A CELLULAR OPERATORS ASSOCIATION OF INDIA AND ORS.

v.

UNION OF INDIA AND ORS.

DECEMBER 17, 2002

B [G.B. PATTANAIK, CJ., H.K. SEMA AND S.B. SINHA, JJ.]

Telecom Regulatory Authority of India Act, 1997:

Sections 14 and 18:

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Central Government on consideration of recommendations of TRAI and experts body permitting use of Wireless Looping System with limited mobility to service provides—Challenged by appellants—Negatived by Tribunal—On appeal, Held, introduction of WLL with limited mobility is in consumer interest which would also increase the tele-density in the country and as such cannot D *be interfered with by this Court within the limited power under Section 18 of the Act—However, non-consideration of relevant materials on the issue of level playing field and absence of any finding vitiate the ultimate decision of the Tribunal—Matter remanded back to Tribunal for reconsideration on the question of level playing field—Directions issued.*

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Jurisdiction and power of Appellate Tribunal vis-à-vis *Supreme Court—Held, Power of Appellate Tribunal is quite wide and Supreme Court in exercise of its original or appellate power could not limit the jurisdiction of Tribunal as provided under the statute—It must give due consideration to the recommendations of TRAI and an expert body—Power of Supreme Court is* F *circumscribed by provisions under Section 100 CPC to substantial question of law arising from judgment of the Tribunal—Though Tribunal has much wider jurisdiction than Supreme Court such jurisdiction cannot be held to be supervisory jurisdiction—Civil Procedure Code, 1908; Section 100.*

G **Telecom Regulatory Authority of India, on receipt of the requisition from the Government, prepared consultation paper and obtained suggestions from stake holders including appellant, on the question of permitting WLL with limited mobility and submitted its recommendations to the Government-Telecom Regulatory Authority of India on reconsideration of the matter on the issues of use of hand-held status in**

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wireless in Local Loop System, limited mobility by use of WLL system, level playing field and convergence of fixed and mobile services. TRAI submitted re-considered recommendations for wireless in Local Loop which were considered by the Prime Minister and after taking into consideration the grievances made by the appellant, a Committee of Experts (GOT-IT) was constituted for an expert opinion on these issues. Its final report was accepted by the Prime Minister. Cellular Operators Association of India and others challenged the decision of the Government permitting the Fixed Services Providers-respondents to offer WLL with limited mobility and also assailed the recommendations of TRAI before the Telecom Disputes Settlement and Appellate Tribunal, which was rejected by the Tribunal. Hence the present appeal.

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It was contended for the appellants that the Tribunal did not make any reference to highly debatable issues on important questions of law which required to be interfered with; that in arriving at such decision, accepting recommendations of TRAI, it was obligatory for the Government to act in accordance with the provisions of the Act and such non-compliance vitiates the ultimate decision; that the Tribunal failed to answer the question whether WLL with limited mobility is a substitution of cellular operation; that the Tribunal did not answer the question about the permissibility of WLL with limited mobility under NTP-1999; that there was neither appreciation of the material nor any finding has been given by the Tribunal on the issue of level playing field and as such the judgment of the Tribunal was liable to be interfered with; that the Tribunal assumed several things without any basis in its judgment; that the Tribunal disposed of the matter on the ground of consumer interest and not by focusing its attention to several infirmities with the decision of the Government; that decision of the Government permitting the FSPs to have WLL with limited mobility was an arbitrary action and Tribunal committed error in not examining that aspect; that in regard to National Telecom Policy-1999 any changes in the licence agreement tantamount to violation of recommendations; that the jurisdiction of the Tribunal is wide enough and not circumscribed by the jurisdiction of a Court under Article 226; that the Tribunal committed serious error by restricting its jurisdiction and that object of the amended provision in the Act strengthening the authority would be frustrated if the dispute regarding level playing field was not answered by the Tribunal on the ground of public interest.

D E F G H

A On behalf of the respondents, it was submitted that Courts generally grant greater latitude to the decision of expert bodies like TRAI/Tribunal and judicial scrutiny in such matters would not extend to extending the decision on the ground that it was unwise or unscientific or inappropriate or a better decision could have been given; that it would not be appropriate either for the Tribunal or for this Court to interfere with the decision of B the Government arrived at after the recommendations/deliberations of expert bodies like TRAI and GOT-IT unless any statutory infirmity was found or it was established that the decision was vitiated by *malafides*; that appellants have been granted several concessions in the matter of revenue share percentage which, according to the Tribunal, fully compensated the C cellular operators and answers the level playing field; that the Tribunal had answered all the questions in its findings that the jurisdiction of this Court is restricted to interference only on substantial question of law; that since Tribunal has found that introduction of WLL with limited mobility would subserve the consumer interest as well as increased tele-density of rural and semi-urban areas, this Court should not interfere with such D conclusions on the facts in exercise of powers under Article 136; that with the advancement in the technology, the licence terms permitting WLL, huge compensation granted to the appellants and policy decision of the Government were four basic reasons for which the Tribunal rightly did not interfere with the decision of the Government; and that the decision E of TRAI as well as that of the Government was a well-considered decision and the same need not be interfered with either by the Tribunal or by this Court.

On behalf of the consumers, it was submitted that both the TRAI and the Government took into consideration consumer interest by F providing benefits of least expensive services as well as technology advancement and even the Tribunal in the impugned decision affirmed the same. Hence, ultimate conclusion of the Tribunal should not be interfered with.

Allowing the appeal, the Court

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HELD: *(Per Pattanaik, CJI.*, for himself and Sema, J.)

1.1. Notwithstanding the fact that the powers of this Court under Section 18 of Telecom Regulatory Authority of India Act is circumscribed by the applicability of Section 100 of the Code of Civil Procedure, though H there has been no formulation of the question, as required under sub-

section (4) of Section 100, but at any rate, it is only a substantial question of law arising out of the order of the Tribunal, which can be urged in the appeal. [240-B, C] A

1.2. There is no dispute with the general proposition that when an appeal is provided under a statute against the decision of an expert body, notwithstanding the absence of any restriction for the exercise of that appellate power, the appellate Court would be reluctant to interfere with the findings and conclusions of the expert body unless it is so warranted either on the ground that the finding of the expert body is perverse or is based on no evidence or suffers from any glaring infirmity on account of which no reasonable man could come to that conclusion. The appellate Court indeed would be loath to interfere with the findings arrived at by an expert body on the basis of re-evaluation of the materials or even if an alternative conclusion is possible. [244-B, C, D] B C

Tata Iron & Steel Co. Ltd. v. *Union of India and Anr.*, [1996] 9 SCC 709, referred to. D

1.3. The Statement of Objects and Reasons would indicate that to increase the investors' confidence and to create a level playing field between the public and the private operators, suitable amendment in the Telecom Regulatory Authority of India Act, 1997 was brought about and under the amendment, a Tribunal was constituted for adjudicating the disputes between a licensor and a licensee, between two or more service providers, between a service provider and a group of consumers and also to hear and dispose of appeal against any direction, decision or order of the Authority. The power of that Tribunal has to be adjudged from the language conferring that power and it would not be appropriate to restrict the same on the ground that the decision which is the subject matter of challenge before the Tribunal was that of an expert body. It is true that the Telecom Regulatory Authority of India as well as GOT-IT comprises of experts, and on their advice Prime Minister finally took the decision, but that would not in any way restrict the power of the Appellate Tribunal under Section 14 of the Act, even though in the matter of appreciation though the Tribunal would give due weight to such expert advice and recommendations. [245-D, E, F, G, H; 246-A] E F G

1.4. Having regard to the very purpose and object for which the Appellate Tribunal was constituted and having examined the different provisions contained in Chapter IV, more particularly the provision H

A dealing with ousting the jurisdiction of Civil Court in relation to any matter which the Appellate Tribunal is empowered by or under the Act, as contained in Section 15 of the Act, the power of Appellate Tribunal is quite wide and the decisions of this Court dealing with the power of a Court, exercising appellate power or original power, will have no application for limiting the jurisdiction of the Appellate Tribunal under
B the Act. Since the Tribunal is the original authority to adjudicate any dispute and since the Tribunal has to hear and dispose of appeals against the directions, decisions or order of TRAI, it is difficult to import the self-contained restrictions and limitations of a Court under the Judge-made law. [246-A, B, C, D]

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1.5. 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 of this Court is only on a substantial question of law and the jurisdiction of Civil Court
D for filing a suit is also ousted. The Tribunal has the power to adjudicate any dispute while answering the dispute, due weight has to be given to the recommendation of TRAI, which consists of experts. The Tribunal also committed yet another error in holding that the jurisdiction of the Appellate Tribunal cannot be wider than that of the Supreme Court. A
E bare comparison of the provisions of Section 14 of the Act, which confers jurisdiction on the Tribunal and Section 18, which confers jurisdiction on the Supreme Court, would unequivocally indicate that the Tribunal has much wider jurisdiction than the jurisdiction of this Court under Section 18 of the Act, as this Court would be entitled to interfere only on a substantial question of law, which arises from the judgment of the Tribunal
F and not otherwise. [249-A, B, C, D]

1.6. The recommendations made by TRAI on issue relating to WLL with limited mobility indicate that the entire endeavour of TRAI has been to ensure that the interest of consumers remains the foremost test of any option being acceptable or unacceptable, such interests being sustainable
G long-term interests in terms of cost and quality for the individual user and growth, accessibility and the resultant tele-density for the masses. There is no reason to deny a facility as long as the likely adverse impact on level playing field is kept in view and ways can be found to mitigate the same. TRAI also observed that with the acceptance of migration to NTP-1999,
H the cellular mobile service operators have accepted that their markets will

no more be protected for them by the terms of their licences and NTP-1999 as well as recent policy announcements which acknowledge greater competition as the policy norm in both basic and cellular mobile sectors and increased competition, therefore, cannot be denied. But it will have to be ensured that such compensation is generated without making the level playing field uneven. TRAI also recommended that revenue share as licence for the mobile operators may be prescribed at 12% of the annual revenue, which would mitigate the grievance of loss of market, which the mobile operators have to face as a result of the introduction of WLL services with limited mobility by basic service operators. The ultimate recommendation of TRAI was that WLL with limited mobility should be provided as part of the basic service licence. [247-G-H; 248-A, B, C, D] A B C

