

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM:

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN

W.P.No.32128 of 2019

Reliance Jio Infocomm Ltd.,
represented by its Authorized Signatory,
Having office at,
No.89, Dr.Radhakrishnan Salai,
Sullivan Garden,
Mylapore, Chennai 600 004.

registered Office at
Office - 101, Saffron, Near Centre Point,
Panchwati 5 Rasta, Ambawadi,
Ahmedabad - 380006,
Gujarat, India.

... Petitioner

vs.

1. Telecom Disputes Settlement and Appellate Tribunal,
represented by its Chairperson,
3rd Floor, Hotel Samrat, Kautilya Marg,
Chanakyapuri, New Delhi - 110 021.
2. Telecom Regulatory Authority of India,
represented by its Secretary,
Mahanagar Doorsanchar Bhawan,
(Next to Zakir Hussain College),
Jawaharlal Nehru Marg (Old Minto Road),
New Delhi - 110 002.
3. Tata Communications Ltd.,
Having Office at:
Jayanth Tech Park,
No.41, Mount Poonamallee Road,
Nandambakkam,
Chennai 600 089.
Registered Office at:
VSB, Mahatma Gandhi Road,
Fort, Mumbai 400 001,
Maharashtra.

4. Bharti Airtel Ltd.,
Having Office at:
No.101, Bharathi Towers,
Santhome High Road,
Santhome,
Chennai 600 002.

Registered Office at:
Bharti Crescent
1, Nelson Mandela Road,
Vasant Kunj, Phase II,
New Delhi - 110 070.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorarified mandamus, calling for the records of the 1st Respondent in its order dated 07.11.2019 issued in Miscellaneous Application No.270 of 2019 in Telecommunication Petition No.77 of 2019, quash the same and consequently restrain the Respondent No.4 from demanding or collecting any charges from the Petitioner, as Access Facilitation Charges (AFC), Operation and Maintenance Charges (O & MC) or Co-location Charges (CLC) for taking any coercive action in pursuance of the aforementioned demands, including but not limited to termination of the Cable Landing Station - Reference Interconnect Offer (CLS-RIO) Agreements executed between the parties and/or disconnection or denial of access to Cable Landing Station (CLS) and other facilities, pending disposal of the Telecommunication Petition No.77 of 2019 by the Respondent No.1.

For Petitioner : Mr.N.Venkataraman,
Senior Counsel
for Mr.Abishek Jenasenan

For 3rd Respondent : Mr.C.Mohan,
for M/s.King & Patridge

For 4th Respondent : Mr.P.S.Raman, Senior Counsel
for Mr.Madhan Babu

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O R D E R
(Order of the Court made by M.M.SUNDRESH,J.)

This Writ Petition has been filed against the order dated 07.11.2019 passed by the 1st Respondent/Telecom Disputes Settlement and Appellate Tribunal in Miscellaneous Application No.270 of 2019 in Telecommunication Petition No.77 of 2019, by which, the interim relief sought for by the Petitioner, was

rejected.

2. This is, in fact, a second round of litigation before this Court. Earlier, the Regulation governing was, International Telecommunication Access Essential Facilities at Cable Landing Stations Regulations, 2007, dated 07.06.2007. Thereafter, another Regulation viz. International Telecommunication Access Essential Facilities at Cable Landing Stations Regulations, 2012, dated 19.10.2012, was introduced. Pursuant thereto, a further Regulation viz. International Telecommunication Cable Landing Stations Access Facilitation Charges and Co-Location Charges Regulation, 2012, dated 21.12.2012, was introduced.

3. All these Regulations were put into challenge by the 3rd and 4th Respondents. A Division Bench of this Court in W.A.Nos.283 and 285 of 2017, by a judgment dated 02.07.2018, was pleased to hold as follows:

"(a) Both appeals are partly allowed. We partly confirm the dismissal of Writ Petitions, W.P.Nos.1875 and 3652 of 2013. We confirm the dismissal of the Writ Petitions insofar as it pertains to challenge to 'International Telecommunication Access to Essential Facilities At Cable Landing Stations Regulations, 2007 (5 of 2007)', dated 07.06.2007, i.e. 'CLS Regulation' and 'International Telecommunication Access to Essential Facilities at Cable Landing Stations (Amendment) Regulations, 2012 (No.21 of 2012)' dated 19.10.2012, i.e. 'CLS Amendment Regulation'.

(b) Insofar as dismissal of the aforesaid writ petitions qua 'The International Telecommunication Cable Landing Stations Access Facilitation Charges and Co-location Charges Regulations, 2012 (No.27 of 2012), dated 21.12.2012, i.e. 'CLS Co-location Charges Regulation' is concerned, we partly set aside the same holding that, Schedules I, II and III of The International Telecommunication Cable Landing Stations Access Facilitation Charges and Co-location Charges Regulations, 2012 (No.27 of 2012), dated 21.12.2012 stand quashed.

