

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 829-833 OF 2009

TELECOM REGULATORY AUTHORITY OF INDIA

Appellant(s)

VERSUS

SET DISCOVERY P. LTD. ETC.

Respondent(s)

O R D E R

These appeals are directed against an order dated 15.01.2009 passed by the Telecom Disputes Settlement & Appellate Tribunal (for short 'the Tribunal').

The Tribunal dealt with the validity of the Telecommunications (Broadcasting and Cable) Service (Second) Tariff (Eighth Amendment) Order 2007 dated 04.10.2007 issued by the Telecom Regulatory Authority of India (for short 'the TRAI').

During the pendency of the appeal, an order was passed on 13.05.2009 by this Court noticing that the Tribunal has directed the TRAI to study the matter afresh and issue a comprehensive order covering all the aspects including the issue of subscription base in a non-addressable system.

It was stated by learned senior counsel appearing for the TRAI that a revised study would be completed within a short period

after hearing all the stakeholders at the earliest.

Signature Not Verified

Digitally signed by

Meenakshi Kohli

Date: 2014.11.25

14:23:18 IST

Pursuant to the order dated 13.05.2009, the TRAI prepared a

Reason:

report dated 21.07.2010, but that is not the subject-matter of the present appeals.

2

While challenging the order passed by the Tribunal, learned counsel for the TRAI made two principal submissions, namely, (i) that the Tribunal erroneously held that the TRAI could not fix a ceiling of charges to be paid by the subscribers to the LCOs/MSOs

and by the LCOs/MSOs to the broadcasters and (ii) the Tribunal was wrong in holding that the process of issuing the impugned tariff order was not transparent in terms of Section 11(4) of the Telecom Regulatory Authority of India Act, 1997 (for short 'the Act')

We have heard learned counsel for the parties and find that there is no clear finding given by the Tribunal that the TRAI cannot fix a ceiling as has been done in the impugned tariff order. Whether the TRAI can in fact put a ceiling on charges will, therefore, need to be decided in an appropriate case.

As far as the issue of transparency is concerned, now that a fresh report has been prepared by the TRAI, pursuant to our order dated 13.05.2009, after hearing all the parties, we are of the opinion that the question whether the impugned tariff order was issued in a non-transparent manner or suffers from absence of indicating all the material relied upon by the TRAI, has become academic. If the report that has now been prepared by the TRAI during the pendency of the appeal is notified and converted into a tariff order (as proposed by the TRAI), it would be open to the respondents and other stakeholders to challenge that order, inter alia, on the ground that it suffers from a lack of transparency as required by Section 11(4) of the Act.

3

In this view of the matter, we do not feel it appropriate to go into the correctness of the order passed by the Tribunal on 15.01.2009, the exercise having been rendered academic.

We accordingly dispose of these appeals leaving all questions open for being agitated by the stakeholders as and when the TRAI passes a fresh tariff order in terms of the report prepared by it.

We may note the submissions made by learned counsel for the TRAI that since the report was prepared in 2010, there may be a necessity of holding further consultations. In any case, representations may be made by the stakeholders and to the extent possible, the TRAI will attempt to notify the fresh order immediately after 31.12.2014.

We make it clear that we have left all questions of law open

Ms. Chinmayee Chandra, Adv.
Mrs. Manik Karanjawala, Adv.

Mr. Tejveer Singh, Adv.
Mr. Gaurav Sharma, Adv.
Mr. Abhinav Mukerji, Adv.

5

Mrs. Pratibha M. Singh, Sr. Adv.
Mr. Saikrishna Rajagopal, Adv.
Mr. Sidharth Chopra, Adv.
Mr. Saurabh Srivastava, Adv.

Mr. Anil Kumar Mishra-I, Adv.

Mr. Atul Sharma, Adv.

Mr. Gagan Gupta, Adv.

Mr. Rajiv Mehta, Adv.

M/s Fox Mandal & Co., Advs.

Ms. Sumita Hazarika, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeals are disposed of in terms of the signed order.

(R.NATARAJAN)
Court Master

(JASWINDER KAUR)
Court Master

(Signed order is placed on the file)