

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

Dated 17<sup>th</sup> July, 2014

**Petition No. 273 of 2012**

Reliance Telecom Ltd. ... Petitioner

Vs.

Union of India ... Respondent

**Petition No. 274 of 2012**

Reliance Communications Ltd. ... Petitioner

Vs.

Union of India ... Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON**

**HON'BLE MR. KULDIP SINGH, MEMBER**

For Petitioner ... Mr. Navin Chawla, Advocate  
Mr. Pranav Sarthi, Advocate

For Respondent ... Mr. K.P.S. Kohli, Advocate  
Mr. Prashant Jain, Advocate for  
Ms. Maneesha Dhir, Advocate

**JUDGMENT**

**Kuldip Singh:** In these petitions, penalties imposed by the respondent – Union of India, for violation of terms & conditions of license agreement with regard to

verification of subscribers and failure to comply with clause 41.14 of the same, have been challenged.

2. Petitioners – M/s. Reliance Telecom Ltd. (Petition No. 273 of 2012) and M/s. Reliance Communications Ltd. (Petition No. 274 of 2012) have been granted Unified Access Services License (UASL) under Section 4 of the Indian Telegraph Act, 1885 for Madhya Pradesh Service area.

3. Before going into the facts of the case, we give a brief background of the customer verification process and its objective.

As per clause 41.14 [Part VI] of the UAS License Agreement, licensees are required, inter-alia, to do the following:-

- (i) make a complete list of their subscribers available on their website so that the authorized Intelligence Agencies can obtain the same at any time;
- (ii) Ensure adequate verification of each and every customer before enrolling it as a subscriber;
- (iii) Follow the instructions issued by the licensor in this regard from time to time.

Clause 41.14 of the UAS Licences reads as under :-

*“The complete list of subscribers shall be made available by the LICENSEE 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 against him is non-transferable and that he alone will be responsible for proper and bonafide personal use of the service.”*

On 31.7.2008, the UAS License was amended to incorporate the following clause

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*“The Licensor shall have the right to direct the Licensee to warn, penalize or terminate the franchisee or agent or distributor or servant, after considering any report of conduct or antecedents detrimental to the security of the nation. The decision of the Licensor in this regard shall be final and binding and in any case the Licensee shall bear all liabilities in the matter and keep the Licensor indemnified for all claims, cost, charges or damages in this respect.”*

4. Clause 41.14 of the License Agreement is a part of security considerations. The objective of this clause is that the identity as well as address details of any subscriber subscribing to the services of the licensee company should be readily available in case of need. We may note that in case of a fixed phone service, the premises where the phone is installed is well known in contrast to mobile service where the subscriber can be anywhere. It is more so in case of prepaid service for which the phone bill is not required to be issued to the subscriber and the subscriber can avail the services by purchasing prepaid vouchers and charging his account. In case of any need by a security agency, the details of such subscribers must be readily and correctly available. Since the matter may involve the security of the country, the importance of these details cannot be over-emphasized.

5. Department of Telecommunications (DoT) - Union of India has been issuing instructions from time to time for compliance with clause 41.14 of the license. It has also provided for a scheme of financial penalty for violation of terms & conditions of the license agreement in respect of subscriber verification. The Department has also been carrying out the audit of the licensees to ensure their compliance with the instructions issued from time to time. Vide letter dated 01.6.2010 the work relating to imposition of penalty has been de-centralized and

put on Telecom, Enforcement, Resources and Monitoring (TERM) Cells set up under DOT in various license areas.

Subscribers, while subscribing to the services of a licensee, are required to complete a form which is called as the 'Customer Acquisition Form (CAF)'. The subscribers are also required to submit the proof of identity as well as proof of address, for which certain documents specified by the Department of Telecommunications (DoT) are to be provided. Licensees are also required to follow the guidelines issued in this regard from time to time. To ensure compliance with the instructions in this regard, TERM Cell of the concerned service area conducts monthly audits of the licensees on sample basis. On the total subscriber base of the licensee in that service area, a sample of one percent of the subscribers at random is taken and the licensee is asked to provide copies of the CAF Forms of the subscribers. These copies of CAF forms are checked for compliance with the instructions and guidelines issued from time to time and in cases of non-compliance, the licensees are given a week's time to discuss the cases and make available the original CAFs. The initial report indicating the findings about compliance/non-compliance is also provided to the licensee. Based on the discussions with the service provider (licensee), the report is finalized and jointly signed by both. Based on this final report, the amounts of penalty are calculated in accordance with the telescopic rates that provide for increasing amounts of penalties for higher percentage of non-compliance. The service provider, if he so desires can make a representation to the Deputy Director General (DDG), TERM whose decision is final.

