

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

DATED : 19th December, 2002

**PETITION NO.13 OF 2002
(MA NO.27 OF 2002)
WITH
PETITION NO.14 OF 2002
(MA NO.38 OF 2002)**

PETITION NO.13 OF 2002

Kerala Telecom Circle Public Telephone
Franchises Association,
Kasaragod District Committee
Near Petrol Pump, Kottacherry,
Kanhangad 671315
Represented by its President T. Hamza.
.... Petitioner

Vs

1. Union of India represented by
The Secretary, Ministry of Telecommunication,
Sanchar Bhawan,
New Delhi.
2. Bharat Sanchar Nigam Ltd.,
(Govt. of India Enterprise) represented by its
Chairman
20, Ashoka Road,
New Delhi.
3. The Chief General Manager
Bharat Sanchar Nigam Ltd.
Thiruvanathapuram
4. The Telecom Regulatory Authority of India
represented by its Chairman
Sanchar Bhawan
New Delhi.

..... Respondents

For Petitioner	:	Mr.
Vipindas T.K., Advocate		
For Respondent No.1	:	None
For Respondent Nos. 2 & 3	:	Mr.
Maninder Singh &		

Ankur Talwar, Advocates

Mr.

For Respondent No.4
Meet Malhotra with

: Mr.

Mr.
Raghvinder Singh,
Advocates

PETITION NO.14 OF 2002

Kerala Telecom Circle Public Telephone
Franchises Association,
(Regd. No.A-21/95)
K.V. Complex
Kallayi Road
Calicut – 2
Kerala State
Represented by its General Secretary
V.T. Velayudhan

.... Petitioner

Vs.

1. Union of India represented by
The Secretary, Ministry of Telecommunication,
Sanchar Bhawan,
New Delhi.
2. Bharat Sanchar Nigam Ltd.,
(Govt. of India Enterprise) represented by its
Chairman
20, Ashoka Road,
New Delhi.
3. The Chief General Manager
Bharat Sanchar Nigam Ltd.
Thiruvananthapuram
4. The Telecom Regulatory Authority of India
represented by its Chairman
Sanchar Bhawan
New Delhi.

..... Respondents

For Petitioner
T.K., Advocate

: Mr. Vipindas

For Respondent No.1

: None

For Respondent Nos. 2 & 3 : Mr. Maninder
Singh & Mr. Ankur
Talwar, Advocates

For Respondent No.4 : Mr. Meet
Malhotra with Mr. Raghvinder
Singh, Advocates

BEFORE :

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

Contract – terms of contract – parties to abide by the same – “service charge” for Inter SDCA Calls - Held: PCO Operators are franchisees of BSNL and bound by terms of their Franchise Agreement - Consumers' interest – Franchiser passing down certain benefits to its users- Franchisee cannot deny such transmission of benefits by levying any charges particularly when no absolute legal rights to levy charges was available to Franchisees under the Agreement – petition dismissed.

ORDER

In these petitions the Franchisees of Bharat Sanchar Nigam Ltd. in Kerala have challenged the direction of BSNL to the franchisees of public call offices (PCO-s) not to collect “service charges” in respect of certain specified categories of calls made from the PCO-s. In support of their petition, the petitioners have stated that Public Call Offices with Subscriber Trunk Dialing facilities were permitted to charge upto Rs.2/- as service charges for all calls other than local calls from 1994 onwards. By a circular dated 9th March, 1999 the Government laid down that such service charges cannot be collected for “inter SDCA” calls charged on 180 seconds per unit call basis. The petitioners contend that the Telecommunication Tariff Order 1999 dated 9th March, 1999 which is the statutory basis for charging of tariffs for all telecommunication services throughout the country clearly recognizes that apart from the ceiling of Rs.1.20 per metered call, charges upto a ceiling of Rs.2/- for each STD/ISD call can be collected and that the tariff order has no separate instructions about inter-SDCA or intra-SDCA calls. As such the petitioner’s claim, the directions prohibiting the collection of service charges for inter-SDCA calls are per se illegal and without authority.

