IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2061 OF 2006

Hotel & Restaurant Assocn. and Anr. ...Appellants

Versus

Star India Pvt. Ltd. and Ors. …Respondents

W I T H

CIVIL APPEAL NO. 2247 OF 2006

J U D G M E N T

S.B. SINHA, J :

Appellants are members of Hotel Association of India and Hotel & Restaurant Owners Association (Western India), EIH Limited and Eastern International Hotels Ltd. The members of Hotel Association of India are owners of big hotels whereas the members of Hotel & Restaurant Owners Association (Western India) are owners of small hotels. They provide television services to their guests. Respondents herein are broadcasters or distributors. The television services provided for by the broadcasters to the actual consumers are carried through distribution of Cable or Multi System Operators (MSOs). Whereas ordinarily in the small hotels cable operators give signal to all the rooms where for separate charges are levied; the services provided in the big hotels are through an equipment installed for the said purpose known as Head End. The signals are received through satellites. They have contracts with the broadcasters directly.

The Parliament enacted the Cable Television Networks (Regulation) Act, 1995 (for short "the 1995 Act") to regulate the operation of cable

television networks in the country and for matters connected therewith or incidental thereto.

"Cable operator", "cable service" and "cable television network" as defined in Section 2 of the 1995 Act read as under:

> "(aa) "cable operator" means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network;
>
> (b) "cable service" means the transmission by cables of programmes including re-transmission by cable of any broadcast television signals;
>
> (c) "cable television network" means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to provide cable service for reception by multiple subscribers;"

Chapter II of the 1995 Act provides for cable television network to be operated only upon registration thereof. Section 4-A of the 1995 Act provides for transmission of programmes through addressable system. Some regulations in regard to the operation of cable operators are provided for in the 1995 Act. Sub-section (9) of Section 4-A which is relevant for our purpose reads as under:

> "(9) Every cable operator shall submit a report to the Central Government in the prescribed form and manner containing the information regarding –
>
> (i) the number of total subscribers;
>
> (ii) subscription rates;
>
> (iii) number of subscribers receiving programmes transmitted in basic service tier or particular programme or set of programmes transmitted on

> pay channel, in respect of cable services provided by such cable operator through a cable television network, and such report shall be submitted periodically at such intervals as may be prescribed and shall also contain the rate of amount, if any, payable by the cable operator to any broadcaster."

In the year 1997, the Telecom Regulatory Authority of India Act, 1997 (for short "the TRAI Act") was enacted which came into force from 28th March, 1997. By reason of the TRAI Act, a Telecom Regulatory Authority of India (TRAI) and an Appellate Authority known as Telecom Disputes Settlement and Appellate Tribunal (TDSAT) were constituted.

"Service provider" and "telecommunication service" have been defined in Sections 2(1)(j) and 2(1)(k) of the TRAI Act in the following terms:

> "(j) "service provider" means the Government as a service provider and includes a licensee;
>
> (k) "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio tex services, video tex services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means but shall not include broadcasting services:
>
> Provided that the Central Government may notify other service to be telecommunication service including broadcasting services."

In exercise of its power under the proviso appended to Section 2(1)(k) of the TRAI Act, the Central Government issued a notification on 9.01.2004 notifying broadcasting and cable services to be telecommunication services.

On 15.01.2004, a Tariff Order known as "The Telecommunication (Broadcasting and Cable) Services Tariff Order, 2004" was issued by TRAI freezing the charges prevalent on 26.12.2003 till final determination by it on the various issues concerning those charges. The same was to apply in both Conditional Access System (CAS) and non-CAS areas. The said Tariff Order was amended on 10.03.2004 known as "The Telecommunication (Broadcasting and Cable) Services Tariff (First Amendment) Order, 2004" in terms whereof classification and non-classification of CAS and non-CAS areas were done away with. Chennai, however, was excluded from the operation thereof. The said Order was amended again on 13.08.2004 wherewith we are not concerned herein.

