TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 2ND NOVEMBER 2012

Appeal No. 16 of 2012
(M.A. N o. 601 of 2012)

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

Vs.

Telecom Regulatory Authority of India ...Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON
HON'BLE MR. P.K. RASTOGI, MEMBER

For Appellants : Mr. Maninder Singh, Sr. Advocate
Mr. Navin Chawla, Advocate
Ms. Nidhi Parashar, Advocate
Mr. Abhishek Jha, Advocate

For Respondent : Mr. Rakesh Dwivedi, Sr. Advocate
Mr. Saket Singh, Advocate

JUDGMENT

This appeal is directed against a direction issued by the Respondent herein on or about 7th September, 2011 purported to have been issued in exercise of its power under Section 13 read with sub-clauses (i) and (v) of Clause (b) of Sub-section 1 of Section 11 of the Telecom Regulatory Authority of India Act, 1997 (hereinafter called

and referred to for the sake of brevity) as the said Act, pertaining to missed calls ('Wangiri calls' originating from outside the country).

2. Before, however,Ienter into the merit of the matter, the following factual matrix may be noticed:-

3. The term 'Wangiri' is a Japanese term which signifies a call received with one-ring which would be shown as a missed call and the receiver of the calls may reply thereto, whereupon the same would not materialize but the consumer will have to pay the requisite charges leviable for making an International calls.

Wangiri is derived from the English word 'one' (or 'wan' as it is pronounced in Japanese phonetics) and 'kiru', which means 'to cut'. A 'wangiri' call is a call that is cut off or hung up after one ring, according to Wikipedia.

4. For the said purpose a meeting was proposed to be held by the TRAI in terms of a letter dated 18.10.2011, wherein its Joint Advisor (QOS) stated as under:-

> ***"Subject: Problem of missed calls and messages from international locations prompting customer to reply.***
>
> *It has come to the notice of TRAI, through complaints from consumers and also through the media, that*

mobile users get missed calls from international numbers and without understanding that this is an international number the customers reply to these missed calls and end up 'paying substantial charges for such calls. The customers also receive messages from international locations saying for example that they have won prizes and for claiming the prize they may have to contact a particular *number. Such numbers are normally premium numbers and by responding to such messages the customers lose lot of money, without availing any service.*

All the service providers are hereby advised to take immediate steps to address the above problems, so as to protect the interests of consumers, and inform TRAI about the steps taken in this regard, within 3 days of the issue of this letter."

A meeting was held on 7th February, 2012 and a decision was allegedly taken (according to the Appellants) that the operators would install one equipment which before an international call materializes would contain a 'warning' by way of a pre-recorded message stating: 'that the call is an international one'.

5. On 13th February, 2012, the TRAI purported to be without referring to the Appellants' responses dated 7.7.2011 and 17.7.2011 noticed the suggestions given by the telecom operators which inter-alia are as under:-

"(b) Before an ISD call is materialized or established, an announcement may be made that the call is an ISD call. This option may be explored by the access service providers.

(c) Calls having similar 'signatures' from a destination above a certain threshold could be a wangiri call and outgoing calls to such destinations should invariably carry an announcement warning the customer about ISD all and possibility of premium charges. Most of the ILD operators suggested that this could be better rather than giving announcement before all ISD calls. Some of the access providers also expressed that they are already implementing similar solutions.

(f) There is a need to create awareness amongst consumers about this problem and in this regard advertisement campaigns needs to be undertaken.

It was informed by Advisor (QOS) that the service providers may deliberate these issue within their organization and these issue could be further discussed in the forthcoming workshop on 14th February, 2012 on implementation of TRAI directions on unsolicited commercial communication."

6. The Appellants contend that the suggestion contained in paragraph (b) of the said letter had been accepted and pursuant thereto or in furtherance thereof requisite equipments were installed which meaningfully addressed the problem.

