

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

% Judgment delivered on: 05.02.2015

+ **WP(C) 1208/2015**

TAJ TELEVISION INDIA PVT. LTD.

..... PETITIONER

VERSUS

FASTWAY TRANSMISSION INDIA
PVT. LTD. & ANR.

..... RESPONDENT

Advocates who appeared in this case:

For the Petitioner :Mr. Vikas Singh, Sr. Adv. with Mr Tejveer Singh
Bhatia, Mr Kapil Midha & Mr Kunal Vats, Advs.

For the Respondents: Mr Navin Chawla & Mr G.S. Oberoi, Advs. for R-1.
Mr Anurag Ahluwalia, CGSC with Mr T.P. Singh, Adv.
for R-2.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER,J

WP(C) No. 1208/2015 & CM Nos. 2120-2122/2015

1. This petition is directed against an interim order dated 29.01.2015 passed by the Telecom Disputes Settlement & Appellate Tribunal (in short the Tribunal) in petition no. 530(C)/2014, in M.A. No. 265/ 2014, filed in, petition no. 371(C)/2014, along with M.A. No. 230/2014, and in M.A. No. 284/2014, filed in, petition no. 358(C)/2014.

1.1 The reason, I have detailed out the petition numbers, is on account of

the fact that two (2) out of the three (3) petitions being: petition no. 530(C)/2014 and 358(C)/2014, were filed by respondent no.1, i.e., Fastway Transmission Pvt. Ltd. (hereafter referred to as FTPL), while the third petition was preferred by an entity by the name of Indiverse Broadband Pvt. Ltd. (hereafter referred to as IBPL).

1.2 IBPL has not been arrayed as a party to the captioned writ petition.

2. The broad grievance of the petitioner qua the impugned order is that, the Tribunal, has granted final relief at the interim stage without adjudicating upon as to whether a case of piracy, as set up by it, had been made out or not. The petitioner, is also aggrieved by the fact that while the Tribunal recognizes that FTPL does not receive signals in the area in issue, which is Karnal, in the State of Haryana, it proceeded to put in place an interim arrangement pending trial on the specious ground that FTPL would lose its market share; albeit almost on a daily basis. In other words, it is the petitioner's case that, since FTPL does not have a consumer base in the area in issue, qua the channels that it uploads, there could be no question of FTPL's market share, being eroded.

3. In order to adjudicate upon this petition, and the contentions advanced before me, by counsels for both parties; the following broad facts would be required to be noticed.

3.1 FTPL, which is a Multi-System Operator (MSO), re-transmits signals pertaining to various TV channels, received from several broadcasters/content aggregators, including the petitioner, amongst others, to the States of Punjab, Himachal Pradesh and Haryana. Notably this is an averment which finds place in paragraph 2 of the writ petition.

3.2 In view of the above, it appears that FTPL evinced an interest in receiving signals from the petitioner qua its TV channels in respect of the

following cities: Hisar, Rohtak and Jind. For this purpose, it appears discussions were held and, therefore, to take the matter further, a meeting was sought by FTPL vide an e-mail dated 03.06.2014.

3.3 It is the petitioner's case that FTPL's request could not be considered as the e-mail dated 03.06.2014 did not enclose the mandatory documents, and information, as required under the Telecommunication (Broadcasting & Cable Services) Interconnect Regulations, 2004 (in short 2004 Regulations).

3.4 According to the petitioner, FTPL, without authority, commenced re-transmission of petitioner's signals to the city of Karnal, in the State of Haryana, from its head-end located in Ludhiana, in the State of Punjab.

