

DEPARTMENT OF TELECOMMUNICATION AND ANR. A
v.
CELLULAR OPERATORS ASSOCIATION OF INDIA AND ORS.

MARCH 4, 2003

[S. RAJENDRA BABU AND DR. AR. LAKSHMANAN, JJ.] B

New Telecom Policy, 1999:

Licence granted to Cellular Operators on terms and conditions— Charging of interest on late payment of advance licence fee—Postponement of effective date—Demand of interest by the Authority for extended period— Challenge to—Tribunal allowed the appeal directing the Authority to modify demands—On appeal, held, since licence fee becoming due from a particular date and interest is depending on the licence fee, the interest on licence fee would not accrue from a date prior to the effective date of payment of fee— Authority to modify demands by adjusting excess amount of interest towards outstanding/future dues—Directions issued. C D

Appellant-Authority had granted licence to respondents-Cellular Operators on certain terms and conditions. The licensees were required to pay licence fee in advance by the due date/effective date and in case of failure to make payment of fee on due date, interest thereon would be charged. E

Appellant had introduced the New Telecom Policy, 1999 whereby effective date of payment of fee was extended by certain period. However, appellant had raised demand of interest from the prior effective date which was challenged by the respondents before the Telecom Disputes Settlement and Appellate Tribunal. Tribunal allowed the appeal with certain directions on refund of interest charged for the extended period. Hence the present appeal. F

Disposing of the appeal, the Court G

HELD: 1.1. The licence fee becomes due and payable from the effective date. When the effective date stood postponed by a period of six months then that is the date from which the licence fee will have to be H

A reckoned and appropriate calculation made both for purposes of licence fee and interest. Unless the licence fee becomes due the question of payment of interest will not arise. [551-D-E]

B 1.2. The payment of interest is dependent upon the licence fee becoming due. Interest is not independent of the licence fee and when the licence fee had to be paid from a particular date, the interest would not accrue from a date prior to the licence fee becoming due for payment. [551-F-G]

C 1.3. The appellants should modify the demand issued to the respondents to the extent it is found to charge higher amount of licence fee or interest on the principles set out in this order. The excess amount which is liable to be refunded to the respondents shall be adjusted towards outstanding or future dues and if still any amount becomes due to them the same shall be refunded at the relevant bank rates. [551-H; 552-A]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5050 of 2002.

From the Judgment and Order dated 9.4.2002 of the Telecom Disputes Settlement & Appellate Tribunal, New Delhi in P.No. 10 of 2001.

E Mukul Rohtagi, Additional Solicitor General and Navin Chawla for the Appellants.

P. Chidambaram and C.S. Vadiyanathan, Manjul Bajpai, Ms. Bina Gupta, Praveen Thomas, Ms. Divya Roy, Ms. Shaily Yogi, Ms. Garima Dewan and R.K. Sharma for the Respondents.

F The Judgment of the Court was delivered by

G **RAJENDRA BABU, J.** Pursuant to a tender notice issued on 16.1.1995 the appellants granted licences to various cellular operators on terms and conditions mentioned therein. The Licence Agreement provided that the licensee has to pay the prescribed fee in advance in terms of Schedule B thereof and the period of licence was initially for 10 years. The licensee was obliged to install and run the system within 12 months of the effective date which is defined in the licence. The Agreement also provided that in case of failure to pay the licence fee within the prescribed time interest shall be charged on the amount due at certain rate.

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The New Telecom Policy [1999] NTP 99 was introduced thereafter which was known as 'migration package' and was offered to various licencees as set out in their letter dated 22.7.1999 which was accepted unconditionally by the members of respondent No.1 and other licencees on 26.7.1999. In the NTP, under the migration package it was stated that the effective date is postponed by about six months for payment of licence fee. Demands were raised on the basis that modified effective date is applicable only to licence fee and not to interest that had already accrued. The amounts were also paid by the cellular operators as demanded. Thereafter several representations were made stating that the charging of interest is not permissible as licence fee had not become due in view of the notional extension of the effective date. However, the appellants having stuck to their stand as set out in their demand, the respondent filed a petition on 26.6.2001 before the Telecom Disputes Settlement & Appellate Tribunal [hereinafter referred to as 'the Tribunal'] challenging, *inter alia* the demand of interest without making any adjustment on account of notional extension of the effective date by six months. The Tribunal accepted the stand of the cellular operators and directed the appellants to modify their demand subject to certain other incidental directions. This order is in challenge before us.

Schedule B to the License Agreement provides for definition, interpretation and transitional provisions relating to the conditions. Clause 1(j) defines 'effective date' as under:

"Effective date" is the date by which the licensing agreement comes into effect and the "effective date" is reckoned with effect from the date the license agreement is signed after payment of appropriate component of licence fee.

