

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

Dated 3rd May, 2006

**Review Application No.1 of 2006
in
Appeal No.8 of 2005**

M/s. Bharti Televentures Limited
Having its registered office at
Qutab Ambience
(Near Qutab Minar)
H-5/12, Mehrauli Road,
New Delhi – 110 030

.... Applicant

Versus

1. Telecom Regulatory Authority of India
Through its Secretary
A-2/14, Safdarjung Enclave,
New Delhi – 110 029

2. Bharat Sanchar Nigam Limited
Through its Chairman & Managing Director
B-611, Statesman House,
B-148, Barakhamba Road,
New Delhi – 110 001

.... Respondents

BEFORE:-

**HON'BLE MR. JUSTICE N. SANTOSH HEGDE,
CHAIRPERSON**

MR. VINOD VAISH, MEMBER

LT. GEN. D.P. SEHGAL (RETD.), MEMBER

For Applicant : Mr. Ramji Srinivasan,
Mr. Priyabrat Tripathy
Mr. Mohd. Akram, Ms. Mandakini
Singh, Advocates

For Respondent No.1 : Shri Raghvinder Singh for Mr. Meet
Malhotra, Advocates

For Respondent No.2 : Mr. Maninder Singh with
Mr. Yoginder Hando and
Mr. Tejveer Singh Bhatia, Advocates

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ORDER

Even though the arguments in this application were heard on 01.03.2006, the order was reserved on a request made by the learned counsel for the applicant till arguments were heard by this Tribunal in Appeal No.132 of 2005 which were concluded on 19.04.2005. Hence, this belated order.

2. This is an application for review filed under Section 16(2)(f) of the Telecom Regulatory Authority of India Act, 1997 (the Act), seeking a review of the order of this Tribunal made on 10th February, 2006 in Appeal No.8 of 2005 - Bharti Televentures Limited Vs. Telecom Regulatory Authority of India & Anr. By the said order, this Tribunal dismissed the Appeal of the Petitioner herein holding that the said party was not entitled to the benefit of the earlier order of this Tribunal dated 3rd May, 2005 made in Appeal No.31 of 2003 and Petition No.20 of 2004 whereby this Tribunal had directed the respondent, BSNL, to stop charging Re.0.19 from the cellular operators by way of transit charges for accessing BSNL's Cellone subscribers, wherever the MSCs of both BSNL Cellone and Private CMSOs are connected to same level-I Tax of BSNL. The Tribunal further directed that the direction given, as recorded hereinabove, would take effect from the date of that order. The Tribunal consequently refused to grant the refund of transit charges already collected by the BSNL till the date of the order in those cases.

3. Nearly 2 months after the said order of this Tribunal in the Cellular Operators' case which itself was filed in the year 2003, the applicant herein who is a basic service operator approached this Tribunal by way of Appeal No.8 of 2005 (supra) seeking a direction to the TRAI to modify the Telecom Regulatory Authority of India (Transit Charges for BSNL's Cellone Terminating Traffic) Regulation, 2005 (10 of 2005) and further seeking the benefit of the order of this Tribunal given to the cellular operators in Petition No.20 of 2004.

4. The prayer of the applicant in its main appeal was rejected by this Tribunal as per the order now sought to be reviewed holding that the order of this Tribunal dated 3rd May, 2005 does not apply to the applicant who by then had voluntarily entered into a fresh Addenda to its principal

agreement with the BSNL knowing very well the order of this Tribunal dated 03.05.2005 and terms of which includes the condition of payment of interconnection between the parties. Therefore, so long as the said Addenda covers the rights and liabilities of the parties in regard to various aspects of interconnection including interconnection charges, the applicant cannot take advantage of the order of this Tribunal dated 3rd May, 2005. In the said view of the matter, this Tribunal in that order also came to the conclusion that it was not necessary for the Tribunal to decide the issue whether the applicant who is a basic operator stands on the same footing as a cellular operator.

