

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

DATED 24th MAY, 2010

Appeal No. 2 of 2008

Association of Unified Telecom Service Providers of India & Ors. ... Appellants

Versus

Telecom Regulatory Authority of India

... Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON

HON'BLE MR.G. D. GAIHA, MEMBER

HON'BLE MR. P.K.RASTOGI, MEMBER

For Appellants

: Mr.Ramji Srinivasan,Senior Advocate
Ms. Shikha Sarin, Advocate

For Respondent : Mr. Saket Singh, Advocate

JUDGEMENT

S. B. Sinha

The petitioner is an Association of some service providers of India. In this appeal the appellant has inter alia questioned the methodology adopted by the Telecom Regulatory Authority of India (TRAI) to determine the Port charges.

Port is defined as under:-

“Port is a place of termination on a switch/distribution frame to provide a point to access or interconnection for ingress and egress of traffic between the interconnecting networks i.e. ports are used by both the interconnecting parties.”

The petitioner would contend that TRAI in determining the port charges has committed a serious illegality in so far as it did not adopt the correct methodology, meaning thereby on the basis of usage and actual cost.

Mr. Ramji Srinsaniva, the learned senior counsel appearing on behalf of the appellant would urge :-

- 1) TRAI in various regulations having recognized that any charge payable by the interconnection seeker would be cost based as well as usage based, failed to answer the question it had posed unto itself.
- 2) Even in the Explanatory Memorandum, TRAI did not refer to the reasons for excluding the usage based charge, although the service providers had provided the traffic pattern in terms of the informations sought for by TRAI itself.
- 3) The explanation sought to be given in respect thereof by the respondent in its reply before this Tribunal for the first time can not be looked into in view of the well settled principle of law that a statutory authority is to assign reasons for passing a statutory order in the orders only and not by way of affidavit.

Mr. Saket Singh the learned counsel appearing on behalf of the respondent, on other hand, urged :-

- (A) TRAI while reviewing the port charges in the year 2007 was only concerned with the variation of cost and no other.
- (B) The 2001 regulation having provided for the principles enunciated in regard to determination of the port charges and which having not been challenged, the same was in force and in that view of the matter the respondent was not obligated to review the port charges upon taking into consideration the usage based principle.

- (C) The only question before the TRAI having regard to the representations made by the service providers being confined to reduction of port charges and consultation being confined to collection of data in that behalf, TRAI had received some comments, when the draft regulations were published which exercise was undertaken only for the sake of transparency.
- (D) A limited review was undertaken inter alia in view of the judgement of this Tribunal in BSNL Vs. TRAI and having regard to the fact that BSNL is also a BSO licensee.

Indisputably, grant of interconnection including the requisite charges payable therefor, comes within the exclusive jurisdiction of the TRAI in terms of Section 11 (i)(b) (ii), (iii) and (iv) of Telecom Regulatory Authority of India Act 1997 (The Act).

Before, however, advert to the rival contentions of the parties, we may notice that the consultative process undertaken by the TRAI in this behalf was by a letter dated 25th August, 2006. Whereby it asked for comments from COAI (Cellular Operators Association of India) and the appellants on the issues :-

“Traffic trend analysis for a period of one week

a) From private operator to BSNL/MTNL

b) From Private Operator to Other Private Operators.”

The said letter refers to the letter of the appellant as also COAI dated 10th August 2006, wherein it was stated as under :-

“Thank you very much for giving us the opportunity to place before you our submissions seeking an urgent review of port charges for interconnection.

A copy of the joint presentation made by AUSPI And COAI is enclosed herewith for your ready reference.

As requested, we will revert to you in respect of the following information and clarifications desired by the Authority.

1. Traffic trend analysis for a period of one week
 - a. From Private Operator to BSNL/MTNL
 - b. From Private Operator to other Private Operators.
2. Justification for our submission that Port Charges, if applied, should only be for new POIs and that too, only for period of three years.
3. Details & calculations to demonstrate that the cost of fixed ports is higher than that of Mobile ports.