1.7. The Government recognized the advantages of limited mobility for fixed service operators to achieve quick roll-out of networks and cheaper service to the customers and it accordingly formulated the points of reference to the group on convergence. The formulation also indicates the anxiety of the Government to ensure faster achievement of the targets of tele-density as well as rural and remote area telephony at cheaper and affordable rates after introduction of limited mobility. It, however, unequivocally stated that the same must be consistent with the principle of level playing field among different categories of operators. [248-E, F] D

1.8. Notwithstanding the fact that the conclusion of the Tribunal that introduction of WLL (M) is in the interest of the consumer and a consumer would be able to get the services at a much cheaper rate, which will ultimately increase the tele-density in the country, it being a conclusion on consideration of materials, cannot be interfered with by this Court within the limited power under Section 18. But non-consideration of relevant materials on the issue regarding level playing field and absence of any finding by the Tribunal on that score would vitiate the ultimate decision. The bald conclusion of the Tribunal that the cellular operators have already been compensated in various ways and the erosion of profits has also been taken by the entry of the fourth-cellular operator, cannot be held to be a conclusion on the issue of level playing field. Hence the matter is remitted to the Tribunal for re-consideration with special emphasis on the issue of level playing field. The fixed service operators will, however, be bound by the ultimate decision to be given by the Tribunal. [250-C, D, E, F, G, H] E F G H

A *Per Sinha, J. (Supplementing) :*

1.1. The Tribunal arrived at certain findings without application of its mind on various vital issues including the issue of its jurisdiction. Tribunal failed to assign sufficient or cogent reasons in support of its findings. In relation to some issues, no reason has been assigned. Some
B **issues although noticed have not been adverted to. Some issues have even not been noticed. The impugned order of the TDSAT does not fulfil the criteria of a judgment. Even as an appellate authority the TDSAT was required to comply with the principles of or analogous to the provisions of Order 41 Rule 33 of the Code of Civil Procedure.**

C **[251-F, G, H; 252-A-H; 253-A-H; 254-A-F]**

Balraj Taneja and Anr. **v.** *Sunil Madan and Anr.* **[1999] 8 SCC 396;** *Union of India and Ors.* **v.** *Manager, M/s. Jain & Associates,* **[2001] 3 SCC 277 and** *Rattan Dev* **v.** *Pasam Devi,* **[2002] 7 SCC 441, relied on.**

D **1.2. TDSAT was required to exercise its jurisdiction in terms of Section 14A of the Act. It is an expert body and its jurisdiction is wide having regard to sub-section (7) of Section 14A. Its jurisdiction extends to examining the legality, propriety or correctness of a direction/order or decision of the authority in terms of sub-section (1) thereof. Its approach being on the premise that its jurisdiction is limited or akin to the power**
E **of judicial review is wholly unsustainable. It failed to take into consideration the amplitude of its jurisdiction and thus misdirected itself in law. If a jurisdictional question or the extent thereof is disputed before a Tribunal, the Tribunal must necessarily decide it unless the statute provides otherwise. [254-G, H; 255-A, B, C, D]**

F *Union of India* **v.** *Parma Nanda,* **[1989] 2 SCC 177, referred to.**

Judicial review of Administrative Law by H.W.R. Wade & C.F. Forsyth, page No. 260, **referred to.**

1.3. The rule as regards deference to expert bodies applies only in
G **respect of a reviewing Court and not to an expert Tribunal. It may not be the function of a Court exercising power of judicial review to act as a super-model. [256-C-G]**

Administrative Law by Bernard Sehwartz, 3rd edition, para 10.1 page 625 and 'Jurisdiction and Illegality' by Amnon Rubinstein, **referred to.**

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1.4. Statutory recommendations made by regulatory bodies are normally accepted by the Central Government, as a result of which the rights and obligations of the parties may seriously be affected. On this premise the Parliament created an independent expert Tribunal which may interfere with the finding of fact, finding of law or a mixed question of law and fact of the Authority. Succinctly stated the jurisdiction of the Tribunal is not circumscribed in any manner whatsoever. [257-A, B, C]

Union of India **v.** *Parma Nanda,* **[1989] 2 SCC 177, referred to.**

1.5. When jurisdiction upon a Court or a Tribunal is conferred by a statute, the same has to be construed in terms thereof and not otherwise. The power of this Court as also the High Court although is of wide amplitude, certain restrictions by way of self-discipline are imposed. Ordinarily the power of judicial review can be exercised only when illegality, irrationality or impropriety is found in decision making process of the authority. [257-F, G; 258-A-H]

West Bengal Electricity Regulatory Commission **v.** *C.E.S.C. Ltd.,* **[2002] 7 SCALE 217, relied on.**

Universal Camera Corporation **v.** *National Labour Relations Board,* **[340 US 474], relied on.**

1.6. Sub-section (7) of Section 14 of the Act confers a wide jurisdiction upon the Tribunal. The Tribunal being an expert body is entitled to exercise its appellate jurisdiction both on fact as also in law over a decision of order/decision/direction of the Authority. It should have borne in mind that its decision on fact and law is final and appeal lies to this Court in terms of Section 18 of the Act only on substantial questions of law. It was obliged to determine the questions of law and facts so as to enable this Court to consider the matter if any substantial question of law arises on the face of the judgment. [259-B, C, D]

Union of India **v.** *Tarachand Gupta & Bros.,* **[1971] 1 SCC 486 and** *Union of India and Anr.* **v.** *Paras Laminates (P) Ltd.,* **[1990] 4 SCC 453, relied on.**

Permian Basin Area Rate Cases, **[390 US 747, 20 L Ed. 2d 312], referred to.**

A 1.7. The power of this Court under Section 18 of the Act cannot be equated with the power of judicial review. As this Court will be concerned with a substantial question of law arising in the case, its jurisdiction would not be restricted to illegality, irrationality or procedural impropriety in the decision making process. TDSAT, therefore, has posed absolutely a wrong question and thus its impugned decision suffers from a misdirection B in law. [261-C-E]

1.8. The Tribunal proceeded to decide the issues only from the angle of consumers' interest. Consumers' interest is only one of the relevant factors. It by itself cannot be decisive. Consumers' interest is required to C be taken into consideration only when it is found that the actions of the Central Government as also the recommendation of Authority were within their respective jurisdiction. [264-D-E]

1.9. TDSAT proceeded on the basis that the Central Government is entitled to change its own policy decision without taking into consideration D the fact that according to the Central Government itself it was merely a 'fine tuning of the policy' and not a change of policy. The jurisdiction of the Central Government to effect change in the policy decisions was also in question. If a national policy had been adopted by the Cabinet, having regard to the provisions contained in Section 14 of the General Clauses Act, although a change in the policy would be permissible, but the E procedure laid down therefor was required to be followed. This aspect of the matter has also not been considered by the TDSAT.

[264-E-F-G-H; 265-A-C]

Union of India and Ors. v. *Dinesh Engineering Corporation and Anr.*, F [2001] 8 SCC 491 and *Home Secretary, U.T. of Chandigarh and Anr.* v. *Darshjit Singh Grewal and Ors.*, [1993] 4 SCC 25, relied on.

1.10. As regards the level playing field, TDSAT did not refer to a large number of materials at all. It took a wrong decision that the appellants had conceded the power of the Central Government in the G matter of change of policy and furthermore agreed thereto in the event its offers are satisfied. Most of the findings recorded by TDSAT are not supported by any cogent reason. It arrived at some findings without referring to any material on records. [265-F-G]

1.11. Tribunal failed to notice that the requirement of increasing tele- H density in rural areas was not in question. What was questioned was that

encroachment by the FSPs in the area which is within the exclusive privilege of the cellular operators having regard to the provision of the NTP-99 and the terms and conditions of the licences issued to them. It also failed to arrive at any finding as to whether the concessions given to the appellants by the Central Government were asked for by them or not and/or whether only because they received such concessions, they were estopped or precluded from raising the issues. TDSAT further failed to take into consideration as to whether the terms of offer made to the appellants for providing fixed service were similar to those offered to the fixed service providers or not. Furthermore, the issue relating to the grant of concessions to the appellants may be held to be redundant if the purported decision of the Central Government or the recommendations of the Authority were illegal and without jurisdiction. [266-A-D]

2. It would be inappropriate for the Court to substitute itself for the statutory authorities to decide the matter. Hence there is no need to enter into the merit of the case. [266-F]

State of West Bengal and Ors. **v.** *Nuruddin Mallick and Ors.*, **[1998] 8 SCC 143, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3092 of 2002.

From the Judgment and Order dated 15.3.2002 of the Telecom Disputes, Appellate and Settlement Tribunal, New Delhi in P.No. 1 of 2001.

WITH

C.A. Nos. 3123, 3214 and 3300 of 2002.

Soli J. Sorabjee, Attorney General, Mukul Rohtagi, Additional Solicitor General, P. Chidambaram, C.S. Vaidyanathan, Gopal Subramanium, Ram Jethmalani, Jaideep Gupta, Dr. A.M. Singhvi, Ashok H. Desai, P.N. Mishra, Manul Bajpai, Ms. Indu Malhotra, Kashi Visheshwar, Praveen Thomas, Gopal Jain, R.N. Karanjawala, Ms. Ruby Singh Ahuja, Ms. Meghna Mishra, Manik Karanjawala, Ms. Bina Gupta, Ms. Vanita Bharagava, Ms. Garima Dewan, Ms. Divya Roy, Jitendra Acharya, Avinash Modi, S. Mehlwal, N. Mahabir, Manish Singhvi, Sunil Mathews, Anand Misra, Ashim Sud, Ajay Sharma, P. Parmeshwaran, Ramji Srinivasan, V. Rajkumar, Yogesh Gupta, Amit Bhandari, Rajiv Mehta, Milen Sathe, Ramesh Babu M.R., Rudreshwar Singh, Tapesh Singh, Manish Tiwari, Shishir Pinaki and Sanjay Jain for the appearing parties.

