

Den Networks Limited Vs Hem Chand Cable TV Network and Anr

Court: Telecom Disputes Settlement And Appellate Tribunal

Date of Decision: Jan. 10, 2025

Acts Referred: Telecom Regulatory Authority of India Act, 1997 " Section 14, 14A
Evidence Act, 1872 " Section 102

Hon'ble Judges: Ram Krishna Gautam, Member

Bench: Single Bench

Advocate: Vibhav Srivastava, Aashi Arora

Final Decision: Allowed

Judgement

Ram Krishna Gautam, Member

1. The present Petition, is being filed under Section 14 read with Section 14A of the Telecom Regulatory Authority of India Act, 1997 (As Amended

from time to time) (hereinafter referred to as "TRAI Act") on behalf of the above Petitioner Company, against the Respondent No. 1, Hem

Chand Cable TV Network, a Local Cable Operator, bearing LCO code LCOALG123 in the Petitioner's system, for default on the part of it in

making payment of subscription fee from the subscribers, to the Petitioner for availing Cable signal feed, amounting to Rs. 13,175/- (Rupees Thirteen

Thousand One Hundred Seventy Five Only) as on 31st December, 2020. It is further submitted that Respondent No. 1 has migrated to the competitor

MSO of the Petitioner i.e. Raj Cable Network, Respondent no.2, without clearing the outstanding amount due and payable by the Respondent No. 1 to

the Petitioner. It is submitted that the Respondent No. 1 has taken 69 Set Top Boxes from the Petitioner for deployment at subscribers' house. It

is mentioned in the petition that such STBs are the exclusive property of the Petitioner and has been mentioned in the agreement executed, in

between, the parties. Each set top box was worth Rs. 1999/- per set top box. The petitioner prays for directions to the Respondents to jointly and

severally clear the outstanding subscription dues of Rs. 13,175/- (Rupees Thirteen Thousand One Hundred Seventy Five Only) as on 31st December,

2020 and to return 69 Set Top Boxes in good and working condition which has been issued to Respondent no.1 or in lieu of that pay an amount of

Rs.1,37,931/-(Rupees One Lakh Thirty Seven Thousand Nine Hundred Thirty One Only) @ Rs. 1999/- per Set Top Box. It has further been prayed

to restrain Respondent no. 2 from inducing a breach of any agreement between Petitioner and Respondent no.1 by ordering permanent injunction with

restoration of the set top boxes of the Petitioner at subscribers premises, if any, and also to restrain the Respondent No. 1 to receive cable TV signals

from Respondent no. 2 or any other MSO until the Set Top Boxes of Petitioner returned to the Petitioner in good and working condition or cost

equivalent to such set top boxes is paid by the Respondent No.1 and further to restrain the Respondent no. 2 from supplying signals to Respondent no.

1 until the dues of the Petitioner are cleared and STBs are returned to the petitioner. The prayer is to declare the Respondents as defaulters with

further orders as this Tribunal, may deem fit and appropriate, in the facts and circumstances, of the present case alongwith cost in favour of the

Petitioner and against the Respondent.

2. In brief, the petition contends that the Petitioner is a cable television service provider, duly registered under the provisions of the Cable Television

Networks (Regulation) Act, 1995, (as amended upto date) (hereinafter referred to as "Cable Television Act") and is carrying on Distributor

Platform Operator [hereinafter referred to as "DPO"] business. Respondent No. 1, Hem Chand Cable TV Network, is a Local Cable Operator

and has received encrypted Cable Signal feeds of television channels from the addressable system of the Petitioner to retransmit the same through its

Cable Television network to the subscribers. The Respondent has entered into an interconnect agreement on 19th October, 2019 (herein after referred

to as "Agreement") with Petitioner for obtaining Cable Signal feed from 19th October, 2019 onwards. Copy of the agreement dated 19th October,

2019 is annexed herewith and marked as Annexure- P1. The Respondent no. 2, Raj Cable Network, is also engaged in the business of cable television

service under the provisions of the Cable Television Act, 1995 and is the working in the area of operation of the Petitioner and is service provider

under TRAI Act, 1997.

