

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 396/2015**

Pronounced on : 31st August, 2015

**SUN DISTRIBUTION
SERVICES PRIVATE LIMITED.** Appellant
Through: **Mr.Ankit Chaturvedi, Adv.**

Versus

UNION OF INDIA & ANR. Respondents
Through: **Mr.Vivek Goyal, Adv.** with
Mr.Vikramjeet, Adv. for R-1.
Mr.Vadivelu Deenadayalan, Adv. for R-2.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH**

J U D G M E N T

MS.G.ROHINI, CHIEF JUSTICE:

1. The petitioners in W.P.(C) No.5925/2015 preferred this appeal aggrieved by the dismissal of the writ petition by the learned Single Judge by order dated 05.06.2015.
2. We have heard the learned counsel for the parties. The facts in brief are as under:-
3. The respondent No.2 (Vaji Digital Network), a multi system operator, filed a petition before the Telecom Disputes Settlement & Appellate Tribunal, New Delhi (TDSAT) against four broadcasters including Sun Distribution Services Pvt. Ltd., i.e., the appellant herein, seeking signals for

re-transmission in Rajahmundry. According to Vaji Digital Network, it was entitled to signals of the channels of Sun Distribution Services Pvt. Ltd. (broadcaster) in terms of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004 (hereinafter referred to as 'the Regulations'). The petition was opposed by Sun Distribution Services Pvt. Ltd. raising objections to the grant of signals alleging that Vaji Digital Network is a defaulter and further it failed to comply with various requirements under the Regulations. Sun Distribution Services Pvt. Ltd. also raised a dispute with regard to the Subscriber Line Reporter (SLR) submitted by Vaji Digital Network and wanted to verify the correctness of the SLR. Under those circumstances, the TDSAT by order dated 26.03.2015 granted liberty to Sun Distribution Services Pvt. Ltd. to verify the SLR submitted by Vaji Digital Network and the documents relating to the re-constitution of the firm. However, Sun Distribution Service Pvt. Ltd. did not choose to verify the SLR submitted by Vaji Digital Network. Having taken note of the said fact, the TDSAT passed an order on 29.05.2015 as under:

“In view of the stand taken by these two broadcasters, it is not possible to dispose of these two petitions with any direction to execute interconnect agreements on the basis of any fanciful SLR or a fixed fee amount and either the SLR or the fixed fee or CPS can be determined only on a consideration of all the relevant materials produced before the Tribunal.

But this cannot be a ground to further deny the petitioner the supply of the channels of these two broadcasters. As noted above, the petition was filed in October, 2014. It has thus already remained pending for seven months.

During this period, the broadcasters raised from stage to stage, different grounds to deny their signals to the petitioner. In a competitive market like broadcasting, such a long delay can have highly adverse commercial consequences for the petitioner.

We, accordingly, deem it fair, just and reasonable to make an interim order directing Eenadu and SUN to enter into an interim and provisional interconnect agreements with the petitioner on a fixed monthly fee at the rate 25% of the aggregate amount of monthly subscription fee that they are receiving from their MSOs in Rajahmundry. Eenadu has one MSO from which it receives Rs.7,48,225/- (exclusive of taxes) as the monthly subscription fee. SUN has two MSOs in Rajahmundry from who it receives an aggregate of Rs.11,92,929/- as the monthly subscription fee. The provisional agreements with the petitioner will be at the rate of 25% of the aforesaid amounts respectively. It is made clear that the interim agreements will be without prejudice to the rights and contentions of the parties and the amount fixed for the provisional agreement will abide by the final determination in these two petitions. The agreements, as direct, may be executed forthwith and not later than a week from today and supply of signals should commence immediately on that basis.”

