TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 11th February, 2010

Petition No.56 of 2009

M/s Vodafone Essar Gujarat Ltd. … Petitioner

Versus

Bharat Sanchar Nigam Limited …Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON
HON'BLE MR.G. D. GAIHA, MEMBER

For Petitioner : Mr. Navin Chawla,Advocate
Mr. Sharath Sampath, Advocate

For Respondent : Mr.ManinderSingh, Senior Advocate
with Mrs.Prathiba M. Singh,
Mr. Yoginder Handoo,
Mr.Tejveer Singh Bhatia,
Ms.Nitya Thakur,
Mr.Arjun Natarajan, Advocates

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JUDGMENT

S.B. Sinha

The petitioner is a licensee under the provisions of the Indian Telegraph Act, 1885. Being not an ILDO licensee it was not authorized to bring any international calls for termination in India.

The respondent is also a licensee. It admittedly has its network throughout India. Parties hereto for the purpose of connecting their respective subscribers from one network to another entered into an Interconnect Agreement. We would refer to the details thereof at an appropriate stage.

The petitioner indisputably has been issued with a bill dated 16.10.2004 asking it to pay a sum of Rs.3,54,94,916/- purported to have been calculated on the basis of the number of incoming calls received at the respondent's network at the rate of Rs.5.65 per minute paying the highest charge prescribed by the Telecom Regulatory Authority of India (TRAI) in terms of Interconnect Usage Charge Regulation 2003(IUC).

The said bill was issued relying on/or on the basis of clauses contained in Chapter 7 of the interconnect agreement entered into by and between the parties hereto.

We may notice the factual matrix involving the disputes between the parties.

As referred to hereinbefore the Interconnect Agreement entered into by and between the parties hereto on or about 21.08.2002. The said agreement did not contain any penal clause of the nature referred to hereinbefore on the basis whereof the respondent could raise a bill. On or about 26.03.2003 the Ministry of Communications & IT (Department of Telecommunication) noticing that clandestine exchanges were being operated by some unscrupulous persons for receiving international calls and distribution of PSTN in India wherefor vigilance should be exercised and call details record should be analysed, issued a circular letter advising the cellular operators inter alia, the following:

> "i) Utmost vigilance should be exercised in providing bulk telephone connections for a single used as well as for a single location. Provision of 10 or more connections may be taken as bulk connections for this purpose. Special Verficiation of bonafide should be carried out for providing such bulk connections information about bulk connections will be forwarded to Sr.DDG (Vigilance). DoT as well as all Security Agencies on monthly basis.
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> (ii) The call detail records for outgoing calls made by mobile customers should be analyzed for the sucribers making large number of outgoing calls day and night and to the various telephone number normally, no incoming call is observed in such cases. This can be done by running special program for this purpose. The service provider should devise appropriate fraud management and prevention programmed and fix threshold levels of average per day usage in minutes of the telephone connection, all telephone connections crossing the threshold of usage should be checked for bonafide use. A record of check must be maintained which may be verified by Licensor any time.

The list/details of suspected subscriber should be informed to the Sr.DDG (Vigilance), DoT, West Block-I, Wing-2, R.K. Puram, New Delhi – 110 066, immediately.

(iv) Caller Line Identification(CLI) shall never be tampered as the same is also required for security purpose and any violation of this amounts to breach of security. CLI restricting should not be normally provided to the customers. Due verification for the reason of demanding CLIR must be done before provision of the facility. It shall be the responsibility of the service providers to work out appropriate guidelines to be followed by their staff members to prevent misuse of this facility. The subscriber having CLIR should be listed in a password protected webside with their compete address and details so that authorised Government Agencies can view or download for detection and investigation of misuse. However, CLIR must not be provided in case of bulk connections, call centre, telemarketing services.

(v) Bulk users, premises should be inspected by the services providers at regular intervals for satisfying themselves about bonafide use of such facilities. A record of such inspection should be maintained and preserved for minimum one year, for inspection/verification by the licensing authority or designated officer of the authority.

