

File Number N-45006/1/2021-DAS
GOVERNMENT OF INDIA
Ministry of Information & Broadcasting

“A” Wing, Shastri Bhawan
New Delhi, Delhi – 110001

Dated the 14th January, 2022

ORDER

The undersigned being the Appellate Authority has reviewed appeal dated 28/11/2021 filed by M/s Bhusawal Cable Network Pvt. Ltd. (hereinafter referred as BCN) against this Ministry’s Order dated 23/11/2021 cancelling the MSO registration of BCN, and after having personal hearing with the representatives of BCN on 23/12/2021 and the following Order is made.

Background

2. This Ministry had granted provisional registration of Multi-System Operator (MSO) to BCN for operating as MSO in Digital Address System in the State of Maharashtra and Madhya Pradesh as notified vide Notification Number 2534 (E) dated 11.11.2011 under Cable Television Networks (Amendment) Rules, 2021 vide its communication number 9/111/2014-BP&L dated 04.11.2015.
3. BCN was subsequently given PAN India registration of MSO vide this Ministry’s Circular Number 2/108/2015-DAS dated 27.01.2017 and subsequently treated to have a regular registration of MSO vide this Ministry’s Office Memorandum Number 9/406/2016-DAS dated 06.03.2017.
4. The registration of MSO granted to BCN by this Ministry was subject to adherence and compliance of certain terms and conditions.
5. Clause 4 (i) of the terms and conditions of registration of MSO granted to BCN bound it to comply with all the provisions of the Cable Television Networks (Regulation) Act, 1995 and the Rules made thereunder, as amended from time to time.
6. Clause 4 (ii) of the terms and conditions of registration of MSO granted to BCN provided that it should abide by the rules/regulations/orders/directions/guidelines etcetera issued by the regulatory authority or by this Ministry from time to time.



7. Clause 6 of the terms and conditions of registration of MSO granted to BCN required that it should ensure its continued eligibility as applicable throughout the period of the permission and adhere to all the terms and conditions, failing which its permission shall be liable to be terminated/cancelled forthwith without giving any notice.

8. Pursuant to a complaint received in this Ministry against BCN regarding taking feed from DD Free dish and re-transmitting on its network, the Ministry requested the authorized officer (AO) concerned prescribed under the Cable Television Networks (Regulation) Act, 1995 to inquire into the matter and submit his report to this Ministry.

9. The AO in his report dated 20/09/2021 to the Ministry stated that feed from DD Free Dish was used by M/s BCN Private Limited for re-transmission of certain mandatory and private satellite channels. The supporting evidence in the form of Panchanama in the presence of two witnesses and corroborative video recording of the enquiry proceedings were also furnished.

10. In view of report of the AO, opportunity of being heard was provided by the Ministry to BCN vide this Ministry's communications dated 24/09/2021 and 07/10/2021 levelling all charges against it and demanded an explanation as to why non-compliance of the terms and conditions laid down in its MSO registration should not entail termination/cancellation of its registration.

11. In response to Ministry's communications, BCN submitted its reply. The logo of BCN superimposed on logo of DD Free Dish on its cable network for certain Free to Air mandatory DD Channels and Pay channels could not be explained to the satisfaction of the Ministry.

11.1 The Ministry concluded violation of Section 8 of the Cable Television Networks (Regulation) Act, 1995 read with the Appendix thereto for retransmitting satellite signals of mandatory DD channels by taking signals from KU Band of spectrum in place of mandated C Band.

11.2 The Ministry also concluded violation of rule 6(3) of the Cable Television Networks Rules, 1994 for the reason of unauthorised reception of DD Free Dish signals by the BCN and re-transmitting on their Cable Network.

11.3 On above mentioned reasons, the Ministry cancelled the MSO registration granted to BCN on 04.11.2015 giving therein an opportunity to appeal, if any.

12. BCN has availed the opportunity and filed an appeal vide its letter dated 28/11/2021 and requested for personal hearing also. Accordingly, a personal



hearing has been granted to BCN on 23/12/2021 vide letter dated 17/12/2021 and was availed by the Appellant on 23/12/2021.

