

(2008) 05 DEL CK 0010

In the Delhi High Court

Case No : Writ Petition (Civil) 2744 of 2005

Set Discovery P. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)
Consumer Protection Act, 1986 — Section 9
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15
Monopolies and Restrictive Trade Practices Act, 1969 — Section 5(1)
Telecom Regulatory Appellate Authority of India (Amendment) Act, 2000 — Section 14
Telecom Regulatory Authority of India Act, 1997 — Section 11, 11(1), 11(2), 11(3), 12(4)
Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 — Regulation 3.2, 4, 4.1, 4.2
Telegraph Act, 1885 — Section 7B(I)

Citation : AIR 2008 Delhi 159 : (2008) 151 DLT 531 : (2008) 104 DRJ 590

Hon'ble Judges : T.S. Thakur, J; Siddharth Mridul, J

Bench : Division Bench

Advocate : Aditya Narain, for the Appellant; Vikas Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—By way of present petition, the petitioner challenges the validity of Section 36 of the Telecom Regulatory Authority of India Act 1997 (the TRAI Act, 1997) and in particular regulations 4.1 and 4.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 (Interconnection Regulations 2004) as violative of Articles 14 and 19(1)(g) of the Constitution of India. In addition the petitioner also challenges the direction dated 12th January, 2005 issued by the Telecom Regulatory Authority of India, (TRAI) directing the petitioner to restore the signals to respondent No. 4, a last mile operator, and the show cause notice dated 25th January, 2005, issued by TRAI, upon the petitioner's failure to comply with the direction dated 12th January 2005.

2. The petitioner-company is a distributor of satellite television channels to various cable operators based on affiliation agreements. Three Star Communications-respondent No. 4, entered into an affiliation agreement dated 29th October, 2002 (agreement) with the petitioner to distribute certain television services. In terms of the agreement the petitioner was obliged to provide signals to the respondent No. 4 for onward transmission. In consideration thereof, the respondent No. 4 was required to pay the petitioner a monthly subscription fee by the 15th of every month.

3. The petitioner states that the respondent No. 4 was a chronic defaulter and had always been late in payment of the monthly subscription fee. Further, although, respondent No. 4, kept reassuring and promising that it would clear its outstanding dues, it did not do so and was consequently in breach of the agreement. The petitioner avers that, Therefore, it was well within its contractual right to deactivate the signals from as early as January, 2004 but did not do so on account of the repeated assurances given by respondent No. 4. It is stated that during a meeting between the parties held on the 5th of November 2004 the respondent agreed to pay the amount due as on that date by the 18th of November, 2004. However, respondent No. 4 failed to pay amounts due as agreed. It was in these circumstances, that the petitioner was constrained to deactivate the signals on 14.12.2004.

4. In response to the disconnection of signals, respondent No. 4 addressed a complaint dated 21st December, 2004 to TRAI stating therein that the petitioner had intentionally and without prior notice blocked all channel signals and thereby sought necessary action against the petitioner including a direction to restore the signal immediately in the interest of the subscribers.

5. On the 23rd of December, 2004 TRAI addressed a communication to the petitioner, in relation to the complaint filed by respondent No. 4, and requested the latter to respond to the said complaint not later than 28th December, 2004.

6. On 28th December, 2004 vide a communication addressed to TRAI, the petitioner is stated to have replied to the complaint, and submitted that, as respondent No. 4 was a chronic defaulter with outstanding dues of over rupees one lac forty thousand since August, 2004, the petitioner was justified in discontinuing the signal based on contractual agreement between the parties. The said communication, however, was not received by TRAI. In any event, vide communication dated 29th December, 2004 respondent No. 3 once again requested the petitioner to furnish its comments by the 30th December, 2004, failing which it was stated in the said communication, that it would be presumed that the petitioner had no comments to offer, and TRAI could proceed in accordance with the provisions of the TRAI Act and interconnection regulations.

