



PAKISTAN TELECOMMUNICATION AUTHORITY
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Decision under section 4(f) of Pakistan Telecommunication (Re-organization) Act, 1996

File No. 14-126/L&A/PTA/04

Name of the Parties

**M/s Easy Phone (Pvt.) Limited, 140-Aurangzeb Block,
New Garden Town, Lahore**

Claimant

Versus

**Chairman PTCL Islamabad, PTCL HQ's, G-8/4 Islamabad
Chief Engineer PSP PTCL HQ's, G-8/4 Islamabad**

Respondents

The Issues

“Claim under section 4(f) of Pakistan Telecommunication (Re-organization) Act, 1996
against the Respondents”

1. Briefly stated facts of the instant claim under section 4(f) of Pakistan Telecommunications Authority (Re-organization) Act, 1996 (the “Act”) was filed on 28th April 2004 and amended dated 12th October 2006 by the Claimant against the Respondents are that the officers of the Pakistan Telecommunication Authority (the “Authority”) passed a determination dated 23rd April 2003 (the “determination”) on the issue of excessive billing of Rs. 1662406 of five inactive lines on the ground that employees of both the Respondents and the Claimant were involved in misusing of payphone lines held liable to share the billing on equal proportions i.e., 50 percent by the Respondents and 50% by the Claimant.

2. In order to determine the matter two preliminary hearings dated 6th December 2006 and 12th December 2006 under regulations 22 of Pakistan Telecommunication (Functions & Powers) Regulations, 2004 were held. Muhammad Atta-ur-Rehman, Rana Liaqat, Muhammad UMER Kahn Vardag Advocate on behalf of the Claimant and Mr. Fayasl Saeed Qureshi, AM (Legal), Sardar Imam Qaisrani Assistant Legal Advisor, Wilayat Ali ACE (PSP-II), Muhammad Iqbal DCE (PSP-II) attended the hearing and, finally, the matter was fixed for final hearing before the Authority on 7th February, 2007.

3. Hearing before the Authority

3.1 Mr. Muhammad Atta-ur Rehman, Mr. Shahid Zulfiqar Ali, and Mr. Umer Khan Vardag Advocate from the Claimant and Mr. Fiaz-Ud Din, Sarfar Imam Qureshi, Muhammad Iqbal, Mr. Faysal Qureshi, Mr. Ghulam Samad and Muhammad Ansar from the Respondent attended the

final hearing.

3.2 Jurisdiction of the Authority

3.2.1 Respondent's objection to the jurisdiction

At the outset the Respondents argued that the matter has already been disposed of, hence, the Authority has no jurisdiction to entertain the instant claim on the ground that alleged facts do not constitute contraventions of the Act or rules or regulations made or licenses thereunder. The Respondent also argued that since the matter has already been decided on the instant claim is hit by section 11 of CPC, i.e. Res judicata, *'that the matter once adjudicated is received as a truth'*, and that there be end to litigation.

3.2.2 Authority's remarks

The Authority observed that the plea taken by the Respondent on the issue of jurisdiction does not fall within the principle of res-judicata. The instant claim is not on the matter already decided but it is based upon the implementation of the determination. Being an independent claim it does not attract principle of res-judicata.

3.2.3 The Claimant sought a relief in terms to refund of amount either paid in excess, exorbitant or suffered a loss due to the Respondents. The section 4(f) of the Act describes the jurisdiction of the Authority as to investigate and adjudicate on complaints and other claims made against licensees arising out of alleged contravention of the provision of the Act, the rules and licenses issued thereunder. Moreover, from the contents of the claim it is revealed that only two issues i.e., excessive payment over and above of the determination and exorbitant payment as bad paymaster fall within the scope of the Authority's jurisdiction while rest of the claims do not qualify the qualification as envisaged under the above-referred section of the Act. Hence, the Authority has power to adjudicate this claim on two issues only as aforementioned.

