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

Dated 04<sup>TH</sup> April, 2019

**Telecommunication Petition No. 264 of 2011**  
**(with M.A.No.342 of 2011)**

Tata Teleservices Ltd, New Delhi

...Petitioner

Vs.

Bharat Sanchar Nigam Limited, New Delhi

...Respondent

**BEFORE:**

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

For Petitioner

: Mr.Ramji Srinivasan, Sr.Advocate  
Mr. Mansoor Ali Shoket, Advocate  
Mr. Jibran Tak, Advocate  
Ms.Sylona Mohapatra, Advocate

For Respondent

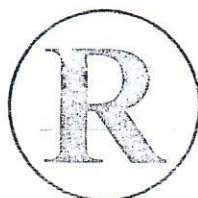
: Mr. Tejveer Singh Bhatia, Advocate  
Mr.Kunal Vats, Advocate  
Ms. Vishakha Ahuja, Advocate



**ORDER**

**By S.K. Singh, Chairperson** – As originally filed, this petition challenged the legality and validity of altogether 10 invoices whose details are given in Para 13 of the original petitioner which was filed on 24.05.2011. All the invoices were received by the petitioner towards the end of April-May 2011 and appear to have been issued in those very months except one relating to Vadodara which bears the date 31.07.2010. The invoices(bills) relate to the period 2004-05 and reflect not only the originally invoiced amount but also interest generally upto March 2011. It is clear that the invoices relate to different telecom districts within Gujarat. At the very initial stage when the petition was admitted, this Tribunal directed the parties to meet for reconciliation of accounts. After such an exercise, respondent/BSNL revised the invoices and reduced the amount and the liability of the petitioner from Rs.273 crores (approx.) was claimed to Rs.63,15,23,995/- inclusive of interest calculated from February 2005 upto 30.04.2011. The respondent also claimed further interest from May 2011 till the date of payment on the principal amount of Rs.25,75,09,695/-.

2. In the light of aforesaid development, petitioner sought permission and filed an amended petition on 21.02.2012 to challenge the revised demand of



Rs.63 crores and odd. On 20.04.2012 issues were framed with the consent of parties. *Inter alia*, they include the following:

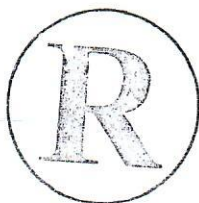
- (i) Whether the petition filed by the petitioner and/or the claim of the respondent is barred under law of limitation?
- (ii) Whether clause 6.4.6(a) of the Interconnect Agreement is liable to be set-aside being unfair, arbitrary and one-sided and thus violative of Article 14 of the Constitution.
- (iii) Whether respondent is entitled to invoke the clause 6.4.6 on the ground that the calls are wrong routed?

3. At the outset, it is noted that the main issue pressed during hearing is that of limitation. But before noticing the pleadings and other relevant materials on that issue, it may be useful to notice in brief certain facts so that the defence raised against the plea of limitation may be properly appreciated.

4. Petitioner was initially having basic services licences whereunder it offered fixed wireless services. It was awarded BSO licence for Gujarat Circle by DoT on 31.08.2001. The petitioner and respondent/BSNL entered into an Interconnect Agreement for Gujarat Circle on 21.02.2001. Its relevant clauses as highlighted on behalf of the petitioner are as under:

“6.4 ACCESS CHARGES

6.4.9 “If BSNL detects that WLL mobile subscribers originated calls are being handed over or have been made over at any port not meant for



carrying such calls. BSNL shall be free to charge the BSOs @ Rs.1.14 per metered unit for all the calls recorded on these posts from the date of provision of that POI or for the preceding two months whichever is less apart from taking other legal actions including disconnection of POIs or temporary suspension of the interconnection arrangements.

## 7.2 ISSUE OF BILLS

7.2.1 Bills for access charges and charges for special services including trunk calls will be issued on monthly basis by the designated unit of BSNL to the BSO and such bills shall be payable within 15 days from the date of issue. Similar bills may also be issued by the BSO for the access charges, if any, due to it.”

