

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 31ST DAY OF JANUARY 2013

THE HON'BLE MR. JUSTICE VINOD K.SHARMA

O.A. No.1076 of 2012

in

C.S. No.833 of 2012

T.Saikrishnan
S/o.Thandapani
Prop.M/s.Skylink Communications
No.65/4, Kali Amman Koil Street,
Virugambakkam, Chennai-92. ..Applicant/Plaintiff

-Versus-

1.Mr.Narendran
Prop:M/s.Amman Network Communication
No.29/10, Feroz Sahib Street,
Royapettah,
Chennai-600 014.

2.Mr.Thanneermalai
Prop: M/s.Prasanna Sat Vision
O.No.38, Thyphoon Ali Khan Street,
Chepauk,
Chennai-600 005.

3.Mr.Mathivanan
Prop:M/s.Sri Venkatewara Cable Vision
No.30/51, Muktharunnisa Begum Street,
Ellis Road,
Anna Salai,
Chennai-600 002.

4.The General Manager
Railtel Corporation of India Ltd.,
4th Floor, Chief Administrative Officer Block,
CAO/CN/MS E.V.R.Periyar Salai
Chennai-8.

5.Ashok Kumar @ John Doe
6.Ashok Kumar @ John Doe
7.Ashok Kumar @ John Doe
8.Ashok Kumar @ John Doe

9.Tamil Nadu Arasu Cable TV Corporation (*)
 Limited (TACTV)
 Rep. by its Managing Director
 11/22, Mangadu Samy street,
 Nungambakkam, Chennai-600 034. ..Respondents/Defendants

9th defendant/respondent impleaded as per order (*)
 dated 18/01/13 in A.NO.113/13

Original Application praying that this Hon'ble Court be pleased to pass an interim injunction restraining the Respondent/defendant, their men, agents, staff, subordinates or any person claiming through or on behalf the Respondents/defendants, restraining the respondents 1 to 4 and other unknown defendants represented herein by John Doe or Ashok Kumar, replaceable by future respondents, from in any manner transmitting the cable TV signals in analogue mode or operating analog head end or importing cable TV signals from Non-DAS areas or rolling out cable TV signals without DAS license to the consumers within the Chennai Metropolitan till the disposal of the suit.

This Original Application coming on this day before this court for hearing the court made the following order:

The plaintiff/applicant has filed this application for interim injunction restraining the respondents 1 to 4 and other unknown defendants represented by John Doe or Ashok Kumar, replaceable by future respondents, from in any manner transmitting the cable TV signals in analogue mode or operating analogue head end or importing cable TV signals from Non-DAS areas or rolling out cable TV signals without DAS license to the consumers within the Chennai Metropolitan area till the disposal of the suit.

2 The plaintiff/applicant has filed a suit for permanent injunction restraining the defendants 1 to 3 and other unknown defendants represented by John Doe or Ashok Kumar, replaceable by future respondents, from in any manner transmitting the cable TV signals in analogue mode or operating analogue head end or importing cable TV signals from Non-DAS areas or rolling out cable TV signals without DAS license to the consumers within the Chennai Metropolitan area.

3 The plaintiff/applicant is in the cable business for the last several years and running cable TV business after getting valid license from the postal department. The plaintiff/applicant is operating in and around Virugambakkam area in more than 1800 customers. The plaintiff/applicant re-transmitting signals as per the law laid down by the Central Government in this regard.

4 It is the case of the plaintiff/applicant that the defendants 1 to 3 and unknown defendants 6 to 9 are also in the Cable TV business transmitting signals in and around Virugambakkam area and other areas in Chennai city without obtaining necessary licence as per Cable Television Network Act, 1995 as amended.

5 It is the case of the applicant that Cable TV and Broadcasting comes under the exclusive law making powers of the Parliament and in exercise of the power, Parliament has amended the Cable Television Networks Act, 1995, by making Digital Addressable System (DAS) mandatory in the country. The Central Government is authorised under the Act to notify the implementation of Digital Addressable System (DAS).

6 In pursuance to the powers conferred under the Cable Television Networks Act, 1995, the Central Government issued a notification, dated 11.11.2011, implementing DAS to several cities, towns and areas in the country in phased manner.

7 The areas falling under the Chennai Metropolitan area had been placed under DAS in the first phase of said notification requiring implementation by 31.7.2012 by the Central Government.

