

Before the Ombudsman
KPFC BHAVAN, C.V.Raman Pillai Road , Vellayambalam,
Thiruvananthapuram-695 010.

Order Dated 1st March 2007

Present: M.Sivathanu Pillai, Ombudsman-in Charge.

Appeal petition No 2 of 2007.

CGRF order OP No. 110/2006. dated 30th November 2006.

M/s.Reliance Communications,

1st Floor, Vazhveli Buildings (above SBT ATM),

Kesevadasapuram-Ulloor Road,

Thiruvananthapuram 695 004.

Appellant

Vs

Chief Engineer(Commercial & Tariff),

8th Floor, Vaidyuthi Bhavan,

Pattom, Thiruvananthapuram 695 004.

Respondent

Date of hearing: 27th February 2007.

a. The appeal is on the tariff applied to the installations of M/s Reliance Communications. The grounds of appeal are as given below:

1. Appellant has obtained a licence from Government of India, Department of Telecommunications, for various telecom services and appellant is doing only IT and Telecom business which is definitely a part of the IT and Telecom Industry.
2. Appellant is offering various telecom and internet services after investing a huge amount of Rs 1000 Crore in Kerala.
3. Appellant is offering various Telecom and Internet services which cannot be compared with shops selling brought out products on a margin or those doing petty services for whom Commercial tariff is applicable.
4. Government of India, State Governments and Banks have recognized IT and Telecom services as Industry.
5. Industrial tariff is applied by Kerala State Electricity Board(herinafter called Board) for various Audio/Video Cassette Recording establishments. Computer consultancy services engaged in data processing activities are classified by Board under Industrial tariff.
6. IT and Telecom do not find a place in the items of consumers for whom LT VII tariff is applicable. Neither the word IT nor the word

- Telecom is appearing anywhere in the tariff categorization under LT VII.
7. Board's contention is that very definition of IT units covers only those who manufacture hardware or develop software. Tariff order of Board uses the word Information Technology. This covers hardware, which broadly denotes the electronic equipment, the network over which the information is transmitted and received as also the software. Without the network and equipment there is no information transmission or reception, manipulation control or even Internet.
 8. It is strange that a company which has put up and has been maintaining an all India massive network offering broadband, data voice and internet services cannot be covered under the IT umbrella for the purpose of Industrial tariff whereas a workshop offering repair services is classified as LT Industrial tariff.
 9. As per the definition of IT given by ATIS, activities of appellant come under IT.
 10. In the IT policy released by Government of Kerala in December 2001, IT includes IT and Telecommunications industry and are clearly entitled to tariff under LT IV and HT I. Maharashtra State Electricity Board has issued orders applying LTP-G tariff to M/s Tata Teleservices.
 11. The fact that BSNL and cellular operators are charged with Commercial Tariff does not imply its automatic implementation for Reliance Communications .
 12. As per Sec 108 of the Electricity Act 2003, the policy directives are binding on the Commission and hence the directives given in the IT policy are to be given effect to.

b. The petition was heard on 27th February 2007. Authorised counsel for appellant was present. **Respondent was not present for the hearing. But respondent has forwarded an argument note to the Chairman of KSERC.** The letter is dated 26-02-07. Appellant has strongly criticized the attitude of the respondent in furnishing belated statements and that too was not given to appellant or Ombudsman. This attitude of respondent is not at all reasonable. Respondent has questioned the jurisdiction of Ombudsman. But this cannot be taken as the reason for sending the statement to Chairman of KSERC.

Appellant has pointed out that Board has violated directions in IT Policy and the provisions in the Electricity Act 2003. This can be taken with

CGRF and appeal on the same taken up with Ombudsman. Also, Ombudsman can interfere where it is pointed out that the regulations of KSERC are violated.

c. Appellant submitted a further note of arguments on 27-02-07. Appellant further argued that the Social aspect of providing a service should be taken in to consideration while applying the tariff. Appellant had no further point for adding during hearing.

d. Board in the statement filed has stated tariff is determined by the KSERC and hence Ombudsman has no jurisdiction on the fixation of tariff. Board further pointed out that the Appellant couldn't represent a whole list of consumers unless authorized by the consumers. Board has stated that Technopark itself has applied Commercial tariff for Reliance Communications. Also Board has pointed out that the document given as Annexure 8 by the Appellant is not the IT policy document but is the IT Incentive Scheme.

