

Case No :WP(C)(PIL) 0000005/2016

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Party Name : DIBYENDU SARKAR Vs UNION OF INDIA & ORS

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HONBLE THE CHIEF JUSTICE DEEPAK GUPTA THE HONBLE MR. JUSTICE S.C.DAS

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This writ petition has been filed in the public interest and on 01.03.2016 we had passed the following order:

*"This is a public interest litigation and the grievance of the petitioner is that the so called cable operators in the State of Tripura are selling set top boxes at exorbitant rates ranging from '1700/- per set top box to '2,500/- per set top box in violation of the tariff fixed by the Telecom Regulatory Authority of India (TRAI). These operators are also not giving any receipt and they are not even giving any option to the consumers to choose the programmes of their choice.*

*Notice be issued to the respondents.*

*Sri Deb suvies service of notice on behalf of respondent No.1*

*Notice be issued to the respondent Nos.2 to 9, returnable for 29<sup>th</sup> March, 2016.*

*Sri T.D. Majumder suvies service of notice on behalf of respondent Nos.3 to 9.*

*All the District Magistrates shall file affidavit stating whether there are any multi-system operators registered with them in terms of Section 11C of the Cable Television Networks Rules, 1994.*

*The District Magistrates shall also inform us about the steps if any taken by the District Magistrates to ensure that the cable operators do not charge anything over and above the rates fixed by the Telecom Regulatory Authority of India (TRAI). We further direct that in case these rates have not been publicized till date, on or before the next date the District Magistrates shall ensure that these rates are given full publicity and even the cable operators are directed that these rates as fixed by the TRAI are being ensured across the cable networks concerned. The District Magistrates in their reply shall also inform this Court what steps they have taken to ensure that the set top box conform to Bureau of Indian Standards(BIS) as laid down in the directions issued by the TRAI. List on 29.03.2016."*

2. Pursuant to our order the District Magistrates have filed their affidavits.

A perusal of these affidavits show that the District Magistrates except (M)West of Agartala who are authorized officers within the meaning of Section 2(a) of the Cable Television Networks (Regulation) Act, 1995 were virtually sleeping till this Court entertained the writ petition and passed orders. All action by the other authorized officers has been taken after we passed the orders and on perusal of the affidavits of the District Magistrates & Collectors, Dhalai District, South Tripura District, Gomati District, North Tripura District, Unakoti District and Khowai District, it is apparent that no action was taken prior to the order issued by us as quoted hereinafter.

3. As far as Dhalai District is concerned we find that the Collector has taken some action in the matter and has held meeting with the SDMs and also with the Cable Operators. The Collector has candidly admitted that the issue regarding publicity of rates was never raised before the order but after the order has been passed he has directed the Cable Network to display the rates in the daily network service.

In the affidavit of the Collector, Dhalai he has also stated that the Cable Operators in his District are supplying Set Top Boxes conforming to Bureau of Indian Standards(BIS) specification.

4. The second affidavit is of the District Magistrate & Collector, South Tripura who has issued notifications with regard to publication of the charges only on 22.03.2016.

5. In Gomati District it is stated that there is one MSO, Tripurasawari Satellite Link, Mahatma Gandhi Road, P.O. R.K. Pur, District-Gomati, Udaipur-799120. The said MSO is made a party to this writ petition as respondent and it shall file its reply detailing the number of Set Top Boxes sold by it and also giving the details of the model numbers and the BIS certification with regard to the said model numbers.

6. In the affidavit of the District Magistrate & Collector, West Tripura it is mentioned that there is one MSO, M/s SRSTI, 11 Jagannath Bari Road, Agartala, West Tripura-799001. That is also added as party respondent.

This is the only District where we find that some action had been taken prior to the order we passed. On 06.01.2016 the District Magistrate had received complaints and issued an order to M/s SRSTI Cable Network which has been attached as Annexure-R/2. It would also be pertinent to mention that the District Magistrate, West Tripura also published various advertisements in newspapers, copies of which have been attached along with his reply which shows that he at least was aware of the problem and was taking some action.

We appreciate the public notice issued and published in the newspapers which clearly shows that the Set Top Box would be available from SRSTI Cable Network and the supplier should give money receipt along with price, quality and other conditions about the Set Top Box. The District Magistrate has also given a toll free number to lodge any complaint in this regard.