8 Prior to implementation of the notification, Chennai Metropolitan area was earlier termed as Conditional Access system (CAS) area a city to transform into CAS areas totally. Under this system, Free to Air (FTA) channels for which no subscription charges are required to be paid to the respective broadcasters were allowed to be transmitted in analogue form and the Pay channels for which the subscription charges were required to be paid to the

broadcasters were transmitted via Set Top Boxes (STB) in digitalized format.

9 The amendment notified mandates every consumer to own a STB irrespective of FTA or Pay channels. It also bans the re-transmission of pure analogue system and every house intended to have cable connection need to have a Set Top Box.

10 It also requires to obtain a license from the Central Government for operation as Multi System Operator (MSO) for operating a control room and to provide signals to cable operators in DAS notified areas, under Rule 11 of Cable Television Networks Rules, 1994. The import of signals from analogue transmission has been made illegal.

11 It is the case of the plaintiff/applicant that the Telecom Regulatory Authority of India (TRAI) is the industry regulator, inter alia empowered to regulate the interconnection between the stake holders, Tariff, Quality of service and other consumer complaint redressal mechanisms. It is submitted that this Court has refused to stay the implementation of DAS in Chennai Metropolitan area.

12 The case of the plaintiff/applicant is that few organizations have obtained license from the Central

Government to act as DAS Multi System Operator (MSO). Two such persons are already in operation and handful Multi system operators have installed digital control room and are ready to roll out their signals.

13 That the defendants are Cable Operators who do not possess DAS license, but are operating analogue signals for re-transmission in DAS notified Chennai Metropolitan area. The defendants and other unknown defendants are pumping in analogue signals from non-DAS areas, using fibre optic cable provided by the 4th defendant RailTel Corporation India Ltd. by allowing the carriage of illegal signals.

14 That the illegal analogue transmission are generated by the defendants 1 to 3 and other unknown defendants either by operating an analogue signal control room within the notified area or re-transmission of signals from DTH service or importing analogue signals from control room operated in non-notified areas which is contrary to law. The illegal activities of the respondents have prejudiced the business of the cable TV operators like the applicant who are doing business legally.

15 That by re-transmitting analogue signals and offering those illegal signals for a throw away price, they also abet innocent consumers to be part of such illegality and therefore, are instrument in violating the law.

16 That the customers of the applicant in view of the

throw away price offered by the defendants, are switching over to the defendants network thereby causing loss to the applicant. The plaintiff/applicant therefore wrote to the defendants 1 to 3 to stop the illegal practise, but inspite of this, the defendants/respondents continuing with the illegal activities which has resulted in great hardship not only to the plaintiff, but also to others legally operating cable TV operators. The plaintiff/applicant therefore, claims to be greatly prejudiced and submits that he will be put to great loss, if the interim injunction is not granted.

17 On the pleadings referred to above, it is prayed that injunction be granted.

18 Separate counter affidavits have been filed on behalf of the defendants 1 and 2 and defendant No.9 (newly added respondent). The defendants 1 and 2 have denied the averments and allegations made in the application by pleading therein that the Parliament has enacted an Act called Cable Television (Regulation) Networks Act, 1995 to regulate the operation of Cable Television Network in the country. The statutory Rule called Cable Television Network Rules, 1995 have also been framed to regulate the functioning of the cable television operators.

19 The case of the defendants 1 and 2 is that

Operator", who receives a programming service from a broadcaster or his authorised agencies and re-transmits the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more Local Cable Operators. The Rules also imposes an obligation of every "MSO" to obtain valid permission from the Central Government.

20 Section 3 and 4 of the Act, 1995 provide, no person can operate Cable Television network unless he is registered as a cable operator under the Act, 1995 and any person who is desirous of operating a cable television network is also required to apply for registration as a cable operator with the registering authority. As per notification No.S.O.718(E), dated 29.9.1994, the Head Post Master of a Head Post Office of the area, within whose territorial jurisdiction, the office of the cable operator is situated, has been notified as the registering authority.

21 It is the stand of the defendant No.1 and 2 that M/s.Kal Cables Pvt. Ltd. having its office at No.229, Kutcheri Road, Mylapore, Chennai 4 hold a valid permission from the Central Government to operate as "MSO" as per the terms and conditions contained in the said permission. The defendants 1 and 2 have obtained license from Department of Posts, India to operate as "LCO" within Royapettah, Chennai

22 The defendants 1 and 2 have also entered into agreements with M/s.Kal Cables Pvt. Ltd. through its unit "SCV", who is "MSO" holding a valid permission from the Central Government to provide cable television network service. The defendants 1 and 2 are in business for last so many years.

