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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24th February, 2020

+ **W.P.(C) 13537/2019**

**RAJAGOPAL CHAKRAVARTHI VENKATESH
AND ANR.**

..... Petitioners

Through: Mr. Rajiv Nayyar and Mr. Sidharth Luthra, Senior Advocate with Mr. Anshuman Sharma, Mr. Vivek Sarin, Mr. Satish C. Kaushik, Mr. Vishesh Dhundia, Mr. Saif Shrama, Mr. Akshay Sehgal, Mr. Anmol and Mr. Dibya Prashant, Advocates.
(M:8527010765 & 9013407227)

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms. Maninder Acharya, ASG with Mr. Jaswant Rai Aggarwal, Mr. Vikrant Goyal, Ms. Shefali Jaiswal, Mr. Shikhar and Mr. Viplav Acharya. Advocates for UOI (M:9953228888) with Mr. Amit Katoch (Director) and Mr. Vijay Kaushik (Under Secretary) in person.

Mr. Sandeep Sethi, Sr. Advocate with Ms. Roopali Singh, Mr. Abijnan Jha, Ms. Urvashi Mishra and Mr. Tanmay Sharma, Advocate for R-2 & 3. (M:8377046635)

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed by the Petitioner No.1 and Petitioner No.2 – Lex Sportel Vision Pvt. Ltd. (*hereinafter, 'Lex Sportel'*)

against the Union of India – Respondent No.1 and three group companies of the Discovery group ('Discovery'). The prayer in the writ petition is as under:

“a) Issue writ, order or direction in the nature of certiorari or any other suitable writ to call the record of downlinking Permission vide Registration No. 96/F/2011 TV (1) dated 01.06.2011 on the File No 1601/03/2012 -TV (1) for Channel 'DSport' granted by Respondent No.1 in favour of Respondent No.2 and set the same aside;

b) Issue writ, order or direction in the nature of mandamus or any other suitable writ directing to the Respondent No.1 to reject the application dated 09.10.2019 in respect of Registration no. 96/F/2011-TV(1) dated 01.06.2011 submitted by Respondent No.2 on the File No 1601/03/2012 -TV (1) for change of name from 'DSport' to 'EuroSport';

c) Issue writ, order or direction in the nature of mandamus or any other suitable writ or direction forbearing the Respondent No.1 from granting any fresh permission and/or registration in future as prescribed in Clause 6.2.4 of the Policy Guidelines for Downlinking of Television Channel dated 05.12.2011 in favour of Respondent No.2, 3 and 4;”

2. The case of the Petitioners is that the Petitioners had entered into a Term Sheet dated 22nd June, 2017 called the CMS (Channel Management Services) Term Sheet with Respondent Nos.2 & 3. As per the said Term Sheet, the Petitioners were supposed to provide various services to Respondent Nos.2 & 3, which are described herein below:

2)	<i>Provision of Programme Services to DNAP for the DSport Channel</i>	<p><i>Lex Sportel and (as the case may be) Venkateish will render the following services to DNAP for the Channel, at its/his own cost and at all times under supervision of DNAP:</i></p> <p><i>a. Lex Sportel shall, in consultation with DNAP, acquire sports related entertainment content for the Channel ("Channel Content");</i></p> <p><i>...</i></p>
3)	<i>Channel Management Services including Delivery of the Channel</i>	<p><i>Lex Sportel shall at its own cost, provide the following services for the Channel:</i></p> <p><i>a. produce the linear 24*7 feed of the Channel, including channel identities and bugs;</i></p> <p><i>b. manage the playout of the Channel and the scheduling of content (including advertisements and promotions insertions) thereon as required by DNAP;</i></p> <p><i>c. Lex Sportel shall arrange for:</i></p> <p><i>(i) a suitable satellite for uplinking the Channel from outside India;</i></p> <p><i>(ii) transportation of the playout signal from the channel production facility to the uplink facility and uplinking the signal on to the satellite;</i></p>