3.5 Having come to know of this situation, the petitioner claims that it sent a cease and desist notice dated 16.07.2014, to FTPL. This notice inter alia required FTPL to refrain from re-transmitting signals of petitioner's channels in the city of Karnal. In response to the same, a reply dated 18.07.2014 was sent by FTPL, wherein it took the stand that it was not re-transmitting the signals, as alleged, and that, it was abiding by the terms and conditions of the subscription agreement. In other words, FTPL took the stand that its operations were confined to the authorized area. As a matter of fact, FTPL offered that a joint survey could be conducted to ascertain the correct facts, and in this behalf indicated that it was ready to deploy its technical personnel. FTPL, concluded its reply by alluding to the fact that, since, it had been informed by the petitioner that the subscription agreement obtaining between them for other territories had expired, it was willing to execute a fresh subscription agreement for all areas.

3.6 Evidently, the aforesaid communication of FTPL was followed by an e-mail dated 26.07.2014, whereby, inter alia, it indicated that they were willing to provide services in Digital Addressable Mode (in short DAS), and

that, in this connection the provisioning of a subscriber base would not be an issue. Furthermore, FTPL also called upon the petitioner to execute a subscription agreement for the year 2014 for the city of Karnal, apart from the cities of Hisar, Jind and Rohtak.

3.7 The petitioner, apparently, was not impressed with the contents of the e-mail dated 26.07.2014 and, accordingly, shot off a letter/ e-mail dated 28.07.2014. By this communication, the petitioner, inter alia, took the stand that FTPL was indulging in piracy by re-transmitting signals from DAS notified area to Non-DAS notified area, i.e., the city of Karnal. It was also indicated that its own survey had shown that the stand taken by FTPL, in its earlier communication, was not accurate. Accordingly, FTPL, was put to notice that, if it did not refrain from re-transmitting its signals to Karnal-city, it will be constrained to terminate their subsisting relationships and deactivate the signals transmitted to its DAS head-end located in Ludhiana. The petitioner, thus, notified FTPL that, the said communication should be treated as a notice under clause 6.1 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television System) Regulations 2012 (in short DAS Regulations). FTPL was also forewarned that if such an eventuality occurred, they would initiate steps to take out a public notice in terms of the DAS Regulations, for the benefit of the consumers at large.

3.8 True to form, the petitioner published a notice on 31.07.2014, in Jansatta daily (circulated in New Delhi).

3.9 FTPL, on the other hand, issued a rebuttal vide communication dated 06.08.2014. In this communication, FTPL, inter alia, stated as follows:

“... At this point it is pertinent to mention that vide our mails dated 3rd June 14 and subsequent mail dated 26th July 14 we had asked for the signals of your bouquet in four cities of Haryana

including Karnal. Subsequent to that during our meeting on this subject you had raised unreasonable demands for the subscription fee towards your bouquet. We had been telling you since the beginning that we want to transmit digital addressable signals only in these four cities of Haryana, wherein due to transparency of the system there is no need of negotiations and we can pay you as per the No. of STB's installed.

We take this letter as an opportunity to request you to give us the rights to run your bouquet in the four cities of Haryana namely Hisar, Jind, Rohtak and Karnal only on RIO rates bases as a stop gap arrangement and when we reach to an agreement on CPS we can sign the same.

We again request you officials to finalize the negotiations on the erstwhile agreements and sign the same and not to give effect to your 6.1 and 6.5 notices..."

4. FTPL, apprehending that the petitioner would proceed to de-activate signals being sent to its DAS head-end in Ludhiana, moved a petition, which was numbered as: 358(C)/ 2014. By this petition, FTPL sought several reliefs, including a prayer that the petitioner should enter into an agreement with it, for supplying signals of TV-channels, for further re-transmission in DAS, amongst other things, to the city of Karnal. By way of interim relief, FTPL prayed that this direction should be issued at rates, which may be found reasonable. In this behalf see prayer clause (c) and (e) of petition no. 358(C)/2014.

