* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24th MAY, 2023

IN THE MATTER OF:

\+ **W.P.(C) 11740/2016 & CM APPL. 46239/2016, 21714/2017, 35305/2017, 35306/2017,7426/2020, 13820/2018**

VODAFONE MOBILE SERVICES LTD. & ANR ..... Petitioners

Through: Mr. Gopal Jain, Senior Advocate with Mr. Manjul Bajpai, Mr. Manu Krishnan, Mr. Vipul Singh, Ms. Madhavi Agarwal, Advocates

versus

TELECOM REGULATORY AUTHORITY OF INDIA ..... Respondent

Through: Mr. Ramji Srinivasan, Senior Advocate and Mr. Ritin Rai, Senior Advocate with Mr. K R Sasiprabhu, Mr.Aabhas Kshetrapal, Mr. Aditya Swarup, Mr. Tushar Bhardwaj, Mr.Vishnu Sharma, Mr. Manan Shishodia, Mr. Prakhar Agarwal, Advocates
Ms. Arunima Dwivedi, CGSC with Ms. Pinky Pawar, Mr. Aakash Pathak, Advocates for UOI

\+ **W.P.(C) 685/2017 & CM APPL. 3138/2017, 41382/2017**

VODAFONE IDEA LIMITED ..... Petitioner

Through: Mr. Gopal Jain, Senior Advocate with Mr. Manjul Bajpai, Mr. Manu Krishnan, Mr. Vipul Singh, Ms. Madhavi Agarwal, Advocates

versus

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THE TELECOM REGULATORY AUTHORITY OF INDIA

..... Respondent

Through: Mr. Ramji Srinivasan, Senior Advocate and Mr. Ritin Rai, Senior Advocate with Mr. K R Sasiprabhu, Mr.Aabhas Kshetrapal, Mr. Aditya Swarup, Mr. Tushar Bhardwaj, Mr.Vishnu Sharma, Mr. Manan Shishodia, Mr. Prakhar Agarwal, Advocates
Mr. Manish Mohan, CGSC with Mr.Jatin Teotia, Advocate for UOI
Ms. Arunima Dwivedi, CGSC with Ms. Pinky Pawar, Mr. Aakash Pathak, Advocates for UOI

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The primary challenge in the present writ petitions is to the impugned recommendation dated 21.10.2016 passed by the Telecom Regulatory Authority of India (*hereinafter referred as 'Respondent No. 1')* on the ground that impugned recommendation made by the Respondent No.1/TRAI to the Secretary, Department of Telecommunication for penal action of Rs.50 crores per Licensed Service Area (LSA) for all 21 LSAs except for Jammu and Kashmir where POI congestion exceeded the allowable limit of 0.5% as reported by Vodafone through their letter dated the 23rd September, 2016 is contrary to law and deserves to be struck down.

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2. It is pertinent to mention here that certain other prayers have also been sought for in W.P.(C) 685/2017 which are not being decided at present for the reason that the arguments have primarily been advanced by the Counsels only on the recommendation dated 21.10.2016 passed by the Telecom Regulatory Authority of India.

3. Petitioner No. 1 is a Unified Access Service Provider with established Cellular mobile network all across India in 21 circles excluding Mumbai. Petitioner No. 2 is a Unified Access Service Provider in Mumbai Circle. In W.P.(C) 685/2017, Petitioner No.1 is a provider of telecommunication access service under CMTS/UASL/Unified License granted by the Department of Telecommunication (*hereinafter referred as 'DOT'*) under Indian Telegraph Act, 1885. Petitioner No. 2 is a shareholder of petitioner no. 1.

4. On 14.06.2014, Reliance Jio Infocom Limited (*hereinafter referred as 'RJIL'*) entered into an Interconnection Agreement with the petitioners, for the purpose of interconnecting their networks and exchanging telecommunications traffic. After two years on 14.07.2016, RJIL sent a letter to Respondent No.1/TRAI to instruct service providers including the petitioners to augment/increase point of interconnection (*hereinafter referred as 'POI'*) as RJIL was conducting test trials of its network services before its full-fledged commercial launch. As per RJIL, increasing/augmenting the POI was required to provide immaculate quality and sufficient interconnection capacity for inter-operator traffic at the POI, in accordance with TRAI regulations. Respondent No. 1/TRAI wrote a letter dated 19.07.2016 to petitioners and other service providers seeking response to RJIL's request for intervention by Respondent No.1/TRAI as the

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Petitioners and other service providers have been denying/delaying RJIL's request for augmentation of POI. This issue was raised again by RJIL vide its letter dated 12.08.2016.