A The Judgments of the Court were delivered by

PATTANAIK, CJ. These appeals are under Section 18 of the Telecom Regulatory Authority of India Act, 1997 [hereinafter referred to as 'the Act'] against the decision of the Telecom Disputes Settlement and Appellate Tribunal [hereinafter referred to as 'the tribunal']. The appellants are Cellular Mobile B Service Providers (CMSPs) and the private respondents are the Fixed Service Providers (FSPs). The appellants approached the tribunal under Section 14 of the Act, challenging the decision of the Government dated 25.1.2001, permitting the Fixed Service Providers to offer WLL with limited mobility. Be it be stated that the appellants had also assailed the recommendations of C the Telecom Regulatory Authority of India [for short TRAI] dated 8.1.2001. But after the Government decision dated 25.1.2001, the petition was amended and the subsequent decision of the Government was also challenged. Before the tribunal, large number of issues on facts and law had been raised, which can be broadly enumerated as under:

D (i) The decision of the government is vitiated for non-compliance of Section 11(1)(a)(i) of the Act.

(ii) The NTP-1999 never contemplated of WLL with limited mobility and as such the decision to provide WLL with limited mobility to the Fixed Service Providers is beyond the policy in question.

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(iii) The permission to offer WLL with limited mobility is arbitrary, unreasonable and unjust decision on the part of the Government.

(iv) TRAI, while recommending by its letter dated 8.1.2001 had indicated for compliance of two conditions, but the government F decision ultimately taken is contrary to the said recommendations and, therefore, is vitiated.

(v) The ultimate decision of the government in fact does not deal with the question of level playing field between FSPs offering WLL with limited mobility and CMSPs, as a result of the G discriminatory regulatory regime.

(vi) The impugned decision conferring the benefit of WLL with limited mobility to the Fixed Service Providers is nothing but a Cellular Mobile Service in SDCA and as such is a substitution for the same and such a substitution ought not to have been H allowed.

(vii) The Government decision allowing Fixed Service Providers to provide WLL with limited mobility without any entry fee and without any charges for allocation of spectrum and even without a competitive bidding, amount to violation of the recommendations made by the TRAI dealing with new CMSPs licensees.

The stand of the Union Government as well as the Fixed Service Providers and also the consumers before the tribunal was that there was no prohibition in the Policy of 1999 (NTP-1999) either for introduction of any new technology in consumers interest nor is there any bar on the power of the competent authority to accept the recommendations of the TRAI and take a final decision regarding permitting inexpensive and advantageous system for the consumers. It was also urged that both before the TRAI and also before the Special Committee appointed by the Prime Minister, long deliberations had been made and the cellular operators were extensively heard and then on the basis of the recommendations of the Special Committee, the Prime Minister took the decision. When a highly expertised body has recommended, which was ultimately accepted by the government, it would not be for the Court to interfere with the same unless the so-called recommendations are found to be either arbitrary or contrary to law or in violation of the principles of natural justice. That being so, it would not be for the appellate tribunal to interfere with the well considered decision of the Government of India in approving the recommendations of the specially constituted Committee and in permitting the Fixed Service Providers to use WLL with limited mobility mechanism in the larger interest of the society. It was also contended before the tribunal that before making any recommendations, the Committee had duly examined the question of level playing field and also whether it is a substituted form of mobile service or not and such findings of the expertised body are not to be interfered with by the appellate tribunal in exercise of its limited powers. On behalf of the Fixed Service Providers as well as the consumers, several instances were also given before the appellate tribunal as to how the so-called grievance of the cellular operator is nothing but a shedding of crocodile tears and they have been benefiting and are not in any way prejudicially affected by the introduction of WLL with limited mobility. According to the consumers, the WLLM is particularly helpful to increase tele-density in rural and semi-urban areas and, therefore, any attempt to increase the tele-density and to penetrate the areas which do not have telephone connections, must be welcomed. It was also contended that the steps taken by the government in providing the facility of

A WLL with limited mobility are for providing affordable and cheaper telecommunication services as well as for increasing the tele-density in the urban, semi-urban and rural areas and that should not be stalled, even if there has been minor infraction of any provisions of the Act or the Rules, particularly when it is in the larger interest of the consumers. It was stated before us by the counsel appearing for the parties that the hearing before the tribunal B continued for 26 days and large number of contentions on facts as well as law were urged and quite a number of decisions had been cited. The tribunal however by the impugned judgment, while dismissing the application filed before it, came to the conclusion that—

C (a) The WLL with limited mobility offers benefits to consumers in rural and urban areas and it would provide uninterrupted trouble free service, as the subscriber does not have to wait endlessly for a mechanic to come and rectify the fault in the wire line.

(b) A subscriber having WLL with limited mobility can dispense with the wire-line phone. D

(c) The decisions to offer WLL with limited mobility is a policy decision of the government, which the government was free to take and as such a policy decision cannot be assailed either by the cellular operators nor the tribunal can interfere with the same.

E (d) The jurisdiction of the tribunal is not wider than that of the Supreme Court and within the parameters of that jurisdiction, the tribunal cannot interfere with the decision of the government.

(e) The cellular operators unequivocally indicated by their letter dated 25.9.2000 that they had no objection to the introduction of limited F mobility provided level playing field conditions are maintained and, therefore, they are not entitled to assail the decision of introduction of WLL with limited mobility.

(f) The so-called decision of the government is not a case of mindless change of policy in a hurry nor is the decision arbitrary or *mala fide* and the government is entitled to deviate from a policy G decision and adopt another policy, which cannot be reviewed by the appellate tribunal.

(g) A new technology has come into existence, which technology is much more beneficial to the consumers and which technology would make it possible for increasing the tele-density in the H

country, the same should not be interfered with. A

(h) The charges a consumer will have to pay for WLL with limited mobility will be much less than the charges levied by the Cell operators and the CDMA network casts much less to build and operate than GSM and further CDMA is far superior to GSM.

(i) The Cellular operators themselves had been allowed to migrate and they cannot be heard to complain about, when such migration is permitted to Fixed Service Providers. B

(j) The fear expressed by the cellular operators is either feigned or imaginary.

(k) The cellular operators can also use latest technology including WLL with limited mobility and so also the Fixed Service Providers. C

(l) A reduction of licence fee and entry fee into areas hitherto unavailable to the cellular operators like PCO is sufficient compensation and concession. D

(m) There cannot be any legitimate expectation and the theory of legitimate expectation has no application. But on the other hand, it will be an illegitimate expectation.

With these conclusions, the tribunal having dismissed the application, the cellular operator are in appeals before this Court. E

On behalf of the appellants arguments were advanced in this Court by Mr. P. Chidambaram, Mr. Ram Jethmalani and Mr. C.S. Vaidyanathan. On behalf of the respondents, arguments were advanced by the Ld. Attorney General, Dr. A.M. Singhvi, Mr. Ashok H. Desai and Mr. P.N. Misra. F

The arguments of the appellants can be summarized thus:

(1) Though large number of highly debatable issues had been argued, the tribunal did not make any reference to those issues and such non-consideration and non-disposal would be an important question of law for which the order has to be interfered with. G

(2) In view of the divergence between the recommendation of the TRAI and the ultimate decision of the government, it was obligatory for the government to act in accordance with the 5th proviso to Section 11(1) and such non-compliance vitiates the H

A ultimate decision. The tribunal committed error in not answering the said issue.

(3) Even the tribunal failed to answer the question, whether the WLL with limited mobility is nothing but a substitution of the cellular operation and such non-answering vitiates the ultimate decision.

B (4) The tribunal also did not positively answer the question whether introduction of WLL with limited mobility was permissible under NTP-1999 and whether the technology itself was known as early as in 1994-95.

(5) On the question of level playing field, it is contended that there C has been no discussion or appreciation of the materials placed and in fact, no finding has been given though the tribunal has used the expression 'that some compensation has been provided for to the cellular operators'.

(6) The conclusions of the tribunal without appreciating the evidence D and materials adduced and without being backed by any reasons are unsustainable and the same have to be interfered with.

(7) The tribunal also has assumed several things even though not borne out by records and such assumption without any reference to any materials vitiates the ultimate conclusion and as such E cannot be upheld by this Court.

(8) The tribunal disposed of the matter broadly on the ground that it is in the consumer's interest without focusing its attention to the several infirmities with the decision of the government and as such the impugned judgment of the tribunal has to be interfered F with.

(9) The administrative ministry which formulated the NTP, having itself interpreted NTP-1999, to hold that it does not permit FSPs to provide any mobile service, the subsequent decision permitting the FSPs to have WLL with limited mobility is nothing but an G arbitrary action and the tribunal committed error in not examining this aspect.

(10) The migration package was accepted both by the FSPs and CMSPs under the new policy regime of NTP-1999, and the provisions of NTP-99 became part of their respective licence agreement and H when there has been a change of the same, it tantamounts to

violation of guarantees included in the conditions of licence. A

(11) It was also urged that the appellate tribunal under the Act, exercises both the original jurisdiction as well as the appellate jurisdiction and the same is wide enough and not circumscribed by the jurisdiction of a court under Article 226 and, therefore, the tribunal committed serious error by restricting its jurisdiction B and it amounts to non-exercise of jurisdiction vested in law.

(12) Lastly, it was urged that the objects and reasons of the amended provisions were to strengthen the authority, so as to increase investors' confidence and create a level playing field between the public and private operators. Such object will be frustrated if C the dispute regarding the level playing field is not answered and is brushed aside, as has been done by the tribunal, on the ground of public interest and as such the impugned decision of the tribunal cannot be upheld.

The arguments on behalf of the respondents on the other hand can be D summarized thus:

1. The level of judicial scrutiny and the extent of judicial intervention in any particular case, depends upon the nature of the impugned decision and its subject matter as well as the composition of the decision making body. E

2. When decision of expert bodies or tribunal dealing with technical, scientific, academic or economic matters are assailed, courts grant greater latitude to the decision of such expert bodies and while exercising original or appellate jurisdiction, greater deference to such decision is accorded. Judicial intervention is restricted to F and is available if there is a breach of a constitutional or a statutory provision or the approach adopted is totally illegal or if the decision is vitiated by *mala fides*, properly pleaded and proven. Judicial scrutiny would not extend to questioning the decision on the ground that it is unwise or unscientific or inappropriate or a better decision could have been given. The limitation for judicial G intervention is inherent and that being so, the impugned order of the tribunal has to be examined from that stand point.