We appreciate the steps taken by the District Magistrate, West Tripura, Agartala and we are only amazed by the affidavits of the other District Magistrates who say that they never received any complaints and they never took any action. This only shows that those District Magistrates were not aware of the ground reality in their districts and were just glossing over their duties.

Another notice was issued in the 'Dainik Sambad' on 14.01.2016 where the cable subscribers were requested to be cautious about the following matters at the time of collection of Set Top Boxes and reads as follows:

- 1) The price/value of the Set Top Box should be given on the pocket of the Set Top Box.
- 2) The consumer/agent/supplier is bound to handover the cash receipt, quality, validity and other conditional certificate to the subscriber at the time of delivery of Set Top Box.
- 3) The subscribers can make complaint, if any, to the following Telephone numbers:  
Sakur                    0361-232-5527  
Mokumpur        0361-234-3088  
Jramti                0361-234-6647

If this notice could be issued in Agartala why could this action not be done in other places.

Along with the affidavit of the District Magistrate, West Tripura we find a letter of M/s SRSTI in which it has stated that as on 15.12.2015 it had already installed 17,000 Set Top Boxes and was expecting to install another 18,000 Set Top Boxes by 31.12.2015. Therefore, by the estimate of SRSTI, 35,000 Set Top Boxes were to be installed latest by December 31, 2015 at the cost of '1,700/- per Set Top box. This amount works out to '5,95,00,000/- in its reply M/s SRSTI shall inform this Court whether it has paid any VAT on this account because according to M/s SRSTI this transfer is an outright sale of the Set Top Box.

7. The Commissioner of Taxes is added as a respondent and he shall also inform us whether any VAT has been charged throughout the State of Tripura for the supply of these Set Top Boxes and on what basis the VAT has been charged.

8. Another disturbing aspect of the matter is that as far as West Tripura is concerned, M/s SRSTI Cable Network in their letter to the District Magistrate dated 15.12.2015 has enclosed the specification of the Set Top Boxes and the BIS certificate number is mentioned as R/65001/24. When we carefully perused the certificate of the Bureau of Indian Standards having the same number we find that the Bureau of Indian Standards has given registration and certification with regard to two models as *ALI-2321HD* and *ALI-220X2D*. The certificate which has been issued by SMT Electronic Technology Limited which is a Taiwanese or Hong Kong based company is with regard to Set Top Boxes *PVR-C-ALI-2321 chipset based Model-4*.

We are not clear what is the model number supplied in the State of Tripura. Therefore, SRSTI Cable Network shall along with their reply file copies of the invoices by which they received these Set Top Boxes showing the model number and showing the full details thereof. On the next date M/s SRSTI shall also produce their entire records with regard to the supply of these boxes including their account books for perusal by this Court.

9. Next is the affidavit filed by the District Magistrate & Collector, Unakoti and even he has taken steps after the order was passed and not before. In this affidavit it is also mentioned that one local Cable Operator, Santa Dhar of Kalimshahar has sold Set Top Boxes at the rate of '1,800/- but no details of the model number, etc. of the Set Top Boxes are given.

10. Next affidavit is of the DM & Collector, Khowai and according to him in Khowai District though somebody has applied for registration, no registration has been given and in Telamara Sub-Division one Telamara Cable Network is providing cable TV through an agreement with NXXT Digital. We are not clear whether NXXT Digital has any right or authority to distribute cable signal in the State of Tripura or in Khowai District and the District Magistrate, Khowai shall file a fresh affidavit in this regard. It is obvious that this affidavit of the District Magistrate, Khowai has been prepared at the instance of the Cable Network Operators and we do not appreciate the role of the District Magistrate, especially after we had passed the order on the last date that they should themselves ensure that action be taken. The DM, Khowai has not even issued any public notice but has only affixed the rates on the notice board of his office and he has only held a meeting with the Cable Operators.

We are not at all satisfied with the response of the District Magistrate, Khowai who shall be present in Court on the next date to explain why even after our order was passed he has not complied with it in letter and spirit.

11. The District Magistrate & Collector, Sepahajala has not filed his affidavit. According to Mr. T.D. Majumder he was not a party in the writ petition. He be added as a respondent in the writ petition and he shall also file his affidavit by the next date.

