

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 11th DAY OF OCTOBER 2012

BEFORE

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

WRIT PETITION Nos. 37882-893 OF 2011 (LB)

BETWEEN:

1. M/s. Reliance Communications Limited
Having its Circle Office at No.12/2,
“Subramanya Arcade”,
Tower B, Ground Floor,
Bannerghatta Road,
Bangalore – 560 029,
Represented by its
Authorized Signatory
Mr. Padmanabhan G.

2. Reliance Infratel Limited,
Having its Circle Office at No.12/2,
“Subramanya Arcade”,
Tower B, Ground Floor,
Bannerghatta Road,
Bangalore – 560 029,
Represented by its
Authorized Signatory
Mr. Padmanabhan G.

3. M/s Spectra ISP Networks Private Limited,
(formerly known as Spectra Net Private Limited)
A company registered under the
Companies Act, 1956 having its registered
Office at A.60, Naraiana Industrial Area,
Phase-I, New Delhi – 110 028,
Having its Bangalore Office at
No.602, 5th floor, Oxford Towers,
139, Old Airport Road,
Kodihalli,
Bangalore – 560 008,
Represented by its authorised
Signatory Mr.Dileep Kachroo.

4. M/s Bharti Airtel Limited,
Having its Karnataka Circle Office
No.55, Divyashree towers,
Bannerghatta Main Road,
Bangalore – 560 029,
Represented by its authorised
Signatory Shri Nagaraj S.

5. M/s Tata teleservices Limited,
Having its registered office at
Jeevan Bharti Tower-1, 10th floor,
Connaught Circus,
New Delhi – 110 001 and
Local Office at A-Block,
Silicon Terraces, No.30/1,
Hosur Main road,
Koramangala,
Bangalore – 560 095
Represented by its authorised
Signatory
Mr.Safeer Ahmed.

6. M/s Idea Cellular Limited,
(Formerly known as Spice
Communications Limited)
A Company registered under the
Companies Act,1956
Having its registered office at
Suman Towers, Plot No.18,
Sector –II, Gandhinagar – 382 001
Gujarath State, having its
Karnataka Circle Office at
No.75, Civil Station, Richmond road,
Bangalore – 560 025
Represented by its Authorised
Signatory Shri Gurudatta H.R.

7. M/s Indusind Media and Communications Limited
Also known as In Cuble
(Formerly known as M/s Indusind
media and Communications Private Limited)
A company registered under the Companies
Act, 1956 having its registered office at
315, Charni Road,
Mum,bai – 400 004
Represented by its Authorised Signatory
Pratap S Wadhwa.

8. M/s Hathway Cable and Datacom Limited
(Formerly known as M/s Hathway
Cable and Datacom Private Limited)
A company registered under the Companies
Act, 1956 having its registered office at
'Rehejas' 4th floor, Corner of MAIN
Avenue and V.P.Road, Santa Cruz (West),
MUMBAI – 400 054,
Having its Bangalore Office at

No.73, 4t floor, Sree Complex,
St.John's road,
Bangalore 560 042
Represented by its authorised
Signatory,
Shri Suresh Kumar A .

9. M/s Tata Communications Limited.,
(Earlier known as Videsh Sanchar
Nigam Limited)

A company registered under
The Companies Act, 1956,
Having its registered office at
M.G.Road, Fort,
Mumbai – 400 001
Its Bangalore Office at
No.18, 19 and 20, EPIP Layout ,
KIADB, White Field,
Bangalore - 560 066
Represented by its Authorised
Signatory
Mr.A.K.Mishra.

- 10.M/s Dishnet Wireless Limited,
(Formerly known as M/s Dishnet
DSL Limited)

A company registered under the Companies
Act, 1956 having its registered office at
769, Spencer's Plaza, 5th floor,
Anna Salai, Chennai –600 002 and its
Circle Office at No.66/5-25, C/o Aircel
Limited, H.M.Vibha Towers,
Luskar Hosur Road, Adugodi,
Bangalore – 560 029
Represented by its Authorised

Signatory
Mr.Nitin Mulchandani.

11.M/s Vodafone Essar South Limited,
Having its registered office at
C-48, Chota Industrial Area Phase-II
New Delhi – 110 020
11/1, 12/1, Koramangala,
Intermediate Ring Road,
Amarjyothi Layout,
Bangalore 560 071
Represented by its Constituted
Attorney Mr.Vivekanandan C.

12.M/s Bell Teleservices India Private Limited,
Having its registered office at No.16,
1st floor, 1st main, 5th cross,
HIG Colony, RMV 2nd Stage,
Bangalore – 560 094
Represented by its Chairman and
Managing Director Shri Giri N.M.

..PETITIONERS

(By Shri Venkataraman, Senior Advocate for Shri S.V. Bhat,
Advocate)

AND :

1. The State of Karnataka,
Department of Information
Technology, M.S.Building,
Vidhana Veedhi ,
Bangalore – 560 001
By its Principal Secretary.

