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

% **Date of decision: 25 November 2022**

+ W.P.(C) 16307/2022 & CM APPL. 51085/2022, CM APPL.
51086/2022, CM APPL. 51087/2022

AMAZON SELLER SERVICES PVT LTD Petitioner

Through: Mr. Maninder Singh and Mr.
Rajiv Nayar, Sr. Advs. with Mr.
Sai Krishna Rajgopal, Mr.
Sidharth Chopra, Ms. Sneha
Jain, Ms. Ruby Ahuja, Mr.
Yatinder Garg, Ms. Rimjhim
Tiwari, Mr. Akshay Aggarwal
and Ms. Savmi D Endlow,
Advs.

versus

DISH TV INDIA LTD & ANR. Respondents

Through: Mr. C A Sundaram, Sr. Adv.
with Ms. Tajveer Singh Bhatia,
Mr. Roham Swarup and Mr. M.
Kunal Vats, Advs. for R-1.
Mr. Rajeev Sharma, Sr. Adv.
with Ms. Shruti Sharma, Mr.
Saket Chandra and Mr. Pranav
Giri, Advs. for R-2.
Mr. Meet Malhotra, Sr. Adv.
with Ms. Ritwika Nanda, Ms.
Petal Chandhok, Mr. Ajay and
Ms. Richa, Advs. for Siti
Networks Ltd.
Mr. Jayant Mehta, Sr. Adv.
with Mr. Counsel (appearance
not given).

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. Amazon Seller Services Private Limited has approached this Court assailing the order dated 24 November 2022 passed by the **Telecom Disputes Settlement and Appellate Tribunal**¹ on a petition preferred by the first respondent. Broadcasting Petition No. 504/2022 came to be preferred before the TDSAT assailing the action of Prasar Bharati, the second respondent in this petition, which had proceeded to encrypt the DD Sports channel with effect from 22 November 2022. The grievance raised was that the DD Sports channel had remained a **Free-To-Air**² channel right from 2013 in light of a notification issued by the Union Government dated 06 September 2013 in exercise of powers conferred by Section 8(1) of the **Cable Television Network (Regulation) Act 1995**³. Section 8 of the 1995 Act empowers the Union Government to specify the names of those Doordashan channels or channels operated by or on behalf of Parliament to be mandatorily carried by cable operators in their cable service. Undisputedly, DD Sports is one of the channels which finds mention in the said notification. It is also admitted to parties that the aforesaid notification has neither been modified nor rescinded at least insofar as DD Sports is concerned.

2. Taking note of the challenge which was raised before it in the broadcasting petition, the TDSAT in terms of the impugned order observed as follows: -

“14. Prima facie, even in presence of an agreement or understanding between respondent no.1 and respondent no. 2 section 8 of the "Act of 1995" applies to the signals which have been obtained by the respondent no. 1 for distribution and

¹ TDSAT

² FTA

³ the 1995 Act

broadcasting in whole of India, in pursuance of the obligation created under 8 of the "Act of 1995".

15. Moreover, since 2013 the respondent no. 1 is providing unencrypted DD sports 1.0 channel (FTA).

16. Moreover, the Central Government notification dated 06.09.2013 is valid even today, which enumerates 24 channels including DD Sports at serial no. 5. All these channels are being given to the petitioners in an "**unencrypted mode**" since 2013 i.e. from the date of Office Memorandum to 22.11.2022, **and now**, without any notice the respondent no. 1 has given the DD Sports 1.0 channel(FTA) with encryption. Thus, respondent no. 1 has provided a jacket to the DD Sports 1.0(FTA) channel that requires decoders by the petitioners to show their channels to the public at large and the supply of such decoders at this stage by the respondent no. 1 in whole of such a vast and wide country like India takes longer time.

