

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

Dated 18th September, 2012

M.A.No.189 of 2012 in Petition No.102 of 2007

Tata Teleservices Limited ...Petitioner

Versus

Union of India ...Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON

HON'BLE MR. P.K. RASTOGI, MEMBER

For Petitioner : Mr.Ramji Srinivasan,Sr.Advocate
Ms. Simran Brar, Advocate
Mr.Vivek Paul Oriel,Advocate

For Respondent : Mr.Ruchir Mishra,Advocate

ORDER

This Miscellaneous Application has been filed, inter alia, on the premise that the Respondent herein has not complied with the directions of this Tribunal as contained in its judgment dated 25.08.2010.

For appreciating the respective contentions of the parties in this application, we may notice that the Petitioner in the main petition had prayed for the following reliefs:-

- a) *hold and declare that the action of the respondents in unilaterally altering the basis for levying charge for the spectrum including MWA and MWBB from the Date of Usage to the date of earmarking is unilateral, arbitrary and impermissible in law;*
- b) *hold and declare that the action of the respondents in attempting to raise a claim and enforce the same without duly verifying and giving adjustments to the surrender of frequencies by the petitioner and adjustments to the Double Charging in respect of these frequencies is bad in law;*
- c) *hold and declare that the respondent has no power or jurisdiction either in contract or under the terms of the Licence Agreement or any of the operating Licenses issued by the WPC to impose penalty of 150% or otherwise or any other amount on alleged shortfall of demands*

towards subscriber charges including charges towards MWA and MWBB;

- d) set aside the claims raised by the Respondents including Demand Notes dated 14.03.2006, 08.06.2006, 21.06.2006, 28.03.2007, 30.03.2007 and 13.04.2007 and/or any other Demand Note raised by the respondents in this regard;*
- e) direct the respondent to revise the Demand Notes after giving due credit after recalculating charges on the basis of the charging mechanism as previously levied and agreed to between the parties namely the Date of Usage/Commercial Launch and not the date of earmarking and revising the Demand Notes after giving due adjustments to the surrender of frequencies and double charging against certain frequencies.”*

The parties, however, agreed to reconcile their accounts which exercise was carried out.

A joint statement was filed before this Tribunal with regard to the frequencies in question which are in the following terms:

“In terms of the said broad agreement of the parties to reconcile their accounts with reference to various frequencies which have been allotted to the petitioner for operating in the state of Andhra Pradesh, a broad consensus has been arrived at. A note on the joint statement has been placed before us pointing out the views of both the parties. We may notice the issues and the view of W.P.C.

(a) “Surrender of 18 GHz (18140/19150) MHz MW Carrier in Andhra Pradesh (AP).

WPC Wing has already agreed for the surrender of five links in Hyderabad retrospectively w.e.f. 23.12.1999 on the basis of the proof of application for surrender of these links in DoT/justifications and identification of the five links recently.

(b) Revised computation of Adjusted Gross Revenue (hereinafter referred to as ‘AGR’) for TTML.

The necessary correction for the year 2001-2002 has been made and the requested to WFD for the issue of revised demand note accordingly.

(c) Implementation of Hon'ble TDSAT order in Petition No. 116 of 2007 dated 15th April, 2009

As intimated in the revised reconciliation sheets, the matter is under consideration in the Ministry. The benefit of the above judgment would be given to all operators including M/s. TTSL/TTML after the receipt of Ministry's decision.

(d) Penalty levied and Interest on Penalty

The above judgement was given by Hon'ble TDSAT on the outstanding dues of cellular operators for the period of 1999 to 2001. However, no penalty on spectrum charges has been charged from the CDMA operators for the above period.

(e) Interest on late payment

The simple rate of interest (not cumulative) on the late payment of the principal amount has been charged for the period 1999-2001 also.

(f) Issue of revised Demand Notes

Revise demand notes for all the service areas are being issued taking into account some dispute (pointed out by M/s TTSL recently

during preparation of joint statements) regarding the receipt of some payments/Revision of AGR on the basis of AGR/payments etc. submitted by M/s TTML/TTSL. WPC wing is of the view, in case M/s TTML/TTSL produce any proof of receipts of the payments from WPC wing/WFD, the amount shall be taken into account and in case M/s. TTSL/TTML unable to produce the proof, they have been asked to verify the amount realization from the respective banks and produce the same, so that amount shall be taken into account.”

However, in relation to a frequency bearing No. 18140 - 19150 no consensus as to whether the same had been surrendered in note could be arrived at.”

We may notice Issue Nos. 4 & 5 of the minutes of meeting held between the parties hereto for the purpose of reconciliation of their accounts.

“Issue 4: Penalty levied and Interest on Penalty

5. DOT has levied a penalty and delayed interest on penalty on TTSI and TTNL, which needs to be reversed. As per this Hon'ble Tribunal's orders in other matters such as in Petition No. 123 of 2008, COAI vs. DOT (order dated 19.11.2009), no penalty and interest on penalty can be levied on the WPC spectrum charges,. It is submitted that there has been no short fall in payments (as can be seen from calculations submitted and thus no penalty and interest on penalty is lieviable. In fact, the WPC ought to give the TTSL and TTML interest @ SBI prime plus 5% on excess amounts. This needs to be reconciled in light of Hon'ble TDSAT orders. WPC not authorized to levy any penalty and interest on penalty.

