

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

**Dated 4<sup>th</sup> March, 2022**

**Telecom Petition No.77 of 2016**

West Bengal State Electricity & Transmission Co. Ltd. ....Petitioner

Versus

Union of India .....Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON  
HON'BLE MR. SUBODH KUMAR GUPTA, MEMBER**

For Petitioner : Mr. Meet Malhotra, Senior Advocate  
Mr. Diggaj Pathak, Advocate  
Ms. Shweta Sharma, Advocate  
Mr. Naved Ahmed, Advocate

For Respondent(UOI) : Mr. A P Sahay, Advocate,  
Mr. Vivek Singh, Advocate  
Ms. Swayamprabha Saraswati, Advocate

**ORDER**

**By S.K. Singh, Chairperson** – This petition has been filed by the West Bengal State Electricity & Transmission Co. Ltd. to raise a grievance that the demand made by the respondent through the Department of Telecommunication (DoT) towards royalty spectrum charges etc. vide letter dated 06.09.2016 (**Annexure P-25**) is arbitrary, excessive and unwarranted, being in total disregard of issue raised and submissions made on behalf of the petitioner.

2. Fortunately there is not much dispute on facts. The relevant facts are hereinafter noted in brief. The petitioner company through its letter of 24.07.2000 sought NOC/Permission for establishment and operation of Microwave Radio Link Network for allocation of Back Haul Spectrum from the respondent for operation and maintenance of power system in West Bengal. The said NOC/Permission was granted vide letter dated 08.11.2002. The said letter granting NOC for establishment and operation of M/W Radio Link Network of prescribed specifications was to be used only for the captive network of the petitioner and not for other network. In Para 3 of the letter, DoT clarified that the permission is subject to specific terms and conditions mentioned in **Annexure-1** to the said letter and in addition to other conditions imposed by Wireless Planning and

Coordination(WPC) Wing. For the purpose of licence fee, the Billing and Controlling authority was the office of the Controller of Communications Accounts, Kolkata. The demand draft/pay order for licence fee was to be payable at Kolkata in favour of specified officer. **Annexure-1** to the letter laid down various terms and conditions and clarified that the permission was subject to provisions of Indian Telegraph Act, 1885 and Rules made thereunder and DoT could revoke the permission by giving 30 days' notice in case of any breach of the terms and conditions of permission. Petitioner was required to undertake to pay all necessary dues "including licence fee, royalty and other charges prescribed by DoT and WPC".

3. The dispute relates to dues on certain heads like royalty and fee payable to WPC and interest for alleged dues on these heads. There is no dispute with regard to licence fee payable to DoT because the same has been paid regularly as per invoices raised by DoT/concerned office. Considering the area of dispute noted above, the relevant clauses which require some attention are extracted hereinbelow:-

"20. The license fee for radio systems @ Rs.50,000 per hop per annum upto 120 channels, @ Rs.2 lakhs per hop per annum above 120 and

upto 480 channels and @ Rs.2.4 lakhs per hop per annum above 480 and upto 1960 channels shall be payable by the party.

21. The license fee for Radio Systems shall be payable by the party from the date of commissioning of system or after expiry of 18 months from the date of NOC/Permission, whichever is earlier. This date shall hereinafter be called the “Effective date”.
22. In addition to the licence fee, the PARTY shall also pay fees and Royalty for the use of Radio frequencies as per the details prescribed by the Wireless Planning & Coordination Wing (WPC).
23. The licese fee shall be paid in advance for the ensuing year. The license fee shall become due on the first of April of each year and shall be paid within 15 days of the commencement of the year. The advance licence fee for the first year shall become due on the “Effective date” and shall be paid within 15 days of the “Effective date”.
24. xxxxxxxxxxxxxx
25. Any delay in payment of License fee payable under the NOC/Permission beyond the stipulated period will attract interest at a rate which will be 5% above the Prime Lending rate (PLR) of State Bank of India prevalent on the day the payment became due. The

interest shall be compounded monthly and a part of the month shall be reckoned as a full month for the purposes of calculation of interest. A Month shall be an English Calendar Month.

