TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Petition No. 327 of 2011
(With M.A. No. 214 of 2011)

DATE : 21ST OCTOBER, 2011

Idea Cellular Ltd. ..... Petitioner

Vs.

Union of India ..... Respondent

BEFORE :

HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON
HON'BLE MR. P.K. RASTOGI, MEMBER

For Petitioner : Mr. P.V. Kapur, Senior Advocate
Mr. Navin Chawla, Advocate
Mr. Aman Anand, Advocate
Ms. Nidhi M. Parashar, Advocate

For Respondent : Ms. Manisha Dhir, Advocate
Mr. K.P.S. Kohli, Advocate
Ms.Poonam Anand, Advocate

J U D G E M E N T

The petitioner is a licensee; the licence having been granted by the respondent herein in terms of the provisions of Section 4 of the Indian Telegraph Act, 1885.

This petition has been filed inter-alia questioning the legality and/or validity of an order dated 15.7.2011 issued by the respondent herein whereby and whereunder a penalty of Rs.50 crores has been levied inter-alia on the premise that the petitioner has violated Condition No. 24.10.5 of Schedule B Part III of the licence conditions and Condition Nos. 5.13 and 5.15 of the Amendment dated 12.8.2002 as also various instructions/ guidelines issued by it in respect of verification of subscribers and re-verification of the existing subscribers.

2. The petitioner, in terms of the aforementioned licence agreement dated 17.12.1995, inter-alia, was required to supply the details of the subscribers to whom it had been providing services.

We may notice the relevant provisions of the said licence agreement :-

> *"24.10.5 The Authority or any authorized person shall have an access to the Data base relating to the Cellular subscribers of the Licensee. The Licensee shall also update the data relating to his subscribers available with the Authority on a monthly basis. The Licensee shall make available details of the subscribers using the service at any prescribed instant, to the Authority or its representative.*
>
> *5.13 The complete list of subscribers shall be made available by the licensees on their website (having password controlled access), so that authorized Intelligence Agencies are able to obtain the*

subscriber list at any time, as per their convenience with the help of the password. The list should be updated on regular basis. Hard copy as and when required by security agencies shall also be furnished. The licensee shall ensure adequate verification of each and every customer before enrolling him as a subscriber; instructions issued by the licensor in this regard from time to time shall be scrupulously followed. The SIM Card used in the User terminal shall be registered against each subscriber for his bonafide use. The licensee shall make it clear to the subscriber that the SIM card used in the user terminal registered against him is non-transferable and that he alone will be responsible for proper and bonafide personal use of the service.

5.14 A format would be prescribed by the LICENSOR to delineate the details of information required before enrolling a customer as a subscriber. A photo identification of subscribers shall be pre-requisite before providing the service."

3. There are two TERM Cells in the circle of Andhra Pradesh.

The petitioner was required to furnish the details of its subscribers to both the TERM Cells.

On or about 23.6.2010 the ADG, TERM Cell, A.P., Vijayawada sent an e. mail to one Shri Arun of the petitioner, which reads as under :-

"This pertains to the CAF verification process for June, 2010 (On May, 2010 customer Data). The following discrepancies were found :-

Based on analysis of Customer Database submitted on 10/6/2010		*As reported in the Covering letter accompanying the Customer Database CD submitted on 21/6/2010*		*Based on analysis of customer data base submitted on 21/6/2010*	
Prepaid	*Postpaid*	*Prepaid*	*Postpaid*	*Prepaid*	*Postpaid*
4956324	*97602*	*7027172*	*132149*	*7027174*	*134866*
Total	*5053926*	*Total*	*7159321*	*Total*	*7162040*

You are directed to explain the reasons for the sudden jump in the current subscriber database when compared to that of previous months. However, samples were taken based on analysis of customer database submitted on 21/6/2010, which were enclosed with this mail. Kindly submit CAFs for the listed samples and explanation for the sudden jump in the subscriber data base, by the due date 25/06/2010."

4. A reminder was issued thereto on or about 29.6.2010 in the following terms :-

"Please provide the Scanned Copy of CAF and all the supportive documents submitted by the customer of 9848256420."

5. Yet again, another reminder was issued on or about 12.7.2010, which is to the following effect :-

"*Sub : Discrepancy in subscriber data base – Reg*

Ref:-1) This Office mail dated 23-06-2010

2) This Office Lr. No. TERM AP/SDV-Idea/2010-11/11 dated 29.06.2010

A kind reference is invited to this office mail dated 23.06.2010 and subsequent reminder dated 29.06.2010, wherein it was directed to explain the reasons with sufficient proof of documents for the sudden abnormal jump in the subscriber data base for the month of May, 2010 when compared to previous months. So far no reply has been received in this office till date.