On or about 5th March, 2012, the Respondent reminded the operators that it had not received the requisite comments. One of the operators, namely, Airtel, in a letter dated 12th March, 2012 addressed to the Joint Advisor (QoS) of the Respondent, stated as under:-

> *"1.* ***Point no.*** *(a) Providing Voice Alert for Premium Rate Charges for ISD calls before call materialization.*
>
> ***Response:*** *ISD rates are publicized by service providers through website etc. Therefore, we don't see any need for announcing the tariff before call materialization for each ISD call. However, Customer may be informed that the number being dialed is an International destination and will be charged as per prevailing ISD tariff.*
>
> ***2. Point no.*** *(b) Before ISD call (outgoing) is established an announcement may be made that the call is an ISD call.*
>
> ***Response:*** *As submitted in the above response, we may inform customer before establishing a call towards the ISD destination through voice alert that number dialed is an International destination and will be charged as per prevailing ISD tariff. This change however will require changes to be done on all switches (MSCs & GMSCs) which is a time consuming activity and hence time of minimum 3 months will be required to carry out the same.*
>
> *It is also pertinent to highlight that with the introduction of voice alert before materialization of call may also impact network performance parameter namely* "Answer *to seizure ratio" (ASR).*
>
> ***3. Point no.*** *(c): Calls having similar signature from a destination above certain threshold could be a wangiri call*

and outgoing calls to such destinations to carry announcement of ISD call and premium charges.

Response: *This is technically not feasible to implement due to following reasons -*

(i) Since calls will be coming from different destinations hence identification of A party number is a challenge, and

(ii) No tool is currently available to indentify the missed calls."

It was contended that if despite the warnings, the subscribers make a call, it would amount to a consent on its part to put through an international call.

7. The Respondent issued a letter on or about 16.4.2012 directing the Director General of the First Petitioner, herein that a meeting will be held on 30.4.2012 at 11:00 hours to discuss the issues relating to missed-calls (Wangiri calls). The said meeting was held under the Chairmanship of Joint Advisor of the Respondent.

8. The First Petitioner issued an e-mail addressed to all its members, stating inter-alia as under:-

"Following points were taken up for discussion:

1) <u>Missed Calls (Wangiri calls) from International destinations:</u>

a) *At the outset, Shri. A. Robert J. Ravi informed the*

participants that TRAI would be issuing letter/direction in order to resolve the issue of the Wangiri having following clause:

All the service providers within 90 days has to make sure that before an ISD call is materialized or established , an announcement has be made that the call is an ISD call.

b) *He submitted that other provisions as highlighted in the TRAI's letter no. F.No.308-11/2012 QOS dated February 13, 2012 (Copy enclosed) would be subsequently considered for implementation.*

c) *He further submitted that both the associations with the help of their members should come up with* a *monitoring mechanism /report on this issue within 2 months' time.*

d) *Associations should also think of establishing a portal wherein all the numbers from where the Wangiri calls are being made should be displayed.*

e) *Both the associations agreed to revert on this issue.*

f) *On creating awareness among the consumers about this problem COAI submitted that the same should be taken up under the CUTCEF fund of TRAI.*

It was agreed that COAI & AUSPI would jointly take up this issue in the next meeting of CUTCEF in TRAI."

9. By a letter dated 12th July, 2012, the Respondent again asked the operators that a meeting would be held on 17th July 2012, wherein no reference was made to the 'Wangiri Calls'.

However, in the said meeting, discussions was held on 'Wangiri Calls' whereupon the First Petitioner again by an e-mail dated 17th July 2010 stated as under:-

> ***"Wanqiri Calls:***
>
> a. *In order to resolve the issue of Wangiri calls, TRAI suggested that the ISD facility should be provided only to those customers who request for such service i.e. opt-in approach should be applied in activating the ISD facility of the customer.*
>
> b. *TRAI was of the view that if customers (including pre-paid) could be ISD barred and only allowed upon a request (by SMS / USSD) there may not be case of unknowingly responding to such Wangiri calls.*
>
> c. *TRAI further submitted that for post-paid customer, ISD facility is being activated by the operator's only basis the customer request. Operators should have similar opt-in approach for the Pre-paid customers as well.*
>
> d. *Action Point: Evaluate the technical implementation issues and both the associations to jointly revert back with their reply on the issue* ***by Tuesday. July 24, 2012.*** *Should we not revert by then, TRAI will assume that their proposal is agreeable and will issue directions.*
>
> *Further, TRAI submitted that the above mentioned suggestion is the most feasible option compared to the other alternatives i.e. announcement before every ISD call or suppression of the first or first two rings to the subscriber. Hence, in case any, operator has already*

implemented the option of having announcement before any ISD call, the operator should maintain the status quo on the same."