WPC Views:-

The above judgment was given by Hon'ble TDSAT on the outstanding dues of cellular operators for the period of 1999 to 2001. However, no penalty on spectrum charges from the CDMA operators for the above period.

Issue No. 5: interest on late Payment

6. It is submitted that DOT has levied interest on late payment. It is humbly submitted that the DOT ought not to charge any interest in light of this Hon'ble Tribunal's judgment dated 19.11.2009 in COAI Petition No. 123 of 2008, as applicable. As it is, there has been no short fall in payments as can be seen form calculations submitted and thus no penalty and interst on penalty is leviabile. In fact the WPC ought to give the TTSL and TTML interst @ SBI prime plus 5% on excess amounts paid by the TTSL and TTML.

WPC Views:

The simply rate of interest (not cumulative) on the late payment of the principal amount has been charged for the period 1999-2001 also.”

The said petition was filed in respect of the demands raised by the Respondent for the circle of Andhra Pradesh.

The demands sought to be impugned herein relate to the Mumbai circle and the Maharashtra circle.

The Petitioner would contend that the interest at the compounded rate as also penal interest levied by the Respondent is not only contrary to the aforementioned judgment but also the decision of this Tribunal dated 19.11.2009 in Petition No. 123 of 2008 (Cellular Operators Association of India & Ors. Vs. Department of Telecommunications & Ors.) as well as its judgment and order dated 11.02.2010 passed in Petition No. 8 of 2003 (BPL Mobile Cellular Ltd. & Anr. Vs. Department of Telecommunications).

Section 20 of the TRAI Act, 1997 reads as under:

“If any person willfully fails to comply with the orders of the Authority or any order of the High Court , as the case may be, he shall be punishable with fine which may extend to one lakh rupees and in case of a second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which the default continues.”

The submissions of Mr. Ramji Srinivasan, learned senior counsel appearing on behalf of the Petitioner, shortly stated, is that the Respondent in respect of aforementioned circles also could not have charged interest at the compounded rate and levied penal interest being bound to charge simple interest only.

Moreover, it was submitted that levy of penalty to the extent of 50% of 'other dues' having been declared to be illegal, no demand could have been raised on that basis or otherwise.

Mr. Ruchir Mishra learned counsel appearing for the Respondent, on the other hand, submitted that the Respondent had scrupulously complied with the directions of this Tribunal passed in the said Petition No. 102 of 2007.

A joint statement was made before the tribunal. The said joint statement was based on a decision taken by both the parties while reconciling their accounts. The said statement made by the Respondent being applicable to the accounts relating the circle in question, it, in our considered opinion, cannot be proceeded against

for violation thereof in the facts and circumstances of the present case.

It has been submitted before us that despite the interpretation of the relevant provisions of the license agreement, by this Tribunal, the Respondent has failed and/or neglected to comply with this Court's directions.

The said petition related to the period 1999 to 2001.

Mr. Mishra would contend that the Petitioner has migrated to USA license from Nov. 2003 and, thus, the provisions of the basic operator's license are not applicable.

It is not necessary to consider the said question raised by the learned counsel for the Respondent.

Mr. Srinivasan urged that from a perusal of the chart submitted by the Petitioner which are at pages 41 and 49 of the paper book. It would appear that the calculations have been made for the financial years 1998-1999 and 2004-05.

It has rightly been pointed out by Mr. Mishra that from a perusal of the aforementioned charts which are applicable for the circles of Mumbai and Maharashtra, that simple interest was

calculated for the dues in question which had, however, been carried forward as opening balance from 15 April 2002.

Learned counsel appearing for the parties have addressed us on the merit of the matter.

As indicated heretofore the primary contention of the applicant is that the decision of this Tribunal dated 25.08.2010 must be considered in the light of law declared by this Tribunal in the said Petition No. 123 of 2008 & Petition No. 8 of 2003 and other analogous cases.

The factual matrix involved in the Petition No. 102 of 2007 was different. The payability of the rate of interest and/or the nature thereof was not considered therein. If the Respondent has proceeded in the matter on the basis that the conditions of licensee otherwise entitle them to levy interest 'on other' due amounts, in our considered opinion, no exception thereto can be taken for the purpose of initiation of a contempt proceeding against the Respondent.

It is one thing to say that the Respondent has willfully disobeyed the order of this Tribunal but it is another thing to say that it interpreted the same differently being confined to circle in question

and years in question, which cannot be said to be absurd, a proceeding u/s 20 of the Act would be initiated.

“In Tamilnad Mercantile Bank Shareholders Welfare Association Vs. S.C. Sekar, 2009, SCC 784, Supreme Court of India held:

52. If two views are possible, as held by this Court, a contempt petition would not lie.

It was observed that:

“The order of this Court properly construed, therefore, would mean that the admitted lease would cover only 16,000 square feet of land. Different phraseologies like ‘entire’ and ‘admitted’ have been used by this Court. Construction of the said order, therefore, must be resorted to upon reading the same in its entirety. It is a well settled principle of law that if two interpretations are possible of the order which is ambiguous, a contempt proceeding would not be maintainable.”

In the facts and circumstances of the case, we are of the opinion that the action on the part of the Respondent being bona fide, no case has been made out for initiation of a proceeding under Section 20 of the TRAI Act.

The remedy of the Petitioner, if any, is to file a fresh Petition.

The application is, therefore, dismissed with the
aforementioned observations without any order as to costs.

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(S.B. Sinha)
Chairperson

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(P. K. Rastogi)
Member

MM