

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2018

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.Nos.5915 and 5916 of 2018

Vodafone Mobile Services Limited
Having its registered office at
Peninsula Corporate Park,
Ganapatrao Kadam Marg, Lower Parel,
Mumbai - 400 013
rep. by its Manager Legal P.V.K.Duraimurugan
Having its Tamil Nadu Circle office at
Tower 1, 9th floor, TVH Beliciaa Towers,
Block 94, MRC Nagar,
Chennai - 600 028. .. Petitioner in
both WPs

vs.

- 1.Union of India,
rep. by its Secretary,
Department of Telecommunications,
Sanchar Bhawan 20, Ashoka Road,
New Delhi - 110 001.
- 2.Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhavan,
Jawahar Lal Nehru Marg,
New Delhi - 110 002.

- 3.Vodafone India Limited,
Having its registered office at
Peninsula Corporate Park,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai - 400 013. .. Respondents in
both WPs

PRAYER : Writ Petition No.5915 of 2018 filed under Article 226 of the Constitution of India for issuance of a writ of declaration to declare that the impugned notification dated 16.2.2018 bearing No.312/-1/2017F&EA is unconstitutional,

illegal, arbitrary, unreasonable and capricious and therefore null and void ab-initio being in violation of, inter alia, Articles 14 and 19 of the Constitution of India and also without the authority of law, being in violation of the provisions of the Telecom Regulatory Authority of India Act, 1997.

PRAYER : Writ Petition No.5916 of 2018 filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records of the second respondent comprised in impugned communication dated 7.3.2018 bearing No.301-7(27)/2017-F&EA and quash the same as being illegal, arbitrary, capricious and without the authority of law.

For Petitioner : Mr.P.S.Raman
in W.P.No.5915/2018 Senior Counsel
for M/s.R.Parthasarathy

For Petitioner : Mr.AR.L.Sundaresan
in W.P.No.5916/2018 Senior Counsel
for M/s.R.Parthasarathy

For Respondents : Mr.N.Ramesh
SPC for respondent No.1
in both WPs

Mr.P.Wilson
Senior Counsel
for Richardson Wilson
for 2nd respondent
in W.P.No.5915/2018

Mr.N.L.Rajah
Senior Counsel
for Dr.M.Devendran
for 2nd respondent
in W.P.No.5916/2018

Mr.K.Venkatramani
Senior Counsel
for M/s.Gupta and Ravi
for impleading petitioner
in WMP.Nos.10516 & 10517 of
2018

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COMMON ORDER

(Order was made by Ms.Indira Banerjee, Chief Justice)

In W.P.No.5915 of 2018, hereinafter referred to as the first writ petition, the writ petitioner has challenged a Notification dated 16.2.2018 passed by the Telecom Regulatory Authority of India (hereinafter referred to as "TRAI") in exercise of powers conferred under 11(2) read with Section 11(1)(b)(i) of the Telecom Regulatory Authority of India Act, 1997, hereinafter referred to as "the TRAI Act", making the Telecommunication Tariff (Sixty third Amendment) Order 2018, amending the Telecommunication Tariff Order, 1999.

2. In W.P.No.5916 of 2018, hereinafter referred to as the second writ petition, the writ petitioner has challenged a communication No.301-7(27)/2017-F&EA, dated 07.3.2018, the relevant portion whereof is extracted hereinbelow:

"3. After the consultation process, TRAI has notified TTO (63rd Amendment) on 16.02.2018 defining the Regulatory principles of tariff assessment. In this context, your particular attention is invited to Para 7.4.2 (e) (iv) & (v) of the explanatory memorandum to the 63rd Amendment of TTO. The offer of a discount is effectively the offer of a new tariff. The Authority is of the opinion that segmented offers which have to be necessarily transparent and non-arbitrary, either for retention or acquisition of new consumers, are to be transparently filed with the Authority in accordance with the reporting requirement. All such segmented tariffs are to be publically displayed, inter alia, on the website of the TSPs, for transparent and complete disclosure to consumers, without any discrimination. These issues have also been discussed in para 7.3 of the 63rd Amendment which may also be referred to.

4. In the light of the above, the following are required to be kept in mind while reporting a segmented offer:

- a. Though the basic criteria for classification of subscribers are given, the detailed profile of subscribers who can avail these products also needs to be indicated in clear terms.
- b. The date of launch of these products is required to be indicated.
- c. As all segmented offers are to be published like any other tariffs reports, requests for confidentially cannot be entertained.

d. Reporting norms imply mandatory publishing of such reported tariffs on TSP's websites with all related terms and conditions.