3. The Respondent No. 1 has defaulted in meeting with its obligations, as laid down under the agreement, by not making payments towards the

monthly subscription charges and has swapped the set top boxes of the Petitioner and migrated to Respondent no.2, without giving any notice on

clearing the dues of the Petitioner, whereas Petitioner has fulfilled its obligation under the Agreement and ensured uninterrupted supply of signals to

Respondent No.1. Petitioner has suffered heavy financial losses, hence, the Petitioner is seeking intervention of this Tribunal to pass appropriate

directions, in accordance with law.

4. This Tribunal has the jurisdiction to entertain and try the present petition under the provisions of the TRAI Act and it has been filed within the

limitation period.

5. It has been mentioned that on the basis of the terms of written Agreement, the Petitioner on a monthly basis raised invoices on the Respondent No.

1, for the payment of subscription amount collected from subscribers. Copy of one of the invoices raised by the Petitioner towards monthly

subscription charges are annexed herewith and marked as Annexure P-2. Also a copy of the statement of Accounts maintained by the Petitioner

Company is annexed herewith and marked as Annexure P-3. Petitioner on many occasions, orally requested the Respondent No. 1 to clear the

outstanding amount, but the Respondent No. 1 paid no heed to requests of the Petitioner and continued to default in making any payments and giving

false assurances that the same will be cleared soon. Then Petitioner issued a demand notice to the Respondent No. 1. That the copy of Demand

Notice dated 3rd March 2021 to Respondent No. 1, is annexed herewith and marked as Annexure- P4.

6. Despite several requests of the Petitioner, Respondent No. 1 did not come forward to clear the outstanding dues of the Petitioner, nor returned the

Set top boxes issued by the Petitioner and swapped the boxes of the Petitioner in connivance with Respondent no. 2 and migrated completely to

Respondent no. 2. As per contention of the petitioner, the total outstanding liability of the Respondent No. 1, as per the Agreement executed between

the parties is Rs. 13,175/- (Rupees Thirteen Thousand One Hundred Seventy Five Only) towards subscription fee as on 31st December, 2020 and

total of 69 STBs or sum of Rs.1,37,931/- (Rupees One Lakh Thirty Seven Thousand Nine Hundred Thirty One Only) towards the total amount of

STBs is due and payable from respondent no. 1. Further it is also stated that the Petitioner is also entitled to recover from the Respondent No. 1, an

interest at the rate of 18% p.a. on such outstanding amount from the date it became due till the date of realization.

7. Mr. Siddharth Priya Srivastava, is the Authorised Signatory of the Petitioner's Company, duly authorised to file this petition vide Board

Resolution dated 15.01.2019, which is annexed as Annexure P 5 to petition.

8. After giving sufficient opportunities to the respondents, neither appearance, nor any reply got filed. Hence, on 15.1.2024, the respondents were

proceeded ex parte.

9. Evidence by way of affidavit dated 3rd December 2021 was filed by Mr. Siddharth Priya Srivastava of petitioner's company reiterating the

contentions of the petition in totality. No evidence, either oral or documentary, for and on behalf of Respondent, could be filed, by Respondents.

10. Petitioner also filed written arguments in this petition specifying the details of the amount to be awarded to the petitioner.

11. Heard learned counsel for the petitioner and gone through the material placed on record.

12. Hon'ble Apex Court in Anil Rishi Vs. Gurbaksh Singh AIR 2006 SC 1971 has propounded that onus to prove a fact is on the person who

asserts it. Under Section 102 of The Indian Evidence Act, initial onus is always on the plaintiff to prove his case and if he discharges, the onus shifts to

defendant.

It has further been propounded in Premalata Vs. Arhant Kumar Jain- AIR 1976 SC 626 that where both parties have already produced whatever

evidence they had, the question of burden of proof ceases to have any importance. But while appreciating the question of burden of proof and

misplacing the burden of proof on a particular party and recording of findings in a particular way will definitely vitiate the judgment. The old principle

propounded by Privy Council in Lakshman Vs. Venkateswarloo AIR 1949 PC 278 still holds good that burden of proof on the pleadings never

shifts, it always remains constant. Factually proving of a case in his favour is cost upon plaintiff when he fulfils, onus shifts over defendants to adduce

rebutting evidence to meet the case made out by plaintiff. Onus may again shift to plaintiff. Hon'ble Apex Court in State of J & K Vs Hindustan

Forest Co. (2006) 12 SCC 198 has propounded that the plaintiff cannot obviously take advantage of the weakness of defendant. The plaintiff must

stand upon evidence adduced by him. Though unlike a criminal case, in civil cases there is no mandate for proving fact beyond reasonable doubt, but

even preponderance of probabilities may serve as a good basis of decision, as was propounded in M Krishnan Vs Vijay Singh- 2001 CrLJ 4705.