10. The TRAI, however, by a letter dated 18th July, 2012 stated as under:-

> *"A meeting was held in TRAI on 17th July, 2012 to discuss the issues relating to Wangiri calls from international locations prompting customers to respond and also the representation of COAI on the issue of misuse of missed call for commercial purposes. The meeting was chaired by Principal Advisor (CI&QOS) and attended by the representatives of COAI, AUSPI and some of the service providers. During the meeting the industry associations and service providers were informed about the proposal of the Authority to bar pre-activation of ISD facility for all new prepaid connections and deactivation of ISD facility to existing prepaid customers, except those who have requested for ISD facility, so as to address the issue of missed calls from international locations prompting customers to respond. Prin. Advisor (CI&QOS) sought the views of participants on this proposal. The representatives of industry associations and service providers agreed to submit their views on the proposal within a week.*

11. The Appellant No. 1 however by its letter dated 27th July, 2012 stated thus:-

"3. We would like to put on record that TRAI had conducted a meeting on April 30,2012 to discuss the issues relating to missed calls (Wangiri calls) from international destinations wherein TRAI had asked all the service provider to make sure within 90 days, that before an ISD calls is materialized or established, an announcement be made that the call is an ISD call, Our member have taken step to implement this and are at considerably advanced stages of implementation (configuration changes). Now all of a sudden, through this meeting, we were informed that instead of the pre-call announcement, our members should move towards an opt-in approach for activation of ISD facility. The authority would appreciate that considerable investment has been made by our member operators in making such changes and now reversing these changes would lead to wastage of significant amount of money and time that has been spent by them.

4. During the meeting, TRAI had further stated that for post-paid customer, ISD facility is being activated by the operator's only on the basis of request from the customers. TRAI stated that operators should have similar opt-in approach for the Pre-paid customers as well. TRAI was of the view that, so as to help reduction in instances of customers unknowingly responding to Wangiri calls, all customers (including all pre-paid) could be ISD barred and only allowed access to ISD upon a request (by way of a SMS / USSD). In this regard, we would like to state that opt-in through SMS / USSD has its own challenges given the low level of SMS penetration, literacy barriers, etc and hence this is not a customer friendly approach."

12. The impugned direction was issued on 7th September, 2012, the relevant parts whereof read as under:-

> *"3. And whereas the Authority held meeting with Access Service Provides and International Long Distance Providers on the 25th October, 2011 and the 7th February, 2012 to discuss the problem of missed calls from international numbers and to find out the measures to protect the interest of the consumers, and the Authority noted the suggestions received during the said meetings;*
>
> *4. And whereas the Authority, vide its letter No.308-11/2010-QoS dated 13th February, 2012, desired that all International Long Distance Operators and all Access Service Providers to deliberate upon the suggestions made in the meeting held on 7th February, 2012, and the Authority, vide its letter No.308-11/2010-QoS, dated 5th March, 2012, requested all International Long Distance Operators and all Access Service Providers to submit their comments on the said suggestions to the Authority by 12th March, 2012;*
>
> *5. And whereas the Authority considered the suggestions received from the service providers during the meetings held on 25th October, 2011 and 7th February, 2012 and also the comments received from the service providers in response to the letter dated 5th March, 2012, and to protect the interest of the consumers has decided to issue direction to the service providers, to take measures to address the problem of missed international calls;*

6. Now, therefore, in exercise of powers conferred upon the Authority under section 13, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997, the Authority hereby directs all the Access Service Providers-

(i) to ensure that no ISD facility is activated on pre-paid SIM without the explicit consent of the consumer;

(ii) to inform all pre-paid subscribers having ISD facility, through SMS, within ten days of the date of issue of this direction, that ISD facility of the subscribers shall be discontinued after sixty days and, if such subscribers want to continue with ISD facility, they should give their explicit consent for availing such facility within sixty days of the receipt of the SMS;

(iii) to discontinue, after the expiry of sixty days of the date on which the subscriber is informed under sub-para (ii), ISD facility on all such pre-paid cellular mobile telephone service subscribers who have not given explicit consent for continuing with ISD facility;

(iv) to inform through SMS, within ten days of the date of the issue of this direction, all pre-paid cellular mobile telephone service consumers not to respond to missed calls from unknown international numbers with prefix other than "+91" or calls about winning prizes or lottery and send such SMS to the consumers every six months; and

(v) to provide easy and transparent opt-in and opt-out facility to the consumers of the cellular mobile telephone service for activation or deactivation of ISD facility."

