

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

Dated 31st October, 2012

PETITION NO. 731 OF 2012

Reliance Telecom Ltd. ... Petitioner

Vs

Union of India (DoT) ... Respondent

BEFORE:

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

For Petitioner : Mr. Navin Chawla, Advocate
Ms. Nidhi Prashar, Advocate
Mr. Soayib Qureshi, Advocate

For Respondent : Mr. K.P.S. Kohli, Advocate
Mr. Abhishek Kumar, Advocate
Mr. Tarveen Singh Nanda, Advocate
Ms. Debopama Roy, Advocate for
Ms. Maneesha Dhir, Advocate

ORDER

The Petitioner, a licensee under the Indian Telegraph Act, 1885 in respect of the circle of Assam, is before us, being aggrieved by and dissatisfied with a letter of demand dated 21.9.2012 whereby and whereunder it has been asked to deposit a sum of Rs.39.82 crores.

2. The said penalty has been imposed on the Petitioner's failure to comply with the Respondent's instructions dated 24.12.2008 and other circular letters whereby and whereunder the licensees are required to verify the customer's CAFs within the time specified therein.

The relevant part of the impugned demand is as under :-

"6. Based on such discussion as mentioned in para 5 above, the CAF audit report has been finalized and penalty has been imposed as per the DoT letter No. 800-52/2008-VAS-III (Pt.) dated 24th December, 2008 and No. 800-14/2011-VAS dated 31.03.2011. The summary of audit report and penalty imposed are given below and also in annexure-1.

Month	Sam ple Size	No. of missing CAFs	No. of invalid POA & POI due to recharge without valid reservati on	No. of cases belongs to other category	No. of missing CAFs and non compliant Photo/POI/ POA cases	Correct subscriber Verification Percentage	Financial Graded penalty imposed (Multiplying the amount by 4 Rs.
		a	c	d	e=a+b+c+d		
Apr' 2012	6048	0	1899	92	1991	67.08	398200000

The details are enclosed as 'Annexure II'. The above report on which the two Annexures are based was E-mailed at the address

jitendra.n.sharmah@relianceada.com and copy to Indhan Chetia@relianceaa.com and mahendra.k.pandey@relianceada.com.”

8. NOW THEREFORE, on the grounds stated above, prescribed graded financial penalty of an amount of Rs.39,82,00,000/- (Rupees Thirty Nine Crores Eighty Two Lakhs only) on the basis of correct subscriber verification percentage as per above sample CAF Audit is hereby imposed on M/s. Reliance Telecom Ltd. for Assam License Service Area for the month of April'2012. The final amount of penalty will be communicated after receipt of executive order from DoT based on various court decisions. However, for now M/s. Reliance Telecom Ltd. may pay as per honorable TDSAT latest order or any other honorable court order. This amount is to be deposited with Communication Accounts Officer, O/o CCA, Assam within 21 days from the date of issue of this notice through a demand draft or pay order payable at Guwahati drawn on any scheduled bank in favour of Communication Accounts Officer, O/o CCA, Assam, Department of Telecommunications, Guwahati-791001 failing which the amount of the penalty shall be recovered with applicable interest (2%) above Prime lending rate of State Bank of India existing as on the beginning of the Financial Year (namely 1st April) in respect of the license fees pertaining to the said financial year as per terms and conditions of the licence agreement for non-payment of dues. Further, the Licensor shall be at liberty to encash the Financial Bank Guarantee in case of non-payment of above mentioned amount without any further notice to the Licensee.”

3. The Petitioner contends that in the Joint Audit Report drawn up by the parties hereto, the authorized representative of the Petitioner made the following endorsement :-

“Comments from TS2

- 1. 1849 no. of CAFs Re-verified under DoT Re-verification instructions dated 30.09.2009 which is further validated vide circular dated 31.03.2011. Hence, subsequently flagged as “Re-verified” in the database supplied.*
- 2. A total of 61 CAFs submitted either with Gram Panchayat Certificate or Caste Certificate, re-verified by State Govt., as POI/POA under DoT circular dated 31.03.2011. Hence, may be treated as compliant.*

*Sd/- 09.08.2012
(Jitender Nath Sharma)”*

4. Mr. Navin Chawla appearing for the Petitioner would contend that in raising the impugned demand, the Respondent has not given effect to the order of this Tribunal in Petition No. 252 of 2010 which has attained finality between the parties. It was urged that if the aforementioned objection of the Petitioner with regard to the number of forms which the Petitioner allegedly failed to verify, is taken to be correct, the Petitioner would be required to pay only a sum of Rs.81,000/- having defaulted only in respect of 81 CAFs.

Before us, the learned counsel would contend that if the graded scale as opined by this Tribunal in Petition No. 252 of 2010 is applied, the Petitioner was required to pay a sum of Rs.19,99,28,000/-.

5. Mr. Kohli, learned counsel appearing on behalf of the Respondent on the other hand, would submit that the Petitioner in Petition No. 15 of 2012 and other connected matters, had sought for clarification at least on four occasions i.e. on 28.02.2012, 13.3.2012, 18.6.2012 and 28.7.2012 and now another contention has been raised in this petition.

6. In Petition No. 252 of 2010 this Tribunal while upholding the contention of the Respondent that inter-alia in the case involving security of nation, it has the appropriate jurisdiction to issue instructions/guidelines. It could also specify the amount of penalty in the event of non-compliance thereof which, however, should be subject to the doctrine of 'proportionality'.

7. One of the questions, which have been raised by the Petitioner, is that the certificates issued by the Gram Panchayat as also the Caste Certificate issued by the concerned Society could not have been directed to be not

considered by the Respondent. So far as the cases relating to certificates issued by Gram Panchayat and Caste Certificates are concerned, the number of such cases is only 61 out of 92 referred to by the Respondent. On a sample survey of 6048 CAFs, in 1899 of them it has been found that the Petitioner has given a connection charge without making any re-verification.

The Petitioner has made out a prima facie case, except with regard to 81 cases.

It must, however, be borne in mind that this Tribunal in the aforementioned interim orders passed in Petition No.15 of 2012 and connected matters had directed the Petitioners therein to pay 25 percent of the demanded amount.

8. Mr. Chawla would submit that the Respondent has demanded a sum which is more than the licence fee payable for two years. It has rightly been submitted by Mr.Kohli that this Tribunal cannot compare the licence fee with the amount of penalty imposed on the Petitioner as the latter is governed by circulars issued by the Respondent.

9. Keeping in view the peculiar facts and circumstances of this case and the earlier orders passed by this Tribunal, as noticed heretobefore, we are of the opinion that in the event the Petitioner deposits a sum of Rs.5.00 crores with the respondent and furnish a bank guarantee for Rs.15.00 crores within a period of two weeks from date, no coercive step may be taken against it for enforcing the impugned order.

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(S. B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

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