(3) According to the Attorney General, the very composition of TRAI as well as the composition of GOT-IT constituted by the Prime Minister, indicates that it consisted of highly qualified technical H

A experts and it is on their recommendation, the Prime Minister took the final decision. That being so, it would not be appropriate either for the tribunal or for this Court to interfere with the same unless any statutory infirmity is found or it is established that the decision is vitiated by *mala fides.*

B (4) According to the Ld. Attorney General, not only the recommendations of the TRAI confer several benefits to the cellular operators as against the basic service operators, but also GOT-IT granted further concessions in the matter of revenue share percentage, which in the language of the tribunal, fully compensated the cellular operators and this answers the level playing field.

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(5) It is urged that no doubt the judgment of the tribunal could have been better written, but that itself would be no ground for interference by this Court, when the Court's jurisdiction to interfere is restricted to interference on a substantial question of law. According to the respondents, if the judgment of the tribunal is read between the lines, then it must be held that all questions raised have been answered and findings had been given and as such there is no justification for interfering with that decision.

D

(6) It is also contended that the consumers interest as well as tele-density of the rural and semi-urban areas are two vital considerations for any authority under the Act and when the tribunal has found that the introduction of WLL with limited mobility would subserve the aforesaid two vital requirements, this Court should not interfere with the said conclusions on facts in exercise of powers under Article 136.

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(7) According to Dr. Singhvi, the learned counsel for the basic telecom operators, the march of technology, the licence terms permitting WLL, huge compensation granted to the cellular operators and a policy decision of the government are the four basic reasons for which the tribunal did not interfere with the decision of the government and as such, it would not be appropriate for this Court to interfere with the said well-reasoned judgment of the tribunal.

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(8) According to Dr. Singhvi, the grievances of the cellular operators are nothing but shedding of crocodile tears inasmuch as even the

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cellular operators have given bid for astronomical figure even after the impugned judgment and as such the grievance is not genuine.

(9) It is contended that the tribunal having given finding on question of facts, the same ought not to be interfered with by this Court when the appellate jurisdiction can be invoked only when a substantial question of law arises.

(10) Lastly, it is contended that there being large number of consultations and open house discussions both by the TRAI as well as the GOT-IT and the cellular operators having been heard at length and the consultation papers on WLL(M) being quite extensive, the decision of the TRAT as well as that of the government, must be held to be a well considered decision and the same does not require any interference by a tribunal or this Court.

On behalf of the consumers, it was specifically urged that in a public utility service, what is of paramount importance is the consumers' interest which in turn pre-supposes that the consumers must get the benefit of least expensive service and the consumers should not be denied the efficiency and benefit of the technological advancement. Both the TRAI and the government decision, kept the aforesaid considerations in view and even the tribunal also in the impugned decision duly borne in mind the aforesaid considerations and, therefore, the ultimate conclusion of the tribunal should not be interfered with by this Court.

In view of the submissions made by the counsel for the parties, the first question that arises is, what are the parameters for exercise of appellate powers of the Supreme Court, in view of the provisions contained in Section 18 of the Act. Section 18(1) is extracted herein-below in extenso:

> **"18. Appeal to Supreme Court** - (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall 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 of that Code."

The aforesaid provision, unequivocally indicates that against an order of the tribunal, an appeal would lie to the Supreme Court, on one or more of the grounds, specified in Section 100 of the Code of Civil Procedure. Under

A Section 100 of the Civil Procedure Code, an appeal lies to the High Court for 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. Under sub-section (4) of Section 100 of the Code of Civil Procedure, if the High Court is satisfied that a substantial question of law is involved, then itself formulates a question and under sub-section (5), an appeal shall be B heard on the question so formulated and under sub-section (5), the respondent has the right to argue that the case does not involve any such question. Notwithstanding the fact that the powers of this Court under Section 18 is circumscribed by the applicability of Section 100 of the Code of Civil Procedure, in the case in hand there has been no formulation of the question, C as required under sub-section (4) of section 100, but at any rate, it is only a substantial question of law arising out of the order of the tribunal, which can be urged in this appeal. It is in this context, Dr. A.M. Singhvi appearing for the basic operators, Mr. Ashok H. Desai, appearing for the consumers and Ld. Attorney General, appearing for the Union of India had urged that no substantial question of law arises, particularly, when the appellate tribunal D has come to the conclusion that it is in the interest of the consumers on the recommendations made by the TRAI and the further advice of the GOT-IT, constituted by the Prime Minister, the government has taken the decision. According to the learned counsel for the respondents, whether permitting the basic operators to have the privilege of WLL with limited mobility is in the E interest of the consumers and is on account of modern technological development, is a question of fact and the conclusion thereon has been based on the basis of the report of the Expert Committee, constituted by the Prime Minister and the government has merely implemented the same.

Mr. P. Chidambaram, Mr. Ram Jethmalani and Mr. C.S. Vaidyanathan, F appearing for the appellants, on the other hand contended that non-consideration of the points raised and non-consideration of the relevant materials and failure to exercise jurisdiction vested in the tribunal would itself constitute a substantial question of law for this Court to interfere with the ultimate conclusion of the tribunal. It would, therefore, be necessary to examine the extent and parameters of the jurisdiction of the tribunal itself G under Section 14 of the Act. Section 14 is extracted herein-below in extenso:

> **"Sec 14. Establishment of Appellate Tribunal.** The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal H to-

(a) adjudicate any dispute- A

(i) between a licensor and a licensee:

(ii) between two or more service providers;

(iii) between a service provider and a group of consumers;

B

Provided that nothing in this clause shall apply in respect of matters relating to-

(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission C established under sub-section (1) of Section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969);

(B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer D Disputes Redressal Commission or the National Consumer Redressal Commission established under Section 9 of the Consumer Protection Act, 1986 (68 of 1986);

(C) dispute between telegraph authority and any other person referred to in sub-section (1) of Section 7B of the Indian E Telegraph Act, 1885 (13 of 1885);

(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act."

According to the counsel appearing for the appellants that the original Act F was amended in the year 2000 and Chapter IV was inserted, under which the tribunal was constituted as an Expert Body, with the main object to increase investors' confidence and to create a level playing field between the public and the private operators and also the fact that the tribunal has both the original jurisdiction as well as the appellate jurisdiction, with only one appeal to the Supreme Court on a substantial question of law, it would be reasonable G to hold that the tribunal has unfettered jurisdiction to adjudicate the dispute raised as well as to decide the legality of an order of the Central Government or even the opinion of the TRAI or any other expert body and the jurisdiction should be much more wider, when the legislature have ousted the jurisdiction of the civil court to entertain any suit or proceeding in respect of any matter, H

A which the appellate tribunal is empowered by or under the Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act, as provided in Section 15. According to Mr. Chidambaram, the tribunal under the Act has all the powers conferred expressly by the statute and also it has all the incidental and ancillary powers, which are B necessary to make fully effective the express grant of statutory powers. Within the bounds of its jurisdiction it has all the powers expressly and impliedly granted under the statute. Reliance was placed on the decision of this Court in the case of *Union of India and Anr.* v. *Paras Laminates (P) Ltd.,* [1990] 4 SCC 453.

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Learned Attorney General, appearing for the Union of India, on the other hand contended that the level of judicial scrutiny and the extent of judicial intervention depends upon the nature of the impugned decision and its subject matter as well as the composition of the decision making body. It was urged that decisions of expert bodies or tribunals dealing with technical, D scientific, academic or economic matters are accorded greater latitude and the Courts whether exercising original or appellate jurisdiction accord much greater reference to such decisions and judicial intervention is restricted and is available if there is a clear breach of a constitutional or a statutory provision or the approach adopted is totally illegal or if the decision is vitiated by *mala* E *fides,* properly pleaded and proven. According to the learned Attorney General, judicial scrutiny in these cases cannot extend to questioning the decision on the ground that it is unwise or unscientific or inappropriate or that another decision would have been better or more sound. The rationale for minimal judicial interference is that the subject matter of the decision is not amenable to judicial intervention except on the limited grounds, as aforesaid. It is, F therefore, urged that the self-imposed limitation which applies when the High Court exercises its supervisory jurisdiction in respect of an order of an inferior tribunal, when the High Court is approached under Article 226 and 227 of the Constitution, would equally apply to the proceedings and appeals before the tribunal under Section 14 and the impugned judgment of the tribunal has to be scrutinized from that stand point, bearing in mind the limited power of G interference conferred on the Supreme Court under Section 18. It is, therefore, urged by the learned Attorney General that the impugned decision of the tribunal cannot be found fault with, merely on the ground that the order is not as detailed as it could have been, particularly when the tribunal has applied its mind not only to the recommendations made by the TRAI but also H to the recommendations made by a high powered expert body on the directions

of the Prime Minister, namely GOT-IT, which recommendation was accepted by the Prime Minister and the ultimate decision emanated. It is in this connection, learned Attorney General relied upon a recent decision of a three Judge Bench in the case of *West Bengal Electricity Regulatory Commission* v. *C.E.S.C. Ltd. etc. etc.*, JT (2002) 7 SC 578, wherein this Court has held that the rule of prudence in law is that the appellate power is not to be exercised for the purpose of substituting one subjective satisfaction with another, without there being any specific reason for such substitution and further in regard to the exercise of appellate power against the orders of expert tribunals, on facts, the appellate court which is not an expert forum should be doubly careful while interfering with such expert forum's findings on facts. While coming to the aforesaid conclusion, this Court relied upon a series of earlier cases and held that "the appellate power of the High Court statutorily is not hedged in by any restriction, but in our opinion, the High Court merely because it has unrestricted appellate power, should not interfere with the considered order of the commission unless it is satisfied that the order of the commission is perverse, not based on evidence or on misreading of evidence, keeping in mind the fact that the commission is an expert body." The Court also relied upon the decision of this Court in *Collector of Customs, Bombay* v. *Swastic Woolens (P.) Ltd. and Ors.*, [1988] Supp. SCC 796, wherein while considering the statuary appellate powers under Section 130-E(b) of the Customs Act, 1962, this Court had held:

> "We are, however, of the view that if a fact finding authority comes to a conclusion within the above parameters honestly and *bona fide*, the fact that another authority be it the Supreme Court or the High Court may have a different perspective of that question, in our opinion is no ground to interference with that finding in an appeal from such a finding. In the new scheme of things, the tribunals have been entrusted with the authority and the jurisdiction decide the questions involving determination of the rate of duty of excise or to the value of goods for purposes of assessment. An appeal has been provided to this Court to oversee that the subordinate tribunals act within the law. Merely because another view might be possible by a competent court of law is no ground for interference under Section 130-E of the Act though in relation to the rate of duty of customs or to the value of goods for purposes of assessment, the amplitude of appeal is unlimited. But because the jurisdiction is unlimited, there is inherent limitation imposed in such appeals. The tribunal has not deviated from the path of correct principle and has considered all the relevant factors. If the

A tribunal has acted *bona fide* with the natural justice by a speaking order, in our opinion, even if superior court feels that another view is possible, that is no ground for substitution of that view in exercise of power under clause (b) of Section 130-E of the Act."