(vi) Leased Circuits should also be checked for their bonafide use and to detect any misuse."

Respondent thereafter also in terms of its letter dated 15.10.2004 opining that such international incoming traffic would amount to tampering of CLI, issued a notice upon the predecessor in interest of the petitioner namely FASCEL Ltd. stating as under:

"Incoming international traffic has been observed purportedly coming on Gujarat LSA subscribers at Vadodara TAX but actually originating from abroad which amounts to passing ISD Calls through CMTS POI. This is strictly prohibited and amounts to tampering of the CLI of these calls, which is in violation of the terms and conditions of the Interconnect Agreement.

Few of the sample CLIs observed are 9825174114, 9825351280, 9825212757. Similar calls have been observed from the month of Sept-04.

As per the terms and conditions of Interconnect Agreement, incoming international calls cannot be handed over for termination in the BSNL Network by Private CMTS Operators at their CMTS POI. Such calls can be delivered by an ILD Operator at BSNL's level '1' TAX. Hence as per letter No.208-20/2003-Reg. dated 28.01.2004, BSNL shall charge @ Rs.5.65/- per minute for all incoming calls at your CMTS POI with Vadodara level-2 TAX. A provisional bill has been raised and enclosed as per Annexure-1. You are instructed to pay the same by 25.10.04.

This notice is hereby served on you to refrain from offering ISD calls on CMTS POI with immediate effect. In case of any continuing violation of the Interconnect Agreement, your CMTS POI at Vadodara TAX shall be disconnected without any further notice to you."

The said FASCEL Ltd. in terms of its letter dated 19.10.2004 contended that it had not contravened the Interconnect Agreement and refused to make any payment of the said provisional bill inter alia, stating:

"If, through no fault of ours, a very small number of our subscribers are misusing our service breach the laws of the land, we are ready to assist in any manner to investigate this and take any action to put a stop to further activities. However, we cannot be held responsible or liable for the action of a few subscribers any more than BSNL could be liable for a criminal using a BSNL landline to extort money."

By another letter dated 21.10.2004 the petitioner stated as under:

"We also assure that we have not tampered and do not tamper with the CLI for any of the calls handled by us. We take this opportunity to refer to the numerous occasions in the past when we have co-operated with BSNL to detect people who carry out such illegal activities. We reiterate our commitment to you to continue such assistance in the future also. We strongly believe such illegal activities are anti-national and cause huge revenue loss to the nation."

Respondent in response to the said letters, while acknowledging that FASCEL Ltd. is not an international long distance operator alleged that international calls were being routed through its network and were offered at POI with BSNL in support whereof again 6 sample CLIs observed through purported misuse was pointed out by a letter dated 01.11.2004. It was stated:

"Instead of taking corrective action, you have indicated that you will assist us in doing the investigation. You may kindly note that it is the responsibility of the Operator to ensure that its customers do not misuse the services to subvert the laws

of the land. In order to do this, you are required to do bonafide verification of all the customers, which perhaps, has not been done or done in a very casual manner."

By a letter dated 02.11.2004, the petitioner stated it was in possession of observation sample of the calls which terminated on its network having CLI of BSNL numbers wherefor a floppy containing list of such calls was also given for necessary action at its end.

The respondent was informed that the connections having suspicious numbers have been disconnected.

Yet again the respondent by its letter dated 19.11.2004 called upon the petitioner to disconnect all numbers which were being misused, lodge first information reports with the police authorities and recover the amount payable to it by way of Access Deficit Charges (ADC) for such ISD calls.

It might have been possible for the petitioner to disconnect all numbers which were found to be suspicious in nature but we feel that it was difficult for it to recover the amount of ADC for such ISD calls as those were really responsible therefor could not have been identified.