4.1 This petition was, however, disposed of on the very first date, i.e., 13.08.2014. On that date, two broad directions were issued by the Tribunal. First, that the disconnection would not be carried out by the petitioner, upon FTPL, filing an affidavit to the effect that, it shall not re-transmit the petitioner's TV-channels to the city of Karnal or any area beyond the agreements in vogue. Second, that FTPL's representative, would visit the petitioner's office for engaging in negotiations to enable parties to enter into

additional agreements. This direction was issued based on the submission advanced on behalf of the FTPL, that it was desirous of extending its operations to the cities, such as, Karnal, Hisar, Rohtak and Jind, and that, for this purpose, it had already made a request to the petitioner.

4.2 As directed by the Tribunal vide its order dated 13.08.2014, FTPL filed an affidavit dated 22.08.2014, on 25.08.2014.

4.3 Apparently, between August and September, 2014, meetings were held. The petitioner's stand is that, it not only requested FTPL to refrain from committing piracy, in particular, with respect to the area in issue, i.e., Karnal, but also called upon it to clear its outstanding dues with regard to the areas, falling in other States, such as, Punjab and Haryana.

4.4 The petitioner, being dissatisfied with the conduct of FTPL, filed a petition under Section 20 of the Telecom Regulatory Authority of India Act, 1997 (in short the TRAI Act) for purported wilful failure, on its part, to adhere to the directions contained in the Tribunal's order dated 13.08.2014. This application was filed, in the disposed of petition bearing no. 358(C)/2014. Though the paper book does not disclose the application number, my guess is that, it stood numbered as M.A. No. 284/2014; which is also an application that was the subject matter of the impugned order.

4.5 While, the aforementioned application was pending, IBPL, the other MSO, filed a petition bearing no. 371(C)/2014. The said petition was filed along with an interlocutory application being: M.A. No. 265/2014. In the said petition, another interlocutory application was filed which was numbered as M.A. No 230/2014. This petition, along with M.A. No. 284/2014, filed in petition no. 358(C)/2014, came to be considered by the Tribunal on 18.11.2014. On that date, after hearing counsels for the parties herein, as also the counsel for IBPL, the Tribunal, posed two questions.

These being:

- “...(i) Whether any television viewer in Karnal is getting to watch the channels of Taj Television through Fastway Transmission?
- (ii) What is the correct subscriber base of the petitioner (Indiverse Broadband)....”

4.6 In view of the aforesaid posers, the Tribunal, came to the conclusion that a joint survey was required. Accordingly, it appointed, a commissioner to do the needful in the matter. The matters were made returnable, by the Tribunal, on 05.12.2014.

4.7 On the returnable date, the learned commissioner sought, extension of time, in view of the fact that he was required to cover a vast area, which comprised of nearly 400 villages. As prayed, time was extended and the matter was posted for further proceedings on 16.01.2015.

4.8 In the interregnum, the petitioner chose to file a complaint with the police with regard to the alleged acts of piracy being committed by FTPL. Based on the complaint, an FIR No. 958 was registered with the police station at Karnal, Civil Lines, on 07.12.2014.

4.9 Being aggrieved, FTPL decided to approach to the Punjab & Haryana High Court by way of a petition under Section 482 of the Code of Criminal Procedure, 1973 (in short the Cr.P.C.) to seek the quashing of the aforementioned FIR. This petition was filed, apparently, on 16/17.12.2014. The petition preferred by FTPL, under Section 482 of the Cr.P.C., was dismissed by Punjab & Haryana High Court vide order dated 17.12.2014, on the ground that it was premature, in view of the fact that the investigation was in progress. Liberty, though was given to FTPL, to raise all pleas before the investigating officer; who in turn was directed to consider the same, albeit in accordance with law.

4.10 It appears that, around the same time, i.e., 16.12.2014, FTPL also

filed a fresh petition under Section 14 read with Section 14A of the TRAI Act. By this petition, FTPL sought a direction from the Tribunal to the effect that the petitioner be called upon to enter into an agreement with it, for the supply of signals qua its channels on such terms and conditions, as may be found, non-discriminatory and reasonable. This petition was numbered as 530(C)/2014.

