

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 02ND MAY, 2012

Petition No.248 of 2012

Bharti Airtel 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. Maninder Singh, Sr. Advocate Mr. Navin Chawla, Advocate Ms. Nidhi Parashar, Advocate
For Respondent	:	Mr. K.P.S. Kohli, Advocate for Ms. Maneesha Dhir, Advocate

ORDER

This petition inter-alia raises a question as regards interpretation of various circular letters issued by the Respondent herein so far as the obligations on the part of the licensee and verification and/or re-verification of

the Customer Application Forms (CAFs) and consequent imposition of penalty is concerned.

2. Petitioner is a licensee operating inter-alia in the State of Assam and North-East service areas. Respondent herein had issued a large number of circulars with regard to the mode and manner in which the Customer Application Forms (CAFs) should be verified and/or re-verified.

3. Cellular Operators Association of India as also Association of Unified Telecom Service Providers of India, the Association of the Cellular Operators along with a few licensees filed a petition before this Tribunal questioning the validity of the circulars issued by the Respondent from time to time.

This Tribunal, while upholding the right of the Respondent to issue such circulars, applying the doctrine of proportionality opined that the purport of imposition of penalty on the 'graded scale', as directed by the Respondent in its circular of December, 2008 was varied by it in its circular letters dated 03.02.2011 and 07.02.2011.

It was directed that the penalties be calculated on the graded scale as applied on a non-telescopic basis like Income Tax.

4. In Petition No.252 of 2011, an interim order was passed on or about 03.06.2011 whereby and whereunder inter-alia it was directed :-

“(ii) In the event the operators are intimated about the suspicious identity of any of the customers, his connection shall be withdrawn.”

5. While the said petition was pending, the Associations of the Cellular Operators as also some of the operators questioning inter-alia the validity of certain circulars issued by the Respondent in respect of Assam and North-East circles, filed a petition before this Tribunal, which was marked as Petition No.15 of 2012.

While entertaining the said petition, the operators were directed to file separate petitions circle-wise.

Pursuant thereto or in furtherance thereof, the Petitioner filed a petition marked as Petition No. 27 of 2012.

The matter relating to the interim prayer made by the Petitioners came up for consideration before this Tribunal and by an order dated 06.02.2012, it was directed :-

(sic-consideration)

“19. We are of the view that each petition requires detailed after filing of reply by the respondent. However, keeping in view the

interest of both the parties into consideration, we are of the opinion that interest of justice will be sub-served if the petitioners are directed to pay the 25% of the penalty imposed by the respondent within a period of one week. This order would, however, be subject to any other or further order which may be passed by the Tribunal.”

6. Petitioners were said to have made payments in terms of the said order as also the interim order passed in Petition No. 252 of 2011.

Quantum of the amount payable to the Respondent in terms of the said orders being in controversy, Miscellaneous Applications were filed by the Petitioners therein. Miscellaneous Application filed by the Petitioner was marked as M.A. No. 71 of 2012. The said application along with the connected matters came up for consideration and by an order dated 28.02.2012, it was directed as under :-

10. Therefore, we would like to clarify our orders dated 18.5.2011 and 03.6.2011 passed in Petition No. 252 of 2011 will be applicable to these petitions also as a matter of principle and furthermore, 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 shall be payable as an interim measure.”

7. The parties hereto, however, again raised a controversy as regards the interpretation of the said orders.

Petitioners, inter-alia, contended that they were worse off by filing the application for clarification; whereas the contention of the Respondent was that in terms of the said order dated 28.02.2012 only the Certificates issued by the Gram Panchayat and Caste Certificate were to be excluded from computation of the amount of penalty. The said matter is pending consideration before this Tribunal. Respondent, however, raised additional bills imposing penalty for the months of March, April and July 2011 on or about 03.04.2012.