5. The Petitioners responded with a letter to the Respondent No.1/TRAI stating that RJIL's request for augmentation of POI for its 'test users', even before its commercial launch, is incongruous with the spirit of interconnection agreement dated 14.06.2014, which was signed between the petitioners and RJIL.

6. A meeting was held on 09.09.2016 by Respondent No.1/TRAI with RJIL and other service providers including the Petitioners. It was concluded in the meeting that benchmark of 0.5% as per Quality of Service Regulations (*hereinafter referred as 'QOS regulations'*) should be followed by service providers. With respect to the meeting held on 09.09.2016, the petitioner wrote a letter to Respondent No.1/TRAI regarding difficulties being faced due to RJIL's free calls for 'test users' leading to abnormal asymmetry of traffic as well as abnormal volume of calls per user which in turn was leading to choking of networks even after augmentation of POI by the petitioners.

7. On 27.09.2016, a Show Cause Notice was issued by the Respondent No.1/TRAI to the Petitioners for violation of TRAI regulations and Unified Service licenses as the percentage of failed call attempts during busy hours with RJIL was extremely high, leading to the petitioners failing to meet the benchmark of 0.5% for POI congestion prescribed in QOS regulations. On 07.10.2016, the Petitioners responded to the Show Cause Notice. However, Respondent No. 1/TRAI issued a direction on the same day under Section 13 of the Telecom Regulatory Authority of India Act, 1997 *(hereinafter*

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referred as 'TRAI Act') to all service providers to comply with the TRAI regulations, Unified Service licenses and furnish a compliance report by the 31.10.2016. The petitioners afterwards replied to respondent No. 1/TRAI providing information on traffic and congestion on POI.

8. On 21.10.2016, respondent No. 1/TRAI issued the Impugned Recommendation stating that the petitioners were at fault for not providing POIs to RJIL and recommended imposition of a penalty of Rs. 50 crores per circle for 21 Licensed Service Areas where POI congestion exceeded the allowable limit of 0.5%. The petitioners requested respondent No. 1/TRAI to withdraw the impugned recommendation, but to no avail. Thereafter, the Petitioners filed the present petitions before this Court.

9. Learned counsel appearing on behalf of the Petitioners states that Impugned Recommendation is palpably erroneous and respondent No. 1/TRAI does not have jurisdiction under Section 11(1)(a)(ii) of the TRAI Act as it can only issue recommendation to DOT for revocation of License but does not have the power to recommend penalty. Additionally, under Clause 10.1(i) of the License, it is DOT's exclusive jurisdiction to impose penalty. Under Regulation 5A of QOS Regulations, respondent No. 1/TRAI can impose financial disincentive not exceeding Rs. 1 lakh in first contravention, but it can only be levied after affording Principles of Natural Justice. The TRAI Act does not confer the power to impose penalty or recommend penalty mentioned in the License Agreement, therefore, respondent No. 1 has no jurisdiction for penalising. (Refer: Manipal University & Anr. v. Union of India, **Civil Appeal No. 8381/2017,** decided on 03.07.2017).

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10. It is the case of the petitioner that the impugned recommendation cannot be challenged before a tribunal because it is not an order but only a recommendation. Additionally, the Impugned recommendation is statutory in nature as it is emanating from an expert body like Respondent No. 1/TRAI and the same can be challenged by filing a writ petition and not before the Tribunal. Such recommendation would by itself furnish a cause of action necessitating a challenge under Article 226 of the Constitution of India. It is submitted that the present writ petitions are maintainable under Article 226 of the Constitution of India. (Refer: V K Ashokan Vs. CCE, (2009) 14 SCC 85 and Rajesh Kumar v. CIT **(2007) 2 SCC 181).** It is further submitted that under Section 11(4) of the TRAI Act, the exercise of making recommendations should be transparent, which implies that due opportunity of representation and hearing must be given, however, no opportunity of hearing was granted before passing the adverse orders against petitioner, which is also in violation of the Principles of Natural Justice (Refer: DK Yadav Vs. JMA industries Ltd. **(1993) 3 SCC 259**; V K Ashokan Vs. CCE, **(2009) 14 SCC 85**; Prakash Ratan Sinha Vs. State of Bihar, **(2009) 14 SCC 690**).

