

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

Dated <sup>rd</sup> 23 February, 2021

**MA No.269/2019**  
in  
**Telecom Petition No.59 of 2019**

Bharti Airtel Ltd.

.....Petitioner

Vs.

Union of India

.....Respondent

**BEFORE:**

**HON'BLE MR.JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON**

For Petitioner

: Mr. Ramji Srinivasan, Sr. Advocate  
Mr. Harsh Kaushik, Advocate  
Mr. Abhay Chattopadhyay, Advocate

For Respondent

: Mr. Abhay Prakash Sahay, Advocate

**ORDER**

**By S.K. Singh, Chairperson** – This Tribunal is required to reconsider interim order passed earlier on 26.07.2019 in the light of order of the Hon'ble Delhi High Court dated 17.09.2019 passed on a Review Petition No.385/2019 in WP(C) No.9151/2019. In view of liberty granted by the High Court the petitioner has again sought interim relief in respect of the penalty amounts imposed by the orders of the respondent which are subject matter of the petition which is pending for final hearing. The parties have been heard in detail in the light of MA No.269/2019 which has been filed on 25.09.2019 to seek interim relief in terms of the above order of the Delhi High Court. The respondent had assured the High Court that it will not take coercive steps until October, 2019 by which time a decision was expected to be taken on the interim relief.

2. Respondent has filed a reply to the MA on 19.11.2019. Rejoinder has been filed on 19.12.2019. The interim protection was continued from 14.10.2019 till the next date, awaiting reply. The pleadings in respect of MA took considerable time as noted above. The matter was to be considered on 31.01.2020 but for some reason the matter was not listed on the date fixed. While considering similar issue

of interim protection in T.P. No.97/2019 on 08.01.2021 the Tribunal directed the present matter to be listed for considering MA No.269/2019. Two further adjournments were on account of personal difficulties of learned counsel for the respondent.

3. Coming to the merits and other relevant aspects required for deciding the interim relief claimed in MA No.269/2019, it is noted that the petition has been filed against imposition of penalty amounting to Rs.4,14,000/- by the respondent on the ground that petitioner had violated the Subscriber Verification Guidelines in respect of 414 mobile connections detected in course of 5 audits in the Delhi Metro Service Area(Delhi LSA) for the months of December, 2017 to April, 2018.
4. On 26.07.2019 the prayer for interim relief was finally heard and by the order passed on that date this Tribunal decided not to stay the payment of penalty but the same was made subject to result of this petition which was admitted for hearing. Against the said interim order the petitioner preferred WP(C) No.9151/2019 before the Delhi High Court but without any success as would appear from the order disposing of the said writ petition on 27.08.2019.

5. The petitioner preferred a Review Petition which was considered by the Delhi High Court on 17.09.2019. A submission was made before the Delhi High Court that in a similar matter arising in WP(C) No.1032/2018, it had passed an interim order on 03.02.2018. After noting the contention, the Review was disposed of with the liberty that petitioner could seek interim relief from TDSAT in respect of the penalty amounts. The argument before the Delhi High Court on the basis of interim order in another writ petition was based upon a submission that penalty demands are raised by the respondent pursuant to three circulars dated 24.12.2008, 23.03.2009 and 09.08.2012 and since upon a challenge by Tata Teleservices Ltd., an interim order of stay was passed by Hon'ble Punjab & Haryana High Court on 10.06.2014 and further on 06.08.2014, hence the demand of penalty for not maintaining the database as required in respect of Customer Acquisition Form(CAF) could not be recovered till the stay is operating.

6. It is noticed that the submissions on the basis of challenge to the circulars was not raised before this Tribunal on 26.07.2019 nor before the Delhi High Court when the writ petition of the petitioner was originally disposed of without interfering with the order of this Tribunal dated 26.07.2019. While considering the review, the High Court also noted the submission on behalf of respondent that a Division Bench of the High Court of Tripura has dismissed the challenge to said

circulars vide judgment dated 15.03.2017. The resultant SLP(C) No.15870/2017 is admittedly pending before the Supreme Court but without any interim order of stay of the judgment of the Division Bench holding the relevant circulars *intra vires*.

7. In the aforesaid situation, this Tribunal has to consider whether the order dated 26.07.2019 requires reconsideration and taking of another view on account of the plea that Punjab & Haryana High Court as well as some other high courts, following the interim order of the Punjab & Haryana High Court have passed interim orders of stay or have treated the circulars as ineffective and non-operational for the time being.