It is once again directed to explain the reasons with sufficient proof of documents by 1700 hrs of 16.07.2010 failing which it will be presumed that you have nothing to offer by way of explanation and this office would process the case further."

6. Admittedly, the petitioner did not reply thereto.

It, however, appears that a meeting had taken place between the officers of the parties hereto on or about 01.12.2010 wherein according to the petitioner it explained the reasons in respect of the said purported discrepancies.

Without any further notice, however, the impugned order dated 15.7.2010 has been passed, purportedly for under-reporting of the customers to the extent of 23,71,622 for the month of April 2010 and 5,81,802 for the month of May 2010.

The impugned order, however, is restricted to the under-reporting for the month of May 2010 only.

A break-up of the said figure was furnished in the impugned order, which reads as under :-

> *"From the details of the 5,81,082 customers not reported in prepaid customer database of May, 2010 (database as on 31.05.2010), it was found that some numbers were activated as far back as 1999. The year wise breakup is mentioned below :*

Sl. No.	*Year of activation from IN Dump*	*Number of active prepaid customer*
1.	*1999*	*40*
2.	*2000*	*95*
3.	*2001*	*275*
4.	*2002*	*354*
5.	*2003*	*2883*
6.	*2004*	*4542*
7.	*2005*	*12120*
8.	*2006*	*24242*
9.	*2007*	*10347*
10.	*2008*	*32198*
11.	*2009*	*118447*
12.	*2010*	*375539*
	Total	*581082*

7. The impugned notice also refers to the instructions and guidelines issued by the DoT; apart from the aforementioned conditions of the licence with regard to the verification of the subscribers and re-verification of the existing

subscribers. It was contended that registration of the customers without CAF and suppression of actual subscribers of a customer data pose a threat to the security of the Nation. It was, therefore, directed :-

> *"Whereas, as per new clause inserted in CMTS license agreement below clause 15.7 of CMTS license agreement vide amendment No. 842-479/2004-VAS/3 of 25th November, 2004. "The Licensor may also impose a financial penalty not exceeding Rs.50 Crores for violation of terms and conditions of license agreement. This penalty is exclusive of Liquidated damages (LD) as prescribed in this license agreement."*
>
> *NOW THEREFORE, M/s. Idea Cellular Limited is directed to pay the penalty amount Rs.50 Crores (Rupees Fifty Crores) as per license condition indicated above, immediately and in any case within 15 days of the date of issue of this notice failing which further action may be initiated under the conditions of the CMTS license agreement. The amount may be deposited by means of Demand Draft or Banker's Cheque drawn on any schedule bank in favour of PAO. Department of Telecommunications Headquarter, New Delhi – 110001 in the Pay and Accounts Office of the Department of Telecommunications, Sanchar Bhavan, New Delhi."*

8. Our attention has also been drawn to a letter of the Ministry of Communication dated 20.4.2010, relevant portion whereof reads as under :-

> *"As per the terms and conditions of the CMTS/UAS/Basic license agreement which inter-alia provides that "The Licensor or its*

representative(s) will have an access to the Database relating to the subscribers of the LICENSEE. The LICENSEE shall also update the list of his subscribers and make available the same to the Licensor at such intervals as may be prescribed. The LICENSEE shall make available at any prescribed instant to the Licensor or its authorized representative details of the subscribers using the service.

2. In this connection the data relating to the number of telephone subscribers is being received every month from all the telecom service providers to the Licensor and designated security agencies. It has been observed that the service providers are reporting this data in the different form. In order to avoid the discrepancy in the subscriber database form, the matter has been examined and it has been decided to devise a methodology for subscriber data verification to be followed uniformly by all telecom service providers while reporting this data to DoT & TRAI.

3. In view of the above, all CMTS/UAS/Basic Licensees are required to provide the following information about the connections state-wise and license area wise at the end of each month to the respective TERM Cell as well as Economic Research Unit of DoT by 7th of the next month."

9. The petitioner, upon receipt of the said notice dated 15.7.2011, stated :-

"That without in any manner admitting the contents of your above letter, we wish to submit that we have not committed any violation of the terms and conditions of the License Agreement and therefore, the imposition of penalty is unfounded.