7. It was, in the above circumstances, that the impugned direction dated 12th January, 2005 u/s 13 of the TRAI Act read with Clauses 4.1 and 4.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection

Regulation, 2004 was rendered by TRAI directing the petitioner (a) to take immediate steps for restoration of the signals to respondent No. 4; (b) to furnish a compliance report within two days on receipt of this direction; and (c) to scrupulously comply with the requirements of the regulations before disconnection of signals. The petitioner vide its letter dated 13th January, 2005 acknowledged the aforesaid directions, and simultaneously informed TRAI, that it would be pursuing an appeal in the matter.

8. However, since the petitioner failed to comply with the directions of TRAI, as contained in its communication dated 12th January, 2005, a show cause notice dated 25th January, 2005, as to why penal action should not be initiated against the petitioner, u/s 29 read with Section 34 of the TRAI Act, 1997, was issued. The petitioner also assails the show cause notice dated 25th January, 2005.

9. Mr. Aditya Narayan, Advocate submitted that the impugned order is liable to be set aside, because it is tantamount to directing that the petitioner does business with a defaulting party, contrary to its rights under the agreement. It is urged that the impugned direction to restore the signals to respondent No. 4, who defaulted in making payment under the agreement, is violative of the petitioner's constitutional right enshrined in Article 14 and fundamental right to trade under Article 19(1)(g) of the Constitution. Counsel further submits that Clauses 4.1 and 4.2 of the Interconnection Regulations dated 10th December, 2004 are ultra vires the regulation making power conferred on respondent No. 3 u/s 36 of the TRAI Act, and further that Section 36 of the TRAI Act itself suffers from the vice of excessive delegation.

10. On the other hand Mr. Mehta, Advocate appearing on behalf of TRAI, submits that the challenge made in the petition does not survive, in view of the decision of this Hon'ble Court in *Star India P. Ltd. Vs. The Telecom Regulatory Authority of India and Others*, . Counsel contends that the petitioner herein was also a party to the proceedings in the said decision, which dealt with and decided identical issues, and as such the petition ought to be dismissed on this ground alone.

11. The relevant provisions of the TRAI Act, 1997 read as follows:

11. Functions of Authority - (1) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the functions of the Authority shall be to-

(b) discharge the following functions, namely:

(i) ensure compliance of terms and conditions of license;

(ii) notwithstanding anything contained in the terms and conditions of the license 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;

(iii) ensure technical compatibility and effective inter-connection between

different service providers.

(iv) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;

(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 services;

(vi) lay down and ensure the time period for providing Local and long distance circuits of Telecommunication between different service providers;

(vii) maintain register of interconnect agreements and of all such other matters as may be provided in the regulations;

(viii) keep register maintained under Clause (vii) open for inspection to any member of public on payment of such fee and compliance of such other requirement as may be provided in the regulations;

(ix) ensure effective compliance of universal service obligations:

(d) perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act:

Provided that the recommendations of the Authority specified in the Clause (a) of this sub-section shall not be binding upon the Central Government:

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.

14. Establishment of Appellate Tribunal.- The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to -

(a) adjudicate any dispute -

(i) between a licensor and a licensee;

(ii) between two or more service providers;

(iii) between a service provider and a group of consumers:

Provided that nothing in this clause shall apply in respect of matters relating to -

(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to jurisdiction of the Monopolies and Restrictive Trade

Commission established under Sub-section (1) of Section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969);

(B) the complaint of an individual consumer maintainable before a Consumer Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established u/s 9 of the Consumer Protection Act, 1986; 68 of 1986

(C) dispute between telegraph authority and any other person referred to in Sub-section (I) of Section 7 B of the Indian Telegraph Act, 1885; 13 of 1885

(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.

29. Penalty for contravention of directions of Authority.- If a person violates directions of the Authority, such person shall be punishable with fine which may extend to one lakh rupees and in case of second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which the default continues.

34. Cognizance of offences.- (1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder, save on a complaint made by the Authority.

(2) No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate of first class shall try any offence punishable under this Act.