On or about 1.10.2004, a new Tariff Order for cable and broadcasting services called "the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004" was issued by TRAI. It inter alia laid down definitions for various entities such as MSOs, broadcasters and cable operators and reiterated the ceiling/ freeze prescribed by the first Tariff Order. Definitions of "broadcaster", "broadcasting services", "cable operator", "cable service" and "cable television network" were provided therein which are as under:

> "(a) 'broadcaster' means any person including an individual, group of persons, public or body corporate, firm or any organisation or body who/ which is providing broadcasting service and includes his authorised distribution agencies;
> (b) 'broadcasting services' means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro magnetic waves through space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be construed accordingly;
> (c) 'cable operator' means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network;

(d) 'cable service' means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals;
(e) 'cable television network' means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment designed to provide cable service for reception by multiple subscribers;"

In regard to the tariff, it was stated:

"The charges, excluding taxes, payable by—
(a) Cable subscribers to cable operator;

(b) Cable operators to multi system operators/broadcasters (including their authorised distribution agencies); and

(c) Multi system operators to broadcasters (including their authorised distribution agencies)
prevalent as on 26 December 2003 shall be the ceiling with respect to both free-to-air and pay channels.

Provided that if any new pay channel(s) that is/are introduced after 26.12.2003 or any channel(s) that was/were free to air channel on 26.12.2003 is/are converted to pay channel(s) subsequently, then the ceiling referred to as above can be exceeded, but only if the new channel(s) are provided on a stand alone basis, either individually or as part of new, separate bouquet(s) and the new channel(s) is/ are not included in the bouquet being provided on 26.12.2003 by a particular broadcaster. The extent to which the ceilings referred to above can be exceeded would be limited to the rates for the new channels. For the new pay channel(s) as well as the channel(s) that were free to air as on 26.12.2003 and have subsequently converted to pay channel(s) the rates

> must be similar to–the rates of similar channels as on 26.12.2003:
>
> Provided further that in case a multi system operator or a cable operator reduces the number of pay channels that were being shown on 26.12.2003, the ceiling charge shall be reduced taking into account the rates of similar channels as on as on 26.12.2003."

On 1.12.2004, the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Second Amendment) Order, 2004 was notified permitting a 7% increases in the charges on account of inflation. A Regulation termed as "The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation, 2004" was issued by TRAI on 31.12.2004 wherein 'consumer' was defined to mean 'any person who is subscriber of any broadcasting service(s) in the country'.

The broadcasters had fixed charges for providing television services to domestic consumers. They sought to make demands to increase the rates of the hotels on the premise that TRAI had announced an increase of 7% over the rates prevalent on 26.12.2003 (ceiling rate) would be permitted on the ground of inflation. Appellants – Hotel Associations do not dispute the applicability thereof.

In view of a purported arbitrary increase in the rates in regard to services to the hotels, Appellants – Hotel Associations sought for intervention of TRAI so as to enable them to guide their members in regard to renewal of contracts, for continuity of supply of feed by their respective television channel broadcasters stating:

> "The proposed increase in the rates demanded by the Broadcasters is completely arbitrary and without any basis or justification. It is a blatant manifestation of their monopolistic position by the Broadcasters, who have formed a cartel. It tantamounts to exploitation of hotels, leaving them no choice other than to comply with the unilateral increase in rates by 30th March, 2005 failing which their channels will be deactivated.

> It will be appreciated that viewing television channels in hotels is an important guest facility for tourists and international traveler, staying in hotels which provide facilities and services of comparable nature of standards as followed with other countries. The threatened deactivation of channel from 30th March, 2005 if implemented would result in great inconvenience to and complaints from international visitors and from the tourists staying in hotels. It would be highly detrimental and damaging to the image of tourism in India and would undermine the various measures, which the government and the tourism industry are jointly taking in public private partnership to promote tourism to India."

Notices were issued by TRAI to the broadcasters. However, having regard to the threat of disconnecting the services by the broadcasters unless the rates demanded by them were paid, Appellant – Hotel Association of India filed an application marked as Application No. 32(C) of 2005 before TDSAT praying inter alia for the following reliefs:

> "i) Direct the respondents to charge fair, non-discriminatory, non-arbitrary and cost based rates by the respondents.
>
> ii) Direct the respondents to provide the detail working of the final rental charged and submit supportive documents and other details as may be necessary to ascertain that the final rental charged is fair, cost based, non-arbitrary and non-discriminatory;
>
> iii) Direct the respondents not to deactivate channels of the members Hotel of the petitioner No. 1 Association until the final disposal of the present petition.

> iv) Pass ad-interim, interim, ex-parte orders in terms of the above prayers;…"

Appellant – Hotel & Restaurant Owners Association (Western India) also filed a similar application bearing No. 80(C) of 2005. Indisputably, on 4.04.2005, an interim order directing maintenance of 'status quo as existing on that date' was passed by TDSAT.

