

Chapter - 18

THE TELECOM REGULATORY AUTHORITY OF INDIA ACT, 1997

The Telecom Regulatory Authority of India Act, 1997 (hereafter referred as the “Act”) has been passed to bring the quality of telecom services to world standards, and make available a wide range of services to customers at reasonable prices. The Act has made possible fair competitive participation of various companies in the telecom sector and the protection and promotion of consumer interest. Under the Act, the regulatory functions have been separated from the service providing functions, which is now the general trend in the world. Mainly, the Act provides for the establishment of the Telecom Regulatory Authority (hereafter referred as “Authority”) to maintain harmony in present multi-operator situation in which private operators are competing with the government operators. It is expected that this may ensure healthy growth of the telecommunications infrastructure and protection of consumers’ interest in a better way.

The role of the Authority is mainly related to introduction of new service providers and the specification of the terms and conditions of the licences granted to them. This is a matter of very vital concern for general consumers.

The Act was amended in 2000 by the Telecom Regulatory Authority of India (Amendment) Act which, *inter alia*, substituted Chapter IV of the principal Act providing for the establishment of Telecom Dispute Settlement and Appellate Tribunal. The Appellate Tribunal is empowered to hear and dispose of appeals against any direction, decision or order of the Authority. Any failure to comply with the orders of the Appellate Tribunal has been made punishable under the Act. Against any direction or order made by the Appellate Tribunal, appeal can be filed in the Supreme Court.

Under the Act “telecommunication service” means the 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 electro-magnetic means.¹ But the telecommunication service does not ordinarily include broadcasting

1. The Telecom Regulatory Authority of India Act, 1997, sec. 2(k).

services.² The central government has been empowered to notify any other service also as telecommunication service including broadcasting services.³

Since there is all around a revolution taking place in services like electronic mail, voice mail, data services and cellular mobile phone services, the Act enables the consumers and the consumer organizations to be equally responsive to the needs of the time and make the Regulatory Authority work for the protection of their interests. The consumer associations should, therefore, create common awareness about the authorities established under the Act and their role. Guidance and opportunities to approach these authorities should also be provided to common people.

The provisions of the Act are in addition to and not in derogation of the provisions of the Indian Telegraph Act, 1885 and the Wireless Telegraphy Act, 1933. So the functions and powers of the telegraph authority under the Indian Telegraph Act, 1885 in relation to the areas falling within the jurisdiction thereof are not affected by the provisions of this Act. The telegraph authority, which grants the licences under section 4 of the Indian Telegraph Act, 1885 is also a licensor for the purpose of this Act.

I. Telecom Regulatory Authority of India

Composition

The power to establish the Telecom Regulatory Authority of India lies with the central government.⁴ The Authority may consist of a chairperson, one or two whole-time members and one or two part-time members, to be appointed by the central government.⁵

The chairperson and the members should be persons having special knowledge and professional experience in telecommunication, industry, finance, accountancy, law, management or consumer affairs.⁶ Any person in government service can be appointed as a member if such a person has held the post of secretary or additional secretary, or the post of additional secretary and secretary to the Government of India or any equivalent post in the central government or the state government for a period of not less than three years.⁷ Any person having financial or other interest likely to affect prejudicially his functions as such member should not be so appointed.⁸

2. *Ibid.*

3. *Ibid.*

4. *Id.*, sec. 3(1).

5. *Id.*, sec. 3(3).

6. *Id.*, sec. 4.

7. *Id.*, proviso to sec. 4.

8. *Id.*, sec. 5(1).

The chairperson and other members can hold office for a term of three years, or until they attain the age of sixty-five years, whichever is earlier.⁹ On the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, the persons appointed as chairperson and as members and were holding office as such immediately before such commencement were directed to vacate their respective offices, and were made entitled to claim compensation, not exceeding three month's pay and allowances for the premature termination of the term of their offices and contract of service.¹⁰

Under section 5 of the Act, a government employee, if selected as the chairperson or whole-time member of the Authority, has to retire from his service before joining.¹¹

A member of the Authority may relinquish his office by giving in writing to the central government notice of not less than three months.¹² The chairperson or any whole-time member, ceasing to hold his office under the Authority, becomes ineligible for further employment under the central government or any state government.¹³ They can not also accept any commercial employment, for a period of one year from the date they cease to hold office.¹⁴ This condition is not applicable to the chairperson or a member who has ceased to hold office under Amendment Act of 2000 and they will be eligible for re-appointment in the Authority or the Appellate Tribunal.¹⁵