6. Let us also briefly examine the process of activation of the SIM cards. When a subscriber approaches a service provider or its retailer/ agent for a mobile connection, he is asked to fill the Customer Acquisition Form (CAF) and submit the required documents of identity and address proof as detailed above. The subscriber then chooses a plan as per its requirements and is given a SIM card. Though it is possible to have pre-activated SIM cards which, when inserted in the handset, can immediately be used to make or receive calls, DoT, vide its letter dated 23.3.2009, issued certain instructions/clarifications to all the CMTS/UASL/Basic Licensees that included a prohibition on the sale of pre-activated SIM cards. Clause 8 of this letter relates to Pre-Activated SIM Cards and reads as under :-

**“8. Pre-Activated SIM Cards :**

*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.”*

7. With the above background, we now proceed to examine the facts of the case as under:

- (i) A raid was conducted on two retailers of the petitioners – M/s. New Mobile Point, Bhopal and M/s. Music & Music, Bhopal by a team of officials of Telecom Enforcement Resource & Monitoring Cell (TERM), M.P. on 26.5.2011. A total of 388 SIM(Subscriber Identity Module) Cards were confiscated during the raid, out of which 131 SIM Cards belonged to Reliance Telecom Ltd., out of which 116 were found activated. 18 SIM Cards belonging to M/s. Reliance Communications Ltd. were seized and all of them were found activated;
- (ii) On 28.5.2011, the respondent sought the activation details of the SIM Cards (131 from M/s. Reliance Telecom Ltd. and 18 from M/s. Reliance Communication Ltd.). The details of 116 Mobile Digital Numbers (MDNs) in respect of 116 SIM Cards were provided for by M/s. Reliance Telecom Ltd. and 18 MDNs for the 18 SIM Cards were provided for by M/s. Reliance Communications Ltd. 15 MDNs of M/s. Reliance Telecom Ltd. were not activated and therefore, the details of the 15 MDNs could not be provided.

8. It is the contention of the respondents that the SIM cards found active were pre-activated in violation of the instructions issued in this regard. Accordingly, as per the impugned letters dated 22.3.2012, a penalty of Rs.58

lacs was imposed on M/s. Reliance Telecom Ltd. (Petition No. 273 of 2012) and Rs.9 lacs on M/s. Reliance Communications Ltd. (Petition No. 274 of 2012). These penalties were imposed for violation of terms & conditions of license agreement with regard to verification of subscribers and failure to comply with clause 41.14 and clause 8 of the instructions issued by DoT in this regard vide letter dated 23.3.2009. The relevant paras of the impugned letters are as under:-

- “3. *AND WHEREAS the Licensor has issued the instructions regarding verification of subscribers from time to time and as per the instructions for the verification of subscribers issued vide No.842-725/2005/157 Dated 23<sup>rd</sup> March 2009 clause 8 stating that pre-activated SIM cards should not 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 connection.*
4. *AND WHEREAS during the sample check carried out by the licensor to ascertain the status of subscriber verification in compliance to license condition and instruction of licensor issued time to time, it has been noticed that the licensee has failed to comply with the license condition and instruction of licensor issued from time to time.*
5. *AND WHEREAS it is observed that M/s. Reliance Telecom Limited has failed to comply clause 8 of DoT letter No. 842-725/2005/157 dated 23<sup>rd</sup> March 2009 in 116. It is clear from the report that proper verification has not been carried out by the Service provider at the time of provisioning of service to the subscriber. Hence M/s. Reliance Telecom Limited has violated*

*the terms and condition of License Agreement and the instructions issued time to time by licensor on the subject by providing mobile connection without proper verification. The percentage of correct verification of M/s. Reliance Telecom Limited for MP License Service area has been ascertained and financial penalty has been calculated as per clause 8 of DoT letter No.842-725/2005/157 dated 23<sup>rd</sup> March 2009. The details are enclosed as 'Annexure' is E-mailed at the address : [arun.johari@relianceada.com](mailto:arun.johari@relianceada.com). “*

9. It is the contention of the petitioner that SIM Cards in question were not pre-activated as the CAFs for these show a date which is prior to date of activation or same as the date of activation of the SIM Cards. As per the petitioner, these SIM cards were activated after filling of CAFs. Mr. Navin Chawla, learned counsel appearing for petitioners, submitted that though the Call Data Records (CDRs) were asked, the same were not analyzed by DoT.

