

26.

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 16.04.2009

+ W.P. (C) 8112/2009

DIGICABLE NETWORK INDIA PVT. LTD. Petitioner

Through: Mr. Rajiv Nayyar, Sr. Advocate
with Mr. Yoginder Handoo and
Mr. Tejveer S. Bhatia, Advocates.

versus

STAR DEN MEDIA SERVICES PVT. LTD. Respondent

Through: Mr. Ramji Srinivasan,
Sr. Advocate with Mr. Gaurav Juneja
and Ms. Vartika Sahay, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J. (OPEN COURT)

% Heard the counsel.

2. The petitioner is aggrieved by order dated 1.4.2009 issued by the Telecom Disputes Settlement & Appellate Tribunal (hereafter referred to as TDSAT). By the impugned order, the Tribunal varied its previous interim order, made on 6.3.2009 whereby it had directed the suspension of the

public notice dated 15.2.2009 issued by the first respondent.

3. Briefly the facts are that the petitioner took over an existing cable network which was fed by the first respondent's signals in July, 2008. Concededly, the existing agreement covered certain areas and was to end on 31.12.2008. The petitioner felt aggrieved by the notice issued by the first respondent, proposing to suspend the services. In its Petition, before the Tribunal, the present petitioner contended that pursuant to negotiations an understanding reached between the parties on 31.12.2008, evidenced by letter dated 31.12.2008, 13.1.2009 and 11.2.2009, whereby the period of the agreement was to be extended, as well as the area. On the strength of these and other averments, the petitioner approached the Tribunal claiming substantive reliefs, as well as an interim order for suspension of operation of the public notice dated 15.2.2009 issued by the first respondent.

4. The TDSAT by its order dated 6.3.2009 directed as follows: -

"Notice. Mr.Gaurav Juneja accepts notice on behalf of the respondent and requests for time to seek instructions.

Post this matter for further directions on 16.3.09. In the meanwhile, the respondent will not give effect to the Public Notice dated 15.2.09.

Counsel for the respondent submits that the petition filed by the petitioner is supported by an affidavit dated 21.2.09 which is, on the face of it, false as petition bears the date 5.3.09 and on 21.2.09 the deponent could not have stated what he has stated in para-2 of the affidavit."

5. On the next date of hearing, the order was extended in the following terms: -

"Notice on M.A. No.32 of 2009. Mr. Akshat Hansaria accepts notice. It is submitted on behalf of the respondent that its counsel are not available today. Request is made for adjournment which is not opposed. List again on 30.3.2009 under the category of 'direction' matters."

6. As is evident, the above order was in context of an application moved before the Tribunal. The matter was again listed on 1.4.2009 when the order impugned in the present proceedings was made. The said order reads as follows: -

"Learned counsel for the respondent has pressed for clarification of the interim order dated 6.3.2009 because according to him the petitioner has unauthorisedly extended to areas which are outside the agreement under the cover of the said interim order. Our attention has been drawn to the existing agreement between the parties as per which the petitioner is authorised to give signals in specific areas mentioned in letter dated 23.2.09 from respondent at page-36 of the paper book. In view of this, we clarify that the interim order dated 6.3.2009, directing that the Public Notice dated 15.3.2009 shall remain stayed, is subject to the petitioner confining to the areas mentioned in the letter referred to above.

Reply be filed within two weeks as prayed by the learned counsel for the respondent. Rejoinder thereto may be filed within two weeks thereafter. List for hearing on 15.5.2009.

M.A.No.32 of 2009

This application is not opposed. Accordingly, the fresh affidavit filed by the petitioner is taken on record. The M.A. stands disposed of."

7. The petitioner contends that a conjoint reading of the concerned letters i.e. dated 31.12.2008, 11.2.2009 as well as the letter of the first respondent dated 23.2.2009 would disclose that an agreement existed between the parties regarding the continuation of the arrangement as well

as the extension of the area. It was submitted that in these circumstances, the Tribunal committed an error in varying the interim order made earlier on 6.3.2009. It was contended by learned senior counsel for the petitioner that the essential premise of the impugned order is that the petitioner had unauthorizedly extended the areas which were over and above the areas (covered by the agreement) under cover of the interim order. Counsel emphasized that the Tribunal was not presented with any application or even reply, and that in the circumstances by varying the terms of interim order which subsisted since 6.3.2009 the TDSAT overstepped its limits. Learned counsel relied on the correspondence between the parties as well as the notice issued by the first respondent on 15.2.2009.

