
(2023) 10 TDSAT CK 0034

In the Telecom Disputes Settlement And Appellate Tribunal

Case No : Telecom Petition No. 92 Of 2019, 4 Of 2022 With Misc Application No. 430 Of 2021, 308 Of 2022, 190 Of 2023

Syniverse Technologies India Pvt. Ltd

APPELLANT

Vs

Bharat Sanchar Nigam Ltd

RESPONDENT

Date of Decision : 17-10-2023

Acts Referred:

Citation : (2023) 10 TDSAT CK 0034

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

Bench : Division Bench

Advocate : Ritu Anand, Jafar Alam, Akshay Bhatia, Dhiraj Mhetre

Judgement

1. We have heard learned counsels for both the petitioners in both the aforesaid petitions. Ms. Ritu Anand Vishwakarma submitted that for the period for which the demand has been raised by the respondent is thoroughly unconstitutional in view of the decision rendered by Hon'ble Delhi High Court in Writ Petition (C) No. 1507 of 2018 in judgement and order dated 8.3.2019.

2. It is further submitted by counsel or the petitioner that Review Applications (RAs) filed by different stakeholders including the neutral body – Telecom Regulatory Authority of India (TRAI) bearing Nos. 134 of 2019 and 135 of 2019 have also have been dismissed by Hon'ble Delhi High Court vide judgement dated 15.4.2019 and 3.5.2019 respectively.

3. It is further submitted by the counsel for the petitioner that once any rules or regulations or the provisions of the Act have been held as unconstitutional, it has always got retrospective effect unless it is specifically held by Hon'ble Supreme Court that the overruling or quashing is prospective in nature. In support of this, counsel for the petitioner has placed reliance upon the following : -

- CBI v. R. R. Kishore, 2023 SCC Online SC 1146, Paras 94-96

- State of Manipur v. Surjakumar Okram, 2022 SCC Online SC 130, Para 28
 - Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn., (1992) 3 SCC 1, Para 10.
4. Counsel for the petitioner has also placed reliance upon the decision rendered by Hon'ble the Supreme Court in I.C. Golaknath and Ors. Vs. State of Punjab and Anr. reported in 1967 AIR 1643 dated 27.2.1967 (Relevant paras 51-53 and 117) especially for the "prospective overruling principle".
 5. Counsels for the petitioners have placed heavy reliance upon the proposition of the law that the levy which is sought for by the BSNL has already been held as unconstitutional and therefore, no such demand can be raised by the respondent.
 6. It is further submitted by the counsels for the petitioners that the demand of the respondent of the Per Port Transaction Charges (PPTC) tantamounts to contempt of the court and hence, the argument of the respondent is full of absurdity and against the judgment delivered by Hon'ble Delhi High Court as well as against the principle propounded by Hon'ble the Supreme Court in I.C. Golaknath and Ors. Vs. State of Punjab and Anr. reported in 1967 AIR 1643.
 7. Counsel for the respondent – BSNL is seeking time to get instructions.
 8. Hence, this matter shall be listed for final hearing on 2.11.2023.