23 The plaintiff is also similarly situated having obtained license from the Department of Posts, India to operate as "LCO" in Virugambakkam, Chennai 92. The plaintiff/ applicant has also entered into an agreement with M/s.Kal Cables Pvt. Ltd. through its unit "SCV", who is an "MSO" holding a valid permission from the Central Government to provide cable television network services.

24 The stand of the respondents 1 and 2/defendants 1 and 2 therefore is that the defendants 1 and 2 are doing business as "LCO" in different areas and have no clash of business interest. The plaintiff/applicant with intent to scuttle the business prospects of Tamil Nadu Arasu Cable Television of the State Government, has filed the present suit/application against the respondents 1 and 2 and obtained interim order, in view of the fact that the respondents 1 and 2 have evinced interest in carrying the signals of Tamil Nadu Arasu Cable Television. Therefore, the application has been filed with vested interest and is

25 The maintainability of the suit is challenged on the plea, that jurisdiction of the civil Court is barred under section 14 and 15 of the Telecom Regulatory Authority of India Act, 1997. It is submitted that the remedy of the plaintiff/applicant is to approach the Telecom Disputes Settlement and Appellate Tribunal and not civil Court, as it takes care of dispute between two or more service providers.

26 It is submitted that the suit as framed is bad for non joinder of necessary party, as "MSO" i.e. M/s.Kal Cable Pvt.Ltd./SCV has not been made as party to the application/suit. The submission is that the defendants 1 and 2 are transmitting signals received from M/s.Kal Cable Pvt. Ltd./SCV, therefore, "MSO" are necessary party to the suit.

27 That there is no cause of action with the plaintiff/ applicant to maintain application against the respondents 1 and 2, as the plaintiff/applicant similarly placed being "LCOs" having license from the Department of Posts, India and have entered into an agreement with "MSO", i.e. M/s.Kal Cable Pvt. Ltd./SCV, as the defendant No.1 and 2. It is also case of the defendants 1 and 2 that there is no conflict of interest between the parties. The plaintiff and defendants 1 and 2 are operating in different areas.

28 The parawise replies also on the same lines, as per the submission made hereinabove.

29 On merit, the stand of the respondents 1 and 2 is that they are bound to transmit the signals provided by "MSO" to customers and non supply of signals will result in violation of agreement entered into between the parties, as also violation of "TRAI" regulations.

30 However, it is admitted in para 44 of the counter affidavit that the respondents 1 and 2 have so far given Set Top Box (STB) to consumers, who sought and paid for it and are providing signals to them whereas to others through analogue mode.

31 It is also case of the defendants 1 and 2 that the business being carried out by the respondents 1 and 2 does in no way cause damage or loss to the applicant and that if at all, there is any violation on the part of the respondents 1 and 2, it is for the authorities concerned to act and not for applicant to voice his grievance and in any case not before this Court.

32 That applicant has failed to make out any prima facie case and that the balance of convenience is in favour of the respondents. It is also submitted that the applicant is not likely to suffer any irreparable loss.

33 The respondent No.9 who got itself impleaded as party, has filed counter. It has raised preliminary issues with regard to maintainability of the suit, on the

ground that in view of section 14 and 15 of the Telecom Regulatory Authority of India Act, 1997, the jurisdiction of the civil Court is barred as the dispute raised in this suit is covered under section 14 of the Act.

34 It is submitted by the respondent No.9, that the applicant has not come to the Court with clean hands and has filed this application on the instigation of some vested interest who do not want the Government to operate the Cable TV business. That one person has raised the same issue before the TDSAT in his application No.5/2013 in which notice has been issued to TACTV.

35 It is also submitted in the counter affidavit that the applicant on the concept of John Doe has obtained interim injunction against unknown defendants which includes respondent No.9 also and it is submitted that such suit is not maintainable for the reason that order can be sought only in a case where, the plaintiff has a personal, exclusive right vested with him like in the case of copyrights, movies, etc. which cannot be invoked in the present case, as the plaintiff/ applicant has no personal or exclusive right over the transmission of signals.

36 That the applicant inspite of being aware that the signals are provided by 8 MSO's in the State of Tamil Nadu, he purposefully neglected to add them as parties and instead after obtaining interim order, has issued contempt notice to all.