The petitioners had represented about this to the telecom authorities. Simultaneously Kasargod District Committee of the petitioner Association had filed an original petition (O.P. No.4712 of 2002) before the Kerala High Court. By its judgement dated 26th February, 2002 the High Court disposed of the petition along with 34 other original petitions. The High Court was of the opinion that “such a dispute can most satisfactorily be resolved by the expert body which has

been set up to hear such disputes and resolve them.” The operative part of the order was as under :

“In the result, we dispose of all these original petitions by the following order :

- (i) The petitioners in each of these writ petitions are at liberty to raise a dispute before the Tribunal constituted under section of the Telecom Regulatory Authority of India Act, 1997,
- (ii) For a period of two months from today, the telephone lines of the petitioners shall not be disconnected on the ground that the petitioners have collected service charges subject to the condition that the petitioners shall keep a detailed account of the amounts of service charges collected and deposit such amounts with the concerned Accounts Officer of the BSNL along with an accompanying statement of accounts from month to month.”

The petitioners came up before this Tribunal on 22nd April, 2002 with a prayer to direct the Union of India and BSNL to permit the petitioners to charge service charge of Rs.2/- for all inter-SDCA calls and intra-circle calls made from STD PCO-s or any other appropriate reliefs. Since the representative character of the petitioners Association as well as their legal authority to pursue this matter was not properly documented, they were given time to fulfill the requirements and the case was taken up for consideration thereafter.

The petitioners urged that “Local calls”, “trunk calls” and “STD facilities” are well-defined statutory concepts under Indian Telegraph Rules 1951 and that “Inter-SDCA calls” or “Intra-SDCA” calls are variations of these statutory terms. Thus the definition of “Local call” under Rule 2(x) of Indian Telegraph Rules, 1951 is “a call from subscriber’s line to another line on any exchange within the same exchange system.” Rule 2(WW) defines “trunk call” as “call on trunk line”, and Rule 2(xx) defines “trunk line” as “a telephone line connecting an exchange system with another exchange system or a Public Call Office on which a fee is levied for a conversation on the basis of the duration of the conversation.” Rule 2(yy) defines STD facility as “the facility whereby the subscribers can obtain trunk calls without the assistance of the operators by use of the dial provided.” The petitioners therefore stressed that any call from one exchange system to another exchange system was basically a trunk call and that the telecom authorities could not possibly give a direction not to levy service charges on inter-SDCA calls as long as these did not strictly come under the statutory definition of “local calls”. The petitioners further argued that inter-SDCA calls include calls to areas which were earlier charged at 8,12,36,48,90 seconds per unit and that merely by enhancing the duration of the calls to 180 seconds per unit such calls could not be brought within the definition of local calls. Other considerations urged were the investments made by the PCO-owners, most of whom were either educated unemployed or belonging to deprived/handicapped sections of society, which could be recovered only through the levy of service charges and the mushrooming of STD PCO-s which has worsened the economic condition of the existing PCO-owners. The petitioners therefore felt that both on legal grounds and socio-economic considerations they should be permitted to levy service charges on inter-SDCA calls also.

The respondents on the other hand argued that the PCO-owners were basically the franchisees of Bharat Sanchar Nigam Limited (BSNL) and the relationship between the petitioners and the respondent No.2 was nothing more than a contractual relationship. Attention was drawn to the following specific conditions in the application for a PCO, the licence granted and the Agreement signed by the respondents :

Clause 11 of the PCO Application Form

“11. I/we hereby declare that the current Rules and Regulations/instructions/terms and conditions of the Department of Telecom as amended from time to time are acceptable to me/us. I/we also agree that any dispute arising with Telegraph Authority will be subject to Arbitration by the Arbitrator as appointed by the Department.....”

Cause 3 of the Licence granted

“3. The Telegraph Authority may at any time revoke the licence on the breach of any of the terms and conditions therein contained or in default of payment of any contribution payable thereunder as e.g., misuse of payphone, refusing use of payphone to Public, unauthorized charging from Public, levying of any surcharge or extra charges or in default of payment of any dues/bills payable thereunder etc. or any other condition laid down by the department from time to time.”