12. We find that in some of the affidavits it has been stated that no complaints have been received. We are not happy with this averment of the District Magistrate. When the District Magistrates were failing in their own duties and had not informed the consumers about their rights and the Cable Operators had not taken any action as required under the Cable Television Networks(Regulation) Act and the Rules framed thereunder or as per the orders of the TRAI how can one expect poor and single consumers to fight a better. It is the duty of the consumer bodies and the Magistrates to ensure that the law is enforced.

13. We also direct all the SDMs in the State to ensure that on a random basis in their jurisdiction they will check at least hundred households which have purchased Set Top Boxes over the last ten months and at least ten from each month and they shall find out the model number, etc. of the purchased Set Top Boxes. We also direct that publicity of this order shall be given on the cable television network itself so that if any person has a complaint he can directly approach the SDM and the SDM will take note of such complaint.

14. We are not at all happy with this stand of the Magistrates they are not aware of any complaints. What time does it take for an SDM to visit the houses of 5-7 consumers on random basis and check up the Set Top Boxes to find out whether the Set Top Boxes conform to Bureau of Indian Standards, which company do they belonged to, what is the model number, etc. etc.? This verification will have to be done.

15. When we go through the options approved by the Telecom Regulatory Authority of India we find that there are only four options given. The first option provides for refundable security deposit of '400/- per month and rent of the set top box at '55.66 per month exclusive of taxes and this rent is payable for 36 months which works out to about '2003.76. The next option is of giving a refundable security deposit of '800/- and paying rent of '30.66 per month which works out to a total payment of '1823.76 over three years. The third option is of adjustable security deposit of '400/- which means that this is not a refundable security deposit. Therefore, the customer only has to pay '400/- and thereafter pay rent of '36.80 per month for 36 months i.e. '1344.80 over 36 months + '400/- . The fourth option is of paying an adjustable security deposit of '800/- and paying '32.59 per month i.e. over 36 months the person pays '1185.48 + '800/- of security deposit which is '1985.48. This option was to be given so that the customers do not have to pay '1,700/- as an outright purchase. There is no option of outright purchase as far as we can gather from the TRAI guidelines. In case the Cable Operators can point out something else we may take a different view but as per the material on record the only four options are available as approved by the TRAI. What has happened is that M/s SRSTI has collected almost six crores rupees which it could not have. Interest on the six crores rupees over three years even at a very conservative rate of 15 percent per annum will come to almost '3,00,00,000/-. Where does this money go?

We are prima facie of the view that in view of the large scale amount involved there may be some elements of corruption and therefore we are giving notice to all the SDMs and the District Magistrates to file proper reply by the next date showing what action they have taken failing which we may be constrained to refer the matter for investigation by a competent authority including the Central Bureau of Investigation(CBI). We further direct the District Magistrates to ensure that with effect from today they shall ensure that no set top boxes are transferred in violation of the TRAI guidelines.

We also issue the following directions:

- (i) Every Cable Operator shall prominently display a moving notice in the bottom part of the screen clearly displaying the rates as approved by the Telecom Regulatory Authority of India (TRAI) for purchase of Set Top Boxes and also for the distribution of channels. This shall be done continuously for at least five minutes in an hour and especially at prime time viewing from 6.00 pm to 11.00 pm to ensure that all consumers are aware about the rates fixed by the TRAI for purchase/rent of Set Top Boxes and the rates for hiring of channels.
- (ii) The Cable Operators shall also ensure that all the consumers are made aware of the packages and options which are available to them.
- (iii) It shall also be ensured that the consumers are told that in terms of proviso to Rule 12 every consumer has a right to purchase the Set Top Box from the market and therefore it is the duty of the Cable Operators to inform the consumers that what are the comparability requirements for purchase of such a Set Top Box from the market.

(iv) Set Top Boxes having digital access can only be supplied by Multi-System Operators(MSO) and not by Cable Operators. Supply and installation of the Set Top Box can only be done by the MSOs even though the consumer has a right to approach the MSO through the linked Cable Operator.

Compliance affidavits be filed by all SDMs by 25<sup>th</sup> May, 2016.

List on 31.05.2016.