



**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated: 04/10/2023

BROADCASTING PETITION/217/2023

WITH

MISC APPLICATION/236/2023

Petitioner Name: All India Digital Cable Federation

Versus

Respondent Name: Star India Pvt Ltd

BEFORE

HON'BLE MR. JUSTICE DHIRUBHAI NARANBHAI PATEL ,CHAIRPERSON

HON'BLE MR. SUBODH KUMAR GUPTA ,MEMBER

For Applicants/Appellants/

Petitioners Advocate

Mr Meet Malhotra Senior Advocate
Mr Tushar Singh
Mr Ravi S S Chauhan
Ms Akshra Arshi
Ms Pallak Singh
Mr Nikhil Sabri

For Respondents Advocate

Mr Mukul Rohatgi Senior Advocate
Mr Maninder Singh Senior Advocate
Ms Ruby Singh Ahuja
Mr Sidharth Chopra
Ms Swikriti Singhania
Mr Ranjeet Singh Sidhu
Ms Srishti Kumar
Ms Kritika Sachdeva
Mr Varun

Amicus Curiae:

For Impleader(Pet.):

For Impleader(Res.):

ORDER

1. Mr. Meet Malhotra, learned senior counsel appearing for the petitioner submitted that the respondent is violating Regulation 3(2) of The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulation, 2017 (hereinafter referred to as "**the Regulations, 2017**", for the sake of brevity).

2. Counsel for the petitioner has also read over the definitions of various Clauses given under Regulation 2 of the Regulations, 2017 and has pointed that the respondent has to provide TV channels on non-discriminatory basis.

3. The respondent is charging from the petitioner for their channel Star Sports whereas on Over-the-top (OTT) platform they are allowing downloading of their own

application on mobile phones and permitting the viewers/customers to view free of charge Star Sports. This is violation of Regulation 3(2) of the Regulations, 2017.

4. Counsel for the petitioner has also taken this Tribunal to the decision rendered by this Tribunal in Petition No.295(C) of 2014 judgement dated 07.12.2015 especially paragraph 88 onwards and has placed reliance upon the decision rendered in (2019) 2SCC 104 paragraph 74 etc.

5. On the basis of these submissions, it is submitted by counsel for the petitioner that the respondent may be restrained from permitting their viewers to have Star Sports on their mobiles free of charge or they should also provide free of charge Star Sports to the petitioner also.

6. Several arguments canvassed by the counsel for the petitioner and the manner in which the respondent is working especially using OTT platform. It is also submitted by counsel for the petitioner that though OTT platform is not mentioned in the definition given in Regulation 2(r) of "distribution platform", this sub section should be read with other definitions and it is submitted that OTT platforms are using internet and, therefore, this Tribunal has all the powers, jurisdiction and authority to hear this matter and decide the same because the respondents are using Broadband Internet and, therefore, they are falling within the definition of Telegraph as defined under the Indian Telegraph Act, 1885 and hence, this Tribunal has got jurisdiction.

7. We have heard learned Senior Counsels appearing for the respondents Mr. Mukul Rohtagi as well as Mr. Maninder Singh who have taken this Tribunal to various Annexures and definitions of the Regulations, 2017 including the Explanatory Memorandum published by Telecom Regulatory Authority of India (TRAI) at page no. 283 onwards and has pointed out that the respondent wears two hats - one is of "broadcasting", and another is of "owner of OTT".

8. It is further submitted by the counsels for the respondent that looking to the Regulation 2(r) of the Regulations, 2017 the OTT platform is not covered by the definition of distribution platform because the definition is exhaustive. Nothing can be added in this definition by this Tribunal.

9. It is further submitted by the counsels for the respondent that even otherwise also looking to the overall provisions of the Regulations, 2017 they are meant for regulating the distribution of signals of TV channels etc. and OTT platform is not a TV channel at all. Therefore, this is also an understanding of TRAI looking to -

(a) Explanatory memorandum published by TRAI of the Regulations, 2017 which is annexed at Annexure P4, and

(b) Looking to the representations preferred by this petitioner before TRAI.

10. It is further submitted by counsels for the respondent that even consultation paper has already been published, separately by the TRAI for these types of OTT platforms whether they are to be included in TRAI Act or not.

11. It is further submitted by counsels for the respondent that the petitioner who argued the matter yesterday before this Tribunal had simultaneously preferred a writ petition being WPC No. 12906 of 2023 before Hon'ble Delhi High Court. The matter was heard yesterday by the learned single Judge. Notice has been issued on 3.10.2023 in that Writ Petition and made returnable on 15.12.2023.

12. It is submitted by the counsels for the respondent that the main issues involved in the broadcasting petition are also involved in the Writ Petition preferred before Hon'ble Delhi High Court. Moreover, TRAI is a party respondent in the Writ Petition whereas deliberately the petitioner has not joined TRAI as a respondent in the present Broadcasting Petition, for the reasons best known to this present petitioner.

13. Counsel for the respondent has pointed out several peculiarities of OTT platform including not to have a licence from the Central Government, and it is not a TV channel at all etc.

14. It is also submitted by counsel for the respondent that OTT platforms, looking to the present position of law prevailing in this country, is covered by Information Technology Act, 2000 and rules framed thereunder in the year 2021 and not under the TRAI Act, 1997 and the Regulations framed under the TRAI Act.

15. Having heard counsels for both the sides and looking to the contentious issues raised in this broadcasting petition, this broadcasting petition is Admitted. Counsels for the respondents are waiving the notice of admission.

16. So far as interim relief is concerned, looking to the provisions of the Regulations, 2017 especially looking to the Regulation 2(h), to be read with 2(j), to be read with 2(r), 2(s) and 2(pp) with Regulation 3, 4 and also looking to explanatory memorandum published by TRAI of the Regulations, 2017 which is at Annexure P-4 to the memo of this petition, there is no *prima facie* case in favour of the petitioner. Prima facie, OTT platform is not, covered by TRAI, 2(r) of the Regulations, 2017 to be read with other definitions as stated hereinabove including 2(pp) etc.

17. Prima facie, OTT platform is not a TV channel, nor the respondent is requiring any permission or a licence from the Central Government. Moreover, looking to the provisions of the Information Technology Act, 2000 and the rules framed thereunder of the year 2021 and looking to the provisions of TRAI Act, 1997, there is no *prima facie* case with this petitioner. Balance of convenience is also not in favour of this petitioner and no irreparable loss will be caused to the petitioner if the stay, as prayed for, is not granted. It is always open for the petitioner to maintain separately a list of consumers who have subscribed to the Star Sports channel on the petitioner's platform as the same contents are being made available through video streaming on the said OTT platform, thus no irreparable loss will be caused to the petitioner if the stay, as prayed for, is not granted.

18. These details which the petitioner is maintaining can always be presented before this Tribunal by the way of an affidavit, before the final hearing of this Broadcasting Petition, which will be replied by the respondent. Hence, the interim relief, as prayed for, by this petitioner is hereby rejected.

19. Petitioner is permitted to file rejoinder affidavit on or before the next date of hearing.

20. This matter is adjourned to 18.12.2023.

**(JUSTICE D. N. PATEL)
CHAIRPERSON**

**(SUBODH KUMAR GUPTA)
MEMBER**