Cellular Operators Association Of ... vs Union Of India & Ors on 17 December, 2002

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Bench: S.B. Sinha

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           CASE NO.:
Appeal (civil)  3092 of 2002
Appeal (civil)  3123 of 2002
Appeal (civil)  3214 of 2002

PETITIONER:
Cellular Operators Association of India & Ors.

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 17/12/2002

BENCH:
S.B. Sinha.

JUDGMENT:
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J U D G M E N T 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 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.

(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 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 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.

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 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.

(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 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 expectationthat 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 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 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 [(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 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 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 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.

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 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.
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> 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
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> (a) jurisdictional;
>
> (b) found on the basis of no evidence; or
>
> (c) wrong, misunderstood or ignored.

Errors of law Old rule: The court would quash only if the error was

(a) jurisidictional; or

(b) on the face of the record.

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 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 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:

> "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 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 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.

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. Similarly, exercise of jurisdiction by the same court in an appeal vis--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 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, 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 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 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 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 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 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 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 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 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 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 :

> "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 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 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."

It was observed:

> "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."

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 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.

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 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 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 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 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 goods 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 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 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, 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 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 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 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."

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

> "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"."

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

> (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;
>
> (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 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.

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;
>
> 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.

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 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 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 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 Anr. [(2001) 8 SCC 491], this Court even while exercising its power of judicial review laid down the law thus :-

> "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. 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."

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 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 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 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 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.

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 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 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 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.

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.

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 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 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."

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