We have noticed hereinbefore that First Information Reports (FIRs) were to be lodged by the DoT on the basis of the information received by it from the cellular operators. The DoT did not say that in each case the cellular operator must lodge independent FIR as lodging the same at various places in India would not have led to an investigation of all the cases either by the same authority or at least by the respective investigating officers in collaboration with each other. Be that as it may, non lodging of FIRs by itself could not have clothed the respondent with jurisdiction to invoke clause 6.4.6 of the contract.

By its letter dated 20.11.2004, the petitioner informed the General Manager of the respondent in regard to various actions taken by it for curbing the said illegal activity. Despite the same the respondent by its letter dated 18.12.2004 reiterated that the petitioner should disconnect those numbers, lodge FIRs and recover ADC, stating:

> "You are further given an extension for submitting a responsive reply. The action may be taken within 10 days failing which we will be compelled to initiate action for recovery of compensation for the loss of ADC/IUC due to BSNL."

By another letter dated 27.12.2004 the petitioner informed the respondent as to the action taken by it. Respondent, however, in terms of its letter dated 17.01.2005 while accepting that it was not an international long distance operator but the calls were permitted through its POI made it responsible for payment of ADC for the calls transited. It was furthermore pointed out:

> "You have not specified whether the FIR have been filed or nor for the numbers which were intimated by this office earlier letter no.154 dt.18.12.04. You are again intimated that the liability of payment of bill issued by this office stand as it is."

The petitioner by its letter dated 04.03.2005 lodged protest thereagainst, stating:

> "We had explained in our letter dated 27.12.2004 that the mobile numbers given in your letter dated 18.12.2004 were all not in use on that date. We are following the norms stipulated by the DoT for the prevention of the ISD call routing, fraud done by some unscrupulous parties across the country. We take reference to the various correspondences with your office in this regard to convince you of our efforts in aiding the Government of India and its agencies in curbing the menace of ISD illegal call routing."

By reason of a letter dated 18.03.2005 the respondent furthermore made the petitioner responsible in respect of the said matter, stating:

> "You may kindly note that it is the responsibility of the operator to ensure that its customers do not use subvert the law of land and pose any threat to national security. Your approach seems to be very casual and perhaps indicate active connivance on your side to permit such misuse.
>
> However, this letter is to reiterate our demand for payment of IUC as per agreement for POI. Since the international calls have emanated from your network into our POI, we reiterate our stand for your liability of payment of bills raised by us without any prejudice. Copy of the bill for Rs.3,54,94,916/- sent to you on 16.10.2004 remains unpaid till date."

The petitioner, however, by its letter dated 04.04.2005 represented that it was not liable to make any payment to the respondent. The respondent by its letters dated 16.06.2006, 22.06.2006 and 19.12.2006 reiterated its demands but no action was

taken pursuant thereto or in furtherance thereof.

It however, only on 31.01.2009 i.e. after more than two years, issued the impugned disconnection notice for alleged non-payment of the aforementioned demand in support whereof it inter alia relied on internal instruction from its headquarters dated 31.12.2008 and circular letter dated 15.01.2009.

Mr.Navin Chawla, learned counsel appearing on behalf of would contend:

(i) The petitioner being not an international long distance operator, the question of handing over any international call to the respondent would not arise.

(ii) No allegation of any tampering/modification of CLI having been made against the petitioner, the impugned order is wholly illegal.

(iii) There is no provision in the Interconnect Agreement between the petitioner and respondent justifying imposition of demand by it.

(iv) The petitioner cannot be held to be liable for any criminal act on the part of its subscribers.

Mr.Maninder Singh, learned counsel on behalf of the respondent, on the other hand, urged :

(i) The petitioner as a service provider was bound to comply with the directions of the DoT as well as the respondent and thus it did not lie in its mouth to contend that it was neither bound to lodge any FIR nor recover the ADC from its subscribers.

(ii) The petitioner having accepted in the petition itself that the calls handed over to the network of the respondent were international calls, by necessary implication it must be held to have accepted that there had been a tampering with CLI as the calls received were only local CLIs.

