

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

**Dated 8th December, 2015**

**Petition No. 341 of 2013**

**Vodafone South Ltd., New Delhi**

**...Petitioner**

**Vs.**

**Union of India, New Delhi**

**... Respondent**

**BEFORE :**

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

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

**HON'BLE MR. B.B. SRIVASTAVA, MEMBER**

For Petitioner : Mr. Meet Malhotra, Sr. Advocate  
Mr. Navin Chawla, Advocate  
Mr. Sidharth, Advocate

For Respondent : Mr. S.S. Shamsbery, Advocate  
Mr. Vikas Malik, Advocate

**ORDER**

**Kuldip Singh:**

The petitioner Vodafone South Limited has been granted Unified Access Service Licenses by the respondent under section 4 of the Indian Telegraph

Act. It is aggrieved by the imposition of a penalty of Rs. 27,97,35,000/- , revised subsequent to the judgment of the Tribunal in Petition No. 252 of 2013 to Rs.15,83,04,600/-, for alleged violation of license conditions regarding verification of subscribers in its Andhra Pradesh Service Area. The penalties are imposed for the period from April 2009 to December 2009. These are imposed by the TERM cell, A.P. for failure to supply 599 Customer Verification Forms (CAFs) and alleged failure to comply with essential requirements like photos on CAFs, identity, and address proof in 7524 cases.

This Tribunal had examined the issue of CAF in detail in its judgment dated July, 2, 2014 in petition no. 48 of 2012. Paras 4 and 5 of this judgment are as under:

“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 rate 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."

It is the case of the petitioner that prior to April 2009 it was availing the services of one M/s Writers Information Management Services for the purposes of record management of CAFs collected from the subscribers. However, with effect from April 2009, it hired the services of one NSB Solutions Pvt. Ltd. for the purpose of entering data, scanning, cataloguing, storing, etc. and the earlier CAFs had to be transferred from M/s Writers Management to M/s NSB Solutions. As these CAFs had to be properly checked and catalogued, this exercise took about 5-6 months. In the CAF audits conducted by the TERM cell during this period, the petitioner produced photocopies of scanned copies for the purpose. Since this photocopies were made from scanned copies, their quality was not very good due to which the prints were dim/unclear. The representative of the petitioner requested for time to produce the originals but instead of giving time, the respondent treated the CAFs as non-compliant and imposed the impugned penalties.

In a recent judgment of the Tribunal in Reliance Telecom Ltd. Vs UOI, petition no. 24 of 2013 delivered on 28 October 2015, it was observed that CAF audit is a function of national safety and security and not an exercise for revenue generation and there had to be a different treatment for a procedural lapse vis-à-vis a substantive lapse. It was observed as under:

“From the above letter it is clear that for the TERM Cell, non-submission of CAFs by the due date is equal to CAFs being not available which, in turn, is equal to CAFs being not in

conformity with the relevant guidelines. This approach may be unexceptionable if the object of the CAF audit is to earn revenue but it cannot be justified if the object is to ascertain the identity of the subscriber from the point of view of national security which is the sole objective of the CAF audit.

In light of the discussions made above we come to the conclusion that there may be circumstances, though arising very occasionally, where a service provider may not be in position to submit the CAFs by the due date for very good and valid reasons. In such situation, if the service provider informs the TERM Cell, before the due date of submission of CAFs about the reason for his inability to submit the CAFs, and shows materials substantiating the reason assigned by him, the TERM Cell should consider extending the time for production of CAFs suitably, depending upon the reason for non-submission within time. Further, in case the service provider does not submit the CAFs within time without assigning any reason but wishes to submit them beyond time, the TERM Cell should still examine the CAFs to check if those are in conformity with the guidelines, subjecting of course the service provider to some penalty for the procedural lapse. The DoT will be well advised to devise a scheme making a distinction between any procedural lapses by the service provider in the monthly audit process and the substantive non-compliance with the guidelines for filling up the CAF and the necessary documents (PoI and PoA) needed as enclosures to it. Needless to say, the penalty for procedural lapses would be at much lower rates than the penalty for substantive violations of the guidelines. Further, in case the service provider does not submit the CAFs without any good reason, the authorities should not close the case by simply imposing penalty for the non-submitted CAF. The service provider should be compelled to produce the CAF or to give reason for non-production. In any event all efforts should be made to ascertain the identity of the subscriber, either by means of the data base maintained by the service provider or, if necessary, even by contacting the service provider personally.”

