

**TELECOM DISPUTES SETTLEMENT AND APPELLATE TRIBUNAL  
NEW DELHI**

**DATED THE 24<sup>th</sup> APRIL , 2001.**

**APPEAL NO. 1 of 2001**

(From the directions and orders dated 25<sup>th</sup> January 2001 and 7<sup>th</sup> February, 2001  
passed by the TRAI)

Bharat Sanchar Nigam Ltd. .....Appellant  
Through its:  
Chairman & Managing Director,

Vs.

Cellular Operators Association of India & Ors. .....  
Respondents

**BEFORE:**

**HON'BLE MR. JUSTICE SUHAS C. SEN,  
CHAIRPERSON  
MR. R.U.S. PRASAD, MEMBER  
MR. P.R. DASTUPTA, MEMBER**

For the Appellants:	Mr. Kirti Rawal, Additional Solicitor General and Mr. Ankur Talwar, Advocates with him.
For MTNL	Mr. C.s. Vaidyanathan, Sr. Advocate and Mr. Arun Kathpalia, Advocate with him
For the Respondent/ (COAI)	Mr. Gopal Subramanum, Sr. Advocate and Mr. Manjul Bajpai, Advocate with him.
For the Respondent/ (ABTO)	Mr.. Ramji Srinivasan, and Ms. Geeta Nair, Advocates.

**[Natural Justice – principles of – held - Violated because no hearing was given before passing impugned Order by TRAI. Even post-decisional hearing was given by Secretary instead of TRAI itself- Directions - Section 13 - Section 11(2) of TRAI Act,1997 - Revised Pulse Rate - Inter network calls - impugned order/ direction set aside – matter remanded to TRAI]**

**ORDER**

This is an appeal against the directions/orders issued by the Telecom Regulatory Authority of India (TRAI) on 25<sup>th</sup> January, 2001 and the communication dated 7<sup>th</sup> February, 2001. When the appeal was filed, on 22<sup>nd</sup> February, 2001 a prayer was made for an interim order staying the operation of the impugned directions/orders issued by the TRAI. We passed an interim order as prayed till the disposal of the appeal. The order passed in the presence of the counsel for the MTNL, which supported the stand taken by the appellant, Bharat Sanchar Nigam Ltd. Counsel for Cellular Operators Association of India (COAI) and Association of Basic Telephone Operators (ABTO) were also heard before the interim order was passed on 22<sup>nd</sup> February, 2001.

The appeal has now come up for final hearing. It has been strenuously contended by Mr. Kirit Rawal, Addl. Solicitor General appearing for the appellant Bharat Sanchar Nigam Ltd. (BSNL) that the impugned orders/directions of TRAI were erroneous on a number of counts. Mr. C.S. Vaidyanathan, counsel for MTNL supported the case made out by BSNL and raised certain additional points.

Mr. Gopal Subramanum has argued the case at length and contended that the order was entirely justified and no interference was called for in the order passed. Mr. Ramji Srinivasan appearing on behalf of the ABTO has also supported the order passed by the TRAI and has contended that this appeal is frivolous and should be dismissed. Alternatively, he invited us to go into the merits of the case and decide the case as we deem fit. We need not elaborately examine the grounds urged on behalf of BSNL and MTNL challenging the impugned orders/directions nor do we propose to examine the arguments advanced on behalf of ABTO, COAI because, in our opinion, the impugned orders/directions passed by the Telecom Regulatory Authority of India Act, 1997 (as amended) suffer from a serious infirmity passed by the TRAI.

The facts relevant for the purpose of the case are that on 28<sup>th</sup> May, 1999, in order to ensure effective inter connection between different service providers and to regulate relations inter se amongst service providers for sharing the revenue derived from providing telecommunication services, TRAI in exercise of its powers under subsection (2) of section 11 of the Telecom Regulatory Authority of India Act 1997 issued an order, which was notified in the official gazette determining tariff at which telecommunication services within India and outside shall be provided. This order, Telecommunication Tariff Order, 1999, became effective from the date of its notification in the official gazette, Rule 6 of the Order provide: -

#### "6. Flexibility and Packages

- (i) The service provider shall offer the standard packages(s) to all subscribers.
- (ii) Where a tariff has been specified as a ceiling, no tariff shall be fixed in excess of such ceiling.
- (iii) Where a tariff has been specified as a floor, no tariff shall be fixed before such floor.
- (iv) In all other cases, a service provider may, in addition to the standard package, offer alternative combinations of tariff to

different classed of subscribers in a non-discriminatory manner.”