Grounds of Appeal

13. BCN has raised the following grounds of appeal before the undersigned against the order dated 23.11.2021 by the Ministry:

- i) that Deputy Secretary to the Government of India, while passing the impugned order dated 23.11.2021, has merely acted in a callous and mechanical manner, that too, without application of mind. The responses of the appellant have been dealt by the Deputy Secretary to Government of India in inadvertent manner and without speaking order in the absence of any reasons much less cogent reasons.
- ii) that the Appellant's objections/response(s) to the show cause notice, on merit as well as on technicality of the mandate of law, have been completely ignored while passing the impugned order dated 23.11.2021 merely on the assumption that the officer authorized under the Cable Television Network (Regulation) Act, 1995 and alleged recording by/through him cannot be disbelieved or doubted.
- iii) that while assuming so, the order/judgment dated 28.09.2021 passed by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in 1024 Writ Petition No. 10690/2021 has been completely ignored in term whereof, inter alia, the Authorised officer has been found to be guilty of committing over-reaches and improper sealing of the entire business premises of the Appellant in clear-cut violation of the Section 11 etc. of the Cable Television Network (Regulation) Act, 1995. It is therefore, quite evident that the impugned order dated 23.11.2021 is ultra-virus and ex-facie non-speaking order and merely based upon the whims and fancies of the Deputy Secretary, Ministry of Information & Broadcasting, Government of India and thus, deserves to be quashed/set aside immediately.
- iv) that the impugned order is an act of haste and avoiding mandate of law as the reasonable and genuine offer by the Appellant to re-examine its network afresh/de-novo has been ignored in hair-splitting technicalities. Moreover, the alleged invocation of Section 8 of the Cable Television Network (Regulation) Rules, 1994 basis untenable and doubtful CD



recording for terminating/cancelling the MSO registration of the Appellant is unprecedented, unheard of and therefore, there seem to be many colors in this process.

- v) that the impugned order is a classic case of making light the genuine and well-founded objections of the Appellant by blindly believing upon the alleged CD recording and AO's alleged Report dated 20.09.2021, which is evidently nothing but travesty of justice. That without even dealing with the well-founded objection of the Appellant to the alleged CD recording, the impugned order dated 23.11.2021 gave guilty verdict against the Appellant while referring to section 8 of the Cable Television Network (Regulations) Act, 1995 and Rule 6(3) of the Cable Television Network (Regulation) Rules, 1994. That the impugned order is unfortunately silent upon the various objection to the alleged CD recording and in a bizarre manner, zeroed the same to the ulterior design of the competitor of the Appellant. That the tone and tenor of the impugned order clearly makes it liable to be set aside immediately. That the Appellant herby reiterated and reaffirms the objections already pointed and highlighted through its responses(s) dated 11.11.2021, 25.09.2021 and 29.09.2021 and 16.10.2021 respectively, the same are also annexed herewith for necessary records and ready references.
- vi) that the Appellant is also deeply anguished and aggrieved because of running from pillar to post at the mercy of the office of the Collector, Jalgaon. That merely for showing the alleged recording, more than 20 days were taken by the Collector office, Jalgaon thereby putting the Appellant on his toes during the season of festivities of Durga Puja and Diwali. To add fire to the injury, the said alleged recording were shown in a half-baked/perfunctory manner and that too without even furnishing true or legitimate copies thereof, if any, to the Appellant in utter violation of the mandatory requirements of the law of the land.
- vii) that the alleged recording and the genuineness thereof being specifically disputed by the Appellant, it was MIB to comply with Collector office, Jalgaon as well as the Deputy Secretary, MIB to comply with the mandate of law by independent corroboration before taking recourse to any coercive action whatsoever including the issuance of the impugned order dated 23.11.2021. However, merely in a mechanical dated 23.11.2021 has been passed against the Appellant which on the face of it, is even far shocking and unfortunate than the over reach and improper excesses committed by the Authorized Officers/Collector, Jalgaon in



sealing the entire business premises of the Appellant in misuse and abuse of the provisions of Cable Television Network (Regulations) Act, 1995.