On or about 29.11.2005, a Second Order was issued by TRAI permitting the broadcasters to further increase 4% of the enhanced charges, (i.e., ceiling charges + 7%) again on account of inflation. Indisputably, however, the operation of the said order was stayed.

Dismissing the applications filed by Appellants, TDSAT in its order dated 17.01.2006 inter alia opined that hotels are neither the consumers nor subscribers stating :

> "36. Now we come to the question whether the tariff laid down by the TRAI notification of 26th December, 2003 is applicable to the members of the petitioner associations. The said Tariff order covers the following in its ambit - the charges payable by (a) Cable subscribers to cable operator; (b) Cable operators to multi service operators/broadcasters (including their authorized distribution agencies); and (c) Multi service operators to broadcasters (including their authorized distribution agencies). In the petition before us we find that the commercial relationship is between the members of the petitioner associations (viz., hotels, restaurants etc.) on the one hand and either cable operators or broadcasters on the other. We have already concluded that the members of the petitioner associations cannot be regarded as subscribers or consumers. As such we are of the view that the above tariff notification of the TRAI would not be applicable. It seems that TRAI has found it necessary to fix the tariff for domestic purpose. We think the Regulator should also consider whether it is necessary or not to fix

> the tariff for commercial purposes in order to bring about greater degree of clarity and to avoid any conflicts and disputes arising in this regard.
>
> 37. In view of the above, we are of the opinion that the respondents are well within their rights to demand the members of the petitioner associations to enter into agreements with them or their representatives for the receipt of signals for actual use of their guests or clients on reasonable terms and conditions and in accordance with the regulations framed in this regard by the TRAI."

Appellants are, thus, before us in these appeals preferred under Section 18 of TRAI Act.

Submissions of Appellants inter alia are:

(i) Keeping in view the scheme of TRAI Act; TDSAT while exercising its original jurisdiction could not have issued any direction upon TRAI to frame any tariff and, thus, tariff framed by TRAI pursuant thereto or in furtherance thereof is without jurisdiction.

(ii) Tariff framed by TRAI being applicable to all consumers who obtain telecommunication services, TDSAT committed a serious error in opining that the same would not apply to commercial consumers.

(iii) TDSAT having regard to the scheme of the Act and the orders made there under committed a manifest error in holding that the applications filed by Appellants were not maintainable.

Counsel appearing on behalf of broadcasters, on the other hand, submitted:

(i) Appellants do not constitute a "group of consumers" so as to maintain an application under Section 14(a)(ii) of TRAI Act.

(ii) Tariff Order dated 15.01.2004 and subsequent Tariff Orders dated 1.10.2004 and 1.12.2004 providing for ceiling rates payable by "cable subscribers" to "cable operators" apply to individual

members of Appellants who use it for commercial purpose and are transmitting the same to the customers.

(iii) The individual members of Appellants being not governed by the Tariff Orders dated 7.03.2006 and 24.03.2006 and in any event the validity thereof having not been challenged by them, all these appeals have now, therefore, become academic.

(iv) In any event, in terms of the Tariff Order dated 15.01.2004, Appellants were bound to pay the rates as were prevailing on 26.12.2003 and changed from time to time.

(v) Five-Star hotels are not 'subscribers' within the meaning of the provisions of the said Tariff Orders.

(vi) Cable operators having not been authorised to give connection to the commercial establishments, the impugned judgment cannot be faulted with.

(vii) In any event, broadcasters having appointed their own authorised suppliers, the hotel associations were bound to take connection only from them.

(viii) As despite a direction issued by TDSAT to the appellants directing them to disclose the names of the cable operators, they having failed to do so, are not entitled to any equitable relief.

Two questions of seminal importance arise for consideration in these appeals, viz.:

(i) Whether the members of Appellants – Associations are consumers and, thus, were entitled to invoke the jurisdiction of TDSAT in terms of Section 14 of TRAI Act?

(ii) Whether the Tariff Orders issued by TRAI on 15.01.2004 and 1.10.2004 are inapplicable to members of Appellants – Associations, i.e., hotels on the ground that those are commercial establishments?

TDSAT in its impugned judgment opined that hotels are not consumers or subscribers. It, however, observed that the members of the hotels associations are de facto MSOs but being not registered do not enjoy the legal status thereof.