## 7.3 TERMS OF PAYMENT

BSNL and BSO agree that.....

- i) .....
- ii) .....
- iii) .....
- iv) If the bill issuing authority subsequently finds that some charges have been omitted from the bills issues, he will include the omitted charges in the subsequent bills at any time, but within 6 months from the date of issue of the relevant bill except in cases where additional billing becomes necessary due to the tariffs/rates changes notified subsequently with retrospective effect by the appropriate authority.”

5. Petitioner migrated from BSO licence to UASL in November 2003. In September 2004 it came out with Fixed Wireless Services, branded as Tata Indicom Walky. It was stand of the petitioner that the Walky service is a basic service and therefore, calls from such basic phone were required to be terminated at the Point of Interconnection(PoI) for basic phones. It is not in dispute that for termination of mobile phone calls there was a separate trunk and as per Interconnection Agreement a higher rate of IUC (including ADC) would be charged by way of penalty if a mobile phone



call was terminated as a basic phone call and not in the separate trunk for mobile calls. The agreement provided for such higher charges by way of penalty.

6. In January, 2005 BSNL wrote letter and declared to the petitioner that the Walky though described as Fixed Wireless Phone Service would now be treated as WLL(M) service from 14.01.2005. It also issued a circular directing its field officers to recover the higher charges including ADC(Access Deficit Charge) and to raise such demands with effect from 14.11.2004 because the agreement permitted mistakes to be rectified and revised demands to be issue within two months. In March 2005, TRAI as well as DoT issued directions and notices for restricting the fixed wireless customer equipment to subscribers' premises because otherwise it would have implication on ADC.

7. The petitioner filed Petition No.45 of 2005 before this Tribunal and challenged the letter and stand of BSNL whereunder it had decided to treat petitioner's fixed wireless phones as limited mobility phones with a demand of increased IUC and ADC on the telephone traffic to and from such fixed wireless phone w.e.f. 14.11.2004. That petition was dismissed on 09.09.2005. Petitioner preferred Civil Appeal Nos.5850/2005 and 5871/2005 before the Hon'ble Supreme Court against the judgment of the Tribunal. That appeal was heard along with two other appeals and by



separate judgments the appeals were disposed of without any relief to the petitioner on the main issue. In the final judgment dated 30.04.2008, the Apex court did not go into the counter-claim or into the issue of quantification on the ground that these were not the subject matter of the appeal. Those questions were left open to be decided in accordance with law at the appropriate stage.

8. When BSNL took coercive steps for realisation of the entire demand, the petitioner paid in part and moved this Tribunal in Petition No.118 of 2008 to challenge the demands as illegal and for implementation of observations in the judgment of the Hon'ble Supreme Court dated 30.04.2008. That petition was dismissed by this Tribunal on 15.04.2010, largely on the basis of principle of *res judicata*/constructive *res judicata*. Petitioner's appeal against this order of the Tribunal bearing Civil Appeal No.4878 of 2010 is pending before the Hon'ble Supreme Court.

9. It may be relevant to notice that an Addenda dated 01.12.2005 to the Interconnect Agreement was executed between the parties and was made effective from 14.11.2003. The relevant clause i.e. clause 6.4.6 is as under:

**"6.4.6 WRONGLY ROUTED CALLS**

- (a) Unauthorised calls i.e. calls other than specified for that trunk group if detected, for which the applicable IUC (including ADC) is higher than the IUC (including ADC) applicable for calls prescribed in that trunk group, then BSNL shall charge the UASL the highest applicable IUC (including ADC), as applicable for such unauthorised calls, for all the

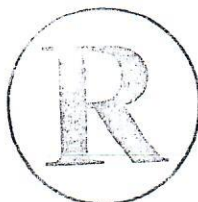


calls recorded on this trunk group from the date of provisioning of that POI or for the preceding two months whichever is less.

