TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 2nd February, 2022

MA No.432 of 2021
in
Telecom Petition No.44 of 2021
(With MA No.377 of 2021)

Vodafone Idea Ltd. ……Petitioner

Versus

Union of India …..Respondent

MA No.434 of 2021
in
Telecom Petition No.45 of 2021

Bharti Airtel Ltd. & Anr. ……Petitioners

Versus

Union of India …..Respondent

MA No.435 of 2021
in
Telecom Petition No.46 of 2021
(With MA No.383 of 2021)

Vodafone Idea 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(TP Nos.44 & 46 of 2021)	:	Mr. Maninder Singh, Sr. Advocate Mr. Manjul Bajpai, Ms. Shally Bhasin, Mr. Prateek Gupta, Mr. Vipul Singh, Dr.Shashwat Bajpai, Ms. Madhavi Agrawal, Advocates
For Petitioners (TP No.45 of 2021)	:	Mr. Aspi Chenoy, Sr. Advocate Ms. Anuradha Dutt, Mr.Harsh Kaushik, Mr.Kuber Dewan, Mr.Abhay Chattopadhyay, Mr. Anish Kapur, Ms.Trisha Raychaudhuri, Advocates
For Respondent(UOI)	:	Mr. Dhruv Tamta, Mr. Apoor Kurup, Ms.Akshata Singh, Advocates
For RJIL(MA Nos.432, 434 & 435 of 2021)	:	Mr. Ramji Srinivasan, Sr. Advocate Mr. Ritin Rai, Sr. Advocate, Mr.K.R. Sasiprabhu, Mr.Aabhas Khetrapal and Mr.Tushar Bhardwaj, Advocates

ORDER

By S.K. Singh, Chairperson – Parties have been heard in detail in respect of MAs Nos.432, 434 and 435 of 2021 through which Reliance Jio Infocomm Ltd. (RJIL) has sought impleadment as a respondent in T.Ps.Nos.44, 45 and 46 of 2021, respectively.

2. Before adverting to the stand of the parties and submissions advanced on their behalf, it will be useful to notice in brief the nature of dispute or issues involved in the telecom petitions. Since all the three petitions are of similar nature, facts are being noticed from the records of T.P. No.44 of 2021, unless specified otherwise. The petitioner is a telecom service provider like the applicant RJIL. The petition seeks quashing of demand notice dated 29.09.2021 issued by the Department of Telecommunications (DoT) whereby the maximum penalty of Rs.50 crores for each service area, in total amounting to Rs.1050 crores has been levied on the ground that provisions of Licence Agreement and the "Standard of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009" (QoS Regulations) have been violated by the petitioner. It is case of the petitioner that the impugned demand is bad on facts as well as in law and also arbitrary. *Inter alia*, petitioner submits that as per

agreement and relevant regulations of TRAI, interconnection connectivity to be provided to the Interconnection Seeker (in the present case RJIL) is based on technical feasibility and involves engineering and mechanical procedure assessment of capacity, data setting and configuration etc. which cannot be done overnight.

3. Further case of the petitioner which has been highlighted by RJIL for seeking impleadment are in Paras 4, 5, 7 and 8 of the petition are as follows:

> "4. The substratum of the Impugned Demand Notice is the purported delay /non-provision of sufficient Point of Interconnections ("POIs") to RJIL from June, 2016 to September 2016, i.e. during RJIL's 'beta launch' purportedly for testing purposes. RJIL i.e. the Interconnection Seeker executed Unified Licence with the DoT in 2014. Pursuant to the same, RJIL and the Petitioner executed Interconnection Agreement dated 14.04.2014.
>
> 5. Under the Interconnection Agreement, a minimum period of 4 weeks has to be given by the Interconnection Seeker for augmentation of POIs. Thereafter, a period of 90 days is given to augment the POIs from receipt of the requisite charges. The said timelines are in consonance with the TRAI Direction dated

07.06.2005 read with modification dated 28.07.2005. Accordingly, at best the petitioner was to provide POIs against the unreasonable demand of RJIL within 118 days (4 weeks+90 days) from the date it had placed its request i.e. the period would have commenced only upon RJIL making the payment for respective POI.

7. It may be noted that RJIL, during its test phase and in a most high handed manner, called upon the petitioner vide letter dated 21.06.2016 to provide 3175 Access and 784 NLD POIs for 22 Million subscribers across 22 Service Areas pan India as an immediate demand. RJIL further stated its unreasonable, unrealistic and unprecedented forecast of 50 Million subscribers after 3 months, 75 Million subscribers after 6 months and 100 Million subscribers after 9 months and accordingly sought nearly 9314 Access and 2183 NLD POIs as per the said timelines.