2. Bruhath Bangalore Mahanagara Palike,
J.C.Road,
Bangalore – 560 002
Represented by its Commissioner.
3. The Chief Engineer,
Bruhath Bangalore Mahanagara Palike,
J.C.Road,
Bangalore – 560 002.
4. Director General and Inspector General
Of Police,
No.1, Nrupathunga road,
Bangalore – 560 001.
5. Union of India,
Department of Telecommunications,
Sanchar Bhavan, No.20, Ashoka road,
New Delhi – 110 001
Represented by its Secretary. .. RESPONDENTS

(By Shri K.V.Narasimhan, Advocate for R-2
Smt. Howhar Unnisa, CGC for R-5
Shri K.S.Mallikarjunaiah, Government Pleader for R-1)

These Writ Petitions filed under Articles 226 and 227 of the Constitution of India praying to quash the resolution at Subject No.1(22)11-12 dated 31.5.2011 passed by the second respondent at Annexure-K.

These petitions coming on for Orders on Interlocutory Application this day, the Court made the following:

ORDER

After having heard the matter for some time, the learned Counsel for respondents 2 and 3 had declared that the said respondents would not claim rents pursuant to Annexure-K and would withdraw Annexures - H.1 to H.8 and any applications by the petitioners seeking permission for laying of the Optical Fibre Cables (Hereinafter referred to as ' the OFC' for brevity) in question would be considered in accordance with law and accordingly, an affidavit of the Head of the Legal Cell of the Bruhat Bengaluru Mahanagara Palike is filed to-day , which reads as follows:

"AFFIDAVIT

I, Rachappa A Chinniwal, Head of the legal cell, Bruhat Bengaluru Mahanagara Palike, Hudson Circle, Bangalore, do hereby solemnly affirm and state as follows:

1. I am the Head of the Legal Cell, Bruhath Bangalore Mahanagara Palike, Bangalore, and I am representing the Respondent Mahanagara Palike, in the above case. I am conversant with the facts of the case.

2. The Respondent No.2 would not claim rents pursuant to Annexure-K from the petitioners till such time appropriate rules/bye laws/ regulations are made.
3. The Respondent No.2 withdraws Annexures-H1 to H8 and it would not be given effect to.
4. The applications for permission, if any, of the petitioners is pending consideration, same would be considered in accordance with law.

I, the Deponent herein do hereby declare that what is stated in the above paragraphs are true and correct to the best of my knowledge, belief and information.”

2. The learned Senior Advocate, Shri Venkataraman, appearing for the Counsel for the petitioners, however, would submit that there is one aspect, which requires to be considered by this court. Though the respondents have fairly sought to withdraw the claim for rent at this point of time, till appropriate Rules are framed and the assurance that the applications pending consideration would be addressed, the withdrawal of Annexures-H.1 to H.8, however, would also have the effect of withdrawing the assurance that the so-called illegal OFCs would be regularised.

This may result in the respondents taking measures to forthwith disconnect or remove all OFCs indiscriminately, without notice to the petitioners. Hence, the learned Senior Advocate would submit that there be an observation by this court that no such precipitative action would follow without notice to the petitioners or in the alternative, to fix a reasonable amount to regularise any such purported illegal OFCs are concerned.

3. The learned Counsel for respondents 2 and 3 would vehemently oppose any such qualification, in the disposal of the petition. It is pointed out that the writ petition is restricted to three aspects, all of which have been considered in the affidavit now filed. Any conditions being imposed on the respondents, notwithstanding the concession now made, would result in traversing beyond the pleadings of the petitioners and imposing a condition, which is totally unwarranted. It is after much contemplation that the present measure is being taken by the respondents in order to avoid acrimony and to ensure that the entire process is regulated as intended. Therefore, if there is to

be any such condition imposed the respondents would withdraw the present offer of not claiming the rent or withdrawing Annexures H.1 to H.8 and this, the learned Counsel, would submit is a firm commitment and if any such conditions are imposed by this court, it would result in a miscarriage of justice and therefore, prays that the affidavit be recorded and the petition may be disposed of, unconditionally.

4. While it is true that it is the option of the respondents to make an offer to settle the matter at this stage on the terms proposed, the respondents also having declared that they would frame Rules and Regulations insofar as the claim for rent is concerned, would indicate that there are no Rules or Regulations, under which respondents 2 and 3 have been imposing or collecting any kind of charges from the petitioners nor is it evident that there are any Rules and Regulations insofar as granting permissions and monitoring the manner in which the petitioners have been laying their OFCs. Therefore, there is no impediment for respondents 2 and 3 to also regulate the laying of OFCs along

with collection of rent which they propose and to monitor the laying of cables also in accordance with the Rules and Regulations to be framed. Though this is not a mandate that is issued to the respondents, it is a suggestion. The interest of justice would demand that when the entire arrangement is in a state of flux, as readily admitted by the respondents, it would not be just for the respondents to act in a manner which denies an opportunity of being heard to the petitioners, even if there are OFCs laid, which requires to be dealt with swiftly in the interest of the public. Therefore, till such time there are Rules and Regulations in place not only in relation to the collection of rent, also to regulate the manner in which the petitioners lay their OFCs and to prevent any illegal OFCs being laid, it would be appropriate if respondents 2 and 3 should place the petitioners on notice of any intended disconnection or other punitive action they intend to take insofar as the OFCs, which are construed as being illegal. If there are instances where the petitioners deny that any OFCs have been laid by them or if the cables are laid in such

unlikely places as sewerage lines, it is open for the respondents to deal with the same as it pleases.

Therefore, the affidavit now filed is placed on record and the petition is disposed of with the above observations, which are observations for the guidance of the parties to regulate their affairs. It is open for the petitioners to approach the Commissioner, BBMP with their grievances, who is requested to address the same and find effective solutions without the petitioners having to approach this court.

Sd/-
JUDGE