8. Judicial discipline and propriety requires at times following even interim orders of other courts till a final view is taken in the pending matters. Hence, the first order of stay by Punjab & Haryana High Court of circulars and communications as well as the demand notice passed on 10.06.2014 resulted in similar order in other proceedings including an interim order by Delhi High court on 03.02.2018 in WP(C) No.1032/2018 by Tata Teleservices Ltd. On the basis of this interim order the review was pressed leading to an order that this Tribunal should reconsider the issues relating to interim relief in view of reliance upon

challenge to the circulars by other entities and interim orders passed in those proceedings.

9. On the other hand, in the reply the respondent Union of India has chosen to plead and rely upon the final judgment by a Division Bench of High Court of Tripura rejecting the challenge to the legality and *vires* of various circulars which reflect the policy of the Union of India for audit and scrutiny of CAFs and to ensure compliance of directions in respect thereof even by imposition of penalty. Such scrutiny and penalty for non-compliance is largely on account of public interest as well as in the interest of national security. Para 4 of the reply shows that SLP against the judgment of the Tripura High Court is pending but the Hon'ble Supreme Court has not granted any stay. In Para 7 of the reply respondent has placed reliance upon a judgment of High Court of Madras dated 24.07.2018 in support of the stand that penalty can be levied under the conditions of Licence Agreement and the provisions of the Indian Telegraph Act, 1885. In Para 8 reliance has been placed upon an order of TDSAT dated 04.03.2005 by which a petition by Reliance Infocomm Ltd.(Petition No.3 of 2005) to challenge power to impose penalty was dismissed on merits. In that case, in Para 44, this Tribunal came to a conclusion that validity of the penalty clause could not be questioned and that public interest required such a clause to be put in place in the licence.

Against this judgment of TDSAT, Civil Appeal No.4982/2005 was preferred before the Supreme Court. The same was disposed of on 29.09.2010 without interfering with the judgment of the TDSAT. Union of India has relied upon clause 41 of the Licence Agreement for urging that it envisages various security conditions to be observed by the licensees.

10. At present juncture, as per submissions by learned counsel for the Union of India, this Tribunal should be guided by its own judgment and views on penalty and by the final judgment in respect of same set of circulars rendered by the Division Bench of Tripura High Court.

11. Having considered the rival submissions for the purpose of interim relief in this petition, it is found that this Tribunal is required to act as per law declared by the High Courts and the Supreme Court in addition to the TRAI Act and other relevant laws. Interim orders passed in different proceedings before different courts bind the parties but not the courts and statutory tribunals who are required to act on the law declared by final judgments and not on the basis of arrangements made in pending matters for variety of reasons. Since by a final judgment, the Tripura High Court has declared that the relevant scheme for penalty and the circulars issued by the Union of India are not illegal, it would not be proper for this

Tribunal to ignore the effect of this judgment. The Hon'ble Supreme Court has not stayed the said judgment although SLP is said to be pending. This finding takes care of the new issue raised before the Hon'ble High Court of Delhi on the basis of interim orders of stay of some of the circulars on the subject. This Tribunal has, in the light of facts of particular case passed similar orders as passed in this case on 26.07.2019 and asked the concerned party to deposit the penalty where the mismatch in database is in all the three respects, but subject to the outcome of the petition. The same order is reiterated.

12. The Tribunal has kept in mind that the impugned demands require the petitioner to pay by way of penalty a monetary sum of Rs.4,14,000/-. Payment made against such demand will not cause any irreparable injury to the petitioner so as to require an injunction upon the respondent not to take coercive or punitive steps for realisation of the penalty. So far as the circulars and the scheme of penalty are concerned, in view of the judgment of the Tripura High Court, it would not be proper to hold that petitioner has a *prima facie* good case on the basis of challenges pending in some other courts against the said circulars with interim orders. For all the aforesaid reasons, the prayer made in MA No.269/2019 is rejected. If the penalty under challenge has not been deposited so far, the same

should be done within four weeks otherwise the respondent would be at liberty to take steps in accordance with law for realization.

13. MA No.269/2019 stands disposed of accordingly.

.....  
(S.K. Singh)  
Chairperson

sks

