
(2026) 03 TDSAT CK 1490

In the Telecom Disputes Settlement And Appellate Tribunal

Case No : Broadcasting Petition No. 59 Of 2021

GTPL Hathway Limited (Gujarat)

APPELLANT

Vs

Sri Shiridi Sai Cable Network & Anr. (Andhra Pradesh)

RESPONDENT

Date of Decision : 17-03-2026

Acts Referred:

Telecom Regulatory Authority of India Act, 1997 — Section 14A(1), 14(a)(ii)
Evidence Act, 1872 — Section 102

Citation : (2026) 03 TDSAT CK 1490

Hon'ble Judges : Ram Krishana Gautam, Member

Bench : Single Bench

Advocate : Nasir Husain, Arjun Natarajan, Aayush Kumar

Final Decision : Allowed

Judgement

Ram Krishna Gautam, Member

1. This Petition, under Section 14A (1) of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as TRAI Act) read with Section 14 (a) (ii), has been filed, by GTPL Hathway Limited, Petitioner, through its authorised representative, against Shiridi Sai Cable Network, Respondent No. 1 and Sri Sai Communication Respondent No. 2, with a prayer for a decree, against Respondents for an injunction for swapping the Set Top Boxes (STBs) of Petitioner with Respondent No. 2, and a direction to Respondent No. 1 to return 232 STBs and in case of default, to pay the cost per STBs to Petitioner.

2. In brief, the contention, of the Petition is that the Petitioner, GTPL Hathway Limited, is a Company registered under Companies Act, 1956, and engaged as an MSO in the business of distribution of Television Channels to its various operators, PAN India, for which it is with a license under Cable Television Networks Act. Respondent No. 1, Sri Shiridi Sai Cable Network, is a Local Cable Operator, represented through its Proprietor namely, Mr P. Gangabhavani, having its office at Bonangi (V), Vizianagram District, Andhra Pradesh. Respondent No.

2, is a competing MSO having its Office at Siddipet, Telangana.

3. Respondent No. 1 entered into an agreement with Petitioner to provide its signals/ services to Respondent No. 1 for further retransmission to the subscribers through portal, under the terms, wherein, Petitioner issued approximately 655 STBs, alongwith accessories, to Respondent No. 1, for planting it at the subscribers end. Respondent No. 1 failed to maintain, the terms of agreement, which was in operation from 25.07.2020 to 31.03.2025. Rather, it started swapping of STBs since, month of December, 2020 to Respondent No. 2, without observing the due process of law and ultimately, failed to return the STBs, which are the exclusive property of Petitioner. Upon the violation of Interconnect Regulations as well as terms of the Agreement executed, in between, and thereby, swapping STBs/ migrating by Respondent No. 1 to 2.

4. The Petitioner issued a notice to Respondent No. 1, for making payment of the invoices raised for period upto 25.12.2020, but it was of no avail, except the assurance by the Respondent. Ultimately, 232 STBs were not returned by Respondent No. 1 to Petitioner, which resulted arising of cause of action, within the jurisdiction of this Tribunal, and in stipulated period of limitation, this Petition, with above prayer, was got filed.

5. In spite of sufficient service to Respondent No. 1, no appearance or reply was there. Matter was proceeded ex-parte, and the reply of Respondent No. 2, was taken into consideration, wherein, there was a specific denial of illegal swapping of STBs of Petitioner, by Respondent No. 1 through Respondent No. 2. Rather, being of no Privity of Contract, in between, Petitioner and Respondent No. 2, it was raised with no liability of Respondent No. 2, towards alleged swapping.

6. There was no issuance of any notice to Respondent No. 2 by Petitioner, nor was any migration by Respondent No. 1 to Respondent No. 2. A prayer was for dismissal of this Petition as against Respondent No. 2.

7. Replication cum rejoinder, by Petitioner, was got filed, with the reiteration of the contention of the Petition. The matter was referred to Court of Registrar for framing of issues and taking of evidences, if any.

8. Court of Registrar vide Order dated 18.04.2022, framed following issues.

(i) Whether the instant Petition is maintainable in its present form?

(ii) Whether the Respondent No. 1 has illegally migrated to Respondent No. 2 in violation of Interconnected Regulations and also in violation of the terms of the Agreement between the Petitioner and Respondent No. 1?

(iii) Whether the Petitioner is entitled for recovery of STBs and viewing cards from the Respondents in good working conditions or in the alternative the cost of the STBs as claimed in the respective Petitions?

(iv) To what other relief/ relief's the Petitioner is entitled for?

9. Petitioner filed its evidence, by way of affidavit of Mr Raghavendra Murthy. Respondent No. 2 filed its evidence, by way its affidavit of Mr Palle Srinivas.

10. Written submission by Petitioner as well as Respondent No. 2 got filed.

11. Heard arguments of Learned Counsel for Petitioner as well as Respondent No. 2 and gone through materials placed on record.

12. The proceeding before this Tribunal is a civil proceeding, as has been given in the TRAI Act, itself. In a civil proceeding, the preponderance of probabilities is the touchstone for making a decision, as against strict burden of proof, required in criminal proceeding.