37 That the suit has not been filed in the representative capacity nor followed the cardinal principles laid down under Order 1 Rule 8 C.P.C., therefore suit is not maintainable.

38 That the plaintiff has failed to implead TACTV and other "MSO"s as necessary parties, even though applicant is registered with TACTV as LCO No.101839. This plea no longer available to the respondent No.9, as on its own, it has chose to get itself impleaded as party to the suit as defendant No.9.

39 It is also stand of the respondent No.9 that TACTV has valid license issued by Ministry of Information and Broadcasting issued in the year 2008 which is valid for 5 years i.e. till 2013.

40 It is also pleaded that issue of implementation of DAS is subjudice and pending before this Court. It is submitted that due to pendency of writ petition, analogue signals are being transmitted by all other Multi System Operators, as there is no ban or prohibition under law for carrying analogue signals. Therefore, the applicant has no cause of action to come to this Court. Furthermore, if there is any violation, it is for the TRAI to take action, but the plaintiff/applicant cannot maintain the suit in this Court.

41 That after the general election to Tamil Nadu Legislative Assembly and after formation of the new Government, steps have been taken to revive the Tamil Nadu Arasu Cable TV Corporation Ltd. and this was announced by His Excellency, the Governor of Tamil Nadu in his address to the Tamil Nadu Legislative Assembly on 3.6.2011 which reads as follows:

"Arasu Cable TV Corporation formed by the previous Government has become defunct. There has been overwhelming demand from the public for the immediate revival of Arasu Cable TV Corporation for providing cable TV services at reasonable rates. The Government will revive the activities in the Public interest and nationalise the private cable TV operators in the State without affecting the interest of the last mile local cable operators."

42 That the respondent No.9 is providing 90 - 100 channels to the subscribers at affordable cost of Rs.70/- (Rupees seventy only) including Free to Air channels, Pay channels and local channels.

43 That Government of India, Ministry of Information and Broadcasting has issued a "MSO" license to the respondent No.9 in April, 2008 and it has also applied for a Digital Addressable System (DAS) license with the Ministry of Information and Broadcasting on 5.7.2012 which is pending.

44 It is also the stand of the respondent No.9 that as per the Cable TV Network (Regulation) Amendment Act, 2011, the entire cable TV Services in the country is to be digitized within a time frame i.e. by 31.12.2014 and in the first phase, four metro cities including Chennai are to be digitized on or before 31.12.2013. In this connection, W.P.No.29651 of 2011 is pending in this Court.

45 It is also the stand of the respondent No.9 that steps have been taken to digitalise cable TV Services in Chennai Metro and it had also floated a tender for Design, Supply, Installation, Testing, Commissioning and manage services/SLA of digital Cable TV Head end with Conditional Access System, Subscriber Management system, Set Top Boxes at Chennai on 22.5.2012. Since the rate quoted by the prospective bidder were not commercially viable, the tender was cancelled and fresh tender has been called for.

46 It is also the case of the respondent No.9 that steps have been taken to get requisite license. It is submitted that Set Top Boxes are not available in large scale in India and therefore, required to import from other countries and distribute to the consumers through cable TV operators and therefore, action is to be taken to purchase and distribute Set Top Boxes. It is also submitted, that the plaintiff/ applicant is also registered "LCO" with the

respondent No.9 and therefore plaintiff was required to implead it as a party, as already noticed, it has been impleaded as defendant No.9.

47 That there is no cause of action with plaintiff to file the present suit. Therefore, application for injunction is abuse of process of law by the plaintiff.

48 The learned Senior counsel for the plaintiff/applicant referred to section 4(a) of the Cable Television Networks (Regulation) Act, 1995 which reads as under:

"4A. Transmission of programmes through addressable systems:-

(1) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, make it obligatory for every cable operator to transmit or retransmit programme of any pay channel through an addressable system with effect from such date as may be specified in the notification and different dates may be specified for different States, cities, towns or areas, as the case may be."

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49 By referring to section 4A, it is contended that notification issued in the official gazette in exercise of powers under 4(a) makes it mandatory for every cable operator to transmit or re-transmit programmes of any channel in an encrypted form through a digital addressable system with effect from such date as may be specified in the notification.

50 The contention of the learned Senior counsel for the applicant therefore was that in exercise of power under section 4(a) of the Act, admittedly, a notification has been issued making it mandatory to transmit or re-transmit programmes of any channel within the city of Chennai through DAS alone and transmission in analogue form is illegal, being violative of section 4A of the Act.