Cause 5 of the Licence granted

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“5. The Telegraph Authority reserves the right to modify at any time the terms and conditions of the licence by giving notice of three months to the licensee if the Telegraph Authority is satisfied that it is necessary or expedient to do so in the interest of the general public or for the proper operation of payphones.”

Clause 12 of the Terms and Conditions for the Installation, maintenance and operation of Payphones.

“12. The licensee shall collect from the callers the prescribed charges for the calls at the rates prescribed from time to time by the Government. He shall also take adequate steps to see that the payphones are not misused and rates higher than those prescribed

by the Government are not charged from the Public. The Department will have full liberty in revising/modifying the rates of commission payable to licensees from time to time; call charges leviable, rates of minimum guarantee, security deposit and so on.”

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Clause 26 of the Terms and Conditions for the Installation, maintenance and operation of Payphones.

“26. Any dispute arising regarding the provisions of this licence shall be settled through arbitrations as provided under Section 7(b) of the Indian telegraph Act.”

Clause 28 of the Terms and Conditions for the Installation, maintenance and operation of Payphones.

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“28. The licensee will have to abide by the current policy of the Department as revised/modified from time to time in respect of all matters including the amount of security deposit, minimum guarantee amount, call charges to be levied, commission payable to the PT operator from time to time etc.”

It was therefore stressed by the respondents that even though the term “licence” was used to indicate the operational permission given to the PCO owners by the Government, the actual relationship which existed between the Government and the PCO owners was that between a Franchiser and its Franchisees. This was made clear subsequently in July 2001 when Bharat Sanchar Nigam Ltd. (which was actually the service-proving wing of the Department of Telecommunication which became corporatised) laid down the revised formats for the application form-cum. Franchisee Agreement Form for STD PCO-s. The respondents therefore stressed that both the Government and BSNL had unquestioned rights to vary the terms of the various franchise agreements from time to time and that the petitioners could always seek arbitration if they were dissatisfied with the terms. It was also argued that the respondents had been periodically amending the rates of commission payable to the franchisees from 1988 onwards and that the franchisees had no absolute rights to levy charges which were not permitted by the franchiser at any given point of time. The respondents have further pointed out that under the original policy laid down in July, 1988 there was no concept of a service charge leviable by the franchisees on the customers and the franchisees were only getting commissions. The concept of a service charge leviable on customers was introduced in 1994 which was not payable for local calls. It has been stressed by the respondents that the concept of local calls itself has kept on evolving over the years along with changes in the definition of what constitutes a local area. Thus, while originally local calls meant calls within the same exchange system, at present local calls extend to the entire Short Distance Charging Area (SDCA) irrespective of the number of exchange systems falling within the SDCA. The respondents have therefore stressed that whenever policy decisions regarding

tariff or billing systems are taken or changes are made therein, it is not open to franchisees to hold on to any earlier tariff structure or billing system which is not authorized or permitted by the franchiser at that point of time. It has been urged that all the efforts of the respondents to make available to subscribers at large communication facilities and infrastructure at cheaper and affordable rates would be negated if the franchisees are permitted to levy service charges on inter-SDCA calls which, in any case, were never a part of the original scheme. The respondents have further pointed out that in view of the representations made by the franchisees their rate of commission has been increased from 16% to 20%.

A careful perusal of the documents and arguments advanced by the petitioners and the respondents leaves no doubt in mind that the relationship that exists between the two are that of franchisees and franchiser. This relationship is governed by the terms and conditions of the contract between the two as existing and renewed from time to time. If the franchiser in its wisdom wishes to pass down certain benefits to its users it is not open to the franchisees to levy charges which would in effect deny such transmission of benefits, particularly when no absolute legal rights to levy such charges were available to them under the relevant terms and conditions of the franchise agreement. The current Application-cum-Franchisee Agreement Form contains an unequivocal declaration from the application that he/she agrees to abide by the terms and conditions of the Agreement and any changes made in them from time to time. Similar stipulations existed in earlier Agreements.

As a result of what is discussed above, the petition fails. There would be no order as to costs.

.....Sd/-.....J.
(SUHAS C. SEN)
CHAIRPERSON

.....Sd/-.....
(R.U.S. PRASAD)
MEMBER

.....Sd/-.....
(P.R. DASGUPTA)
MEMBER