26. The Royalty payable towards WPC Charges shall be payable at such time(s) and in such manner as the WPC Wing of Ministry of Communications may, prescribe from time to time.

27. xxxxxxxxxxxx

28. An advance payment of Licence fee equivalent to one year shall be made within 30 days of issue of NOC/Permission. Such advance payment shall be set off against the licence fee dues arising on or on after the “Effective date”.

The advance payment towards Licence fee shall be forfeited and NOC/Permission terminated for violation of terms and conditions of NOC/Permission, including commercial use of the network.

29. xxxxxxxxxxxx

30. xxxxxxxxxxxx

31. xxxxxxxxxxxx

32. xxxxxxxxxxxx

33. xxxxxxxxxxxx

34. xxxxxxxxxxxx

35. xxxxxxxxxxxx

36. A separate Licence shall be obtained by the party directly from the WPC Wing of Ministry of Communications and Information Technology, which will permit utilization of appropriate radio frequency spectrum for the establishment and operation of the Microwave Radio link Network under usual terms and conditions of that licence. Grant of licence will be governed by normal rules, procedures & guidelines and will be subject to completion of necessary formalities. For this purpose, an application shall be made directly to the Wireless Advisor to the Govt. of India, WPC Wing, Ministry of Communications and Information Technology, Dak Bhawan, Sansad Marg, New Delhi – 110 001 in a prescribed application form available from the WPC Wing.”

4. In terms of stipulations in Clause 36 extracted above, petitioner made an application to WPC for a separate licence. The decision to grant W/T licence was communicated by the WPC Wing through **Annexure P-2** dated 05.12.2003. The conditions in Para 3 prescribed a licence fee of Rs.10,000/- and royalty of Rs.36 lakhs per annum. Condition No.9 prescribed various sub-conditions to be fulfilled

before issue of operating licence. As per sub-conditions (b) and (c), equipment was to be procured from dealer having a Dealer Possession Licence and thereafter as per (c), “after above is completed and equipments are installed and ready for operation, fees may be paid through demand draft drawn from any branch of State Bank of India in favour of Pay & Accounts Officer (Hqrs.), Department of Telecommunications, New Delhi and payable at State Bank of India, Main Branch, New Delhi (Code: 0691).

5. It is petitioner’s case that it obtained all relevant clearances and commenced operations of the Microwave Communications System on 17.04.2007. **Annexures P-3, P-4 and P-5** have been annexed to show that prior to commencement of operations, on 18.05.2006 the Accounts Department of DoT made inquiries whether an application had been submitted to the WPC Wing for a separate licence and whether WPC charges are being paid to the WPC Wing. On 01.06.2006 petitioner replied to the said letter communicating the grant of licence for second pair of frequency in addition to first pair of frequency through Memo dated 05.12.2003 of WPC Wing. Petitioner further wrote that the said link is under observation/testing but commissioning of M/W Link had not been completed. The date of commencement therefore could not be confirmed at that point of time. In the last Para, petitioner communicated that WPC charges amounting to

Rs.36,10,000/- are payable to WPC Wing but that has not been paid because the commissioning of the M/W Link had not been completed. Through another letter dated 30.08.2006 on the subject of royalty fee, petitioner wrote to the Wireless Advisor to the Government of India, WPC Wing informing that the equipment for all 9(nine) numbers Microwave Links have been installed. Site testing of equipments and also network testing for Data and Voice Transmissions are in progress. On successful completion of Site Testing the links shall be declared ready for operation. Petitioner also enquired about the formalities regarding mode of paying royalty charges and licence fee to WPC in advance so that petitioner could pay the same whenever Microwave Links shall be ready for operation.