5. After issue of TTO 63rd Amendment, there exists no scope for any doubt on the interpretation of the principles of non-discrimination and transparency in retail tariff offers. Any discounts or special tariffs offered to particular segment of consumers would need to be non-discriminatory and has to be reported and published as stated in para-3 above. You are accordingly advised to file all the tariffs including segmented tariffs in future and the same is required to be displayed publically, inter-alia on your website as well as envisaged in the TTO."

3. Learned Senior Counsel appearing on behalf of TRAI in the first writ petition Mr.P.Wilson, took a preliminary objection to this Court entertaining the writ petitions, on the ground of existence of an alternative remedy and also argued that this Court lacked territorial jurisdiction to entertain the writ petitions.

4. Some of the relevant provisions of the TRAI Act referred to by Mr.Wilson are set out hereinbelow for convenience:

"11. Functions of Authority.-

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

(a) make recommendations, either suo motu or on a request from the licensor, on the following matters, namely: -

(i) need and timing for introduction of new service provider;

(ii) terms and conditions of licence to a service provider;

(iii) revocation of licence for non-compliance of terms and conditions of licence;

(iv) measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(v) technological improvements in the services provided by the service providers;

(vi) type of equipment to be used by the service providers after inspection of equipment used in the network;

(vii) measures for the development of telecommunication technology and any other matter

relatable to telecommunication industry in general;
(viii) efficient management of available spectrum;
(b) discharge the following functions, namely: -
(i) ensure compliance of terms and conditions of licence;
(ii) notwithstanding anything contained in the terms and conditions 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;
(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 service;
(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 inter-connect 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;
(c) levy fees and other charges at such rates and in respect of such services as may be determined by regulations;
(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 clause (a) of this sub-section shall not be binding upon the Central Government:

Provided further that the Central Government shall seek the recommendations of the Authority in

respect of matters specified in sub-clauses (i) and (ii) of clause (a) of this sub-section in respect of new licence to be issued to a service provider and the Authority shall forward its recommendations within a period of sixty days from the date on which that Government sought the recommendations:

Provided also that the Authority may request the Central Government to furnish such information or documents as may be necessary for the purpose of making recommendations under sub-clauses (i) and (ii) of clause (a) of this sub-section and that Government shall supply such information within a period of seven days. from receipt of such request:

Provided also that the Central Government may issue a licence to a service provider if no recommendations are received from the Authority within the period specified in the second proviso or within such period as may be mutually agreed upon between the Central Government and the Authority:

Provided also that if the Central Government, having considered that recommendation of the Authority, comes to a prima facie conclusion that such recommendation cannot be accepted or needs modifications, it shall refer the recommendation back to the Authority for its reconsideration, and the Authority may, within fifteen days from the date of receipt of such reference, forward to the Central Government its recommendation after considering the reference made by that Government. After receipt of further recommendation if any, the Central Government shall take a final decision.

(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the Authority may, from time to time, by order, notify in the Official Gazette the rates at which the telecommunication services within India and outside India shall be provided under this Act including the rates at which messages shall be transmitted to any country outside India:

Provided that the Authority may notify different rates for different persons or class of persons for similar telecommunication services and where different rates are fixed as aforesaid the Authority shall record the reasons therefor.

(3) While discharging its functions under sub-section (1) or sub-section (2), the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions.

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 the jurisdiction of the Monopolies and Restrictive Trade Practices 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 Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986 (68 of 1986);

(C) the dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B 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.

(c) exercise jurisdiction, powers and authority conferred on -

(i) the Appellate Tribunal under the Information Technology Act, 2000 (21 of 2000); and

(ii) the Appellate Tribunal under the Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008).

15. Civil court not to have jurisdiction.-

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

16. Procedure and powers of Appellate Tribunal.-

(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

(2) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely: - सत्यमेव जयते

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document, from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or

deciding it, ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it, ex parte; and

(i) any other matter which may be prescribed.

(3) Every proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, 1860 (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

18 Appeal to Supreme Court.-

(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie against any order, riot being an interlocutory order, of the appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of ninety days from the date of the decision or order appealed against:

Provided that the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time."