(iii) The petitioner is bound by the internal circular dated 28.01.2004 in terms whereof the petitioner is bound to pay the entire charges at the highest slab i.e. for ISD calls.

(iv) The petitioner was fully conscious and aware that the international calls were being received on its network and the same were handed over to the respondent is clearly guilty of violation of para (viii) of the internal circular dated 28.01.2004.

(v) The letter dated 11.11.2004 of the petitioner clearly demonstrates that it could put in place the system of tracking and picking of data for analyzing usage pattern in terms whereof it could detect the suspicious telephone numbers misusing its network.

(vi) The delay of approximately one year i.e. between December, 2006 to December, 2007 in sending the disconnection notice, has fully been explained by reason of its communications dated 31.12.2008 and 15.01.2009.

In this case the Interconnect Agreement entered into by and between the parties hereto do not contain any stipulation that in the event of detection of any invalid or tampered CLI the respondent would be entitled to make a demand on the basis of the highest number of calls received within a period of two months at the highest slab of rate i.e. the international calls. It has not been shown before us that by tampering and/or misusing its network the petitioner could receive an international call and transfer the same to BSNL as a local call. No fraud or malice on the part of the petitioner has been alleged. Respondent,

however, contends that it is not concerned therewith in as much as when it appears that international calls have been routed through the petitioner's network it incurs the civil liability contained in clause 11 of the circular letter dated 28.01.2004.

In order to appreciate the said contention we may notice that by reason of the said circular, IUC Regulations 2003 was sought to be implemented. Clause 11 of the said purported circular reads as under:

> "11. The CLI based barring facility shall be activated at the POIs wherever technically feasible to ensure that the traffic handed over to BSNL is in the appropriate trunk groups only. Wherever it is technically not feasible to activate CLI based barring, periodic monitoring of the incoming trunk groups shall be done by BSNL to ensure this objective. The calls received without CLI by BSNL from various operators shall be charged at the highest slab i.e. as for ISD Calls. In case such calls are received by BSNL on a trunk group not meant for such calls then all the traffic received on such trunk group for that month billing cycle shall be charged at the rates applicable for IUC of incoming ISD Calls."

IUC Regulations, however, do not contain any such provision. The source of authority of the respondent to issue and implement such a circular has not been pointed out before us far less its authority to insert such a provision while purporting to issue the implementation circular.

IUC Regulation has been framed by TRAI in exercise of its regulation making power conferred on it under Section 36 of the TRAI Act. IUC Regulation, thus, is a piece of subordinate legislation. It comes into effect on its own. There is no provision in the TRAI or any subordinate legislation made thereunder authorizing BSNL to issue such circulars. We would, however,

assume that such was the practice. The practice to issue and implement such circular by no stretch of imagination could authorize the respondent to create a liability clause of such a nature. In our opinion BSNL could not have done so.

We may, however, notice the effect thereof. The first link of the said circular talks of an obligation. It is not a charging clause. Charging provision is contained in the second part of the said provision. The second link of the said provision speaks of the clause received without CLI by the respondent from various operators. In all of its communications the respondent has categorically stated that CLI had been received by it from the petitioner's network.

It may be noticed from the letter dated 15.10.2004 that the respondents therein themselves had given the CLI which these calls bore. There was no allegation that the CLI had been tampered with or modified. By reason of the said notice, thus, a legal fiction was sought to be created. Before issuance of the said letter no show cause notice was issued. It is also of some significance that the said notice was issued within a very short period of the purported detection of some calls allegedly with non-CLI.

It would appear that such calls were being forwarded even by the BSNL to the network of the petitioner.

Mr.Maninder Singh, however, submitted that although some numbers had been disconnected but nothing has been brought on record in regard thereto as to why such actions could not be taken earlier. It is evident that even the respondent could not stop such calls nor at the relevant time took preventive measures.

The respondent by a letter dated 03.11.2004 acknowledged that there had been a growth of 'grey market' in international calls which became an area of growing concern for the Department of Telecom and in view of several communications received in that behalf it is necessary to take steps to curb illegal routing of international calls. Proposals were made to appoint nodal officers by each operator in order to curb the menace.