e. The issue to be considered is whether Telecomservice is covered by the IT Policy and whether the incentives given in the IT policy are applicable in the case of Reliance Communications.

f. The Licensee agreement dated 20th July 2001 is between DOT and Reliance Communications Pvt Ltd. The scope of the Licence is given in para 2 of the Licence. Para 2.a and 2.b of the Licence clearly state that it is a service which covers collection, carriage, transmission and delivery of voice or non-voice Messages. It is clear that the Licence is only for Communication Service. The service is similar to the one offered by BSNL. The details given in Annexure 2 of the petition does in no way help to conclude that the activity is industrial. The name of the Licensee further confirms and clarifies the activity as a service provider. The appellant is clearly a Telecommunication service provider. As per para 2.2(d) the Licensee has to provide the services by establishing a state of the art digital network. No value addition on any hardware like those done by cassette/CD recording is carried out. No software development for sale is also envisaged by the Licence.

g. The argument that the business of appellant cannot be compared with shops engaged in sale of finished products is not fully correct. What the appellant does is to transmit data and deliver at the desired destination without any value addition. Also no manufacturing is involved. The activity is very much similar to those provided by Cable TV, satellite communications, installations of cellular/mobile and mobile phone service providers included in LT VII(A) of tariff published by Board. The activity is not at all different from that of BSNL.

h. The statement that Government of India, State Government and Banks have recognized IT and Telecom services, as Industry is not supported with any proof. Financing institutions give loan for commercial service sector also.

i. Manufacturing of IT and Telecom equipments cannot be compared with Telecom Service where the equipments are used to provide a service. Telecom service provider is similar to any service provider who cannot be compared with the manufacturing industry of the equipments used in the service. Massive network setup does not change the status.

j. Undersigned has seen the working of Regional Switching Station of Reliance Communications at Kozhikode where only switching of channels alone are done.

k. LT VII (A) tariff covers, installations of cellular mobile communications/installation of cable TV network, satellite Communications, telephone exchanges etc. Appellant's infrastructure includes these types of equipments. Hence the statement that IT and Telecom do not find a place in LTVII (A) tariff of Board is not correct.

l. Definition of IT given by ATIS clearly says that IT is the branch of technology used for study and application of data and does not mean the service provided using the hardware and software developed at the research and development units. The name of the appellant and the scope of the Licence make this very clear that the appellant is not a technology developer. Licence fee specifying a service area is insisted only in the case of commercial service providers and not manufacturing units.

m. Policy document of Government has not included Telecommunication service. What the Appellant has given is the Incentive document. The Policy document has not been given. The draft IT Policy now posted in Internet by Government of Kerala does not include Telecommunication Service. Further in the incentive document submitted by the Appellant, IT Industry has been defined as hardware and software industries. The definitions of IT software, IT service and IT enabled service clearly excludes the telecommunication service. Further Telecommunications is not a new service. It is a very old service compared to IT, which is a new development. Appellant's reference to IT policy has nothing to do with Communication business. It has to be looked into whether Government of Kerala has a Telecommunications Policy. IT has become a subject for discussion only with the advent of computers. But telecommunication is as old as the Morse Code. All the above facts lead to the conclusion that there is no violation of Sec 108 of Electricity Act 2003.

n. Maharashtra State Electricity Board's tariff order under category LTP-G refers to IT industry and IT enabled service and not telecom service. Clarification given to Tata Tele Services does not mean that telecom service is under Industrial tariff. Also this argument is applicable in the case of other Telecom service producers such as BSNL.

o. The activities of BSNL and Appellant are the same and Appellant agreed with this. The point that IT Policy was released only in 2001 and hence BSNL was not given Industrial tariff cannot be accepted because the tariff revision was released only in October 2002. As already pointed out above, the draft IT Policy released by Government does not mention anything about Telecommunications Service. Also, as long as BSNL is under Commercial tariff, Reliance Communications should also be under Commercial Tariff. The question as to whether Telecommunications Service is to be categorized under Industrial category irrespective of IT Policy has to be handled by the Regulatory Commission. The petition is disposed off.

Sd/-
OMBUDSMAN

P 2/2007/.....Dated

Forwarded to

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Secretary-in-Charge