- (b) The CLI based barring facility shall be activated at the PoIs wherever technically feasible to ensure that the traffic handed over to BSNL is in the appropriate trunk groups only. Wherever it is technically not feasible to activate CLI based barring, periodic monitoring of the incoming trunk groups shall be done by BSNL to ensure this objective. The calls received by BSNL without CLI or modified/tampered CLI from UASL shall be charged at the highest slab i.e. as for ISD Calls. In case such calls are received by BSNL on any trunk group, then all the calls are received by BSNL on any trunk group, then all the calls recorded on this trunk group shall be charged at the rates applicable for IUC of incoming ISD Calls from the date of provisioning of that POI or for the preceding two months, whichever is less.”

10. As noticed earlier, invoices which were originally impugned in this petition were raised in April-May 2011 for an amount of Rs.273 crores which included interest. The said amount was subsequently revised and reduced to Rs.63.15 crores approximately which has also been challenged and the petition has been amended. Since the learned senior counsel for the petitioner has confined the submissions to the issue of limitation, only that issue is being taken up for adjudication. The other issues shall be treated as not raised.

11. On behalf of the petitioner, it has been highlighted that the demands a part of which is still subsisting after reconciliation of accounts, relate to the year 2004-05 but the invoices were raised for the first time in the months of April-May 2011, much beyond the period of the three years which was available in such matters for filing a suit for recovery of money under the Limitation Act 1963. He further submitted that there is no good or acceptable explanation for



such delay when the Interconnect Agreement between the parties is clear that in a case of present nature, the bills for access charges will be issued on monthly basis and shall be payable within 15 days from the date of issue. He pointed out that as per clause 7.3.1 of the agreement, both the parties agreed to various conditions and one of the conditions is as follows:

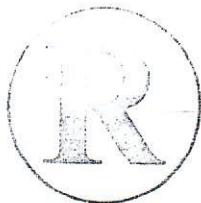
“If the issuing authority subsequently finds that some charges have been omitted from the bills issued, he will include the omitted charges in the subsequent bills at any time, but within six months from the date of issue of the relevant bill except in cases where additional billing becomes necessary due to the tariffs/rates changes notified subsequently with retrospective effect by the appropriate authority.”

12. He further submitted that the impugned invoices are clearly in contravention of the aforesaid provision in the agreement which permits only six months for issuing a revised bill and the present matter is not covered by the sole exception because no appropriate authority has changed tariff rates subsequently with retrospective effect. He, however, conceded that by a judgment dated 19.04.2012 in Petition No.324/2010 (**Reliance Communications Ltd. Vs. BSNL**), this Tribunal in Para 116 relied upon judgment dated 27.01.2011 in Petition No.186/2010 (**Tata Communications Ltd. Vs. BSNL**) to hold that since the statute prescribes a period of limitation as three years the same would be applicable in place of 6 months. Our attention was also drawn to Paras 117-118 of that judgment whereby, in similar circumstances, the Tribunal noticed that at no point of time there was any order

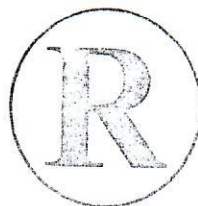


of injunction or prohibition against BSNL to raise bills of the present nature. As it was entitled to raise the bills and the circular letter dated 14.01.2005 also called upon the circle offices to raise such bills, since the circle offices failed to carry out the said instructions, the period of limitation would not be saved. In fact, in this judgment the question of limitation has been considered from various perspectives including provisions in Sections 4 to 14 of the Limitation Act 1963 which provide for exclusion of certain periods in calculating the period of limitation. According to the learned senior counsel for the petitioner the said judgment lays-down the law correctly and on that basis the impugned demand and invoices must be declared to be barred by limitation and therefore, legally not enforceable against the petitioner.