4. Suggested weightages and their justification for allocation of joint costs pertaining to different network elements.
5. International trends & practices in respect of reduction of port charges over past few years.”

The appellant by a letter dated 20th September 2006 in response to the aforementioned letter of the TRAI dated 25.08.2006 stated as under :-

“Justification of port charges for only new POIs and that too, only for a period of three years is as follows :

- Port charges are levied in order to cover incremental charges incurred by interconnection provider due to interconnection seeker.
- Incoming and outgoing traffic between BSNL/MTNL and Private Service Providers has become almost equal.”

It is not in dispute that after the draft regulation was circulated, some time in January 2007, the appellant and COAI by a letter dated 22nd January, 2007 inter alia raised the following issues :-

“Issues raised by Service Providers not addressed.

Numerous issues relating to the Port charges were raised by the service providers which have been duly acknowledged in the draft regulation. However, in the explanatory memorandum attached to the draft regulation it is noted that these issues have remained unaddressed. It had been consistent approach of the Authority to provide sufficient reasons in the explanatory memorandum for not accepting submissions of the stakeholders. In the interest of transparency, the Authority is requested to comprehensively cover the analysis of the following issues raised by the service providers in the final regulation :

- (i) that cost of POIs working for more than 3 years have been recovered by the interconnection providers and therefore there is no rationale for continuation of payments for the same;
- (ii) that POIs are used for both incoming and outgoing traffic and for that reason why charges for ports be not recovered on the basis of usage by respective parties.
- (iii) that ports are used by both the interconnecting parties and interconnection is a mandatory licensing requirement; then why ports should not be provided on non-charging principles ?”

Regulations were published by TRAI known as the Telecommunication Interconnection (Port Charges Amendment Regulation 2007) wherein inter alia the following amendments were made :-

“Every interconnection provider shall charge, on or after the 1st day of April, 2007, the Port charges in accordance with the Port charges specified in Schedule II to these regulations and raise the demand note or the invoice, as the case may be, for the Ports demanded on or after the said date by the interconnection seeker under sub-regulations (1) and (2).”

We would refer to the relevant provisions of the regulation at appropriate stage. We may however notice that TRAI had also published its Explanatory Memorandum inter alia, stating :-

“With the induction of the competition in telecom sector in the country, the interconnection among the operators has become an essential requirement for the development of the sector. In the multi-operator multi service scenario, establishment of interconnection helps the consumers of one network to communicate to the consumers of other network. Port is an essential part for the establishment of the interconnection between two networks.

The entrants in the telecom sector, before commencement of the Telecommunication Interconnection (Port Charges) Regulation 2001, had been representing to the Authority that there was reluctance on the part of the some operators to supply Ports at the prices specified by the Authority in the past. It was also represented by the BSNL that charges specified in the Telecommunication Interconnection (Charges and Revenue Sharing) Regulation 1999 had an anomaly in that these charges encouraged the interconnection seeker to place more than the actual demand for ports. It thus transpired that the Port

Charges needed to be re-evaluated and the existing anomaly to be corrected so that there should not be any economic disincentive for provision of more Ports. Therefore, Authority decided to undertake a review exercise relating to Port Charges.

In considering the point made by network operators that due to provision of an Interconnection 'Port' and consequent traffic flow, capacity enhancement would be required at other nodes as also in the interconnecting links for smooth flow of traffic across the network. A decision therefore, was taken that the cost of downstream augmentation of the network resources should be recovered from the usage charges of network elements involved in call carriage. The underlying principle is that all costs are to be recovered but that no cost elements should be counted twice.

The "Telecommunication Interconnection (Port Charges) Regulation 2001 (6 of 2001)", provides that the Authority may also at any time, on reference from any affected party, and for good and sufficient reasons, review and modify the Port charges. Besides, there has been long pending basic demand of interconnection seekers that Port charges need to be reviewed so as to align it with the current switch/exchange cost.

