

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 10TH AUGUST,2004**REVIEW PETITION No.2 OF 2004**

IN

APPEAL No.2 OF 2004

Bharat Sanchar Nigam Limited

...Appellant

Vs

Telecom Regulatory Authority of India

...Respondent

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BEFORE:**HON'BLE MR. JUSTICE D.P.WADHWA,****CHAIRPERSON****MR. VINOD VAISH, MEMBER**

For : Mr.Kirit N.Raval,Senior Advocate with Mr. Maninder Singh
Appellant and Mr. Ankur Talwar,Advocates

For : Mr.Meet Malhotra with
Respondent Mr.Raghvinder Singh, Advocates

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Regulation – telecommunication interconnection (reference Interconnect Offer) Regulation 2002 framed by TRAI under Section 36 – regulations cannot prescribe a different dispute settlement mechanism than what is provided under the Act – regulations, if contrary to Act, have no legal force and not binding.

ORDER

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This is an application by Telecom Regulatory Authority of India (TRAI) seeking review of our Order dated 21st April 2004 in Appeal No. 2 of 2004 entitled BSNL vs. TRAI and others.

On the face of the application we do not find any ground for review. However, it has been submitted by TRAI that “while the impugned direction of TRAI might possibly be faulted on account of use of the words ‘dispute’ and ‘determination’ therein, the powers of TRAI to intervene in an impending disconnection cannot be questioned.” It is stated by TRAI that this submission is “based on and is reinforced by the relevant aspects of the Telecommunication Interconnection (Reference Interconnect Offer) Regulation

2002” and that these Regulations have been framed under Section 36 of the Act which are in the nature of delegated legislation having statutory force. It is also the submission of TRAI that the validity of the Regulations cannot be questioned by the Tribunal and in support of that it has cited a decision of the Supreme Court in West Bengal Electricity Regulatory Commission vs. C.E.S.C. Limited and others (AIR 2002 SC 3588). This judgment of the Supreme Court, in our view, hardly advances the case of TRAI.

Regulations have to be consistent with the Act. What the Regulations envisage is publishing of Reference Interconnect Offer (RIO) by the Telecommunication Service Providers holding significant market power based on the model of RIO, which is annexed with the Regulations as Annexure-B. BSNL is stated to be a service provider holding significant market power. Regulation 3.2 needs to be seen in particular as it provides that “*A published RIO may undergo any change only with the prior approval of the TRAI. Interconnection Agreements are required to be entered into by and between all Service Providers based on the RIOs so published, provided, however, that by mutual agreement the two parties concerned i.e. the interconnection provider and the seeker may modify and/or add to the terms and conditions stipulated in the published RIO for entering into an Individualised Agreement.*”

Reliance by TRAI is placed on Article 17.1 of the model RIO which is Annexure-B to the Regulations. This article deals with termination of the interconnection agreement between the parties. Article 17.2 deals with withdrawal of interconnection for non-payment and Article

18 deals with disputes. As noted above Regulation 3.2 itself provides that all these Articles of the model RIO may be changed by parties by mutual agreement. How can a model RIO which can be even modified by the parties who enter into interconnection agreement be termed as having statutory proportions as far this Tribunal is concerned? How can any Regulation provide a different dispute settlement mechanism than provided in the Act? Any such Regulation or RIO contrary to the Act

has no value. It has not been pointed out as to how our Order in any way contravenes the provisions of the Act.

We put it to Mr. Meet Malhotra, learned Counsel for TRAI, as to what is meant by the terminology `intervention' and `determination' used by TRAI. We could not get any satisfactory answer from him. Referring to a matter decided earlier, we held that `determination' by TRAI in the case meant `decision'. When TRAI has no adjudicatory functions under the Act, it cannot in turn take the stand that it has powers to pass interim orders in disputes between two service providers. That could not be so. If TRAI has no power to pass final orders it cannot certainly have powers to intervene to pass interim orders.

In *Black's Law Dictionary* the words `determination' and `intervention' have been defined as under :-

Determination, n. 1. A final decision by a court or administrative agency <the court's determination of the issue>.

initial determination. The first determination made by the Social Security Administration of a person's eligibility for benefits.

2. The ending or expiration of an estate or interest in property, or of a right, power, or authority <the easement's determination after four years>. – **determine, vb.**

Intervention, n. 1. The entry into a lawsuit by a third party who, despite not being named a party to the action, has a personal stake in the outcome. The intervenor sometimes joins the plaintiff in claiming what is sought, sometimes joins the defendant in resisting what is sought, and

sometimes takes a position adverse to both the plaintiff and the defendant. Cf. IMPLAIDER; INTERPLEADER.

2. The legal procedure by which such a third party is allowed to become a party to the litigation.

3. *Int'l law.* One nation's interference by force, or threat of force, in another nation's internal affairs or in questions arising between other nations. – **intervene**, *vb.*

In *Concise Oxford Dictionary (Tenth Edition)* the words 'determination', 'intervene' and 'intervention' have been defined as under :-

Determination, *n.* 1. the quality of being determined; firmness of purpose.

2. the process of determining something. >Law the settlement of a dispute by the authoritative decision of a judge or arbitrator. > Law a judicial decision or sentence.

3. Law the cessation of an estate or interest.

4. archaic a tendency to move in a fixed direction.

Intervene *v.* 1. come between so as to prevent or alter something.

➤ occur as a delay or obstacle to something being done.

➤ interrupt verbally.

➤ Law interpose in a law-suit as a third party.

2. [usu. as adj. **intervening**] occur in time between events.

➤ be situated between things.

- DERIVATIVES **intervener** (also **intervenor**) *n.* **interveniend** *adj.*

- ORIGIN C16 (earlier (ME) as *intervention*); from L. *intervenire*, from *inter-* 'between' + *venire* 'come'.

Intervention *n.* 1. the action or process of intervening. > interference by a state in another's affairs.

2. action taken to improve a medical disorder.

- DERIVATIVES **interventional** *adj.*

Important functions relating to the development of the telecommunication sector in the country has been entrusted to TRAI under the Act. These include the making of recommendations either *suo moto* or on the request of the licensor on matters relating to technological improvements in the services, measures to facilitate further growth in telecom services etc. In addition, TRAI is required to perform many important functions relating to compliance of terms and conditions of licence, laying down standards of quality of service, effective compliance of universal service obligations and such like matters. Having entrusted to TRAI important developmental and regulatory functions, the scheme of the legislation has, however, very clearly spared TRAI of the work pertaining to adjudication of disputes which work has been entrusted to TDSAT.

TRAI has authority under Clause (b) under sub-Section 11 of the Act to fix the terms and conditions of the interconnectivity between the service providers and to ensure technical compatibility and the effective interconnection between different service providers. However, if dispute arises between service providers on the terms and conditions of interconnectivity between the service providers as fixed by TRAI, TDSAT has powers to pass even *ex parte* interim orders to stop any threatened disruption of telecom services.

We do not find any merit in this application for review and hence dismissed.

.....**J**

(D.P. Wadhwa)

Chairperson

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(Vinod Vaish)

Member