- viii) that it is as matter of record that the Appellant is a registered MSO with a duly granted DAS License. The Appellant has always been a law abiding entity and during the course of its business, has exclusively caters to the demands of the various subscribers in the area of Bhusawal city, Jalgaon District by retransmitting various TV channels in conformity with law and without any hassle and interruption. That during all these years, the Appellant has established a good reputation and goodwill in the area thereby, resulting in increase of subscriber base from time to time.
- ix) that, during the course of the operation, it is an admitted position that the Appellant also installed 12 feet diameter dish since long in conformity with the MIB notification dated 05.09.2013. As a matter of fact, the Appellant has also been conferred with the certificate dated 20.11.2015 bearing No. DMC/BSL/25(1)/2015-16/256 by none other than the Prasar Bharti under the signature of Shri G.N. Khanzode, the Assistant Engineer after physical inspection in recognition of the compliance of notification NO. 2082 and 1099 respectively by the Appellant. Accordingly, it is evident that there is neither any reason nor any occasion to invoke the provision of Section 8 of the Cable Television Network (Regulation) Act, 1995 against the Appellant and that too, merely on the make-belief, specious, untenable, ultra-virus and tainted CD recording at the behest/through the Collector, Jalgaon.
- x) that even a bare perusal of the so called alleged investigation report dated 20.09.2021, inter alia, under the signature of Collector, Jalgaon casts clouds of doubts, impartiality and lack of independence on the entire over-excessive and improper actions against the Appellant at the ground. That for the reasons already highlighted in Appellant's various response(s), the so called invocation of Rules 6(3) of the Cable Television Network (Regulation) Rules, 1994 is also untenable merely on the grounds that first, it is based upon tainted and ultra-virus CD recording and secondly, there is no complaint whatsoever against the Appellant by any copyright owners whatsoever.
- xi) that the Appellant has also raised its objections to the admissibility and/or genuineness of the alleged CD recordings mat the behest/through



Collector office, Jalgaon in its response(s) to the show cause notice, which are once again reproduced herein below:

- As for the first alleged recording, the same allegedly shows content recorded in some mysterious room, the location or exact address thereof cannot even be deciphered from the alleged recording. Moreover, the said alleged recording's only foundation is by means of camera's focus on the externally stuck logo of some STB (no inbuilt logo revealed) with superimposition of watermark allegedly showing resemblance with Bhusawal Cable Network which is neither tenable nor genuine. Therefore, the nature of the alleged recording as such is highly suspicious and specious which as such, cannot be believed upon its face value, especially because of the fact that mandatory procedure as laid down under section 65B of the Evidence Act and/or other legal provisions have not been followed at all. To add fire to the injury, the alleged recording shown to us on 09.11.2021 has been abysmally very poor in quality/vision and without any sound (on mute actually) in the absence of arrangement for sound speakers. That non-furnishing of the true copy, if any, of the said recording with the Appellant, weighs upon highhandedness and callousness exercised against Appellant in the present scenario.
- As for the other two alleged recordings allegedly inside the control room premises of Bhusawal Cable Network, it is emphatically stated that both of them being ups, cannot be even looked into for allegations corroboration purpose at all. The entire process being tainted with administrative overpowering and in the absence of mandatory requirement of bringing on board independent witnessed in proof of impartial or unbiased nature, the said two alleged recording on the face of it, are untenable in the eyes of law. Therefore, both the aforesaid alleged recordings are neither justified nor permissible in the eye of law. Accordingly, the nature of the alleged two recording as such in highly suspicious and specious which as such, cannot be believed upon its face value also because of the fact that the mandatory procedure as laid down under section 65B of the Evidence Act and/or other legal provisions have not been followed at all. To add fire to the injury, the aforesaid alleged two recording shown to us on 09.11.2021 has been abysmally very poor in quality/vision and without any sound (on mute actually!) in the absence of arrangement for sound speakers. That non-furnishing of the true copy, if any, of the said recording with the Appellant, weighs upon highhandedness and callousness exercised against Appellant in the present scenario.



