this Court when the matters are next taken up. Further, pendency of these matters shall not stand in the way of the Central Government if it so chooses, to implement CAS or of TRAI in devising any system to identify and arrive at the correct number of subscribers of each distributor of TV channels."

6. Per contra, the contention of the learned counsel for the respondent is that the appellant is not a "service provider" and hence the suit is very well maintainable. The learned counsel has cited the following authorities :

(i) Cellular Operators Association of India and Others v. Union of India and Others, 2003 (3) SCC 186 :

"8... Having regard to the very purpose and object for which the Appellate Tribunal was constituted and having examined the different provisions contained in Chapter IV, more particularly, the provision dealing with ousting the jurisdiction of the civil court in relation to any matter which the Appellate Tribunal is empowered by or under the Act, as contained in Section 15, we have no hesitation in coming to the conclusion that the power of the Appellate

Tribunal is quite wide, as has been indicated in the statute itself and the decisions of this Court dealing with the power of a court, exercising appellate power or original power, will have no application for limiting the jurisdiction of the Appellate Tribunal under the Act. Since the Tribunal is the original authority to adjudicate any dispute between a licensor and a licensee or between two or more service providers or between a service provider and a group of consumers and since the Tribunal has to hear and dispose of appeals against the directions, decisions or order of TRAI, it is difficult for us to import the self-contained restrictions and limitations of a court under the judge-made law to which reference has already been made and reliance was placed by the learned Attorney-General. By saying so, we may not be understood to mean that the Appellate Tribunal while exercising power under Section 14 of the Act, will not give due weight to the recommendations or the decisions of an expert body like TRAI or in the case in hand, GOT-IT, which was specifically constituted by the Prime Minister for redressing the grievances of the cellular operators. We would, therefore, answer the question of jurisdiction of the Appellate Tribunal by holding that the said Tribunal has the power to adjudicate any dispute between the persons enumerated in clause (a) of Section 14 and if the dispute is in relation to a decision taken by the Government, as in the case in hand, due weight has to be attached both to the recommendations of TRAI, which consists of an expert body as well as to the recommendations of GOT-IT, a committee of eminent experts from different fields of life, which had been constituted by the Prime Minister."

(ii) Union of India v. Tata Teleservices (Maharashtra) Ltd., 2007 (7) SCC 517 :

"The Telecom Regulatory Authority of India Act, 1997 ("the Act") is seen to be a self-contained code intended to deal with all disputes arising out of telecommunication services provided in this

country. This is emphasised by the Objects and Reasons also. A plain reading of the relevant provisions of the Act in the light of the Preamble to the Act and the Objects and Reasons for enacting the Act, indicates that disputes between the parties concerned, which would involve significant technical aspects, are to be determined by a specialised tribunal constituted for that purpose. Normally, when a specialised tribunal is constituted for dealing with disputes coming under it of a particular nature taking in serious technical aspects, the attempt must be to construe the jurisdiction conferred on it in a manner so as not to frustrate the object sought to be achieved by the Act. In this context, the ousting of the jurisdiction of the civil court contained in Section 15 and Section 27 of the Act has also to be kept in mind. The subject to be dealt with under the Act has considerable technical overtones which normally a civil court, at least as of now, is ill equipped to handle and this aspect cannot be ignored while defining the jurisdiction of TDSAT. The constitution of TDSAT itself indicates that it is chaired by a sitting or retired Judge of the Supreme Court or sitting or a retired Chief Justice of the High Court, one of the highest judicial officers in the hierarchy, and the members of TDSAT have to be of the cadre of Secretaries to Government, obviously well experienced in administration and administrative matters."

(iii) Ramesh Mehta v. Sanwal Chand Singhvi and Others, 2004 (5) SCC 409 :

"27. A definition is not to be read in isolation. It must be read in the context of the phrase which would define it. It should not be vague or ambiguous. The definition of words must be given a meaningful application; where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned."

(iv) N.K.Jain and Others v. C.K.Shah and Others, 1991 (2) SCC 495 :

"13....As already noted, these provisions, which form part of the Act, which is a welfare legislation, are meant to ensure the employees the continuance of the benefits of the provident fund. They should be interpreted in such a way so that the purpose of the legislation is allowed to be achieved (vide International Ore and Fertilizers (India) Pvt.Ltd. v. Employees' State Insurance Corporation"). In Seaford Court Estates Ltd.v.Asher,(1949) 2 All ER 155 (CA), Lord Denning. L.J.observed : (All ER p.164)

"The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature... A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do so as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases." (emphasis supplied)

"19. So much is about the opening

words to Section 2 and it, therefore, follows that the words 'contribution', 'scheme', 'fund' occurring in the said section should in the 'context' be otherwise interpreted as to apply to a private scheme also and if there is a default in "contribution" by the exempted establishment, the same amounts to contravention of Section 6 punishable under Section 14 (1-A)."

7. We have heard the learned counsel for the parties and also gone through the records.

8. To deal with the contentions of the learned counsel, it is necessary to extract Sections 15 and 27 of the Telecom Regulatory Authority of India Act, 1997 (in short, "the Act"), which read as under :

"Section 15. Civil Court not to have jurisdiction.- No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. "

"Section 27. Bar of jurisdiction.- No Civil Courts shall have jurisdiction in respect of any matter which the Authority is empowered by or under this Act to determine."