In the above case, the Tribunal had found that there was nothing on record to show that the petitioner therein, intimated the TERM Cell about the reason for non-submission of the CAFs within the time as directed and requested for extension of time and, therefore, must face penalty for procedural lapse. While setting aside the impugned penalty demands, it was directed that the petitioner shall pay 15% of the impugned demand and submit the CAFs in question within a fortnight which will then be examined by the TERM Cell and a decision taken in accordance with law. The operative of portion of the order is as under:

“In the facts of the case we answer the question framed above in the affirmative and hold that the CAFs for the months of July to October 2012 now being submitted by the petitioner need to be examined by the TERM Cell to judge their compliance with the guidelines. However, as noticed above there is nothing on record to show that the petitioner intimated the TERM Cell about the reason for non-submission of the CAFs within the time as directed in the requisition letter by the TERM Cell and requested for any extension of time for submission of the CAFs. The petitioner must, therefore, face the penalty for the procedural lapse of the audit process as explained above. We accordingly set aside the impugned demands of penalty and direct that if the petitioner deposits fifteen per cent (15%) of the impugned penalty amount and submits the CAFs in question within a fortnight from to-day, the TERM Cell authorities will duly examine the CAFs and take a decision in regard to those CAFs in accordance with law.”

The facts of the present case are similar to the above case except that in the present case, the petitioner offered to submit the original CAFs in its representation made immediately after the penalty was imposed on it and also gave reasons as to why it could not submit them earlier. The pleadings of the petitioner in this regard are as under:

“5(v). That however, in a mechanical and arbitrary manner, the TERM cells of the Respondent, not only refused to extend the time for submission of original CAFs but also started treating CAFs as non-compliant on highly technical reasons like unreadable / unclear POA/POI, photograph mismatch etc. It is most respectfully submitted that the representatives of the petitioner tried to reason with the TERM cells that no penalty can be levied on the petitioner on such technical grounds and they be granted further time for submission of the CAFs as the same was getting delayed for bonafide reasons for transition to new CAF management agency. However, all such representations / pleas were brushed aside and the petitioner’s representatives were forced to sign the Joint Audit Report(s) prepared by both the TERM cells.

(vi). That the petitioner, having no other option, recorded its dissent/observation/plea while signing the Joint Audit Reports. Copies of such Audit Reports are annexed hereto and are marked as Annexure P-I(colly). The petitioner is presently annexing only the first and last page of each audit report along with its protest/plea so far as TERM Cell, Hyderabad is concerned. As far as TERM Cell, Vijayawada is concerned, the petitioner is not in possession of the audit report as the copies of the said reports were not provided by the TERM Cell, Vijayawada.

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In its representation to TERM Cell, A.P. dated 15 July 2015 against the penalty imposed by the respondent on 12 July 2010, the petitioner clearly stated that the original CAFs were available with it and requested for a personal hearing. It also gave reasons for which the original CAFs could not be retrieved earlier. The relevant part of the representation is as under:

“The objections raised typically pertain to “unclear photos” or “unreadable POA” or combinations of them. These “unclear” scanned documents were found to be clear in the original documents which were retrieved now, for the purposes of signing the joint verification reports. These could have been produced earlier too, in case it was required. Hence, including them as part of non – compliant would be unfair and inappropriate. Further we would like to add the following:

1) We were in transition phase from one document management vendor to another, during the period, April to July 09.

2) Consequently, not only the primal task of, retrieving the original documents, became a challenge, further taking photocopies of original documents, too was a struggle, against time. Therefore, verification of original documents is required to clear any doubt which is available now in most cases.

3) All of which, not only, severely impacted providing timely inputs documents with regard to Audits. The fact, is clearly visible in the percentage achievements of the subsequent month from Aug 09 to Mar 10. ”

Similar averments were made by the petitioner in its letter dated 28 July 2010 addressed to DDG Security TERM Cell.

The respondent, however, rejected the petitioner's representation stating that during the joint verification with the nodal officer of the petitioner no comments/remarks were made and that time and again the TERM Cell, AP has expressed its inability to consider review of pervious months CAF reports already finalized.

From the copies of the joint verification reports (Annexure-P1 pages 17 to 47 of the paper book), we note that certain comments were made by the nodal officer of the petitioner on these reports. Be that as it may, as already discussed in details in the Tribunal's Judgment in Reliance Telecom Ltd. Vs UOI , the respondent was wrong in rejecting the representation of the petitioner without going into the merits of the same by examining the original CAFs . We are also of the view that in the circumstances of the case, the delay in production of the original CAFs was due to reasons beyond the control of the petitioner and it offered to produce them as soon as it could.

We, therefore, set aside the impugned demand with a direction to the petitioner to submit the original CAFs to the respondent within 15 days of this order. The respondent shall, thereafter, re-examine the case taking into consideration the CAFs submitted by the petitioner and rework the penalties in accordance with law and raise fresh demand, if any, after adjusting the amount already deposited by the petitioner.

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

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

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**(B.B. Srivastava)**  
**Member**