6. After the Links, as per petitioner, came under use from 17.04.2007, petitioner again wrote a letter on 06.03.2008 (**Annexure P-6**) informing the WPC Wing about commissioning of the Microwave Communications System at the given locations w.e.f. 17.04.2007. Petitioner also requested for action so that payment of royalty charges and licence fee to WPC could be made. Similar request was made again through **Annexure P-7** dated 31.05.2008. A copy of that letter was internally communicated to the GM(F&A) with a Note that the expenditure of Rs.36,10,000/- towards payment of royalty charges and licence fee had been kept aside but actual payment shall be made upon confirmation from

WPC Wing. Petitioner has annexed **Annexures 8 to 13** as further communications between the parties, particularly, the petitioner and WPC Wing on various matters but without any demand or invoice indicating the time and mode of payment to WPC though request for same had been made by the petitioner since commissioning of the Microwave System in April, 2007.

7. A letter from DoT dated 23.02.2015 (**Annexure P-14**) has been highlighted by the petitioner to show that for licence fee, bills were raised leading to payment as per demand but in contrast no bills were raised by WPC for royalty and fees payable to WPC.

8. The petitioner had in the meantime decided to switch-over to an alternative communication medium through optical fibre and therefore, it communicated through a letter of March, 2015 (**Annexure P-15**) that it would like to surrender microwave frequencies and it required Destruction Certificate for cancellation of the Microwave Licence. In response, certain discrepancies were communicated to the petitioner by concerned office of DoT at Kolkata on 24.03.2015. On 13.04.2015, petitioner informed DoT that all the Microwave Transmission systems had been switched off on or before 20.03.2015 and the facility was no longer in operation. Thereafter, the respondent through WPC Wing raised a demand of

Rs.22,29,48,086/- as charges payable to WPC Wing for the period upto 30.09.2015 and late fee upto June, 2015, through letter dated 12.05.2015 (**Annexure P-19**). The said letter further mentioned that a late fee @ 2% per annum (compounded annually) shall be applicable on the due amount for further delay on the payment. The letter was accompanied by a calculation sheet. The dues calculation made on the sheet mentions the licence dated 05.12.2003. The 13 entries with respect to the period in the chart cover the period from 05.12.2003 upto 30.09.2015. For the 13 periods, licence fee has been charged @ Rs.10,000/- and royalty @ Rs.36 lakhs per annum till 30.09.2011 and at the same rate for further six months till 31.03.2012. Thereafter the annual royalty rate has been shown as Rs.60 lakhs whereas the licence fee is at the old rate of Rs.10,000/- per annum. Late fee for each period has been calculated on a monthly basis which in total amounts to Rs.3,40,09,030/- (Rs.3.40 crores approximately). The total licence fee and annual royalty has been shown as Rs.18,89,39,056/- (Rs.18.89 crores approximately). A note in the chart discloses that annual spectrum charges have been revised vide order dated 22.03.2012 w.e.f. 01.04.2012.

**9.** Against the above mentioned total demand of Rs.22.29 crores approximately, petitioner protested vide letter dated 24.08.2015 (**Annexure P-20**). In the protest letter, petitioner referred to Clause No.9(c) of the letter dated

05.12.2003 to contend that charges payable to WPC Wing could be levied only after the exercise of purchase, from licenced sources, all required equipments and their installation is complete and they are ready for operation. It further pointed out that the Microwave Link had been surrendered on 20.03.2015 and therefore, the charges should be calculated not from 05.12.2003 to 30.09.2015 but from 17.04.2007 to 20.03.2015 which is the period the petitioner used the Microwave System after it was installed. Petitioner also pointed out that no invoice or claim had been received during the entire period from WPC Wing and hence, petitioner could not process the payment of charges to WPC Wing. An appeal was made to withdraw the late fee charges because no invoice of claim was received in spite of repeated reminders. Without prejudice to the above stand petitioner enquired about the procedure for payment of royalty charges. The request to revise the spectrum charges/annual royalty and late fee charges was reiterated through letter of 10.02.2015.

