

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

**Dated 13<sup>th</sup> March, 2012**

**Petition No.69 of 2012  
(M.A.No.83 of 2012)**

Reliance Telecom Ltd.  
Vs.  
Union of India

...Petitioner  
...Respondent

**BEFORE:**

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

For Petitioner (P No. 69 of 2012) : Mr.Navin Chawla,Advocate,  
Mr.Santosh Sachin,Advocate for  
Ms.Manali Singhal,Advocate

For Respondent : Ms.Maneesha Dhir,Advocate  
Mr.K.P.S.Kohli,Advocate  
Mr. Abhishek Kumar,Advocate

**P.K.Rastogi, Member**

**ORDER**

By way of this petition, the petitioner has challenged the additional Demand Notice dated 4.1.2012 for the month of April 2011, and the other two additional separate demand notices both dated 18.01.2012, respectively for the months of January 2011 and February 2011 issued by TERM Cell of the DOT, Assam pertaining to Assam Circle.

2. In this petition, the petitioner has prayed for the following reliefs:

*"a. Quash and set aside the additional Demand Notice dated 4.1.2012 for the month of April 2011, and the other two additional separate demand notices both dated 18.01.2012, respectively for the months of January 2011 and February 2011 issued by TERM Cell of the DOT, Assam.*

*b. Quash and set aside the Respondent's show cause notices dated 22.12.2011 and 23.01.2012 as being wholly perverse, unreasonable, unjustifiable, arbitrary and confiscatory.*

*c. Pass such other and further order(s) as may be deemed fit and proper in the facts and circumstances of the case."*

Further, the petitioner requested for an interim relief in the following terms :

*"a. Direct the respondent to not to enforce the two additional separate demand notices both dated 18.01.2012, for the amount of Rs. 2,53,50,500/- and Rs.17,00,000/- against the audit report of January 2011 and February 2011 respectively, till the final disposal of the Petition No. 41 of 2012 and the present petition.*

*b. Direct the respondent to refund the amount of Rs. 10.63 crores which the petitioner has been illegally and arbitrarily coerced to pay under the threat of invocation of Bank Guarantee by the respondent against the additional penalty demand dated 04.01.2012."*

3. Regarding the demand notice dated 04.01.2012 for the month of April 2011, the petitioner has already paid an amount of Rs. 10.63 crores. Therefore, presently, no order need be passed in this regard.

4. However, we have to consider the issue of interim order regarding the demand of Rs. 2,53,50,500/- and Rs.17,00,000/- which were raised by the respondent by way of two additional noticed dated 18.1.2012.

5. We may notice the demand raised by DOT on 18.01.2012 for an amount of Rs. 2,53,50,000/- due to non compliance of Audit Report – February 2011 :

<i>Month</i>	<i>Total no. of non compliant CAFs</i>	<i>No. of non-compliant CAFs due to Gram Panchayat and Caste certificate (activated between 20.7.2010 to 31.03.2011)</i>	<i>No. of non-compliant CAFs suspended</i>	<i>No. of CAFs on which penalty to be imposed due to non compliance of Audit Report</i>	<i>Rate of penalty per CAF in Rs.</i>	<i>Total Penalty Rs.</i>
		<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E=cxd</i>
<i>April 2011</i>	<i>642</i>	<i>112</i>	<i>23</i>	<i>507</i>	<i>50000</i>	<i>2,53,50,000</i>

Another demand notice raised by DOT on 18.01.2012 for an amount of Rs. 17,00,000/- due to non compliance of Audit Report – Jan 2011 is shown below :

Month	Total no. of non compliant CAFs	No. of non-compliant CAFs due to Gram Panchayat and Caste certificate (activated between 20.7.2010 to 31.03.2011)	No. of non-compliant CAFs suspended	No. of CAFs on which penalty to be imposed due to non compliance of Audit Report	Rate of penalty per CAF in Rs.	Total Penalty Rs.
		A	B	C	D	$E=cxd$
April 2011	250	19	197	34	50000	17,00,000

6. The perusal of these two demands shows that the respondent has not followed the principle determined in our interim order in Petition No. 252 of 2011 Cellular Operators Association of India & Ors. Vs Department of Telecommunications & Anr.), wherein we had issued the following directions :

*“Prima facie, we are of the opinion that the term “graded scales” have a definite connotation, particularly, in view of the fact that the percentage so far as verification of a subscriber is concerned is required to be ascertained and “based on the percentage” referred to therein, so as to enable the respondents to impose financial penalty of corresponding amount’.*

*If that be so, the question of each service provider paying penalty at different rates will not arise. The members of the Petitioners Association and in particular the service providers before us have to comply therewith and only in the event any deviation or departure is made therefrom, an appropriate action may be taken by DoT”.*

The operating portion of the said order may be read, thus,

*“However, in the meantime, the respondent may not take any coercive step to implement its interpretation of the earlier order in terms of its letter dated 3.2.2011, subject to the following conditions:-*

- (i) The operators shall pay the penalty at the same rate which they have been paying so long immediately before 3.2.2011.*
- (ii) In the event the operators are intimated about the suspicious identity of any of the customers, his connection shall be withdrawn.*
- (iii) In the event the DoT issues any instructions in this behalf the compliance thereof shall be intimated to DoT within three days thereafter.*
- (iv) For the aforementioned purpose even a prima facie finding of the DoT shall sub-serve the purpose.”*

7. As the interim order issued in Petition No. 252 of 2011 was issued prima-facie as a matter of principle, therefore, the same will be applicable to these impugned notices also.

8. As the demand in these notices also pertains to the period January and February 2011, we are of the opinion that similar order as issued in Petition No. 15 of 2012 (COAI Vs. UOI & other connected matters) dated 06.02.2012 and clarificatory order in M.A. No. 69 of 2012 in Petition No. 25 of 2012 (Dishnet Wireless Vs UOI and other

connected matters) dated 28.02.2012 will be applicable to this petition also.

9. Accordingly, we direct that our orders dated 18.5.2011 and 03.6.2011 passed in Petition No. 252 of 2011 will be applicable to these petitions as a matter of principle and only 25% of the penalty relating to failed CAF forms based on photo identity issued by Village Panchayat Head and Caste and Domicile certificate with photo issued by State Government activated between 20.7.2010 to 31.03.2011 shall be payable as an interim measure. However, this order will be subject to the final order in these petitions as well as in Petition No. 252 of 2011.

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

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

/NC/