8. It is undisputed that the petitioner has provided the said POIs to RJIL within the time period as provided under the Interconnection Agreement. Hence, there was no cause to raise any issue. However, only to cause prejudice, loss and harm to the petitioner, RJIL made various frivolous complaints to TRAI, Respondent and even to Competition Commission of India. Based on the unsubstantiated and one-sided complaints to RJIL, TRAI vide its 2016

Recommendations recommended levy of maximum penalty on petitioner, of Rs.50 crores for each service area, for alleged delay in provisioning of POIs.

Copies of the Charts indicating the provisioning of POIs from September 2016 to February 2017 are annexed herewith and marked as Annexure-"P-2"(Colly)."

4. On the first date, i.e. 12.10.2021, learned counsel for the Union of India sought for and was granted time to seek instructions after an assurance that encashment of bank guarantee shall not be resorted to till the next date. The MAs under consideration were filed soon thereafter on 22.10.2021. On that date all parties to the petition were granted time to file their replies to the applications seeking impleadment. These Miscellaneous Applications were heard finally on 12.01.2022 and order was reserved.

5. On behalf of RJIL, learned senior counsel referred to the background facts in brief leading to the imposition of impugned penalty by DoT, the licensor, to support his plea that it was upon complaint/letters of RJIL that TRAI looked into the conduct of the petitioners and recommended for action by DoT which in turn gave opportunity of hearing to the parties including RJIL and decided to impose

penalty. On the basis of such background materials the stand of RJIL is that it is directly interested in the present proceedings, not only as an industry player governed by TRAI and DoT's supervisory powers but also as a complainant who was heard by DoT and on whose complaint the impugned penalty was imposed. Therefore, the stand of RJIL is that it is a necessary and proper party; its prayer for impleadment as a respondent deserves to be allowed and that it will be adversely affected and prejudiced if it is not so impleaded.

6. On the other hand, learned counsel for the petitioners have made the submissions to the following effect and taken the stand that RJIL is neither a necessary party nor a proper party. Its impleadment will dilute the basic issues which are the alleged shortcomings in the impugned order of DoT and thus shall adversely affect and prejudice the petitioners. It has been highlighted that no relief or prayer has been sought/made in the petitions against RJIL. The matter can be objectively heard and decided and proper relief can be granted to the petitioners after hearing the respondent Union of India alone. In that view of the matter, RJIL can not be treated as a necessary party or even a proper party.

7. Petitioner/non-applicant has referred to its reply to the MA. In the short reply the petitioner has taken stand to the following effect. The MA seeking impleadment is not maintainable. The petitioner being the *dominus litis* has the right to select the necessary and proper party and he does not require any third party like RJIL for effective and proper adjudication of the issues involved in the petition. RJIL according to petitioner is admittedly a competitor in business and it is not a complainant before the DoT as will appear from the impugned order, hence it cannot have *locus standi* to seek impleadment. It has also been pleaded that attempt of RJIL for impleadment is for the purpose of impeding and obstructing the process of early disposal of the main petition by this Tribunal which would prejudice the petitioner and may benefit RJIL and therefore, such malafide attempt should not be allowed to succeed.

8. Learned counsel for Union of India has also opposed the prayer for impleadment of RJIL. According to him also the applicant is neither a necessary party nor a proper party. His submissions are to the following effect. DoT has considered relevant materials including correspondences from TRAI. Only TRAI may be treated as a complainant before DoT which has formed its independent opinion to impose penalty. In such a situation DoT, the licensor alone is a necessary and proper party and not the entities providing informations. They can

at best be like witnesses in a proceeding who are neither necessary nor proper parties. RJIL can not claim *locus* in the matter if imposition of penalty by DoT only because it has interconnect agreements with petitioners. Action by DoT to impose penalty upon a licensee does not constitute an act of regulation affecting the rights of entire industry. The aforesaid stand of respondents has been supported by the non-applicant/petitioners by referring to Paras 15 and 16 of the impugned demand dated 29.09.2021 wherein it is mentioned that correspondence has been received from RJIL and TRAI as well as from other entities like M/s Vodafone. RJIL has not been described as a complainant anywhere and there is no complaint petition before DoT.