That we further wish to bring to your notice that you have in your demand letter under reply mentioned that from an analysis of the database as on 31.05.2010 with the CDRs you have found 5,81,082 Customers who have not been reported by us in pre-paid customers data-base of May, 2010. No detail of such customers (mobile numbers, SIM numbers etc.) has been disclosed in your letter under reply. Therefore, we are at a loss to understand and determine which are these customers that you have found to be unreported. In absence of such details, we have been denied an opportunity to contradict your findings or at least offer an explanation for the same.

At the outset, therefore, we request you to kindly share with us the basis of arriving at this figure of 5,81,082 subscribers as also details such as subscriber numbers etc. thereof. Idea Cellular has at all times followed the DoT Guidelines on subscriber base records/reporting and we confirm that all customer records are available with us in desired format. We reiterate that as responsible Corporate Citizen, National Security is equally important to us and we state that at no point in time was National security compromised in any manner whatsoever. Our consistent customer verification score for the last few years (including the period indicate in your letter viz. April, May 2010 till date) is testimony to the same.

You may further note that the provisioning of subscriber services, records, databases are not available in any given single system. There are multiple complex, standalone, offline & online systems which determine the final subscriber details. Culling data from such complex systems under ever changing requirement of local TERM Cell, is not easy and thus generation of different numbers through these multiple systems cannot be entirely ruled out. Thus

our request to you to share with us the details as highlighted in your letter.

That as far as specific cases are concerned, we have in our earlier communication also brought to your notice that these were simply human errors and no motive can be attributed to us for the same. Your assertion that we 'fabricated' some document is vehemently denied. In any case, we have already been penalized for the same and we have paid the said penalty, albeit, under protest. We cannot therefore, be penalized twice on the same count.

We further wish to submit that, in law, no penalty can be imposed without issuing a show cause notice to the effected party. However, in the present case, you have not given us any such opportunity to show-cause before levying the penalty. This means your demand is void-ab-initio.

In view of the above, and without prejudice to our rights and contentions, we request you to first share with us the basis of your demand and grant us an opportunity of personal hearing so that we may explain our stand on the same. In the meantime, we request you to kindly keep your demand notice under abeyance and not enforce the same against us. We undertake to extend complete support and share all information available with us, as we are equally concerned about the threat to security of nation."

10. Mr. Kapur, learned senior counsel, in support of the petition, would urge:

(i) The impugned order having been issued without complying with the principles of natural justice, the same must be held to be wholly unsustainable in law;

(ii) The contention of the respondent that the communications dated 23.6.2010, 29.6.2010 and 12.7.2010 constitute show cause notices, must be held to be incorrect as by reason thereof, the petitioner was not put to notice that it had taken recourse to concealment/suppression of the details of the consumers which resulted in threat of security to the Nation;

(iii) In any event, the respondent having not heard the petitioner on the quantum of the penalty, the impugned order cannot be sustained.

11. Ms. Maneesha Dhir, learned counsel appearing on behalf of the respondent submitted :-

(a) The conditions of licence of the petitioner, as amended from time to time and in particular those inserted by reason of amendments dated 12.8.2002 and 25.11.2004 having cast obligations on the petitioner to furnish details with regard to subscribers of the operators, no exception to the impugned order can be taken;

(b) Having regard to contractual obligations cast upon the petitioner to provide for the informations and/or details of the subscribers so as not to cause any threat to the national security and, furthermore, the licence having been amended by inserting Penalty Clause after Clause 15.7 of the Contract i.e. Claus 15.8, the petitioner must be

held to be guilty of suppression of the details of the subscriber base resulting in a threat to the national security;

(c) The respondent having issued a circular letter dated 23.3.2009 upon holding consultations with the industries in terms whereof the pre-activated Sim cards were prohibited from being sold and the penalty therefor having been prescribed, the petitioner cannot be heard to say that it was not aware of the consequences of suppression of the details of the subscribers.

(d) The petitioner having been served with three letters being dated 23.6.2010, 29.6.2010 and 12.7.2010, whereby and whereunder directions were clearly issued to the petitioner to explain as to why the discrepancies had taken place and the petitioner having not filed any reply thereto; it was rightly presumed that it had no cause to show and in that view of the matter, the impugned order cannot be faulted;

(e) From the e. mail of the TERM Cell of Andhra Pradesh issued to the petitioner on 16.8.2010 it would be evident that the petitioner has shown three different customer data base subscribers in a short span of time, namely on 08.6.2010, 14.6.2010 and 18.6.2010. The communications dated 23.6.2010, 29.6.2010 and 12.7.2010 must

be construed in the light of the said e. mail and/or earlier correspondences;