11. It is stated that the Show Cause Notice did not inform about possibility of a recommendation for imposing penalty, which is in violation of the Principles of Natural Justice. (Refer: Gorkha Security Services v. Govt. of NCI, **(2014) 9 SCC 105** and Hindustan Lever Ltd. Vs. Director General (Investigation & Registration), **(2001) 2 SCC 474**). Furthermore, it is submitted that TRAI Act does not confer adjudicatory function to Respondent No. 1 as was held by the Hon'ble Supreme Court in BSNL v. Telecom Regulatory Authority of India, Appeal No. 2 of 2004 decided on

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21.4.2004 that after the 2000 Amendment, adjudicatory functions of TRAI were separated from its administrative and legislative functions, leaving respondent No. 1/TRAI with no adjudicatory power.

12. Learned Counsel appearing on behalf of respondent No. 1/TRAI vehemently opposes the present petitions and submits that the present petitions are premature at this stage and non-maintainable. It is the stand of respondent No. 1/TRAI that no cause of action has occurred since the DOT is yet to take a decision on the Impugned Recommendations. In any event, the order of DOT can be challenged if it causes prejudice to the interests of the petitioner. However, no prejudice has been caused to the petitioners because of the Impugned recommendation. He states that two petitions challenging the impugned recommendation are on-going before Telecom Disputes Settlement and Appellate Tribunal (*hereinafter referred as 'TDSAT'*) and, therefore, the present writ petitions ought not to be entertained by this Court.

13. With respect to the issue of granting an opportunity of an oral hearing to the Petitioner before the issuance of the impugned recommendation, it is submitted that respondent No. 1/TRAI is not performing any quasi-judicial function, due to which oral hearing does not become a right. It is submitted that the impugned recommendation was made after the Petitioners gave a detailed reply to the Show Cause Notice. Furthermore, the order dated 29.09.2021 of Respondent No. 2 has been passed after hearing both the parties fairly and, therefore, no prejudice has been caused to the Petitioners. In any event, the order dated 29.09.2021 passed by Respondent No.2 is under challenge before the Tribunal. It is further submitted that any

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judgment passed by this Court will have an impact on the issue pending before the Tribunal.

14. It is the case of the learned counsel appearing on behalf of answering respondent No. 1/TRAI that the impugned recommendation solely a recommendation which can be rejected. Furthermore, respondent No. 1 has complete authority to make impugned recommendations under license conditions as set out in Clauses 10, 16, 27 and 29 of the License.

15. Heard the counsels appearing for the parties and perused the material on record.

16. The principle challenge in the present writ petitions is that power of the Respondent No.1/TRAI to recommend penalty under the provisions of TRAI Act. Section 11 of the TRAI Act which is relevant for adjudication of the present writ petitions read as under:

> *"**11. Functions of Authority**.— [(1)Notwithstanding anything contained in the Indian Telegraph Act,1885 (13 of 1885),the functions of the Authority shall be to—*
>
> *(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 license for non-compliance of terms and conditions of licence;*

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(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 of the licence granted before the commencement of the Telecom Regulatory Authority of India (Amendment) Act,2000 (2 of 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

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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

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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:

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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 therefore.

(3) While discharging its functions 1 [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."

17. It is the contention of the Petitioners that Section 11(1)(a) of the TRAI Act does not authorize the Respondent No.1/TRAI from making any recommendation imposing penalty. It is the further submission of the Petitioners that since a statutory authority has made this recommendation, the same cannot be challenged before the Tribunal as it is not an Order but a recommendation passed by the Respondent No.2.

18. *Per contra*, learned Senior Counsel appearing for the Respondents, contends that the recommendations are not binding on the authorities. He states that the first proviso to Section 11(1) specifically provides that recommendations of the authorities specified under Clause (a) of sub Section (1) of Section 11 is not binding on the Central Government.

19. We find force in the contention of the Respondents as pointed out by the learned Counsel appearing for the Respondents that the first proviso to Section 11(1) specifically provides that recommendations of the authorities specified under Clause (a) of sub Section (1) of Section 11 is not binding on

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the Central Government. Further recommendations are first considered by the Government and only when the Government comes to a *prima facie* conclusion that the recommendation cannot be accepted or needs modification, the recommendation is referred back to the authority for its reconsideration.