36. Power to make regulations.- (1) The Authority may, by notification, make regulations consistent with this Act and the rules made there under to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:

a. the times and places of meetings of the Authority and the procedure to be followed at such meetings under Sub-section (1) of Section 8, including quorum necessary for the transaction of business;

b. the transaction of business at the meetings of the Authority under Sub-section (4) of Section 8;

c. [Clause(c) omitted by Act 2 of 2000, Section 14 (w.r.e.f. 24-1-2000)]

d. matters in respect of which register is to be maintained by the authority under Sub-clause (vii) of Clause (b) of Sub-section (1) of Section 11 ;

e. levy of fee and lay down such other requirements on fulfilment of which a copy of register may be obtained under Sub-clause (viii) of Clause (b) of Sub-section (1) of Section 11;

f. levy of fees and other charges under Clause (c) of Sub-section (1) of Section 11.

12. The relevant provisions of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 are as follows:

4. Disconnection of TV channel signals

4.1 No broadcaster or multi system operator shall disconnect the TV channel signals to a distributor of TV channels without giving one month notice indicating the brief reasons for the proposed action:

Provided that in case a distributor of TV channel is re-transmitting signals for which he/she is not authorized and thereby affecting the commercial interest of the concerned broadcaster or multi system operator, the notice period shall be two working days giving reasons to the concerned distributor of TV channel for such action.

Explanation

A distributor of TV channels is said to be authorized if there exists any agreement between the broadcaster, including his/her agents permitting the distribution of the broadcasting service by the said distributor of TV channels, either through a written agreement or through an oral agreement. Consequently no notice would be required if there is no agreement, written or oral, permitting the distribution of the broadcasting service.

4.2 Broadcaster/multi system operator shall inform the consumers about the dispute to enable them to protect their interests. Accordingly, the notice to discontinue signal shall also be given in two local newspapers in case the distributor of TV channels is operating in local area and in two national papers in case the distributor of TV channels is providing services in a wide area. Alternatively consumers can be informed through scroll on the concerned channel(s). Where a Broadcaster or a Multi System Operator decides to give this notice through a scroll the Multi System Operator or the Cable Operator, as the case may be, must carry the scroll in the concerned channel(s).

13. In this case it is common ground that there was an agreement between the parties. Whether or not any monthly subscription was payable to the petitioner is not germane for the determination of the present petition for the reasons expressed hereafter. The petitioner, no doubt, continued to provide the cable operator with the signals during the pendency of the negotiations inter se for clearance of the outstanding dues. Further, it is an admitted position that the Interconnection Regulations, 2004 were notified and came into force w.e.f. from 10th December, 2004. The action of termination and deactivation of signals on 14th December, 2004 was subsequent to the coming into force of the Interconnection Regulations, 2004. Thereafter, the cable operator initiated the process by filing the complaint, that culminated into the passing of the impugned direction to restore the signal dated 12th January 2005. The subsequent show

cause notice dated 25th January, 2005 impugned herein was issued by TRAI consequent upon the failure of the petitioner to comply with its earlier direction.

14. In *Star India P. Ltd. v. Telecom Regulatory Authority of India and Ors.* (Supra)., a Division Bench of this Court declared thus:

40. Section 11(2) of TRAI Act states that notwithstanding anything contained in the Indian Telegraph Act, the Authority may notify the rates at which telecommunication services shall be provided; the Authority may notify different rates for different persons or class of person for reason to be recorded; the Authority shall not act against the sovereign and integrity of India; or the security of the State; or friendly relations with foreign States; or public order, decency or morality. Learned Senior Counsel for the Petitioners contend that this section bestows unchannelised, unguided, undefined and untrammelled powers on the delegate namely the Authority, and hence should be struck down. What has to be ascertained in every case where such a submission has been put forward is whether the legislative policy has been delineated before the delegation is made, and also whether a correctional system of superintendence and supervision of the delegate's actions has been put in place. Courts should also consider the degree to which delegation is inevitable or necessary or expedient. The frontiers within which the Delegate/Authority must function is further identifiable from indicia available in the Act itself. The Preamble enjoins that the Authority should endeavor to (a) regulate the telecommunication services, (b) protect the interests of service providers and consumers of the telecom sector, (c) to promote and ensure orderly growth of the telecom sector. Jural experience would vouch that fees or rates prescribed in the statute invariably become unrealistic aeons before they receive corrective attention. Where fees, tariffs and rates are dependent on market forces it is expedient to leave their determination and change to the Executive or the Authority or the Regulators, as the case may be. Where redressal machinery is provided for such delegation should be impervious to objection. Inasmuch as the TRAI Act provides for the establishment of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) with jurisdiction inter alia to hear and dispose of appeals against any direction, decision or order of the Authority, this important safeguard against any possible abuse or arbitrary exercise of power is duly in place. A second appeal to the Hon'ble Supreme Court of India is also provided for.

