

Prasar Bharati (Broadcasting ... vs Singla Property Dealers Pvt Ltd on 23 May, 2026

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 23rd May 2026

Broadcasting Petition No. 125 of 2016

Prasar Bharati (Broadcasting Corporation of India) ...Petitioner
Vs.
M/s Singla Property Dealers Pvt. Ltd ...Respondent

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Mr. Rajeev Sharma, Senior Advocate
Mr. Uddyam Mukherjee, Ms. Shreya Sharma,
Mr. Nishant Kandpal, Ms. Arunima Singh,
Advocates
For Respondent : None

JUDGMENT

1. This Petition, under Section 14, of the Telecom Regulatory Authority of India Act, 1997, (hereinafter referred to as "TRAI Act"), has been filed, by Prasar Bharati (Broadcasting Corporation of India) AIR Resources, Room No. 301, Aakashvani Bhavan, Sansad Marg, New Delhi, Petitioner, against M/s Singla Property Dealers Pvt. Ltd., 79, Ganesh Market, Near Overbridge, Hissar, Haryana, with a prayer for a decree, declaring and holding that the use and possession of Respondent of the licensed infrastructure, detailed in the Petition, is unauthorised, illegal and contrary to license agreement, dated 23.03.2006, followed by a mandate to Respondent to forthwith remove its equipment therefrom, an award of damages, at the rate of five times the license fee, @ Rs. 12,44,212/- per annum for the period from 17.07.2009 to 31.12.2015, amounting to Rs. 80,38,510/-, with a further prayer for award of license fee, including delayed payment interest, amounting to Rs. 12,34,255/-, and other reliefs, which this Tribunal deems fit.

2. In brief, the Petition contends that the Petitioner - Prasar Bharati, is a statutory corporation, established under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990, and the General Manager (Commercial) had filed this Petition. The Petitioner is a Public Service Broadcaster in

India, having its Broadcasting Network, to run Doordarshan and All India Radio Network, in the country, i.e., the Petitioner is a licensor in terms of Section 2(e) of the TRAI Act. The Respondent is a Company, incorporated under Companies Act, 1956, having its registered office at the address mentioned above, and is engaged in the Broadcasting business. In the year 2005, the Government of India had invited bids for auction of FM Radio Transmission slots, in respect of various cities, by a tender document, annexed as Annexure P-1 to Petition. The Respondent was a successful bidder in respect of city of Hissar. The Government of India had executed an agreement, called "Grant of Permission Agreement" (GOPA), with each entity to which, it granted FM License in respect of each station. In respect of the City of Hissar, a GOPA, dated 11.10.2006, was got executed, in between, the Government of India and the Respondent. This agreement, dated 11.10.2006 is Annexure P-2 to the Petition. One of the conditions specified in the tender document by the Government of India was that the successful bidder would have to set up transmission facilities, on land as well as tower, to be provided by the Petitioner. Pursuant thereto, and for the purpose, an agreement, dated 23.03.2006, was got executed, between Petitioner and Respondent, for Licensed Infrastructure at Hissar. The Licensed Infrastructure was located at the premises of the Petitioner, located at All India Radio, Hissar. The Licensed Infrastructure was comprised of open space, provided by the Petitioner and tower aperture. This agreement, dated 23.03.2006, is Annexure P-3 to Petition. In terms of the agreement, dated 23.03.2006, the Respondent was liable to pay an yearly license fee, amounting to Rs. 5,01,800/-, per year to the Petitioner. In terms of Clause 3.2 of the said agreement, the License Fee was to be enhanced by 10% every two years for open/covered space and common facilities and by 2.5% every year for the tower. The agreement, dated 23.03.2006, also provided that in the event of the GOPA, executed between the Government of India and the Respondent, being terminated, the agreement, dated 23.03.2006 between the Petitioner and the Respondent, would stand terminated automatically. The GOPA, between the Government of India and the Respondent, was terminated by the Government of India, vide a letter dated 17.07.2009 w.e.f. the date of the letter of termination. This termination letter dated 17.07.2009 is Annexure P-4 to Petition. As per the provisions of the GOPA, the License Agreement, dated 23.03.2006, had come to an end on 17.07.2009, when the Ministry of Information & Broadcasting terminated the GOPA, and the Respondent became liable to remove its equipment from the site. Clause 7.7 of the Agreement provided that in the event, the Respondent does not remove its equipment from the site, on the termination of the agreement, it will be liable to pay damages, quantified at five times the annual rent (Calculated for open area only) per sq. meter on pro-rata basis @ Rs. 12,44,212/-. On the termination of the agreement, dated 23.03.2006, the Respondent became liable to remove its equipment from the site, in terms of Clause 7.7 thereof. However, the Respondent, neither removed its equipment, nor vacated the licensed infrastructure at Hissar. Consequently, it became liable to pay damages quantified at five times the annual rent per square meter on pro-rata basis to the Petitioner in terms of Clause 7.7 of the agreement. As on the date of termination of the agreement the Respondent was in arrears of License fee, for the period 27.10.2007 to 16.07.2009. As such the outstanding amount towards license fee, including Delayed Payment, was Rs. 12,34,255/-. As already stated, the license fee was Rs. 5,01,800/- per year. At the time of termination, the license fee was Rs. 5,01,800/- per year. Since the Respondent failed to remove its equipment, it became liable to pay damages, quantified at five times the annual rent (Calculated for open area only) per square meter on pro-rata basis i.e. Rs. 12,44,212/-.

