

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

DATED 8TH AUGUST,2001

PETITION No.18 OF 2001

BPL Mobile Cellular Ltd. ...
Petitioner
Vs
Union of India & Ors. ...
Respondents

BEFORE:

**HON'BLE MR. SUHAS C. SEN,
CHAIRPERSON
MR.R.U.S.PRASAD, MEMBER
MR.P.R.DASGUPTA, MEMBER**

For Petitioners : Mr. A.S.Sundaram, Senior Advocate
with Mr.Sandeep P.Agarwal,Advocate

For Respondents – DoT (UOI) : Mr.Jaideep Gupta,
Mr.U.Hazarika,Advocates

Respondent(ABTO) : Dr.A.M.Singhvi,Senior Advocate with
Mr.Ramji Srinivasan, Ms.Geeta Nair,
Ms.Navender Singh and
Mr.Saif Mahmood,Advocates

For Intervenor (KALYAN) : Mr.R.K.Jain,Senior Advocate
Mr.Rudreswar Singh and
Mr.Manish Tewari,Advocates

ORDER

We have before us today a Petition filed by BPL Mobile Cellular Ltd. Coimbatore, challenging the decision of the Union of India to permit Fixed Service Providers what is referred to as "Limited Mobility (WLL)". We have also before us an identical Petition filed by the Cellular Operators Association of India which is in an advanced stage of consideration.

Cellular Operators Association of India (COAI) is a Society registered under the Societies Registration Act, 1908 and all the Cellular Operators of India including the petitioner herein are members of this Association. It is the case of the Cellular Operators in Petition No,1 of 2001 that this Association has been

formed for the purpose of, inter alia, canvassing and encouraging the development of telecommunication services in India as also to protect the interest of the Cellular Operators in India. This Association along with some other Cellular Operators like BPL Mobile Communication Ltd., Kerala; Birla AT&AT Communications Ltd., Gandhinagar and a few others made a petition before us inter alia for an order of injunction restraining Union of India from issuing licences to Basic Telephone Operators. A prayer for interim order was made. An application was moved originally on 23.01.2001 when a direction was given to supply copies of the petition to the respondent within a day. On the next date of hearing i.e. 29.01.2001, an application for amendment of the petition made by Cellular Operators Association of India was made which was allowed. An intervention application made by Association of Basic Telecom Operators (ABTO) was also allowed. Direction for filing affidavits was given. The case was fixed for hearing on 21.02.2001. An interim order was issued that any licence granted will abide by the result of the Petition and if any licence was granted, it will contain a clause that the licence will be revoked, if the decision goes in favour of the petitioners in the case.

On 21.02.2001 the petitioners took a fortnight's time to file rejoinder to the affidavits filed by Union of India and ABTO. The cases were fixed for hearing on 20th & 21st March,2001 and came up for hearing alongwith other Petitions. On 21.03.2001, the case was adjourned to 17th & 18th April,2001. When the case was next taken up for hearing on 17.04.2001, a prayer was made on behalf of the COAI for adjournment of the case. Out attention was drawn to a Press Release that the Govt. was going to take some decision on the issue raised before us on 30.04.2001. The prayer for adjournment was opposed on behalf of the Union of India. However, in the interest of justice, we allowed that prayer. On 9.05.2001, a prayer for adjournment was made again on behalf of the COAI on the ground that notice for hearing was inadequate. A prayer was also made for amending the petition. We allowed that prayer and an amended petition was filed on 30.5.2001. On 17.7.2001 directions were given for filing counter affidavits to the amended petitions and the petitions were adjourned to 04.09.2001.

A preliminary point of jurisdiction was also taken by the respondents. Union of India was directed to file written arguments on this point within one week. It may be mentioned that all the directions were given and dates fixed as mutually agreed by the parties. Now, we have before us a Petition made by BPL Mobile Cellular Ltd. It has been alleged by the Counsel appearing on behalf of the Union of India that the petitioner is an alter ego of the Petitioner No.2 in the

original Petition No.1 of 2001 and also a member of the Petitioner Association therein. It appears that the ground for filing this Petition is that that they had earlier moved the Madras High Court in Writ Petition Nos.10718 and 11819 of 2001 and WMP Nos.17328 to 17330 of 2001 on the same ground on which the COAI and also BPL Mobile Communications Ltd. had moved this Tribunal in Petition No.1 of 2001. The prayer made before the Madras High Court is similar to the prayer made before us. In WP No.11819 of 2001, Mr. Justice P Shanmugam passed the following order on 29.06.2001:

"A Division Bench of this court in WMP.15509 and 15510 of 2001 in Writ Petition No.10781 in a public interest litigation in the similar subject has passed the following order:

'The respondents are directed to implement the new Telecom Policy (NTP 99) in its letter and spirit. Further, status quo as on today, is to be maintained for four weeks.'