We may, before embarking upon the legal issues, notice the findings of TDSAT which are as under:

(i) The members of Appellants – Associations are not subscribers as contemplated under the 1995 Act.
(ii) Each room of the hotels/ restaurants can be called as a subscriber.
(iii) The management of the hotels cannot be termed as subscribers. Similarly, various restaurants using cable television cannot be treated as subscribers.
(iv) In view of the definition of "consumer" contained in Consumer Protection Act, 1986 (for short "the 1986 Act"), the users for commercial purposes having been excluded, members of Appellants – Associations being not users of the signals received by them cannot be treated as either subscribers or consumers for the purpose of relief sought for in the petition.
(v) Members of Appellants – Associations being not subscribers or consumers, the Tariff Orders would not be applicable.

Section 11 of TRAI Act provides for the functions of TRAI. Clause (a) of Sub-section (1) of Section 11 of TRAI Act empowers TRAI to make recommendations either suo motu or on the request from the licensor, on the matters enumerated therein. Clause (b) thereof empowers it inter alia to fix the terms and conditions of inter-connectivity between the service providers.

Sub-section (2) of Section 11 of TRAI Act contains a non-obstante clause providing that TRAI may frame from time to time by order (s) notified in the official gazette the rates at which the telecommunication services within India and outside India shall be provided under the said Act including the rates at which messages shall be transmitted to any country outside India. Proviso appended to Sub-section (2) thereof empowers TRAI to notify different rates for different persons or class of persons for similar telecommunication services and where different rates are fixed as aforesaid TRAI shall record the reasons therefor.

Section 14 of TRAI Act provides for establishment of Appellate Tribunal known as TDSAT. In terms of Section 14(a)(iii) inter alia it is entitled to adjudicate any dispute between a service provider and/ or consumer. TRAI Act, in terms of the proviso appended to Section 14, excludes the applicability of the said clause in respect of matters relating to 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 1986 Act. Clause (b) of Section 14 empowers TDSAT to hear and dispose of an appeal against any direction, decision or order of TRAI under the TRAI Act.

TDSAT, therefore, exercises two different jurisdictions, viz., one, original and another, appellate. Exercise of its original jurisdiction is an adjudicatory function whereas its appellate function is to hear appeal(s) against an order of TRAI which may or may not essentially be an adjudicatory one.

We have noticed hereinbefore that the members of Associations take TV signals either from Respondents – Broadcasters under their respective contracts or agreements or through cable operators. Whereas in the former case, there exists a privity of contract between the broadcasters and the owners of the hotels, the owners of the hotels admittedly would not come within the purview of definition of MSOs. The owners of the hotels take TV signals for their customers/ guests. While doing so, they inter alia provide services to their customers. An owner of a hotel provides various amenities to its customers such as beds, meals, fans, television, etc. Making a provision for extending such facilities or amenities to the boarders would not constitute a sale by an owner to a guest. The owners of the hotels take TV signals from the broadcasters in the same manner as they take supply of electrical energy from the licensees. A guest may use an electrical appliance. The same would not constitute the sale of electricity by the hotel to him. For the said purpose, the 'consumer' and 'subscriber' would continue to be the hotel and its management. Similarly, if a television set is provided in all the rooms, as part of the services rendered by the management by way of an amenity, wherefor the guests are not charged separately, the same would not convert the guests staying in a hotel into consumers or subscribers. They do not have any privity of contract with broadcasters or cable operators. The identity of the guests is not known to the broadcasters or cable operators. A guest may not watch TV or in fact the

room may remain unoccupied but the amount under the contract by the owners of the hotels whether with the broadcasters or cable operators remains unchanged. We, therefore, are of the opinion that the members of the appellants' associations are consumers.