There is no dispute that a standard package as laid down by the TRAI was, provided to all subscribers. The dispute, in this case, started when in December, 2000, BSNL took a decision to change its tariff w.e.f. 26<sup>th</sup> January, 2001. According to the BSNL it was entirely within its rights to do so in conformity with Rule 6 (iv) as set out herein above. On 29<sup>th</sup> December, 2000 the proposal for changed tariff, which has been made effective on 25.1.2001, was communicated by BSNL to TRAI on 5<sup>th</sup> January, 2001. BSNL announced its new tariff policy as five clear working days, after the communication of its proposed new tariff will be implemented from 26<sup>th</sup> January, 2001.

COAI made a representation to TRAI objecting to the revised tariff by BSNL stating that it will cause great prejudice to the cellular operators and also the consumers on a number of grounds. On 18<sup>th</sup> January, 2001. BSNL issued a tariff rate on a concessional pulse rate for PSTN calls between Delhi and some specific nearby towns like Rewari, Panipat. Rohtak, etc. On 19<sup>th</sup> January, 2001 ABTO made representation to the Telecom Regulatory Authority of India Act, 1997 (as amended) against the new tariff rates promulgated by BSNL.

On 24<sup>th</sup> January, 2001 TRAI decided that BSNL's revised pulse rate shall apply to inter net-work call also. There after, on 25<sup>th</sup> January, 2001 TRAI issued a direction under section 13 in exercise of its powers directing that the revised pulse rate should also apply for calculating the carriage charge to be paid by a cellular mobile network to the fixed network, as also for the carriage charge paid by private basic service providers to BSNL on intra-circle fixed to fixed network calls.

In exercise of powers under section 11(2) of the TRAI Act, TRAI notified the Telecommunication Tariff (11<sup>th</sup> Amendments) Order, 2001, This order provided that the revised pulse rates shall be applicable to inter network calls. No hearing was given to BSNL before passing these orders by the Telecom Regulatory Authority of India Act, 1997 (as amended). On 25<sup>th</sup> January, 2001 BSNL made a representation to the TRAI objecting to the Notification of the date. On 26<sup>th</sup> January, 2001, the new tariff policy was implemented by BSNL and on 1<sup>st</sup> February, 2001 the new rentals were made leviable effectively by BSNL. On 7<sup>th</sup> February, 2001 TRAI informed BSNL upon a perusal of the representation of the BSNL as well as a discussion held at the level of the Secretaries, Secretary TRAI with the representative of the BSNL, the decision of the TRAI will continue to be in force and BSNL was directed to implement the decision of TRAI. There is no dispute that BSNL was not given any hearing before a decision was arrived at by TRAI and the direction and or orders on 25<sup>th</sup> January and 7<sup>th</sup> February, 2001 were passed by TRAI. A post facto hearing was given to the representative of the BSNL by the Secretary, TRAI will and not by the TRAI itself. In our judgment, before any order was assed modifying BSNL and any directions/orders passed by TRAI behind the back of the BSNL will have to be set aside as they were passed without any opportunity of hearing to the BSNL. The principles of natural justice have been grossly violated in this case. Even the post decisional

hearing to the representation made by the BSNL was given by the Secretary of the TRAI instead of TRAI itself.

Since the defect of not giving a hearing to the BSNL goes to the root of the matter we set aside the impugned orders/directions given by TRAI on 25<sup>th</sup> January and 7<sup>th</sup> February, 2001. TRAI will be at liberty to pass fresh order and /or directions in accordance with law after giving all the parties a fresh hearing. All the parties before us will be at liberty to urge all points including points taken before us before TRAI. We make it clear that we have not expressed any view on the merits of the controversy raised before us. All the points left open to be decided by TRAI. The appeal is disposed of finally as above.

Sd/-  
(SUHAS C. SEN)  
CHAIRPERSON

Sd/-  
(R.U.S. PRASAD)  
MEMBER

Sd/-  
(P.R.DASGUPTA)  
MEMBER