The Authority has, therefore for the purpose of revisiting the Port Charges and review thereof, initially asked the service providers to furnish the cost details of the various elements used for expansion of Digital Trunk Automatic Exchange (DTAX)/Tandem to provide Ports for interconnectivity. Most of the service providers including the Bharat Sanchar Nigam Limited (BSNL), being the incumbent operator with

legacy network spread out in 2647 Short Distance Charging Areas (SDCAs), Level-II Trunk Automatic Exchanges (TAXs) at 322 locations and Level-I Trunk Automatic Exchanges (TAXs) at 21 locations and is also the main provider of the Ports, furnished the cost details of the various network elements. A consultation was done by TRAI with BSNL, COAI and AUSPI for review of the Port charges specified in these regulations and matter was also discussed in series of meetings with them for the said purpose.

For the purpose of Port Charges review as made by this notification, the service providers were asked to submit cost of the network elements and detailed traffic trend analysis to the Authority. On the basis of the substantial data provided by the interconnection seekers and interconnection providers, the Authority undertook the calculations for determining Port Charges and found some gaps and even inconsistencies in data in certain cases provided by interconnection seeker and interconnection provider. The Authority has made a reasonable check with due diligence while taking the network elements and costs thereof for expansion of exchange/switch. For calculating Port Charges, the Authority has adopted the similar approach as used in the said regulation in year 2001, with alignment of the costing methodology adopted by the Authority in recent regulations and tariff orders.

The Authority released the draft of the proposed amending regulations on Port charges along with detailed Explanatory Memorandum after due diligence on inputs from stakeholders and particularly major interconnect provider such as BSNL. The draft of the proposed amending regulations was released on

the 12th January 2007, for seeking the comments of stakeholders. The last date for receiving the comments of the stakeholders was the 22nd January 2007.

However, the comments received from the BPL Mobile Communications Limited, the Bharti Airtel Ltd., the TATA Teleservices Ltd., the MTNL, the BSNL and a joint response from the COAI and the AUSPI have been fully considered and addressed.

The Authority has taken the various comments and inputs into consideration and analysed the matter in detail. For sake of clarity the comments/issues raised by stakeholders are shown in italic fonts and the analysis/consideration of the Authority is made thereafter.

Revised Port charges Regulations should be made effective from the date of its notification.

In the present review, the Authority has taken cost of the network elements provided by the service providers (interconnection seekers and interconnection providers) and also aligned the costing methodology with current practices adopted by the Authority in various regulations/tariff orders and specifies the Port charges by amending the Telecommunication Interconnection (Port Charges) Regulation, 2001 (6 of 2001).

As far as regular review of Port charges, at least once in a year is concerned, it may here mentioned that various issues including Port charges relating to telecom sector are revisited by the Authority and there is

already a provision in the Telecommunication Interconnection (Port Charges) Regulation 2001 that from time to time Authority may review and modify Port charges.”

It is, however, neither denied nor disputed that Bharat Sanchar Nigam Limited had not questioned the validity of 2001 Regulations. In the Explanatory Memorandum while dealing with Issue No. 8, TRAI provided for ‘Annual Review’ of port charges, but it failed to do so. We may also refer to Issue No. 11 which deals with sharing of port charges in view of Traffic Patterns and other issues; clauses (a) and (b) whereof read as under :-

“(a) POIs are used for both incoming and outgoing traffic and for that reason why charges for Port not recovered on the basis of usage by respective parties.

(b) Ports are used by both interconnection parties and interconnection is a mandatory licensing requirement; then why Port should not be provided on non-charging principle ?”

