
(2009) 09 DEL CK 0213

In the Delhi High Court

Case No : Writ Petition (C) 11639 of 2009

Neo Sports Broadcast Pvt.

APPELLANT

Vs

Sun Direct TV Pvt. Ltd.

RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 09 DEL CK 0213

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Vikram Mehta and Abhinav Agnihotri, for the Appellant; Ramji Srinivasan Vivek Sibal, Narayani K. Sibal and Shruti Ranjan, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The impugned order dated 4th September, 2009 passed by the Telecom Disputes Settlement and Appellate Tribunal modifies the earlier interim order and has directed the Sun Direct TV Private Limited, the respondent herein to furnish security deposit of Rs. 25 lacs in cash and Rs. 25 lacs by way of bank guarantee. By the earlier interim order dated 18th December, 2008, the respondent herein was directed to furnish security deposit of Rs. 1 crore and bank guarantee of Rs. 2 crores in favour of the petitioner-Neo Sports Broadcast Private Limited for receiving broadcast signals for the direct to home television service.

2. Learned Counsel for the petitioner has submitted that there is no justification for reducing the security deposit and the reference interconnect offer requires payment of security deposit of Rs. 3 crores. The respondent has challenged some of the terms of the reference interconnect offer, but no final adjudication has been done. He states that the security deposit cannot vary from time to time. It is submitted that number of subscribers seeing a sports channel can vary depending on whether a sports event is being broadcast on the said channel. It is further stated that the respondents are charging Rs. 5 crores as security deposit.

Lastly, he submits that the figures of subscribers given by the respondent are very low and the petitioner has asked for audit. Learned Counsel appearing for the respondent, however, disputes the contention that the petitioner has asked for audit.

3. This Court is not as an appellate forum and is not re-examining merits and demerits of the contentions raised by the parties. A writ court is concerned with the decision making process and not the final conclusion or the decision. Telecom Disputes Settlement and Appellate Tribunal in its order dated 4th September, 2009 has observed that the monthly subscription fee being paid by the respondent is not more than Rs. 5 lacs a month and the said figure is not disputed. The tribunal has further recorded that during the period of last nine months there is not even a single default by the respondent. Lastly, the petitioner is entitled to disconnect the signal by giving three weeks' notice. The tribunal noticed that the petitioner has charged security deposit of Rs. 75 lacs from Big TV, which the petitioner claims was on account of special circumstances. However, in respect of Tata Sky, it is stated that in view of the interim order passed by the tribunal, no security deposit has been charged. It is stated that Airtel has paid full security deposit of Rs. 3 crores. Thus, different service providers have paid different amounts towards security deposit. The object and purpose of security deposit, as is apparent from the order of the tribunal, is to secure and protect the broadcasters against defaults and to ensure recovery in case payment is not made. It cannot be a penal or an exorbitant amount but relatable to the subscription fee payable. The impugned order specifically records that the allegation that the respondent or their sister concern as a broadcaster is charging security deposit of Rs. 5 crores, is not a substantiated fact. No documents has been filed along with the writ petition to show that the respondent has received security deposit of Rs. 5 crores.

4. Keeping these aspects in mind, I do not think any ground for interference in a writ petition under Article 226 of the Constitution is made out. It is, however, clarified that in case it transpires that the number of subscribers attached to the respondent has increased or there was/is wrong disclosure, the petitioner will be entitled to move an application for modification of the interim order passed by the Telecom Disputes Settlement and Appellate Tribunal. It is also clarified that the observations made in this order are prima facie and tentative and will not influence the learned tribunal while deciding and disposing of the appeal.

The writ petition is dismissed.