

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 29th November, 2018

Telecommunication Appeal No.4 of 2018
(M.A. No. 460 of 2018)

Reliance Communication Ltd.

...Appellant

Versus

Telecom Regulatory Authority of India

...Respondent

Telecommunication Appeal No.5 of 2018
(M.A. No. 461 of 2018)

Reliance Telecom Ltd.

...Appellant

Versus

Telecom Regulatory Authority of India

...Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. A.K. BHARGAVA, MEMBER

For Appellants

: Mr. Saket Singh, Advocate
Mr. Vaibhav Niti, Advocate
Ms. Surabhi Limaye, Advocate
Ms. Mithila Lalit, Advocate

For Respondent-TRAI

: Ms. Maneesha Dhir, Advocate,
Mr. Saransh Gupta, Advocate
Mr. Abhishek Kumar, Advocate

ORDER

By S.K. Singh, Chairperson – Both the appeals are identical, the only difference being in the names of the appellants. Since common argument has been advanced in support of both the appeals, they have been heard together and shall be governed by this common order.

2. Learned counsel for the respondent (TRAI) appeared on advance notice and has raised a preliminary objection on the ground of delay and limitation. She has pointed out that although the appellants have claimed to challenge not only the statutory directions issued by TRAI on 19.01.2018 and 22.02.2018 but also some letters. But on a close scrutiny of the reliefs sought and the contents of the letters starting from 06.02.2018 till 21.08.2018 would reveal that the relief is founded only upon challenge to the statutory directions because no liability of payment of any additional amount has been created through the impugned letters which are only replies to the letters of the appellants or to seek compliance of what is provided in the statutory directions. The letters, according to the learned counsel for the respondent do not provide any independent decision to create any liability or cause of action in respect of directions for refund to the prepaid mobile subscribers who suffered because of closure of relevant service by the appellant and either ported out during the particular period with the unspent balance in their account or who could not port out but had unspent balance in their account. The directions to the above effect

have alone been challenged through various grounds and therefore, limitation of 30 days, even if counted from revised directions of 22.02.2018 would set in from 23.03.2018 i.e. 30 days whereas the appeal has been filed on 16.11.2018 by ignoring the issue of limitation altogether.

3. Learned counsel for the appellant has advanced counter submissions on this issue. According to him the replies or contents in the impugned letters amount to decisions and therefore, these would also provide a cause of action and hence limitation should be counted from the last letter dated 21.08.2018 of the respondent.

4. On going through the contents of the letters we find more merit in the submission of learned counsel for the respondent. The letters do not create any liability or additional liability which the appellant wants to avoid. Such liability in respect of refund required to be made to the prepaid subscribers arises only from the impugned directions and therefore, limitation of 30 days has to be counted from 22.02.2018 only. It is just noted that the appeal has been filed much beyond 30 days even from the date of the last letter dated 21.08.2018. Hence, we have no option but to hold that the appeal is barred by limitation.

5. Although it is not necessary to go into submissions on merit of the appeal, but since some submissions were advanced with emphasis and these were countered by learned counsel for respondent, we would like to record that we find the impugned directions of the respondent within the scope of powers and

functions of TRAI which include issuance of direction under Section 13 for giving effect to its functions under various clauses of sub-section(1) of Section 11 of the TRAI Act. Regulation 18 of the Telecommunication Mobile Number Portability Regulations 2009 read with Regulation 14(2), too vest TRAI with the requisite authority to issue directions.

6. According to learned counsel for the appellant, since the terms of licence or the Regulations by TRAI do not create any express liability upon the appellant to make refund of the unused balance payable to the prepaid mobile subscribers, it is not proper for TRAI to issue directions because liabilities can be created only through Regulations or by the licence agreement. We find no merit in this contention. The Regulations of 2009 noted above also require the appellant that at the time of closing its relevant service affecting the prepaid subscribers, it should meet its obligations by paying whatever is payable to such subscribers under the law. There can be no two opinions or any doubt that the particular class of prepaid subscribers has suffered loss because of the appellant and is entitled to get the unspent balance. The declared policy under the Act is to create an Authority which can take care of relevant matters including the interest of the consumers. In this case, the directions take care of common interest of a section of consumers whose demands are lawful but would otherwise be forced to indulge in litigations for refund of their unspent amounts. It is notable that the directions exempt the appellant from the burden of making

refunds where the unspent balance was less than Rs.10/-. Such just and proper directions of TRAI, in our considered view, do not require any interference even on merits.

7. The appeals are dismissed accordingly. There shall be no order as to costs.

.....
(S.K. Singh, J)
Chairperson

.....
(A.K. Bhargava)
Member

sks