The petitioner, it appears installed a system for tracking and picking up data for analyzing usage pattern which could be termed as suspicious and informing of such phones have been disconnected the details whereof were specified therein.

Submission of Mr.Maninder Singh was that petitioner thus could prevent the misuse by the user of the said phones which step it could have taken long back particularly it was all along aware of the illegal routing of international calls. It however, would appear that despite strong vigilance the petitioner out of thousands of million numbers could find only 10 communications which could be termed as suspicious. The petitioner, therefore, has done whatever it could legally do.

If the petitioner was neither authorized to receive international calls it was for the respondent to demonstrate that the petitioner had introduced certain devices to violate the terms of the license. Respondent does not say so. The burden of proof in view of the conditions of license that the petitioner has tampered with the CLI in a situation of this nature was upon the respondent. It failed/neglected to discharge the said burden. By reason of unilateral circular letter the respondent could not have created an obligation on the part of the petitioner.

In BSNL & Anr. Vs. BPL Mobile Cellular Ltd. & Ors - 2008(13) SCC 597, the Supreme Court of India has held as under:

"51. In the instant case, the resources to be leased out were subject to agreement. The terms were to be mutually agreed upon. The terms of contract, in terms of Section 8 of the Contract Act, fructified into a concluded contract. Once a concluded contract was arrived at, the parties were bound thereby. If they were to alter or modify the terms thereof, it was required to be done either by express agreement or by necessary implication which would negate the application of the doctrine of "acceptance sub silentio". But, there is nothing on record to show that such a course of action was taken. The respondents at no point of time were made known either about the internal circulars or about the letters issued from time to time not only changing the tariff but also the basis thereof.

52. We will assume that the contention of the learned Additional Solicitor General that the internal circulars are issued for their application by the local officers. If they have committed a mistake, the same could be rectified. Indisputably, mistakes can be rectified. Mistake may occur in entering into a contract. In the latter case, the mistake must be made known. If by reason of a rectification of mistake, except in some exceptional cases, as for example, where it is apparent on the face of the record, mistake cannot be rectified unilaterally. The parties that would suffer civil consequences by reason of such act of rectification of mistake must be given due notice. Principles of natural justice are required to be complied with. The fact that there was no mistake apparent on the face of the records is borne out by the fact that even the officers wanted clarification from higher officers. The mistake, if any, was sought to be rectified after a long period; at least after a period of three years. When a mistake is not rectified for a long period, the same, in law, may not be treated to be one.

53. Furthermore, what would be the effect of such a mistake must be determined having regard to the provisions of the Contract Act.

54. It is not a case where the contract is sought to be terminated on the ground of a mistake. Only a higher rate is sought to be enforced on the basis of internal circulars.

55. We have noticed hereinbefore the effect of an internal circular. There is no presumption about their correctness. Presumption of correctness of documents is provided for in Sections 81 and 84 of the Evidence Act. Even the contents of a newspaper, as envisaged under Section 81 of the Evidence Act, would not be presumed to be correct."

Yet again this Tribunal in M/s Reliance Infocomm Ltd. Vs BSNL (Petition No.224 of 2006), by its order dated 05.05.2009 has held:

"12. We accordingly hold that the Circulars dated 12.6.2006 and 24.7.2006 issued by the Respondent will have no application whatsoever to any Agreement unless it has been specifically agreed between the parties that the Agreements entered into prior to the date of these Circulars are to be amended suitably."

