

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 05th April, 2019

Telecommunication Petition No. 18 of 2019

Cellular Operators Association of India & Ors.

...Petitioners

Vs.

Bharat Sanchar Nigam Limited

...Respondent

BEFORE:

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

For Petitioner : Mr. Dhruv Mehta, Sr. Advocate
Mr. Harsh Kaushik, Advocate
Mr. Abhay Chattopadhyay, Advocate

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

ORDER

By S.K. Singh, Chairperson – While admitting this petition for hearing, the parties were heard in respect of the interim prayers and order was reserved.

2. The main prayer in the petition is for setting aside/quashing circular/letter



dated 13.02.2019 (**Annexure P-1**) so as to reinstate the rates derived from circular dated 12.06.2012 in accordance with this Tribunal's judgments dated 20.08.2014 and 14.10.2014. There is also prayer for quashing the demand notices based on the letter dated 13.02.2019.

3. By way of interim relief petitioners have sought stay of the impugned circular/letter and also an order to restrain the respondent from taking any steps, coercive or otherwise, for recovery of the amounts under the impugned circular/letter dated 13.02.2019.

4. On behalf of petitioners our attention has been drawn to the fact that when circular dated 12.06.2012 was issued by the respondent for revision of the infrastructure charges, the said circular was challenged and this Tribunal vide judgment and order dated 20.08.2012 in Petition Nos.403 of 2012 and connected matters, (**Annexure P-6**) upheld the right of the respondent/BSNL to revise the rates of infrastructure facilities but held that the revised rates as per circular dated 12.06.2012 shall be applicable prospectively with effect from 01.04.2013, i.e. the next financial year and upto 31.03.2013 the charging shall be as per rates prescribed in the earlier circular dated 30.05.2006. The effect of that judgment led to further litigation. The miscellaneous applications seeking clarification in Petitions Nos. 322(C) and 324(C) of 2013 were disposed of vide order dated 14.10.2014 (**Annexure P-7**). The clarification on facts in respect of circular dated 12.06.2012 do not, in our view, lay down any law to the contrary



of what has been noted as the finding given in the judgment dated 20.08.2014. While disposing of the MAs, it was again stated by the Division Bench that the clarification will be without prejudice to the right of the respondent/BSNL to revise the rates prospectively and in accordance with the agreement between the parties.

5. The aforesaid judgments and orders of this Tribunal dated 20.08.2014 and 14.10.2014 have been challenged before the Apex Court by BSNL through Civil Appeal Nos.1699-1723 of 2014. While notice has been issued therein, there is no stay of those judgments and orders.

6. For seeking interim order of stay of the demands and also the circular, it has been submitted that in similar circumstances, circular dated 30.03.2015 was challenged through T.P. No.10 of 2016 and vide order dated 12.02.2016, this Tribunal granted interim protection by directing BSNL not to invoke the bank guarantee for realization of its demands regarding infrastructure charges. The revised rates through circular of 2016 were also challenged by the petitioners through a miscellaneous application in T.P. No.10 of 2016. By order dated 08.04.2016, the respondent was restrained from realizing the demand on the basis of circular dated 15.02.2016.

7. When the rates were further revised through circular dated 19.02.2018, the petitioners challenged that circular and sought interim stay by filing MAs in



the pending T.P. No.10 of 2016. No doubt this very Bench by order dated 08.05.2018, followed the earlier interim order but observations were made that the amendment petitions were being filed as a ritual every year leading to delay in the hearing of the main petition. Liberty was granted to either of the parties to mention the matter for early hearing on any convenient date but till date no attempt has been made to get that matter decided on merits.

8. Ordinarily, we would have followed the aforesaid interim orders in this petition but we find that the earlier interim orders were passed in a routine manner without realizing that nothing was noted on merits in the earliest interim order and without looking into the law laid down by the judgment dated 20.08.2014. *Prima facie*, that judgment protected the petitioners only against the imposition of rates through the circular dated 12.06.2012 from any date prior to 01.04.2013, i.e. the next financial year. The rates were permitted to be realized only prospectively from the next financial year but it was declared that the respondent has the right to revise the rates of the infrastructure facilities in question. Since that judgment has not been stayed and in fact not even challenged by the petitioners, we do not find any *prima facie* case to grant interim stay of demands made on the basis of impugned circular. In money claims of the present nature the balance of convenience also does not lie in favour of the petitioner because it is clarified that payments made pursuant to the impugned circular/order shall be subject to the result of this petition. The

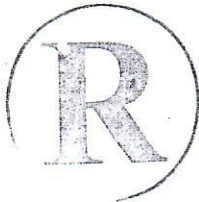


principle of irreparable injury is also not attracted so as to require any order in favour of the petitioners.

9. The prayer for interim relief is, therefore, rejected. It is clarified that this order is only for considering the interim relief and shall not have any adverse impact on either of the parties at a later stage of the proceedings.

10. Reply may be filed within four weeks. Rejoinder, if any, may be filed within two weeks thereafter.

Put up under the head "for directions" on 11.07.2019.



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(S. K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member

