

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.06.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

W.P. NO. 15400 OF 2013

AND

M.P. NO. 1 OF 2013

Reliance Communications Ltd.
Reliance House
No.6, Haddows Road
Chennai 600 006, rep. By its
Authorised Signatory
Mr. R.Vijayaraghavan ... Petitioner

- Vs -

Union of India
through Secretary
Department of Telecommunications
Sanchar Bhawan
20, Ashoka Road
New Delhi 110 001. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the entire records leading to the impugned demand dated 8.1.2013 made by the respondent in its Letter/Proceedings No.1020/20/WFD/05-06 and to quash the same and further direct the respondent to apply clause 19.1 of the UASL issued by the respondent to the petitioner on 14.11.2003 to revenue generated by the petitioner company based only on telecom activities and not on any other revenues not connected with the telecom activities.

For Petitioner : Mr. P.S.Raman, SC, for
Mr. Venkatavaradan

For Respondents: Mr. G.Rajagopalan, Addl. Solicitor
General, for
Mr. Su.Srinivasan, Asst. Solicitor General

ORDER

(DELIVERED BY HULUVADI G.RAMESH, J.)

The petitioner has filed this writ petition praying for a direction to quash the impugned demand dated 8.1.2013 made by the respondent in its Letter/Proceedings No.1020/20/WFD/05-06 and for a

further direction to the respondent to apply clause 19.1 of the UASL issued by the respondent to the petitioner on 14.11.2003 insofar as the revenue generated by the petitioner company based only on telecom activities and not on any other revenues not connected with the telecom activities.

2. The demand dated 8.1.2013, made by the respondent amounting to a cumulative amount of approximately Rs.219 Crores relates to Adjusted Gross Revenue, penalty and interest thereon towards Spectrum Usage Charges under the Unified Access Service Licenses (for short 'UASL') for 16 circles including the Tamil Nadu Circle for the period FY 2005-2006 till 2007-2008.

3. It is the case of the petitioner that UASL is a percentage of Adjusted Gross Revenue ('AGR') earned from wireless subscribers. However, for the FY 2005-2006, AGR has been calculated on the income generated by the petitioner from non-telecom activities and lease lined/bandwidth activities. It is the case of the petitioner that AGR is not to be imposed on non-telecom activities. That being the case, when the main demand itself is illegal, penalty on the said amount cannot be sustained. The petitioner further submits that the respondent has tried to unilaterally amend the licence conditions, which is per se illegal.

4. Heard the learned senior counsel appearing for the petitioner and the learned Addl. Solicitor General appearing for the respondent.

5. It appears that while seeking for allocation of 4G Spectrum licence, a condition was imposed by the respondent that all arrears have to be paid. Since the petitioner also opted to compete in the 4G Spectrum auction and also for extension of licence for 3G Spectrum, subject to objection/protest, the petitioner is said to have paid the demand amount, including the penal interest. According to the petitioner, the demand as made by the respondent that clearing of arrears is a condition precedent for participating in the auction is only a coercive step taken to get the dues settled, to which the respondent is not entitled and the said demand is arbitrary. It is the further stand of the petitioner that no proper calculation has been given by the respondent department and that no opportunity of hearing was afforded to the petitioner to put forth his grievances before the demand was made. It is also further pleaded by the petitioner that the calculation is not made as per the formula stipulated in the contract.

6. Learned Addl. Solicitor General appearing for the respondent submits that orders have already been passed on the said representation submitted by the petitioner. However, according to the learned senior counsel for the petitioner no order has been passed on the representation dated 30.1.13 given by the petitioner.

7. Be that as it may. In view of the fact that the petitioner has already given a representation to the respondent, this Court is of the considered opinion that it would be suffice to direct the

respondent to consider the representation and dispose of the same after affording an opportunity of hearing to the petitioner.

8. In the above circumstances, the respondent department is hereby directed to afford an opportunity of hearing to the petitioner before taking any decision in the matter on consideration of representation submitted by the petitioner. If any order has already been passed by the respondent department and the same has not been communicated to the petitioner, in view of the fact that three years has already passed since the filing of the representation and that according to the petitioner the quantum of amount has also not been calculated as per the stipulated formula, the respondent department shall communicate the order to the petitioner and after affording an opportunity of hearing to the petitioner, pass appropriate orders afresh on the representation filed by the petitioner in accordance with law within a period of four weeks from the date of receipt of a copy of this order. It is further made clear that as the petitioner has already deposited the amount demanded by the respondent under protest for the purpose of participating in the 4G auction, the prayer of the petitioner for stay of the impugned order has become infructuous. It is for the respondent department to calculate the amount due to the department on the basis of the stipulated formula agreed between the parties and if any excess amount is collected, the same may be refunded to the petitioner. However, in case any adverse order is passed or if the petitioner is aggrieved by any order passed by the respondent, liberty is granted to the petitioner to approach the appropriate forum to redress his grievance, if so advised.

9. With the above observations and directions, this writ petition is disposed of. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

The Secretary to Government
Government of India
Department of Telecommunications
Sanchar Bhawan, 20, Ashoka Road
New Delhi 110 001.

+1 cc to M/s.R.Venkatavaradhan, Advocate, SR.35108.

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