

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

**DATED 29<sup>th</sup> JANUARY, 2002**

**APPEAL No.7 OF 2001  
(With M.A. No. 44 of 2001)**

|  |                |
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| Videsh Sanchar Nigam Ltd.                      | ...Appellant   |
| Vs   |                |
| Telecom Regulatory Authority of India & Others | ...Respondents |

**With  
APPEAL NO. 8 OF 2001**

|   |               |
|---|---------------|
| Internet Service Providers Association of India | ...Appellant  |
| Vs.   |               |
| Videsh Sanchar Nigam Ltd.,                      | ...Respondent |

**AND**

**PETITION NO. 20 OF 2001**

|  |             |
|--|-------------|
| Internet Service Providers Association of India & Others | Petitioners |
| Vs.  |             |
| Videsh Sanchar Nigam Ltd.,                               | Respondent  |

**BEFORE:**

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

|  |  |
|--|--|
| For Appellant<br>(In Appeal No. 7 of 2001)   | Mr. C.S. Vaidyanathan, Senior Advocate with<br>Mr. Sarud Abhayankar, Advocates<br>Mr. Mahesh Agarwal<br>Mr. Rishi Agarwal and<br>Mr. Manu Krishnan, Advocates. |
| For Respondent No. 1<br>(In Appeal No. 7 of 2001)<br>For Respondents 2,3 &4<br>(In appeal No. 7 of 2001) | Mr. Meet Malhotra, with<br>Mr. Raghuvinder Singh, Advocates<br>Mr. P. Nagesh<br>Mr. K.V. Balakrishnan<br>Ms. Mahima Singh and<br>Ms. Indu Rekha, Advocates     |
| For Appellant<br>(In Appeal No. 8 of 2001)   | Mr. P. Nagesh<br>Mr. K.V. Balakrishnan<br>Ms. Mahima Singh and<br>Ms. Indu Rekha, Advocates  |
| For Respondent<br>(In Appeal No. 8 of 2001)  | Mr. C.S. Vaidyanathan, Senior Advocate with<br>Mr. Sarud Abhayankar, Advocates   |

Mr. Mahesh Agarwal  
Mr. Rishi Agarwal and Mr. Manu  
Krishnan, Advocates

For Petitioners  
(In Petition No. 20 of 2001)

Mr. P. Nagesh  
Mr. K.V. Balakrishnan  
Ms. Mahima Singh and  
Ms. Indu Rekha, Advocates

For Respondent  
(In Petition No. 20 of 2001)

Mr. C.S. Vaidyanathan, Senior Advocate with  
Mr. Sarud Abhayankar, Advocates  
Mr. Mahesh Agarwal  
Mr. Rishi Agarwal and Mr. Manu  
Krishnan, Advocates

**Natural justice – principles of – powers of TRAI when the Act vests jurisdiction with the TRAI it alone must exercise that jurisdiction and cannot assign or delegate that jurisdiction to another person – hearing by Secretary of TRAI on behalf of the TRAI not proper - principles of natural justice-matter remanded to Authority for fresh decision.**

## O R D E R

The order of Telecom Regulatory Authority of India (hereinafter referred to as the Authority) dated 9.4.2001 is under challenge before us. A large number of grounds have been taken, including a ground on the question of lack of jurisdiction of the authority, to decide the dispute, which was raised before it. We need not go into all these controversies at this stage because one ground taken, on which both sides agree. The Authority did not hear the parties but assigned the job of hearing to the Secretary of the Authority. We directed the counsel for the Authority to file an affidavit stating the correct position. It has been stated on behalf of the Authority in their affidavit that:

“By a decision duty noted on 22.12.2000, the Authority (Chairperson and Members) decided that VSNL would make a presentation regarding their cases to the Secretary, TRAI on 27.12.2000. It was further decided that the Secretary would brief the Authority so as to understand the cost element involved and the principles disputed by VSNL, ISPs and others. Acting under this explicit decision by the Authority, the affected parties were heard. Thus, the secretary was fully authorized to hear the parties. It would also be relevant to mention here that the Secretary is the senior most officer in the TRAI after the Chairman and the Members and is responsible for the entire executive functioning of the Authority. These meetings were held on 27.12.2000, 15.3.2001 and 28.3.2001. Later some of the affected parties made written representations and synopsis of their respective cases which also was put up by the Secretary to the Authority. After acquainting itself of the view points of the various affected parties through the briefing of the Secretary as well as written submissions made by the affected parties, the Authority passed the order dated 9.4.2001 which was admittedly signed by all the members of the authority”.

2. We are of the view that this is not the way a decision can be taken by the Authority. The Authority has been vested with a right to decide the questions raised before it. It cannot assign this jurisdiction to any other person, however high his

position in the Authority may be. It is a well-settled principle that if a statute vests certain jurisdiction to any authority, that authority alone must exercise the jurisdiction and no other person can be assigned that jurisdiction. In the instant case, the Authority asked the Secretary to go into the question and hear the parties. We are of the view that the Authority could have asked the Secretary to go into the question, hear the parties and give a report. But thereafter the duty of the Authority was to hear both the parties and come to a conclusion on its own after hearing both the parties.

3. An argument was made that written submissions were also filed. The grievance is that no hearing or opportunity of being heard was given to the parties to present their case before the Authority. The Authority must give a proper hearing to the parties and decide the case in accordance with law. We direct the Authority to give a proper hearing to the parties. All the questions of fact and law including the questions of jurisdiction and inter connection, are left open. We make it clear that we have not gone into the merits of the case. The parties will approach the Authority for a date of hearing and the case should be heard in accordance with law.

4. It has been urged by Mr. C.S. Vaidyanathan, Senior Counsel appearing on behalf of the appellant, that since the question of jurisdiction is involved a counsel should be permitted to appear on behalf of the parties on the point of jurisdiction. We are of the view that in the facts of this case the question of jurisdiction may be allowed to be argued by a counsel.

5. The interim order passed by this Tribunal will continue and the parties will abide by the decision of the Authority. The Authority will be at liberty to pass such order as it deems fit including any interim order after hearing both the parties.

6. The Appeals and the Petition are disposed of accordingly. No order as to costs.

Sd/-  
.....J  
(Suhas C. Sen)  
Chairperson

Sd/  
.....  
(R.U.S. Prasad)  
Member

Sd/-  
.....  
(P.R. Dasgupta)  
Member