
(2014) 08 AHC CK 0145
In the Allahabad High Court
Case No : C.M.W.P. No. 39721 of 2014

Moon Star Cable Network

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Telecom Regulatory Authority of India Act, 1997 — Section 11, 36

Citation : (2014) 5 AWC 5336

Hon'ble Judges : Vivek Kumar Birla, J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : R.P. Pandey, Advocate for the Appellant

Judgement

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Amreshwar Pratap Sahi and Vivek Kumar Birla, JJ.—The petitioner has been served with a Notice dated 5.6.2014 under the 2012 Regulations by the respondent No. 3 on the ground that the petitioner has failed to pay the outstanding subscription charges to the said respondent under the terms of the Agreement; copy whereof has been filed alongwith the writ petition.

2. Learned counsel submits that the respondent No. 3 is trying to take undue advantage of the terms and conditions of the said Agreement and is compelling the petitioner to make payments which otherwise is a consequence of manipulation.

3. Having perused the same as well as the Standard of Quality of Service (Digital Addressable Cable Television System) Regulations, 2012, which has been framed under Section 36 read with Section 11 of the Telecom Regulatory Authority of India Act, 1997, we find that the aforesaid regulations provide for under Clause 6 for matters relating to Communication of Technical or Operational Non-feasibility. Learned counsel submits that the said clause cannot be invoked for the purpose of issuance of such a notice and in the aforesaid circumstances, the threat to disconnect the service is an act contrary to the aforesaid regulations.

4. We have heard Sri Ashish Agrawal, learned counsel for the respondent No. 1 and having perused the terms and conditions of the Agreement, we find that this is a dispute inter se between the petitioner and the respondent No. 3 and any dispute between the parties under the Agreement is referable to Clause 15 thereof that is reproduced hereunder:

"15. Governing Law and Dispute Resolution.--(i) The rights and obligations of the parties under the Agreement shall be governed by laws of India.

(ii) The parties agree that they shall not seek injunction or any interim/ad-interim orders from any court or judicial Tribunal/authority in India with respect to any claims, dispute or differences between the Parties arising out of this Agreement save and except before the Telecom Disputes Settlement and Appellate Tribunal, New Delhi ("T.D.S.A.T."). The Parties agree that all disputes between the Parties shall be resolved solely through proceedings instituted before the T.D.S.A.T."

5. In view of the aforesaid categorical provisions made for the purpose of adjudication of any such dispute arising, a writ petition would not be maintainable and the parties would be governed by the aforesaid provision under the contract.

6. Consequently, the writ petition is dismissed as not maintainable without prejudice to the parties to agitate under the said provision.