According to the appellant TRAI did not post unto itself the right questions which arose before it and, this did not render correct answers. Only discussions which can be found in the Explanatory Memorandum in regard to review of port charges is as under :-

“The aforesaid amendment i.e. the Telecommunication (Port Charges) Amendment Regulations, 2007 only makes amendments to the principal regulations i.e. Telecommunication Interconnection (Port Charges) Regulation, 2001 (6 of 2001), to the extent that Port charges should be on the current cost of the network element and to align with the present costing methodology adopted by the Authority in various regulations/tariff orders. There are many countries like United Kingdom, Australia, Germany, Sweden, Ireland, Pakistan, Bahrain, Oman and Malaysia etc. where the concept of separate Port charges in addition to Interconnect Usage Charges is prevalent. The Authority, therefore is of the view that system of the Port charges should continue at present.”

Was it incumbent upon the respondent to discuss the basis therefor and/or why having collected data of traffic pattern, it did not take into consideration the usage cost or the additional costs for rendering answer to issue No. 1 and thus failed to exercise its jurisdiction, is the question.

TRAI specified port charges by reason of Telecommunication Interconnection (Charges & Revenue Share) Regulation 1999. It contains a definition section; some of which we may notice :-

- (i) “Interconnection means the commercial and technical arrangements under which service providers connect their equipment, networks and services to enable their customers to have access to the

customers, services and networks of other services providers.

- (ii) Port Charges mean charges payable by the interconnection seeker to the interconnection provider for terminating the interconnection links on the network interface of the interconnection provider.”

Regulation 3 of 1999 Regulation providing for interconnection charges was to be cost based. It was provided that the interconnection charges would be cost based unless as may be specified otherwise as would appear from clause i of Regulation 3. Regulation 4 dealing with the revenue sharing arrangements, inter alia, stated :-

“Any revenue sharing among interconnection seeker and interconnection provider shall take place out of the proceeds of the amount payable by the subscriber for obtaining the service which involves the usage of the network of the interconnection provider.”

In the 1999 Regulations port and interconnection charges were dealt with in the same Regulation. However, in the year 2001 they were separated. 2001 Regulations were notified on 28th December 2001. Clause ii of Regulation 1 provides for payability of the port charges by the interconnection seeker to the interconnection provider.

By reason of 2001 Regulations, therefore, the provision of Revenue Sharing was followed whereas in 1999 Regulation TRAI was concerned with only cost of interconnection. At that stage in the later it kept its limit to the current cost only. Appellant by a letter dated 8.1.2008 addressed to the Chairman of TRAI inter alia stated as under :-

“The aforesaid provisions are, thus, operative and subsisting in undiluted rigor. The AUSPI represented to the TRAI on a number of occasions seeking to have the port charges reviewed and modified on, amongst other grounds, the substantial one of payability of the entire port charges, capex and annual charges, by the Interconnection Seeker, when the port is also used for the traffic of the Interconnection Provider. This core and seminal issue inter alia involving level playing field parameters has been completely ignored by the TRAI, even when the Telecommunication Interconnection (Port Charges) Amendment Regulation 2007 (1 of 2007) dated February 02, 2007 was made.”

TRAI responded thereto by its letter dated 17.1.2006, stating :-

“Please refer to your letter No. AUSPI/12/2008/005 dated 8.1.2008 on the above cited subject. In this connection, it is stated that the Telecommunication Interconnection (Port Charges) Amendment Regulation 2007 (No. 1 of 2007 dated 2.2.2007 is the considered stand of TRAI.”

In reply to this petition TRAI sought to justify its stand stating as under :-

“That the consultation before issuing the amendment to the principal regulation i.e. the Telecommunication Interconnection (Port Charges) Regulation 2001 (6 of 2001) dated the 28th December, 2001 was also limited only to the port charges. In this regard, respondent also published the draft regulation on port charges along with the detailed Explanatory Memorandum on 12th January, 2007 for comments of stakeholders. The fact the proposed amendment to the principal regulation i.e. the Telecommunication Interconnection (Port Charges) Regulation 2001 (6 of 2001) dated the 28th December, 2001 was also limited only to the port charges was mentioned in the Explanatory Memorandum to the Telecommunication Interconnection (Port Charges) Amendment Regulation, 2007 (1 of 2007) dated the 2nd February, 2007. A copy of the said regulation is annexed with the memo of appeal and marked as Annexure A-3.”