41. We also think that if a section or provision of any statute is read in isolation of other parts of that statute, absurd propositions are bound to arise. The Central Government is empowered to make Rules and the Authority to make Regulation by virtue of Section 35. These provisions are immediately followed by Section 37 which mandates that the Rules and the Regulations shall be laid before Parliament.

42. This very question had arisen for consideration in *The Quarry Owners Association Vs. The State of Bihar and Others*, . The challenge in that case was also targeted against the fixation of rates of royalty for minor minerals u/s 15 of

the Mines and Minerals (Regulation and Development) Act, 1957 which, no doubt, itemized some of the subjects which could be dealt with by the delegate. The Supreme Court noted that by virtue of Section 28 the State Government was obligated to place such Rules before each House of the State Legislature. It was held that, "requirement of mere placement of the rules or the provisions before the State Legislature is also one of the forms of check on the State Government to exercise its power as a delegatee". A perusal of Section 37 makes it clear that a docile and perfunctory placement of the Rules and Regulations is not what is envisaged in the TRAI Act. The decision is a direct authority in favor of the validity of the TRAI Act making it impregnable to the vice of excessive and unbridled delegation of powers.

43. We are satisfied that the TRAI Act adequately articulates the parameters and ethos within which the Authority must function. The assailed provisions do not suffer from the vice of excessive delegation of powers.

45. ...So far as CW 16913-14/2006 filed by Set Discovery Private Limited is concerned prayer (d) reads as follows:

(d) Strike down Clauses 3.3 and 9 to 12 of the Telecommunication (Broadcasting and Cable Service) Interconnection (Third Amendment) Regulation, 2006 (10 of 2006) dated 4.9.2006 (No. 6-4/2006-B&CS) as amended by the Telecom Regulatory Authority of India; being ultra vires.

The underlined words have been added by hand by the Petitioners in the Petition, making it palpably clear that it was an afterthought. Keeping the nebulousity of the prayer in perspective we are satisfied that the Petitioners ought not to be permitted to mount a challenge to the virus to the Regulations without laying the foundation for it in their pleadings. This is especially so since the challenge to the virus to the Interconnection Regulations with reference to Articles 14 and 19 of the Constitution has been specifically pleaded. On a perfunctory and prima facie level we may reiterate that it is not correct to contend that the CTN Act does not contemplate broadcasting activity at all. We also draw support from the decision of the Division Bench of the Andhra Pradesh High Court in WP No. 12781 of 2006 between Messrs J.K. Communications and The TRAI and others.

46. Furthermore, the TRAI is clearly competent to prescribe the conditions and tariff impugned before us by virtue of the TRAI Act itself. We have already upheld the legality of Section 2(1)(k), the consequence of which is that broadcasting is undeniably and unassailably covered by that statute. TRAI accordingly is expected to make recommendation inter alia in respect of "measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in services [see Section 11(1)(a)(iv)]". TRAI must regulate arrangements amongst service providers of sharing their revenue derived from providing telecommunication services [see Section 11(1)(b)(iv)] and generally to perform such other function including such administrative and financial functions as may be entrusted to it by the Central

Government as may be necessary to carry out the provisions of the Act [see Section 11(1)(d)]. However, on a perusal of Section 11(2) there is no scope for any controversy concerning the competence of the TRAI to prescribe the impugned rates at which telecommunication services are to be provided. Therefore, de hors the CTN Act and the CTN Rules TRAI is otherwise competent to fix tariffs, as also to prescribe the Standard Interconnection Agreements.