(f) The contention raised by the petitioner that full explanations have been offered in the meeting dated 01.12.2010 is not correct inasmuch as in the said meeting no document was furnished;

(g) Having regard to the circular letter dated 23.3.2009 providing for penalty at the rate of Rs.50,000/- per pre-activated Sim Card for which no CAF has been furnished, the petitioner must be held to have made itself liable to pay a penalty of Rs.2900 crores, but the DoT in view of Clause 15.8 of the Licence confined the demand to Rs.50 crores only;

(h) The provisions in the licence – one for termination of licence, which requires compliance of principles of natural justice, being absent in the matter of imposition of penalty as envisaged under Clause 5.18 of the Licence; the same were not required to be complied with;

(i) In any event, the petitioner having accepted the conditions of licence and in fact once having paid the penalty of Rs.1.50 crores in respect of suppression of three subscribers, it cannot be permitted to approbate and reprobate at the same time;

(j) The principles of natural justice are otherwise not required to be complied with as in a case where the same would result in empty formality.

12. The impugned order dated 15.7.2011 principally contains the sequence of events leading to passing of the said order. It also refers to the so-called under-reporting by the petitioner for the months of April 2010 and May 2010 as also the analysis of the data relating to the number of active pre-paid customers from the year 1999 to 2010 showing the aggregate of the figure at 5,80,082.

It also takes into consideration the provisions of licence and in particular, Clause 24.10.5 of Schedule B Part III and Clauses 5.13 and 5.14 of the licence. It refers to the guidelines/instructions issued by the respondent regarding verification and re-verification of the existing subscribers, registration of customers without CAF and alleged suppression of actual subscribers/customers data to be a threat to the security of the nation and having recorded the violation of the said clause, the amount of Rs.50 crores has been levied by way of penalty.

13. The petitioner, indisputably, has not explained about the sudden jump in the subscriber data base. It also failed to respond to the reminders dated

29.6.2010 and 12.7.2010. We may notice that by reason of the last communication, the petitioner was warned that if no reply is received, an inference would be drawn that it had no reply to furnish.

14. There cannot furthermore be any doubt or dispute that the petitioner was asked to explain the discrepancies by filing the documentary proof in support thereof.

15. The short question, which would arise for our consideration, is as to whether the principle of natural justice is attracted in the facts and circumstances of this case, and if so, whether the same has been complied with?

In terms of the provisions of licence and in particular Clauses 24.10.5, 5.13 and 5.15, an obligation was cast upon the petitioner to furnish the details of the subscribers from time to time (which from the impugned order appears to be on a monthly basis) on failure whereof, Clause 15.8 as inserted by a letter dated 25.11.2004 could be invoked.

16. The licence also contains a provision of termination for security reasons in the following terms :-

"The Telecom Authority reserves the right to take over the entire services and networks of the licensee or revoke/terminate/suspend the licence in the interest of national security or in the event of a national emergency/war or low intensity conflict type of situations."

17. It is also not in dispute that the respondent issued a circular letter on or about 23.3.2009 on the basis of deliberations held in various workshops on Mobile Telephone Services in the recent past. It was provided, inter-alia :-

"8. Pre-activated SIM cards are not to be sold in the market. In case pre-activated SIM cards are on sale, highest penalty of Rs.50,000/- shall be levied on each such connection."

18. The petitioner, however, submits that the difference in the figure arose having regard to the manner of reporting and also the fact that the petitioner had been submitting complete In Dump (Entire) and HLR (Home Location Report) to the TERM Cell at Hyderabad from September 2009, as demanded by it. The respondent itself issued a circular letter on or about 20.4.2010, perusal whereof would clearly demonstrate that a confusion prevailed with regard to the mode and manner in which the informations are required to be furnished. A new format was also prescribed.

19. It may also be noticed that the petitioner was said to have activated three numbers mentioned in the 2nd paragraph of the letter dated 15.7.2011 and from the reply of the respondent it appears that the imposition of the said penalty had nothing to do with the case of concealment of the customer data base.

The same, therefore, for the purpose of the present case is irrelevant.

20. By reason of the aforementioned circular letter dated 23.3.2009, penalty was sought to be imposed. The words used are "highest penalty of Rs.50,000/- for each pre-activated Sim cards on sale". It is not clear as to why the words "highest penalty" have been used. It is, however, conceded that no amendment in the licence has been carried out to the aforementioned effect.