3.3 Respondents on maintainability of the claim

The Respondent further reiterated the Claimant has filed an F. A. O 79/2003 before the Honorable Lahore High Court Rawalpindi Bench Rawalpindi under section 7 of the Act against the determination which was withdrawn vide application dated 11th June 2003 and Revision petition under section 7(3) of the Act was also filed before the Secretary, Ministry of Communication, Islamabad. The Claimant has already sought relief from all forums available to it under the law and has itself withdrawn. Therefore, claim is not maintainable.

3.4 Excess amount paid by the Claimant to the Respondents pursuant to the determination

3.4.1 Claimant's claim

The Claimant pointed out that the determination held liable both the Claimant and the Respondents to share equally the disputed bill of three inactive lines, which came to Rs.1,662,406/-. The share of the complainant came to Rs.831,203/- whereas the total amount due against the Claimant by including bill of two active lines came to Rs.1,424,204/-. To the surprise of the Claimant, the Respondents demanded and received Rs.1,994,823/-. If the Authority had made a determination, then afterwards there was no room for the Respondents under an law or regulation to demand Rs.576,609/- over and above the amount which was

payable in the matter. Mr. Umer Khan Vardag Advocate further argued that mere signing of MoU could not be deemed to be valid agreement in the eye of law. A case law titled Mehran Sugar Mills Limited Vs Sindh Sugar Corporation Limited, 1995 CLC 707 [Karachi] was presented.

3.4.2 Respondent's response

The Respondent denied this fact as stated and argued on the ground that pursuant to the determination a MoU was signed after due deliberations and with the consent of the Claimant. In support of argument the Respondents produced a letter dated 7th June 2003 wherein the Claimant requested for reconciliation of its dues. The Respondents convened a meeting on 17th June 2003 and matter was resolved. The Claimant vide letter No. DPR.18-3/2003 dated 25th July 2003 intimated about its payable dues of Rs.1994823/- as reconciliation of disputed amount of Qital pur Exchange Khanewal Multan. Subsequently, MoU was signed on 1st day of October 2003. The Claimant point of view to the extent of validity of the MoU is not correct as the Claimant deposited post dated cheques and cleared its payable. Therefore, the arguments afforded by the Claimant are not valid.

3.5 Exorbitant amount paid by the Claimant as a bad paymaster

3.5.1 Claimant's claim

The Claimant argued that from the start of dispute, the Respondents declared the Claimant as bad paymaster and charged Rs.2,960,000/- towards new connections without any justification. In support of his argument he produced two letters vide No.15-26/CPPS-65/Fin/PTA dated 3rd March 2003 and Vide No. DG (LE)/1(4-4) Coord/PTA/02/Voll-II dated 4th April 2003 of PTA wherein the Respondents were directed to charge Rs. 2500/- as security for installation of pay phone lines. The Claimant further presented three interconnections agreements made with the Respondents on 14th July 2002, 25th August 2003 and 31st Jan 2006 respectively. Clause 7.3.4 of interconnect agreement dated 25th August 2003 provides that in case of any default in payment within due date required to pay Rs. 7500/-. However, on the direction dated 9th October 2004 of the PTA the Respondents declared the Claimant as good paymaster.

3.5.2 Respondent's reply

The Respondents confronted and submitted due to non-payment of its dues the case was reconciled decided not to declare the Claimant as a good pay master until clearance of outstanding dues and later on the Respondents vide letter No. PSP/TECH-090/CCC dated 27th October 2004 declared it as good paymaster. The Respondents further offered that in accordance with clause 7.2.4 of the agreement they are obliged to refund all the security in excess of Rs.12.5 Million subject to the verification and reconciliation from the filed revenue office of the Respondents.