13. Mr. Maninder Singh, the learned senior counsel appearing on behalf of the Appellants urged:-

(i) The impugned directions have been issued without jurisdiction.

(ii) No allegation having been made that the service providers have committed any violation of the Regulations framed by the Respondent or the terms and conditions of the license, the impugned directions must be held to have been issued *mala-fide* and by way of colourable exercise of power.

(iii) By reason of the impugned directions, the object to remedy the mischiefs would not be achieved and thus, no purpose whatsoever would be served even if the said directions are implemented.

(iv) The impugned directions have been issued in violation of the provisions of sub-section 4 of the Section 11 of the Act and were issued in undue haste.

14. Mr. Dwivedi, learned senior counsel appearing for the Respondent, on the other hand, submitted:-

(a) The Appellants are not prejudiced in any manner by reason of the impugned directions as they have merely been asked as to how they intend to deal with the question of 'opt-in' scheme by the pre paid subscribers problem.

(b) By reason of the impugned directions, the Respondent only intended to have a check on 'Wangiri Calls' and the question with regard to the extent of success can be found out only when the same is implemented.

(c) Having regard to the fact that many operators are not parties to the petition, and in particular the members of AUSPI, evidently these petitions have been filed only by those who were interested to see that the impugned directions are not implemented.

(d) The impugned directions having been issued by the Respondent in exercise of its power conferred on it in terms of Section 11 (1) (b) (i) (ii) and (iv) of the Act, it cannot be said that it did not have any jurisdiction in relation thereto as contended by the Petitioner or otherwise.

(e) The Respondent had jurisdiction to issue the impugned directions having regard to the Regulation dated

21.3.2006 called "Quality of Service (Code of Practice for Metering and Billing Accuracy) 2006" (2006 Regulations).

(f) The only purpose for which the impugned Regulations have been issued is to see that the pre-paid consumers are brought at par with the post-paid consumers so far as it's right to opt in a contract in regard to the ISD services.

15. The principal question which arises for our consideration is as to whether the Respondent has any jurisdiction to issue the impugned Regulations.

16. Section 11 (1)(b) (i), (ii), (v) read as under:

> *"11(1)(b)- Functions of the Authority*
>
> *(i) ensure compliance of terms and conditions of license;*
>
> *(ii) notwithstanding anything contained in the terms and conditions of the licence granted before the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, fix the terms and conditions of inter-connectivity between the service providers;*
>
> *(v) lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication service;"*

17. Section 13 of the said Act reads as under:

> *"13. Power of Authority to issue directions.- The Authority may, for the discharge of its functions under sub-section (1) of section 11, issue such directions from time to time to the service providers, as it may consider necessary:*
>
> *[Provided that no direction under sub-section (4) of section 12 or under this section shall be issued except on the matters specified in clause (b) of sub-section (1) of section 11.]"*

18. It is neither in doubt nor in dispute that the powers under Section 11(1)(b) and Section 13 are issued in different situations.

So far as power under Section 11(1)(b) of the Act is concerned, the same can be issued only upon complying with the provisions of Sub-section (4) of Section 11 thereof; no such statutory requirement, however, need be followed while issuing a direction under Section 13 of the Act.

19. However, exercise of the jurisdiction under the aforementioned provisions must be preceded by complying with the consultative process or upon giving an opportunity of hearing.

Indisputably, the consultative process was started by inviting the comments of the operator in terms of a letter dated 18.10.2011.

20. Several meetings were held. The operators were given ample opportunities to make their responses.

The principal ground on which the provisions of Section 11(4) of the Act are said to have been violated is that the Respondent while issuing the notice dated 12.7.2012 did not specifically mention that the issue relating to 'wangiri calls' would also be discussed.

21. There is no doubt that the Respondent ought to have done so, but it does not appear that any protest with regard thereto was raised by the first appellant herein. It has also not been shown that thereby any prejudice was caused to them.