It has set out clause 7 & 8 of Explanatory Memorandum which we have noticed heretobefore. It also referred to clause 12.3 of Telecommunication Interconnection (Reference Interconnect Offer) Regulation 2002 which reads as under :-

“The cost of upgradation/modifying interconnecting networks to meet the service requirements of the service shall be met by the Party seeking interconnection. However, mutually negotiated sharing arrangements for cost of upgrading/modifying interconnecting networks between the service providers shall be permitted.

Two years after the initial interconnection is established, the issue as to who bears the cost of additional resources required shall be negotiated between the service providers. The general principle followed in these negotiations is that each party should bear the incremental costs incurred for the additional ports required for meeting the QoS standards relating to its outgoing traffic to the other Party.”

Indisputably correctness and/or validity of the said regulations was questioned by BSNL before this Tribunal and by a judgment and order dated 27th April, 2005 it was directed that the cost of augmentation and interconnection were to be borne by the interconnection seeker in line with the license terms in the following words:-

“Cost of augmentation and cost of Interconnection (Reference – clauses 3.4.2 and 12.3 of draft RIO) : BSNL wants the interconnection seeker to bear the cost of upgradation/modifying the interconnecting networks i.e. the charges for augmentation required on account of providing interconnection and for additional capacity based on traffic observations so as to compensate BSNL for

investments (not covered by existing interconnection charges regime) to be made for establishing new infrastructure including down stream network elements to handle additional traffic.

TRAI wants each party to bear the incremental cost incurred for additional ports required for meeting the Quality of Service standards relating to its out going traffic to the other party.

In our view such costs have to be borne by interconnection seeker in line with the license terms. In clause 17.11 of the License Agreement relating to Basic Telecom Service stipulates as under :

“17.11 The network resources including the cost of upgrading/modifying interconnecting networks to meet the service requirements of service will be provided by service provider seeking interconnection. However, mutually negotiated sharing arrangements for cost of upgrading/modifying interconnecting networks between the service providers shall be permitted”.

We may in order to complete the narration of the stand taken by the TRAI may also notice :-

“That, it is an admitted fact that port charges are levied in order to cover the incremental charges incurred by the interconnection provider for providing the interconnection to the interconnection seeker as per the “causation principle”. The interconnection seeker being the cause for the incremental cost borne by the interconnection provider in providing the interconnection, therefore the incremental cost of interconnection provider is required to be taken in account. This has been admitted by the appellants in

a presentation given to the TRAI on 10.08.2006. A copy of the said presentation is annexed hereto and marked as Annexure R-4.”

The appellant in its rejoinder inter alia stated as under :-

“With respect to point (d) above the Appellants respectfully submit that the basic service operators were issued licenses in 2001. However, subsequently in the year 2003, a new licence namely the Unified Access Service License was introduced, which is applicable now. In the said UASL license there is no provision that the payment of interconnection facility will be made only by the interconnection seeker. The UASL license provides that the interconnection between the two service providers will be as per their mutual discussions and agreements which are subject to the directions issued by the Respondent from time to time. The relevant provisions from UASL is reproduced below :

“27.2, the charges for accessing other networks for inter-network calls shall be based on mutual agreements between the service providers conforming to the Orders/Regulations/Guidelines issued by the TRAI from time to time.

27.3 The network resources including the cost of upgrading/modifying interconnecting networks to meet the service requirements of the LICENSEE will be mutually negotiated keeping in view the orders and regulations issued by the TRAI from time to time”.