51 It was also contended that once it is not disputed that section 4(a) has been made applicable and no stay has been granted by the Hon'ble Division Bench of this Court in the writ petition filed against DAS system, the plaintiff/applicant has prima facie case and balance of convenience is also in his favour.

52 It is also submitted that in view of illegal activities of the defendant/respondent, the plaintiff is suffering irreparable loss and injury and therefore entitled to interim injunction.

53 It is contended that the violation of provisions of Act is criminal offence which provides for even imprisonment upto two years and fine. Contravention to section 4(a) have also been made as cognizable offence under section 16 of the Cable Television Networks (Regulation) Act, 1995.

54 The learned senior counsel placed reliance on the judgment of this Court in **New Galaxy Netcom. vs. S.C.V.**

(2009(4) CTC 53) to contend that bar under section 15 of Telecom Regulatory Authority of India Act, 1997 does not apply to this case. The Hon'ble Division Bench of this Court was pleased to lay down as under:

"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"

55 The reliance was also placed on the Division Bench judgment of this Court in ***O.S.A.No.425 to 428 of 2009 decided on 27.4.2010 (M/s.Jak Communication Pvt. Ltd. vs. M/s.Sun TV Network Ltd. and another)*** wherein this Court was pleased to held that the civil Court has jurisdiction to entertain a suit in respect of the dispute/disputes relating to infringement of copyright and piracy and that section 15 of Telecom Regulatory Authority of India Act, 1997 does not bar such a suit.

56 It may be noticed here that questions decided by the Hon'ble Division Bench were as under:

- (i) *Whether the jurisdiction of the civil Court to entertain a suit in respect of matters covered in Chapter VIII of the Copyright Act is excluded, in view of the provision of Section 15 of the TRAI Act?*
- (ii) *Whether the defendants are service providers in terms of Section 2(1)(j) of the TRAI Act and Regulation 2(n) of the Interconnection Regulations? And*
- (iii) *Whether the plaintiffs are estopped from filing the suits, as they had defended the petitions filed by the defendants before TDSAT ?*

The answer to these questions was that civil suit is not

57 The learned Senior counsel appearing on behalf of the respondents 1 and 2 vehemently contended that the present suit is not maintainable, as the writ petition with regard to implementation of DAS in metropolitan city of Chennai is pending adjudication in this Court. Not only this, it was also contended that it is not in dispute that the plaintiff/applicant and the defendants 1 and 2 are operating in two different areas and there is no conflict of interest or business between the plaintiff and the defendant No.1 and therefore, the plaintiff does not have any cause of action to maintain the suit against the defendant No.1 & 2.

58 It was contended that the plaintiff has not disclosed any cause of action against the defendants 1 and 2 nor the suit can be treated to be in a representative capacity, as the provision of Order 1 Rule 8 of C.P.C. has not been complied with.

59 It was thus, vehemently contended that suit is not maintainable as the plaintiff/applicant does not have any exclusive right over the transmission to invoke principle of John Doe.

60 It was also vehemently contended, that the suit as framed is barred under section 14 and 15 of The Telecom Regulatory Authority of India Act, 1997. Once suit itself is not maintainable, it cannot be said that any prima facie case is in favour of the plaintiff/ applicant.

61 The learned Senior counsel referred to para 10 of the counter affidavit to contend that the defendants 1 and 2 are in the same footing as that of the plaintiff, as they have also obtained license from the Department of Posts, India to operate "LCO" within Royapettah, Chennai and Chepauk and have also entered into an agreement with M/s.Kal Cable Pvt. Ltd. through unit S.C.V. who is holding valid permission from the Central Government to provide Cable Television Network Services.

62 It was also contended that in absence of MSO being impleaded as party, no injunction suit is maintainable against the defendant No.1 and 2, as they are transmitting signals received from MSO under valid license of Indian Postal department, as is the case of the plaintiff. Therefore, present application against the respondents 1 and 2 is not maintainable.

63 The learned Additional Advocate General appearing on behalf of the respondent No.9 opposed the application by vehemently contending that the respondent No.9 is holding a license under section 4(a) of the Cable Television Networks (Regulation) Act, 1995 which is valid upto 2013. Therefore, it cannot be said that there is any violation of section 4(a) of the Act.