It is not necessary for us to pronounce finally on the effect of such a clause in the circular letter, although prima facie we are of the view that a penal clause cannot be inserted for violation of a condition of licence without amending the licence itself.

21. We are furthermore of the view that it is also not correct to say in a case of this nature where admittedly Clause 15.8 of Conditions of Licence has been invoked, sustenance for imposition of maximum penalty of Rs.50 crores can be

drawn by reason of the said circular and the same can be upheld by reason of invocation of a procedural provisions of approbation and reprobation, which is merely a specie of estoppel.

Reliance has been placed by Ms. Dhir on Shyam Telelink Limited Vs. Union of India reported in (2010) 10 SCC 165 wherein the petitioner therein, while accepting the migration scheme and having paid the arrears of licence fees sought to question term relating to imposition of liquidated damages when the contract itself was worked out, to our mind, has no application to the fact of the present case. The Apex Court referring to the maxim 'qui approbat, non reprobate' laid down the law that a party to a transaction cannot take advantage of one part of a document or transaction and reject the rest. Herein, the petitioner has not questioned a part of the contract having accepted the other part. What is in question is an action on the part of the respondent herein in imposing the maximum amount of damages specified in the contract.

22. Submission of Ms. Dhir that Clause 15.8 would not attract compliance with the principal of natural justice, is not correct to our mind.

It may be true that two parts of the same contract may contain different provisions – one requiring compliance of principles of natural justice, the other may not.

Reliance has been placed by Ms. Dhir on a decision of the Supreme Court of India in Union of India Vs. Millenium Mumbai Broadcast (P) Ltd. reported in (2006) 10 SCC 510. In that case, one of the clauses contained two provisions – one for termination of the contract, and the other for invocation of bank guarantee. The Supreme Court held that the principles of natural justice would be attracted in the case of revocation of licence but not in the case of invocation of the bank guarantee, stating :-

> *"23. How the said provision can be given effect to would depend on the construction of terms and conditions of the licence. By reason of clause 1.2 as contained in Schedule (C) appended thereto, the licensor had been conferred with a power to revoke the licence as also to encash and forfeit the bank guarantee without any notice. The expression "and" occurring in between the words "right to revoke the licence" and "encash and forfeit the bank guarantee" must be read as two separate clauses. The same cannot be read as conjunctive in view of the fact that it is admitted that the revocation of licence is not permissible without service of 30 days' notice. What was, therefore, permissible is that the licensor in terms of the said condition of licence may encash and forfeit the bank guarantee furnished by the licensee without giving any notice. The same would evidently mean that for the purpose of encashment and forfeiture of the bank guarantee, no separate notice is required to be given in the event any cause of action arises therefor."*

23. In that very decision, it has clearly been laid down that although the mode and manner of compliance of natural justice might not have been

specifically stated but the same would not mean that it was not necessary to do so**. (See para 26).**

It was stated :-

> *"27. However, the letter dated 6.3.2003 was merely a demand. It was not a notice in the true sense of the term as consequences for non-payment had not been stated therein. The said letter was issued only by way of reminder.*
>
> *29. We may consider the matter from another angle. By reason of the provisions contained in clause 12.1 of the terms of the licence, not only the revocation of licence for breach of any conditions contained in any agreement, but also prevention (sic termination) thereof on any other ground. Which would include the default in payment of licence fee would result in the consequence of debarring the licensee from applying directly or indirectly for any FM radio station in future. The consequence of the revocation of the said licence, therefore, is penal in nature. Such penal provision is required to be strictly construed.*
>
> *30. It is in that view of the matter, before the licensor exercises his right to revoke the licence, notice was required to be issued. It having not been done, the conclusion is irresistible that the purported revocation of licence was a nullity."*

24. The principles of natural justice are ordinarily required to be complied with where an action visits civil or evil consequence.

A party, against whom an action is sought to be taken resulting in imposition of penalty, is entitled to know the charges on the basis whereof the penalty is sought to be imposed.

It cannot be based on ipse dixit on the part of the Union of India.

25. The communications dated 23.6.2010, 29.6.2010 and 12.7.2010 did not even remotely mention that there are allegations of suppression/concealment on the part of the petitioner. The purported threat to the national security was also not the subject matter of any charge and, thus, in relation thereto no explanation had been sought for.

The respondent even in the said communications did not make any allegation that the petitioner has violated the conditions of licence. No opportunity, furthermore, was granted as to why the maximum penalty should be imposed. Even in that context, reference to the circular letter dated 23.3.2009, in our considered opinion, was irrelevant.