5. Citing the judgment of the Supreme Court in *Bharat Sanchar Nigam Limited vs. Telecom Regulatory Authority of India and Others*, reported in (2014) 3 SCC 222, Mr. Wilson argued that an appeal from any order or decision of the TRAI lies before the Telecom Disputes Settlement and Appellate Tribunal, hereinafter referred to as "TDSAT".

6. Mr. Wilson argued that TDSAT is empowered to hear all appeals against any direction, decision or order of the TRAI, except those which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission and except the complaint of an individual consumer triable by the District Forum, the State Commission or National Commission under the

Consumer Protection Act, 1986.

7. In *Bharat Sanchar Nigam Limited*, supra, the Supreme Court held:

"106. Clause (a) of amended Section 14 confers jurisdiction upon TDSAT to adjudicate any dispute between a licensor and licensee, between two or more service providers and between a service provider and a group of consumers. Three exceptions to the adjudicatory power of TDSAT relates to the cases which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission, the complaint of an individual consumer which could be maintained under the Consumer Forums established under the Consumer Protection Act, 1986 and dispute between the Telegraph Authority and any other person referred to in Section 7-B(1) of the Indian Telegraph Act, 1885. In terms of clause (b) of Section 14 (amended), TDSAT is empowered to hear and dispose of appeal against any direction, decision or order of TRAI. Section 14-A(1) provides for making of an application to TDSAT for adjudication of any dispute referred to in Section 14(a). Sections 14-A(2) and (3) provide for filing an appeal against any direction, decision or order made by TRAI and also prescribe the period of limitation.

107. The primary objective of the 2000 Amendment was to separate adjudicatory functions of TRAI from its administrative and legislative functions and ward off the criticism that the one who is empowered to make regulations and issue directions or pass orders is clothed with the power to decide legality thereof. The word "direction" used in Section 14(b) is referable to Sections 12(4) and 13. The word "order" is referable to Sections 11(2) and 12(1). The word "decision" has been used in Sections 14-A (2) and (7). This is because the proviso to Section 14-M postulates limited adjudicatory function of TRAI in respect of the disputes being adjudicated under Chapter IV before the 2000 Amendment. This proviso was incorporated in Section 14-M to avoid a hiatus between the coming into force of the 2000 Amendment and the establishment of TDSAT. None of the words used in Section 14(b) have anything to do with adjudication of disputes [by TRAI].

108. The Amendment made in 2000 is intended to vest the original jurisdiction of TRAI in TDSAT and the same is achieved by Section 14(a).

The appellate jurisdiction exercisable by the High Court is also vested in TDSAT by virtue of Section 14 (b) but this does not include decision made by TRAI. Section 14-N provides for transfer to all appeals pending before the High Court to TDSAT and in terms of clause (b) of sub-section (2), TDSAT was required to proceed to deal with the appeal from the stage which was reached before such transfer or from any earlier stage or de novo as considered appropriate by it. Since the High Court while hearing appeal did not have the power of judicial review of subordinate legislation, the transferee adjudicatory forum i.e. TDSAT cannot exercise that power under Section 14(b)."

8. In Cellular Operators Association of India v. Union of India, reported in (2003) 3 SCC 186, the Supreme Court held:

"8. Since the Tribunal is the original authority to adjudicate any dispute between a licensor and a licensee or between two or more service providers or between a service provider and a group of consumers and since the Tribunal has to hear and dispose of appeals against the directions, decisions or order of TRAI, it is difficult for us to import the self-contained restrictions and limitations of a court under the Judge-made law to which reference has already been made and reliance was placed by the learned Attorney General."

9. In Union of India v. Tata Teleservices (Maharashtra) Limited, reported in (2007) 7 SCC 517, the Supreme Court observed

"15. The conspectus of the provisions of the Act clearly indicates that disputes between the licensee or licensor, between two or more service providers which takes in the Government and includes a licensee and between a service provider and a group of consumers are within the purview of TDSAT. The constitution of TDSAT itself indicates that it is chaired by a sitting or retired Judge of the Supreme Court or sitting or a retired Chief Justice of the High Court, one of the highest judicial officers in the hierarchy and the members thereof have to be of the cadre of Secretaries to the Government, obviously well experienced in administration and administrative matters."