The question in regard to supply of food to a guest by the owner of a hotel whether constitutes a sale or not came up for consideration before this Court in The State of Punjab v. M/s. Associated Hotels of India Ltd. [(1972) 1 SCC 472] wherein it was held:

> "What precisely then is the nature of the transaction and the intention of the parties where a hotelier receives a guest in his hotel? Is there in that transaction an intention to sell him food contained in the meals served to him during his stay in the hotel? It stands to reason that during such stay a well equipped hotel would have to furnish a number of amenities to render the customer's stay comfortable. In the supply of such amenities do the hotelier and his customer enter into several contracts every time an amenity is furnished? When a traveller, by plane or by steam-ship, purchases his passage-ticket, the transaction is one for his passage from one place to another. If, in the course of carrying out that transaction, the traveller is supplied with drinks or meals or cigarettes, no one would think that the transaction involves separate sales each time any of those things is supplied. The transaction is essentially one of carrying the passenger to his destination and if in performance of the contract of carriage something is supplied to him, such supply is only incidental to that services, not changing either the pattern or the nature of the contract. Similarly, when clothes are given for washing to a laundery, there is a transaction which essentially involves work or service, and if the launderyman stitches a button to a garment which has fallen off, there is no sale of the button or the thread. A number of such cases involving incidental uses of materials

> can be cited, none of which can be said to involve a sale as part of the main transaction."

Supply of food to non-resident was held not to be a sale in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [(1978) 4 SCC 36]. An endeavour was made to get the said decision reviewed but this Court in M/s. Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [(1980) 2 SCC 167] rejected the said contention.

It is one thing to say that TDSAT shall not exercise its original jurisdiction in respect of a matter covered by the 1986 Act but it is another thing to say that the members of the Associations are not consumers at all. Provisions of the 1986 Act have been referred to for excluding the application under Clause (a) of Section 14 of TRAI Act. While the jurisdiction is sought to be taken away, a strict construction thereof is essential. What is excluded is a complaint of an individual consumer and not a group of consumers. Thus, indisputably, TDSAT would be entitled to entertain a complaint by a group of consumers against a service provider.

It is, therefore, idle to contend that the definition of 'consumer' as contained in Section 2(1)(d) of the 1986 Act would be attracted in a case of this nature. We are unable to accept the submission of Mr. Ashok Desai, that as in terms of Section 2(1)(d) of the 1986 Act 'consumer' does not include a person who obtains goods or services for any commercial purpose, the hotels would not come within the definition of 'consumer'. The said submission of Mr. Desai, in our opinion, is wholly misconceived. Reliance has been placed on Morgan Stanley Mutual Fund v. Kartick Das [(1994) 4 SCC 225] wherein it was opined that the meaning of the word 'consumer' was broadly stated in the above definition so as to include anyone who consumes goods or services at the end of the chain of production. The said decision has no application.

'Consumer' has been defined in the notification dated 31.12.2004. It did not make any distinction between an ordinary cable consumer and a commercial cable consumer. TRAI itself said so in its consultation paper stating:

> "In the Recommendations on Broadcasting and Distribution of TV channels the Authority had also indicated that the ceiling shall be reviewed

> periodically to make adjustment for inflation. It was also stated that the price regulation is only intended to be temporary and as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn. The Tariff Order did not define the word "cable subscribers" and no distinction was expressly provided between ordinary cable consumer and a commercial cable consumer."

A 'consumer' furthermore has been defined in the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation, 2004 issued by TRAI on 31.12.2004. Such regulations having been made in terms of Section 36 of TRAI Act, the term 'consumer' defined therein to mean any person who is a subscriber of any broadcasting service in the country would, in our opinion, would prevail over the definition of a 'consumer' under the 1986 Act.

Our attention, however, was drawn to Explanatory Memorandum appended to the Tariff Order of 1.10.2004. Only a recommendation was made therein that it was not possible to have uniformity of rates for subscribers but it is not in dispute that commercial consumers have not been taken out of the purview of TRAI Act. It may be that in several other sectors as, for example, electricity or water, different tariffs exist for domestic consumers or commercial consumers but it is beyond any cavil that the tariff of the said essential commodities are fixed under statutes. So long, TRAI does not itself make any distinction between consumers and consumers and does not fix different tariffs, the question that a category of users being commercial users/ subscribers being identified so as to exclude the applicability of TRAI Act does not and cannot arise. The Tariff Orders of 2004 did not define the words "cable subscribers" and, thus, no distinction was expressly provided between ordinary cable consumer and commercial cable consumer.

It is one thing to say that TRAI recognises the need for making such a distinction probably pursuant to or in furtherance of the observations made by TDSAT but therefor a final decision is yet to be taken. The notification dated 7.03.2006 has been issued as an interim measure. By reason of the said notification, broadcasters have been injuncted from increasing the rates. So long a final determination in the matter does not take place, not only the

members of Appellants – Associations but also a vast number of similar commercial subscribers would remain protected.