5. It is the above decision of this Tribunal which is now sought to be reviewed in this application.

6. Shri Ramji Srinivasan, learned counsel for the appellant primarily contended that if this Tribunal had decided the issue as to the equal status of a cellular operator and a basic operator in favour of the applicant, then the applicant at least would have been entitled to the benefit of the order of this Tribunal from the date of that order till it entered into the Addenda with the BSNL which benefit, according to the learned counsel has ensued to the cellular operators. Therefore, he contends that by not deciding this issue this Tribunal committed an error apparent on the face of the record which ought to be rectified by reviewing the impugned order of this Tribunal. In support of this contention the learned counsel relied on two judgments of the Hon'ble Supreme Court in the case of M.M.B. Catholicos Vs. M.P. Athanasius - AIR 1954 SC 526 and Board of Control for Cricket, India Vs. Netaji Cricket Club – AIR 2005 SC 592.

7. We do not find any merit in the above argument of the learned counsel. The appeal of the applicant was primarily rejected by this Tribunal on the ground that assuming that order of the Tribunal dated 3rd March, 2005 would be applicable to the basic operators also, even then so far as the applicant is concerned, it would not be entitled to the said benefit because of the fact that it had entered into an agreement with the BSNL which changed the very basis of the order of this Tribunal dated 3rd May, 2005. Therefore, this Tribunal held that the applicant was not entitled to the benefit of the order of this Tribunal dated 3rd May, 2005 in view of changed circumstances.

8. So far its claim for the period between 3rd May, 2005 and the date on which the applicant entered into a fresh agreement with the BSNL is concerned, this Tribunal observed that the same

is also not available to the applicant because of latches. This finding was given on the basis of the observation made by this Tribunal in its order dated 3rd May, 2005 wherein this Tribunal refused the retrospective benefit of its order to the appellant therein. Therefore, the applicant who has filed its Appeal much later certainly will not be entitled to such retrospective benefit because of latches in having come to this Tribunal belatedly. In the impugned order, this Tribunal has assigned reasons for the above refusal. Therefore, it is not as if this Tribunal has not considered the arguments or issues raised in this Petition. On the contrary, having addressed itself to those arguments and issues, it gave its finding. Therefore, it cannot be said that the finding given by this Tribunal was due to any error apparent on the face of the record. The nature of status between the applicant (Basic Operator) and cellular operators was consciously not gone into by this Tribunal because any finding in that regard would not have materially effected the conclusions of this Tribunal in Appeal No.8 of 2005.

9. In the case of M.M.B. Catholicos (supra), the Hon'ble Supreme Court observed:-

“The majority judgments, therefore, are defective on the face of them in that they did not effectively deal with and determine an important issue in the case on which depends the title of the plaintiffs and the maintainability of the suit. This, in our opinion, is certainly an error apparent on the face of the record.”

10. From the said observation it is noticed that it is because of the fact that the majority judgment of the High Court did not effectively deal with the determination of an important issue, the Supreme Court held that the said failure amounted to an error apparent on the face of the record. In the instant case the facts are different in as much as this Tribunal considered the argument and came to the conclusion that the issue regarding the nature of status between the basic operator and cellular operator did not arise for consideration because of other facts of the case. This is a finding given on the facts of the case which if erroneous can be rectified only in an Appeal and not by way of this Review Petition. Therefore, in our humble view, the ratio laid down in the above judgment does not apply to the facts of this case.

11. In the case of Board of Control for Cricket, India (supra), the Apex Court held at page 606 in Para 92 as follows:-

“The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the

earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error.....”

12. With respect, we think even this observation of the Supreme Court does not apply to the fact of this case. Our conclusion which is now sought to be reviewed, in our opinion, is arrived at after hearing the learned counsel for the parties and we are of the opinion that the said finding is not based on any error apparent on the face of the record. It may be an error but every error is not a reviewable one, on the contrary, it may be amenable to be challenged in an Appeal. We are satisfied that the grounds raised by the applicant in this Review Petition are not those which are contemplated under Section 47(1) of Code of Civil Procedure.

13. For the reasons stated above, this Review Application fails and the same is dismissed.

.....J
(N. Santosh Hegde)
Chairperson

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(Vinod Vaish)
Member

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(D.P. Sehgal)
Member