10. In Telecom Regulatory Authority of India v. BPL Mobile Cellular Limited, Civil Appeal No.6743 of 2003, dated 28.3.2006, the Supreme Court observed: "

"The word 'directions' can take within its fold directory orders and regulations in the nature of directions as a matter of semantics. Besides in the context of the TRAI Act there is no reason not to include the orders and regulations containing directions within the word 'directions'. This would also be a logical corollary as such regulations and orders have appended to them a more serious mandate."

11. Referring to Paragraph 107 of the judgment of the Supreme Court in Bharat Sanchar Nigam Limited, supra, Mr.Wilson submitted that the word "order" was referable to Sections 11(2) and 12(1) of the TRAI Act. The Tariff Order passed under Section 11(2) of the TRAI Act is an appealable order under Section 14 of the TRAI Act.

12. Mr.Wilson submitted that only Regulations under Section 36 of the TRAI Act cannot be decided by TDSAT, as held by the Supreme Court in Bharat Sanchar Nigam Limited, supra (Paragraph 124). The Supreme Court held:

"124. In the result, the question framed by the Court is answered in the following terms: in exercise of the power vested in it under Section 14 (b) of the TRAI Act, Tdsat does not have the jurisdiction to entertain the challenge to the regulations framed by TRAI under Section 36 of the TRAI Act.

125. As a corollary, we hold that the contrary view taken by Tdsat and the Delhi High Court [MTNL v. Telecom Regulatory Authority of Delhi, AIR 2000 Del 208] does not represent correct law. At the same time, we make it clear that the aggrieved person shall be free to challenge the validity of the Regulations framed under Section 36 of the TRAI Act by filing appropriate petition before the High Court."

13. In Nivedita Sharma vs. Cellular Operators Association of India and Others, reported in (2011) 14 SCC 337 cited by Mr.Wilson, the Supreme Court held:

"11. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution

and cannot be curtailed by parliamentary legislation—L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] . However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

14. As argued by Mr.Wilson, it is well settled that this Court does not ordinarily exercise its extraordinary jurisdiction of issuing writs when there is an efficacious alternative remedy.

15. Mr.Wilson drew our attention to the fact that some of the service providers have already approached TDSAT challenging the common Tariff Order dated 16.02.2018, which is under challenge in W.P.No.5915 of 2018.

16. Mr.Wilson submitted that other service provider had filed the statutory appeals even before the instant writ petitions were filed. An interim order dated 24.04.2018 has been passed by the TDSAT in the statutory appeals filed by other service providers, namely Bharti Airtel Limited and Idea Cellular Limited, staying the impugned clauses in the impugned order.

17. Mr.Wilson submitted that the petitioner has, in the writ petition suppressed the material fact of the pendency of the appeals of other service providers before the TDSAT. Further, the statement made in paragraph No.45 of the affidavit that there is no other alternative remedy available to the petitioner is incorrect.

18. Mr.Wilson submitted that this Court lacks territorial jurisdiction to entertain the writ petitions as no part of the cause of action for these writ petitions has arisen within the jurisdiction of this Court. The cause titles of the writ petitions show that the petitioner has its registered office at Mumbai. In a devious attempt to attract the jurisdiction of

this Court, the writ petitioner has included the address of its Chennai office, though nothing happened in the Chennai office of the writ petitioner. The license agreement dated 06.11.2008, to which Mr.Wilson drew our attention, was executed at New Delhi.

19. Mr.Wilson pointed out that there is no pleading in the writ petitions that cause of action had arisen at Chennai. The writ petitions would therefore have to be dismissed in limine by this Court, for want of territorial jurisdiction.

20. Mr.N.L.Rajah, learned Senior Counsel appearing on behalf of TRAI in W.P.No.5916 of 2018 adopted and further elaborated on the submissions of Mr.Wilson.

21. Mr.Rajah cited Reliance Communications Ltd. and Ors. vs. The Union of India and Ors. reported in (2016) 2 CALCUTTA LAW TIMES 236 (HC), where a Division Bench of the Calcutta High Court referred to the judgments of the Supreme Court in Union of India v. Tata Teleservices (Maharashtra) Ltd., reported in (2007) 7 SCC 517 and Union of India v. Major General Shri Kant Sharma, reported in (2015) 6 SCC 773, and held that the High Court's power of judicial review was a basic feature of the Constitution which could not be curtailed by any legislation. However, when a statutory forum was created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

22. Mr.N.L.Rajah submitted that entertaining these writ petitions would lead to multiplicity of proceedings, since TDSAT is already in seisin of the appeals against the impugned tariff order and has also granted interim orders in the appeals.