(c) TRAI shall redo and re-enact

the aforesaid quashed schedules, i.e. schedules I, II and III of 'The International Telecommunication Cable Landing Stations Access Facilitation Charges and Co-location Charges Regulations, 2012 (No.27 of 2012), dated 21.12.2012, after strictly following the procedure for subordinate legislation making, particularly transparency and principles of natural justice which have also been built into section 11(4) of TRAI Act within six months from the date of receipt of a copy of this order."

4. Thereafter, a fresh Regulation viz. The International Telecommunication Cable Landing Stations Access Facilitation Charges and Co-location Charges (Amendment) Regulations, 2018, dated 28.11.2018, was introduced.

5. Pursuant to the aforesaid Regulation, the 4th Respondent issued a Demand Notice dated 06.12.2018, to the Petitioner.

6. After sending a reply, the Petitioner filed Telecommunication Petition No.77 of 2019 before the 1st Respondent. Needless it is to state that, the order of the Division Bench has been challenged by the 3rd Respondent before the Apex Court, which is still pending consideration on the question of jurisdiction of TRAI.

7. Before the 1st Respondent, the Petitioner contended that the order of the Division Bench, as upheld by the Apex Court, has not been considered in the proper perspective. However, the 1st Respondent has rejected the said contention, by dismissing the Application for stay. Challenging the same, the present Writ Petition has been filed.

8. Learned Senior Counsel appearing for the Petitioner contended that the Division Bench has directed TRAI to re-do and re-enact the exercise. It is more like an order of remand. This has been done while upholding the Regulations. The schedule which is meant to re-do and re-enact was set aside only on technical grounds. Therefore, it is axiomatic that it will relate back to the date of Regulation, dated 01.01.2013. There is no question of retrospective application involved.

9. Per contra, learned Senior Counsel appearing for the 4th Respondent submitted that what is involved is, retrospective in application. Inasmuch as the Regulation per se has not been put into challenge, the consequential demand cannot be put into

question. Reliance has been made by the learned Senior Counsel on the judgment dated 03.05.2019 passed by the Delhi High Court in the case of Syniverse Technologies (India) Pvt. Ltd. vs. Telecom Regulatory Authority of India, in Review Petition Nos.135 and 138 of 2019.

10. Learned counsel appearing for the 3rd Respondent submitted that, though, there is not much for the 3rd Respondent to articulate before this Court, issues of law will have an impact. Therefore, they need not be gone into.

11. Going into the issues of law, which in our considered view, are very substantial. Therefore, in order to resolve the dispute at this stage, we put a question, both to the learned Senior Counsel appearing for the Petitioner and the 4th Respondent. The suggestion of this Court is to the effect that a Bank Guarantee can be given by the Petitioner for the entire claim made by the 4th Respondent, which can be encashed, subject to the final decision of the 1st Respondent. If so, it is for the 1st Respondent to pass appropriate orders, while disposing of Telecommunication Petition No.77 of 2019 filed by the Petitioner. This would take care of the competing interest of the contesting parties, viz. the Petitioner and the 4th Respondent.

12. Learned Senior Counsel appearing for the Petitioner submitted that sufficient time may be granted for complying with the order of this Court. Learned Senior Counsel appearing for the 4th Respondent submitted that no steps would be taken pursuant to the demand made, on such compliance.

13. Considering the above, this Writ Petition stands disposed of, on the following terms:

(i) The Petitioner shall give Bank Guarantee for the entire claim made by the 4th Respondent, within a period of four weeks from the date of receipt of a copy of this order;

(ii) The 1st Respondent is at liberty to pass appropriate orders on the same with respect to appropriation and invocation of the Bank Guarantee, at the time of passing the final order;

(iii) Parties are directed to complete pleadings within a period of four weeks from the date of receipt of a copy of this order;

(iv) The 1st Respondent is requested to make all endeavors to conclude the proceedings in Telecommunication Petition

No.77 of 2019, finally, within a period of eight weeks thereafter, without being influenced by the order of this Court;

(v) The 4th Respondent shall not effect disconnection, pending disposal of the Telecommunication Petition No.77 of 2019;

(vi) The aforesaid order is subject to the compliance by the Petitioner.

14. All the issues raised by the parties, are left open to be decided by the 1st Respondent.

No costs. Consequently, connected W.M.P.Nos.32399, 32400 and 32402 of 2019 are closed.

aeb

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chairperson,
Telecom Disputes Settlement and Appellate Tribunal,
3rd Floor, Hotel Samrat, Kautilya Marg,
Chanakyapuri, New Delhi - 110 021.
2. The Secretary,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
(Next to Zakir Hussain College),
Jawaharlal Nehru Marg (Old Minto Road),
New Delhi - 110 002.

+1cc to M/s.King & Partridge, Advocate, SR.No.94664
+3CCs to Mr.Abishek Jenasenan, Advocate, SR.No.94541

+1cc to Mr.R.Parthasarathy, Advocate, SR.No.94417
(dated : 20/11/2019)

W.P.No.32128 of 2019

Kak(18/11/2019)