- xii) that the content of para 7 of the impugned order dated 23.11.2021 are ex-facie, inconsistent and contradictory in nature. The inconsistency and contradiction is evident from the fact that the Authorized Officer, Jalgaon/Collector Office Jalgaon instead of holding lawful enquiry and submitting the report in sequitur thereto to the Ministry, committed improper acts of inter alia, sealing the entire business premises of the Appellant, which as matter of record has been taken cognizance by the High Court of Judicature at Bombay, Bench at Aurangabad in 1024 Writ Petition No.10690/2021 vide order/judgment dated 28.09.2021.
- xiii) that the content of para 8 of the impugned order fated 23.11.2021 are misconceived, incorrect untenable and controvertible and thus, denied specifically. That a bare perusal of the so called alleged report dated 20.09.2021 under the signature of, inter alia, Collector Jalgaon, specifically demonstrates that the same is a classic case of highhandedness and impropriety and a complete misuse and abuse of the provisions of Cable Television Network (Regulation) Act, 1995. That the alleged video evidence, suffering with so many lacuna and infirmities, also being de-hors the mandate of law, has been controverted/disputed by the Appellant from time to time including through its aforesaid response(s) to the show cause notice. Having regard thereto, a mechanical, finding attributing violation of Section 8 of the Cable Television Network (regulation) Act, 1995 and the Rule 6(3) of the Cable Television Network Regulation Rules, 1994 by the Appellant basis thereof is ultra-virus and without any substance or merit whatsoever. Moreover, invocation of the aforesaid two provisions [Section 8 and Rules 6(3)], is not maintainable and out of question especially because of the infrastructure availability with the Appellant, i.e. installation of 12 feet diameter dish since long and in the absence of any complaint whatsoever from copyright owners. The ordeal and sufferings of the Appellant at the hands of the concerned officials become further evident from the fact that the Appellant has been made to run from pillar to post during the festivities and not even provided with the true copies, if any, of the alleged CD recordings once the same have been disputed on many grounds, on merit as well as on fact.
- xiv) that the content of para 10 impugned order dated 23.11.2021 are misconceived, incorrect and denied specifically. That the very foundation of the misconceived allegation of the violation of Cable Television Network(Regulation) Act, 1995 being the alleged CD recording at the behest/through Collector Office, Jalgaon, has been



controverted by the Appellant on facts as well as law. However, the same has been found to be not satisfactory merely in a perfunctory and non-speaking manner.

- xv) that the contents of para 12 of the impugned order dated 23.11.2021 are misconceived, incorrect and thus denied. That instead of passing directions to the Collector Office, Jalgaon, to stand on its own legs and discharge the burden of proof as regard to the alleged CD recording, in a provision(s) unknown to law, the Appellant has been blamed for not providing any evidence to counter the same. On the face of it, it is travesty of justice especially because of the fact that the Collector Office, Jalgaon has already been found to be acted in improper manner while sealing the entire business premises of the Appellant vide order/judgment dated 28.09.2021 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in 1024 Write Petition No. 10690/2021. That the mere reasoning of not disbelieving or doubting the genuineness of alleged video recording by the AO/Collector, Jalgaon on the face of it is untenable and improper.

14. During personal hearing with the Appellate Authority, BCN presented judgments in three court cases quoting as relevant to its appeal, as mentioned below:

- i. Order dated 14/07/2020 in case number (2020)/7 Supreme Court Cases 1, Arjun Pandit Rao Khotkar v/s Kailash Khushanrao Gorantyal.
- ii. Order dated 11/01/2019 in case number 2019 SCC online Del 6568 in the High Court of Delhi, Novex Communications Pvt Ltd v/s Lemon Tree Hotels Ltd and Ors.
- iii. Order dated 29/10/2020 in W.P. No. 14825 /2016 in the High Court of Madras, R.Ramdas v/s The Joint Commissioner of Central Excise, Puducherry and Ors.

Discussion

15. Ground Nos. 13(i), 13(ii), 13(iii), 13(iv), 13(v), 13(vii), 13(xii)

15.1 The section 4(7) of the Cable Television Networks (Regulation) Act, 1995 gives authority to the central government to suspend or revoke the registration granted to the cable operate and reads as follows:



“The Central Government may suspend or revoke the registration granted under sub-section (5) if the cable operator violates one or more of the terms and conditions of such registration:

Provided that no such order of suspension or revocation shall be made without giving reasonable opportunity of being heard to the cable operator.”

15.2 The rule 11(7) of Cable Television Networks Rules, 1994 gives authority to the central government to suspend or revoke the registration granted to the MSO and reads as follows:

“In the event of a violation by a multi-system operator of one or more of the terms and conditions of the permission granted under sub-rule (3), the Central Government may suspend or revoke such permission for such period and for such notified areas as deems fit: Provided that no such order of suspension or revocation shall be made without giving a reasonable opportunity to the multi-system operator to explain its position.”

15.3 On perusal of records, it is evident that the Ministry had passed order dated 23.11.2021 after providing the reasonable opportunity of being heard to the MSO. The impugned order was passed after taking the approval of the competent Authority. The alleged violations were brought to the notice of Appellant vide letter dated 24.09.2021 and 07.10.2021. Vide letter dated 07.10.2021, the Ministry explained in clear terms the nature of violations, sought supporting documents and advised to furnish reply on facts and merits. The opportunity to examine the video recording at the office of Collector, Jalgaon was also provided, the custodian and owner of the original video recording, to ensure the principal of Natural Justice. The order was passed by the Ministry only after the receipt of the reply and due application of mind.