26. In Nirode Baran Bannerjee Vs. Union of India and Anr. reported in 1971 (3) SCC 788, the Apex Court opined :-

> *"2. In our judgment the order of the Central Government is vitiated because the appellant was never called upon to explain*

whether "the public sector was interested in the area". It appears from the recital in the notice served upon the appellant that the Central Government had tentatively come to the conclusion on the three grounds that the petition filed by the appellant should be dismissed, and the appellant was called upon to submit his comments on the proposed rejection on those three grounds. If thereafter the Central Government dismissed the petition on a ground which was not mentioned in the order served upon the appellant, prima facie the order was illegal, for the appellant was never given an opportunity to make his representation on the fourth ground. We, therefore, set aside the order passed by the Central Government and direct that the Central Government do proceed according to law."

Vilangandan Vs. Executive Engineer (PWD) reported in AIR 1978 SC 930 is a case wherein the following notice was issued :-

"7. The fulfillment of the undertaking given by the department to give facilities to carry out the work as soon as you start the work was not even necessitated as you have failed even to commence the work as per the terms of the contract……

You are therefore requested to show cause within 7 days from the date of this notice why the work may not be arranged otherwise at your risk and loss, through other agencies after debarring you as a defaulter and making good the loss that may accrue to the department, from your subsisting contracts in this Division." (Emphasis supplied).

In the communication, it was asserted :-

> *"the work is being arranged at your risk and loss through other agencies after declaring and debarring you from taking further contract under the Division." (Emphasis supplied)."*

The Apex Court relying on the decision of Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal, (1975) 2 SCR 674 wherein the principle of natural justice was held to be required to be complied with in a case of 'Black-listing', opined as under :-

> *"17. The crucial words are those that have been underlined. They take their colour from the context construed along with the links of the sentence which precede and succeed them, the words "debarring you as a defaulter", could be understood as conveying no more than that an action with reference to the contract in question, only, was under contemplation. There are no words in the notice which could give a clear intimation to the addressee that it was proposed to debar him from taking any contract, whatever, in future under the Department."*

It is, therefore, clear that the show cause notice must be a self contained one.

27. In Kothari Filaments and Anr. Vs. Commissioner of Customs & Ors. reported in (2009) 2 SCC 192, although a detailed show cause notice was

issued, but the informations contained in the documents pertaining thereto having not been supplied nor shown to the appellant therein, the Apex Court opined :-

> *"14. The statutory authorities under the Act exercise quasi-judicial function. By reason of the impugned order, the properties could be confiscated, redemption fine and personal fine could be imposed and in the event an importer was found guilty of violation of the provisions of the Act. In the event, a finding as regards violation of the provisions of the Act is arrived at, several steps resulting in civil or evil consequences may be taken. The principles of natural justice, therefore, were required to be complied with.*
>
> *15. The Act does not prohibit application of the principles of natural justice. The Commissioner of Customs either could not have passed the order on the basis of the materials which were known only to them, copies whereof were not supplied or inspection thereto had not been given. He, thus, could not have adverted to the report of the overseas enquiries. A person charged with mis-declaration is entitled to know the ground on the basis whereof he would be penalized. He may have an answer to the charges or may not have. But there cannot be any doubt whatsoever that in law he is entitled to a proper hearing which would include supply of the documents. Only on knowing the contents of the documents, he could furnish an effective reply."*

28. We are, therefore, are of the opinion :-

(a) As the impugned order visits the petitioner with civil consequence, the same was required to be preceded by issuance of a show cause notice leveling the relevant charges against it;

(b) The conditions of licence having not excluded application of the principle of natural justice, only because another clause requiring compliance of the principle of natural justice has specifically been provided in the licence, the same ipso-facto would not mean that the same was not attracted in a case governing clause 15.8 of the licence;

(c) The communications dated 23.6.2010, 29.6.2010 and 12.7.2010 do not constitute show cause notices, which satisfy the requirements of the principle of 'Audi Alteram Partem';

(d) Had such opportunity been granted to the petitioner, it could have shown that it had not suppressed any material fact relating to details of the subscribers and/or by reason thereof the security of nation was not threatened.

29. For the reasons aforementioned while setting aside the impugned order, it is directed that the respondent may pass a fresh order upon issuance of a show cause notice to the petitioner containing the charges leveled against it.

30. This petition is allowed with the aforementioned direction. However, having regard to the fact that the petitioner has not replied to any of the three communications of the respondent, there shall be no order as to costs.

.....
(S.B. Sinha)
Chairperson

.....
(P.K. Rastogi)
Member

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