13. In reply learned counsel for the respondent has referred to the Preamble as well as Section 3 of the Limitation Act to submit that the Act applies only to suits, appeals and applications and hence it cannot invalidate or affect an invoice issued by the respondent making demand of money from the petitioner even beyond the period of three years. He also placed reliance upon Section 2(j) of the Limitation Act which defines "period of limitation" to mean the period of limitation prescribed for any suit, appeal or application. He placed reliance upon judgment in the case of **Punjab National Bank & Ors. Vs. Surendra Prasad Sinha; (1993) Supp.(1) SCC 499** to submit that on account of limitation, the claimant does not lose its right but only the remedy, if suit etc. is



not filed within the period of limitation. He next placed reliance upon the case of **Khadi Gram Udyog Trust Vs. Shri Ramchandraji Virajman Mandir; (1978) 1 SCC 44** to submit that a court can direct for deposit of “entire amount of rent due” and it would include even rent which has become time barred. A perusal of this judgment shows that the court has relied upon the well-settled principle of law that limitation bars the remedy but the debt is not extinguished. It may be noticed that here the requirement to deposit “entire amount of rent due” had arisen on account of statutory provision in Section 20 of the U.P. Pleading (Regulation of Letting, Rent and Eviction) Act, 1972. By depositing the entire arrears of rent the defaulting tenant could avoid a decree for eviction on the ground of default. Clearly, the facts were entirely different and involved interpretation of a particular statute. Reliance has also been placed upon judgment in the case of **Srimant Shyamrao Suryavanshi Vs. Prahlad; (2002) 3 SCC 676**. The relevant Paras 18 and 20 show that in a suit for recovery of possession of land, the defendant took the defence to protect his possession as per Section 53-A of the Transfer of Property Act. The plaintiff raised the plea of limitation. The court held that the various articles of Limitation Act show that they do not apply to a defence taken by a defendant to a suit. The law of limitation was in those circumstances held to apply only against the plaintiff so as to bar the remedy of bringing an action in a court of law.



14. The purpose of aforesaid judgments is to support the contention that although BSNL may have lost its right to claim the invoiced amount through a suit or legal proceeding but it can still pressurise a party by other means such as preventing access to PoIs so as to force such party to pay a time barred claim of BSNL. In our considered view such a stand negates the rule of law and will clearly not be available to an instrumentality of State such as BSNL which is bound by Article 14 of the Constitution of India to act fairly and not unreasonably. Further; this stand is clearly in violation of relevant clause in the agreement that permits additional bills within 6 months only. This period, as per judgment of this Tribunal stands extended upto 3 years because of legal ability arising under the Limitation Act.

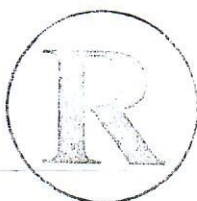
15. The State or its instrumentality may have many powers which an ordinary citizen does not have. This will not entitle them to realise money which is barred by law of limitation, by applying their unequal might and by threatening the subject with drastic action so as to affect the right to carry on business etc. In such a situation, as envisaged above, no court of law or a Tribunal is expected to deny relief to a party like the petitioner in the present case only on the plea that the respondent has chosen not to prefer a suit or petition for recovery of money since it is barred by limitation but has chosen to threaten the petitioner with other consequences if the demand is not met. In such cases, the court is not helpless and can issue appropriate declaration and grant relief by holding that



the defendant has no right to any claim which stands barred by law of limitation. This course would be more necessary if the bargaining powers of parties are not equal.

16. As a second limb of defence, learned counsel for the respondent has taken the stand that petitioner's claim that its fixed wireless phones were not mobiles or limited mobility phones, made through Petition No.45 of 2005 was dismissed by this Tribunal on 09.09.2005 and it held that BSNL was entitled to take action under the Interconnect Agreement for raising a demand for requisite IUC charges. On the basis of that judgment/order it has been submitted that there is thus a decree in favour of BSNL and hence it can be executed within 12 years as provided by Article 136 of the Schedule to the Limitation Act.