9. On behalf of Bharti Airtel Ltd., petitioner in T.P. No.45 of 2021, also impleadment application has been opposed and it has been additionally pointed out that show cause notice was issued by TRAI not on the basis of any letter of RJIL but on the basis of reply sent by this petitioner to TRAI. The exercise by DoT leading to impugned penalty is on the basis of recommendations of TRAI and therefore, RJIL cannot have any *locus* to claim impleadment either as a necessary or a proper party. Learned counsel for Bharti Airtel has also taken the stand that RJIL is interested in changing and enlarging the character of the dispute from that between petitioners and DoT to one with RJIL also. The right of the petitioner, the

dominus litis to select for impleadment only the necessary and proper party needs no interference.

10. By way of rejoinder learned counsel for RJIL has highlighted some of the paras in T.P. No.44 of 2021 which have been extracted earlier. He also highlighted that petitioners and RJIL have a contractual relationship and when terms of the contract were allegedly violated by the petitioners, TRAI was competent to look into such violation in exercise of its regulatory jurisdiction and finding it appropriate TRAI recommended action for DoT. Hence, RJIL is not only a proper but also a necessary party.

11. Besides, distinguishing some of the judgments relied upon by learned counsel for the petitioner, learned counsel for RJIL placed strong reliance upon a Constitution Bench judgment of the Supreme Court in the case of **Udit Narain Singh Malpaharia Vs. Addl. Member, Board of Revenue; 1963 Supp(1) SCR 676**. The issue noticed in Para 6 of the judgment was – "whether in a writ in the nature of *certiorari* filed under Article 226 of the Constitution the party or parties in whose favour a tribunal or authority had made an order, which is sought to be quashed, is or are necessary party or parties". The Court highlighted the meaning of judicial or quasi-judicial act as distinguished from administrative act and that a

writ of *certiorari* may issue when any court or a tribunal having legal authority to determine questions affecting rights of subjects and having the duty to act judicially, act in excess of their legal authority. The Court proceeded to hold that a tribunal or authority performs a judicial or quasi-judicial act only after hearing parties and its order may affect the right(s) of the parties before it. A proceeding for writ of *certiorari* cannot succeed before the High Court without the presence of the party who was successful before the subordinate court or tribunal. Such a party whose interests are directly affected or are likely to be directly affected is a necessary party. In Para 10 of the judgment the Court held that such parties whose presence is not necessary for making an effective order, but whose presence may facilitate the settling of all the questions that may be involved in the controversy may be described as proper party. Importantly, it was observed that "the question of making such a person as a party to a writ proceeding depends upon the judicial discretion of the High Court in the circumstances of each case. Either one of the parties to the proceeding may appeal for the impleading of such a party or such a party may *suo moto* approach the Court for being impleaded therein". On behalf of RJIL reliance was also placed upon judgment of Hon'ble Supreme Court in the case of **J.K. International Vs. State (Govt. of NCT of Delhi); (2001) 3 SCC 462**. In that case the appellant sought for impleadment and hearing before the High Court in the capacity of a complainant of a criminal case when one of the accused

had moved the High Court for quashing of the criminal case. The High Court rejected the prayer on the ground that after cognizance had been taken and the accused had been asked to appear before the Court the complainant did not have any *locus standi* to seek impleadment because at that stage the State was duty bound to take care of the prosecution. The Hon'ble Supreme Court in Para 7 noticed the provisions of the old Code of Criminal Procedure and an earlier judgment of the Supreme Court which disapproved attempts of the private person to interfere with the course of the prosecution when the public prosecutor was in management of the prosecution. But thereafter in Para 8 it was held that although the complainant was not required to be made a party by the accused himself and it is predominantly the concern of the State to continue with the prosecution, when the complainant wished to be heard at the stage where accused wanted the case to be quashed it would be a negation of justice if is foreclosed from being heard when he had made a request to the Court for that purpose. By referring to various provisions of the Criminal Procedure Code, it was highlighted that a person who is aggrieved by the offence is not altogether wiped out from the scenario of the trial even after investigation and charge-sheet. It was highlighted that during the course of trial also a complainant can engage a counsel who shall act under the directions of the public prosecutor and may submit written arguments at the end, with the permission of the Court.

12. Since reliance was placed upon the case of **Kasturi Vs. Uyyamperumal & Ors.; (2005) 6 SCC 733** by learned counsel for M/s Vodafone Idea Ltd., that when a party is not a necessary or a proper party, the plaintiff/petitioner being the *dominus litis* has a right not to implead third parties, learned counsel for RJIL sought to distinguish this judgment by placing reliance upon judgment of the Supreme Court in the case **Vidur Impex & Traders (P) Ltd. Vs. Tosh Apartments (P) Ltd.; (2012) 8 SCC 384**. In Para 33 of this judgment the Para 7 of **Kasturi(supra.)** was extracted to note that for finding out a necessary party, it is necessary that (i) there must be a right to some relief against such party in respect of controversies involved in the proceedings and (ii) no effective decree can be opposed in absence of such parties. Thereafter it was held that for deciding the question who is a proper party in a suit for specific performance of a contract for sale, the guiding principle is that the presence of such party is necessary to adjudicate the controversies involved in the suit. From the discussions in this judgment, it is clear that nature of a suit for a specific performance of a contract cannot be permitted to be changed by adding a person who has raised a claim of title adverse to the claim of a vendor. This would practically convert the proceeding to a suit for title and that cannot be allowed.

