

## **TRAI: Analysis of Powers, Functions and Jurisdiction with Case Analysis**

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### **Abstract**

*This research paper will try to understand the powers, functioning, and duties of The Telecom Regulatory Authority of India (“TRAI”). TRAI gets its authority under the TRAI Act, 1997. The telecommunication sector plays a vital role in the development of the infrastructure of a country. It covers various aspect of technology, i.e., Radio technology, Broadcasting services, E-commerce, Internet Services, Satellite Television, and so forth. When the State of Jammu and Kashmir acceded to India, this was one of the departments whose power was kept with the Union Government. The telecommunication sector is rapidly growing as new and better technologies are invented, so we opted to establish the Telecom Regulatory Authority of India. And under this TRAI Act, Telecom Dispute Settlement Appellate Tribunal. These two authorities, i.e., TRAI and TDSTAT, are responsible for regulating telecommunication services, adjudicating disputes, disposing of appeals, and protecting the interest of consumers and the service providers.*

**Keywords:** *Telecom Regulatory Authority of India (TRAI), Competition Commission of India (CCI), Telecom Dispute Settlement Appellate Tribunal (TDSTAT)*

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## **Introduction: A brief about TRAI Act**

In the year 1995, a bill tabled in Parliament to establish a regulatory body which would regulate the Telecom Sector, by amending the Indian Telegraph Act, 1985. The bill was discarded as the Regulatory body which was being established was a non-statutory authority wherein most of the Members of Parliament were of the view that there should be a statutory regulatory body to regulate the telecom sector. Later in the year 1997, by the Presidential Ordinance<sup>2</sup> TRAI as regulatory body was established and then Parliament enacted the TRAI Act. Further in the year 2000, TRAI Act faced a major Amendment where the regulatory function and dispute settlement function was distributed between TRAI and the newly established adjudicatory body i.e., Telecom Dispute Settlement Appellate Tribunal respectively.

However, TRAI is not a complete Independent Regulatory Body. As per Section 25 of the TRAI Act, the Government of India has the power to issue certain directions which TRAI is bound to follow. Section 35 allows for the Central Government to make rules and specific legislations from time to time with regards to TRAI, the same shall be binding. It is therefore fair to conclude, that TRAI is not a complete Independent Regulatory Body as compared to other bodies similar in the mode of working such as CCI and SEBI.

TRAI Act is made of six chapters which deals with different matters such as the applicability of the Act, definitions, constitution of TRAI, its powers and functions, establishment of the appellate tribunal, its procedure, and various other provisions which are important for the smooth functioning of TRAI and TDSAT. The main objective of is to provide fair and transparent policy to the service providers and also to promote healthy environment by promoting fair competition.

## **Organisation of TRAI**

As per Section 3 of the Act, TRAI is a corporate entity which have perpetual succession, power to acquire, hold and sale property whether it is movable or immovable. TRAI can also enter into contract as stipulated by the provision. TRAI can also sue and be sued in its name. TRAI is headed by a chairperson and consist of two whole time members along with maximum two part-time members who are appointed by the Central Government, these members can hold their offices for

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<sup>2</sup> Presidential ordinance is TRAI Ordinance (No. 11 of 1997).

the duration of three years or until they attain the age of 65 years whichever is earlier<sup>3</sup>. These members have special knowledge and experience in the field of law, telecommunication, management or consumer affairs. The seat of TRAI is situated at New Delhi.

## **Powers and Functions of TRAI**

Under Section 11 of the TRAI Act, the functions of TRAI are as follows:

- i. TRAI can make recommendations, either without request or on request from the licensor on the matters related to timing for introduction of new service provider, conditions related to issuance of license to the service providers, types of equipment to be used by the service providers and so on<sup>4</sup>.
- ii. TRAI have to fix the terms and conditions of inter-connectivity between the service providers.
- iii. TRAI have to ensure the time period for providing local and long-distance circuits.
- iv. TRAI can levy fees and other such charges in respect of services as determined by the regulations.
- v. TRAI have administrative function and financial functions which are entrusted by the Union Government<sup>5</sup>.
- vi. TRAI have the function of regulating tariffs of various telecom services.
- vii. TRAI also have the function to make recommendation to Central Government on every matter related to new telecom services or regulations. However, these recommendations are not binding on the Central Government.