The power of general superintendence in the conduct of the affairs of the Authority lies with the chairperson of the Authority who has to preside over the meetings of the Authority and discharge other prescribed functions.¹⁶ A vice-chairperson may be appointed by the central government to exercise and discharge some such powers and functions of the chairperson as may be delegated to him.¹⁷

A member of the Authority can be removed from his office by the central government, if he has been adjudged an insolvent or has been convicted of an offence involving moral turpitude or has become physically or mentally incapable of acting as a member.¹⁸ Further, a member who has acquired such financial or other interest in the Authority as is likely to affect

9. *Id.*, sec. 5(2).

10. *Id.*, sec. 5(3).

11. *Id.*, sec. 5(4).

12. *Id.*, sec. 5(7)(a).

13. *Id.*, sec. 5(8)(a).

14. *Id.*, sec. 5(8)(b).

15. *Id.*, proviso to sec. 5(8)(b); see *supra* note 12.

16. *Id.*, sec. 6(1).

17. *Id.*, sec. 6(2).

18. *Id.*, sec. 7(1)(a) to (c).

prejudicially his functions as a member or has abused his position as to render his continuance in office prejudicial to the public interest can also be removed from office.¹⁹ However, before a member is removed from his office, he should be given a reasonable opportunity of being heard in the matter.²⁰

Functions of the Authority

The functions of the Authority are to make recommendations, either *suo motu* or on a request from the licensor about:²¹

- (i) the need and timing for introduction of new service provider;
- (ii) the terms and conditions of licence to a service provider;
- (iii) the revocation of licence for non-compliance of terms and conditions of licence;
- (iv) the measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;
- (v) the technological improvements in the services provided by the service providers;
- (vi) the type of equipment to be used by the service providers after inspection of equipment used in the network;
- (vii) the measures for the development of telecommunication technology and any other matter relatable to telecommunication industry in general;
- (viii) the efficient management of available spectrum;

In addition to making such recommendations, the authority is required to:²²

- (i) ensure compliance of terms and conditions of licence;
- (ii) 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 to conduct the periodical survey thereof as to protect the interest of the consumers;

19. *Id.*, sec. 7(1)(d) & (e).

20. *Id.*, sec. 7(2).

21. *Id.*, sec. 11(1)(a).

22. *Id.*, sec. 11(1)(b).

- (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-connectivity agreements and other related matters;
- (viii) keep such register open for inspection to any member of public on payment of prescribed fee; and
- (ix) ensure effective compliance of universal service obligations.

The Authority can levy fees and other charges at specified rates.²³ It can perform such other functions of administrative and financial nature as may be entrusted to it by the central government.²⁴

The recommendations of the Authority on these matters are not binding upon the central government. Once the central government seeks the recommendations of the Authority in respect of need and timing for introduction of new service providers and about terms and conditions of licence, it should forward the same within a period of sixty days from the date on which they were sought.²⁵ If necessary, the Authority may, for the purpose of making recommendations request the central government to furnish relevant information or documents, which the government is supposed to supply within a period of seven days from the date of request.²⁶

If the Authority does not send any recommendations about a matter within the specified period or as mutually agreed upon between the central government and the Authority, the central government may issue a licence to the service provider even in the absence of the recommendation. The central government may in appropriate cases refer the recommendation back to the Authority for its reconsideration, and the Authority should re-submit the same after reconsideration within fifteen days from the date of such reference. After receipt of further recommendations, if any, the final decision can be taken by the central government.²⁷

The Authority is empowered to notify the rates for providing telecommunication services, within and outside India. It also includes the rates at which messages can be transmitted to any country outside India.²⁸ The Authority may for sufficient reasons notify different rates for different persons or class of persons for similar telecommunication services.²⁹

23. *Id.*, sec. 11(1)(c).

24. *Id.*, sec. 11(1)(d).

25. *Id.*, provisos to sec. 11.

26. *Ibid.*

27. *Ibid.*

28. *Id.*, sec. 11(2).

29. *Id.*, proviso to sec. 11(2).