Submission of Mr. Maninder Singh was that the petitioner was all along aware that the calls in question were international calls. In support of such a contention our attention has been drawn to the following portion of para 1 of the petition which reads as under:

"It is submitted that the calls in question arose out of alleged illegal/clandestine telecommunication facilities/exchanges set up by some private miscreants without any knowledge, consent, support, authority, abetment or any remote involvement of the Petitioner. ISD calls were received by such miscreants in such illegal telephone exchanges/facilities through International Private Leased Circuits (IPLC), Very Small Aperture Terminal (VSAT), Internet Service Providers' Link/Internet Leased Line ISDN(BRA) none of which is provided by the Petitioner herein. Normally ISD calls were received by such miscreants through the Voice Over Internet Protocol

(VOIP) and then through computer or other equipment transferred these calls as local originated calls to the network of the Petitioner for further transmit/termination as local call using the telephone connection to the Petitioner/Respondent and/or other telecom operators."

The said pleadings in our opinion do not constitute any admission on the part of the petitioner.

In para 1, the petitioner has contended the nature of the challenge involved therein. It is in that context, it has been contended that the bills had been raised on the alleged ground of routing of ISD in the STD trunk in POI at DTAX. A typographical error has occurred as instead of 'respondent', the word 'petitioner' has been mentioned. The statement in question was by way of submission. The petitioner by reason thereof intended to refute the allegation of the respondent. It is now a well settled principle of law that for the purpose of ascertaining admissions contained in a pleading, the same has to be read in its entirety. So read, in our opinion paragraph 1 of the petition does not contain any admission of its knowledge that the calls in question were international calls.

We have noticed hereinbefore that even the Department of Telecommunication in its circular letter dated 23.06.2003 clearly stated that some miscreants operate clandestine/illegal exchanges for receiving international calls and distribution of PSTN in India. The DoT has pointed out that the miscreants use the types of telecommunication facilities provided by the operators. The DoT acknowledged that apart from the national security it causes loss not only to the Government but also to the telecom operators. It is, thus, one thing to say that the telecom operators are themselves guilty of commission of fraud for the purpose of boosting its revenue and thus depriving the Government therefrom, but it is another thing to say some miscreants have been operating such clandestine/illegal exchanges and for the said purpose use the facilities granted by the operators.

We have heretobefore noticed that not only the facilities of the petitioner but also the facilities of BSNL had been used by such miscreants. So far as the petitioner was informed by the respondent about transmission of such calls the petitioner in turn has also furnished BSNL the requisite particulars to show that the facilities of BSNL had also been used by such miscreants. The circular letter dated 23.06.2003 does not create a monetary obligation on the part of an operator. The powers and functions of the Government are contained in the Indian Telegraph Act. TRAI Act is being a special statute in respect of the matters specified therein. In terms of the said enactment TRAI has been created. Section 11 of the Act empowers TRAI to fix the terms and conditions of interconnectivity between the service providers as contained in sub-clause(ii) of Clause (b) of sub-section (1) of Section 11 of the TRAI Act. The said provision also contains a non obstante clause.

A non obstante clause confers an overriding effect over provisions of another enactment in case of any conflict. In Iridium India Telecom Ltd. Vs. Motorola Inc. - 2005(2) SCC 145, it is stated thus:

> "36. ……There is no doubt that where the *non obstante* clause is widely worded, "a search has, therefore, to be made with a view to determining which provision answers the description and which does not". The historical development of the law suggests that the *non obstante* clause in Section 129 is intended to bypass the entire body of the Code so far as the rules made by the Chartered High Court for regulating the procedure on its Original Side are concerned."

Reference has therein made to Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram – 1986(4) SCC 447, wherein it was stated as under:

> "33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when

> we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment with the glasses of the statute- maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

If the petitioner had no hand in the matter of transmission of an international call to the respondent's network, the question of its liability to recover ADC on its behalf would not arise. The petitioner cannot be subjected to any fiscal liability for the wrongs committed by a third party. The exchange through which such calls are transmitted being illegal or invalid ones and the same having been set up by miscreants, in our opinion no fiscal liability can be harped on the petitioner. The circular letter dated 24.06.2003 does not provide for any revenue generation. It is a general circular meant for all the cellular operators. The respondent cannot take any advantage thereof being not a revenue generation circular in absence of any such provision in the Interconnect Agreement. It may be one thing to say that conditions of licence and tariffs provided for in the IUC Regulations may have to be considered together but it would have no application herein as the circular dated 24.06.2003 has nothing to do with realization of ADC. ADC is payable to BSNL in terms of IUC Regulations and not otherwise. If because of the activities of some miscreants, cellular operators as also the Government of India suffered a monetory loss, the same cannot be recovered by one operator from the another on the premise that the later had not fulfilled its obligation of the DoT circular dated 24.06.2003.