22. Keeping in view the purport and object of the impugned directions, it is difficult to accept that the same has been issued either in undue haste or mala fide being for unauthorized purpose and/or thereby the Respondent has committed fraud on its power.

Submission of Mr. Singh that the Respondent had accepted the suggestion of the Petitioners herein to the effect that an equipment would be installed to warn the customer was accepted and acted upon cannot also be accepted. From a plain reading of the correspondences issued by and between the parties hereto and/or the minutes of the meeting recorded by the TRAI, I have no doubt in my mind that the said suggestion on the part of the Petitioners remained in the real suggestions and the same had never been finally accepted by the Respondent.

23. We may, however, notice that whereas according to the Respondent only 2% of the customers utilize ISD facility such figure pertains only to a specific zone and does not represent the complete picture, the Respondent contend that the total number of the international calls would be 2% of the prepaid mobile customers having been using ISD facility.

24. I would assume for the sake of argument that the purpose for which the said directions had been issued are well meaning ones but the question which arises for consideration is as to whether the Respondent has any jurisdiction in relation thereto.

25. On a plain reading of the provisions of subs-clauses (i), (ii) and (v) of Clause (b) of subsection (1) of Section 11 of the Act, it does not appear that the impugned directions could have been issued in terms thereof.

26. The impugned directions have not been issued with a view to ensure compliance of the terms and conditions of license inasmuch as non-compliance thereof by the Appellants herein is not in issue.

It is also not a case, where the interconnectivity between the service providers is in issue.

27. The contentions raised by the Respondents in this behalf centers round the 2006 Regulations.

28. The contention of Mr. Maninder Singh is that having regard to the definition of 'quality of service' within the meaning of the provisions thereof or otherwise, the same must relate to the networking issue; whereas according to Mr. Dwivedi it is covered by the Code of Practice for Metering and Billing Accuracy as contained in the Annexure 1 appended thereto.

Clause 4 of the said Regulation reads, thus:-

> ***"4. Code of Practice for metering and billing accuracy:*** *The service provider is required to comply with the Code of Practice for metering and billing accuracy as laid down in Annexure-1."*

We may notice the said Code of Practice which reads as under:

> *"The service providers, though broadly in agreement with the benchmarking and Code of Practice, were not in favour of a separate benchmarking other than those given in the QOS Regulation. The parameter given in the QOS Regulation is complaints-based measure of billing accuracy. While analysis of upheld billing complaints to find root causes is useful in preventing further occurrences of a problem, and is to be encouraged, it is a proactive process. System assessment and performance measurement, if done frequently, has the advantage, of identifying*

problems and rectifying them before the subscriber becomes aware of them. This reduces the incidence of complaints, benefiting the operator through the reduction of costs of complaint handling, and reducing the burden of complaints referred to the regulator. As such, the Authority felt that it would be appropriate to implement a Code of Practice for metering and billing accuracy."

29. The said Code of Practice in the considered opinion of this Tribunal has no application to the fact of the present case and as metering or billing accuracy is not in issue. It has also nothing to do with the complaint based measure of billing accuracy.

Quality of service has been defined in Regulation 2(iv) of the said Regulations in the following terms:

"2.Definition.- .....

(iv) "Quality of Service" is the main indicator of the performance of a telephone network and of the degree to which the network conforms to the stipulated norms;"

30. It is, therefore, evident that quality of service could only pertain to the performance of a telephone network and not to a matter which pertains to formation of a contract.

31. It is now a well settled principle of law that the freedom to enter into a contract can be regulated provided there exists a statutory power in this behalf.

Such directions and/or Regulations as is loosely called, in the opinion of this Tribunal must be construed strictly.

A direction is issued by the Respondent and in exercise of its power conferred on it under the said Act. It cannot act beyond the purview thereof.

32. The Respondent is a statutory authority. It must, therefore, exercise its power within the four corners of the statute.

33. Even if Clause (v) of Section 11(1)(b) of the Act is construed liberally, the term 'quality of service' cannot be stretched too far to confer a power on the Regulator to intervene even at the stage of formation of a contract and/or the mode and manner thereof.

The TRAI must exercise its statutory power with a purpose for which the same was meant to be exercised.