4. Aggrieved by the said order dated 29.05.2015, Sun Distribution Services Pvt. Ltd. filed W.P.(C) No.5925/2015 which was dismissed at the threshold by the learned Single Judge by order dated 05.06.2015. The said order has been assailed by Sun Distribution Service Pvt. Ltd./writ petitioner in the present appeal under Clause 10 of the Letters Patent. The Division Bench by order dated 12.06.2015 granted interim stay of the TDSAT order dated 29.05.2015 observing that the direction of TDSAT dated 29.05.2015 to enter into a provisional interconnect agreement without insisting on the

prior verification of the SLR submitted by Vaji Digital Network prima facie appears to be contrary to Regulation 9.2 of the Regulations.

5. Vaji Digital Network filed its counter affidavit together with an application to vacate the interim order of stay dated 12.06.2015. When the said vacate application was listed before us, we heard the main appeal itself with the consent of both the parties.

6. It is no doubt true that Regulation 9.2 of the Regulations mandates prior verification of SLR. The TDSAT has also taken note of the same while passing the order dated 29.05.2015. The order dated 29.05.2015 further reflects that during the course of the proceedings before TDSAT, Vaji Digital Network had submitted its SLR copies to Sun Distribution Services Pvt. Ltd. and it was given an opportunity to verify the SLR and file supplementary replies. However, Sun Distribution Services Pvt. Ltd. disputed the subscriber base of the Vaji Digital Network and contended that the request of Vaji Digital Network to give their signals can be considered only after a proper verification of its SLR and a survey to assess the potential of its growth. Having regard to the stand taken by Sun Distribution Services Pvt. Ltd. and keeping in view that the petition has been pending from the year 2014 and further delay can have highly adverse commercial consequences, the TDSAT thought it fit to grant an interim order directing Sun Distribution Services Pvt. Ltd. to enter into an interim and provisional interconnect agreement with Vaji Digital Network on a fixed monthly fee @ 25% of the aggregate amount of monthly subscription fee that they are receiving from their Multi System Operators (MSOs) in Rajahmundry. It was also made clear that the interconnected agreements will be without

prejudice to the rights and contentions of the parties and the amount fixed for the provisional agreement will abide by the final determination in the main petition.

7. As could be seen from the material available on record, Vaji Digital Network has always been willing for verification of SLR by Sun Distribution Services Pvt. Ltd. and no justifiable reason is forthcoming from Sun Distribution Services Pvt. Ltd. as to why they have not undertaken the verification of SLR so far. Therefore it cannot be held that the mandatory requirement of prior verification of SLR was not insisted upon while directing to enter upon provisional agreement.

8. It is also relevant to note that TDSAT is a statutory tribunal constituted under Section 14 of the Telecom Regulatory Authority of India Act, 1997. The law is well settled that an order of statutory authority could be interfered with by this Court while exercising jurisdiction under Article 226 of the Constitution, only if the Court comes to the conclusion that the order is contrary to provisions of law or the authority concerned has no jurisdiction or the authority concerned took into consideration certain extraneous materials, not germane to the issue or the authority concerned failed to take into consideration certain materials which are otherwise relevant or the finding is one on the materials which could not have been arrived at by any reasonable man. [*Vide: Maharashtra Academy of Engg. & Educational Research v. State of Maharashtra, (2001) 10 SCC 166; Shamshad Ahmad & Ors. v. Tilak Raj Bajaj (Decd.) through LRs & Ors. (2008) 9 SCC 1; Satwati Deswal v. State of Haryana & ors. (2010) 1 SCC 126 and Bhiwani Central Cooperative Bank Ltd., Haryana v. Registrar*

***Cooperative Societies, Harayan & Anr. (2010) 15 SCC 517*].**

9. In the facts and circumstances of the present case, the order of the TDSAT dated 29.05.2015 which was passed as an interim arrangement till the disposal of the main petition making it clear that the action taken thereupon would abide by the final determination, cannot be held to have suffered from any patent error of fact or law warranting interference by this Court in exercise of writ jurisdiction. The learned Single Judge is, therefore, justified in declining to entertain the writ petition. Therefore, the appeal is devoid of any merit.

10. Accordingly, the appeal is dismissed. Needless to mention that the interim stay granted on 12.06.2015 shall stand vacated.

CHIEF JUSTICE

JAYANT NATH, J

AUGUST 31, 2015

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