It may be stated that the three Judge Bench was considering the extent of the B jurisdiction of the High Court in exercise of its appellate power under Section 27 of the Electricity Regulatory Commissions Act, 1998, which according to the learned Attorney General is almost in *pari materia* with Section 14 of the Act with which we are concerned in the present case. There is no dispute with the general proposition that when an appeal is provided under a statute C against the decision of an expert body, notwithstanding the absence of any restriction for the exercise of that appellate power, the appellate Court would be reluctant to interfere with the findings and conclusions of the expert body unless it is so warranted either on the ground that the finding of the expert body is perverse or is based on no evidence or suffers from any glaring infirmity on account of which no reasonable man could come to that D conclusion. The appellate Court indeed would be loath to interfere with the findings arrived at by an expert body on the basis of re-evaluation of the materials or even if an alternative conclusion is possible. In this connection, it is worth mentioning the observations made by this Court in *Tata Iron & Steel Co. Ltd.* v. *Union of India and Anr.,* [1996] 9 SCC 709, wherein this E Court had held that where legal issues are intertwined with those involving determination of policy and a plethora of technical issues, such as in this case, courts of law have to be very wary and must exercise their jurisdiction with circumspection for they must not transgress into the realm of policy-making, unless the policy is inconsistent with the Constitution and the laws. It was also held that on matters affecting policy and those that require technical F expertise, the Court should show deference to, and follow the recommendations of the Committee which is more qualified to address the issues. Learned Attorney General had also relied upon the decision of this Court in the *State of M.P. and Ors.* v. *Nandlal Jaiswal and Ors.,* [1986] 4 SCC 566, wherein this Court had held that whatever observations have been made in regard to the legislation relating to economic matters must apply in regard to executive G action in the field of economic activities, though the executive decision may not be placed on as high a pedestal as legislative judgment insofar as judicial deference is concerned. According to the learned Attorney General, the government was entitled to make pragmatic adjustments which may be called for by particular circumstances and the Court cannot strike down a policy H decision taken by the State Government merely because it feels that another

policy decision would have been fairer or wiser or more scientific or logical, as was held in *Permian Basin* Case, 20 Law Edition (2nd) 312. Reliance was also placed on a three Judge Bench decision of this Court in the case of *G.B. Mahajan and Ors.* v. *Jalgaon Municipal Council and Ors.*, [1991] 3 SCC 91, wherein this Court had observed that in matters of economic policy which lack adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pejorative environmental implications or amount to clear abuse of power, the same could not be interfered with. It is worthwhile also to notice the views of Sir Gerard Brennan in Judicial Review of Administrative Action:

> "The Courts are kept out of the lush field of administrative policy, except when policy is inconsistent with the express or implied provisions of a statute, which creates the power to which the policy relates or when a decision made in purported exercise of a power is such that a repository of the power, acting reasonably and in good faith, could not have made it."

It is not necessary for us to notice all the decisions cited by the learned Attorney General in order to arrive at the conclusion as to what is the extent of jurisdiction of the appellate tribunal under Section 14 of the Act. Suffice it to say, Chapter IV containing Section 14 was inserted by amendment of the year 2002 and the very Statement of Objects and Reasons would indicate that to increase the investors' confidence and to create a level playing field between the public and the private operators, suitable amendment in the Telecom Regulatory Authority of India Act, 1997 was brought about and under the amendment, a tribunal was constituted called the Telecom Disputes Settlement and Appellate Tribunal for adjudicating the disputes between a licensor and a licensee, between two or more service providers, between a service provider and a group of consumers and also to hear and dispose of appeal against any direction, decision or order of the Authority. The aforesaid provision was absolutely essential as the organizations of the licensor, namely, MTNL and the BSNL were also service providers. That being the object for which an independent tribunal was constituted, the power of that tribunal has to be adjudged from the language conferring that power and it would not be appropriate to restrict the same on the ground that the decision which is the subject matter of challenge before the tribunal was that of an expert body. It is no doubt true, to which we will advert later, that the composition of Telecom Regulatory Authority of India as well as the constitution of GOT-IT in April, 2001 consists of large number of eminent impartial experts and

A it is on their advice, the Prime Minister finally took the decision, but that would not in any way restrict the power of the appellate tribunal under Section 14, even though in the matter of appreciation though the tribunal would give due weight to such expert advice and recommendations. Having regard to the very purpose and object for which the appellate tribunal was constituted and having examined the different provisions contained in Chapter B IV, more particularly the provision dealing with ousting the jurisdiction of Civil Court in relation to any matter which the appellate tribunal is empowered by or under the Act, as contained in Section 15, we have no hesitation in coming to the conclusion that the power of Appellate Tribunal is quite wide, as has been indicated in the statute itself and the decisions of this Court C dealing with the power of a Court, exercising appellate power or original power, will have no application for limiting the jurisdiction of the appellate tribunal under the Act. 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 D or order of the 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 E not give due weight to the recommendations or the decisions of the 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 F 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 the TRAI which consists of an expert body as well as to the recommendations of the GOT-IT, a committee of eminent experts from different fields of life, which had been constituted by the Prime Minister.

G So far as the jurisdiction of this Court under Section 18 is concerned, there is no dispute from any quarter that the appeal would lie against any order of the appellate tribunal only on the ground specified in Section 100 of the Code of Civil Procedure and necessarily, therefore, it must be a substantial question of law. The question, therefore, remains to be considered H is, whether from the judgment of the tribunal, the contentions raised by the

appellants can be held to be a substantial question of law, which requires interference with the Order of the tribunal. Before we consider that question, certain broad features may be noticed, namely that the composition of Telecom Regulatory Authority of India consisted of as many as five members, which includes the technical personnel, the management personnel and also the financial personnel. The said authority on receipt of the requisition from the government, prepared consultation paper and wanted suggestions from stake holders on the question of permitting WLL with limited mobility. Open house discussions were made in the four metros on for different dates and the said authority submitted its recommendations on 31.8.2000. The Government however, remanded the matter to TRAI, seeking reconsidered opinion on several issues, including the issue of use of hand held sets in Wireless in Local Loop System. The reconsidered recommendations were submitted by the TRAI on 31.10.2000, but it did not deal with the issue relating to WLL with limited mobility. TRAI, thereafter issued consultation paper on policy issues relating to limited mobility by use of WLL System as well as issues relating to level playing field and convergence of fixed and mobile services and suggestions were invited from Stake holders. There was open house, conducted in four metros again and finally, on 8.1.2001, the TRAI submitted reconsidered recommendations for Wireless in Local Loop. The stake holders in response to the consultation paper issued by TRAI, had submitted their comments, including the present appellants, the Cellular Operators Association of India. When the recommendations were considered by the Prime Minister and grievances were made by the Cellular Operators, under orders of the Prime Minister, GOT-IT was constituted in April 2001, which consisted of several Ministers, eminent lawyers, Vigilance Commissioner, Secretary, Department of Telecom and even the member of Planning Commission. It is this body, which also deliberated on the issues, held discussions with different persons, including the Cellular Operators Association of India and finally submitted the report on 26.4.2001, which report was accepted by the Prime Minister on 27.4.2001.

The recommendations made by the TRAI on issues relating to WLL with limited mobility indicate that the entire endeavour of TRAI has been to ensure that the interest of consumers remains the foremost test of any option being acceptable or unacceptable, such interests being sustainable long-term interests in terms of cost and quality for the individual user and growth, accessibility and the resultant tele-density for the masses. It is on account of this, the TRAI had earlier stated that the best way to serve the interests of the consumer is to ensure fair and open competition for telecom services. On

A consideration of several issues, the TRAI came to the conclusion that there is no reason to deny a facility as long as the likely adverse impact on level playing field is kept in view and ways can be found to mitigate the same. The TRAI also observed that with the acceptance of migration to NTP-99, the cellular mobile service operators have accepted that their markets will no more be protected for them by the terms of their licences and NTP-99 as well B as recent policy announcements acknowledge greater competition as the policy norm in both basic and cellular mobile sectors and increased competition, therefore, cannot be denied. But it will have to be ensured that such competition is generated without making the level playing field uneven. The said authority also unequivocally held that the common consumer will emerge a clear winner C and the basic operators will get a market which they have not been able to cover so far and the mobile operators are likely to encounter some loss of market, as WLL mobility will be available to the consumers at the price of basic services. The TRAI also recommended that revenue share as licence for the mobile operators may be prescribed at 12% of the annual revenue, which would mitigate the grievance of loss of market, which the mobile operators D have to face as a result of the introduction of WLL services with limited mobility by basic service operators. The ultimate recommendation of the TRAI was that the WLL with limited mobility should be provided as part of the basic service licence.

