

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 5253 OF 2010

B.S.N.L.

Appellant (s)

VERSUS

TELECOM REGULATORY AUTH.OF INDIA & ORS.

Respondent(s)

(With office report)

WITH With Civil Appeal No.5184 of 2010

(With appln.(s) for clarification/modification of Court's order and directions)

Civil Appeal No.5873 of 2010

(With appln.(s) for directions and with office report)

Civil Appeal No.6068 of 2010

(With appln.(s) for permission to file additional documents and with office report)

Civil Appeal No.6255 of 2010

(With office report)

Civil Appeal Nos.951-952 of 2005

(With office report)

Civil Appeal No.3298 of 2005

(With appln.(s) for permission to place additional documents on record and with office report)

Civil Appeal No.3299 of 2005

(With office report)

Civil Appeal No.4529 of 2005

(With office report)

Civil Appeal No.6049 of 2005

(With appln.(s) for directions)

Civil Appeal No.802 of 2006

(With office report)

Civil Appeal No.2731 of 2006

(With office report)

Civil Appeal No.2794 of 2006

Civil Appeal No.3504 of 2006

(With office report)

Civil Appeal Nos.5834-5836 of 2005

(With appln.(s) for permission to file additional documents and with office report)

Civil Appeal No.5837 of 2005

(With office report)

Civil Appeal Nos.4965-4966 of 2007

(With appln.(s) for permission to file additional documents and stay)

Civil Appeal No.177 of 2008

(With appln.(s) for stay and permission to place additional documents on record and permission to file addl.documents and office report)

Civil Appeal Nos.598-599 of 2008

(With office report)

Civil Appeal No.11374/2013

(With appln.(s) for permission to file appeal and with office report)

Transferred Case No.39 of 2010

C.A.No.271-281/2011

(With appln.(s) for ex-parte stay and early hearing and with office report)

Date: 26/02/2014 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

HON'BLE MR. JUSTICE M.Y. EQBAL

For Appearing

Mr.A.S.Chandiok, ASG

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Mr.N.Ganpathy, Adv.

UPON hearing counsel the Court made the following

O R D E R

C.A.No.5253/2010, C.A.No.5184/2010, C.A.No.5873/2010, C.A.No.6068/2010,
C.A.No.6255/2010, C.A.No.11374/2013, C.A.Nos.5834-36/2005,
C.A.No.5837/2005, T.C.No.39/2010 and C.A.Nos.271-281/2011

Learned counsel for the respondents as also the learned counsel representing the AUSPI state that the instant civil appeals and transferred case ought to be disposed of in terms of the order passed by this Court on 06.12.2013 in C.A.No.5253/2010 and connected matters.

List these cases on 27.02.2013.

Learned counsel shall confirm or deny the aforesaid factual/legal position on that day.

C.A.Nos.3298/2005, 3299/2005, 4529/2005, 6049/2005, 802/2006, 2731/2006, 2794/2006, 3504/2006, 951-952/2005, 4965-66/2007, 177/2008 and 598-599/2008

Learned counsel for the parties have submitted that this Court by its order dated 06.02.2007 had framed the following questions of law of public importance:

"1. Whether in the event of any inconsistency between the terms and conditions of the licenses issued under Section 4 of the Indian Telegraph Act, 1885 and the provisions of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act), the provisions of the TRAI Act would prevail in view of the purpose and object for which the Act has been passed, i.e., for ensuring rapid development of telecommunications in the country incorporating the most modern technology and at the same time protecting the interests of the consumers and the service providers.

2. Whether Telecom Regulatory Authority of India has powers to fix the terms and conditions of interconnectivity between service providers, in respect of all the licenses, irrespective of the fact whether licences issued before or after 24.1.2000 - especially in view of the non-obstante clause in sub-section (1) of the Section 11 and sub-clause (ii) of Clause (b) of sub-section (1) of Section 11 of the TRAI (Amendment) Act of 2000.

3. Whether TRAI has no power to fix terms and conditions of interconnectivity between service providers in respect of licenses issued after 24.01.2000 including terms and conditions of interconnection agreements - in view of, inter-alia, the scheme laid down in the provisos to Section 11(1) of the TRAI Act, 1997 as amended on 24.01.2000 and if it does not have any such power what would be the harmonious construction of the amended clause 11(1)(b)(ii) and the new scheme more specifically embodied in the provisos?

4. Whether under the amended provisions of the TRAI Act, 1997 introduced w.e.f. 24.01.2000 - the harmonious construction of Section 11(1)(b)(ii) and the scheme of the provisos to Section 11(1) would allow TRAI to have the power to fix the terms and conditions of interconnectivity with respect to licenses issued before 24.01.2000, only to the extent the licensor (Govt. of India) accepts the recommendations of the TRAI for incorporation in new licenses, so as to achieve level playing field between the service providers granted licenses before and after the amendment of the TRAI Act?

5. Whether the appeals are maintainable in the present form?"

We are informed that the above questions need to be adjudicated upon by a larger Bench and only thereupon the instant appeals can be examined on their individual merits.

Accordingly, we direct the Registry of this Court to place these matters before the Hon'ble the Chief Justice of India for appropriate order of listing.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Assistant Registrar