

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

Dated 19th September, 2019

**Telecommunication Petition No.221 of 2018
With M.A. No. 418 of 2018**

Reliance Jio Infocomm Ltd. ... Petitioner
Vs.
Union of India ... Respondent

BEFORE:

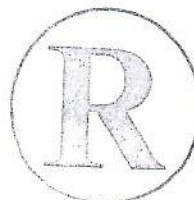
**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. A.K. BHARGAVA, MEMBER**

For Petitioner : Mr. Ritin Rai, Senior Advocate
Mr. K R Sasiprabhu, Advocate
Mr. Tushar Bhardwaj, Advocate
Ms. Kritika Bhardwaj, Advocate
Mr. Vishnu Sharma, Advocate

For Respondent : Mr. Abhay Prakash Sahay, Advocate
Mr. Rahul Kulhare, Advocate
Mr. B S Meena, ADG/Department

ORDER

A. K. Bhargava - The petitioner, Reliance Jio Infocomm Ltd. (hereinafter referred to as RJIL) is a Telecom Service Provider (TSP) holding a Unified License (UL)

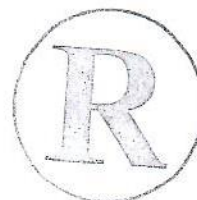


granted to it by the respondent for providing telecom services in India, including inter-alia, in the licensed service area of Rajasthan. The petitioner was allotted spectrum in various bands by the respondent vide its letter dated 9.1.2015 after conducting the auction. As per section 3.6. 1 of the NIA to the auction, the petitioner was to comply with certain roll out obligations.

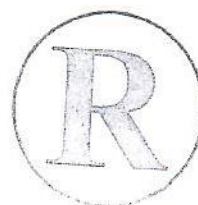
2. The respondent issued an OM dated 7.8.2015 regarding service testing by TERM Cells in terms of Test Schedule No. 1-6/2015-AS-IV dated 14.7.2015 for verification and compliance of roll out obligations associated with spectrum in 2100 MHz, 1800 MHz and 800 MHz bands using LTE – FDD radio access technology. The relevant paragraphs are set out as under :

“Instructions to TERM cells regarding Test Schedule 6/2015-AS-IV dated 14.07.2015 for Roll-out Obligations of Spectrum in 2100 MHz, 1800 MHz, 900 MHz and 800 MHz Bands using LTE-FDD Radio Access Technology

1. *Service provider will submit application for service test & approval as per format of Form A, along with complete self-test results and all the relevant technical documents as per document verification schedule. TERM cell shall examine the documents along with test results and if all the documents and test results are in order, TERM cell shall issue letter within 10 days from the receipt of Form – A to the service provider for making payment for the test fee. If all the documents as per document verification schedule are not in order, the application may be returned to the service provider along with the intimation letter clearly indicting the reasons for the same.*



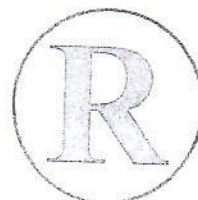
2. *The requisite test fee shall be submitted by the service provider to the concerned CCA office in the form of demand draft / banker's cheque, with the validity of six months, in favour of CAO(Cash), CCA payable at respective headquarters of CCA. Receipt of submission shall be submitted to the TERM cell along with Form-B, duly completed in all respect.*
3. *On receipt of Form – B, along with the proof of payment of the requisite test fee, TERM cell shall register the case of testing and allot the unique registration number on the same date.*
4. *TERM cell shall communicate the testing date(s) in writing to service provider at least 10 days in advance for making the necessary test equipments ready on the date(s) of testing. If service provider is not ready on testing date(s), the date can be extended up to 10 more days by DDG (TERM) on a written request from service provider, after which the registration will be closed and service provider will have to register again by paying normal fee. Service provider will make all the resources available for testing.*
5. *TERM cell shall carry out the testing on the above schedule date as per test schedule mentioned above. It may be ensured by TERM cells that pre-requisite checks for coverage as per sub-section A of test schedule are tested and passed before carrying out coverage tests. Minor deviations in pre-requisites can be approved by DDG (TERM) concerned.*
6. *Date of Registration of the case by TERM cell is to treated as date of meeting roll out obligation, in case test results are found in order in the testing carried out by the TERM cell.*
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9. *If, no examination, the test results are found in order, the case shall be approved by the DDG of the concerned TERM cell and service test result certificate will be issued by the respective TERM cell as per Performa, with copy to TERM wing and Access Services wing at DoT HQ.*
10. *If the test results in the testing conducted by the TERM cell are found to be deficient in meeting the roll out obligations, except for deviations approved, the case shall be rejected by the TERM cell and the test results still will be given to the service provider with a copy to TERM wing and Access services wing at DoT HQ and registration will be closed. The concerned service provider shall re-register the case once again by paying three times the normal test fee."*