20. The Apex Court in Union of India v. Assn. of Unified Telecom Service Providers of India, **(2011) 10 SCC 543** has observed as under:

> *"42. Section 11(1)(a)(ii) of the TRAI Act states that notwithstanding anything contained in the Telegraph Act, TRAI shall have the function to make recommendations, either suo motu or on a request from a licensor on the terms and conditions of the licence to a service provider. The first proviso, however, states that the recommendations of TRAI shall not be binding upon the Central Government. The second, third, fourth and fifth provisos deal with the procedure that has to be followed by TRAI and the Central Government with regard to recommendations of TRAI. At the end of the fifth proviso, it is stated that after receipt of further recommendation, if any, the Central Government shall take the final decision.*
>
> *43. These provisions in the TRAI Act show that notwithstanding sub-section (1) of Section 4 of the Telegraph Act vesting exclusive privilege in the Central Government in respect of telecommunication activities and notwithstanding the proviso to sub-section (1) of Section 4 of the Telegraph Act vesting in the Central Government the power to decide on the conditions of licence including the payment to be paid by the licensee for the licence, TRAI has been conferred with the statutory power to make recommendations on the terms and conditions of the licence to a service provider and the Central Government was bound to seek the recommendations*

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> *of TRAI on such terms and conditions at different stages, **but the recommendations of TRAI are not binding on the Central Government and the final decision on the terms and conditions of a licence to a service provider rested with the Central Government. The legal consequence is that if there is a difference between TRAI and the Central Government with regard to a particular term or condition of a licence, as in the present case, the recommendations of TRAI will not prevail and instead the decision of the Central Government will be final and binding.**"*
> *(emphasis supplied)*

21. The Telecom Regulatory Authority of India is a self contained code which is intended to deal with all disputes arising out of the telecom services. It is well settled that when a tribunal is constituted under the Act and is looking into the issues under that Act, the Courts should not normally exercise its jurisdiction under Article 226 of the Constitution of India. In Union of India v. Tata Teleservices (Maharashtra) Ltd., **(2007) 7 SCC 517**, the Apex Court held as under:

> *"16. The Act is seen to be a self-contained code intended to deal with all disputes arising out of telecommunication services provided in this country in the light of the National Telecom Policy, 1994. This is emphasised by the Objects and Reasons also.*
>
> *17. Normally, when a specialised tribunal is constituted for dealing with disputes coming under it of a particular nature taking in serious technical aspects, the attempt must be to construe the jurisdiction conferred on it in a manner as not to frustrate the object sought to be achieved by the Act. In this context, the ousting of the jurisdiction of the civil court contained in Section 15 and Section 27 of the Act has also to be kept in mind. The subject to be dealt with*

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> *under the Act has considerable technical overtones which normally a civil court, at least as of now, is ill equipped to handle and this aspect cannot be ignored while defining the jurisdiction of TDSAT."*

22. The abovementioned Judgment has further been quoted with approval by the Apex Court in the case of BSNL v. TRAI, **(2014) 3 SCC 222.**

23. The Apex Court has also explained the jurisdiction of the TRAI and the Government in dealing with issues arising out of the TRAI Act. In Cellular Operators Assn. of India v. Union of India, **(2003) 3 SCC 186,** the Apex Court observed as under:

> *"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.* ***By saying so, we may not be understood to mean that the Appellate Tribunal while exercising power under Section 14 of the Act, will not give due weight to the recommendations or the decisions of an expert body like TRAI or in the case in hand, GOT-IT, which was specifically constituted by the Prime Minister for redressing the grievances of the cellular operators****. We would, therefore, answer the question of jurisdiction of the Appellate Tribunal by holding that the said Tribunal has the power to adjudicate any dispute between the persons enumerated in clause (a) of Section 14 and if the dispute is in relation to a decision taken by the Government, as in the case in hand, due weight has to be attached both to the recommendations of TRAI which consists of an expert*

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body as well as to the recommendations of GOT-IT, a committee of eminent experts from different fields of life, which had been constituted by the Prime Minister.