## **Landmark cases related to working of TRAI**

In this Section emphasis is primarily laid on the jurisdiction and prevalence of TRAI over certain matters with the help of few cases analysis:

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<sup>3</sup> Right to Information Act 2005 § 4(1) (b), TRAI Manual

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

## 1. Competition Commission of India v. Bharti Airtel Limited<sup>6</sup>:

### Facts of the case

In December 2016, Reliance Jio Limited approached Competition Commission of India alleging cartelization by Incumbent Dominant Operators known as IDOs, which are Bharti Airtel, Idea Cellular Limited and Vodafone India Limited collectively and Cellular Operator Association of India. The alleged violation happened under Section 3 and 4 of the Competition Act, 2002, which states that any agreement which is likely to cause adverse effect on the competition within India and no enterprise or group shall abuse its dominant position respectively. Here Jio alleged that this cartelization tried to restrict its entry into the telecom sector by denying the sufficient number of Point of Interconnection to it. Further, Jio filed an application before TRAI for investigation of the conduct of IDOs and COAI. On investigation of matter by the CCI, it was found that the alleged violations are true, and passed an order for further investigation. Aggrieved by the order, the respondents filed a writ petition in Bombay High Court asking for the quashing of this particular order. After hearing of matter in the Bombay High Court, court quashed order of CCI for investigation, stating the CCI did not have jurisdiction in matters of telecom sector and stated that this matter is already raised in front of TRAI. Aggrieved by the particular order of Bombay High Court, CCI filed a special leave petition in Supreme Court for its determination.

### Issues of the case

- Whether the writ petition filed before High Court of Bombay is maintainable?
- Whether the High Court could give its findings on merits?

### Judgement of the Case

- It was held by the court that the petition filed before the Bombay High court is maintainable and not barred by Section 26(1) of the Competition Act. The order given by the CCI is quasi-judicial order and hence the High Court is competent to decide on the matters raised through Article 226 of the Indian Constitution.

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<sup>6</sup> AIR 2019 SC 113

- It was also held by the Hon'ble Supreme court that CCI's order to investigate the matter through Director General as it has adverse civil consequences.
- On the second issue the Hon'ble Supreme Court held that, "Since it was found that the Petition filed before Bombay High court is maintainable, then the order passed by the High court to quash the order passed by CCI should also be kept untouched". Hence, the appeals were not maintainable before the Supreme Court.
- SC also held that with regards to sector specific matters, the sector regulators have much more knowledge and expertise to deal with these issues and hence TRAI is one of the sector regulators, which is established only for the purpose to regulate the telecom sector and it have better expertise and knowledge with regards to the matters of Telecom sector as compared to the Competition Commission of India.
- It is the discretion of TRAI that if they found that some kind of anti-competitive practices have been done, then the CCI's jurisdiction can be invoked to investigate the matter further.
- Also, the Hon'ble Supreme Court stated that the development of harmonious construction is important between CCI and TRAI. "We cannot directly revoke the Jurisdiction of CCI as main objective of CCI is to curb anti-competitive practices and ensure free and fair trade in the market. Hence, we cannot negate the jurisdiction of CCI in the Telecom Sector but that jurisdiction should be pushed in the later stage once the issue is decided by TRAI".

### **Analysis**

As infrastructure in India is developing and new inventions and implementation of technology is being carried out, it is necessary to establish the role of sector specific regulators as they are the only body who governs the infrastructure development. It is also necessary to understand that we have CCI as a general market regulator who ensures fair and free market practices. The CCI should work with particular sector regulators as one has the role in development of infrastructure and other have the role to ensure that particular development is done without any kind of discrepancies. From the above judgement we can understand the need of harmonious relation between regulatory bodies of India.

## 2. Cellular Operators Association of India and Ors. v. TRAI and Ors.<sup>7</sup>

### Facts of the case

TRAI in the year 2015 notified a regulation namely, Telecom Consumers Protection (Ninth Amendment) Regulations, 2015. Which was to take effect from 1<sup>st</sup> January, 2016. As per the amendment every service provider of cellular mobile telephone services has to credit one rupee for each call drop up to three calls drop a day to calling consumers, which happens within its network. The money should be credited to the consumers account within four hours for the pre-paid customers and adjusted in the monthly bill of postpaid customer. Aggrieved by the amendment regulation the Cellular Operators Association of India reached Delhi High Court, where it was held that the amendment regulation is valid regulation. Further, the COAI approached Hon'ble Supreme Court challenging the said Judgment of Delhi High Court. Hence the case is.