13. Hon'ble Apex Court in Anil Rishi Vs. Gurbaksh Singh-AIR 2006 SC 1971 has propounded that onus to prove a fact is on the person who asserts it. Under Section 102 of The Indian Evidence Act, initial onus is always on the plaintiff to prove his case and if he discharges, the onus shifts to defendant. It has further been propounded in Premlata Vs. Arhant Kumar Jain- AIR 1976 SC 626 that where both parties have already produced whatever evidence they had, the question of burden of proof ceases to have any importance. But while appreciating the question of burden of proof and misplacing the burden of proof on a particular party and recording of findings in a particular way will definitely vitiate the judgment. The old principle propounded by Privy Council in Lakshman Vs. Venkateswarlu-AIR 1949 PC 278 still holds good that burden of proof on the pleadings never shifts, it always remains constant. Factually proving of a case in his favour is cost upon plaintiff when he fulfils, onus shifts over defendants to adduce rebutting evidence to meet the case made out by plaintiff. Onus may again shift to plaintiff. Hon'ble Apex Court in State of J & K Vs Hindustan Forest Co. (2006) 12 SCC 198 has propounded that the plaintiff cannot obviously take advantage of the weakness of defendant. The plaintiff must stand upon evidence adduced by him. Though unlike a criminal case, in civil cases there is no mandate for proving fact beyond reasonable doubt, but even preponderance of probabilities may serve as a good basis of decision, as was propounded in M Krishnan Vs Vijay Singh- 2001 CrLJ 4705. Hon'ble Apex Court in Raghvamma Vs. A Cherry Chamma-AIR 1964 SC 136 has propounded that burden and bonus of proof, are two different things. Burden of proof lies upon a person who has to prove the facts and it never shifts. Onus of proof shifts. Such shifting of onus is a continuous process in evaluation of evidence.

14. Issue No. 1

The law has been settled by this Tribunal that there being no Privity of Contract, in between, competing MSO and Petitioner MSO, with regard to swapping, if any, hence, no right to sue against competing MSO for the misconduct of LCO, is to be compensated, and this legal proposition, laid down by this Tribunal, is being admitted by Learned Counsel for Petitioner. Hence, the very objection in reply of Respondent No. 2, regarding the Petition, not maintainable in present form, remains of no avail, specifically, when no claim is being made against

Respondent No. 2. Hence, this issue is being decided in favour of Petitioner vis-à-vis Respondent No. 2

15. Issue No. 2

The very contention of Petition, regarding swapping by Respondent No. 1, as against Interconnect Agreement, as well as regulations in that regard, i.e., without making payment of raised invoices, and returning STBs, got issued by Petitioner, or issuing a scheduled stipulated notice of three weeks to Petitioner, has been reiterated in uncontroverted affidavit, filed by Petitioner in its ex-parte evidence. There is no reply or evidence by Respondent No. 1 and the very contention of Respondent No. 2, is not related with Respondent No. 1 in this regard, because the swapping and non following is being levelled against Respondent No. 1, that too, has been said on oath, not controverted by other side. Hence, this issue is being decided in favour of Petitioner.

16. Issue No. 3

The number of STBs which were not returned, has been specifically said on oath, with no rebuttal by other side, and these are 232 STBs with viewing cards. The amount has also been specified @ Rs. 672 per STB as the depreciated value per STB, at the time of filing of this Petition. This contention, on oath, had not been rebutted by Respondent No. 1. Hence, this fact has been fully proved by Petitioner in its evidence. Hence, this issue is being decided in favour of Petitioner.

17. Issue No. 4

The Interconnect Agreement, issuance of STB, non return of 232 STBs and its viewing cards, has been proved by Petitioner in Issue No. 3. Hence, Petitioner is entitled for a decree as against Respondent No. 1 for returning above 232 STBs in good and working condition, and in case of failure, to make payment of depreciated value in the tune of Rs 1,55,904/- (Rupees One Lakh Fifty Five thousand Nine Hundred and Four Only) @ Rs. 672/- per STB.

The Simple Interest ,pendentelite and future, till actual date of payment @ 9% per annum, which has been regularly provided by this Tribunal in sequence of Judgments in the present fiscal scenario and appreciation of situation, is the justifiable interest to be awarded along with cost value. This is being decided in favour of Petitioner as above.

18. On the basis of above decisions, this Petition merits to be allowed against Respondent No. 1.

ORDER

Petition is being allowed with cost against Respondent No. 1, with a direction, to return 232 STBs, alongwith viewing cards, in good and working condition to Petitioner within two months of Judgment and in case of failure, to make payment of Rs. 1,55,904/- (Rupees One Lakh Fifty Five thousand Nine Hundred and Four Only) for those STBs @ Rs. 672/- per STBs, with a further direction to

make payment of Simple Interest @ 9% per annum i.e., pendente lite and future interest, till actual date of payment to Petitioner.

With regard to Respondent No. 2, no relief is being claimed and awarded in favour of Petitioner.

Formal order/decrees be got prepared by Office, accordingly.