		<p>(iii) <i>encryption of the Channel signals as per encryption standards provided by DNAP; and</i></p> <p>(iv) <i>for the Channel to be uplinked with 1080i resolution with an 8 mbps bandwidth and with facilities for reception in PIRDs and IRDs in India.</i></p> <p><i>Lex Sportel acknowledges that the channel license for DSport as granted by the Ministry of Information and Broadcasting, Government of India ("MIB") is for a standard definition channel.</i></p>
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3. Discovery served a Notice of Termination of the CMS Term Sheet on 14th October, 2019 and it is submitted that on 23rd January, 2020, the same was terminated. Disputes have arisen between Lex Sportel and Discovery, which led to filing of the present petition.

4. The limited ground in this writ petition is in respect of the downlinking permission for the channel 'DSport' which was granted by the UOI on 28th April, 2017. It is the Petitioners' case that it had been granted permission for uplinking of the channel DSport in Hong Kong, by the Office of Communications Authority (OFCA), Hong Kong vide letter dated 17th January, 2017. The said channel was availed of by Discovery which had applied for downlinking permission with the Ministry. The letter dated 17th January, 2017, according to the Petitioners, was, part of the permission,

which was granted on 28th April, 2017 when the logo was changed by Discovery from *Discovery G* to *DSport*. On 9th October, 2019, Discovery has filed for fresh approval of change of name from *DSport* to *EuroSport*, which is now pending consideration with the UOI.

5. The grievance of the Petitioners is that while changing the name of the channel, the earlier approval for uplinking permission issued by the UOI cannot be relied upon by Discovery and accordingly, the UOI ought not to grant the permission for change of name without the fresh uplinking and downlinking permissions being placed on record. This Court had, when the writ petition was listed for the first time on 20th December 2019, heard the parties and had passed the following orders.

“1. It is submitted by Id. Sr. counsels for the Petitioners, on instructions, that the advance copy of the petition was sent by courier to the Respondent Nos. 2 to 4, however, there is no appearance.

2. The Petitioner has filed the present writ petition in respect of the channel named ‘DSport’ which is currently being downlinked and marketed by Respondent Nos. 2 to 4 in India. The allegation of the Petitioners is that the Petitioners have the uplinking license for the channel, ‘DSport’ which is being downlinked by Respondent Nos. 2 to 4 in India and an attempt is being made to convert the said channel into ‘EuroSport’ by Respondent Nos. 2 to 4 by making a representation to the Union of India through I&B Ministry. Objections have been raised by the Petitioners with the I&B Ministry on grant of permission to change the name from ‘DSport’ to ‘EuroSport’. The said representation and the objections thereto are stated to be pending before the Ministry.

3. The Petitioners case is that they have not heard

from the I&B Ministry as to the status of the representations dated 13th November, 2019, 25th November, 2019 and 7th December, 2019.

4. The submission of Mr. Rajiv Nayyar, Id. Sr. counsel appearing for the Petitioners is that the request of the Respondent Nos. 2 to 4 ought to be considered by the I&B Ministry in the light of the objections which have also been raised by the Petitioners. Since there has been no response, there is an apprehension that the permission may be granted without considering the objections raised by the Petitioners.

5. Ld. counsel for the Respondent No. 1, Union of India, Ministry of I&B, submits that he would need to take instructions in this matter as he is not aware of the exact status of the request of Respondent Nos. 2 to 4 or the objections raised by the Petitioners.

6. Since the I&B Ministry does not have instructions in the matter, it is directed that the request/representation of Respondent nos 2 to 4, dated 9th October, 2019 along with any other requests for change of name of channel DSPORT to Eurosport shall be considered by the I&B Ministry along with the Petitioners' objections/representations. A hearing shall be given to the Petitioners before any decision is taken by the I&B Ministry. Let the Respondent Nos. 2 to 4 be served once again.