E When the Prime Minister referred the issue to the group on convergence, it was stipulated that the government recognizes the advantages of limited mobility for fixed service operators to achieve quick roll-out of networks and cheaper service to the customers and it accordingly formulated the points of reference to the group on convergence. The formulation also indicates the anxiety of the government to find out how limited mobility can be introduced F to ensure faster achievement of the targets of tele-density as well as rural and remote area telephony at cheaper and affordable rates. It however, unequivocally stated that the same must be consistent with the principle of level playing field among different categories of operators. Thus two considerations were paramount namely ensuring faster achievements of the targets of tele-density and telephony at cheaper and affordable rates as well G as level playing field amongst different categories of operators equitably. The expert body GOT-IT, when recommended for introduction of WLL with limited mobility, it did take into account the two basic concepts and answered the same, which was ultimately accepted by the Government of India. When the decision was assailed before the appellate tribunal, the tribunal by the H impugned judgment, rejected the application, the legality of which is the

subject matter of challenge in the present appeal. At the outset, it may be stated that the tribunal committed an error by holding that it exercises supervisory jurisdiction. 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 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 the TRAI, which consists of experts. The tribunal also committed yet another error in holding that the jurisdiction of the appellate tribunal cannot be wider than that of the Supreme Court. A bare comparison of the provisions of Section 14, which confers jurisdiction on the tribunal and Section 18, which confers jurisdiction on the Supreme Court, would unequivocally indicate that the tribunal has much wider jurisdiction than the jurisdiction of this Court under Section 18, as this Court would be entitled to interfere only on a substantial question of law, which arises from the judgment of the tribunal and not otherwise. Bearing in the mind the aforesaid two apparent errors committed by the tribunal, when we examine the impugned order of the tribunal in the anvil of different contentions raised by the eminent counsel appearing on both sides, we find that the tribunal on consideration of the materials, came to the conclusion that the decision to allow WLL with limited mobility was taken after elaborate discussions and deliberations, which in fact is borne out by records, we have already discussed. The tribunal also further found that the object of NTP-99 and the purpose behind switching over from duopoly to multipoly is to encourage competition and to increase the teledensity of the country and to provide service to common man on an affordable basis. According to the tribunal, allowing WLL with limited mobility will be to render cheaper telephone service to the consumer, both in rural and urban areas. This finding also is borne out from the materials on record and it may not be possible for us to interfere with those findings with the limited power, we have under Section 18 of the Act. But the conclusion of the tribunal that nothing should be allowed to stand in the way of pursuing the objective of increasing tele-density in the country and that the decision being a policy decision, is not liable to be interfered with by the tribunal, cannot be sustained inasmuch as the main grievance of the cellular operators was to the effect that the tribunal did not consider several materials placed before it on the question of level playing field nor has it given any positive finding on that. The Ld. Attorney General as well as Mr. Ashok Desai and Dr. Singhvi,

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A strenuously urged by spinning some words from different parts of the order of the tribunal to contend that the issue of level playing field also has been considered and answered. But we are unable to accept this contention. Further, even in the recommendation of the TRAI as well as the recommendation of the GOT-IT, it was specifically indicated that the WLL with limited mobility can be permitted if the question of level playing field of the cellular operators B is duly considered and they are duly compensated. On this issue, according to Mr. Chidambaram and Mr. Vaidyanathan, huge materials had been produced and the tribunal never applied its mind to those materials, being swayed away by the question that this being a policy decision, cannot be interfered with by the tribunal. Such approach of the tribunal was wholly erroneous and non-C consideration of materials on a vital issue by the tribunal would constitute a substantial question of law within the meaning of Section 18 of the Act, on account of which this Court can interfere with the decision of the tribunal. Notwithstanding the fact that the conclusion of the tribunal that introduction of WLL(M) is in the interest of the consumer and a consumer would be able to get the services at a much cheaper rate, which will ultimately increase the D tele-density in the country, being a conclusion on consideration of materials and as such cannot be interfered with by this Court within the limited power under Section 18. But non-consideration of relevant materials on the issue regarding level playing field and absence of any finding by the tribunal on that score would vitiate the ultimate decision. The bald conclusion of the E tribunal that the cellular operators have already been compensated in various ways and the erosion of profits has also taken by the entry of the fourth-cellular operator, cannot be held to be a conclusion on the issue of level playing field, as contended by the learned Attorney General and reiterated by Dr. A.M. Singhvi. In the aforesaid premises, we are unable to sustain the impugned decision of the tribunal. We accordingly set aside the same and F remit the matter to the tribunal for reconsideration with special emphasis on the question of level playing field, on the basis of materials already on records, after hearing the counsel for the parties concerned.

Both Mr. Chidambaram and Mr. Ram Jethmalani contended before us that until decision of the tribunal afresh, the fixed service operators may not G be permitted to provide WLL limited mobility to the consumers. But we are unable to accept this prayer, since that would be grossly detrimental to the consumers' interest and also on account of the fact that several fixed service operators have already provided the facility in question. Needless to mention the fixed service operators will however be bound by the ultimate decision H to be given by the tribunal. These appeals are accordingly allowed and the

cases are remitted back to the tribunal for reconsideration in accordance with the observations made by us in this Judgment.

S.B. SINHA, J. I agree with the conclusions of the judgment prepared by My Lord, the Chief Justice of India that the matter should be remitted back to the tribunal but I would like to assign additional reasons therefor.

The basic fact on the matter has been noticed by My Lord, the Chief Justice of India.

I may, however, point out that the learned counsels appearing on behalf of the parties have raised a large number of contentions.

They not only filed written submissions before this Court, our attention has also been drawn to the written submissions filed before the learned TDSAT. The questions raised are numerous and varied. The learned counsels have also taken us through a large number of documents. A large number of charts have been filed before us for one purpose or the other. The parties had also relied upon the opinion of experts on technical matters. The learned counsels have also referred to a large number of authorities.

If we were to determine the questions raised before us ourselves, we would have noted the submissions of the learned counsels in great details but having regard to the order proposed to be passed, we do not intend to do so, as the submissions would be raised before the learned TDSAT again and it would be taken through the documents to which our attention has been drawn by the learned counsel.

Suffice it to point out that before the learned TDSAT admittedly the matter was heard for 26 days. In this Court also the matter was heard for four days.

It arrived at certain findings without application of its mind on various vital issues including the issue of its jurisdiction.

Its findings inter alia are: -

(i) That WLL with limited mobility offers benefits to consumers in rural and urban area.

(ii) WLL with limited mobility would provide uninterrupted trouble free service because the subscriber does not have to wait endlessly

A for a mechanic to come and rectify the fault in the wire line.

(iii) A subscriber having WLL with limited mobility can dispense with the wireline phone.

(iv) The petitioners cannot assail a policy decision taken by the Government.

B

(v) The Jurisdiction of the Tribunal is not wider than that of the Supreme Court.

(vi) Government has a right to change its policy and the argument that a departure from well established policy can be quashed is

C of no substance.

(vii) By letter dated 25.9.2000, the Cellular Operators stated that they had no objection to introduction of limited mobility provided level playing field conditions were maintained.

(viii) This is not a case of mindless change of policy in a hurry nor is

D the decision arbitrary or mala fide in any way.

(ix) Government is entitled to deviate from a policy decision and adopt another policy, and this cannot be reviewed.

(x) In the instant case, a new technology has come.

E (xi) CDMA is far superior to GSM.

(xii) CDMA network costs less to build and operate than GSM.

(xiii) We must make clear that from the chart produced before us, we find that the charges consumers will have to pay for WLL with limited mobility will be very much less than the charges currently

F levied by the Cell Operators.

(xiv) Petitioners themselves were allowed to migrate. After signing the migration package, the Cellular Operators cannot be heard to complain about unexpected new competition.

G (xv) The fear expressed by the petitioners is either feigned or imaginary.

(xvi) Advance of technology must be allowed to go ahead without any check or hindrance.

(xvii) Technological advances have also to some extent blurred the

H distinction between Fixed and Wireless Telecom Wireless

technology

(xviii) The petitioners can use latest technology including WLL with mobility as well as the Respondents.

(xix) The Government offered them (petitioners) more than enough concessions through reduction in licence fees and entry into areas hitherto unavailable to them, e.g., P.C.O.

(xx) This is a policy decision well within the domain of the Government.

(xxi) Government decided to allow use of spectrum on first come first serve basis without any rhyme of reason. This is a strange argument coming from the Petitioners. The Petitioners themselves have not been charged anything special for use of spectrum. The CMSPs and FSPs have been treated equally and no special favour was shown to the FSPs in this regard.

(xxii) It has been argued by Mr. Vaidyanathan that this is inbuilt in the fee that they have to pay. But there is no evidence for this.

(xxiii) There cannot be any legitimate expectation.....that will be an illegitimate expectation.

Each one of the aforementioned findings have been assailed as perverse.

We, however, need not go into the aforementioned question in view of the order proposed to be passed by us in our opinion the learned Tribunal failed to assign sufficient or cogent reasons in support of its findings. In relation to some issues, no reason has been assigned. Some issues although noticed have not been adverted to. Some issues have even not been noticed. The impugned order of the TDSAT, therefore, does not fulfil the criteria of a judgment.

A judgment of a court or a Tribunal should contain concise statement of case, points of decisions, the reasons for such decisions and decisions thereupon.

In *Balraj Taneja and Anr.* v. *Sunil Madan and Anr.*, [1999] 8 SCC 396 it has been held :

> " "Judgment" as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree

A or order. What a judgment should contain is indicated in Order 20 Rule 4(2) which says that a judgment "shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision." It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court
B and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment."

In *Union of India and Ors.* v. *Manager, M/s Jain and Associates,*
C [2001] 3 SCC 277, this Court held as follows :

"The result is before pronouncing judgment, the court has to apply its mind to arrive at the conclusion whether there is any cause to modify or remit the award. Further the phrase "pronounce judgment" would itself indicate judicial determination by reasoned order for arriving at
D the conclusion that decree in terms of award be passed. One of the meanings given to the word "judgment" in Webster's Comprehensive Dictionary [International Edn., Vol. I (1984)] reads thus : "the result of judging; the decision or conclusion reached, as after consideration or deliberation". Further, Order 20 Rule 4(2) CPC in terms provides that "judgment" shall contain a concise statement of case, the points
E for determination, the decision thereon, and the reasons for such decision. This is antithesis to pronouncement of non-speaking order."