64 It was also vehemently contended that the respondent No.1 already applied for grant of DAS license

with the central Government and application is still pending. Therefore, plaintiff/ applicant has no right or cause of action to sue the respondent No.9 specially when plaintiff is one of the "LCO" registered with the respondent No.9.

65 That even if arguments of the learned senior counsel for the plaintiff/applicant is accepted for the sake of arguments, then also remedy with the plaintiff/applicant is only under section 11, which provides action for violation of section 4(A) of the Cable Television Networks (Regulation) Act, 1995 or one under section 16 of the Act, but the violation of section 4A certainly does not give any right to the plaintiff/applicant to invoke the jurisdiction of this Court to seek injunction.

66 Reference was also made section 12, 13, 14 and 15, to contend that before taking action under section 11, procedure prescribed under statute is to be followed which provides necessary safeguards. The plaintiff by ignoring statutory provisions of the Act, cannot seek injunction from this Court. That this Court has no jurisdiction to entertain the suit under section 14 and 15 of the Telecom Regulatory Authority of India Act, 1997. That one Vidya Sagar has also filed application No.5 of 2013 before the Telecom Disputes Settlement and Appellate Tribunal against the respondent No.9 and others claiming same relief in

which notice has been issued to the respondent No.9 on 16.1.2013 for preliminary hearing.

67 The contention of the learned Additional Advocate General was that the issue raised in suit is covered under section 14 of the Cable Television Networks (Regulation) Act, 1995 which bars the jurisdiction of the civil Court.

68 The learned Additional Advocate General referred to section 2(e) of the TRAI Act, 1997 which defines "licensee" to mean any person licensed under sub-section (1) of section 4 of the Indian Telegraph Act, 1885 (13 of 1885) for providing specified public telecommunication services.

69 He also referred to section 2(ea) of the TRAI Act, 1997 which "licensor" to mean the Central Government or the telegraph authority who grants a license under section 4 of the Indian Telegraph Act, 1885.

70 The reference was also made to section 2(aa) of the Cable Television Networks Rules, 1994 which defines "Authority" to mean the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997.

71 The reference was also made to definition under section 2(ee) of this Rules which defines "Multi

System Operator (MSO)" to mean a cable operator who receives a programming service from a broadcaster or his authorized agencies and re-transmits the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more Local Cable Operators (LCOs), and includes his authorised distribution agencies by whatever name called.

72 Whereas "Cable Operator" under this Rule defined to mean any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television networks.

73 The contention of the learned Additional Advocate General was that under section 14 of the TRAI Act, 1997, any dispute between "licensor" and "licensee", or between two or more service providers falls within the jurisdiction of the Telecom Disputes Settlement and Appellate Tribunal and the jurisdiction of the civil Court is barred.

74 It was also contended that the dispute raised by the plaintiff/ applicant being a "Local Cable Operator" duly registered with Post and Telegraph Department, with regard to transmission of programme in violation of 4(A) of the Cable Television Networks (Regulations) Act, 1995 by other "Local Cable Operator" and "MSO" falls under section

75 The reliance was placed on the judgment of the Hon'ble Supreme Court in case of **Union of India (UOI) vs. Tata Teleservices (Maharashtra) Ltd. (2007) 7 SCC 517** to contend that this Court have no jurisdiction. The Hon'ble Supreme Court was pleased to lay down:-

"9. The conspectus of the provisions of the Act clearly indicates that disputes between the licensee or licensor, between two or more service providers which takes in the Government and includes a licensee and between a service provider and a group of consumers are within the purview of the TDSAT. 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 concerned parties, which would involve significant technical aspects, are to be determined by a specialised tribunal constituted for that purpose. There is also an ouster of jurisdiction of the civil court to entertain any suit or proceeding in respect of any matter which the TDSAT is empowered by or under the Act to determine. The civil court also has no jurisdiction to grant an injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act. The constitution of the 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 thereof have to be of the cadre of secretaries to the Government, obviously well experienced in administration and administrative matters.

10. 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 in the light of the National Telecom Policy, 1994. This is emphasised by the Objects and Reasons also.

11. 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 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 the TDSAT.