It is not disputed that the nature of supply of TV signals is not distinct and different. It is same both for domestic consumers and commercial consumers.

It is one thing to say that TV signals are being used for commercial purpose but it is a question which TRAI has to address itself independently and in exercise of its power under Section 11(2) of TRAI Act. The same having not been done till date, in our opinion, it cannot be contended that a commercial consumer is not a consumer.

'Subscriber' has been defined in Section 2(i) of the 1995 Act to mean a person who receives the signals of cable television network at a place indicated by him to the cable operator, without further transmitting to any other persons.

The members of Appellants – Associations stricto sensu do not retransmit the signals to any other person. It merely makes the services available to its own guests, which in other words, would mean to itself. If the amenities provided for by the management as a subscriber under TRAI Act is inseparable from the other amenities provided to a boarder of a hotel, it remains a subscriber by reason of making the services available in each of the rooms of the hotel. It is not transmitting the signals of cable television network to any other persons. TRAI Act and various orders made thereunder are required to be read conjointly with a view to give harmonious and purposive construction thereto.

An attempt has been made by Mr. Desai to contend that the 1986 Act is a cognate legislation. Section 2(2) of TRAI Act provides that words and expression used and not defined in the said Act but defined in Indian Telegraph Act, 1885 or the Indian Wireless Telegraphy Act, 1933 shall have the meanings respectively assigned to them in those Acts. Thus, meaning of only such words which are not defined under TRAI Act but defined under those Acts could be taken into consideration. It is furthermore well known that the definition of a term in one statute cannot be used as a guide for construction of a same term in another statute particularly in a case where statutes have been enacted for different purposes.

In Hari Khemu Gawali v. Deputy Commissioner of Police, Bombay and another [AIR 1956 SC 559], a Constitution Bench of this Court stated:

> "…It has been repeatedly said by this Court that it is not safe to pronounce on the provisions of one Act with reference to decisions dealing with other Acts which may not be in pari materia."

In M/s. MSCO. Pvt. Ltd. v. Union of India and Others [(1985) 1 SCC 51], this Court held:

> "4. The expression 'industry' has many meanings. It means 'skill', 'ingenuity', 'dexterity', 'diligence', 'systematic work or labour', 'habitual employment in the productive arts', 'manufacturing establishment'ect. But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject..."

In Maheshwari Fish Seed Farm v. T.N. Electricity Board and Another [(2004) 4 SCC 705], this Court in regard to different meanings of 'agriculture' as noticed in different decisions held:

> "9…A reading of the judgment shows a research by looking into several authorities, meaning assigned by dictionaries and finding out how the term is understood in common parlance. The Court held that the term 'agriculture' has been defined in various dictionaries both in the narrow sense and in the wider sense. In the narrow sense agriculture is the cultivation of the field. In the wider sense it

> comprises of all activities in relation to the land including horticulture, forestry, breeding and rearing of livestock, dairying, butter and cheese-making, husbandry etc. Whether the narrower or the wider sense of the term 'agriculture' should be adopted in a particular case depends not only upon the provisions of the various statutes in which the same occurs but also upon the facts and circumstances of each case. The definition of the term in one statute does not afford a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally."

In Tata Consultancy Services v. State of A.P. [(2005) 1 SCC 308], this Court held:

> "40. Copyright Act and the Sales Tax Act are also not statutes in pari materia and as such the definition contained in the former should not be applied in the latter. [See Jagatram Ahuja v. Commr. of Gift-tax, Hyderabad].
>
> 41. In absence of incorporation or reference, it is trite that it is not permissible to interpret a word in accordance with its definition in other statute and more so when the same is not dealing with any cognate subject…"

Reliance has been placed upon a decision of this Court in Deputy Chief Controller of Imports and Exports, New Delhi v. K.T. Kosalram and Others [(1970) 3 SCC 82] wherein the provisions of the Indian Tariff Act, 1934 were called in aid to interpret import licence granted under the Imports and Exports Control Act, 1947 on the premise that both relates to the larger import scheme of the Government of India. In that case, the Central Government made Imports Control Order under the Imports and Exports Control Act. Item No. 67(1) in Schedule I, Part V contained a very large number of various components of a printing press corresponding to Item No. 72(2) of the Indian Tariff Act which consolidates the law relating to customs

duties. This Court opined that although dictionary meanings are helpful in understanding the general sense of the word but it cannot control a situation where the scheme of the statutes or the instrument considered as a whole clearly conveys a somewhat different shade of meaning. In that fact situation, it was opined:

> "…It is not always a safe way to construe a statute or a contract by dividing it by a process of etymological dissection and after separating words from their context to give each word some particular definition given by lexicographers and then to reconstruct the instrument upon the basis of those definitions. What particular meaning should be attached to words and phrases in a given instrument is usually to be gathered from the context, the nature of the subject matter, the purpose or the intention of the author and the effect of giving to them one or the other permissible meaning on the object to be achieved. Words are after all used merely as a vehicle to convey the idea of the speaker or the writer and the words have naturally, therefore, to be so construed as to fit in with the idea which emerges on a consideration of the entire context. Each word is but a symbol which may stand for one or a number of objects…"

In Shree Meenakshi Mills Ltd. v. Union of India [(1974) 1 SCC 468], the Cotton Textiles Cess Act, 1948 and the Cotton Textiles Companies (Management of Undertakings and Liquidation or Reconstruction) Act, 1967 were held to be cognate legislations.

TRAI Act and the 1986 Act are not in pari materia. They have been enacted for different purposes and in that view of the matter even Sirsilk Ltd. v. Textiles Committee and Others [1989 Supp (1) SCC 168] would have no application in the instant case.

Strong reliance has been placed on some purported agreements entered into by and between the broadcasters and the cable operators to contend that cable operators were authorised only to supply signals to

private residential households or private residential multi-unit dwellings and not to commercial users. TDSAT has not gone into that aspect of the matter. It is seriously disputed that such agreements exist. In any event such a question cannot be gone into by us as cable operators are not parties in these appeals.

We, therefore, are of the opinion that it would not be correct to contend that the commercial cable subscribers would be outside the purview of regulatory jurisdiction of TRAI. If such a contention is accepted, the purport and object for which the TRAI Act was enacted would be defeated. TDSAT, with great respect, therefore, was not correct in opining that the regulators should also consider whether it is necessary or not to fix the tariff for commercial purposes in order to bring greater degree of clarity and to avoid any conflicts and disputes arising in this regard.

While exercising its original jurisdiction, again with respect, TDSAT should not have made such observations. This Court in K. Kankarathnamma and Others v. State of Andhra Pradesh [(1964) 6 SCR 294 at 298], held:

> "…wherever jurisdiction is given by a statute and such jurisdiction is only give upon certain specified terms contained therein, it is a universal principle that those terms should also be complied with, in order to create and raise the jurisdiction, and if they are not complied with the jurisdiction does not arise..."

It is also well settled that when a power is required to be exercised in a particular manner, the same has to be exercised in that manner or not at all. TDSAT having not exercised its appellate jurisdiction, in our opinion, neither could have issued any direction nor TRAI could abide thereby. [See Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors., AIR 1978 SC 851, Commissioner of Police v. Gordhandas Bhanji, AIR 1952 SC 16, Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627 and R.S. Garg v. State of U.P. and Others, 2006 (7) SCALE 405]

We are, however, sure that TRAI while exercising its jurisdiction under Sub-section (2) of Section 11 of TRAI Act shall proceed to exercise

its jurisdiction without in any way being influenced by the said observations. It must apply its mind independently.

It may be true that TRAI in its Tariff Order dated 7.3.2006 sought to define ordinary cable subscribers and cable subscribers separately but the same is yet to be adopted finally. It is not conclusive. It must while laying down new tariff take into consideration all the pros and cons of the matter. It must apply its mind afresh as regards not only the justifiability thereof but also the workability thereof.

TRAI exercises a broad jurisdiction. Its jurisdiction is not only to fix tariff but also laying down terms and conditions for providing services. Prima facie, it can fix norms and the mode and manner in which a consumer would get the services.

The role of a regulator may be varied. A regulation may provide for cost, supply of service on non-discriminatory basis, the mode and manner of supply making provisions for fair competition providing for label playing field, protection of consumers interest, prevention of monopoly. The services to be provided for through the cable operators are also recognised. While making the regulations, several factors are, thus required to be taken into account. The interest of one of the players in the field would not be of taken into consideration throwing the interest of others to the wind.