3. In pursuance of this procedure, the petitioner approached the TERM Cell of the respondent on 18.6.2018 with an application for service test in the prescribed format along with Form A, self-test results and all relevant documents. On 25.6.2018, the DoT issued a letter to RJIL to pay test fees and to complete the required formalities. After completion of the required formalities, all 30 BHQs were registered on 2.7.2018 with the respondent. Out of these 30 BHQs which were offered for testing together, three of three sites were picked up for testing as per prescribed procedure. These three selected sample sites were tested by TERM Cell in the field during 25.7.2019 to 27.7.2019 and were found compliant.

4. On 27.8.2018, the respondent raised a question that in its EMF self-certificate, RJIL had mentioned the first date of radiation for Chhabra BHQ (part of 30 BHQs offered) as 18.4.2018, as opposed to the date of self-test results submitted in pursuance of its roll out obligation which reflected the date of testing as 29.3.2018. Relevant Para of DoT's letter dated 27.8.2018 is reproduced below:

"2. Chhabra (Baran). The self-test for the site I-RJ-CBRA-ENB-G001, (eNodeB verification & coverage test) were carried out on 29.03.2018 as per rollout file submitted by you. However, as per the EMR self-certificate one of the three BTS (I-R)-CBRA-ENB-G001) the date of first radiation was 18.04.2018."



5. RJIL responded to this letter on 31.8.2019 giving clarification to the mismatch in dates for Chabra BHQ. Their explanation is as below :

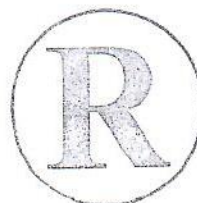
"2. For BHQ Chhabra (Baran): The Self-test for the site I-RJ-CBRA-ENB-G001(eNodeB Verification & Coverage test) were carried out on 29.03.2018 as per Rollout file submitted by you. However as per the EMR self-Certificate one of the three BTS (I-RJ-CBRA-ENB-G001) the date of first radiation was 18.04.2018.

- Sir, for the BHQ Chhabra (Baran), Pre-testing for rollout done on 29.03.2018 with 3 sites, Pretesting file submission one on 18.06.2018. DN received on 25.06.2018 and FORB B registration done on 02.07.2018.*
- Sir, for this particular site ID I-RJ-CBRA-ENB-G001 definition in system were done on 22.03.2018, but due to hardware issues, the site couldn't be radiated. Then trouble shooting was attempted from 24.03.2018 to 29.03.2018 . Finally we could radiate complete site on 29.03.2018 for MRO Pre-testing. However still there were intermittent performance issues on site which were finally resolved on 18.04.2018 with reloading of eNodeB software and site become stable.*
- In view of above persisting problem, we had considered first radiation date as 18.04.2018 instead of 29.03.2018.*

In view of above clarification, it is submitted that the submission done by RJIL for registration of BHQ for 1800 MHz band is in accordance to the Test Schedule for Roll out Obligations as prescribed by DoT."

6. On 17.9.2018, DoT issued service test certificates barring Chhabra and closed registration for this BHQ on the same date. The relevant para of the letter is reproduced below :

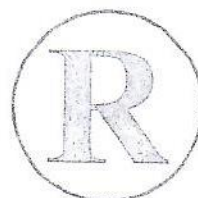
"Please refer above cited BHQ Chhabra (District Baran) offered for Phase-3 rollout obligation of 1800 MHz spectrum allotted under NIA dated 09.01.2015. As per the self-test results submitted



by you, the coverage and service testing of the said BHQ were carried out by you on 29.03.2018. The said BHQ was registered on 02.07.2018. On examination of the self-test results submitted by you, anomaly was noticed that eNodeB/Sites verification & coverage test etc. were carried out by you on 29.03.2018, however out of the three sites for Chhabra BHQ, as per the EMR self-certificate submitted by you on NEP portal, for one of the three sites/eNodeB (I-R-CBRA-ENB-G001, NEP ID R1/16/5087/0011) the date of first radiation was 18.04.2018 means the said site/enodeB was not radiating on 29.3.2018 the date of coverage & service testing carried out by you. Based on the same you were asked to submit your clarification vide this office letter dated 27.08.2019 referred at 2 above. Your reply received vide letter dated 31.8.2018. After consideration of all facts & documents submitted by you and self-certificate uploaded on NEP portal by you, it was found that :