In terms of Section 11(1)(b)(i) of the TRAI Act it is the function of TRAI to implement the conditions of licence issued by the licensor and not the respondent.

By reason of the said circular we would assume the petitioner has incurred certain liabilities. Such liability, if any, having been fastened upon it by DoT, it is for the DoT to implement the same. Clause (i) of Para 3 of the said circular provides one of such obligations. A cellular operator, therefore, was bound to make a special verification bonafide for provision of 10 or more connections which were to be given as bulk connections for the said purpose. It is not the case of the respondent that the petitioner has breached the said provision. Sub-clause(ii) of para 3 speaks about analysing of the call details records, mode and manner wherefor has also been laid down. Again it is not the case of the respondent that the petitioner has violated the same.

Clause (iii) provides for appointment of nodal officers in respect of each service area. Nodal officers were required to be appointed so that vigilance unit of DoT may contact them. It was again not for BSNL, who is another service provider, to make any complaint thereabout. In any event nothing has been pointed out before us that the nodal officers have not been appointed.

Clause (iv) speaks of an obligation on the part of the cellular operators not to tamper the CLI. A responsibility has been thrust upon the service providers to work out appropriate guidelines to be followed by the staff members to prevent misuse of the said facility. The said provision also has been laid down for security purposes. There is no contention that Clause (v) and (vi) of para 3 have been violated. It is also not the contention of the respondent that the petitioner has not carried out its obligations in respect of clauses (v) & (vi). Petitioner has terminated the telephone connections of those who were found to be suspects.

In terms of circular letter dated 23.06.2003 the service providers were required to pass on the informations to the DoT. The petitioner had installed appropriate devices to find out such suspicious numbers. Clause (ii) of para 3 merely provides for

passing of the information to the Senior DDG (Vigilance). It may not be correct to contend that reluctance on the part of the petitioner to lodge FIR was a violation of the said circular letter. In any view of the matter refusal to lodge an FIR by itself would not attract clause (ii) of the implementation circular dated 28.01.2004.

We cannot accept the submission of Mr.Maninder Singh that the implementation circular letter dated 28.01.2004 became a part of the licence. It would not be, as BSNL had no jurisdiction to issue the said circular and in particular clause 11 thereof.

In a case of this nature it was obligatory on the part of the respondent to give an opportunity of hearing to the petitioner. For whatever reasons, no action had been taken on the representation of the petitioner and/or refusal on its part to make any payment for a period of more than one year. The headquarter of the respondent's letter dated 28.01.2004 evidently gave rise to the issuance of the demand dated 31.01.2009. It is not the case of the respondent that the claim of the petitioner is barred by limitation as the petitioner's contentions had not been finally rejected by the respondent.

It cannot be said that the petitioner was guilty of any delay or latches on its part. Reference to an earlier circular in respect of Gujarat Circle of the respondent is not a matter with which the petitioner was concerned.

We also regret our inability to accept the contention of Mr.Maninder Singh that a non-CLI call is inherently a call handed over a trunk groups, in absence of any materials placed in this behalf and in particular having regard to the reference made differently in para 11 of the said circular letter.

For the reasons aforementioned, this petition deserves to be allowed. It is directed accordingly. The impugned demands dated 16.10.2004 are set aside. The respondent shall pay and bear the costs of the petitioner. Counsel's fee assessed at

Rs.1,00,000/-.

……..J
(S.B. Sinha)
Chairperson

…….
(G.D. Gaiha)
Member