15.4 The Panchnama of the enquiry proceeding conducted by the Authorised officer in the presence of two witnesses clearly mentions the fact that feed of DD Free Dish was used for transmission of Free to Air mandatory channels as well as Pay Channels. The video recording of the proceedings also corroborates the findings. Therefore, the Ministry had sufficient evidence before passing the impugned order.

15.5 The Order/Judgment dated 28.09.2021 passed by the Hon’ble High Court of Judicature at Bombay, Bench at Aurangabad in 1024 Writ Petition No. 10690/2021 was duly perused. The Hon’ble High Court in its Judgment cancelled the order of Authorised officer sealing the premises of the MSO. The Hon’ble High Court has



also made it clear in the order that authority can proceed with the Show Cause Notice issued to the Appellant and take decision as may be permissible under law on its own merit. The Hon'ble High Court has also stated that its order would not preclude the authority to proceed ahead in accordance with law.

15.6 The Appellant has also placed reliance on Order dated 29/10/2020 in W.P. No. 14825 /2016 in the Hon'ble High Court of Madras, R.Ramdas v/s The Joint Commissioner of Central Excise, Puducherry and Ors on the ground that Authorised officer rather without completing enquiry in comprehensive manner submitted report to the Ministry. It appears from the perusal of order relied upon that the matter deals with the taxation wherein statutory show cause notice was issued to the petitioner but Demand was raised beyond the scope of the show cause notice.

15.7 The matters related to Revenue and Taxation are different from the matters related to granting/cancellation of registration. The collection of taxes places responsibility on state to exercise the Authority as per the mandate of law, whereas the onus is on to the Appellant in the present case to maintain the eligibility and follow the terms and conditions all the time. The BCN was provided the reasonable opportunity of being heard as mandated in section 4(7) of the Cable Television Networks (Regulation) Act, 1995 and Rule 11(7) of Cable Television Networks Rules, 1994 vide this Ministry's communications dated 23.09.2021 and 07.10.2021 levelling all charges and evidences before taking any adverse action. Therefore, there is no merit on the ground taken by BCN.

15.8 Though the Judgement relied on by the BCN is materially different but even in this Judgement para 13 reads as:

"13. For the reasons stated above, the Order-in-Original No.07/2016-ST dated 25.02.2016 is quashed. However, the first respondent is granted liberty to issue a fresh show cause notice giving details of the proposed demand for the respective services, atleast within a period of 30 days from the date of receipt of a copy of this order. With such a liberty, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. No costs."

15.9 The above para clearly indicates that the requirement of law is fulfilled if decision is taken only after the charges were brought to notice of the Appellant seeking explanation. In this case, the Appellant was clearly conveyed the charges and action was taken only after receipt of the response.

15.10 In view of above, these grounds of appeal are dismissed.

16. Ground No. 13(vi)

16.1 On perusal of records it is seen that the vide letter dated 07.10.2021; the Appellant was also provided with the copy of few screenshots of video recording of enquiry proceedings conducted by the Authorised Officer. Also, Appellant was provided the opportunity of examine the video recording of the proceeding by the office of Collector, Jalgaon on 22.10.2021. Thereafter, vide letter dated 26.10.2021, the Appellant requested to Collector, Jalgaon to show them the video recording after 08.11.2021. It is clear from records that substantial delay on examining the video recording was due to the suffering of Mr. Ashwin Khona from pneumonia, on request of the Appellant only.

16.2 In any case, screenshots of the video recording on sample basis were already provided to the Appellant to furnish his reply. Also, the order was passed only after examination of video recording by the Appellant and receipt of his reply.

16.3 In view of above, this ground of appeal is dismissed.

17. Ground No. 13(viii), 13(ix), 13(x), 13(xi), 13(xiv) and 13(xv)

17.1 The Appellant has placed reliance on Hon'ble Supreme Court decision in CIVIL APPEAL NOS. 20825-20826 OF 2017 dated 14.07.2020 in case of Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal to support his contention that requirement of 65B of the Evidence Act for electronic evidence has not been fulfilled while adjudicating in this matter.

i) Analysis of Case:

In Arjun v. Kailash, the Hon'ble Supreme Court had to adjudicate on an election petition which challenged the election of Mr. Arjun Panditrao Khotkar from Jalna Legislative Assembly Constituency, on the ground that the nomination papers were filed after the stipulated deadline. The Respondents wished to rely on video camera recordings to prove that the candidate had filed his nomination after the stipulated deadline. The Election Commission produced CDs which contained a copy of the video camera recordings, in accordance with the direction given by the High Court. However, the necessary certificates were not produced in accordance with Section 65B(4) by the Election Commission, despite multiple requests made by the Petitioner.