The aforementioned facts are not in dispute.

However, before advertng to the questions raised by the learned counsel, we may also notice the relevant paragraphs of the judgement of this Tribunal dated 19.03.2007 in the aforementioned petition which are as under :-

“In fact we are confronted with a situation where in effect the Respondent is charging Rs.21.00 lakhs per annum for use of less than one sq. meterof space in its exchange. This translates to a rate of around 17,500/- per sq. feet per month.

Under these circumstances we consider it a fit situation for the Tribunal to take note of the unreasonable, unfair and rather arbitrary manner in which the Respondent who is a telecom service provider in the public sector has sought to impose exorbitant charges for housing the end equipment whereby interconnection takes place at Mumbai between the telecom network of the Petitioner and the Respondent. We consider it apt in these circumstances to quash the demand notices issued by MTNL to the Petitioner and hold that the charges fixed in the year 2000 should prevail subject to 10% annual escalation being built into the amount from 1/4/2001 onwards, on which we shall elaborate subsequently. We direct that this arrangement will continue till such time as new charges are determined by MTNL based on sound logical reasoning. In order to ensure that there is a semblance of

fairness and reasonability and Respondent is not tempted to adopt an arbitrary approach in this regard as it has done in the matter presently before us, we request TRAI who at one point of time had intervened in this matter to lay down guidelines at the earliest to ensure that the fixation of such charges by service providers including MTNL is not done arbitrarily and is based on use of sound criteria and reasonable rationale and based on a realistic assessment of the commercial rentals prevailing in the market. To the extent that this infrastructure is also utilized by the Respondent for its outgoing traffic, TRAI may also see to what extent the costs need to be shared by the Respondent.”

We have referred to the chronological events as also the relevant regulations and the decision of this Tribunal elaborately only for the purpose of showing that whatever is the merit of contention of Mr. Ramji Srinivasan, it is difficult for us to hold that the TRAI in the peculiar facts and circumstances of the case has committed any illegality.

It has not been denied or disputed that the principles for determining the port charges were enunciated in the 2001 Regulations. In the said Regulations no provision was made for determining the usage based costs of port charges. Mr. Srinivasan may be correct in his submission that the prohibition contained in the BSO license does not exist in the UASL licenses, but as at present advised and keeping in view the fact that matter is pending in appeal before the Supreme Court of India and the judgement of this Tribunal, thus, is still being in force, the TRAI might have not considered the said contention of Mr. Srinivasan presumably because the same had not been raised.

It is true that the conditions of license in BSO licenses and UASL licenses are different but can there be levy of different port charges for the licensees who hold both types of licenses is a question which would require a deeper consideration.

Usually, in the light of the doctrine of level playing field uniformity in different type of charges is desirable, although may not be imperative in character. Such a question, therefore, having not been raised by the appellant or COAI before the TRAI nor it having any opportunity to consider the views of the others, we are of the opinion that such an exercise may be carried out by it in future. We say so because in the event the TRAI finds it feasible to determine different port charges, one in respect of the BSO licenses and the other in respect of UASL licenses, it may do so as judgement of this Tribunal dated 19.03.2007 is confined to the BSO license alone.

The jurisdiction of TRAI may be limited, if at all, so far as it involves the change of the terms and conditions of the licenses. However, there can not be any doubt or dispute that in respect of UASL licenses; there being no prohibition, the TRAI's jurisdiction in this behalf is not limited.

It is true that the appellant had taken up the issue of determination of cost with the TRAI; but the stage therefor is also of some significance.

Only some interconnection seekers raised a contention that the TRAI should exercise its jurisdiction of review of port charges as the cost has gone down. TRAI sought for comments of all concerned only in relation thereto. It only in answer to the appellant's letter dated 10th August, 2006 asked for traffic data and analysis thereof, which it might have thought would be relevant.