DISCONNECTION OF TV CHANNEL SIGNALS

47. The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 has been amended by Notification No. 6-4/2006-B & CS dated 4.9.2006, in exercise of powers of Section 2(k) and Section 11 of the TRAI Act. Our attention has been directed towards Regulation 4 thereof which deals with Disconnection of TV Channel Signals and reads as follows-

4.1. No broadcaster or multi-system operator shall disconnect the TV channel signals to a distributor of TV channels without giving three weeks notice to the distributor clearly giving the reasons for the proposed action: Provided that a notice would also be required before disconnection of signals to a distributor of TV channels if there was an agreement, written or oral, permitting the distribution of the broadcasting service, which has expired due to efflux of time:

Provided further that no notice would be required if there is no agreement, written or oral, permitting the distribution of the signals.

4.2 No distributor of TV channels shall disconnect the re-transmission of any TV channel without giving three weeks notice to the broadcaster or multi-system operator clearly giving the reasons for the proposed action.

4.3 A broadcaster/multi-systemoperator/distributor of TV channels shall inform the consumers about such dispute to enable them to protect their interests. Accordingly, the notice to disconnect signals shall also be given in two local newspapers out of which at least one notice shall be given in local language in a newspaper which is published in the local language, in case the distributor of TV channels is operating in one district and in two national newspapers in case the distributor of TV channels is providing services in more than one district. The period of three weeks mentioned in Sub-clauses 4.1 and 4.2 of this regulation shall start from the date of publication of the notice in the newspapers or the date of service of the notice on the service provider, which is later.

Explanation-

1. In case the notice is published in two newspapers on different dates then the period of three weeks shall start from the latter of the two dates.

2. Broadcaster/multi system operator/distributor of TV channels may also inform the consumers through scrolls on the concerned channel (s). However, issue of notice in newspapers shall be compulsory.

4.4 The notice in the newspapers must give the reasons in brief for the

disconnection.

48. Learned Counsel for the Petitioners have relied on the decision of the Division Bench in MTNL Vs. Telecom Regulatory Authority of Delhi, in which it has inter alia been observed that "when the Legislature intends to confer on a body the power to vary contracts or existing private rights, it has to do so specifically. In the absence of any provision authorising the authority to vary private rights under existing contracts or licences, no such power can be presumed or assumed. This is the law laid down reported in Indian Aluminium Company Vs. Kerala State Electricity Board, ". In our opinion, however, reliance on these observations would lead to an anachronism. Prior to making these observations our learned Brothers had noted that u/s 11(1)(b) the Authority merely has a power to recommend terms and conditions of a license and cannot override the provisions in a contract between the parties. Our learned Brothers had also observed that the Authority has, in purported exercise of powers u/s 11(1)(d), converted a recommendatory function into a directory one. It held that it was for the Government to decide what are the terms and conditions of a license to a service provider. What must be borne in mind, however, is that Section 11 has been amended subsequent to the pronouncement of that decision vide the Telecom Regulatory Appellate Authority of India (Amendment) Act, 2000 with effect from 25.3.2000. The amending Act has bifurcated the functions of the Authority. It must now make recommendations u/s 11(1)(a) and by virtue of Section 11(1)(b) must discharge several functions, including fixing the terms and conditions of inter-connectivity between service providers, maintain interconnect agreements, etc., as we have already adumbrated above.

49. Moreover, the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 had been issued after Mahanagar Telephone Nigam Ltd. Regulation 4 has been substituted by the extant provision. In view of these subsequent events it is not open to the Petitioners to contend that the said decision continues to hold the field. A perusal of the Statement of Objects and Reasons of the Telecom Regulatory Authority of India (Amendment) Ordinance, 2000 will disclose that the President had stated in October, 1999 that the TRAI requires to be strengthened by making suitable amendments to the Act. A Group on Telecom and IT Convergence had been constituted for this purpose, which submitted its recommendations to the Central Government leading to the promulgation of the Telecom Regulatory Authority of India (Amendment) Ordinance dated 24.1.2000. The salient features of the Amendment were (a) to bring into being a clear distinction between the recommendatory/advisory and the regulatory functions of the Authority as envisaged under Sub-section (1) of Section 11 of the Act, (b) empowering the TRAI to fix terms and conditions of inter-connectivity between service providers, (c) tariff setting function of TRAI has been brought under the purview of Sub-section (3) of Section 11. By means of this very amendment the TDSAT had also been established which by Section 14 has the power to adjudicate any disputes between a licensor and a licensee between two or more service providers or between a service provider and a