**10.** WPC Wing of respondent sent a reply dated 04.03.2016 (**Annexure P-22**). In the reply the requests were rejected. A stand was taken that no demand note or invoice was required to be issued; the applicant/petitioner was liable to pay annual spectrum charges in advance failing which a late fee @ 2% per month compounded annually, is applicable on such dues. The details for making the

payment under the appropriate head were conveyed through this letter. The letter raised the demand to Rs.26,73,30,607/- by revising the annual charges upto 30.09.2016 and late fee upto March, 2016. A stand was taken that Destruction Certificate may be issued after the payment of spectrum charges dues. Through letter of 15.03.2016, WPC Wing communicated that the Wireless Operating Licence was valid upto 31.12.2012 and the rate of royalty has been revised w.e.f. 01.04.2012. Petitioner was requested to renew the licence by paying the spectrum charges along with late fee as per rules. By letter dated 15.07.2016 petitioner communicated its stand and intimated that an amount of Rs.3,60,80,000/- (Rs.3.60 crores approximately) is now tendered as spectrum charges for the period 17.04.2007 to 20.03.2015 without prejudice to petitioner's interest. The payment was made through demand draft and the same is not denied. Thereafter respondent on 06.09.2016 acknowledged the aforesaid payment by the petitioner but still showed the dues to be Rs.24.63 crores approximately on account of late fee calculated upto September, 2016. Thereafter the present petition was filed on 07.12.2016.

**11.** On behalf of respondent some lapses on the part of petitioner have been highlighted, particularly the fact that after decision to grant W/T Licence was communicated to the petitioner through letter of 05.12.2003, it took a lot of time in

completing the installation and commencing the operation by 17.04.2007. As per reply since the decision dated 05.12.2003 was valid for one year from the date of issue, the petitioner should have completed the installation process within one year and should have paid the licence fee and royalty within the said period of one year. On that presumption, it has been contended that the liability to pay the annual charges commenced from the date of decision and not from the date of installation. It has also been pleaded that the regime of spectrum charges was changed w.e.f. 01.04.2005 and as per the changed regime the charges were leviable from date of earmarking i.e. 01.04.2005 (Para 9 of the reply). It has also been pleaded that spectrum is a scarce natural resource and therefore, charging could not have waited till installation.

**12.** With regard to charging of late fee there is no specific averment that it was communicated to the petitioner as a condition before or even after the delay started taking place as per respondent.

**13.** It is also relevant to note that a half-hearted submission was raised that petitioner is engaged in the business of supply of electricity and therefore it is not a service provider or a licensee amenable to jurisdiction of this Tribunal. This contention has to be rejected outrightly in view of consistent stand of the

respondent that its demand against the petitioner is of licence fee and royalty payable to WPC Wing. It is also not denied that the demand of licence fee by DoT which is not the subject of impugned demand, has been paid regularly by the petitioner as a licensee. Hence, the facts leave no scope but to reject the objection of lack of jurisdiction.

**14.** In the rejoinder filed by the petitioner, a calculation sheet has been annexed as **Annexure P-26**. As per that, the petitioner has paid licence fee of Rs.10,000/- and royalty of Rs.36 lakhs per annum amounting to Rs.3,60,80,000/- for the period of use of Microwave Wireless Transmission facility from 01.04.2007 to 31.03.2015. The royalty has been shown as Rs.36 lakhs per annum upto 31.03.2012 and thereafter at the rate of Rs.48 lakhs per annum. However, during course of submissions, it was conceded on behalf of the petitioner that the royalty charges were revised to Rs.60 lakhs per annum w.e.f. 01.04.2012 and therefore, it may be liable to further pay the balance deficit of Rs.12 lakhs annually for three years totalling Rs.36 lakhs.

**15.** In the light of the aforesaid stand of the parties, the main issues are whether (i) petitioner is liable to pay the fee and royalty to WPC Wing from the date of decision i.e. from 05.12.2003 upto 30.09.2016 and even thereafter or from

17.04.2007 to 20.03.2015; and (ii) whether late fee @ 2% per annum compounded annually is payable by the petitioner.