3.6 Other claims i.e., loss, cost of defending case, loss of reputation and legal professional charges

3.6.1 Claimant's claim

The Claimant further submitted that the high handedness of the Respondents that when a dispute was pending before this Authority, the Respondents disconnected the other telephone connections of the Claimant thereby forcing it to succumb to every illegal demand of Respondents. This disconnection caused huge losses to the complainant for which as to

token to claim of fifty million rupees (50,000,000/-) is made by the complainant. Due to illegal, false and fabricated case the Claimant suffered following losses in lieu of litigation which was absolutely unjustified;

a.	Cost for defending the case	Rs.500,000/-
b.	Loss of reputation	Rs.5,000,000/-
c.	Legal professionals cost	Rs.500,000/-

3.6.2 In last the Claimant prayed that a false case was registered against its employee. FIA duly investigated the matter and the employees of the Claimant was found innocent and later on discharged from the case. The Claimant argued that in the light of its employee having been discharged by FIA the determination should be withdrawn as it has become bad in the eyes of law.

3.6.3 Respondent's reply

The Respondents replied that the determination has been accepted and implemented in its true letter and spirit. Therefore, Respondent is not at all in contempt or violation of any order of PTA. The claim of the Claimant is *malafide* and illegal.

4. **Decision of the Authority**

After perusal of record and arguments, the Authority hereby decides as under:

4.1 The record placed before us shows and also agreed by the Respondent and admitted by the Claimant, there has been signed and executed an MoU between the parties. The amount of Rs. 8,31,203/- i.e. 50% of the amount disputed earlier which the Claimant was liable to pay in the light of the previous determination of the officer of the Authority and also the amount paid is excess of the said 50%, has been paid by the Claimant after agreeing to pay to the Respondent the said amount vide MoU signed between the parties on 1st October 2003. We are unable to agree to the Claimant's assertion that the MoU was signed under force and coercion as, the Claimant has nowhere challenged or questioned signing of the aforementioned MoU nor has ever brought the aforementioned fact in the notice of the Authority earlier. Even through the claim in hand filed by the Claimant, the validity and sanctity of the aforementioned MoU has not been questioned by the Claimant. Hence, it goes without saying that the MoU has been signed by the parties with free consent and the amount once agreed to be paid by the Claimant to the Respondent for certain reasons cannot be taken back by exploiting the provisions of section 4(f) of the Act nor same can be demanded back at this belated stage. However, so far as the amount of Rs. 282114/- is concerned it is apparent from the record that the said amount should have been billed by the Respondent in the names of the respective subscribers of the two lines i.e. M/s World Call and M/s Super Tel. This amount of Rs. 282114/- has been taken from the Claimant without any justification regarding which the Respondent is direct to either return the same amount to the Claimant or to adjusted in the future bills of the Claimant.

4.2 On the issue of bad pay master and payment of pay phone lines thereon we reached at the conclusion that clause 7.3.4 of interconnect agreement dated 25th August 2003 clearly provides that in case of any default of dues within due date, Rs.7500/- as security of pay phone line will be payable. Here it may be noted that the Respondents agreed that the Claimant has paid all payment

and did not default in payment of its dues except for the disputed amount. In such a situation, we wonder how the Claimant was declared as bad paymaster. PTAs' letters No. 15-26/CPPS-65/Fin/PTA dated 3rd March 2003 and Vide No. DG (LE)/1(4-4) Coord/PTA/02/Voll-II dated 4th April 2003 also directed the Respondents to charge Rs.2500/- as security for installation of PCO.

4.3 For the foregoing reasons, the Respondent has no right to charge exorbitant security of Rs.7500/- instead of Rs.2500/-. Therefore, the amount over and above Rs. 2500/- paid by the Claimant to the Respondent as security should be paid back or adjusted in the bills of the Claimant from 3rd March, 2003 onwards.

4.4 The Case Law 1999 CLC 707 as referred to by the Claimant's counsel is irrelevant for the instant case. The said case law pertains to a situation where specific performance of an MoU is sought through a court of law. While in the case in hand the parties have already take actions pursuant to the document signed by them.

4.5 Lastly, the payer of the Claimant to review the determination cannot be entertained on the ground that under the Act the Authority has no power to review its earlier determinations. Orders passed by the Authority are challengeable before the High Court. The earlier determination of the Authority, having not been question before the High Court by any party, has attained finality.

Claim disposed of

Member (Finance)

Member (Technical)

The decision is passed on 20th day of February 2007 and comprises 5 pages only.