Powers of the Authority

The Telecom Regulatory Authority has been empowered to call upon any service provider at any time to furnish in writing the information or explanation relating to its affairs.³⁰ If found expedient, the Authority can also appoint one or more persons to make an inquiry in relation to the affairs of a service provider.³¹ Likewise, the Authority may get the books of account or other documents of any service provider inspected by its officers.³² For the purpose of this provision about inspection of accounts or other documents, every person or officer of a department or body of persons dealing with such documents would be bound to make them available for such inspection.³³ To make it convenient, under the Act every service provider is bound to maintain the books of account and other documents in the prescribed manner.³⁴ Besides, the Authority is empowered to issue any directions to service providers as may be considered necessary for their proper functioning.³⁵

II. Appellate Tribunal

Composition

The Appellate Tribunal consists of a chairperson and one or two members appointed by the central government, in consultation with the Chief Justice of India.³⁶ The jurisdiction of the Appellate Tribunal may be exercised by the Benches which may be constituted by the chairperson and each Bench may ordinarily be of one or two members. The central government is authorised to notify the areas in relation to which each Bench may exercise its jurisdiction.³⁷

The chairperson can transfer a member of Tribunal from one Bench to another Bench.³⁸ If at any stage of the hearing of a case it appears to the chairperson or a member of the Appellate Tribunal that the case ought to be heard by a particular Bench, the same may be accordingly transferred by the chairperson to such Bench.³⁹

The chairperson of the tribunal can be a person who has been the Judge of the Supreme Court or the Chief Justice of a High Court.⁴⁰ The member

30. *Id.*, sec. 12(1)(a).

31. *Id.*, sec. 12(1)(b).

32. *Id.*, sec. 12(1)(c).

33. *Id.*, sec. 12(2).

34. *Id.*, sec. 12(3).

35. *Id.*, sec. 12(4) and sec. 13.

36. *Id.*, sec. 14B(1) and (2).

37. *Id.*, sec. 14B(3).

38. *Id.*, sec. 14B(4).

39. *Id.*, sec. 14B(5).

40. *Id.*, sec. 14C(a).

can be a person who has held the post of a secretary or any equivalent post in the central government or the state government for a period of not less than two years or a person who is well versed in the field of technology, telecommunication, industry, commerce or administration.⁴¹ The chairperson and every other member of the Appellate Tribunal will hold office for a term not exceeding three years.⁴² The chairperson can hold office up to the age of seventy years and a member only upto the age of sixty-five years.⁴³

The chairperson or any member of the Appellate Tribunal can be removed from his office by the central government on the same grounds as have been specified in case of the members of the Authority.⁴⁴

Before removing the chairperson or a member of the Appellate Tribunal from his office, a reference will have to be made to the Supreme Court by the central government, on which the Supreme Court may conduct an enquiry and report the grounds on which the involved persons may be removed from office.⁴⁵ The central government may suspend from office the person in respect of whom a reference has been made to the Supreme Court until an appropriate order is passed after receiving the report of the Supreme Court on such reference.⁴⁶

Jurisdiction

As mentioned above, section 14 of the Act provides for the establishment of the Telecom Disputes Settlement and Appellate Tribunal known as the Appellate Tribunal to adjudicate any dispute between a licensor and a licensee; two or more service providers, *inter se*; and between a service provider and a group of consumers.⁴⁷ The matters relating to the monopolistic trade practice, restrictive trade practice and unfair trade practice which were earlier covered by the MRTP Act, 1969 and now under the Competition Act, 2002 would not be dealt with under this Act.⁴⁸ Further the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum (distribution) or a Consumer Disputes Redressal Commission (State Commission) or the National Consumer Redressal Commission (National Commission) established under section 9 of the Consumer Protection Act, 1986⁴⁹ cannot be brought before the

41. *Id.*, sec. 14C(b).

42. *Id.*, sec. 14C(b).

43. *Id.*, sec. 14D.

44. *Id.*, sec. 14G; see *supra* note 20, sec. 7.

45. *Id.*, sec. 14G(2)

46. *Id.*, sec. 14G(3).

47. *Id.*, sec. 14(a).

48. *Id.*, proviso A to sec. 14(a).

49. *Id.*, proviso B to sec. 14(a).