- ii) During the cross examination, an officer of the Election Commission testified that the video camera recordings were authentic. Based on this testimony, the Hon'ble High Court admitted the evidence of the video recordings even though the certificate in accordance with Section 65B(4) had not been produced. The High Court held that it was satisfied that there was "substantial compliance" with Section 65B, as a competent officer had testified that the video recordings were authentic.
- iii) In this scenario, the Hon'ble Supreme Court had to interpret Section 65B(4) for determining the following issues:
- Whether a certificate under Section 65B(4) must be produced even when an original record of the electronic evidence is available, or does it have to be given only when a secondary record of the electronic evidence is produced?
 - Whether compliance with Section 65B(4) is mandatory even in a situation when it is not possible to obtain the certificate from the competent entity?
- iv) The lead opinion was delivered by Justice Nariman and a concurring opinion was delivered by Justice V Ramasubramanian. Justice Nariman noted that Section 65B(1) differentiates between the 'original' electronic record, which is contained in the computer in which the information is first stored – and the secondary copies that are made from the primary electronic record. It was held that a certificate under Section 65B(4) shall have to be obtained only when the secondary copies of the electronic record are produced before the Court. Production of a certificate shall not be necessary when the original electronic record is produced. The original electronic record can be adduced directly as evidence if the owner of the computer/tablet/mobile phone steps into the witness box and establishes that the device where the information is first stored is owned/operated by him. If the "computer" where the electronic record was first stored happens to be part of a "computer network" or "computer system" (as defined under the Information Technology Act, 2000), and it is not possible to bring such a network/system physically to the Court, then secondary copies can be produced along with the certificate stipulated by Section 65B(4).
- v) Justice Nariman also agreed with the view taken in Anvar v. Basheer – which held that Section 65B is a complete code in itself for the admissibility of electronic evidence and shall not be affected by other provisions of the Evidence Act. Anvar v. Basheer also held that – "...if an electronic record as such is used as primary evidence under Section

62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65-B of the Evidence Act.” Justice Nariman clarified that this dictum should be read by omitting the words “under Section 62 of the Evidence Act.” This is because Section 65B is a complete code for electronic evidence and shall supersede other provisions such as Section 62. Justice Nariman implies here that it is not necessary to refer to Section 62, as Section 65B(1) itself distinguishes between the original electronic record and the secondary copies of the electronic record.

17.2 The para 6 of the letter dated 24.09.2015, F.No. 9/111/2014-BP&L clearly states that the Appellant shall ensure its continued eligibility as applicable throughout the period of the permission and adhere to all the terms and conditions. The Appellant was fully aware that eligibility and compliance to the terms and conditions are not one-time affair and to be maintained throughout. Therefore, the Appellant cannot claim compliance on the basis of certificate dated 20.11.2015 bearing No. DMC/BSL/25(1)/2015-16/256 by the Prasar Bharti in the year 2021.

17.3 The appellant has also claimed that the CD is tainted and cannot be relied upon. There is a Panchnama of enquiry proceedings conducted by team of SDM, Bhusawal, SDM Malkapur and ASP, Jalgaon with two witnesses. SDM, Bhusawal is also an Authorised Officer under the Cable TV Networks(Regulations) Act, 1995 and was himself present on the premises. The video recording of the proceedings corroborates the facts mentioned in the Panchnama. The quality of video recordings is sufficient as far as logos of TV channels and BCN on the TV screens are clearly visible.

17.4 The Appellant has also raised the legal point of admissibility of video recording as evidence in the absence of certificate under section 65B of the Evidence Act. The Cable Television Networks (Regulations) Act, 1995 has clarified, wherever required the nature of proceedings. Section 14(2) of the Cable Television Networks (Regulations) Act, 1995 clearly states that provisions of Code of Civil Procedure, 1908 (5 of 1908) shall, so far as may be, apply to every proceeding referred to in Section 14(1) of the Cable Television Networks (Regulations) Act, 1995. Similarly, chapter IV of the Cable Television Networks (Regulations) Act, 1995 implies that Code of Criminal Procedure 1973 (2 of 1974) will be applicable to the complained filed by the Authorised Officer in any court against a Cable Operator for Offences and Penalties.

