

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 32274 of 2015 (H)

PETITIONER :

**M/S. RELIANCE COMMUNICATIONS LTD.,
HAVING ITS REGISTERED OFFICE AT: H BLOCK, 1ST FLOOR
DHIRUBHAI AMBANI KNOWLEDGE CITY, NAVI MUMBAI-400 710
AND HAVING ITS DELHI OFFICE AT: RELIANCE CENTRE
3RD FLOOR, A-WING, MAHARAJA RANJIT SINGH MARG
NEW DELHI-110 002
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR.ARUL KUMAR PUTHUKKUDI.**

**BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMT.G.MINI
SRI.P.S.SREEPRASAD**

RESPONDENT :

**BHARAT SANCHAR NIGAM LTD.,
505, BHARAT SANCHAR BHAVAN, JANPATH
NEW DELHI-110 001, REPRESENTED BY ITS CHAIRMAN.**

**BY ADVS. SRI.PREMJIT NAGENDRAN, SC
SRI.MATHEWS K.PHILIP, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1 : COPY OF THE BASIC INTERCONNECT AGREEMENT FOR KERALA CIRCLE DTD. 20.7.2001.
- EXT. P2 : COPY OF THE INTERCONNECT AGREEMENT DTD.25.1.2002 WITH BSNL.
- EXT. P2(a): COPY OF THE ADDENDA VIII IN RESPECT OF KERALA CIRCLE, DTD.21.9.2005.
- EXT. P3 : COPY OF JUDGMENT DTD.15.4.2010 IN CA 4877 OF 2010.
- EXT. P4 : COPY OF THE ORDER DTD.18.4.2011 IN PETITION 141 OF 2011.
- EXT. P5 : COPY OF THE PETITIONER'S LETTER INDICATING PAYMENT DTD. 6.12.2011.
- EXT. P6 : COPY OF THE PETITIONERS' LETTER DTD.22.11.2011.
- EXT. P7 : COPY OF THE ORDER DTD.19.4.2012.
- EXT. P8 : COPY OF PETITION NO.205 OF 2015 FILED BEFORE THE TDSAT DTD. 1.5.2015.
- EXT. P9 : COPY OF ORDER DTD.5.5.2015 PASSED BY THIS HON'BLE TRIBUNAL IN PETITION 205 OF 2015.
- EXT. P10: COPY OF REPLY DTD.10.9.2015.
- EXT. P11: COPY OF BSNL DEMAND LETTER DTD. 23.9.2015.
- EXT. P11(a): COPY OF MINUTES OF MEETING DTD. 22.9.2015 BSNL.
- EXT. P12: COPY OF THE PETITIONER'S LETTER DTD. 29.9.2015.
- EXT. P13: COPY OF MA 349 OF 2015.
- EXT. P14: COPY OF TDSAT ORDER DTD. 7.10.2015 PASSED IN MA 349 OF 2015 IN PETITION 205 OF 2015.
- EXT. P15: COPY OF TDSAT ORDER DTD. 8.10.2015 PASSED IN MA 349 OF 2015 IN PETITION 205 OF 2015.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 32274 of 2015

Dated this the 27th day of October, 2015

JUDGMENT

This writ petition is filed challenging an order passed by the Telecom Disputes Settlement and Appellate Tribunal, New Delhi, (TDSAT) which is produced as Ext.P14.

2. The petitioner is a telecom service provider who has a dispute with the BSNL respondent in relation to access deficit charges. The BSNL raised a demand which is the subject matter of the challenge before the TDSAT.

3. TDSAT, as per order dated 05/05/2015 which is produced as Ext.P9, passed the following order :

“The case will be taken up for hearing as soon as the pleadings are complete.

In the meanwhile, in case the petitioner deposits 50% of the impugned demand within two weeks from today, BSNL will not take any

coercive measure for realization of the aforesaid demand.

It is further made clear that depending upon the result of the case, either party may have to make payment to the other along with interest at an appropriate rate as may be directed by the Tribunal.”

4. Thereafter, pending proceedings before the TDSAT, BSNL issued another demand which is produced as Ext.P11. This is essentially with regard to claiming of 50% of the remaining unpaid interest on the principle amount demanded. The petitioner challenged Ext.P11 by an interim application filed in M.A.No.349/2015, which is produced as Ext.P13. TDSAT as per the impugned order dismissed the above application stating as follows:

“The application is, accordingly, dismissed, subject, however, to the direction that the payment of impugned demand dated 23.9.2015 shall be without prejudice to the petitioner's rights and contentions and shall be subject to the final outcome of this petition”

5. The learned Senior Counsel impugning this order submitted that the TDSAT failed to exercise its

jurisdiction vested with it to advance cause of justice. It is submitted to retain the rights in 'lis' intact the discretion ought to have been exercised to stay the demand in Ext.P11. It is further submitted that in view of the earlier order, directing to deposit 50% of the demand, necessarily subsequent demand also ought to have been stayed as it is only a claim relating to the interest.

6. The learned Standing Counsel for the BSNL submits that the discretionary relief of granting stay is purely within the domain of TDSAT and the petitioner cannot seek a judicial review of such decision invoking remedy under Article 226 of the Constitution of India. It is submitted that the petitioner is liable to pay the entire amount demanded as per Ext.P11.

7. The issue now urged would fall within the narrow compass relating to the exercise of Power of discretion by the TDSAT. As seen from the impugned order, it did not state any reason for declining exercise of discretionary relief. No doubt exercise of discretion would depend on facts of each case. This discretion can

be exercised to decline stay with supporting reasons. The judicial review can be invoked only to the extent of failure of exercise of the Power of discretion by the TDSAT.

8. This Court is of the view that in view of the earlier order passed by TDSAT, the interest of justice demand that 50% of the amount demanded in Ext.P11 should suffice to meet the ends of justice. Therefore, the impugned order is set aside to the extent by staying operation of Ext.P11 till the disposal of Petition 203/2015 on the condition that the petitioner remits half of the amount demanded in Ext.P11 within a period of four weeks from today.

The writ petition is disposed of as above.

Sd/-
A. MUHAMED MUSTAQUE
JUDGE