group of consumers and to hear and dispose of appeals against any direction, decision or order of the Authority under the Act. We cannot accept the argument that the law does not empower TRAI to fix terms of interconnection.

RESTRICTIONS ON DISCONNECTION

50. The contention on behalf of the Petitioners is that the extant Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 deserve to be struck down since it stipulates that no broadcaster shall disconnect TV signals to distributor without giving three weeks notice even though the distributor may be in default. Reliance has been placed by them on the first proviso of Regulation 3.2 which states that in the event that a distributor of TV channels has defaulted in payment to the broadcaster, the latter shall not be obliged to provide signals on non-discriminatory terms. However, the legal maxim that a person cannot be a judge in his own cause persuades us to prefer the view that the broadcaster should not be permitted to arrogate to himself the unilateral power of determining whether one of his distributors has defaulted in payment. The requirement for issuance of a three weeks notice in which the reasons for proposed disconnection are spelt out, is not unreasonable. It enables the raising of a dispute by the parties before an independent forum. What must not be overlooked is that the subscriber has a fundamental right of viewership which has pre-eminence over that of the broadcasters' fundamental rights. The impugned Regulations are calculated to protect the viewers' interest. The second Proviso to Regulation 4.1 clarifies that no notice would be required if there is no agreement, written or oral, permitting the distribution of the signals. There is no incongruity between these Regulations once it is understood that the second Proviso to Regulation 3.2 would come into play only when the dispute has been adjudicated upon by the appropriate Forum. This Proviso has the effect of not only imparting reasonableness to the impugned Regulation but it also protects the copyright of the broadcaster. It is for these reasons that we reject the contention put forward on behalf of the petitioners that Regulation 4, introduced by means of the amendment dated 4.9.2006, suffers from any legal vice.

51. We do not find any merit in the writ petitions which we hereby dismiss. The parties shall, however, bear their respective costs. A copy of this judgment be placed by the Registry in all the connected matters.

15. We have examined the ratio decidendi of the cited decision as well as the stipulation of the Act and the extant regulations which obliged a broadcaster not to disconnect the TV channel signals to a distributor without giving one month notice indicating the brief reasons for the proposed action. It is pertinent to observe that regulation 4.2 unequivocally stipulates that the broadcaster shall inform the consumers about the dispute between the parties in order to enable them to protect their interests and accordingly requires that the notice to discontinue signals shall also be given in two newspapers as well as through scroll on the concerned channel.

16. The preamble to the TRAI Act clearly mentions that TRAI has been established, inter alia, "to regulate the telecommunication services...to protect the interests of service providers and consumers of the telecom sector". Thus the protection of the interests of consumers is at the core of the TRAI Act. Section 11 of the Act invests TRAI with substantive powers including specific power to fix the terms and conditions of interconnectivity between the service providers. Section 13 invests TRAI with the authority to issue directions for the discharge of its functions under Clause (b) of Sub Section 1 of Section 11. The provision of Section 36 of the Act empower TRAI to make regulations consistent with the Act and the Rules made there under to carry out the purposes of this Act. Section 29 provides for penalty in the event of a violation of the directions of TRAI and the provisions of Section 34 empower a Court not inferior to that of a CMM or a CJM of first class to try any offence punishable under this Act on a complaint made by TRAI. The provision of Section 14 provides for the establishment of a Appellant Tribunal with the jurisdiction to adjudicate disputes between two or more service providers.