17.5 Therefore, legislature has not bound the proceedings for granting, denying, revoking and suspending the registration to a Cable Operator to either Code of Criminal Procedure or Code of Civil Procedure. The legislature has, however, cast



the requirement of granting reasonable opportunity of being heard before cancelling or suspending the registration to a Cable Operator. Therefore, the proceedings to decide upon the cancellation of registration to a Cable Operator cannot be considered to be a Judicial Proceedings. The rigours of Indian Evidence Act, 1872 cannot be applied to such proceedings. These proceedings can at best be described as quasi-Judicial proceedings to be governed by the Principal of Natural Justice and Preponderance of Probability. Therefore, there is no legal infirmity in relying on the Panchnama and Corroborative Video recording as evidence.

17.6 Even though the rigours of Indian Evidence Act, 1872 are not applicable in the instant proceedings, the owner of the video recording in this case, office of Collector Jalgaon, has clearly stated in his letter dated 20.09.2021 that video recording is related to enquiry proceedings. If occasion arises, the original video recording can always be produced before the court, or copy thereof after furnishing the required certificate under section 65B of the Evidence Act. In the instant matter, video recording corroborates the spot enquiry conducted in the presence of two witnesses as also evidenced by Panchnama duly affirmed by the witnesses.

17.7 In view of above, these grounds of appeal are dismissed.

18. Ground No. 13(xiii)

18.1 On perusal of records, it is seen that impugned order dated 23.11.2021 has cancelled the registration of the Appellant on grounds of violation of terms and conditions of the registration. The violation Section 8 of the Cable Television Networks(Regulation) Act, 1995 and Rule 6(3) of Cable Television Networks Rules, 1994 have been reported in the order. These violations are discussed as follows:

18.2 Section 8 of the Cable Television Networks(Regulation) Act, 1995

The Section 8 of the cable Television Networks(Regulation) Act, 1995 reads as follows:

“8. Compulsory transmission of certain channels.—(1) The Central Government may, by notification in the Official Gazette, specify the names of Doordarshan channels or the channels operated by or on behalf of Parliament, to be mandatorily carried by the cable operators in their cable service and the manner of reception and re-transmission of such channels: Provided that in areas where digital addressable system has not been introduced in accordance with the provisions of sub-section (1) of section 4A, the notification as regards the prime band is concerned shall be limited to the carriage of two Doordarshan terrestrial channels and one regional

language channel of the State in which the network of the cable operator is located.

(2) The channels referred to in sub-section (1) shall be re-transmitted without any deletion or alteration of any programme transmitted on such channels.

(3) Notwithstanding the provisions of sub-section (1), any notification issued by the Central Government or the Prasar Bharti (Broadcasting Corporation of India) in pursuance of the provisions of sub-section (1), prior to the 25th day of October, 2011 shall continue to remain in force till such notifications are rescinded or amended, as the case may be.”

18.2 In exercise of power granted in Section 8(1) Cable Television Networks(Regulation) Act, 1995; the list of channels and manner of their re-transmission has been specified. Every Cable Operator is required to re-transmit the mandatory Doordarshan Channels only after taking C-band satellite signals.

18.3 In the instant case, documentary evidence in form of Panchnama of enquiry proceedings and corroborative video recording clearly establishes that the Appellant has taken feed from DD Free Dish of the mandatory Free to Air Channels and re-transmitted in its network. The DD Free Dish broadcast is KU band and not the C band. The Appellant has not admitted this fact evidence and hence no explanation was provided for doing so. The legal/technical objections on admissibility of electronic evidence has already been discussed in forgoing paras. Therefore, violation of Section 8 of the Cable Television Networks(Regulation) Act, 1995 is established.

18.4 Rule 6(3) of Cable Television Networks Rules, 1994

The Rule 6(3) of cable Television Networks Rules, 1994 reads as:

“No cable operator shall carry or include in his cable service any programme in respect of which copyright subsists under the Copyright Act, 1972 (14 of 1972) unless he has been granted a licence by owners of copyright under the Act in respect of such programme.”

The Appellant was found to be transmitting certain mandatory and pay channels after taking feed from DD Free Dish and transmitting them in its Network. DD Free Dish is Direct to Home (DTH) subscription free service provided by the Prasar Bharti, the Public Broadcaster. DTH services are for the end user and cannot be provided to the any Distribution Platform

Operators (DPOs). There is separate license given by the Ministry for HITS (Headend In The Sky); which authorises them to connect to the end consumers through other Distribution Platform Operators (DPOs). Therefore, there is not any scope for the Prasar Bharti to enter into any agreement with the Appellant for providing feed of DD Free Dish to re-transmit on the network of BCN.