34. It is one thing to say that the terms of a contract are subject to a Regulation but it is another thing to say that the Regulations can be invoked and/or directions can be issued even for the purpose of laying

down the manner in which a contract between the parties should be entered into, although the Regulations do not provide therefor.

35. If the Parliament intended to confer such a broad power on the Respondent, it could have said so explicitly.

In Deddappa and Ors. Vs. the Branch Manager, National Insurance Co. Ltd. AIR 2008 SC 767, the law has been laid down in the following terms:-

> *"27. A beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party. In Regional Director, Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries MANU/SC/0203/1984 : (1985)ILLJ69SC , this Court held:*
>
> *We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme.*
>
> *We, therefore, agree with the opinion of the High Court."*

[See also United Bank of India vs. Piyush Kanti Nandi 2009 (8) SCC 605 para 24)

It is not the case where there is any dispute with regard to billing.

There are Regulations and Regulations. The power of the TRAI operates in different fields. It in exercise of its power under Section 11 (i) (b) restricts and/or mandate the terms of a contract. It will also fix a tariff or rate with regard thereto. In *Sree Konark Digital Systems Pvt. Ltd. vs. Sun 18 Media Services South Pvt. Ltd*, Petition No.52 (C) of 2012, decided on 14th August 2012, this Tribunal while interpreting Clause 3.2 of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations clearly held that having regard to the restrictions imposed on the freedom of the parties to enter into a contract, the conditions precedent therefor must be strictly construed.

In the instant case, the TRAI has not laid down any mandatory provisions with regard to an Interconnect Agreement. It has made the 2006 Regulations for the purpose of regulating the quality of service.

The question of regulating quality of service would arise provided a contract has been entered into and the services are rendered pursuant thereto or in furtherance thereof. In the garb of laying down Regulations relating to quality of service, it in the opinion

of this Tribunal, cannot embark an area which pertains to a stage prior thereto, namely, at the stage of formation of contract.

A contract is entered into on a consensus between the parties in terms of Sections 5 to 7 of the Indian Contract Act. It is noticed heretobefore that the quality of service is defined in the said Regulations.

It is true that the said Regulations have been given effect to and acted upon by the operators. It would, however, not be correct to contend that the appellants herein indirectly are questioning the validity of the said Regulations.

What have they are doing is to show that quality of service in terms of the Regulations being defined the 2006 Regulations are not applicable in the instant case.

It is also a well settled principles of law that when an expression has been defined, the same meaning, unless the context otherwise requires, be given the same meaning.

In Nimet Resources Inc. Vs. Essar Stells Limited, (2009) 17 SCC 313, the Apex Court held as under:-

> ***"13.*** *The definition of "court" indisputably would be subject to the context in which it is used. It may also include the appellate courts. Once the legislature has defined a term in the interpretation clause, it is not*

necessary for it to use the same expression in other provisions of the Act. It is well settled that meaning assigned to a term as defined in the interpretation clause unless the context otherwise requires should be given the same meaning.

14. *It is also well settled that in the absence of any context indicating a contrary intention, the same meaning would be attached to the word used in the later as is given to them in the earlier statute. It is trite that the words or expression used in a statute before and after amendment should be given the same meaning. It is a settled law that when the legislature uses the same words in a similar connection, it is to be presumed that in the absence of any context indicating a contrary intention, the same meaning should attach to the words. (See Lennon v. Gibson & Howes Ltd. [1919 AC 709 (PC)] , AC at p. 711, Craies on Statute Law, 7th Edn., p. 141 and G.P. Singh's Principles of Statutory Interpretation, 10th Edn., p. 278.).”*

Similar observations have been made in *Indore Vikas Pradhikaran Vs. Pure Industrial Coke & Chemicals Ltd.* (2007) 8 SCC 705 at page 737.

36. Moreover, the Respondent even did not hold any consultation with regard to the question as to whether the prepaid customers and postpaid customers should be brought at par. In absence of such a question having been raised in the consultative process, it is difficult

to hold that the 2006 Regulations would cover a situation of the present nature.

37. In any event, the impugned directions would also affect the contracts which have already been entered into. It, therefore, cannot be sustained.

38. For the reasons aforementioned, the impugned directions cannot be sustained. It is set aside accordingly.

39. This Appeal is allowed without any order as to costs.

.....
(S.B. Sinha)
Chairperson

HKC/