1. eNodeB site ID I-RI-CBRA-ENB-G001(NEP ID RJ/16/5087/0011) was first radiated on 18.4.2018 as per the self-certificate (certificate ID :-RJ/16/5087/0011/0188/04/04/07844/NS/23042018) submitted by you on NEP Portal. As per the certificate "Date for first radiation in respect of eNodeB ID I-RJ-CBRA-ENB-G001 is 18-Apr-2018". Further in support of the same you have submitted OSS Snapshot-RAJ/GBT/E/03006 at page no. 7 of the certificate. The same shows that the said site was first radiated on 18.4.2018 not on 29.3.2018 (the date of coverage & service testing carried out by you) as mentioned in self-test results.
2. Further with respect to the database of all BTS/Sites/eNodeB in Rajasthan LSA as on 31.03.2018 submitted by you in April-2018, the said site was not appearing under 1800 MHz band. The same also shows that the said site was not radiated till 31.3.2018 on 1800 MHz band for which roll out obligation was offered.

In view of above, as the said eNodeB which was one of the 3 sites mentioned by you in the offered rollout for Chhabra BHQ was not radiating on 29.03.2018 (on the date you have carried out the coverage and service testing) and was first radiated on 18.4.2018, the registration of the said BHQ is closed. Further you are hereby intimated that re-registration shall be carried out by paying three times the normal test fee as per DoT HQ instructions issued time to time."

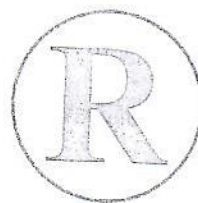


7. Against the order dated 17-9-2018, RJIL filed a representation on 20-9-2018 but that was rejected by the order dated 25-9-2018. Aggrieved by the letters dated 17.9.2018 and 25-9-2018, RJIL has filed this petition on 8-10-2019 with the following prayers :

(a) *Set aside and quash the letter bearing no. RJ-C/Service Testing/211/10 dated 17.9.2018 and letter bearing no. RJ-C/Service Testing/211/12 dated 25.9.2018*

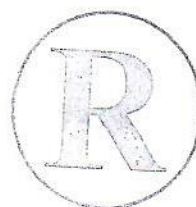
(b) *Direct the respondent no. 2 to issue final certificate of MRO 1800 MHz for BHQ Chhabra.*

8. On 9-10-2018, this Tribunal directed that the petitioner be allowed to re-register itself for the Chhabra BHQ for the purpose of minimum roll out obligation as an alternative but without prejudice to rights and claims made in made in the petition. Both the parties have acted on this direction. Affidavit filed by the petitioner to bring on record the subsequent developments shows that in pursuance to the order dated 9-10-2018, petitioner submitted an application for service test along with the self-test result of 19-9-2018 in respect of Chhabra BHQ. After completion of formalities, respondent registered the site on 17-10-2018. Thereafter, respondent conducted the tests and issued the service test result certificate on 30-11-2018.



9. The dispute in this case is only in respect of Chhabra BHQ. Learned senior counsel for the petitioner Mr Ritin Rai submits that service test result certificate in respect of Chhabra BHQ has been wrongly denied. His contention is that (a) the respondent could have closed the registration only if the sample sites failed in the test conducted by the respondent. However, it is a matter of record that all the three sites selected for testing passed the requisite tests. (b) roll out obligation and EMF radiation are regulated by two different regimes and the respondent has erroneously mixed them up (c) the test procedure prescribes a time limit of 10 days to examine whether all the documents and test results are in order. Respondent, however, has reacted months later to point out discrepancy related to the date and has unfairly closed the registration. Mr Ritin Rai also points out that the registration date is linked to liquidated damages and unwarranted late registration would result in unfair imposition of such charges.

10. On the other hand, learned counsel for the respondent Mr. A. P. Sahay submits that the TERM Cell rightly closed the registration after giving petitioner an opportunity to clarify. He contends that (a) the petitioner has submitted wrong/misleading information in respect of Chhabra BHQ and the petitioner cannot claim service test result certificate on the basis of wrong /misleading



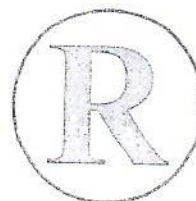
information (b) there has been no delay on part of the respondent to point out the discrepancy (c) the registration of the Chhabra BHQ was closed as per DoT instructions/guidelines on the subject.

