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***SUPREME COURT DROPS THE
HAMMER ON TRAI'S CALL DROP
REGULATIONS***

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A. Supreme Court quashes TRAI Regulations on call drops

The Hon'ble Supreme Court of India has quashed the Telecom Consumers Protection (Ninth Amendment) Regulations dated October 16, 2015 ("**Regulations**") issued by the Telecom Regulatory Authority of India ("**TRAI**"). The Regulations, which prescribed a financial disincentive (Rs. 1 for each call drop limited to a maximum of three calls per day) to be paid by the Telecom Service Providers ("**TSPs**") to their customers w.e.f. January 1, 2016 had been challenged by the TSPs before the Hon'ble High Court of Delhi on the grounds of being arbitrary, unreasonable and without basis. The High Court however, upheld the validity of the Regulations on February 29, 2016 and further stated that since the same had not been stayed by the court during the proceedings, TRAI was at liberty to take appropriate steps towards its compliance.

B. The TSPs' arguments before the Supreme Court

Unfazed by the setback before the High Court, the TSPs appealed to the Supreme Court challenging the lower court's judgment. The Supreme Court categorized the TSPs' arguments into the following categories:

- (i) That the Regulations were ultra vires Section 36 read with Section 11 of the TRAI Act, 1997 ("**Act**");
- (ii) That the Regulations, being in the nature of subordinate legislations were manifestly arbitrary and unreasonable, thereby affecting the fundamental rights of the TSPs under Articles 14 and 19(1)(g) of the Constitution;
- (iii) That TRAI had no power to interfere with the licence conditions which were contract conditions between the licensor and licensee and thus the penalty not provided by the licence needed to be struck down; and

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(iv) That Section 11(4) of the Act required TRAI to be transparent in its dealings with various stakeholders – which it had failed to do.

C. Defence of HC Order by TRAI and Consumer Groups

TRAI submitted, *inter alia*, before the apex court that the Regulations were an experimental measure and were liable to be revisited in 6 months, and therefore the TSPs had been hasty in their appeal without allowing the Regulations to work. TRAI submitted that it was possible to arrive at the cause of a call drop and further possible to isolate the service provider responsible for the same. It was further submitted that the fault of consumers and the fault of the TSPs were the only two main reasons for call drops. To further support the arguments put forth on behalf of TRAI, counsel for various consumer groups submitted that the appeal by TSPs should be dismissed as the focus of TRAI and the Regulations was for the impoverished consumers in India (such as those relying on Rs. 10 top up recharges). It was urged that the doctrine of public trust should apply to the Regulations as they were a part of the overall social responsibility of TRAI towards consumers.

D. The Supreme Court's Decision

The Supreme Court struck down the Regulations as being arbitrary and ultra vires the Act and, *inter alia*, observed that the Regulations sought to protect the interest of the consumer at the expense of the TSP and that the balance sought to be achieved for the orderly growth of the telecom sector by the Act had been violated. It was clarified that the Regulations being a subordinate legislation need to pass the test for arbitrariness and constitutional muster. The court noted that the Regulations seemed to be based on the fact that the service provider is 100% at fault which was contradictory to the statistic (that 36.9% of call drops are due to the fault of consumers) provided by TRAI itself. The court determined that in view of the aforesaid, the TSPs were being made to pay for call drops which were not attributable to their own fault and the consumer in some cases was receiving compensation for a call drop that was due to the fault of the consumer itself. The court therefore concluded that the Regulations had been framed without intelligent care and deliberation. It further dismissed the argument (put forth by TRAI) that the Regulations would be worked in such a manner so that the TSP would be liable to pay only when it is found at fault as the Regulations itself were invalid. The court clarified that a legislation or statute which is otherwise invalid cannot be saved by its being administered in a reasonable manner.

E. Conclusion

One of the most significant aspects of the dispute so far seems to be the failure on the part of TRAI and the TSPs to find a feasible solution for suffering consumers. Although the Regulations have been quashed by the Supreme Court, neither TRAI nor the TSPs have shared a "Plan B" to solve the problem of call drops, which continues unabatedly against the interest of consumers.

Feedback

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