5. Upon notice being issued in the said petition, reply was filed by the petitioner followed by a rejoinder filed by FTPL. Along with its reply, the petitioner, apparently, filed copies of CDs, which according to it, demonstrated that, FTPL had committed piracy, contrary to the stand taken by it before the Tribunal. In the interregnum, the Commissioner filed its report dated 09.01.2015, on 12.01.2015.

5.1 It is in the background of these facts, that the impugned order came to be passed by the Tribunal. The petitioner being aggrieved by the interim directions, preferred the instant petition, as indicated hereinabove.

Submissions of Counsels

6. In support of the petition, submissions were made by Mr Vikas Singh, learned senior counsel, followed by submissions by Mr Navin Chawla, in rebuttal.

7. Mr Vikas Singh submitted that the interim order was unsustainable, as the Tribunal, without adjudicating upon the charge levelled against FTPL, which is, that it had indulged in piracy, had, put in place an interim arrangement which, in a sense, benefited the wrong doer. It was the learned senior counsel's contention that the rationale for putting the interim arrangement in place was flawed, as FTPL could not have lost its market share vis-a-vis signals qua its TV-channels, as none were supplied to it. Learned counsel further contended that, the seriousness of the petitioner's

charge could be ascertained from the fact that, based on its complaint an FIR had been registered against FTPL.

7.1 It was the learned counsel's contention that, in effect, the Tribunal had granted final relief to the FTPL at the interim stage.

8. Mr Navin Chawla, on the other hand, sought to demonstrate that FTPL was not re-transmitting its signals, as alleged, or at all, to the city of Karnal, and that, on the other hand, it had time and again called upon the petitioner, to enter into an agreement for that purpose. Learned counsel submitted that, the petitioner was obliged to provide signals, if requested, on non-discriminatory basis to all distributors of TV channels, including MSOs under the provisions of clause 3.2 of the 2004 Regulations. In this behalf, it was contended that, imposition of unreasonable terms would constitute denial of request. Learned counsel further submitted that this request was required to be complied, within a reasonable timeframe, which could not exceed sixty (60) days. In other words, after a reasonable time frame had expired, as stipulated in the 2004 Regulations, according to Mr Chawla, FTPL had a right to approach the Tribunal, to request for issuance of an appropriate direction qua the petitioner.

8.1 Mr Chawla, thus, submitted, that the Tribunal, having regard to the aforesaid aspects, put in place an interim arrangement and, at the same time, issued directions for expedition of trial, with the consent of the parties herein.

REASONS

9. Having heard the counsels for parties, and perused the record, what clearly emerges is that, the impugned order was passed by the Tribunal, having regard to the following scenario.

(i) The petitioner claimed that FTPL was indulging in piracy by re-

transmitting the signals qua its TV-channels, in the city of Karnal.

(ii) FTPL, on the other hand, denied the charge and, to back that claim, it placed reliance on the report of the Commissioner, appointed by the Tribunal.

(iii) If FTPL was right in its contention, then it could under clause 3.2 of the 2004 Regulations move the Tribunal for issuance of a suitable direction for supply of signals by the petitioner. In this behalf, FTPL had moved petition no. 530(C)/2014.

(iv) IBPL, the other MSO, was seeking reduction of its subscriber base; which was the basis for arriving at the monthly subscription, it was called upon to pay to the petitioner.

(v) In support of its charge, the petitioner had preferred a petition under Section 20 of the TRAI Act for alleged, wilful failure of FTPL, in complying with the Tribunal's order dated 13.08.2014.

10. In view of the aforesaid circumstances could it be said that, the Tribunal had exercised its jurisdiction with material irregularity? It is no one's case that the Tribunal, did not have jurisdiction to pass the impugned order. In my view, no irregularity has been committed by the Tribunal, in passing, the impugned order. The reason for the same is clearly evident from the record and, on a bare perusal of the impugned order. I must, therefore, for the sake of convenience extract the findings and the conclusion of the Commissioner appointed by the Tribunal:

“.... In view of the inspection and the survey conducted my view in respect of:

Whether any television viewer in Karnal is getting to watch the channels of Taj Television through Fastway Transmission?