13. On behalf of petitioners, in T.P. No.45 of 2021 the right of RJIL to seek impleadment has been seriously opposed on the basis of principle of *dominus litis* and in support of that principle reliance has been placed upon the following judgments of the Hon'ble Supreme Court:

(i) **Kasturi Vs. Uyyamperumal & Ors.; (2005) 6 SCC 733**

(ii) **Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Bombay & Ors.; (2020) 14 SCC 392**

(iii) **Gurmit Singh Bhatia Vs. Kiran Kant Robinson; (2020) 13 SCC 773.**

14. So far as the principle of *dominus litis* is concerned, there is no caveat against it and the judgments are clear and deserve full respect. However, the prayer of RJIL in the MAs is not to reject the petitions because they suffer from defect of parties or that the petitioner has committed a mistake by not impleading RJIL as a respondent. The prayer is plain and simple. RJIL wants this Tribunal to implead it as a respondent on the basis of facts highlighted and the case laws relied upon, particularly upon the case of **Udit Narayan Singh(supra.)**. In view of order proposed to be passed it is not necessary to deal with the aforesaid judgments at length.

15. In other two petitions, learned counsel for the petitioners has placed reliance upon the following judgments:

(i) **Ramesh Hirachand Kundanmal Vs. Municipal Corpn. of Greater Bomaby; (1992) 2 SCC 524**

(ii) **N. Madhavan Vs. The Deputy Collector M.P. No.2 of 2010 in WP No. 5023 of 2010 decided on 24.09.2010 by the High Court of Madras**

(iii) **Think Gas Ludhiana Pvt. Ltd. Vs. Petroleum and Natural Gas Regulatory Board & Ors.; (2021 SCC Online APTEL 41.**

16. In the case of **Ramesh Hirachand Kundanmal(supra.)**, the relevant provisions of Civil Procedure Code were considered by the Supreme Court for deciding the question whether respondent No.2 was a necessary or proper party to be joined as defendant under Order 1 Rule 10 of the CPC in the suit of the appellant filed against respondent No.1. On behalf of petitioner reliance has been placed mainly upon Paras 14 and 15. The Court has held that the person to be joined must be one whose presence is necessary as a party and not merely as a witness. The main purpose of making a person party is to ensure that he is heard and should be bound by the result of the action. A necessary party must have direct and legal interest in the action. He should be in a position to "say that the litigation may lead to a result which will affect him legally i.e. by curtailing his legal rights." In Para 15 the Court pointed out that Municipal Corporation had

proceeded against the applicant for violation of the municipal laws whereas the person impleaded as respondent No.2 could have only a limited grievance, for violation of an agreement which would be a different cause of action. Hence, the consolidation of such different cause of action was not permissible and the court below had erred in permitting respondent No.2 to be added as a defendant in the suit of the appellant.

17. In the case of **N. Madhvan(supra.)**, the Hon'ble High Court of Madras dismissed a miscellaneous petition filed by a third party seeking impleadment as one of the respondents. The Court held in Para 13 that "it may be true that the representation given by the petitioner herein be instrumental to initiate action against the writ petitioner but the same will not cloth the petitioner herein with any right or liberty to participate in all the proceedings initiated by the statutory authority."

18. In the above case the miscellaneous petition seeking impleadment was by a rival businessman who had no vested right of any kind to oppose setting up of the business by the writ petitioner even if it was so done in contravention of any statute. The test applied was that the third party could not have claimed any relief by filing a writ petition but the same was being done indirectly by seeking

impleadment as a respondent. In the present case it is not in dispute that petitioners and RJIL have business relations and agreements with each other. For a cause of action RJIL could have maintained an original independent petition before this Tribunal. Of course that is not the situation herein.

19. In the case of **Think Gas (supra.)**, the Appellate Tribunal for Electricity considered, *inter alia*, a grievance of the appellant, Think Gas, that its intervention application had been wrongly dismissed by respondent No.1. After considering the facts relating to Think Gas, the Appellate Tribunal finally concluded that Think Gas was not an aggrieved person and therefore, could not maintain the appeal. It was also held that it had no *locus* as no vested right of Think Gas was involved in the action. In Para 22 it was held that "mere interest of parties in the fruits of litigation cannot be a real test for being impleaded as a party."