17. It is seen, Therefore, that the TRAI Act adequately articulates the parameters within which the authority must function. Section 36 of the TRAI Act is immediately followed by Section 37 which mandates that the regulations made under this Act shall be laid before Parliament. The TRAI Act u/s 14 also provides for a redressal machinery to ensure that such delegation is impervious to objections. Inasmuch as the TRAI Act establishes an Appellate Tribunal, to adjudicate disputes between two service providers and provides for the hearing and disposal of appeals against any and every direction, decision or order of TRAI, it constitutes a safeguard against any possible abuse or arbitrary exercise of power. It is also seen that the interconnection regulations, in so far as they require a broadcaster to give 30 days notice to the cable operator before disconnecting the TV signals, are principally to protect and secure the interests of the consumers. Even otherwise the restriction imposed on the contractual rights of the petitioner is reasonable and within the regulation making authority of TRAI, as provided for by the TRAI Act. The preamble of the TRAI Act enjoins TRAI to protect consumers. The legislative policy of the TRAI Act is clearly and unambiguously delineated before the delegation of the Regulation making authority. There is a correctional system of superintendence and supervision in place. The delegation itself is unequivocally necessary, inevitable as well as expedient for the purposes of the TRAI Act. The restriction thus imposed on the contractual rights of the petitioner, being mandated by interests of the general public, are reasonable, necessary and constitutional, in order to regulate broadcasting and cable services within the country.

18. It is also indisputable, that the legal position with regard to the power of TRAI as well as its authority to make the interconnection regulations thereunder, stands concluded by the authoritative pronouncement of the Division Bench in *Star India P. Ltd. v. Telecom Regulatory Authority of India and Ors.* (Supra), where it has been held that the provision assailed therein as well as the

impugned regulations do not suffer from the vice of excessive delegation of powers.

19. TRAI, Therefore, has the jurisdiction to issue directions of the nature that have been impugned in the present petition. Further, TRAI also has the authority to initiate a complaint u/s 34 of the Act for an offence punishable under this Act or the Rules and Regulations made thereunder. Furthermore the provisions of Section 29 make any person who violates directions of the authority of TRAI punishable with a fine. The show cause notice issued in this regard, was within the jurisdiction and competence of TRAI and cannot be assailed by way of the present proceedings.

20. Insofar as the direction to restore signals is concerned the same could have been appropriately challenged before the appellate authority constituted u/s 14. In fact the petitioner itself informed TRAI vide its communication dated 13th January, 2005 that they would be pursuing an appeal in the matter. The petition fails to disclose any cogent reason why the efficacious alternative remedy of an appeal provided under the TRAI Act has not been prosecuted by it.

21. The notice to show cause dated 25th January, 2005 impugned herein was issued consequent upon the failure of the petitioner to comply with the direction issued by TRAI on 12th January, 2005 to take immediate steps for restoration of signals to respondent No. 3. In our opinion, it does not lie in the mouth of the petitioner to challenge the impugned show cause notice, inasmuch as it was on the petitioner's failure to comply with the direction to restore the signal that TRAI was constrained to issue the show cause notice in compliance of the mandate of Sections 29 and 34 of the TRAI Act.

22. In this view of the matter, we are satisfied that the regulation making power of TRAI u/s 36 of the TRAI Act, 1997 does not grant unfettered or unbridled powers upon respondent No. 3 and the assailed provision does not suffer from the vice of excessive delegation of powers. We are further satisfied that Clauses 4.1 and 4.2 of the Regulation dated 10th December, 2004 do not impose any unreasonable restrictions on the contractual freedom of the petitioner by providing for a notice period of 30 days prior to disconnection of signals since that requirement is necessitated for the protection of the interests of the consumers at large. It would be seen that it is open to the petitioner to challenge the directions issued by the authority before the Appellate Tribunal, for Settlement of the Disputes, and to initiate an appropriate proceeding for recovery of the outstanding subscription owed to it by the cable operator-respondent No. 4.

23. In view of the above discussion, we find that the grounds urged in the writ petition are unfounded. The writ petition fails and is hereby dismissed. The parties shall, however, bear their respective costs.