I visited Karnal on several dates for survey and from the statements of the LCOs and even from some subscribers and also after viewing the Television programs and turning the

channels on the Television sets it was found that the channels of Taj Television were not running on any of the TV set at the time when survey was conducted. Neither was it established after recording statements from various LCOs that ZEE channels were being transmitted through Fastways Transmission. In fact I visited the control room of Fastways Transmission and the signals of Taj Television were not found either in analogue or digital mode...”

(emphasis is mine)

11. Quite clearly, the conclusion, arrived at by the Commissioner, pursuant to a survey, at least, set up, an arguable case, at this stage, in favour of FTPL that, it was not re-transmitting the signals qua the petitioner’s TV-channels. The fact that material was supplied by the petitioner in the form of CDs, both to the Commissioner and the Tribunal, which sought to portray a different picture, is also not in dispute. The veracity of claims and counter claims made by parties herein, could therefore, only be settled by a trial. The Tribunal, in its wisdom, and in my opinion correctly so, has set down the matter for trial, and in this behalf, issued the necessary directions, so that the exercise could be expedited. The returnable date in the matter, as fixed by the Tribunal, is 19.03.2015.

12. What is of significance is that, it is not as if the petitioner has been directed to supply signals to FTPL, without costs. In terms of the impugned order, the Tribunal has directed FTPL to pay a monthly subscription fee at the rate of Rs. 17 lacs, and that, payment for the first month, is directed to be paid, in advance, by 03.02.2015.

12.1 The argument of Mr Vikas Singh that clause 3.2 of the 2004 Regulations could not be triggered in this case in view of the fact that not only had FTPL indulged in piracy, but also on account of the fact that it had not paid its past dues, is in my opinion, a matter which the Tribunal will

consider while dealing with FTPL's petition, seeking supply of signals. To interdict the Tribunal's interim directions, would result in pre-judging the issue. That cannot be the ambit of this petition.

13. The argument advanced by Mr Vikas Singh that the Tribunal's direction has resulted in granting of final relief; albeit at the interim stage, does not impress me. The reason for the same, is this: As indicated right in the beginning of my narration, the petitioner has conceded that FTPL re-transmits signals inter alia to the State of Haryana, though of broadcasters/content aggregators, other than, the petitioner. In fact, Mr Navin Chawla, in the course of his submissions, had emphasised that FTPL was re-transmitting signals of other broadcasters/ content aggregators, in the city of Karnal itself. This submission was not refuted by the learned counsels for the petitioner. Therefore, the observation of the Tribunal that FTPL had a consumer base in the city of Karnal, which it could lose, is not without basis. As a matter of fact, Mr Chawla asserted with some vehemence that, it was the petitioner's endeavour to create a monopoly for its TV-channel signals in the city of Karnal, by excluding FTPL; and to achieve this end, it had engaged the services of IBPL. These are assertions which cannot be examined without a trial in the matter. The petition of IBPL, is also pending consideration of the Tribunal, as noticed above.

14. The fact remains that under the 2004 Regulations, all things being equal, the petitioner cannot unreasonably deny a request for supply of signals qua its TV Channels. As a matter of fact FTPL in its petition 530 (C) of 2014, has sought herein relief in that behalf. As indicated above, whether this request is sustainable, is something that the Tribunal would have to consider after evidence is led in the matter. Suffice it to say, the interim direction in this behalf issued to the petitioner has come about with

the necessary direction for adequate recompense. There is in fact no ground raised in the petition on this aspect of the matter.

15. I, therefore, find no merit in the submissions advanced on behalf of the petitioner. Consequently, the petition is dismissed. Parties will, however, bear their own costs.

RAJIV SHAKDHER, J

FEBRUARY 5, 2015

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