In one of the said bills, the Respondent has placed a table which is as under :-

<i>Month</i>	<i>Total No. of non compliant CAFs</i>	<i>No. of non compliant CAF's due to Gram Panchayat and Caste Certificate (activated between 20.07.2010 and 31.03.2011)</i>	<i>No. of non compliant CAF's 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>n</i>	<i>c</i>	<i>d</i>	<i>E=cxd</i>
<i>March-2011</i>	<i>4687</i>	<i>1355</i>	<i>42</i>	<i>3290</i>	<i>50000</i>	<i>16,45,00,000</i>

8. The fact that the Petitioner is not in a position to comply with the requirements of the circular letter with regard to the 42 CAFs is not in dispute. Whereas according to the Petitioner, not only the CAFs which were to be verified on the basis of the Gram Panchayat and Caste Certificate is in question in the Petition No. 15 of 2012 and other connected matters, but also the 3290 CAFs which were outside the purview of the said certificates.

9. The impugned demands have been made on two premises :-

- (i) Violation of the circular letters;
- (ii) Non-compliance of the orders passed by this Tribunal.

10. It is not in dispute that CAFs have been audited, on the basis whereof a demand was made on 11.8.2011. The figures of unverified CAFs have also been stated therein. Similarly, for the month of April 2011 demands were raised on the basis of the audit report as would appear from perusal of the letter dated 21.12.2011. The impugned bills dated 03.04.2012 have been served on the Petitioner on the same basis.

By reason of the impugned demand dated 16.4.2012, additional penalty has been levied, the concluding paragraph whereof reads as under :-

“As evident from the above facts, M/s BAL not only violated DoT instructions but also violated TDSAT orders by not deactivating the number of non-compliant CAFs. Hence, the demand note issued for non-compliance of audit report of March 2011 and April 2011 cannot be kept in abeyance as requested. With regard to CAF audit of July 2011, a final reply to M/s. BAL was given by DDG on 06.02.2012. In the meantime, M/s BAL approached TDSAT against the audit report of July 2011. In the interim order Hon’ble TDSAT did not stay operation of any DoT letter. Hence, in this case also, M/s BAL not only violated DoT instructions but also violated TDSAT instructions contained in TDSAT order dated 18.05.2011 in petition no. 252 of 2010. Hence, demand note issued for non-compliance of audit report of July 2011 also can not be kept in abeyance as requested.”

11. Reliance in support thereof has been placed on paragraph 7 of the circular letter dated 23.3.2009, which reads as under :-

“7. Timely Disconnection :

It is clarified that where CAF is found non-compliant for a working mobile connection, either proper CAF should be produced within 72 hours or else the connection deactivated. In case of failure to take either action, highest penalty of Rs.50,000/- shall be levied on each

such connection, in addition to the penalty for non-compliance during subscriber verification.”

12. The short question, which arises for consideration is that keeping in view the fact that verification/re-verification of the CAFs have not been carried out within a period of three days or the connections having not been disconnected, the Respondent is entitled to levy other and further penalties.

13. The other pending matters, in our considered opinion, have a direct bearing on the controversies surrounding the present petition.

The order of this Tribunal passed in Petition No. 15 of 2012 is also under consideration. Respondent, as has been done on the earlier occasions, in the event it was of the opinion that the Petitioner has not complied with the order of this Tribunal, should have brought the same to its notice.

It, prima facie, in our opinion, ought not to have levied penalty for the months of March 2011, April 2011 and July 2011 as penalties as regards non re-verification of CAF forms have already been imposed, which is the subject matter of Petition No. 15 of 2012 and thus the questions involved herein are pending consideration before this Tribunal.

14. We, therefore, feel that subject to any other or further orders which may be passed upon considering the reply filed by the Respondent, if any, and without prejudice to the rights and contentions of the parties, interest of justice would be sub-served if the Respondents are directed not to take any coercive step to implement the impugned orders.

We have passed this order keeping in view the fact that on determination of all the disputes, if it appears to us that the Petitioner is bound to pay the additional amount demanded by it for which a suitable direction can be issued. Equities between the parties can also be adjusted at an appropriate stage.

15. For the reasons stated heretobefore, Respondents are directed not to take any coercive steps for realization of the demanded amount till further orders.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

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