

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 4265-4266 OF 2003

STAR INDIA PVT.LTD.APPELLANT

VERSUS

LGM NETWORK & ORS.RESPONDENTS

With

C.A.Nos.9492-9493/2003

SET DISCOVERY PRIVATE LTD.APPELLANT

VERSUS

LGM NETWORK & ORS.RESPONDENTS

O R D E R

C.A.Nos.4265-4266/2003

These appeals are directed against an order of the Monopolies and

Restrictive Trade Practice Commission (hereinafter referred to as the 'Commission')

dt. 09.05.2003 whereby exercising power under Section 12 A of the Monopolies and

Restrictive Trade Practices Act, 1969 (hereinafter referred to as the 'Act') the

Commission has granted interim order in favour of the respondents directing the

appellant herein to restore satellite signals to the respondents subject to the condition

that the respondents will pay to the appellant the amount or amounts for use of the

service on the basis of actual number of subscribers as verified and determined by

the appellant. While issuing notice in these appeals on 02.06.2003, this Court had

granted stay of the said order of the Commission. The learned counsel for the

appellant has at the outset raised following objections against the impugned order

of the Commission :-

1. Relying upon a Judgment of this Court in Star India (P) Ltd. vs. SITI

Cable Network Ltd. And Others, (2003) 8 SCC 304, it is argued that

the party approaching the Commission has to give at least a prima facie

proof in support of its complaint before any interim order can be passed

in its favour. In the present case, the complaint is based on mere

allegations and not even prima facie proof in support of allegations in

the complaint is forthcoming.

2. The impugned order of the Commission is unworkable. In support of

this contention, it is submitted that the main dispute which had arisen

between the parties was with regard to the number of subscribers. In

the operative part of the impugned order, the Commission has left the

matter regarding number of subscribers to be determined by the

appellant. This, according to the learned senior counsel for the appellant, will lead to further disputes between the parties as the respondent will never accept the figures of appellant.

3. Admittedly, there was a written agreement between the parties and the said agreement expired on 31.12.2002. Therefore, it is submitted that the Court will not extend the term of the agreement by way of an interim order. No relief can be granted based on an agreement which has already expired.

4. It is further pointed out that in the meanwhile for regulating the relationship of parties in such matters, the new regime has come into operation by virtue of The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004. In view of these Regulations, it is submitted that the respondents have to go through the prescribed channels in order to obtain satellite signals. Application has to be made as per procedure laid. The Regulations also provide for machinery for ventilating grievance, if any, which a party may have. Therefore, it is submitted that the respondent had to go through the new regime in order to get signals. Presently the respondents are not getting any signals from the appellant in view of the stay order passed by this Court.

We find force in the above objections raised on behalf of the appellant.

We are of the view that the agreement between the parties having come to an end due to passage of time, no relief can be granted to the respondent at this stage. This Court will not enforce an agreement which has already expired particularly keeping in view the nature of the transaction involved. Secondly, a new regime has come into place. The respondent has to seek remedy by taking steps in pursuance of that regime. It is not possible today to enforce the impugned order of the Commission. Accordingly, the said order is hereby set aside and the respondents are left free to exercise their rights in accordance with law.

The learned senior counsel appearing for the appellant has offered that the appellant will inform the respondent about the name of the Multi System Operator for their area whom the respondent can approach for getting satellite signals under the new regime. The appeals are disposed of in above terms without any order as to costs.

The appellant also assures that he will expedite the process, if initiated, by the respondents for obtaining satellite signals.

The learned counsel for the respondent apprehends that the complaint filed by the respondent before the Commission is still pending and this Order may not prejudice the complaint. It is clarified that any observation contained in the above Order will not come in the way of the Commission deciding the complaint said to be pending before it.

This appeal is directed against an order dt. 09.05.2003 passed by the Monopolies and Restrictive Trade Practice Commission (hereinafter referred to as the 'Commission') under Section 12 A of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the 'Act') directing the appellant to restore satellite signals to the respondent subject to the condition that the respondent will pay to the appellant the amount or amounts for use of the services on the basis of actual number of subscribers as verified and determined by the appellant. The impugned order in the present case is identical to the impugned order in C.A.Nos.4265-4266/2003. The said appeals stand disposed of. The Order passed in C.A.Nos.4265-4266/2003 will govern the present appeals also. We may note a slight difference in the facts in these appeals though the difference does not have a bearing on the ultimate result of the appeals. M/s SET India was the previous distributor of satellite signals. The respondent had an arrangement with the said SET India for providing satellite signals. In December, 2001, SET India discontinued the signals which were being provided to the respondent on account of disputes between the parties about the number of subscribers. Later in August, 2002, SET India stopped the business of distributing satellite signals. The said business was taken over by M/s Set Discovery Private Limited, the appellant herein. The original agreement between SET India and the respondent had come to an end

and no agreement was entered into between M/s Set Discovery Private Limited and the respondent. This is the only difference on facts between the two sets of appeals.

The learned counsel for the appellant raised similar contentions challenging the

order under appeal. The appeals are disposed of in same terms.

The respondent will approach the appellant directly who will provide the respondent necessary particulars to enable the respondent to make the application for obtaining satellite signals.

The learned counsel for the respondent apprehends that the complaint

filed by the respondent before the Commission is still pending and this Order may

not prejudice the complaint. It is clarified that any observation contained in the

above Order will not come in the way of the Commission deciding the complaint

said to be pending before it.

.....J.

ARUN KUMAR)

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.....J.

.V.RAVEENDRAN)

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MARCH 29, 2006.

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ITEM NO.104

COURT NO.10

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(s). 4265-4266 OF 2003

STAR INDIA PVT. LTD.

Appellant (s)

VERSUS

LGM NETWORK & ORS.

Respondent(s)

(With appln.(s) for stay)

WITH

Civil Appeal NO. 9492-9493 of 2003

Date: 29/03/2006 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN KUMAR
HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Appellant(s)

Mr.Mukul Rohatgi, Sr.Adv.
Mr.Gopal Jain, Adv.
Mr.R.N.Karanjawala, Adv.
Ms.Ruby Singh Ahuja, Adv.
Ms.Kanika Agnihotri, Adv.

Ms.Meghna Mishra, Adv.
Mrs Manik Karanjawala, Adv.

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In C.A.No.9492-
9493/2003 & RR
In C.A.No.4265-

Mr.Anant Narain Hakser, Sr.Adv.
Mr.Atul Y.Chitale, Adv.
Mrs.Suchitra Atul Chitale, Adv.

4266/2003

Ms.Sujeeta Srivastava, Adv.
Mr.Madhup Singhal, Adv.

For Respondent(s)

Mr.Vineet Bhagat, Adv.
Mr.K.G.Bhagat, Adv.
Mr.Debasis Mishra, Adv.
Mr. Rameshwar Prasad Goyal,Adv.

Mr. E.C. Agrawala ,Adv

UPON hearing counsel the Court made the following
O R D E R

C.A.Nos.4265-4266/2003

The appeals are disposed of in terms of the signed order without any order

as to costs.

C.A.Nos.9492-9493/2003

The appeals are disposed of in terms of the signed order without any order

as to costs.

(Satish K. Yadav)

Court Master

(Phoolan Wati Arora)

Court Master

(Signed order is placed on the file)