18.5 Further, the Section 37 of the Copyright Act, 1957 reads as follows:

“37. Broadcast reproduction right.— (1) Every broadcasting organisation shall have a special right to be known as “broadcast reproduction right” in respect of its broadcasts.

(2) The broadcast reproduction right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.

(3) During the continuance of a broadcast reproduction right in relation to any broadcast, any person who, without the licence of the owner of the right does any of the following acts of the broadcast or any substantial part thereof, —

(a) re-broadcast the broadcast; or

(b) causes the broadcast to be heard or seen by the public on payment of any charges; or

(c) makes any sound recording or visual recording of the broadcast; or

(d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; or

[(e) sells or gives on commercial rental or offer for sale or for such rental, any such sound recording or visual recording referred to in clause (c) or clause (d)] shall, subject to the provision of section 39, be deemed to have infringed the broadcast reproduction right.

18.6 The Appellant was hence found to be retransmitting the mandatory as well as Pay Channels on its network after taking feed from the DD Free Dish, which being a DTH transmission cannot be given to or received by an MSO and is clearly violation of provisions of the Copyright Act, 1957, which inter alia results in violation of Rule 6(3) of the cable Television Networks Rules, 1994 and terms and conditions of MSO registration granted to the Appellant.

18.7 Here, the Appellant has also taken a legal ground that the only copyrights owner can file complaint for the violation of its rights placing reliance on Order dated 11/01/2019 in case number 2019 SCC online Del 6568 in the High Court of Delhi, Novex Communications Pvt Ltd v/s Lemon Tree Hotels Ltd and Ors. The Appellant has also claimed that in absence of any complaint by the Copyright Owner; Rule 6(3) of the cable Television Networks Rules, 1994 cannot be invoked by the Ministry. After perusal of order, it is evidently clear that the subject matter involved in the case relied upon is totally different from the present case. The case relied upon deals with the point whether the provisions of Sections 33 to 35 of the copyright Act, 1957 only entitle a copyright society to collect the license fee, and the appellant/plaintiff not being a copyright society hence cannot file the present suit alleging infringement of copyright because the appellant/plaintiff is not entitled to collect the license fee. Further the Para 19 of the order itself reads as:

“19. So that there is no misunderstanding with respect to the aspects decided and the interpretation given to the provisions of the Act in this judgment, it is observed that what is dealt with and decided in this case is only in the context of the copyright in a sound recording, and of this copyright work the appellant/plaintiff claims to be the owner.”

18.8 The Ministry is not claiming to be the owner of Copyright in the instant case but only exercising its right to take action on the violation of terms and conditions of granting registration to the Appellant. The cancellation of registration by the Ministry neither prohibits Authorised Officer to proceed with filing complaints before the court nor copyright owners to take action as per law. Therefore, the legal ground taken by the Appellant is also not maintainable.


18.9 In view of above discussion, this ground of appeal is dismissed.

Decision

19. Against the backdrop of the foregoing, the claims made by the appellant i.e. BCN are found to be on flimsy ground and do not have either substance or merit and therefore, liable to be rejected. Accordingly, earlier decision to cancel the MSO registration of M/s Bhusawal Cable Network Pvt. Ltd vide the Ministry's

Order dated 23/11/2021 is upheld. However, 7 days' time w.e.f the date of issue of this Order is given to BCN for winding up its operations as an MSO during which a scroll shall be run by it informing its subscribers about its closure of business on the given date, so as to enable them to make alternative arrangement.

20. The appeal, accordingly, stands disposed of.



Secretary

Ministry of Information and Broadcasting &
Appellate Authority

To

M/s Bhusawal Cable Network (BCN) Private Limited
Plot Number 6, S.No. 53/1/1, RK Constructions
Opposite Airtel Mobile Tower, Nr Gadkari Nagar
Khadka Square, Khadka Road
Bhusawal, Maharashtra – 425201
Email: rkcons01@gmail.com, bcnpvtltd@gmail.com

Copy to:

1. Secretary, TRAI
2. Chief Secretary, Maharashtra
3. DGP, Police, Maharashtra
4. DC, Jalgaon, with request to ensure compliance of this Order.
5. NIC, MIB, with the request to upload this Order on Ministry's website for information of all concerned.