We may notice that the Tariff Order of 2004 which came into force from 15.01.2004 whereby the price prevalent as on 26.12.2003 was to be the ceiling in respect of charges payable by :

(a) Cable subscribers to cable operator;
(b) Cable operators to Multi Service Operators/ Broadcasters (including their authorized distribution agencies); and
(c) Multi Service Operators to Broadcasters (including their authorized distribution agencies).

Whereas members of Hotel & Restaurant Association would be protected thereby, the Tariff Order dated 7.03.2006 protects all as in terms thereof Sub-clause (f) of Clause 2 of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 was substituted by the following:

> "(i) for all others except commercial cable subscribers, the rates (excluding taxes) payable by one party to the other by virtue of the written/oral agreement prevalent on 26th December 2003. The principle applicable in the written/oral agreement prevalent on 26th December 2003, should be applied for determining the scope of the term "rates"
>
> (ii) for commercial cable subscribers, the rates (excluding taxes) payable by one party to the other by virtue of the written/oral agreement prevalent on 1st March 2006. The principle applicable in the written/oral agreement prevalent on1st March 2006, should be applied for determining the scope of the term "rates""

Thus, it covers both the situations.

It is now also not in dispute, as would appear from the Explanatory Memorandum issued by TRAI, that the interim protection has been extended also to commercial consumers.

A contention has been raised that the freeze/ ceiling order did not apply to the new channels or in a case the free channels are converted into pay channels. However, TDSAT did not go into the said question.

Having regard to the order proposed to be passed, we do not intend to also determine the said question for the first time. We may notice that, except a few, the members of Hotel Associations have entered into contract directly with the broadcasters. Mr. Venugopal agrees that all those owners of the hotel who had set up Head End shall continue to pay the amount which was payable as on 1.10.2004. If there are arrears, the same must be cleared within eight weeks from date. So far as those who are taking signals through cable operators, keeping in view the fact that there are certain disputed questions of fact and furthermore in view of the fact that they have not disclosed the name of the cable operators except 314 hotels and some restaurants, they may furnish the complete list.

We, therefore, direct those members who are taking signals through cable operators to disclose the details as directed by TDSAT within three weeks from date. Cable operators, if TDSAT so directs, may be impleaded as parties and/ or some of them in representative capacities. The matter in relation to those who are taking supply through the cable operators is being remitted to TDSAT. It would be open to the parties to adduce additional evidences. Until an appropriate order is passed by TDSAT, by way of an interim measure, the members of Appellants – Hotel & Restuarant Association and those members of Hotel Association who are taking supply through cable operators shall pay in terms of the Order dated 7.03.2006 but the same shall be subject to the ultimate order that may be passed by TDSAT. All other informations, if any, as directed by TDSAT, shall be furnished.

On 19th October, 2006, we have passed the following order:

> "It appears that by our order dated 28.4.2006, a Bench of this Court directed that status-quo, as it existed on that date, shall be maintained. It is stated at the Bar that pursuant to and in furtherance of the said order the TRAI has not been carrying out the processes for framing the tariff in terms of Section 11 of the Telecom Regulatory Authority of India Act.
>
> Before us Mr. Sanjay Kapur, learned counsel appearing for TRAI submitted that TRAI has already issued consultation papers and processes for framing a tariff is likely to be over within one month from date.
>
> We in modification of our said order dated 28.4.2006 direct the TRAI to carry out the processes for framing the tariff. While doing so, it must exercise its jurisdiction under Section 11 of the Act independently and not relying on or on the basis of any observation made by the TDSAT to this effect. It goes without saying that all the procedures required for framing the said tariff shall be complied with.
>
> It has been brought to our notice that even in the consultation paper some references have been

> made to the recommendations made by the TDSAT. In view of our directions issued hereinbefore a fresh consultation paper need not be issued. We, however, make it clear that in framing the actual tariff the provisions of Section 11 of the Act shall be complied with and all procedures laid down in relation thereto shall be followed.
>
> We also furthermore direct that by reason of the order of grant of status-quo, we have not stayed the criminal proceedings."

We reiterate the same.

In the event TRAI frames tariffs, the members of Appellants – Associations would be entitled to prefer appeals there against. All contentions in that behalf are left open. The appeals are allowed with the aforementioned observations and directions. No costs.

…….J.
[S.B. Sinha]

……..J.
[Markandey Katju]

New Delhi;
November 24, 2006