3. From time to time the Respondent, was called upon to vacate the licensed infrastructure, and remove its equipment, and make outstanding payments, but of no avail. Hence, a notice, dated 27.06.2012, was got issued to Respondent, with a prayer for making a payment of an amount of Rs. 44,99,886/- to the Petitioner. But it was of no response. This notice, dated 27.06.2012 is Annexure P-5 to Petition.

4. Clause 12 of the agreement, dated 23.03.2006 entered, in between, provided that any dispute or difference arising with regard to any aspect of the said agreement, shall be settled through mutual consultation, and in case of failure, the same shall be settled finally by arbitration, by a Sole Arbitrator to be nominated by the Secretary, Ministry of Information & Broadcasting. Despite repeated efforts, the settlement could not be effected. The Petitioner invoked arbitration, vide letter, dated 07.02.2013, which is Annexure P-6 to Petition. But, as this Tribunal was having jurisdiction to entertain this matter in dispute, hence, letter dated 15.05.2013, was got issued by Ministry of Information & Broadcasting. Till date, Respondent has not removed its equipment from the site, and was in continuation of possession over it. As on 31.12.2015, an amount of Rs. 92,72,765/- is due from the Respondent towards arrear of license fee, and damages as per details, set out in a calculation sheet, annexed as Annexure P-8 to the Petition.

5. A cause of action had arisen, within the territorial jurisdiction of this Tribunal, within the period of limitation. Hence, this Petition with above prayer.

6. The service of notice was got effected over Respondent and in case of no response, the order to proceed ex-parte was passed on 26.07.2016.

7. The matter was referred before the Court of Registrar for recording of evidences in ex-parte there at. But, as per COVID period intervention, the hearing was listed after a long gap. Hence, in utter precaution, one more opportunity of making service through Police mode was exhausted, wherein, sufficient service was there. But, none appeared for Respondent.

8. Hence, vide order, dated 01.03.2024 the matter was proceeded ex-

parte. Wherein, evidence, by way of affidavit of Mr Sanjay Kumar Mishra, Assistant Engineer (P&D Unit), All India Radio, Prasar Bharati, New Delhi, authorised representative of Petitioner, Broadcasting Corporation of India, was got filed on record, and evidence was got concluded.

9. A written submission was got filed by Petitioner.

10. Heard arguments of Learned Counsel for Petitioner and gone through material placed on record.

11. 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. Venkateswarloo - 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 onus 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.

12. This Petition, before this Tribunal, is a civil proceeding and in civil proceeding, the preponderance of probabilities, is the touchstone for making a decision, as against strict burden of proof, required in criminal proceeding.

13. Burden to prove its contents was upon Petitioner and its witness, Mr Sanjay Kumar Mishra, vide its affidavit evidence, had proved the contention of Petition, in full reiteration, getting the tender document, issued by Government of India, Annexed with Petition, marked Exhibited as Exhibit PW-1/1. The execution of an agreement called the GOPA by Government of India, with Respondent entity, granting FM License in respect of City of Hissar, dated 11.10.2006, being executed in between Government of India and Respondent, having signature of Shri Arvind Kumar, the then Director (Broadcasting), Ministry of Information & Broadcasting, Government of India over it, and the acquaintance of this witness, with the signature of above Officer, because of being familiar with the signature of Shri Arvind Kumar, since in the course of duties, and the interaction, in between, having opportunity to see the signing by Mr Arvind Kumar and the signature of this Arvind Kumar, over each of the page of GOPA, has been proved, resulting it a marking as Exhibit PW-1/2. The conditions specified in the tender document, by the Government of India, was with specific covenant that successful bidder would have to set up transmission facilities, on land as well as tower, to be provided by the Petitioner, and for this, an agreement, dated 23.03.2006, pursuant thereto was got executed, in between, for Licensed Infrastructure at Hissar. The Licensed Infrastructure was located at the premises of the Petitioner, located at All India Radio, Hissar and it was comprised of open space, provided by the Petitioner and tower aperture infrastructure at Hissar. This agreement, dated 23.03.2006 was got signed by Mr R. R. Prasad, the Chief Engineer, All India Radio Resources, on behalf of Petitioner, and this witness was in full acquaintance with the signature of Mr R. R. Prasad, because of being colleague, in the Office and his signature on this document, has been fully proved, resulting the marking as Exhibit PW-1/3.