17. Thus, there is a prima facie case in favor of the petitioners. Looking to the further detailed provisions of the "Act of 2007" to be read with the "Act of 1995" in light of the "Act of 1990" there is a definite goal to be achieved by the Union of India in the field of sports. Since 2013, DD Sports 1.0 channel(FTA) was supplied in an unencrypted mode to the public at large. Thus the balance of convenience is also in favor of this petitioners and irreparable loss will be caused to them if the stay as prayed for is not granted. We, therefore, direct the respondent no. 1 to supply DD sports 1.0 channel(FTA) in an unencrypted mode during the pendency of these Broadcasting Petitions.

18. All the fine niceties of the arguments canvassed by the counsels for the petitioners as well as the counsels for the respondents shall be dealt with at the time of final hearing of these Broadcasting Petitions. If one by one all the arguments canvassed by both the sides are dealt with at this stage, perhaps nothing will be left out to be decided at the time of final hearing of this Broadcasting Petitions.”

3. Aggrieved by the aforesaid order passed by the Tribunal, the petitioner has approached this Court by way of the instant writ petition. The petitioner asserts that on 24 October 2022 it entered into an agreement with the New Zealand Cricket Board in terms of which it came to be granted exclusive media rights for the Indian territory for broadcast and transmission of the international cricket match series

organized by the said Board. According to the petitioner, the duration of the rights is from 24 October 2022 till 30 April 2026. It is further averred that the petitioner entered into an arrangement with respondent No. 2 for sharing the signals / feed of the said cricket matches forming part of the India-New Zealand Series-2022 in terms of which Prasar Bharati was given the limited right to re-transmit the said matches restricted to the DTH platform owned by it and known as DD Free Dish.

4. According to the petitioner, the rights conferred on Prasar Bharati did not envisage a further re-transmission or re-broadcast of the said cricket matches on any private cable or **Direct To Home**⁴ platform. Upon coming to note that the live feed of those matches was also being carried on the platforms owned by respondent No.1 and other channels, the petitioner is stated to have issued a cease-and-desist notice to Prasar Bharati. It is perhaps the said notice which prompted Prasar Bharati to encrypt the content relating to those matches being carried on DD Sports. It was in the aforesaid backdrop that the first respondent had approached TDSAT assailing the action of Prasar Bharati.

5. It may, at the outset, be noted that Mr. Sharma, learned Senior Counsel appearing for Prasar Bharati, has stated that pursuant to the order passed by TDSAT on 24 November 2022, the content has been decrypted and is now available as part of the FTA services provided by it.

6. Assailing the action of Prasar Bharati, Mr. Nayar and Mr. Singh, learned Senior Counsels appearing for the petitioner, have

⁴ DTH

vehemently contended that the action of the second respondent is in clear breach of the agreement and arrangement which had been entered into and which clearly restrained respondent No.2 from carrying the content of the matches on any platform other than its own terrestrial and DTH networks.

7. Both sides have also laid great emphasis on the judgment rendered by the Supreme Court in **Union of India vs. Board of Control for Cricket in India**⁵ to submit that any content which is acquired under Section 3 of the **Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007**⁶ can be retransmitted by Prasar Bharati only on its terrestrial and DTH network. It was contended that the distinction in the nature of powers which is exercised by the Union Government under Section 8 of the 1995 Act and the power which is exercisable under Section 3 of the 2007 Act, had been clearly enunciated by the Supreme Court in the decision aforesaid. Learned Senior Counsels laid stress on the following observations as appearing in paragraphs 32, 33, 34, 35, 36 of the report. Those passages are extracted hereinbelow: -

“32. The Cable Act was enacted in the year 1995 to regulate the operation of cable television network which had come into India around that time. Cable television was a new experience for the Indian viewers who, overnight, had access to a large number of foreign channels carrying different kinds and forms of entertainment and information. While it is correct that some of the channels available on cable television network were Indianised in content, there was an apprehension, and perhaps justified, that the new trend and upsurge may make Doordarshan and its regional channels extinct resulting in dissemination of awareness on national issues. This is evident from the report of the Standing Committee to which the Cable TV Network (Regulation) Bill, 1993 was referred to. This is why Section 8 of the Cable Act, 1995

⁵ (2018) 11 SCC 700

⁶ the 2007 Act

was enacted, namely, to obligate cable TV operators to carry news and information concerning the developments of the country, government policies and other such related matters even to all such households who may have availed of cable services. In fact, transmission of Doordarshan channels by cable operators is always a complimentary part of any bouquet of services that a cable operator may make available to a consumer.