7. Let fresh service be effected on Respondents 2 to 4, through e-mail in addition. List on 30th March, 2020. ”

6. Pursuant to the orders passed by the Court, it is submitted on behalf of the UOI that a hearing has already been granted to the Petitioners on 5th February, 2020 and that Discovery's application dated 9th October, 2019 is under consideration with the Ministry. Paragraphs 6 and 7 of the said affidavit are extracted herein below:

“6) It is respectfully submitted that as per the

directions of this Hon'ble Court on 20.12.2019, Respondent Ministry gave a hearing to Petitioners on 05.02.2020 at 4.00 PM. The meeting was attended by the petitioner-Sh. RC Venkatesh along with his Advocate Sh. Vivek Sarin.

7) It is respectfully submitted that the application dated 09.10.2019 submitted by M/s. Discovery Communications India for name and logo change of its channels "DSport" & "DSport HD" is under consideration in the Respondent-Ministry."

7. Today, ld. counsels for the parties have been heard. On behalf of the Petitioners, Mr. Rajiv Nayyar and Mr. Sidharth Luthra, ld. Senior Counsels have submitted that Discovery having obtained the permission on the basis of the uplinking approval given to Lex Sportel, the name change application cannot be approved, until and unless a fresh uplinking permission from the regulatory authority in Hong Kong is placed on record by Discovery. The document dated 17th January, 2017 is relied upon on behalf of the Petitioners. Further reliance is also placed upon a letter dated 12th November 2019 issued by APSTAR to the Petitioners which reads as under:

*"Lex Sportel Vision Pvt. Ltd.
D 583, Chittaranjan Park
New Delhi – 110 019
India*

Dear Sir,

Re: Confirmation of proposed change of name of the Television Channel namely "DSPORT" (the "Channel")

We, APT Satellite TV Development Limited (hereinafter "APTTV"), refer to your request for change of name of the Channel and would like to confirm the following as requested by you:

1) That APTTV holds a valid Non-domestic Television Programme Service License (the "License") conferred

by the Broadcasting Authority of Hong Kong.

2) That under the License, APTTV is licensed and authorised to provide non-domestic television programme services to its customers.

3) That Lex Sportel Vision Pvt Ltd (“Lex Sportel”) has been a customer of APT Satellite TV Development Since 5 January 2017.

4) That Lex Sportel’s TV Program Service of the Channel has been permitted to be included in APTTV’s permitted list of services vide OFCA letter dated 17 January 2017 and has been continuously included in the list of permitted services as of the date of this Letter.

5) That APTTV has no objection to any change of name of the Channel to any other name provided that APT is provided with one month’s advance notice for the said change of name.

6) That upon request of Lex Sportel, APT would approach OFCA for issuance of a letter confirming the inclusion of the said service under the new name of the Channel in APT’s list of permitted services.

Thank you.

Yours Sincerely

For and on behalf of

APT Satellite TV Development Limited”

8. On behalf of Discovery, it is submitted by Mr. Sandeep Sethi, Id. Senior Counsel that the Term Sheet having been terminated, the Petitioners have no locus to be objecting to the name change application filed on behalf of Discovery before the UOI. Further it is urged by Mr. Sethi that the mark Discovery belongs to the Respondents and the Petitioner has no right in the same. Moreover, he submits that Discovery was merely availing services from the Petitioners and the same having not been continued, they cannot create any impediments in the name change application.

9. Id. ASG has submitted that the application dated 9th October, 2019 is

still under consideration, and no decision has been taken in this regard. She also relies upon the Policy Guidelines for Uplinking of Television Channels From India, 2011 and the Policy Guidelines for Downlinking of Television Channels, 2011. Ld. ASG submits that under the Policy Guidelines for downlinking of channels, three categories of permissions are given which are-

- “(i) Uplinking Only: Channels uplinking from India and downlinking in a territory outside India. Very few channels falls in this category (around 20)*
- (ii) Downlinking Only: Channels uplinking from the territory outside India and downlinking in India. These are also very few in numbers (around 90)*
- (iii) Uplinking and Downlinking: Channels uplinked from India and also downlinked in India. Most of the TV Channels permitted falls under this category (around 830).”*

In the case of *Dsport* channel, an application was made by Discovery on 20th January 2017 wherein permission was sought for modification of the *DSport* logo as also for changing the uplinking territory and satellite of *DSport* which was granted by the Ministry on 28th April 2017. It is further submitted that a fresh application dated 9th October 2019 has been made by Discovery for name and logo change of its channels *DSport* and *DSport HD*, which is under consideration. Ld. ASG submits that the Ministry has no role in the dispute between Discovery and the Petitioners.