It did not follow the said guidelines. Even as an appellate authority the TDSAT was required to comply with the principles of or analogous to the
F provisions of Order 41 Rule 33 of the Code of Civil Procedure. See *Rattan Dev* v. *Pasam Devi,* [2002] 7 SCC 441 and *B.S. Sharma* v. *State of Haryana and Anr.,* [2001] 1 SCC 434.

As regards the issue of jurisdiction, it posed a wrong question and gave a wrong answer.

G TDSAT was required to exercise its jurisdiction in terms of Section 14A of the Act. TDSAT itself is an expert body and its jurisdiction is wide having regard to sub-section (7) of Section 14A thereof. Its jurisdiction extends to examining the legality, propriety or correctness of a direction/order or decision of the authority in terms of sub-section (2) of Section 14 as also the
H dispute made in an application under sub-section (1) thereof. The approach

of the learned TDSAT, being on the premise that its jurisdiction is limited or akin to the power of judicial review is, therefore, wholly unsustainable. The extent of jurisdiction of a court or a Tribunal depends upon the relevant statute. TDSAT is a creature of a statute. Its jurisdiction is also conferred by a statute. The purpose of creation of TDSAT has expressly been stated by the Parliament in the Amending Act of 2000. TDSAT, thus, failed to take into consideration the amplitude of its jurisdiction and thus misdirected itself in law.

The learned Attorney General has relied upon a decision of this Court in *Union of India* v. *Parma Nanda,* [1989) 2 SCC 177] but the said decision has no application at all to the fact of the matter.

If a jurisdictional question or the extent thereof is disputed before a tribunal, the tribunal must necessarily decide it unless the statute provides otherwise. (See Judicial Review of Administrative Law by H.W.R. Wade & C.F. Forsyth, page No. 260). Only when question of law or mixed question of fact and law are decided by a tribunal, the High Court or the Supreme Court can exercise its power of judicial review.

In the aforementioned treatise it has been noticed :

"Jurisdiction over fact and law: summary

At the end of a chapter which is top-heavy with obsolescent material it may be useful to summarise the position as shortly as possible. The overall picture is of an expanding system struggling to free itself from the trammels of classical doctrines laid down in the past. It is not safe to say that the classical doctrines are wholly obsolete and that the broad and simple principles of review, which clearly now commend themselves to the judiciary, will entirely supplant them. A summary can therefore only state the long-established rules together with the simpler and broader rules which have now superseded them, much for the benefit of the law. Together they are as follows.

Errors of fact

Old rule: The court would quash only if the erroneous fact was jurisdictional.

New rule: The court will quash if an erroneous and decisive fact was

(a) jurisdictional;

A (b) found on the basis of no evidence; or

(c) wrong, misunderstood or ignored.

Errors of law

B Old rule: The court would quash only if the error was

(a) jurisidictional; or

(b) on the face of the record.

C New rule: The court will quash for any decisive error, because all errors of law are now jurisdictional."

The rule as regard deference to expert bodies applies only in respect of a reviewing court and not to an expert tribunal. It may not be the function D of a court exercising power of judicial review to act as a super-model as has been stated in Administrative Law by Bernard Schwartz, 3rd edition in para 10.1 at page 625; but the same would not be a case where an expert tribunal has been constituted only with a view to determine the correctness of an order passed by another expert body. The remedy under Section 14 of the Act is not a supervisory one. TDSAT's jurisdiction is not akin to a court E issuing a writ of certiorari. The tribunal although is not a court, it has all the trappings of a Court. Its functions are judicial.

In 'Jurisdiction and Illegality' by Amnon Rubinstein a judicial power in contrast to the reviewing power is stated thus:

F

> "A judicial power, on the other hand, denotes a process in which ascertainable legal rules are applied and which, therefore, is subject to an objectively correct solution. But that, as will be seen, does not mean that the repository of such a power is under an enforceable duty to arrive at that solution. The legal rules applied are capable of various G interpretations and the repository of power, using his own reasoning faculties, may deviate from that solution which the law regards as the objectively correct one."

The regulatory bodies exercise wide jurisdiction. They lay down the law. They may prosecute. They may punish. Intrinsically, they act like an H

internal audit. They may fix the price, they may fix the area of operation and so on and so forth. While doing so, they may, as in the present case, interfere with the existing rights of the licensees.

Statutory recommendations made by it are normally accepted by the Central Government, as a result of which the rights and obligations of the parties may seriously be affected. It was in the aforementioned premise the Parliament thought of creating an independent expert tribunal which, if an occasion arises therefor, may interfere with the finding of fact, finding of law or a mixed question of law and fact of the Authority. Succinctly stated the jurisdiction of the tribunal is not circumscribed in any manner whatsoever.

This Court in *Parma Nanda* (supra) was considering the jurisdiction of the Administrative Tribunal constituted under the Administrative Tribunals Act, 1985. Having regard to the provisions of the said Act, it was held that the jurisdiction of the Tribunal is that of the Civil Court or of the High Court under Articles 226/227 of the Constitution of India. The question which arose for consideration in that case was as to whether the Civil Court or the High Court in a suit or a writ petition can interfere with the quantum of punishment imposed upon an employee by his employer.

The said decision has no application in the instant case. Apart from the fact that even in relation to invocation of the doctrine of proportionality this Court has categorically held that court's jurisdiction in this regard although is limited but in a given situation it can exercise its jurisdiction either by remitting the matter back to the Disciplinary Authority or impose a lesser punishment, when the order of punishment is found to be unreasonable attracting Article 14 of the Constitution of India or when the quantum of punishment is so disproportionate that the same is shocking to judicial conscience. See *Om Kumar and Ors.* v. *Union of India,* [2001] 2 SCC 386.

There cannot be any doubt whatsoever that when jurisdiction upon a court or a Tribunal is conferred by a statute, the same has to be construed in terms thereof and not otherwise. The power of judicial review of this Court as also the High Court, however, stand on a different footing. The power of this Court as also the High Court although is of wide amplitude, certain restrictions by way of self-discipline are imposed. Ordinarily the power of judicial review can be exercised only when illegality, irrationality or impropriety is found in decision making process of the authority.

A Similarly, the Civil Court's jurisdiction in service matters is circumscribed by the provisions of the Special Relief Act, 1963.

However, the jurisdiction of the Industrial Tribunal or the Labour Court in a similar situation having regard to the provision of Section 11A of the Industrial Disputes Act, 1947 is much wider and akin to the appellate power. B Similarly, exercise of jurisdiction by the same court in an appeal *vis-a-vis* a revision would be different. Its approach as an appellate authority or a revisional authority even if arising out the same order would be different.

Even in *West Bengal Electricity Regulatory Commission* v. *C.E.S.C. Ltd.*, (2002) 7 SCALE 217 whereupon the learned Attorney General has C placed reliance, this Court specifically stated :

> "We notice that the Commission constituted under s.17 of the 1998 Act is an expert body and the determination of tariff which has to be made by the Commission involves a very highly technical procedure, D requiring working knowledge of law, engineering, finance, commerce, economics and management. A perusal of the report of the ASCI as well as that of the Commission abundantly proves this fact. Therefore, we think it would be more appropriate and effective if a statutory appeal is provided to a similar expert body, so that the various E questions which are factual and technical that arise in such an appeal, get appropriate consideration in the first stage also. From s.4 of the 1998 Act, we notice that the Central Electricity Regulatory Commission which has a judicial member as also a number of other members having varied qualifications, is better equipped to appreciate the technical and factual questions involved in the appeals arising F from the orders of the Commission. Without meaning any disrespect to the judges of the High Court, we think neither the High Court nor the Supreme Court would in reality be appropriate appellate forums in dealing with this type of factual and technical matters. Therefore, we recommend that the appellate power against an order of the state G commission under the 1998 Act should be conferred either on the Central Electricity Regulatory Commission or on a similar body. We notice that under the Telecom Regulatory Authority of India Act 1997 in Chapter IV, a similar provision is made for an appeal to a special appellate tribunal and thereafter a further appeal to the Supreme Court on questions of law only. We think a similar appellate provisions H may be considered to make the relief of appeal more effective."

It may, however, be noticed that in relation to transmission and distribution losses, although this Court was exercising the same power as that of the High Court, it allowed a claim of transmission and distribution losses to the extent of 19% i.e. 2.2% more that what was allowed by the Commission for the year 2000-01 and 18% for the year 2001-02.

Sub-section (7) of Section 14A confers a wide jurisdiction upon the Tribunal. The Tribunal being an expert body is entitled to exercise its appellate jurisdiction both on fact as also in law over a decision of order/decision/ direction of the Authority. Its power to examine the correctness, legality or propriety of the order passed by the Authority as also in relation to the dispute must be held to be a wide one.

The learned TDSAT should have borne in mind that its decision on fact and law is final and appeal lies to this Court in terms of Section 18 of the Act only on substantial questions of law. It, therefore, was obliged to determine the questions of law and facts so as to enable this Court to consider the matter, if any, substantial question of law arises on the face of the judgment.

Furthermore, the question as to whether the procedural requirements have not been fulfilled or not had not been gone into by the learned TDSAT.

In *Permian Basin Area Rate* Cases [390 US 747, 20 L Ed 2d 312], the U.S. Supreme Court has laid down the parameters of judicial review. In relation to the opinion of the committee, it was held that if the agency has before it representative evidence, ample in quantity to measure with appropriate precision the financial and other requirements of the pertinent parties. It was held :

> "It follows that the responsibilities of a reviewing court are essentially three. First, it must determine whether the Commission's order, viewed in light of the relevant facts and of the Commission's broad regulatory duties, abused or exceeded its authority. Second, the court must examine manner in which the Commission has employed the methods of regulation which it has itself selected, and must decide whether each of the order's essential elements is supported by substantial evidence. Third, the court must determine whether the order may reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed, and yet provide appropriate protection to the relevant public

A interests, both existing and foreseeable. The court's responsibility is not to supplant the Commission's balance of these interests with one more nearly to its liking, but instead to assure itself that the Commission has given reasoned consideration to each of the pertinent factors. Judicial review of the Commission's orders will therefore function accurately and efficaciously only if the Commission indicates fully B and carefully the methods by which, and the purposes for which, it has chosen to act, as well as its assessment of the consequences of its orders for the character and future development of the industry. We are, in addition, obliged at this juncture to give weight to the unusual difficulties of this first area proceeding; we must, however, emphasize C that this weight must significantly lessen as the Commission's experience with area regulation lengthens. We shall examine the various issues presented by the rate structure in light of these interrelated criteria."