23. Mr.Rajah argued that no injury could possibly be caused to the petitioner by approaching TDSAT, which is a specialized Tribunal with the requisite expertise in dealing with disputes of the kind raised in these writ petitions. Mr.Rajah also argued that the petitioner is a big corporate house with corporate office in Delhi, where the TDSAT is located and there should be no inconvenience to the petitioner in approaching TDSAT.

24. Mr.Rajah argued that the writ petitions were in abuse of the process of this Court and had, in any event, been filed suppressing material facts. Mr.Rajah argued that the petitioner deliberately suppressed the pending appeals of Service Providers, since this Court would not have entertained the writ petitions had this Court known that appeals were pending. The writ petitions are liable to be dismissed on that ground alone. In support of this argument, Mr.Rajah cited Agricultural and Processed Food Products vs. Oswal Agro Furane and Others reported in (1996) 4 SCC 297.

25. Mr.Venkatramani, learned Senior Counsel appearing on behalf of Reliance Jio Infocom Company Limited submitted that the impugned Tariff Order is a commercial order, the validity whereof could not be challenged by filing a writ petition when an alternative remedy was available. He also argued that the writ petitions be dismissed for want of territorial jurisdiction.

26. Mr.P.S.Raman, learned Senior Counsel appearing for the writ petitioners, however, argued that the impugned Tariff Order was applicable all over India, including in the State of Tamil Nadu. The impugned communication though addressed to the writ petitioner at its Corporate office at Mumbai, would have all India ramification and would affect the business of the writ petitioner in the State of Tamil Nadu.

27. Mr.Raman also argued that the writ petition was maintainable in this Court since TDSAT could not adjudicate the validity of the Tariff Order.

28. Referring to the judgment and order of a Division Bench of this Court in W.P.Nos.44126 and 44127 of 2016, dated 02.03.2018, Mr.Raman argued that both the Judges of the Division Bench had, in effect, held that the writ petition could be entertained in this Court notwithstanding the existence of any other remedy and this Court had territorial jurisdiction.

29. It is well settled that the existence of an alternative remedy does not bar the High Court from exercising its jurisdiction under Article 226 of the Constitution of India. Moreover, when a writ petition is entertained and kept pending, thereafter, the Court may not refuse to adjudicate the same merely on the ground of existence of an alternative remedy. However, the Court does not ordinarily intervene when there is an equally efficacious alternative remedy available.

30. However, in view of the judgment of the Supreme Court in Bharat Sanchar Nigam Limited, supra, it is difficult to accept the submission that TDSAT cannot adjudicate the validity of the Tariff Order. In this case, there are appeals in relation to the same impugned Tariff Order and the impugned communication pending before the TDSAT, which have been entertained and kept pending. We do not deem it appropriate to allow disputes to be adjudicated before a second forum.

31. May be, as contended by the writ petitioner, it cannot be said that this Court does not at all have territorial jurisdiction to entertain the writ petitions. However, it is not necessary for us to go into the question of territorial jurisdiction as we are fully satisfied that the writ petitioner has an efficacious alternative remedy.

32. It appears that by an order dated 04.5.2018 in W.P.(C) No.4763 of 2018 and by an order dated 18.5.2018 in W.P.(C) No.4782 of 2018, the Delhi High Court has directed the TDSAT to expeditiously dispose the said applications. It is expected that all similar applications be heard by the same forum.

33. The writ petition is, therefore, not entertained. No costs. Consequently, W.M.P.Nos.7287 to 7289, 7290 to 7292 of 2018, 10640 and 12248 of 2018 are closed. It will be open to the petitioner to approach the TDSAT, New Delhi. An application may be filed within two weeks. For a period of three weeks, the interim order earlier passed by this Court restraining the respondents from taking coercive steps against the petitioner will continue.

34. In view of the order passed in the main writ petitions, there is no need to implead the proposed parties as respondents in the writ petitions and W.M.P.Nos.10516 and 10517 of 2018 are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bbr/sasi

To:

1.The Secretary,
Department of Telecommunications,
Sanchar Bhawan 20, Ashoka Road,
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2.Telecom Regulatory Authority of India,
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+1cc to M/s.Gupta and Ravi, Advocate sr.no.34903
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+1cc to Mr.N.Ramesh, Advocate sr.no.34570

W.P.Nos.5915 and 5916 of 2018

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