12. Section 14A of the Act gives the right to the Central Government, or to the State Government to approach TDSAT on its own. Going by the definitions in the Act, both Governments could be service providers. The Central Government could also be the licensor. Thus, either as a licensor or a service provider, the Central Government could make an application to TDSAT seeking an adjudication of any dispute between it and the licensee or between it and another service provider or between it and a group of consumers. It has actually to make its claim in TDSAT. There is no reason to whittle down the right given to the Central Government to approach the TDSAT for an adjudication of its claim which comes under Section 14(1) of the Act. Normally, a right to make a claim would also include a right to make a cross-claim or counter claim in the sense that the Central Government could always make an independent claim on matters covered

under the Act and such a claim will have to be entertained by the TDSAT. This the Central Government could do even while it is defending a claim made against it in TDSAT, by way of a separate application. If a subject matter is capable of being raised before the 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 counter claim when the other side, namely, the licensee or consumers, had already approached the TDSAT with a claim of their own and the Central Government is called upon to defend it. It is, therefore, not possible to accept an argument that a counter claim by the Central Government or State Government cannot be entertained by the TDSAT. We hold that the TDSAT has jurisdiction to entertain a counter claim in the light of Section 14(1) and 14A of the Act.

13. The thrust of the argument on behalf of the respondent before us was, in a case where, a licence had not actually been issued to a party by the Central Government, the dispute could not be said to be one between a licensor and a licensee, contemplated by Section 14(a)(i) or (ii) of the Act. It is submitted that only on the actual grant of a licence, a person would become a licensee under the Central Government and only a dispute arising after the grant of a licence would come within the purview of the Act. The wording of the definition of licensee is emphasised in support. Considering the purpose for which the Act is brought into force and the TDSAT is created, we think that there is no warrant for accepting such a narrow approach or to adopt such a narrow construction. It will be appropriate to understand the scope of Section 14(a)(i) of the Act and for that matter Section 14(a)(ii) of the Act also, as including those to whom licenses were intended to

be issued and as taking in also disputes that commence on the tender or offer of a person being accepted. In other words, a dispute commencing with the acceptance of a tender leading to the possible issue of a licence and disputes arising out of the grant of licence even after the period has expired would all come within the purview of Section 14(a) of the Act. To put it differently, Section 14 takes within its sweep disputes following the issue of a Letter of Intent pre grant of actual licence as also disputes arising out of a licence granted between a quondam licensee and the licensor.

14. In the case on hand, the Notice Inviting Tender defined a "licensee" as a registered Indian Company that will be awarded licence for providing the service. Now, pursuant to that invitation, the predecessor of the respondent submitted its tender and the appellant accepted it. A Letter of Intent was also issued. The respondent accepted and started negotiating for certain modifications, which apparently the appellant was willing to consider. But ultimately, the contract did not come into being. The licence was not actually granted. It is the case of the appellant that the appellant had suffered considerable loss because of the respondent walking out of the obligation undertaken by acceptance of the Letter of Intent. According to the learned Additional Solicitor General appearing for the appellant, such a dispute would also come within the purview of Section 14 of the Act going by the definition of licensee and the meaning given to it in the Notice Inviting Tenders. The argument of learned Senior Counsel on behalf of the respondent is that the expressions "licensor" and "licensee" are defined in the Act and the respondent had not become a licensee and the appellant had not become a licensor since the agreement was never entered into between

the parties for providing telecom services in the Karnataka Telecom Circle and the attempt to rope in an intending licensee to whom a Letter of Intent has been issued or the entering into a contract is proposed, cannot be countenanced since the respondent has not become a licensee within the meaning of the Act and consequently this was not a dispute that came within the purview of Section 14(1) of the Act.

15. We have already indicated that a specialised tribunal has been constituted for the purpose of dealing with specialised matters and disputes arising out of licenses granted under the Act. We therefore do not think that there is any reason to restrict the jurisdiction of the tribunal so constituted by keeping out of its purview a person whose offer has been accepted and to whom a letter of intent is issued by the Government and who had even accepted that letter of intent. Any breach or alleged breach of obligation arising after acceptance of the offer made in response to a Notice Inviting Tender, would also normally come within the purview of a dispute that is liable to be settled by the specialised tribunal. We see no reason to restrict the expressions "licensor" or "licensee" occurring in Section 14(a)(i) of the Act and to exclude a person like the respondent who had been given a Letter of Intent regarding the Karnataka Circle, who had accepted the Letter of Intent but was trying to negotiate some further terms of common interest before a formal contract was entered into and the work was to be started. To exclude disputes arising between the parties thereafter on the failure of the contract to go through, does not appear to be warranted or justified considering the purpose for which the TDSAT has been established and the object sought to be achieved by the creation of a specialised tribunal. In Cellular Operators Association of India and

