
(2022) 01 TDSAT CK 0094

In the Telecom Disputes Settlement And Appellate Tribunal

Case No : Telecom Petition No. 1 Of 2023 With Misc Application No. 3 Of 2023

Reliance Jio Infocomm Ltd

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-01-2022

Acts Referred:

Telecom Regulatory Authority of India Act, 1997 — Section 11, 11(1)

Citation : (2022) 01 TDSAT CK 0094

Hon'ble Judges : Dhirubhai Naranbhai Patel, Chairperson; Subodh Kumar Gupta, Member

Bench : Division Bench

Advocate : Ramji Srinivasan, Ritin Rai, K R Sasiprabhu, Aditya Swarup, Tushar Bhardwaj, Swaroop Anand Mishra, Aman Shukla, Shruti Pandey, Dhruv Tamta

Final Decision : Allowed

Judgement

M A. No. 3 of 2023

1. Counsel appearing for the petitioner seeks permission to withdraw this M.A. and is seeking time to supply the legible copies of the Annexures upon which the petitioner is relying upon.

This M.A. is hereby disposed of as withdrawn.

T.P. No. 1 of 2023

2. Notice upon respondent. Counsel Mr. Dhruv Tamta accepts notice on behalf of the respondent and is seeking time to get instructions and to file reply and is also seeking time to seek specific instructions for the compliance of 5th Proviso to Section 11(1) of TRAI Act, 1997. Time, as prayed for, is granted to the counsel of the Union of India.

3. Counsel appearing for the petitioner has insisted for an ad-interim relief for staying the operation, implementation and execution of communication in form of Office Memorandum dated 11.10.2022 (Annexure P-2 to the memo of this

Petition) and consequential demands based upon Annexure P-2 which is at Annexure P-1 to the memo of this Petition. Counsel appearing for the petitioner has at length submitted that the petitioner is using different bands and each band has a separate Spectrum Usage Charges (SUC). Counsel appearing for the petitioner has also submitted that looking to the need of spectrum sharing a policy has been floated by the respondent for sharing of Access Spectrum by Access Service Providers which is known as Spectrum Sharing Policy/Guidelines floated on 24.9.2015 (Annexure P-8 to the memo of this Petition).

4. Counsel appearing for the petitioner has placed reliance upon paragraphs 12 and 13 of this Spectrum Sharing Guidelines. Counsel appearing for the petitioner has also taken this Court to the reference made by the Union of India dated 15.1.2020 (Annexure P-16 to the memo of this Petition) and has also submitted that upon this reference TRAI has already given recommendations which are at Annexure P-19 to the Memo of this Petition dated 17.8.2020 and has also placed reliance upon the paragraphs 2.4, 2.8 and 3.1. of the said recommendations of the TRAI (Annexure P-19) dated 17.8.2020 and has submitted that as per TRAI's recommendations it has been clarified that as per the existing Spectrum Sharing Guidelines an increment of 0.5% on "SUC rate" should apply to the spectrum band which is being shared and not on "the overall weighted average SUC", which includes all the Spectrum bands held by the Telecom Service Provider. It is further submitted by counsel appearing for the petitioner that looking to the provisions of Section 11(1) of the TRAI Act, 1997 especially to the Fifth Proviso, thereof, if the Government is not agreeing with the recommendations of TRAI, the Central Government ought to have referred the matter back to TRAI. In the facts of the present case after the recommendations of TRAI dated 17.8.2020 the Central Government has not referred the recommendations back to TRAI as per 5th Proviso to Section 11(1) of the TRAI Act, 1997.

5. Counsel appearing for the petitioner has also placed reliance upon the decision rendered by Hon'ble the Supreme Court reported in Bharti Airtel Ltd. Vs. Union of India (2015) 12 SCC 1 (especially paragraphs nos. 66, 67 and 68 thereof). Counsel appearing for the petitioner has also placed reliance upon the decision of this Tribunal reported in Internet Service Providers Association of India Vs. Union of India 2019 SCC Online TDSAT 1756 (especially upon paragraphs nos. 29 to 32, 34, 35 and 42).

6. On the basis of aforesaid submissions and especially looking to the Annexures P-19, it is submitted by the counsel appearing for the petitioner that the impugned order dated 11.10.2022 which is at Annexure P-2 which permits the Union of India to levy Spectrum Usage Charges (SUC) rate of each of the licenses host sharing to be increased by 0.5.% of Adjusted Gross Revenue (AGR) as per the illustrations given in the Annexures and looking to the Annexure 0.5% has been added to the weighted average SUC rate. This understanding of the Union of India is in violation of the recommendations of TRAI dated 17.8.2020 (Annexure P-19) especially as stated hereinabove in paragraph 3.1 thereof to be

read with paragraph 2.8 to be read with 5th Proviso to Section 11 of TRAI Act, 1997. Therefore, it is submitted by counsel appearing for the petitioner that operation, implementation and execution of the impugned order dated 11.10.2022 (Annexure P-2) may be stayed and consequently the calculation of demands which are based upon Annexure P-2 may also be stayed (which are at Annexure P-1 to the memo this petition).

7. In view of the aforesaid submissions especially –

(a) Looking to the Spectrum Sharing Guidelines dated 24.9.2015 (Annexure P-8);

(b) and also looking to the reference made by the Central Government dated 15.1.2020 (Annexure P-16 to the memo of this Petition);

(c) and also looking to the recommendations of TRAI dated 17.8.2020 (Annexure P-19 to the memo of this Petition) especially Clause 2.8 to be read with Clause 3.1 thereof;

(d) and also looking to the 5th Proviso of Section 11(1) of TRAI Act, 1997;

(e) and also looking the decisions rendered by Hon'ble the Supreme Court in (2015) 12 SCC1 (Paragraphs 66,67 and 68 thereof);

(f) and also looking to the decisions rendered by this Tribunal reported as 2019 SCC Online TDSAT 1756 (paragraphs 29 to 32, 34, 35 and 42 thereof)

- there is a prima facie case in favour of this petitioner. After receiving the recommendations of TRAI, (Annexure P-19) dated 17.08.2020 there was a need to follow mandatory procedure as envisaged in the 5th Proviso to Sec. 11(1) of the TRAI Act, 1997. Prima facie this has not been complied with by the respondent before issuing the impugned order dated 11.10.2022 (Annexure P-2 to the memo of this petition).

8. Moreover, balance of convenience is also in favour of petitioner and if the stay as prayed for is not granted, it will cause irreparable loss to the petitioner.

9. We, therefore, stay the operation, implementation and execution of the impugned order dated 11.10.2022 (Annexure P-2 to the memo of this Petition) till the next date of hearing.

10. We also hereby stay all the consequential steps initiated or to be initiated by the respondent in pursuance of Annexure P-2 to the memo of this Petition till the next date of hearing.

11. The Petition is admitted for hearing.

12. Counsel for the Union of India is seeking time to file reply. Time, as prayed for, is granted.

13. Hence, list this matter on 24.2.2023 under the heading "For Directions".