

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

DATED THE 6TH DAY OF AUGUST, 2003

PETITION No.11 OF 2001

BPL Mobile Cellular Ltd.

... Petitioner

Vs.

Bharat Sanchar Nigam Ltd.& Others.

...Respondents

BEFORE:

**HON'BLE MR. JUSTICE D.P. WADHWA,
CHAIRPERSON
MR.R.U.S.PRASAD, MEMBER
MR.P.R.DASGUPTA, MEMBER**

For Petitioner

: Mr. Rishi Agrawala, Advocate

For Respondents

: Mr. Ankur Talwar for Mr. Maninder Singh, Advocate

Concluded contract - held cannot be unilaterally varied after the expiry period of 2 years- Points of Interconnection - Rent and Guarantee – flat-rate basis.

ORDER

This is a petition filed under Section 14 of the Telecom Regulatory Authority of India Act, 1997 by M/s BPL Cellular Limited, Coimbatore (Tamil Nadu) who is a Cellular Mobile Services Providers in Kerala, holding a valid licence dated 19.12.1995 issued under the Indian Telegraph Act, 1885. The Petitioner's grievance arises out of the denial of its request to grant additional streams of interconnection by the Respondent, Bharat Sanchar Nigam Limited at Cochin and Alleppey, Palakkad, Kollam, Trivandrum, Calicut, Kottayam, Kannur, Ernakulam and Trichur where the Respondent had already provided Points of Interconnect (POI) to the Petitioner earlier.

2. The facts of the case are as under. As per the licence agreement dated 19.12.1995 between the Department of Telecommunications (DoT) and the Petitioner, the Petitioner is a Cellular Mobile Service Provider in Kerala. The Petitioner needed interconnectivity between DoT Public Switching Transmission Network (PSTN) and its own exchange so that its customers could contact those linked with DoT network and international lines. Existing procedures for such inter-connectivity envisaged either the applicants themselves supplying the equipment for the inter-connectivity under the contributory work basis or the DoT providing the same under Rent and Guarantee (R&G) basis. The Petitioner sought inter-connectivity on contributory work basis; however, DoT was agreeable to provide Points of Interconnection (POI) only on R&G basis and quoted the charges on capital cost basis. Subsequently, however the rates were revised by DoT unilaterally on a flat rate basis which were higher than those computed on capital cost basis. The Petitioner challenged this before the Kerala High Court (O.P. No. 680 of 2000) under Article 226 of the Constitution of India. Separately the Petitioner filed CMP No. 1024/2000 and 1743/2000, seeking direction to the Respondent not to enforce the demands towards R&G charges on a flat rate basis, pending disposal of the original petition. Vide its order dated 20th January 2000, the High Court directed the Petitioner to deposit an amount of Rs. 50 lakhs and the Respondent not to enforce the demand, as prayed for by the Petitioner, pending disposal of the Original Petition. This amount of Rs. 50 lakhs was duly deposited by the Petitioner. Subsequently the Respondent again raised fresh demands on flat rate basis and the Petitioner filed another petition (CMP No. 33207/2000) before the Kerala High court, seeking stay of such demands. This came up for consideration before the High court on 17.7.2000 when the High Court directed the Respondent once again not to enforce the demands made by them. The Petitioner filed another CMP (No. 13304/2000 in O.P. No. 680/2000) when it found that the Respondent was not providing additional circuits/inter-connectivity lines at Cochin and Alleppey in spite of the petitioner having paid the requisite amounts as per the demand notes raised by the Respondent. This CMP however was not pursued as the Respondent provided the facilities asked for soon after the CMP was filed. Subsequently the Petitioner asked for additional streams at 8 locations, viz., Palakkad, Kollam, Trivandrum, Calicut, Kottayam, Kannur, Ernakulam and Trichur, where there were already existing Points of Interconnect. All the requests were dated 11.04.2000, excepting for Kollam which was dated 29.12.1999. On 19.1.2000 the Petitioner was advised by the General Manager, Telecom Distt Kollam that there was an unpaid amount of Rs. 13.49 lakhs and that additional streams could be provided only after the amount was paid. It is the contention of the Petitioner that this amount represented the revised R&G charges raised on flat rate basis by the Respondent which was stayed by the High Court and hence not payable till the disposal of the Original Petition. This was pointed out by the Petitioner to the Respondent without any tangible result. Thereafter the Petitioner filed CMP No. 23829/2000 in O.P. No. 680/2000 seeking an order directing the Respondent to consider the requests for additional streams in all the 8 locations. This came up for consideration before the High Court on 20.6.2000 when the Court directed the Respondent to consider the requests within a period of one month. The Respondent thereafter issued an order on 11th July 2000, turning down the requests on the ground that the Petitioner was a defaulter in respect of R&G charges. The Petitioner once again pointed out to the Respondent that the High court having stayed the computation of R&G charges on a higher flat rate basis it would be wrong to categorise the Petitioner as a defaulter and deny facilities on that ground. However, the Respondent declined to accept this plea and formally turned it down. The Petitioner thereafter again approached Kerala High Court with a Writ Petition under Article 226 of the Constitution (O.P. No. 22578/2000) along with an application for stay (CMP No. 3798/2000). On 31.8.2000 the High court directed the Respondent to give the additional lines as asked for by the Petition. The Writ Petition was disposed of by the High court vide its order dated 14.6.2001 in which the Petitioner was granted leave to withdraw all the Original Petitions filed in this respect and move Telecom Disputes Settlement & Appellate Tribunal for Redressal of the disputes in terms of the TRAI Act, 1997. Time was given till 10.7.2001 to move the petition before the Tribunal and the interim stay granted to realization of R&G rates on the revised basis, i.e., flat rate was continued. The Petition was filed before this Tribunal