The draft regulations were however, issued in January, 2007. Paragraph 3 of the Explanatory Memorandum reads as under :-

“The new entrants had been representing to the Authority that there was reluctance on the part of the incumbent to supply ports at the prices specified by the Authority in the past. It was also represented by the BSNL that prevailing charges had an anomaly in that these charges encouraged the interconnection seeker to place more than the justified demand for ports, because annual port charges for 8 ports were of the same order as that for 33 ports. It thus transpired that the port charges needed to be re-evaluated and the existing anomaly to be corrected so that there should not be any economic disincentive for provision of more ports. Therefore, Authority decided to undertake a review exercise relating to charging of ports.”

At that stage it was not possible for TRAI to review the whole scenario. We although find force in the submission of Mr. Ramji Srinivasan that the 2001 Regulations having provided for the jurisdiction of TRAI to review port charges on an annual basis, it could have altered or modified the underlying principles. The TRAI, however, having kept its exercise limited to review of port charges and not the principles enunciated in 2001 Regulation which was now not a matter of challenge by any service providers except BSNL, and, thus, it is difficult for us to arrive at a conclusion that TRAI should have undertaken that exercise, at least after receipt of the comments of the appellant and COAI on the draft regulations.

As the appellant states that review of port charges should be an annual feature, in our opinion, the appellant can not be heard to say that principles underlying the determination of port charges should have been reviewed and therefore, the entire exercise was required to be gone into afresh.

Alteration or modification of the principles enunciated for fixation of port charges may not be an easy task. For the said purpose, not only the Associations of service providers but also the established operators as also the new entrants were required to be heard elaborately. We are satisfied that TRAI although for the sake of transparency was obligated to disclose in its Explanatory Memorandum as to what had happened during different phases of consultative process, but had acted within the jurisdiction in not taking the same into consideration, keeping in view the limited scope therefor.

In paragraphs 7, 9 and 12 of the Explanatory Memorandum in relation to 2007 Regulations, TRAI has made it clear that there had been no consultative process undertaken for taking into consideration the usage for determining the port charges. No comment had been asked for as to whether and to what extent of sharing of revenue between two service providers would be done only in its Explanatory Memorandum. While dealing with issue No. 11, it noticed certain comments but it was of the opinion that the regulations were only being amended, keeping in view the current cost of net worth element and to align the costing methodology adopted by it in various regulations and tariff orders. Paragraph 29 of the explanatory memorandum must be considered in the aforementioned backdrop.

The TRAI is very clear on its stand that it had decided to review the old rates on the request of the stakeholders only. In the 2002 Regulations as noticed by us heretofore, it had laid down that after initial inter-connection was established, the issue as to who bears the cost as additional resources required, was to be negotiated between the service providers. Thus, amendment in the regulation which was the subject matter of Appeal No. 11 of 2002, was required to be considered in the light thereof.

The provisions, thus, have been made to review the situation, when a service provider becomes the service seeker and when a seeker becomes a provider. It may be noticed that the appellant even before us, has not challenged the 2001 Regulation.

Even otherwise it would have been barred by the law of limitation.

This petition which is also been filed in February 2008 ex-facie is barred by limitation as the Regulations had been framed in February, 2007. Furthermore, BSNL and other BSOs who could be affected by this judgement should have been impleaded as parties in the petition.

We, furthermore, are of the opinion that there can not be any doubt or dispute that the TRAI in its future exercise subject to the observations made hereinbefore may take into consideration, the contentions raised in this appeal upon following the usual procedure.

We would also request the TRAI to consider the desirability to review port charges at regular intervals.

It may also consider the desirability of framing regulations which would remain in force at least for 3 years so that all parties may arrange their financial affairs, keeping that fact in mind.

This appeal is dismissed. However, in the facts and circumstances of the case, the parties shall pay and bear their own costs.

....., J
(S.B.Sinha)
Chairperson

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(G. D. Gaiha)
Member

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(P.K.Rastogi)
Member