Mr. KPS Kohli, learned counsel appearing for respondent, however, submitted that on analyzing the screen shots of MDNs (Mobile Digital Numbers), it was confirmed that the said SIM Cards were pre-activated and not sold to any genuine subscribers. As per the respondent, most of the MDNs were activated and then switched off and the petitioners were submitting forged and fabricated CAFs against the pre-activated SIM Cards seized from the point of sale during the raid. As per it, perusal of the CAFs revealed that multiple SIM Cards were

issued to same person and were prepared after the raid was conducted by the respondent. As per the respondent, petitioner also violated clause 3 of the guidelines/circular dated 22.11.2006 issued by respondent, as per which the licensee company's authorized representative (who is directly accountable to the licensee company) is required to verify that all the documentary requirement has been completed before activating the SIM card.

Mr. Chawla argued that allegation of forgery has only been made in reply and no such ground was taken while imposing the impugned penalties. He relied on *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*<sup>1</sup> para 8. He further relied on *Cellular Operators Association of India & Ors. Vs. Department of Telecommunications & Anr.*<sup>2</sup> and submitted that onus to prove forgery is on respondent and no penalty can be levied till this onus is discharged.

We are unable to agree with the submission of Mr. Chawla that SIM Cards were activated after receiving CAFs for the simple reason that if that was the case, the SIM Cards would not be lying with the agent of petitioners at the point of sale. From the fact that these SIM cards were lying with the agent at the point of sale and also in activated condition, clearly shows that they were activated

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<sup>1</sup>SCC 1978 (1) 405

<sup>2</sup>Petition No.252 of 2011

prior to being sold to customers. We may also see from para 3 of the circular of the DoT dated 22.11.2006 that the licensee company's authorized representative, who is directly accountable to the licensee company, is required to verify that all documentary requirements have been completed before activating the same. The relevant para is as under:

- “3. *The Licensees shall ensure that*
- (i) *The authorized person at the point of sale shall record in the application form that he has seen the subscriber and verified his documents with the original. In this regard license shall ensure that the point of sale is suitably advised of his responsibilities and consequent liabilities in the matter.*
- (ii) *The connections are activated only after the requirement of filling up of customer acquisition form and copies of documentary proof as per requirement have been fulfilled by the customer **for this purpose the licensee company's authorized representative (who is directly accountable to the licensee company) shall verify that all the documentary requirement has been completed before activating the SIM card.*****
- (iii) *Pre-activated SIM card are not to be sold in the market.”*
- (Emphasis ours)*

10. Mr. Chawla submitted that there is a complete violation of principle of natural justice as all the information sought by respondent was supplied but no

show cause notice was issued before imposing the penalties as per the impugned letters, no opportunity of hearing was granted and no reasons were given while rejecting the appeal preferred by petitioners.

Mr. Kohli, however, submitted that in this case the facts were known to respondent. The procedure for verification of subscribers as well as the penalties for non-compliance and for pre-activated SIM Cards was well known and in the facts of the case and under the circumstances only one conclusion and corresponding penalty was possible. With regard to his submission, Mr. Kohli relied on S. L. Kapoor Vs. Jagmohan & Others<sup>3</sup>, para 17 of which is as under :-

*“17. Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because courts do not issue futile writs. But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary.”*

Keeping in view the facts and circumstances of the present case, we agree with the submission of Mr. Kohli.

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<sup>3</sup>(1980) 4 SCC 379

11. Mr. Chawla submitted that in case of non-compliance with the instructions for verification of subscribers, a graded scheme of penalty is provided that dependson percentage of non-compliance and, therefore, penalties, if any found imposable, should be in accordance with this.

In this regard we may refer clause 8 of the DoT circular No.842/725/2005/157 dated 23.3.2009 (para 8 above). The penalty for Pre-activated SIM Cards is clearly prescribed as Rs.50,000/- for each such connection.

In view of this, we are not able to agree with the submission of Mr. Chawla.

12. In view of the foregoing, we do not find any merit in these petitions which are accordingly dismissed. Cost of litigation is assessed as Rs. 50,000/-

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**(Aftab Alam)**  
**Chairperson**

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**(Kuldip Singh)**  
**Member**

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