2. After hearing the learned Counsel for the petitioner Mr.C.A.Subramani and the learned Additional Solicitor General for the respondents, I am satisfied that the orders on the same terms could be passed in this Writ Petition till the matter is posted before the Bench. Accordingly, the respondents are directed to maintain status quo in Tamil Nadu area till the matter is posted before Bench for hearing on the WMP. Notice.
3. Considering the importance of the matter, the Registry is directed to place the papers before my Lord the Hon'ble Chief Justice for appropriate orders.

Post the matter on 05.07.2001."

On the next date of hearing i.e. 06.07.2001, Mr.N.K.Jain, CJ and Mr.K.Thangavel, J intimately passed the following order:

".....Since no licence has been issued as stated by the Additional Solicitor General, status quo to be maintained to the extent not to implement the letters of intent till further orders. Post on 24.7.2001."

The WP as also the Miscellaneous Petitions for interim order were disposed of finally by an order dated 02.08.2001 by Mr.N.K.Jain.CJ and Mr.K.Thangavel, J by passing the following orders:

- "18. On an overall consideration, we feel that it is not necessary to allow the implead petition more particularly when the Union of India is represented and heard. However, we have heard Mr.K.M.Vijayan, learned senior counsel.

19. This Court has jurisdiction under Article 226 of the Constitution throughout the territory, which is also not disputed by learned Additional Solicitor General. But it has to be exercised considering the facts and circumstances of the case. In the instant case, as discussed, sufficient materials are placed to go into the issue and what will be the effect on the exchequer if separate licence fees as required under the main policy is levied and collected and the benefit to the consumers, as stated. The facts of not giving public auction and the consequence of the same along with the recommendation have also to be seen. These are all questions of facts to be decided on interpretation. Since the matter is pending before the Tribunal, we refrain from going into the questions and merits of the case at this stage. The Tribunal will consider all the submissions of the respected parties before it. We also give liberty to the Tribunal to consider any application from the parties who are here, if necessary, without making a precedent, though we are aware that the jurisdiction of the Tribunal is to adjudicate the disputes inter se between the service provider or group of consumers and however, it is within the discretion of the Tribunal to consider or to allow as intervener. Learned Additional Solicitor General and Mr.Sundaram, learned senior counsel (W.P.No.11819 of 2001) have agreed to move the Tribunal for proponing the date even before 8.8.2001. In the facts and circumstances of the case, it is expected the Tribunal will decide the case at the earliest. However, the status quo order will be up to 8.8.2001 and thereafter, parties in the pending appeal, are free to get appropriate order from the Tribunal. The writ petitions are disposed of accordingly. Consequently, W.M.Ps Nos.15509,15510 and 17328 to 17330 of 2001 in W.P.No.10718 of 2001 and W.M.P. No.17235 of 2001 in W.P.No.11819 of 2001 are dismissed.”

BPL Mobile Cellular Ltd. has now come up with this Petition for passing the same interim order as was passed by the Division Bench of the Madras High Court.

At this stage, we need not go into the merits of the controversy because the case of COAI is fixed for hearing on 04.09.2001. The issues involved in this case are the same. We do not see how a member of the Association can make a separate Petition in different forum asking for the same relief. Another feature is that BPL Mobile Communications Ltd., Kerala, the Petitioner No.2 in original Petition No.1 of 2001 and the Petitioner BPL Mobile Cellular Ltd., Coimbatore, in this case are closely interconnected. It is alleged by the Union of India that it is the alter ego of Petitioner No.2. If the corporate veil is lifted it will be found that both are identical parties. It was with ulterior motive the High Court was moved from an order different from what we had passed which was binding on all the members of the COAI. The Petitioner does not deny that it is a member of the Association but states that it is not an alter ego

of the Petitioner No.2 in the original Petition No.1 of 2001 but a distinct and separate corporate entity.

We see no reason for passing any interim order different from the one what we had passed in Petition No.1 of 2001. The interim order was passed in the original Petition No.1 of 2001 after hearing the case extensively for several days. There is no reason why a different order will be passed in the case of one of the members of the Association. The interim order in this case will be the same that we passed in the Petition No.1 of 2001 i.e. fresh licences can be issued to the Basic Telecom Operators that they will contain a clause that the licence may be revoked if the decision in this case goes in favour of COAI.

Serious allegations have been made by UOI, ABTO and Mr.R.K.Jain, Senior Counsel, appearing on behalf of the Intervener (Consumer Association). Those allegations must be stated in Affidavit which will be filed within fortnight. Rejoinder, if any, be filed within one week thereafter. This Petition will be taken up along with Petition No.1 of 2001 on 04.08.2001. Issue Notice.

.....Sd/.....J
(Suhas C. Sen)
Chairperson

.....Sd/.....
(R.U.S. Prasad)
Member

.....Sd/.....
(P.R. Dasgupta)
Member