33. On the other hand, the Sports Act, 2007 which is a later enactment had altogether a different object for its enactment, namely, to provide access to the largest number of listeners and viewers, on a free to air basis, of sporting events of national importance through mandatory sharing of sports broadcasting signals with Prasar Bharati and for matters connected therewith or incidental thereto. Section 3 of the Sports Act, 2007 is a significant provision to further the objective behind the enactment of the Sports Act, 2007. Though much argument has been advanced as to whether Section 3 of the Sports Act, 2007 is expropriatory in nature, we have no hesitation in holding the said provision of the Act to be of such a nature inasmuch as it curtails or abridges the rights of a content rights owner or holder and television or radio broadcasting service provider, as may be. Sharing of revenue between the content rights owner or holder and Prasar Bharati envisaged by Section 3(2) of the Sports Act, 2007 would hardly redeem the situation to take the Sports Act, 2007 out of the category of expropriatory legislation. Section 3 of the Sports Act, 2007, therefore, has to be interpreted very strictly. Not only we do not find in the provisions of Section 3 of the Sports Act, 2007 any recognition of the requirement stipulated in Section 8 of the Cable Act, 1995, the plain language of the said provision i.e. Section 3 of the Sports Act, 2007 makes it clear that the obligation to share cast on the content rights owner or holder, etc. with Prasar Bharati is to enable Prasar Bharati to transmit the same on "its terrestrial and DTH networks". If the legislative intent was to allow Section 3 of the Sports Act, 2007 not to operate on its own language but to be controlled by Section 8 of the Cable Act, 1995, there would have been some manifestation of such intent either in Section 3 of the Sports Act, 2007 or in Section 8 of the Cable Act, 1995 (by an appropriate amendment thereto). In the absence of any such legislative intent it will only be correct to hold that Section 3 of the Sports Act, 2007 operates on its own without being controlled by any of the conditions or stipulations contained in Section 8 of the Cable Act, 1995. Any other view may have the effect of introducing a fragility in Section 8 of the Cable Act, a consequence that must surely be avoided.

34. Section 8 of the Cable Act imposes an obligation on the cable operators to carry/transmit such Doordarshan channels or the channels operated by or on behalf of Parliament, as may be,

notified in the Official Gazette. The legislature has not specified any particular channel which must be mandatorily carried by cable operators. The task has been left to the Central Government. It will, therefore, be not wrong to understand the obligation cast on cable operators to transmit the DDI (National) channel and the transmission of live feed of major sports events of national importance on the said channel by Doordarshan as a matter of mere coincidence instead of a legislative mandate. Hypothetically, it is always open to the Central Government to denotify DDI (National) from the notified channels in the notification under Section 8 of the Cable Act. Surely, the effect and operation of Section 3 of the Sports Act cannot be left to be decided on the basis of the discretion of the Central Government to include and subsequently exclude or not to include at all DDI (National) channel in a notification to be published under Section 8 of the Cable Act, 1995. Insofar as DTH network of private operators is concerned, the same does not even come under the operation of a cable operator.

35. Needless to say our conclusions above do not, in any manner, impact or affect the rights of the appellant under Section 12(3)(c) of the Prasar Bharati Act which rights always remain available for exercise, if so desired.

36. On the basis of the above discussions, we, therefore, come to the conclusion that under Section 3 of the Sports Act, 2007 the live feed received by Prasar Bharati from content rights owners or holders is only for the purpose of retransmission of the said signals on its own terrestrial and DTH networks and not to cable operators so as to enable the cable TV operators to reach such consumers who have already subscribed to a cable network.”