9. The above Sections have to be read together with Section 14. In other words, Sections 15 and 27 will have no meaning if Section 14 is not taken into consideration, since it indicates the very establishment and jurisdiction of the Tribunal, as under :

"14. Establishment of Appellate Tribunal.- The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to -

- (a) adjudicate any dispute -
 - (i) between a licensor and a licensee ;
 - (ii) between two or more service providers ;

(iii) between a service provider and a group of consumers:

10. From the above section, it is clear that the Telecom Disputes Settlement and Appellate Tribunal adjudicates the disputes only between a licensor and a licensee ; between two or more service providers and between a service provider and a group of consumers.

11. So, it is important to know as to whether the parties in the case on hand fall in the above category, for settlement of their dispute by the Appellate Tribunal. It is equally significant to perceive the definitions of the words "licensee", "licensor" and "service provider".

11.1. Section 2 (1) (e) defines the word "licensee" as under:

"licensee" means any person licensed under sub-section (1) of section 4 of the Indian Telegraph Act, 1885 (13 of 1885) for providing specified public communication services.

11.2. Section 2 (1) (ea) defines the word "licensor" as follows :

"licensor" means the Central Government or the telegraph authority who grants a licence under section 4 of the Indian Telegraph Act, 1885 (13 of 1885).

11.3. The term "service provider" is defined in Section 2 (1) (j) as under :

"service provider" means the Government as a service provider and includes a licensee.

12. It is not in dispute that the respondent has a licence under the Indian Telegraph Act, 1885. Therefore, it is a licensee within the meaning of Section 2 (1) (e) of the Act and, consequently, a service provider within the meaning of Section 2 (1) (j). But, the appellant is neither a licensee under the Indian Telegraph Act, 1885, nor a service provider and he is only a franchisee, who carries the signals of the respondent through its cables to the end-users, namely, consumers. At the same time, it cannot also be said as a consumer. Therefore, the present dispute is not covered by Section 14 of the Act and it does not fall within the jurisdiction of the Appellate Tribunal.

13. Though the learned counsel for the appellant would submit that the respondent and the appellant would come within the definition of the words "Multi System Operator" and "Cable

Operator" respectively under Telecommunication (Broadcasting and Cable Services) Interconnection Regulations 2004, and that Regulation 2 (n) defines a "Service Provider" to include a Multi System Operator and Cable operator or distributor of TV channels, we do not agree to the said submission, as the plain language of Section 2 (1) (j) of the Act shows that the Government and a licensee under the Indian Telegraph Act alone are included within the meaning of the word "service provider".

14. As per the Cable Television Networks Rules, 1994, a "Cable Operator" is a person who is licensed under a different enactment by the Superintendent of Post Offices and on being satisfied that the applicant fulfils the provisions of the Ordinance, the registering authority shall issue registration certificate in Form-3. So, the regulations relied upon by the learned counsel for the appellant cannot be imported into Section 2 (1) (j) of the Act.

15. A Special Tribunal constituted under a special enactment can exercise only a jurisdiction vested in it by the statute and cannot be conferred with a special jurisdiction by judicial pronouncement, by adopting a circuitous process and a circumventing interpretation. The Act does not give any scope for importing those definitions into the provisions of the Act, especially when the Act itself contains the definitions of the words.

16. The decisions relied upon by the learned counsel for the appellant in Cellular Operators Association of India and Others v. Union of India and Others, 2003 (3) SCC 186, and Union of India v. Tata Teleservices (Maharashtra) Ltd., 2007 (7) SCC 517, were already cited before the learned single Judge. The decisions in both the said cases arose out of appeals filed under Section 18 of the Act against the orders of the Tribunal. The dispute in those cases were either between the Government and the service provider or between two service providers, squarely covered by Section 14 of the Act. It is, in that context, the Supreme Court held in both the aforesaid cases that the jurisdiction of the Tribunal is wide, not confined to any restrictions. The other authorities cited by the learned counsel for the appellant before this Court are (i) Star India (P) Ltd. (1) v. Sea TV Network Ltd. and Another, 2006 (4) Supreme Court Cases 130 (1) and (ii) Star India (P) Ltd. (2) v. Sea TV Network Ltd. and Another, 2006 (4) Supreme Court Cases 130 (2). Even these two cases were also on appeals against the orders of the Tribunal and the issue was not with regard to the maintainability of the suit. No question arose in the aforesaid cases as to whether one of the parties to the litigation was a service provider or not. Therefore, the aforesaid decisions have no application to the facts of the present case.

17. In the case on hand, there is an agreement between

the parties and the appellant, to wriggle out its obligation, has filed the application to reject the plaint. It is only on the basis of the said agreement, the respondent has invested crores of rupees for its business. Further, the respondent/plaintiff is an entity represented by its authorised signatory. Hence, it can sue and be sued. The suit is in the nature of specific performance to make the appellant perform its obligation and it is an ordinary civil litigation, which will not come within the scope of the Act. Therefore, in our considered opinion, the suit is not barred by law and the plaint is not liable to be rejected.

18. For the foregoing reasons, this O.S.A. fails and is dismissed. No costs. Consequently, the connected M.P.Nos.1 and 2 are also dismissed.

19. However, we make it clear that the obiter dicta made by us in this judgment will be only for the purpose of disposing of this appeal and the same shall not, in any way, influence the trial Court in disposing of the suit on merit.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Sub Assistant Registrar,
Original Side, High Court,
Madras 104.

+ 1 cc to Mr. M. Sundar, Advocate SR No.20714

DM(CO)
SR/9.6.2009

O.S.A.No.230 of 2008