others vs. Union of India and others [(2003) 3 SCC 186] this Court had occasion to consider the spread of Sections 14 and 14A of the Act. This Court held that the scope of Sections 14 and 14A are very wide and is not confined by restrictions generally imposed by judge made law on the tribunal exercising an appellate jurisdiction. Of course, their Lordships were considering in particular, the case of appellate jurisdiction. But this Court further said that the tribunal has the power to adjudicate on any dispute but while answering the dispute, due weight had to be given to the recommendations of the authority under the Act which consists of experts. This decision, though it did not directly deal with the power of the TDSAT as the original authority but was dealing with the power of the TDSAT as an appellate authority and the power of this Court in appeal, clearly gives an indication that there is no need to whittle down the scope of Sections 14 and 14A of the Act"

76 The contention therefore was that the plaintiff/applicant has failed to make out a prima facie case and that the balance of convenience is also in favour of the defendants/respondents, as the respondent No.9 is running cable TV network in public interest to provide transmission and furthermore, no irreparable loss is likely to cause to the plaintiff/applicant.

77 On consideration, I find that prima facie, it is admitted case of the parties that there is violation of <https://hcservices.ecourts.gov.in/hcservices/> section 4(A) of the Cable Television Networks (Regulations)

Act, 1995 by the respondents, as the respondents 1 and 2 in para 44 of the counter affidavit have admitted that besides transmitting signals under DAS system they are transmitting signals through analogue mode to others having no Set Top Boxes.

78 It is admitted by the respondent No.9 that they are providing only analogue system and therefore, are violating law for which the respondents can be prosecuted under section 11 and section 16 of the Cable Television Networks (Regulations) Act, 1995.

79 But the question to be decided in this case is

"Whether the plaintiff/applicant can maintain this application for grant of interim injunction."

80 The Answer is "NO".

81 The plaintiff/applicant seeks injunction against the respondents for violating section 4(A) of the Cable Television Networks (Regulations) Act, 1995. The violation is dealt with under Chapter III i.e. Section 11 of Cable Television Networks (Regulations) Act, 1995. The remedy of the applicant/plaintiff therefore was to invoke provisions of section 11 for taking action against persons

<https://hcservices.ecourts.gov.in/hcservices/> for violating section 4(A) of the Act. The act provides the procedure as laid down under section 13, 14 of

the Act to take action, whereas the person aggrieved can file an appeal. The action can also be taken under section 16 of the Act. But as far as the maintenance of civil suit is concerned, the same is barred under section 15 of the Act.

82 The judgment of this Court in the case of ***M/s.New Galaxy Netcom. vs. S.C.V. (supra) and O.S.A.No.425 to 428 of 2009 decided on 27.4.2010 (supra)*** have no application to the present case, as the points in issue in these case were entirely different and with issue raised in these cases did not fall under section 14 of the Cable Television Networks (Regulations) Act, 1995. But in the case in hand, the plaintiff/applicant being a registered licensee under the Act as "Local Cable Operator" is having dispute with other Cable Service providers alleging violation of section 4(A) of the Act. Therefore, in view of the judgment of the Hon'ble Supreme Court in the case of ***Union of India (UOI) vs. Tata Teleservices (Maharashtra) Ltd. (supra)***, the matter is squarely covered under section 14 of the Cable Television Networks (Regulations) Act, 1995. Therefore, bar under section 15 of the Act, would come into operation.

83 The contention of the learned Additional Advocate General for the respondent No.9 and the learned counsel for the respondent No.1 and 2 that the suit as framed is not maintainable on account of non joinder of

necessary parties, cannot be accepted for the reason that the defendant No.9 has itself chosen to implead as party to the suit. Therefore, it cannot be said that suit is bad for non joinder of necessary party or suit is not maintainable.

84 It cannot be said that the plaintiff/applicant has prima facie case to seek injunction nor the balance of convenience is in favour of the plaintiff/applicant as plaintiff/applicant is not likely to suffer any irreparable loss. The remedy for violation is provided under the Act under section 11 and 16 whereas civil suit is barred in view of law laid down by the Hon'ble Supreme Court in **Union of India (UOI) vs. Tata Teleservices (Maharashtra) Ltd. (supra)**.

Consequently, finding no merit, the application is ordered to be dismissed, but with no order as to costs.

sd/.V.K.S.J

31.01.2013

//Certified to be a true copy//

Dated this the day of 2013.

R.s/19.02.2013

COURT OFFICER

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