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*11........ **As has been stated earlier, the jurisdiction of the Tribunal under Section 14 cannot be held to be a supervisory jurisdiction, in view of the language of the statute as well as the fact that it is the only forum for redressing the grievance of an aggrieved party inasmuch as the appellate jurisdiction to this Court is only on a substantial question of law and the jurisdiction of a civil court for filing a suit is also ousted. It has already been held by us that the Tribunal has the power to adjudicate any dispute but while answering the dispute, due weight has to be given to the recommendation of TRAI, which consists of experts**........"*

(emphasis supplied)

24. The Apex Court in the case of M/s South India Bank Ltd. & Ors. vs. Naveen Mathew Philip & ANR. ETC. ETC in **SLP (Civil) Nos.22021-22022 of 2022** dated 17.04.2023 has held that when there is a specialised Tribunal which has been constituted to deal with the disputes under the TRAI Act, then Courts must be slow to interfere under Article 226 of the Constitution of India. The Apex Court has observed as under:

*"16. Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. A writ of mandamus is a prerogative writ. In the absence of any legal right, the Court cannot exercise the said power. More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India. **When a statute prescribes a particular mode,***

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an attempt to circumvent shall not be encouraged by a writ court. A litigant cannot avoid the noncompliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative. *We wish to quote with profit a recent decision of this Court in* ***Radha Krishan Industries v. State of H.P.,*** *(2021) 6 SCC 771,*

> *25. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In Whirlpool Corpn. v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] , a two-Judge Bench of this Court after reviewing the case law on this point, noted : (SCC pp. 9-10, paras 14-15)*
>
> > *"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*
> >
> > *15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where*

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> *the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."*

26. Following the dictum of this Court in Whirlpool [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] , in Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107] , this Court noted that : (Harbanslal Sahnia case [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107] , SCC p. 110, para 7)

> *"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn.v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade*

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> *Marks, (1998) 8 SCC 1] .) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."*

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular

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statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal."

(emphasis supplied)

25. Respondent No.2, after hearing the Parties, has passed the Order dated 29.09.2021 imposing penalty on the Petitioners for violation of the provisions of license agreements and standards of QOS regulations of basic telephone service (wireline) and cellular mobile telephone service regulations, 2009. Paragraph No.41 of the said Order reads as under:

"41. Now therefore, M/s Vodafone Idea Limited (for erstwhile M/s Idea Cellular Ltd. and erstwhile M/s Aditya Birla Telecom Ltd.) is directed to pay penalty of an amount of Rs. 950,00,00,000 (in words: Rupees Nine Hundred and Fifty Crore only), i.e., Rs. 50,00,00,000/- (Rupees Fifty Crore only) per LSA, for nineteen (19) LSAs, for violation of provisions of

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> *license agreements and standards of Quality of Service of basic telephone service (wireline) and cellular mobile telephone service regulations, 2009. The said amount may be deposited within 21 calendar days from the date of issue of this notice failing which further action may be initiated under the terms and conditions of the current license agreement. Further, the Licensor shall be at liberty to encash the financial bank guarantee in case of non-payment of above-mentioned amount without any further notice to the Licensee. The amount shall be deposited in the respective Pr. CCA /CCA offices of Department of Telecommunications, Government of India, under intimation to this office."*

26. The aforesaid Order dated 29.09.2021 passed by Respondent No.2 is under challenge before the TDSAT in Telecom Petition Nos.44-46/2021, and the TDSAT by an Order dated 22.11.2021 has already stayed the said Order dated 29.09.2021. The Telecom Petition No.45/2021 filed by Bharti Airtel Ltd. which was also heard along with Petitions being Telecom Petition Nos.44 & 46/2021 filed by the Petitioners herein specifically challenges the recommendation dated 21.10.2016 which is the subject matter of the instant petitions. The TDSAT has been empowered to deal with all disputes arising under the TRAI Act. After the Tribunal gives the conclusion that the Order dated 29.09.2021 passed by the Respondent No.2 is not sustainable in law, then automatically the recommendation dated 21.10.2016 which is under challenge in the instant writ petitions would be set aside. This Court finds considerable force in the arguments advanced by the learned Senior Counsel for the Respondents that any observations made by the this Court in the instant writ petitions will have an adverse impact on the Telecom Petitions which have been filed before the TDSAT. In view of the pronouncements of the Apex Court, the Tribunals which are expert bodies

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and constituted under the statute to decide the disputes arising under that statute, then Courts must not interfere with under Article 226 of the Constitution of India.

27. In view of the above, the instant writ petitions are disposed of, along with any pending application(s), if any.

28. It is made clear that this Court has not made any observations on the merits of the case. It is always open for the Tribunal to decide the issue on merits, including the recommendation dated 21.10.2016 which is under challenge in the instant petitions.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

MAY 24, 2023
S. Zakir/Chitransha

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