14. As these documents have been fully proved, hence, the covenants written therein, is to be taken, as it is, in between the lines. This witness, has categorically stated on oath, that agreement, dated

23.03.2006, was with term that Respondent was liable to pay an yearly license fee, amounting to Rs. 5,01,800/- per year to the Petitioner, in terms of Clause 3.2 of the said agreement, and this License Fee was to be enhanced by 10% every two years for open/ covered space and common facilities, but, 2.5% yearly for the tower aperture. The agreement, dated 23.03.2006, also provided that in the event the GOPA, executed between the Government of India and the Respondent, is terminated, the agreement, dated 23.03.2006, between the Petitioner and the Respondent, would stand terminated automatically. The GOPA, between the Government of India and the Respondent, was terminated by the Government of India, vide a letter, dated 17.07.2009 w.e.f. the date of the letter of termination, dated 17.07.2009, addressed to the Respondent, issued by the Government of India and received in the Directorate General, AIR. This termination letter, dated 17.07.2009 has been proved and exhibited as Exhibit PW-1/4.

15. The entire contention and Statement of Account has been proved by this witness and Exhibit PW- 1/5, is the notice, having all such details. The demand letter, and its postal proof, has been fully proved and Exhibited as Exhibit PW-1/6. The calculation sheet proved by this witness, and marked as Exhibit PW- 1/8, is correct one and prepared in due course.

16. This testimony is with no rebuttal. The Petition itself is not replied by Respondent. Sufficient service, even in ordinary course, again in ordinary course, as well as by Police Mode, was got ensured, but of no response. Hence, the burden, laid upon the Petitioner, has been fully exhausted. The facts said in Petition, had been fully corroborated, by affidavit evidence, having no rebuttal. There is full corroboration of the contention.

17. Respondent failed to remove its equipment from the Petitioner's premises and it amounted to the violation of Clause 6.9 of the Agreement, making the Respondent liable to pay damages, quantified at five times the annual rent per sq. mtr., as stipulated in Clause 7.7 of the Agreement. The damages quantified at five times the annual rent per sq. mtr., is claimed in this Petition.

18. This Tribunal, in Prasar Bharati (Broadcasting Corporation of India) Vs. Chinnar Circuit Limited, BP No. 652 of 2016, decided on 12.04.2023, reported in 2023 SCC Online TDSAT 101, against which appeal before Hon'ble Apex Court has been dismissed on merit and in other decided alike matter with difference of facts only, in another Petition, BP No. 564 of 2015, Prasar Bharati (Broadcasting Corporation of India) Vs. Pan India Network Infravest Pvt. Limited, decided on 23.02.2024, the same matter, in which under alike facts and circumstances, specifically when Respondent had contested in both of those pre-decided cases, had decreed the Petitions.

19. In present case, the evidence had full corroboration with contention of Petition, no appearance, nor any reply, nor any evidence, nor any controversion by Respondent, is there. Hence, in all preponderance of probabilities, the Petitioner had proved its case.

20. Hence, the relief prayed for by Petitioner, against Respondent, is to be decreed. So far as interest is concerned, this Tribunal, in repeated Judgments, considering the present fiscal scenario had awarded a Simple Interest @ 9% per annum. Hence, the above interest is to be awarded in present case too.

ORDER Petition is being decreed with cost. It is being declared that the possession of the Respondent on the licensed infrastructure, is unauthorised, illegal, and contrary to License Agreement, dated 23.03.2006, and Respondent is being directed to remove and vacate the same within two months, from the date of judgment.

The Respondent is being directed to make the payment in the Tribunal, damages at the rate of five times of the License fee i.e., Rs.

12,44,212/- per annum, for the period from 17.07.2009 to 31.12.2015, amounting to Rs. 80,38,510/-, for making payment to Petitioner. Respondent is further directed to pay the arrear of the License Fee, including delayed payment interest, amounting to Rs. 12,34,255/-, within two months of the Judgment, in the Tribunal for making payment to the Petitioner. The pendente lite and future interest i.e., from 31.12.2015 to actual date of payment, Simple Interest @ 9% per annum, for above amount of failure and damages shall be also payable and be got paid in the Tribunal, for making payment to Petitioner. In case of failure, to get premises/ infrastructure vacated in above period of two months, additional damages in the tune of damages already awarded, for that period of default, will be payable by Respondent. In case of failure, the directions are to be executed, as per procedure of execution. Formal order / decree be got prepared by office, accordingly.

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(Justice Ram Krishna Gautam) Member 23.05.2026 /NC/