by the due date and in its first hearing held on 31st July 2001, the Tribunal directed maintenance of status quo till further orders.

3. In his arguments, the learned Counsel for the Petitioner emphasized the point that the Respondent could not unilaterally and arbitrarily revise the basis on which facilities like Points of Interconnection and/or additional streams were originally provided to the Petitioner and that the Respondent could not deny such facilities on the ground that the payments on the revised basis had not been made.

4. In response to this, the learned Counsel for the Respondent submitted that in terms of the order passed by a Division Bench of Kerala High court on 6.9.2000 in an appeal preferred by DoT (W.A. No. 1950/2000) against the order dated 31.8.2000 in O.P. No. 22578/2000, it was directed that the Petitioner should make all payment excepting the amount demanded towards Rent & Guarantee charges on flat rate basis. It was stated that some of the dues of the Petitioner, over and above the dues on the basis of flat rates towards R&G charges, were pending from the Secondary Switching Areas (SSAs) in Kottayam, Ernakulam, Trichur and Kannur in Kerala circle and hence the Respondent was within the ambits of the directions given by the High Court in denying the additional facilities asked for. It was submitted that that the total amount due from the Petitioner in these 4 areas came to approximately Rs.48.22 lakhs.

5. This submission was contested by the Petitioner who pointed out that the order passed by the Division Bench of Kerala High Court on 6.9.2000 was an interim order passed in CMP No. 5133 in Writ Appeal No. 1950/2000 and that the final order of the Division Bench was passed on 14.6.2001 when the Respondent was permitted to withdraw the Appeal and approach the Tribunal by 10.7.2001. It was further stated that the interim order would subsist till 13.7.2001. The Petitioner drew attention to the fact that the Respondent had chosen not to file any petition before the Tribunal and had thus implicitly accepted the order passed by the Single Judge of Kerala High Court on 31.8.2000 in CMP No. 37978 in O.P. No. 22578/2000. The Petitioner further argued that the dues which were stated to be outstanding were actually raised much later than 6.9.2000 when the Division Bench of the Kerala High Court had passed its interim order. The Petitioner furnished a detailed statement in respect of each due shown as outstanding by the Respondent to substantiate its point that nothing was due in some cases, in some cases the bills were not received at all and in some cases wrong bills were sent which were under correspondence and settlement. In addition, the Petitioner underscored the point that in no case the Petitioner had asked for additional Points of Interconnect (POI); what it had asked for was additional streams in the already existing POI's so that the quality of service provided to the subscribers could be in terms of the quality norms laid down by the TRAI.

6. In its rejoinder, the Respondent stated that the petition had become infructuous in view of the fact that the facilities which were prayed for in the petition before the Tribunal had since then been provided to the petitioner.

7. During the hearing, the learned Counsels of the Petitioner as well as the Respondent further agreed that nothing further survived in this case as the substantive issue relating to the basis on which R&G charges could be levied, once the initial demands were raised on capital cost basis, had already been decided by this Tribunal vide its order on Petition No. 13 of 2001.

8. On going through the materials on record and the pleas made on behalf of the Petitioner and the Respondents we agree that no cause for any action survives now. The Petition succeeds to the extent that the Respondent has accepted that there were no justifiable reasons to deny the additional streams asked for by the Petitioner in the existing points of interconnect already granted by the Respondent to the Petitioner and has provided the additional streams accordingly. As regards the substantive issue, we have already held vide our order dated 1st April 2003 in Petition No. 13 of 2001 that "the action of the Respondent in revising the demands after a period of two years in respect of what were practically existing concluded contracts between the Petitioners and the Respondent was neither legal nor proper". The same reasoning and logic holds good in this case also. The Respondent will pay cost which we assess as Rs.15,000/-.

.....Sd/-.....J
(D.P.Wadhwa)
Chairperson

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

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