8. Learned senior counsel for the respondents, appearing on advance notice resisted the submissions and relied on the letters written in reply to the petitioner's correspondence on 12.2.2009 and 23.2.2009. It was submitted that the first respondent always consistently maintained that the petitioner had unauthorizedly sought to extend the area from what was permitted under expired agreement. He particularly relied upon para 4 of the letter dated 23.2.2009. He submitted that the TDSAT's order was based on the materials on record, and made within its jurisdiction.

9. The above discussion would show that the petitioner's grievance is in respect of the order of the TDSAT by which it varied the terms of a previous order. The ground urged principally is that in the absence of pleadings or any application, TDSAT could not have varied or changed the terms of the

order as it did. According to the submissions, the TDSAT was made aware of whatever materials were to be taken into consideration, which persuaded it to adopt the course as it did on 6.3.2009. There was no change in the circumstances or new development to which the petitioner was put to notice, that could have led to the restricting the terms of the subsisting interim order.

10. The petitioner's arguments, may be divided into two parts. The first deals with what may be termed as the premise of the impugned order. This in turn stems out of the earlier order. No doubt the tenor of the Tribunal's order is that the respondent (first respondent – service provider) had contended for clarification because according to it, the petitioner had unauthorizedly extended the areas under cover of the interim order. Had the order been based solely on that submission, the petitioner may have been correct. However, one cannot ignore entirety of the order; it records the existence of the agreement as well as the letter dated 23.2.2009. In the circumstances, to say that the Tribunal was made to believe that the petitioner had extended the area due to the interim order only on the basis of counsel's submission is not accurate. The recording of the order may lead to such impression; this Court is clear that such was not the intention and that the Tribunal did what it did on an overall conspectus of the facts.

11. As far as the second, perhaps more substantial objection to the impugned order is concerned, the petitioner contends that without any application for variation or reply on the record, the Tribunal could not have

varied the interim order. A copy of the petition before the TDSAT has been placed on the record of this Court. In that, the present writ petitioner mentions about an agreement having been entered into whereby the tenure and the area was supposed to have been extended. No doubt, this letter was a part of the record; whether the Tribunal's notice was specifically drawn to each of these letters or not is not borne out from the initial order dated 6.3.2009. However, what is clear from a reading of the impugned order is that the Tribunal specifically took note of the letter of the first respondent dated 23.2.2009; the same refers to the petitioner's letter dated 11.2.2009. In that letter (i.e. 11.2.2009), the petitioner alluded to the respondent's letter dated 2.2.2009, also mentioning that the substantive agreement had expired on 31.12.2008 and to a meeting whereby it claims that party had agreed to the terms of the new agreement and that the renewal would be on an increased fee of 25%. The final paragraph stated as follows: -

"We state that we till now have completely adhered to the terms of the agreement and had not extended our area of operation. This is evident from the fact that we have requested for your permission when we were willing to extend out area of operation. Be that as it may, now both the parties have negotiated and agreed on defined terms for executing the agreement and this question of illegally extending the area is without any substance."

We request you to execute the agreed subscription agreement for the year 2009 and oblige."

12. The letter of the first respondent dated 23.2.2009, inter alia, states as follows: -

"By your letter dated 24.12.2008 you had tendered your

request for extension of area. In this regard we wish to draw your attention to our letter dated 02.02.09 by which we had conveyed our willingness and requested you to provide us requisite details in terms of Clause 9 of Regulations. By said letter we had made it very clear to you that you cannot unilaterally and without any written agreement with us, extend your area of operation. We had further informed you that your action of unauthorized cable casting affects our commercial interest since we have existing commercial agreements with other operators/affiliates for those areas. Hence we had requested you to stop and immediately refrain from illegal transmission of signals in the area not specifically authorized to you under the Agreement”.

(emphasis supplied)

13. The petitioners did not point out any rule, regulation or circular which constrains the Tribunal from varying the interim order if relevant facts are brought to its notice at any stage during the proceedings. It is not also the case of the writ petitioner that such variations cannot be made and that there is a general practice prevailing in the Tribunal that before a modification or variation is made even on the basis of the facts apparent on the record, invariably applications are to be moved or that formal pleadings are necessary.

14. The Court while exercising or declining to exercise jurisdiction under Article 226 of the Constitution in such cases exercise powers akin to supervisory jurisdiction; it extends to matters of procedure. Where a tribunal conducts its proceedings or concludes on the basis of irregular procedure or over looks substantive aspects of law, the writ Court would be within its jurisdiction to interfere with its order, or proceedings. Barring such instances, interference with interim determinations in pending proceedings would be

unjustified. The Court is satisfied on examination of the materials on record that such interference is not called for.

The Writ Petition is accordingly dismissed.

Order dasti.

**S. RAVINDRA BHAT
(JUDGE)**

APRIL 16, 2009
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