10. A perusal of the affidavit of the UOI and the approvals given would show that at the time when the initial application was filed by Discovery on 20th January 2017 seeking permission for ‘Change in uplinking territory and satellite of *DSport*’, a letter issued by OFCA, Hong Kong dated 17th January 2017 was relied upon in support of the application. The said letter reads as

under:

*“APT Satellite TV Development Limited
22 Dai Kwai Street
Tai Po Industrial Estate
Tai Po
New Territories
(Attn.: Mr Chris Tsang
Legal Counsel)*

Dear Mr. Tsang,

*Non-domestic Television Programme Service
License of APT Satellite TV Development Limited*

I refer to your letter of 13 January 2017 requesting for a confirmation that APT Satellite TV Development (“APT”) is permitted under its non-domestic television programme service license (the “License”) to provide a non-domestic television programme service and that APT is authorised under the License to include “D Sport channel” in its non-domestic television programme service.

In this connection, I enclose herewith a confirmation letter as requested, please.

Yours sincerely,

Sd/-

(Samantha Cheng)

*For Director-General of Communications
Office of the Communications Authority”*

11. The above letter was the uplinking permission granted by the Hong Kong regulatory authority for uplinking of the DSport channel from Hong Kong, which was to be downlinked from India. The letter of APT Satellite TV Development Limited (APSTAR) dated 12th November 2019 which is extracted above, confirms that the Petitioners were the customers of APSTAR and it was Lex Sportel’s TV program service which was permitted to be included in the OFCA letter dated 17th January 2017 – which forms part of the application filed on 20th January 2017 for which permission was

granted on 28th April 2017. Discovery has now terminated the Term Sheet with the Petitioners and has also sought permission to change the name/logo of the *DSport* channel. While there can be no doubt that Discovery is the owner of the trade mark, the issue is whether they can continue to rely upon the uplinking permission given to the Petitioners for the channel *DSport*. Clearly, under the Policy Guidelines, any change in the channel being uplinked or downlinked would have to be brought to the notice of the Ministry, as the Ministry would have to be notified of any change in the channel that is being uplinked. Thus, in any application which is filed by Discovery which would continue to rely upon the letter dated 17th January 2017, the Petitioners would have an interest. They are not completely alien to Discovery's applications relating to the *DSport* channel which was being uplinked by them from Hong Kong.

12. In view of the above factual situation, it is directed that the UOI shall take a decision on the application dated 9th October, 2019 filed by Discovery for change of name from "*DSport*" to "*EuroSport*". The same shall be considered by the UOI as per its policy guidelines for uplinking/downlinking of television channels. If Discovery continues to rely upon the letter dated 17th January, 2017, which had approved the uplinking of the *DSport* channel from Hong Kong, as part of its name change application or any other application seeking approvals, the Petitioners' submissions would be considered and they would be given an opportunity to explain their stand. If on the other hand, Discovery does not rely upon the approval dated 17th January, 2017 then the UOI shall consider the same as per its policy guidelines, and pass appropriate orders as per the prevalent guidelines for uplinking and downlinking. The decision on

Discovery's application dated 9th October, 2019 shall be taken within a period of 8 weeks from today. No further orders are called for in this petition. Needless to add, upon a decision by the Ministry, parties are free to avail of their remedies, if any, as may be available in law.

13. The writ petition is disposed of with these observations. The next date stands cancelled. *Dasti.*

**PRATHIBA M. SINGH,
JUDGE**

FEBRUARY 24, 2020/dk/RG