Hon'ble Apex Court in Raghvamma Vs. A Cherry Chamma AIR 1964 SC 136 has propounded that burden and onus of proof are two

different things. Burden of proof lies upon a person

who,

who has to prove the facts and it never shifts. Onus of proof shifts. Such shifting of onus is a continuous process in evaluation of evidence.

13. This Petition, before this Tribunal, is a civil proceeding and in civil proceeding, the preponderance of probabilities, is the touchstone for making a

decision, as against strict burden of proof, required in criminal proceeding.

14. As there is no privity of contract, in between, petitioner and respondent no. 2 and proposition of law laid down by this Tribunal, in many cases is of

this effect, as competitive MSO, having no privity of contract, will not be held liable for any default made by LCO with regard to liability arisen with

other competitive MSO, out of interconnect agreement, in between, petitioner and that LCO. Hence, respondent no. 2 is not to be fastened with any

liability. Therefore, no relief against competing service provider may be claimed or awarded.

15. Since, during the proceeding before this Tribunal, the respondents chose not to appear, nor filed their reply, nor participated, hence, there is no

negation of contents of petition. Hence, this petition merits its allowance with costs. Further, Petitioner's evidence Affidavit is with reiteration and

the contention of the petition, wherein the interconnect agreement has been made Annexure to affidavit, and it was not controverted by respondents.

Issuance of 69 STBs, along with VCs, in compliance of interconnect agreement, in between, petitioner and respondent no. 1, has been stated in this

uncontroverted affidavit. The price per STB, is given as Rs. 1999/-, and total amount, as a cost of these STBs as well as VC has been calculated to

be Rs. 1,37,931/-. Whereas, as per the agreement entered, in between, the compensation for STBs, ought to be the depreciated value of STB and this

Tribunal, very often has decided depreciation of 15% for the value of purchase. (BP No. 267 of 2019 - Hathway Digital Private Limited Vs. Jaipur

Cable Network). Hence, Rs.1999/- has been claimed as the value of per STBs, and with depreciated value, it will come to Rs. 1699/- per STB.

Hence, the amount payable in case of failure to restore the STBs and VCs, will come to Rs. Rs.1,17,231/- (Rs.1699*69 STBs).

16. Unrebutted affidavit of Petitioner is in fully reiteration and corroboration of Petition. These facts have been fully proved by Petitioner, by way of

uncontroverted affidavit. Hence, Petitioner had proved its case with all precise and cogent evidence. The Petition is to be decreed for an amount of

Rs. 13,175/- (Rupees Thirteen Thousand One Hundred Seventy Five Only), Rs. 1,17,231/- (Rupees One lakh Seventeen Thousand Two Hundred and

Thirty one Only) (Rs.1699*69 STBs) along with pendente lite and future interest @ 9% p.a., an interest, which is being very often awarded in present

fiscal scenario, by this Tribunal in other decided Petitions.

ORDER

Petition is being allowed with cost. Respondent No. 1 is being directed to make deposit within two months, from the date of judgment, the outstanding

subscription dues of Rs. 13,175/- (Rupees Thirteen Thousand One Hundred Seventy Five Only) as on 31st December, 2020, and to return total 69 Set

Top Boxes in good and working condition, which has been issued to it or in lieu of that, pay the total amount of Rs. 1,17,231/- (Rupees One lakh

Seventeen Thousand Two Hundred and Thirty one Only) @ Rs. 1699/- per Set Top Box, along with pendente lite and future interest @ 9% p.a., till

actual date of payment, in Tribunal, for making payment towards petitioner.

Formal order / decree be got prepared by office, accordingly.