20. On a careful perusal of the impugned demand notice (**Annexure P-1**) it is clear that upon receipt of correspondence from RJIL, TRAI made correspondence with the petitioner, asked for its response and goaded it to do the needful on the issue of congestion on the PoIs. The correspondences led TRAI to seek regular reports from the petitioner and it was upon TRAI's recommendation for imposition of maximum penalty that the licensor, DoT decided to accept the recommendations

of TRAI. From Paras 35 to 39 of the impugned notice it transpires that a high level departmental committee was constituted to examine the recommendations of TRAI, the Committee gave personal hearing to the petitioner and accepted written submissions. TRAI's recommendations were also examined by the Digital Communications Commission and thereafter DoT took the impugned decision. From the narration of events in the impugned order and the stand of the DoT in respect of MAs of RJIL, it is evident that RJIL has not been treated as a complainant. There was no formal judicial or quasi judicial proceedings in which generally the rivals are arrayed as complainant and accused. As a regulator, TRAI appears to have taken a stand in the matter and on its report and recommendations, penalty has been imposed upon the petitioner. The order does not decide any contractual issue between petitioners or RJIL nor affects any vested legal or direct right of RJIL in any manner. The impugned order or notice is purely an action by DoT as a licensor against a licensee for an alleged violation of duties and liabilities of the licensor arising under the licence agreement. There was no *lis* decided by the impugned demand notice in the sense it is understood in law nor RJIL was a party to the *lis* as a complainant. Its correspondences can at best be treated only as documentary evidence considered by TRAI and DoT.

21. In the aforesaid factual situation it is found that RJIL is not a necessary or even a proper party in the present appeals in which it wants to be impleaded as a respondent. Its direct rights and interests are not at all decided by the impugned demand notice nor they are like to be affected by any order in the present appeals. Presence of RJIL is not found necessary for the purpose of an effective order in these appeals. No relief has been claimed against RJIL. In these facts, the pleas of the petitioners are found to have merits.

22. The Constitution Bench judgment in the case of **Udit Narayan Singh(supra.)** and all subsequent judgments follow the view that a person who may not be a necessary party but whose presence may facilitate the settling of questions involved in the controversy may be described as proper party. For impleadment of persons **falling under this category**(**emphasis supplied**), it has rightly been observed in the judgment that in writ proceedings, the judicial discretion of the High Court needs to be exercised as per facts and circumstances of each case and a party may *suo moto* approach the Court for being impleaded as such. The general features of the present controversy and the facts noted from the impugned demand notice have been considered for the above purpose of finding out whether such judicial discretion needs to be exercised in favour of RJIL who has approached this Tribunal for impleadment. The answer has to be in negative

because it is not a necessary or proper party for this matter. In the impugned demand notice nothing is decided in favour of RJIL so as to warrant its impleadment for the fear of its being adversely affected by the outcome of the present petitions.

23. This Tribunal is not strictly governed by the provisions in the Code of Civil Procedure (CPC) but only by principles of natural justice. This Tribunal has to be on its guard to ensure that no rights of RJIL should be affected by any order which may be passed in the present appeals without giving an opportunity of hearing to RJIL. On a proper consideration of all the facts and principles of law it is found that RJIL is not even a proper party whose presence will facilitate the settling of relevant questions involved in the present appeal. In order to protect its direct interests and rights against the petitioners, RJIL had the option to approach this Tribunal directly on the basis of interconnect agreements and the relevant regulations, but in the present proceedings, arising on account of action by DoT as a licensor, there is no reasonable requirement to have the presence of RJIL as a party. To the contrary there appears some merit in the case of the petitioners that impleadment of RJIL as a party may dilute the relevant issues and complicate them beyond what is required to be decided.

24. As a result the prayer of RJIL for impleadment made through the MAs under consideration is declined.

25. The principles governing criminal cases, their investigation and trial is not applicable to civil proceedings like the present appeals. But this Tribunal has been given power to formulate its own procedure. In the larger interest of justice and to assist this Tribunal, RJIL is permitted to file, if it so likes, short written notes of not more than 10 pages, based upon materials made available by it to TRAI/DoT, within 6 weeks from today. The Tribunal may look into those notes at the time of final adjudication/decision.

26. The MAs Nos.432, 434 and 435 of 2021 are disposed of accordingly.

……..J
(Shiva Kirti Singh)
Chairperson

…….
(Subodh Kumar Gupta)
Member