### Issues of the Case

- Whether the Ninth Amendment to the Telecom Consumer Protection Regulations, 2015 is ultra vires to Section 36 r/w Section 11 of the TRAI Act, 1997.
- Whether the impugned regulations violate appellant's Fundamental Rights under Article 14 and Article 19(1)(g) of the Constitution?

### Judgement of the Case

- Dealing with the first issue the Hon'ble Supreme Court held that the particular amendment is ultra vires to Section 36 r/w Section 11 of the TRAI Act. Supreme Court said that major power of TRAI is the Regulation making power which is provided under the TRAI act.
- And it was required by the act that this power should be used consistently as per the Act and Rules. It was said that "the regulation was not made to ensure compliance of terms and conditions of the license no has it been made to lay down any standard of quality of services that needs compliance". Hence it is outside the preview of Section 11.
- It was also held that as this amendment does not carry out the purpose of the act under Section 11, so it also not valid under Section 36 of the act. Hence it is ultra vires the Act.

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<sup>7</sup> (2016) 7 SCC 703

- Further while dealing with the second issue it was held by the Hon'ble Supreme Court that the amendment violates Article 14 and 19(1)(g), as it was found by the TRAI that 36.9% of the Call drops takes place because of fault at consumer end, and hence court observed that "this being the case, it is clear that the service provider is made to pay for call drops that may not be attributable to his fault, and the consumer receives compensation for a call drop that may be attributable to the fault of the consumer himself". And therefore, imposing strict liability on the service providers is erroneous as in case of call drop the service providers are not fully liable and so it is arbitrary and unreasonable.

### **Analysis**

From the above case we can understand that the powers of TRAI are not unlimited. The moto behind the establishment of TRAI was to ensure the protection of the interests of the consumers along with that timely managing the growth and development of the telecommunication sector to ensure infrastructure development in India. But TRAI act does not contemplate the redressal of individual consumer complaints and grievances by the Authority. The Act mentions the procedure of which is to be specified by the Authority and to be followed by the service providers to ensure best quality of service. Hence TRAI can issue certain guidelines or regulations to protect the interest of consumers.

As it was held by TRAI itself that 36.9% of Call drop happens at the Consumers end and hence as per Article 14 there should exist intelligible differentia, and that was lacking in this regulation as TRAI have not differentiated between the fault of Service provider and fault of consumer and directly imposed penalties on Service provider even for the fault of consumer. And this imposition is also disturbing the Freedom of Trade under Article 19(1)(g) of the Constitution. And this means that the particular regulations have not been made with due diligence and care.

### **Conclusion**

From the above whole paper, we can conclude that the sector specific regulatory body TRAI is really playing a vital role in the development of the telecom infrastructure of this country. The regulations made by TRAI provides many advantages the consumers and even the service

providers as it lays down proper guidelines and mechanism like what are the terms and conditions of license, what are the rights of the consumers. These policies keep protection consumers interests on top priority. And the consumers are also profiting from these regulations as the service providers have the liability to provide services with best quality and at a pocket friendly price.

TRAI recommends changes and plans for the development of infrastructure such as it recommended the implementation of Rural Broadband network by Public Private Partnership. But there are many other such incidents happened which have harmed the consumer interest instead of ensuring their interests. One such incident is the implementation of the New Tariff Order, 2017 where the cable operators have to provide channels on the per channel rate basis. This NTO was launched to provide benefit to consumer as after the implementation of this order, the consumers have to pay only for the channels which they want to watch but that particular order have failed to do so and eventually led to the increase of 25% of the cable bill which the consumer now have to pay. As per the KPMG M&E Report 2020, it was said that around 26 million users have stopped taking the cable TV services due to the increase in the prices, and this loss of Consumer led the cable tv revenue down by Rs. 85 billion. And the awareness methods opted by the broadcasters for NTO costed them around 1,000 Crore. And hence it one of the examples where TRAI have filed to ensure protection of Consumers Interest.

Nonetheless, the regulatory body plays a very important role in the development of the Country and just like that TRAI is also doing sometimes these regulatory powers get overused and can be harmful for Development by in most of the cases it helps to control free trade practices, ensure best interest of stakeholders. And this is only their main function. We can also see that the Jurisdiction of TRAI pops up first whenever there is question of tussle between CCI and TRAI.