

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 8732/2015

UNION OF INDIA

APPELLANT(S)

VERSUS

TECH MAHINDRA BUSINESS SERVICES LTD.  
(FORMERLY KNOWN AS HUTCHINSON GLOBAL SERVICES LTD.)

RESPONDENT(S)

J U D G M E N T

KURIAN, J.

The whole dispute in this case stems out of a show cause notice issued to the respondent on 27.02.2013, which was challenged before the High Court of Bombay leading to judgment in Writ Petition No.529 of 2013. The relevant paragraph of the judgment reads as follows:-

"4. If the petitioner is directed to deposit the amounts determined to be the loss to the DoT/Government of India due to the unauthorized telecom resources being used, it would be bound to do so and its failure to do so would be met with the consequences as per

law. There can however, be no question of the petitioner being directed to furnish the undertaking to deposit the said amount as directed by the impugned order dated 27<sup>th</sup> February, 2013 unconditionally. That would deprive the petitioner the right to challenge the orders if any this regard. The petitioner is at liberty to challenge any order passed by the respondents including an order, if any, regarding the loss on account of the circumstances mentioned above in the impugned order. The impugned order would be subject to orders, if any, of the Court or Tribunal before which it is challenged.

5. The petitioner therefore shall not be required to furnish an unconditional undertaking as demanded. The undertaking shall be subject to the orders, if any, that may be passed in proceedings that the petitioner may adopt to challenge the same.

6. Needless to clarify therefore that the show-cause notice dated 20<sup>th</sup> January, 2013 remains outstanding.

7. The respondents have acceded to the petitioner's request of a personal hearing in respect of the show-cause notice. No coercive action shall be taken for a period of two weeks after the service of the order pursuant to the show-cause notice, if adverse to the petitioner."

2. Pursuant to the judgment of the High Court, the appellant passed a fresh order, after hearing the parties, on 14.07.2014. The relevant portions of the order read as follows:-

"Establishing end to end bandwidth is licensed through UASL, IP-II, NLD & ILD licenses. Therefore, the company is liable to pay the loss incurred to Government of India due to unauthorized establishment and operation of end to end bandwidth, by the company.

Therefore, M/s. Tech Mahindra Business Services Ltd (erstwhile Hutchison Global Services Pvt. Ltd.) is directed to pay a sum of Rs.6,11,73,460/- (Rupees Six Crore Eleven Lakh Seventy Three Thousand Four Hundred and Sixty only) towards loss

incurred to Government of India. This includes license fee, penalty and interest charges as prescribed in UASL license for the period April 2007 to June 2014. Ready reckoner ceiling tariff for STMs notified by TRAI vide notification no.312-7/2004-Eco. Dated 25<sup>th</sup> April, 2005 has been considered to calculate the license fee payable. Interest (compounded monthly) has been charged @ SBI PLR as on 1<sup>st</sup> April of the financial year concerned + 2%. Calculation sheet is annexured.

The amount shall be paid to CAO, CCA Maharashtra, BSNL Administrative Complex, Juhu Road, Santacruz (West), Mumbai, within 21 days from the date of issue of this demand note and details of payment shall be intimated to this office."

3. This order was challenged before the Telecom Disputes Settlement and Appellate Tribunal (for short, 'TDSAT'), leading to the order dated 01.07.2015, which is under challenge in this appeal. It has been categorically held in the order that .."the respondent has erred in calculating the

loss using the ceiling rate provided in an order issued in 2005 in a regime where the rates have been continuously falling. Further, it is not fair to use the highest percentage prescribed under the UASL License to calculate the licensee fee as well as the interest and penalty provided in a UASL license to calculate the total loss. We may note here that if an ordinary subscriber had made a similar mistake, the respondent-DoT could only have imposed fine as provided in the Telegraph Rules. Just because the petitioner happens to have an OSP registration, we do not see how interest and penalties as provided in a UASL license can be imposed on it".

4. Though such a finding was rendered, in order to put a quietus, the Tribunal took the view that "... interest of justice will be subserved if the respondent was to calculate the loss assuming the same payments as made by the petitioner to M/s. Tata Communications Ltd., for the same bandwidth. For the period prior to the year 2010, the highest payment made for any year (Rs.12,96,056/- for the year 2012) may be used for all the years. The license fee that M/s. Tata Communications Ltd., would have paid on this amount may be taken as the loss of licensee fee. The respondent may charge an interest of 10% from the date such license fee would have become due".

5. We have heard Ms. V. Mohana, learned senior

counsel appearing for the appellant and Mr. Meet Malhotra, learned senior counsel appearing for the respondent(s) extensively.

6. Ultimately, the whole issue revolves round the authority of the appellant to levy penalty and interest. According to the learned senior counsel for the appellant, there are valid notifications in that regard having force of law and also on the quantum. However, we do not find that any such material was available before the Tribunal. Bereft of such information only, the Tribunal ultimately passed the impugned order in the interest of justice.

7. In case there are such materials having the force of law, it is for the appellant to approach the Tribunal and seek review. The appeal is disposed of.

8. Having regard to the pendency of the appeal before us, we grant a period of thirty days from today to the appellant to do the needful. In case, no review is filed within thirty days from today, the amounts deposited by the respondent, after adjusting the amount already awarded by the Tribunal, shall be refunded to the respondent with the same rate of interest i.e. @ 10% per annum, within another fifteen days. In case such a review is filed, we request the Tribunal to dispose of the same expeditiously and preferably within six months. We make it clear that we have not otherwise considered the matter on merits

and hence all contentions available to both the sides are left open. Liberty is also available to the appellant in terms of the judgment in Vinod Kapoor v. State of Goa and Others, reported in (2012) 12 SCC 378.

9. Pending applications, if any, shall stand disposed of.

10. There shall be no orders as to costs.

.....J.  
[KURIAN JOSEPH]

.....J.  
[A.M. KHANWILKAR]

NEW DELHI;  
OCTOBER 03, 2018.