
(2003) 03 KL CK 0109
In the High Court Of Kerala
Case No : O.P. No. 361 of 2002 (R)

T.B. Mohammed and Others	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

Telecom Regulatory Authority of India Act, 1997 — Section 2

Citation : AIR 2003 Ker 243

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : K. Indu, for the Appellant; M.A. Mohamed Ashraf, Addl. CGSC, for the Respondent

Judgement

M.R. hariharan Nair, J.—The question raised in the Original Petition by the various petitioners who are Public Telephone Franchisees is that of entitlement for collecting service charge of Rs. 2/- for intra-circle calls involving radial distance of 100 to 200 Kms. for which 30 seconds is prescribed as duration of one unit,

2. Some Franchisees" Association had approached this Court earlier with a similar request, besides other contentions. In Ext. P1 judgment in O.P. No. 2069/03, a Division Bench of this Court took note of the contention raised by the counsel for the petitioners viz. that just like BSNL which is a licensee within the meaning of Section 4(1) of the Indian Telegraph Act, 1885 read with "Section 2(e) of the Telecom Regulatory Authority of India Act, 1997 (for short "the TRAI Act"), the franchisees (Booth Operators) of the BSNL would also be licensees. Based thereon the Bench found that the petitioners could approach the Tribunal under the TRAI Act for redressal of inter-licence disputes. In the judgment in O.P. No. 2069/03, the said Tribunal, however, found, on a consideration of the relevant legal aspects that the relationship that exists between the petitioners and the BSNL is that of franchisees and franchiser and not of licensee and licensor and as such the petition was not maintainable. As such, there is no bar for this Court to consider the grievance projected in this Original Petition.

3. According to the learned standing counsel who appeared for the respondents, for collection of service, charge and call charges, telephone calls are categorised into four viz. (1) inter-SDCA calls of radial distance of 0 to 50 Kms. for which 180 seconds pulse rate is applicable; (2) intra-circle calls of radial distance of 50 to 100 Kms. attracting pulse rate of 120 seconds; (3) intra-circle calls of range 100 to 200 Kms. attracting pulse rate of 30 seconds, and (4) calls above that category and up to 500 Kms. for which pulse rate of 8 seconds is applicable. It was also argued that no service charge should be collected on local calls and inter-SDCA calls attracting pulse rate of 180 seconds and intra-circle calls of 50 to 100 Kms. (pulse rate of 120 seconds); that such calls would attract call charges of Rs. 1.20 per unit only and that Rs. 2/- is the service charge allowed for the other slabs mentioned above. What is obvious from the argument, therefore, is that the eligibility for realising service charge is governed by distance rule and that it is not dependent on the question of the Code used for access viz., "95" or "zero". That exactly is the case of the petitioners.

4. The petitioners, therefore, would be entitled to collect charge of Rs. 2/- calls of the categories 100 to 200 Kms. and 200 to 500 Kms. In view of this position, there is no scope for any further controversy because the petitioners are satisfied if they are allowed to collect service charge of Rs. 2/- per call for intra-circle calls of range 100 to 200 Kms. attracting pulse rate of 30 seconds which could be put through either using the STD Code starting with the digit "0" or the other Code starting with the digits "95". Whichever Code is used to access the called number, operators are entitled to charge Rs. 2/- per call as regards calls of radial distance of 100 to 200 Kms. attracting pulse rate of 30 seconds. This position is made clear and the Original Petition is closed.