

(2007) 07 JH CK 0012
Jharkhand High Court
Case No: None

R.G. Gupta and Sons (JCCN)

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: July 4, 2007

Acts Referred:

- Telecom Regulatory Authority of India Act, 1997 - Section 14

Citation: (2007) 4 JCR 73

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.K. Merathia, J.

Heard the parties for final disposal.

2. The main question involved in this case is as to whether in view of Clause 3.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 ("Regulation" for short), petitioner can be compelled to supply Television Signals to the distributors of T.V. Channels-Cable Operators, with whom there is dispute inter alia with regard to the dues; on the purported ground of Law and Order problem or public interest.

3. The relevant facts, in short, are as follows. Petitioner is a multi-system operator. The sixteen interveners are the Cable Operators to whom T.V. Signals were/are used to be provided by the petitioner against payment of the charges. Dispute arose between the petitioner and the interveners over payment of dues. They sought to establish and run their own control room. The interveners approached one MLA, who directed the Deputy Commissioner, who in turn, directed the S.D.O. to look into the matter and then S.D.O. intervened. Petitioner objected to the same on account

of the dispute about the dues and sought permission to stop the T.V. Signals to the Cable Operators till the dues are cleared. The Cable Operators undertook to clear the dues and on such undertaking petitioner was directed by the S.D.O. not to stop T.V. Signals. He further directed the parties to settle/get their disputes decided by the competent authority before whom the disputes of some of the Cable Operators were pending and till then the Cable Operators were allowed to operate through their new control room but they were directed not to secure T.V. Signals from any other Cable Operators without permission of the local administration.

4. Mr. Kalyan Roy, appearing for the petitioner, submitted that there is no provision under which the petitioner is bound to provide T.V. Signals to the defaulting Cable Operators. If they had any dispute with regard to payment of the dues and other matters, they could approach the competent authority i.e. Telecom Disputes Settlement and Appellate Tribunal ("the tribunal" for short) but they moved the S.D.O. When the S.D.O. tried to mediate, they agreed to pay the dues but did not pay and now huge amounts are due from them.

5. Mrs. A.R. Choudhary, appearing for the interveners, submitted as follows. Petitioner has wrongly said that its registration/licence has been renewed up to December, 2007, whereas it expired in 2005. Petitioner filed; cases against three Cable Operators before the Tribunal for payment of the dues and restraining them from obtaining T.V. Channel Signals from any other source till the dues are cleared. The Tribunal while adjourning the case on the request of the respondents-the Cable Operators, made it clear that the petition was only for recovery of money and it has nothing to do with supply of signals. Thus no interim relief was granted to the petitioner and therefore this Court may not interfere with the aforesaid order of S.D.O. allowing the interveners to operate from their control room, pending the dispute regarding dues.

6. Mr. K.K. Jhunhunwala, appearing for the State, submitted that in order to maintain Law and Order and in the interest of the consumer-public, the S.D.O. tried to mediate into the disputes with regard to payment and his order is not encroachment on the powers of the tribunal to decide the disputes. The S.D.O. tried to make arrangements till the parties get their disputes decided by the tribunal. Relying on the judgment dated 21.12.2004 passed in W.P. (C) No. 5022 of 2004 Steel City Cable Network v. State of Jharkhand, he submitted that the S.D.O has power to issue such direction.

7. Mr. Manish Kumar, appearing for respondent No. 4 - the Licensing/Registering Authority, submitted that petitioner has been depositing the renewal fee every year and therefore his licence is continuing. He further submitted that the local administration's role is limited to prohibiting transmission in certain circumstances in public interest. The tribunal is only competent to decide the disputes of payment between the petitioner and the Cable Operators.

8. In view of the said stand of the Licensing Authority, the objection that petitioner's licence is not continuing, is rejected.

In view of Section 14 of the Telecom Regulatory Authority of India Act, 1997 (the Act for short), the tribunal is competent to decide the disputes between the petitioner and the Cable Operators. But petitioner cannot be compelled to move against all the Cable Operators and till the disputes are settled, continue to provide T.V. Signals to them. Relevant portion of Clause 3.2 of the Regulation reads as follows:

...Multi system operators shall also on request re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators.

Provided that this provision shall not apply in the case of a distributor of T.V. channels having defaulted in payment.

In this case, apparently, there is dispute regarding payment of dues. It is not the case of the interveners that there are no dues at all.

In the case of Steel City Network, (supra), the S.D.O. divided the areas between the Cable Operators. This Court held-"In my opinion, therefore, the impugned order recommending and suggesting division of areas cannot be said to be illegal, arbitrary or against the public interest. However, the ultimate power rests with the Registering Authority to consider the suggestion and recommendation of the Sub-divisional Officer and issue order in this regard; This Court, therefore, without interfering with the order issued by the Sub-divisional Officer, directs the Registering Authority to consider the recommendation of the Sub-Divisional Officer and take a final decision in the matter of division of areas of the cable operators as expeditiously as possible and preferably within a period of one month from the date of production/receipt of a copy of this order."

In the present case also, the S.D.O. asked the parties to settle/get their disputes settled by the tribunal, and made interim arrangement, by allowing the interveners to continue, on their undertaking to clear the dues. In terms of Clause 3.2 of the Regulation the petitioner cannot be compelled to transmit T.V. Signals to the interveners, who have defaulted in payment of the charges, on the threat of purported Law and Order problem, till finalisation of the disputes between them. Such disputes can be decided only by the tribunal constituted u/s 14 of the Act. If the Cable Operators has got any dispute with the petitioner, they are free to move the tribunal for appropriate orders, but they cannot resort to such illegal pressure tactics through the M.L.A. and local administration. If the Cable Operators try to take law in their hands, the local administration should be competent to handle the situation. Further, no public interest is involved if the consumers do not get T.V. signals.

Accordingly, the order of S.D.O. is modified to the extent that the interveners settle/get their disputes settled by the tribunal, they will not be entitled to get T.V.

Signals from the petitioner or any other person.

9. This writ petition is allowed to the extent indicated above, with cost of Rs. 500/- payable by each intervener to the petitioner.