8. Refuting the aforesaid submissions, Mr. C. A. Sundaram, Mr. Meet Malhotra, Mr. Jayant Mehta, learned Senior Counsels who appeared for the respondents, argued that the judgment of the Supreme Court in **Board of Control for Cricket in India** is clearly being misinterpreted by the petitioner since the same was expounding upon the extent of the power that could be exercised under Section 3 of the 2007 Act. Learned Senior Counsels contended that the power comprised in Section 3 was clearly recognised to be expropriatory in nature and thus clearly distinct and different from that which is exercised by the Union under Section 8 of the 1995 Act.

9. Mr. Sundaram, learned Senior Counsel, laid great stress on the fact that the contract or the arrangement which was made between the petitioner and Prasar Bharati cannot possibly be recognised as being one which came into being by virtue of an exercise of the expropriatory power which stands conferred on Prasar Bharati by virtue of Section 3. Learned Senior Counsels submitted that once the arrangement had come to be entered into between the petitioner and Prasar Bharati, the broadcast or content acquired pursuant thereto would clearly be subject to Indian law and would thus have to necessarily abide by Section 8 of the 1995 Act.

10. In view of the aforesaid, the respondents contended that the act of Prasar Bharati in proceeding to encrypt the FTA content carried on DD Sports is clearly without jurisdiction and contrary to the powers exercised by the Union and as comprised in the 06 September 2013 notification referred to above.

11. Having heard learned Senior Counsels for parties, the Court at the outset, notes that the agreement which may have been entered into between the petitioner and Prasar Bharati has not been placed on the record. The Court has thus been unable to ascertain the correctness of the assertion of the petitioner that the said agreement limited the rights of Prasar Bharati to re-transmit the content relating to the matches only on its own terrestrial or DTH platform. The Court further bears in mind the submission of Mr. Sharma, learned Senior Counsel, who appeared for Prasar Bharati and categorically stated that the content carried on DD Sports is FTA.

12. Viewed in the aforesaid backdrop and the material which has been placed on the record, this Court is of the considered opinion that the restriction on re-transmission of content that may be obtained by

Prasar Bharati only on its terrestrial and DTH networks would have applied only if the content itself had been expropriated in exercise of powers conferred by Section 3 of the 2007 Act. It becomes pertinent to note that the content in respect of which the present dispute has arisen has undisputedly not been acquired by Prasar Bharati in exercise of its expropriatory power as enshrined in Section 3 of the 2007 Act.

13. While learned Senior Counsels appearing for the petitioner also referred to the provisions of Section 12(3)(c) of the **Prasar Bharati (Broadcasting Corporation of India) Act, 1990**⁷ and submitted that the content would clearly fall within the ambit of the aforesaid clause, that in the considered opinion of this Court does not carry the matter any further insofar as the petitioner is concerned for the following reasons.

14. It must be borne in mind that the content which may be carried on DD Sports has been made FTA and to be mandatorily carried by all cable operators in light of the notification issued by the Union Government in exercise of powers conferred by the 1995 Act. DD Sports continues to remain included in the notification of 06 September 2013. Thus, even if the content in question be one which was acquired by Prasar Bharati under Section 12(3)(c) of the 1990 Act, as long as the same is aired on the DD Sports platform, it would be subject to the power that the Union Government may exercise under Section 8 of the 1995 Act. While it would have been open for Prasar Bharati to have carried the said content on any channel which was not FTA or did not find mention in the notification of 06

⁷ the 1990 Act

September 2013, it could clearly not have encrypted the contents thereof as long as DD Sports remained in the list of FTA channels to be compulsorily carried by all cable operators.

15. While learned Senior Counsels for the petitioners also referred to clause 3 of the notification of 06 September 2013 and submitted that the FTA content is restricted to those programmes which are being broadcasted on the C Band satellite signal and thus cannot extend to content which may be broadcasted on the KU Band satellite signal, Mr. Sharma refuted the aforesaid submissions and categorically stated that no such bifurcation existed and that the content of broadcast on DD Sports is FTA.

16. Viewed in the aforesaid light, the Court finds no ground to interfere with the interim directions which have been issued by the TDSAT. The challenge to the same consequently fails.

17. The writ petition along with pending applications shall stand dismissed.

YASHWANT VARMA, J.

NOVEMBER 25, 2022

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