In the present case, the effective date is 12.12.1995 which stood extended to 12.6.1996.

The licence fee is due to be paid in a lump sum prior to signing of the License Agreement for the first year and for the subsequent years it was payable in quarterly instalments in advance. In NTP-99, the migration package provided that the licencee will be required to be paid (1) one time entry fee and (2) licence fee as a percentage share of gross revenue under the licence. The entry fee chargeable will be the license fee dues payable by the existing licencees upto 31.7.1999 duly adjusted consequent upon notional extension of effective date as per the conditions of the existing licence. The licence fee

A as a percentage of gross revenue under the licence shall be payable with effect from 1.8.1999.

B The dispute between the parties is in relation to payment of interest. While the stand of the appellants is that the relevant clause providing for the effective date which has been extended notionally for a period of six months is only for the purpose of payment of licence fee and not in respect of the interest which had accrued upon the licence fee which was to be paid under the original licence while it is the stand of the cellular operators that inasmuch as the effective date for calculation of the outstanding licence fee has been extended by a period of six months the interest will have to be calculated not from the original date but from the extended date and unless licence fee became due the question of payment of interest would not arise.

C The relevant provision of the migration package as set out in the letter dated 22.7.1999 are as follows.

D “(iv) A total of at least 35% of outstanding dues including interest payable as on 31.7.99 and LD charge in full will have to be paid on or before 15.8.1999. The amount paid, if any, against the earlier demand sent under letter dated 25.1.1999 for paying 20% or more of the outstanding dues, may be adjusted at licensee’s option. The balance dues will have to be paid on or before 31.1.2000 alongwith interest calculated upto the actual date of payment.

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F (ix) For the purpose of calculation of outstanding licence fee upto 31.7.1999, the effective date of all the licenses of Cellular Telecom Circle and Basic Telephone Services will be notionally extended by a period of six months. This date does not apply to metro cellular licences. This is with the further condition that where extension of effective date has been given earlier due to whatever circumstances, further extension will be given after deducting the period of extension already given subject to the total extension period not exceeding six months. In cases where extension of period of more than six months has already been given there will be no further change.

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H (x) The liquidated damages as per the existing licence agreement shall be paid latest by 15.8.99.

(xi) The period of licence shall be 20 years starting from the effective date of the existing license agreement.” A

The learned counsel on either side have adverted to several decisions but in our view none of these decisions have a bearing on the issues to be decided in the present case as they turn upon the language of the License Agreement and its provisions. B

It is no doubt true, as contended for appellants that the effective date is defined under the original licence under clause 1(j) which is to be reckoned from the date the License Agreement is signed after payment of appropriate component of licence fee. By reason of NTP-99 and the migration package the effective date stood extended by a period of six months. That means the effective date becomes a date which is after six months thereof thus, there is a substitution of the date of reckoning the licence fee. Whether it results in reduction of any licence fee payable or not is not for us to examine in the present proceeding. All that we are concerned in the present case is whether cellular operators are liable to pay interest without reference to the extended effective date as demanded by the appellants. The Department’s stand is that the expression “for the purpose of calculation of outstanding licence fee” used in clause (ix) will only cover licence fee as such and not outstanding interest. But this argument baffles all logic. The licence fee becomes due and payable from the effective date. When the effective date stood postponed by a period of six months then that is the date from which the licence fee will have to be reckoned and appropriate calculation made both for purposes of licence fee and interest. Unless the licence fee becomes due the question of payment of interest will not arise. However, the learned Additional Solicitor General submitted that there are two components, namely, the licence fee and interest which was payable. In respect of one component the effective date was extended but not in respect of the other. But payment of interest is dependent upon the licence fee becoming due. Interest is not independent of the licence fee and when the licence fee had to be paid from a particular date, the interest would not accrue from a date prior to the licence fee becoming due for payment. In that view of the matter, we think the view taken by the Tribunal is correct and no interference is called for. However, in regard to the relief granted by the Tribunal we think the direction should be modified. The direction to the authorities will now read as follows: C
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We direct the appellants to modify the demand issued to the respondents to the extent it is found to charge higher amount of licence fee or interest on H

- A** the principles set out by us in this order. The excess amount which is liable to be refunded to the respondents shall be adjusted towards outstanding or future dues and if still any amount becomes due to them the same shall be refunded at the relevant bank rates. In other respects the direction given by the Tribunal stands maintained.
- B** The appeal is thus dismissed subject to the modification made in the course of this order.

S.K.S

Appeal dismissed.