**16.** There is no difficulty in appreciating the stand of the respondent that spectrum is a scarce natural resource and can be charged from the date of allocation as per policy. However, when the parties enter into an understanding/agreement by way of licence or pre-licence communication, the rights of the parties are governed by the relevant terms agreed between the parties and communicated by licensor. The terms of understanding/agreement cannot be changed unilaterally by executive decision. It can be done only by operation of law. In the present case, Clause 9(c) of the communication dated 05.12.2003 requires the petitioner to pay fees including royalty to WPC after the process of purchase of installation of equipment is completed and that the petitioner had to work for purchase and installation. Its understanding was communicated more than once that it is liable to pay the fees and royalty from 17.04.2007 when the system was commissioned for use. No other condition has been pointed out which could fasten the liability of paying the charges to WPC Wing from 05.12.2003. This liability cannot be fastened only because of a clause in the letter of 05.12.2003 that the decision was valid for one year. The parties knew the actual developments and facts and this decision held the field pursuant to which

respondent has raised the impugned demands. The other plea in the reply that w.e.f. 01.04.2005 spectrum charges are to be levied from the date of earmarking, cannot apply to the present case because no such change of condition was communicated to the petitioner and such changed policies generally apply prospectively to new allottees/licensees. Respondent has failed to show that they actually communicated such change of policy and made it applicable to the petitioner through any communication even after the new policy of charging became operative from 01.04.2005. Hence, the charging of specified licence fee and royalty payable to WPC Wing in this case has to be from April, 2007, as contended by the petitioner.

**17.** The respondent has continued to levy fee and royalty payable to WPC Wing even after petitioner surrendered the Microwave Links by 20.03.2015. No basis for such right to charge after surrender has been shown in the reply or during arguments. Hence, after the surrender of Microwave Links was duly communicated in March, 2015, charging of fees and royalty after March, 2015 is not found reasonable or supported by any terms of the agreement or law. The other remaining issue of charging of late fee by the respondent @ 2% per annum (compounded annually) also required a stipulation or condition agreed between the parties. Such a condition exists with regard to delay in payment of licence fee to

DoT but admittedly that licence fee has already been paid by the petitioner. With respect to licence from WPC Wing and charges payable for it, no such condition of late fee has been shown from any material on record. In absence of any stipulation as to late fee, charging of same cannot be permitted. Hence, this issue is also decided against the respondent. However, there is no difficulty in holding that even as per petitioner's stand, it was liable to pay licence fee and royalty annually to WPC Wing for the period commencing from 17.04.2007. The payment was required to be made annually but that has not been done. As per petitioner's calculation an amount of Rs.3,60,80,000/- has been paid/tendered only on 15.07.2016 through **Annexure P-24**. This payment itself is short by at least Rs.36 lakhs and the entire dues, in all fairness should have been paid along with reasonable interest for delay in payment. In the background of facts noted, it is deemed reasonable to hold that respondent can charge interest on their lawful dues from the date the annual payments became due, at the rate of 9% per annum till the date of payment. The impugned demand is set aside in the light of discussions made above. The respondent is given liberty to raise a fresh demand on the basis of findings in this judgment. This demand may also include interest at the rate indicated above but shall duly adjust the amount of Rs.3,60,80,000/- treating the same to be part payment of dues made on 15.07.2016. Such fresh demand shall be paid by the petitioner within two months of its receipt failing which, after two

months the petitioner will be liable to pay interest on the outstanding dues indicated in the fresh demand @ 2% per month (compounded annually), till the date of payment.

**18.** The petition is allowed to the aforesaid extent. In the facts of the case, there shall be no order as to costs.

**Sd/-**

.....**J**  
**(Shiva Kirti Singh)**  
**Chairperson**

**Sd/-**

.....  
**(Subodh Kumar Gupta)**  
**Member**