Under sub-section (7) of Section 14A, the TDSAT is entitled to regulate D its own procedure. It has not formulated such procedure. It also did not follow the procedure and in the absence of any procedure laid down therefore, the provisions of the Code of Civil Procedure should be followed.

Even the scope of judicial review may also vary from case to case. It E depends upon the nature of the matter as also the statute involved therein which is required to be dealt with by the Court.

In *Universal Camera Corporation* v. *National Labor Relations Board,* [340 US 474], it is stated :

F "We conclude, therefore, that the Administrative Procedure Act and the Taft-Hartley Act direct that courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some courts have shown in the past. Reviewing courts must be influenced by a feeling that they are not to abdicate the G conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appear substantial when viewed, on the record as a whole, by courts invested with the authority and enjoying the prestige of the Courts of Appeals. The Board's H findings are entitled to respect; but they must nonetheless be set aside

when the record before a Court of Appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence or both." A

It was observed: B

"Our power to review the correctness of application of the present standard ought seldom to be called into action. Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals. This Court will intervene only in what ought to be the rare instance when the standard appears to have been misapprehended or grossly misapplied." C

Furthermore, the power of this Court under Section 18 of the Act cannot be equated with the power of judicial review. As this Court will be concerned with a substantial question of law arising in the case, its jurisdiction D would not be restricted to illegality, irrationality or procedural impropriety in the decision making process.

The learned TDSAT, therefore, has posed absolutely a wrong question and thus its impugned decision suffers from a misdirection in law. E

In *Union of India* v. *Tarachand Gupta and Bros.,* [1971] 1 SCC 486, the law is stated as under :

"The words "a decision or order passed by an Officer of Customs under this Act" used in Section 188 of the Sea Customs Act must F mean a real and not a purported determination. A determination, which takes into consideration factors which the officer has no right to take into account, is no determination. This is also the view taken by courts in England. In such cases the provision excluding jurisdiction of Civil Courts cannot operate so as to exclude an inquiry by them. In *Anisminic Ltd.* v. *The Foreign Compensation Commissioner,* Lord G Reid at pages 213 and 214 of the Report stated as follows :

"It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word "jurisdiction" has been used in a very wide sense, and I have H

A come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the enquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision B in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which C was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide D that question wrongly as it is to decide it rightly."

To the same effect are also the observations of Lord Pearce at page 233, *R.V. Fulham, Hammersmith and Kensington Rent Tribunal* is yet another decision of a tribunal properly embarking on an enquiry, E that is, within its jurisdiction, but at the end of its making an order in excess of its jurisdiction which was held to be a nullity though it was an order of the kind which it was entitled to make in a proper case.

The principle thus is that exclusion of the jurisdiction of the Civil F Courts is not to be readily inferred. Such exclusion, however, is inferred where the statute gives finality to the order of the tribunal on which it confers jurisdiction and provides for adequate remedy to do what the courts would normally do in such a proceeding before it. Even where a statute gives finality, such a provision does not exclude G cases where the provisions of the particular statute have not been complied with or the tribunal has not acted in conformity with the fundamental principles of judicial procedure. The word "jurisdiction" has both a narrow and a wider meaning. In the sense of the former, it means the authority to embark upon an enquiry; in the sense of the latter it is used in several aspects, one of such aspects being that the H decision of the tribunal is in non-compliance with the provisions of

the Act. Accordingly, a determination by a tribunal of a question other than the one which the statute directs it to decide would be a decision not under the provisions of the Act, and, therefore, in excess of its jurisdiction." A

In *Union of India and Anr.* v. *Paras Laminates (P) Ltd.*, [1990] 4 SCC 453], this Court held as follows : B

"There is no doubt that the Tribunal functions as a court within the limits of jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognized as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. The powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes (11th edn.) "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution"." C D E

Furthermore, TDSAT failed to advert unto itself to the following issues: F

(1) Non-compliance with Section 11(1)(a)(i) and (ii);

(2) Non-compliance with the fifth proviso by the authority in view of the divergence of opinion between recommendation dated 8th January, 2001 and guidelines made by the Government of India on 25th January, 2001; G

(3) The issue of substitutability of cellular mobile service with WLL with limited mobility within the area of SDCA like Delhi, Kolkata etc. particularly in a case where the subscribers of cellular phone H

A have not chosen to opt for the roaming facility.

Having regard to the assertions made by the appellants herein that 85% of its business is related to SDCA only and only 15% subscribers have roaming facility. TDSAT ought to have addressed itself on the issue as to whether one service is a substitute of the other or not.

B

TDSAT had also failed to give its findings on the following issues :

(1) That WLL with limited mobility with the existing service is a new service within the meaning of NTP-99;

C

(2) Whether it is within the policy or outside the policy amounting to a change in the policy;

(3) Whether the conditions attached by the authority and its recommendations dated 8th January, 2001 have been satisfied.

D

The Tribunal has opined that the technology may or may not be known as early as in 1994-95 but it proceeded to decide the issues only from the angle of consumers' interest. Consumers' interest is only one of the relevant factors. It by itself cannot be decisive. Consumers' interest is required to be taken into consideration only when it is found that the actions of the Central E Government as also the recommendation of Authority were within their respective jurisdiction.

TDSAT proceeded on the basis that the Central Government is entitled to change its own policy decision without taking into consideration the fact F that according to the Central Government itself it was merely a 'fine tuning of the policy' and not a change of policy.

The jurisdiction of the Central Government to effect change in the policy decisions was also in question. If a National policy had been adopted by the Cabinet, having regard to the provisions contained in Section 14 of the G General Clauses Act, although a change in the policy would be permissible, but the procedure laid down therefore were required to be followed. This aspect of the matter has also not been considered by the TDSAT.

In *Union of India and Ors.* v. *Dinesh Engineering Corporation and* H *Anr.*, [2001] 8 SCC 491, this Court even while exercising its power of judicial

review laid down the law thus :- A

> "There is no doubt that this Court has held in more than one case that where the decision of the authority is in regard to a policy matter, this Court will not ordinarily interfere since these policy matters are taken based on expert knowledge of the persons concerned and courts are normally not equipped to question the correctness of a policy decision. B *But then this does not mean that the courts have to abdicate their right to scrutinize whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of discrimination or unreasonableness, bearing in mind the material on record."* C

In *Home Secretary, U.T. of Chandigarh and Anr.* v. *Darshjit Singh Grewal and Ors.*, [1993] 4 SCC 25, this Court held as follows :

> "It may be relevant to emphasise at this juncture that while the rules and regulations referred to above are statutory, the policy guidelines D are relatable to the executive power of the Chandigarh Administration. It is axiomatic that having enunciated a policy of general application and having communicated it to all concerned including the Chandigarh Engineering College, the Administration is bound by it. It can, of course, change the policy but until that is done, it is bound to adhere E to it."

Before TDSAT, the appellants argued that the decision of the Central Government was arbitrary. The said question was also not answered.

As regards the level playing field, the TDSAT did not refer to a large F number of materials at all. It took a wrong decision that the appellants had conceded the power of the Central Government in the matter of change of policy and furthermore agreed thereto in the event, its offers are satisfied.

We may notice that most of the findings recorded by the TDSAT are not supported by any cogent reason. It arrived at some findings without G referring to any material on records. As for example we may notice that it referred to a chart purported to have been handed over by Dr. Singhvi but the contents of the chart had not been disclosed. In any event, the materials on the basis whereof the chart was prepared had not been disclosed at all.

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A It failed to notice that the requirement of increasing tele-density in rural areas was not in question. What was questioned was that encroachment by the FSPs in the area which is said to be within the exclusive privilege of the cellular operators having regard to the provision of the NTP-99 and the terms and conditions of the licences issued to them. It also failed to arrive at any finding as to whether the concessions given to the appellants by the Central B Government were asked for by them or not and/or whether only because they received such concessions, they were estopped or precluded from raising the issues.

The learned TDSAT further failed to take into consideration the question C as to whether the terms of offer made to the appellants as regards for providing fixed service were similar to those offered to the fixed service providers or not. It merely held that the appellants can use latest technology including WLL with limited mobility as also the respondents without taking into consideration the materials to the effect that the letters of the respondents to the authorities of the Central Government for giving the same facilities fell D on deaf ears. Furthermore, the issue relating to the grant of concessions to the appellants may be held to be redundant if the purported decision of the Central Government/or the recommendations of the authority were illegal and without jurisdiction.

E We have enumerated some of the issues raised before us only with a view to highlight that the TDSAT did not pose unto itself the correct question.

The impugned order, therefore, cannot be sustained and it is set aside accordingly. The matter is remitted to TDSAT for consideration of the matter afresh in accordance with law.

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Before parting with the case, we may notice that the learned counsel appearing on behalf of the respondents made strenuous attempts that this Court itself may enter into merit of the matter. However, having regard to the materials on record, we think that we should not do the same. This Court in *State of West Bengal and Ors.* v. *Nuruddin Mallick and Ors.*, [1998] 8 SCC G 143, observed as under :-

> "Submission for the respondents was that this Court itself should examine and decide the question in issue based on the material on record to set at rest the long-standing issue. We have no hesitation to decline such a suggestion. The courts can either direct the statutory

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authorities, where it is not exercising its discretion, by mandamus to exercise its discretion, or when exercised, to see whether it has been validly exercised. It would be inappropriate for the Court to substitute itself for the statutory authorities to decide the matter." A

The principles enunciated in the aforementioned case would also apply herein. B

S.K.S. Appeal allowed.