11. There is no dispute that the roll out coverage testing is to be carried out as per the test schedule/procedure issued in this regard by the respondent from time to time. This testing procedure is based on self-certification and actual testing for site coverage on sample basis. Self-certification is of the test result that petitioner himself carries out to show that site coverage is available to the subscribers as per prescribed standards. A site is available to the subscriber for use only after it is radiated and is declared commissioned so that it is available to the subscriber for continuous and proper use. Therefore self-certified test result for roll out should be from any date on or after the commissioning date. of course, the date of radiation and commissioning cannot be taken as arbitrary date. Procedure for this is prescribed in relevant guidelines and instructions on EMF radiation. It is a matter of record that the date of radiation of Chhabra BHQ site is 18-4-2018. Therefore, the petitioner should have enclosed and self-certified the test result conducted on or after 18-4-2018. Instead, petitioner has chosen to enclose the test result conducted on 29-3-2018. Petitioner has explained this by



stating that the site had some intermittent performance issues which were finally resolved on 18-4-2018 and the site became stable. Thus, 18-4-2018 was correctly declared as the date of radiation and commissioning, which is not disputed. There is no dispute on the explanation offered. However, we find that a site having intermittent performance issues cannot be considered for roll out and the roll out test should have been conducted on or after 18-4-2018 which is the date of radiation and commissioning. We are therefore of the opinion that the test certificate enclosed in respect of Chhabra BHQ was not in order.

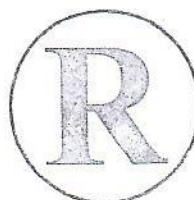
12. Having agreed that the submitted certificate was not in order, question remains as to the right course of action. Method of self-certification is based on trust and requires due diligence on part of the party doing self-certification. If such self-certification is found to be wrong, improper, misleading or insufficient, the accepting party may not act upon it. We, therefore, agree with the learned counsel for the respondent, Mr. Sahay, that service test result certificate cannot be issued by the respondent on the basis of improper self-certificate (or wrong/false certificate as Mr. Sahay puts it). We, however, do not agree with Mr Sahay that the only course of action open with the respondent was to close the registration. The OMs issued on the subject do not envisage such a situation.



However, what the relevant OM dated 7-8-2015 (which deals with the registration process as quoted in Para 2 above) envisages is that ***“TERM cell shall examine the documents along with test results and if all the documents and test results are in order, TERM cell shall issue letter within 10 days from the receipt of Form – A to the service provider for making payment for the test fee. If all the documents as per document verification schedule are not in order, the application may be returned to the service provider along with the intimation letter clearly indicting the reasons for the same”*** (emphasis supplied). Mr. Sahay relies on this provision to claim that respondent is required to check submitted documents only as per document verification schedule, which the TERM Cell did within the stipulated time. However, he overlooks the provision that such documents along with test results were also to be examined in a time-bound manner to see if they are in order. Such examination would have or should have identified the anomaly in dates under question. After this exercise gets done within this prescribed time period of ten days, it leads to the process of registration. Once registered, it can be closed only if the selected samples fail after field testing. For any other situation, respondent is entitled to seek rectification and take suitable action, except closing the registration. In the case of Chhabra BHQ, respondent apparently has failed to examine and identify the anomaly in prescribed time

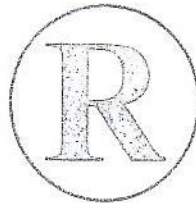


period of 10 days, although it had all the required information with it. The process of registration was duly completed and further requirements were also carried out and successfully complied with. Only at the time of issuing the service test certificate, respondent has realized the discrepancy and closed the registration. Closing the registration at this stage amounts to unfairly penalizing the petitioner for the oversight or delayed action on part of the respondent. Accordingly, just course of action would have been to seek the test certificate for any date on or after the commissioning date and then examine the submitted certificate. This process would have consumed some time. Therefore, further fair and just course of action would be to add this period to the registration process, which would amount to extending the registration date rather than closing the registration altogether and necessitating fresh registration from a prospective date. As per procedure, respondents could have taken maximum 10 days for examining and pointing out discrepancy for rejecting the documents submitted by the petitioner. We also find that after our interim order on 9-10-2018, the corrective action of submitting proper test certificate and registering it was done on 17-10-2018, taking 8 days in the process. Thus, if the respondent would have taken a fair and corrective approach, the registration process would have required extension only by estimated 18 days.



13. In view of the discussions above, we are of the considered opinion that it would be fair and just to treat the original registration date extended by 18 days and make the service test certificate issued for Chhabra BHQ under our interim orders as final. We order accordingly.

14. As a result, the impugned letters/orders are partly set aside. The Telecom Petition 221/2018 is disposed of in above terms. No orders as to cost.



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(S.K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member

