

Supreme Court on TRAI's Tariff Order

written by Mohana Roy | November 21, 2018

Background

The Supreme Court of India (the "Supreme Court") has recently on October 30, 2018 has given its judgment in the case of *Star India Private Limited vs. Department of Industrial Policy and Promotions*[1]. Wherein, Star India Private Limited (the "Appellant") filed an appeal against the Madras High Court order upholding the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (the "Interconnection Regulation") and the Telecommunication (Broadcasting and Cable) Services (Eight) (Addressable Systems) Tariff Order, 2017 (the "Tariff Order"). The Appellant challenged the Interconnection Regulation and the Tariff Order on ground that the Telecommunication Regulatory Authority of India (the "TRAI") has acted ultra vires the Telecom Regulatory Authority of India Act, 1997 (the "TRAI Act" or the "Parent Act") while incorporating the same and interferes with the content of the broadcast. The Supreme Court in its judgment has upheld the Madras High Court's order and has viewed that TRAI has not acted ultra vires the Parent Act; in order to safeguard consumer's interest, the Parent Act ensures fair competition and gives power to TRAI to incorporate such laws and regulations which helps to achieve fair competition and promotion of consumer interest. Hence, the Supreme Court held that the Interconnection Regulation and the Tariff Order does not interfere with the content of the broadcast.

Facts of the Case

The Interconnection Regulation and the Tariff Order was notified on March 3, 2017, since its notification it was challenged that certain clauses of both the laws are ultra-vires the Parent Act.

Some of the key clauses which were challenged were;

1. Regulation 6(1) of the Interconnection Regulation and Order 3(1) & 3(3) of the Tariff Order makes it mandatory for the broadcasters to offer all the channels on an a-la-carte basis, further they can also offer their channel in bouquet however, such bouquet should constitute only pay channels or free-to air channels and not both, similarly the high definition (HD) and the standard definition (SD) channels must not be paired in one bouquet.
2. Regulation 7(4) of the Interconnection Regulation provides that the maximum discount that can be offered by a broadcaster on per pay channel or bouquet of pay channels should be 15% of the maximum retail price.
3. Order 3(2) of the Tariff Order provides that the maximum retail price of a pay channel and a bouquet of pay channels should be uniform for all distribution channels. Thus the broadcaster cannot charge different prices to different distributors.
4. Under Order 3(3) of the Tariff Order any pay channel which is part of a bouquet cannot have a maximum retail price per month of more than INR 19.
5. Order 3(4) of the Tariff Order allows the broadcasters to offer promotional schemes on the maximum retail price per month of its a-la-carte pay channels. And such scheme can only be offered twice a year and for a period of 90 days only.

A writ petition was filed by the Appellant challenging the above mentioned impugned clauses in front of the Madras High Court. Wherein the issues for determining were;

1. Whether the TRAI has the power to regulate the content of the broadcast;

2. Whether the impugned clauses lead to regulation of content of the television channel by the broadcaster effecting directly on the pricing and marketing of a television channel, thereby making it illegal interference of a television. The Madras High Court held in favor of the Respondents aggrieved by which an appeal was filed with the Supreme Court.

Contentions and Findings

The Appellants argued that the impugned clauses of the Interconnection Regulation and the Tariff Order are not in conformity with the TRAI Act. The TRAI Act enables TRAI to regulate transmission or reception of broadcasting services which means regulation of measures taken for carriage of these signals. By making regulations on pricing of the channels and providing direction on how to group the channels is leading to regulation of the content of the broadcast. The Appellant went on arguing that by making such regulations TRAI has not only acted ultra-vires the Parent Act but has also infringed broadcaster's rights under the Copyright Act, 1956.

The Supreme Court while delivering its judgment rejected the Appellant's arguments and upheld Madras High Court's Order.

Analysis

The Supreme Court in its judgment viewed that TRAI has not acted ultra-vires the Parent Act, for which reliance was made upon the objective as set out in the TRAI Act, which clearly states that the reason behind establishment of TRAI is to protect the interest of the consumers and the service providers. In light of this it was further held that no rights under the Copyright Act 1956 were infringed and even if it was infringed it can be justified on the grounds of public interest.

If the broadcasters are left fully unregulated in the matters regarding the prices of the channels and the manner of providing the channels, then it will give them the liberty to set the prices of the channels according to their whims, which may cause harm in two ways; firstly it will harm the consumers for the obvious reasons, secondly, it will disrupt fair competition in the market.

The Supreme Court while delivering its judgment also took note of the explanatory memorandum attached to the Tariff Order, which clearly explains the need of the regulation. As per the explanatory memorandum price fluctuation, conflict of interests among the stakeholders was prevalent in the telecom industry. Most importantly there were exorbitantly high prices for a-la-carte channels and high discounts were given for bouquet channels which forced the consumers to opt for bouquet channels thereby narrowing the choice for the customers.

Further in the explanatory memorandum, general comments by the stakeholders on the draft Tariff Order were also taken in to consideration by the Supreme Court where in a concern regarding overlapping of the Copyright Act 1956 by the TRAI Act was raised which is further analyzed by the Supreme Court and it is held that the object of the Copyright Act 1956 is to protect the proprietary interest of the owner whereas object behind the TRAI Act and the regulations under the TRAI Act are to focus on protection of the ultimate consumers. Therefore jurisdictions of both the laws are totally different thus, the TRAI Act cannot overlap the Copyright Act 1956 and even if it does then the same can be justified under the grounds of public interest.

Conclusion

The Supreme Court's decision to uphold the validity of the Interconnection

Regulation and the Tariff Order sets another example towards safeguarding public interest, which will have a mixed impact. On one hand it will curtail the freedom of the broadcasters and distributors by imposing certain limitations, on the other hand for the consumers it will have a positive impact as it will provide them with more options with regards to channels they may be interested to subscribe, also the prices of the channels shall not be exorbitantly high like it was earlier as now it is regulated.

[1] MANU/SC/1238/2018

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