17. We have carefully gone through the order dated 09.09.2005. It, no doubt, decided against the petitioner and dismissed the petition but no decree was awarded in favour of BSNL which can be executed. There was no counter-claim, nor any decree even otherwise, was passed in favour of BSNL. A declaration that BSNL is entitled to act as per the Interconnect Agreement gives no extra period of limitation to the respondent than the time available under the agreement for raising a demand and for enforcing the same as per law of limitation. Such declaration does not create any new right for execution nor such order dismissing a suit or claim can be held to be a decree executable at the



instance of a respondent/defendant. Such plea is also found to be without any merits.

18. The third limb of defence is based upon an assertion that BSNL could not have raised demands during the pendency of dispute over its rights to raise the demand until the dispute was finally resolved by the Apex Court by judgment dated 30.04.2008. It has been submitted that most of the invoices are within three years from such date and therefore, not barred by limitation. He placed reliance upon judgment in the case of **Union of India Vs. West Coast Paper Mills Ltd. & Anr; (2004) 2 SCC 747**. In this case the plaintiff had obtained a declaration from a Tribunal of limited jurisdiction that the freight charged by Railways was excessive. That declaration was challenged by the Union of India before the Apex Court and the court granted the special leave to appeal and also passed a limited interim order. In that situation, it was held that the declaration had not attained finality and was in jeopardy and the declaration ultimately got merged in the appeal order of the Apex Court only when the final judgment went in favour of the plaintiff. From that date, the suit filed for refund of the excess amount was within the period of limitation.

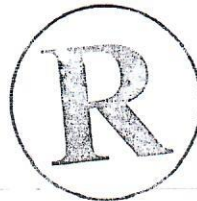
19. In the present case, the aforesaid judgment does not have any application. The respondent has not been a plaintiff/petitioner in any of the petitions. Further, there was no interim stay or injunction to prohibit the respondent from raising the bills similar to those raised in 2005 in other areas, but for some



undisclosed reason the invoices in some parts of Gujarat which are subject matter of this petition were raised much later in 2011. Clearly, the fact situation is quite different and the principles of law settled in the case of **West Coast Paper Mills Ltd.** do not help the respondent in overcoming the bar of limitation in the present case. Learned counsel for the respondent also sought to raise the issue of counter-claims/quantification and submitted that so long the same had not been decided, the issue relevant for raising the impugned invoices remained under adjudication in Petition No.118 of 2008 till it was decided in favour of respondent with some observations, only on 15.04.2010. On a careful perusal of the judgment dated 15.04.2010, it is found that the issues in that case did not stand in the way of respondent in raising the impugned invoices earlier and within the time permitted by the agreement and the law of limitation. In fact, in other areas, respondent had done such exercise since 2005.

20. It was also eventually urged on behalf of respondent that claim for interest is a continuing claim and therefore part of interest claimed which is not barred by limitation should be allowed even if the principal claim on the basis of impugned invoices may not be realisable on account of limitation.

21. The claim for interest is also governed by provisions of the agreement which provide for interest if the invoices/bills raised are not paid within the permissible period/due date. Since the invoices have been raised much beyond the period of limitation, there is no justification for allowing interest for periods

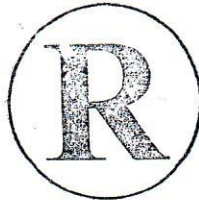


when the invoice itself had not been raised and there was no demand which could be paid even under protest. Since, the invoice has been issued beyond the period of limitation, the claim for interest cannot be treated at a higher level and can not be allowed on the ground that it is a continuing claim.

22. In the light of aforesaid discussions and findings, we find merit in the plea of the petitioner that the respondent's impugned demands are barred by provision in the agreement and even by limitation and therefore, petitioner is entitled to a declaration that the respondent cannot realise any money through any legal proceeding on the basis of impugned invoices.

23. Since an interim order was passed in favour of the petitioner, no other relief is required to be granted except holding that the impugned demands are not enforceable against the petitioner on account of unexplained delay and bar of limitation in the light of provisions in the agreement and the Limitation Act.

24. The petition stands allowed to the aforesaid extent. There shall be no order as to costs.



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

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