Appellate Tribunal. Moreover, any dispute between the telegraph Authority and any other person cannot be heard by this Tribunal.⁵⁰ However, the Tribunal may hear and dispose of an appeal against any direction, decision or order of the Authority under this Act.⁵¹

Manner of dispute settlement and appeals

For the adjudication of any dispute an application can be made to the Appellate Tribunal by the central government or a state government or a local authority or any person.⁵² Any of them, if aggrieved by any direction, decision or order of the Authority, can also prefer an appeal to the Appellate Tribunal.⁵³ Every appeal can be preferred within a period of thirty days from the date on which a copy of the direction or order or decision of the Authority to be appealed against is received.⁵⁴ The Appellate Tribunal may, for a sufficient cause, entertain an appeal even after the expiry of that period.⁵⁵

The Appellate Tribunal should, for disposing of a dispute or appeal, give to each party an opportunity of being heard.⁵⁶ A copy of every order passed by the Tribunal should be send to each party to the dispute/appeal and to the Authority.⁵⁷ To avoid delay in adjudication or disposed of an appeal, an endeavour should be made to dispose them of finally within ninety days from the date of receipt.⁵⁸ The Tribunal has been required to record its reasons in writing for not disposing of an application or appeal within that period.⁵⁹

For the purpose of examining the legality or propriety or correctness of any dispute made in any application or any direction or order of the Authority referred to in the appeal, the Appellate Authority may, on its own motion or otherwise, call for its record such application or order and make such orders as it may think fit.⁶⁰

The Appellate Tribunal is not bound by the procedure laid down by the Code of Civil Procedure, 1908, but has to follow the principles of natural justice. It is, therefore, empowered to regulate its own procedure.⁶¹ The tribunal has the same powers as are vested in a civil court under the CPC,

50. *Id.*, proviso B to sec. 14(c).

51. *Id.*, sec. 14(b).

52. *Id.*, sec. 14A(1).

53. *Id.*, sec. 14A(2).

54. *Id.*, sec. 14A(3).

55. *Id.*, proviso to sec. 14A(3).

56. *Id.*, sec. 14A(4).

57. *Id.*, sec. 14A(5).

58. *Id.*, sec. 14A(6).

59. *Id.*, proviso to sec. 14A(6).

60. *Id.*, sec. 14A(7).

61. *Id.*, sec. 16(1).

while trying a suit, in respect of summoning persons, examining witness, discovery and production of documents, issuing commissions for the examination of witnesses or documents, and reviewing its decisions.⁶² Every proceeding before the Appellate Tribunal is deemed as a judicial proceeding.⁶³

An applicant or appellant may appear before the Appellate Tribunal either in person or through one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers.⁶⁴

III. Appeal to the Supreme Court

Section 18 of the Act makes provisions for appeal against any order of the Appellate Tribunal to the Supreme Court. An appeal can accordingly lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 CPC.⁶⁵ If any decision or order has been made by the Appellate Tribunal with the consent of the parties, no such appeal can lie.⁶⁶ Appeal should be preferred within a period of ninety days from the date of the decision or order.⁶⁷ The Supreme Court may, for sufficient cause, entertain an appeal even after the expiry of the period of ninety days.⁶⁸

Orders of the Appellate Tribunal are executable in the same manner as the decrees of civil courts and, for this purpose, the Tribunal has the powers

62. *Id.*, sec. 16(2).

63. *Id.*, sec. 16(3).

64. *Id.*, sec. 17.

65. *Id.*, sec. 18(1); sec. 100 of the Criminal Procedure Code, 1908 reads as follows:

Second Appeal – (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall at the hearing of the appeal, be allowed to argue that the case does not involve such question.

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

66. *Id.*, sec. 18(2).

67. *Id.*, sec. 18(3).

68. *Id.*, proviso to sec. 18(3).

of a civil court.⁶⁹ The Tribunal may also transmit any of its orders for execution to a civil court having local jurisdiction.⁷⁰ If any person wilfully fails to comply with an order of the Appellate Tribunal, he is punishable with fine up to one lakh rupees and for a subsequent offence with fine upto two lakh rupees. In case of continuing contravention, additional fine can be imposed which may extend to two lakh rupees for every day during which such default continues.⁷¹

A study of the provisions of the Act reveals that the Act has provided for the establishment of an efficient machinery for regulating the functioning of the telecommunication service. Sections 14 and 14A give consumers a valuable right to seek protection and enforcement of their interests before the Authority and the Appellate Tribunal established under the Act. Therefore, the consumers and consumer organizations can actively participate in the process of regulation of the telecommunication services with due regard for consumer interests. In case of their failure to do so, there cannot be an orderly growth of the telecom sector.

69. *Id.*, sec. 19(1).

70. *Id.*, sec. 19(2).

71. *Id.*, sec. 20.