

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

DATED 16th DECEMBER, 2010

PETITION No. 319 OF 2007

Tata Teleservices Limited & Anr.

...Petitioners

Versus

Union of India & Ors.

...Respondents

BEFORE:

HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON

HON'BLE MR.G. D. GAIHA, MEMBER

HON'BLE MR. P.K.RASTOGI, MEMBER

For Petitioners

: Mr. Ramji Srinivasan, Sr. Advocate
Mr. Mansoor Ali Shoket,
Advocate
Mr. Rahul Dhawan, Advocate
Mr. Nitin Kala, Advocate
Mr. Apoorva Mishra, Advocate

For Respondent No.1&2

: Mr. Vikas Singh, Senior Advocate
Mr.Sanjay R. Hegde, Advocate
Ms. Amrita Narayan, Advocate
Mr. Abhishek Malviya, Advocate

For Respondent No. 3(TRAI)

: Mr. Meet Malhotra, Advocate

For Respondent No. 4 (Aircel) : Mr. Ravi S.S.Chauhan, Advocate

For Respondent Nos.5-9 : Mr. C.S. Vaidyanathan, Sr.
Advocate
Mr. Manjul Bajpai, Mr. Gopal Jain,
Mr. Ashish Yadav, Advocate

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JUDGEMENT
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S.B. Sinha

1. The petitioner herein is a licensee within the meaning of the provisions of the Indian Telegraphs Act, 1885 (the Act). It was granted a license as a CDMA operator. Earlier, it was granted a basic telephone license but with effect from 14.11.2003, having regard to the policy decision contained in the National Telecom Policy (NTP), 1999 it was offered and granted the UAS license, inter alia, on the premise that in terms of thereof, all BSOs were to be placed at par with the CMSPS for all practical purposes.
2. The petitioner's grievance is that it was discriminated against as the respondent had failed and/or neglected to allocate the spectrum in appropriate quantum to it. Admittedly the petitioner had been granted licenses for 20 telecom circles across India. According to the petitioner, it was entitled to allocation of increased quantity of spectrum in terms of the Circular letters issued by the WPC wing of the respondent No. 1.

So far as the CDMA operators are concerned, the initial spectrum allocation in the year 1997 was 2.5+2.5 MHz. However, on or about 23.3.2001, the respondent adopted a policy decision that upon completion of the first phase rollout applications as stipulated for the grant of license for service and effectively utilizing the allocated spectrum,

the licensee shall become eligible for further allocation of WLL spectrum to the extent of 1.25+1.25 MHz in the band of 800 MHz. The petitioner contends that despite fulfilling the obligations in this behalf, it had not been allocated the said spectrum. On or about 10.12.2004, another policy was adopted which is to the following effect:-

Service Area	The minimum subscriber base required for allotment of 3 rd carrier			
	1 st Carr.	2 nd Carr.	3 rd Carr	4 th Carr
Metro Service Area Delhi & Mumbai Chennai & Kolkata	3	10	No Criteria*	No criteria* 2 6
Telecom Circles as Service Area Category 'A' Circle Category 'B' Circle Category 'C' circle	No Criteria* 3	10	4 No Criteria*	12 1.5 No Criteria* 5

3. It has been contended by the petitioner that the respondent, despite the fact that the subscriber base of the petitioner exceeded 3 lakhs and ultimately 10 lakhs, it had not been provided additional spectrum with the third and the fourth carrier. Yet again, on or about 29.3.2006, another policy decision was issued whereby and whereunder, it was stipulated:-

Service Area	The minimum subscriber base required for allotment of CDMA carriers of nominal 1.25 MHz bandwidth each	
	5 th Carrier	6 th Carrier
Metro Service Area Delhi & Mumbai	16	21
Chennai & Kolkata	10	13
Telecom Circles as Service Area	20 16 9	26 21 12

- The subscriber based criteria for the allotment of 3rd and 4th carrier for CDMA spectrum shall continue to be as per the order date 10.12.2004
 - The spectrum allotment is subject to availability of spectrum.
 - The active subscribers and peak traffic averaged over a month (for a minimum of 40 mErlang per subscriber) in the Visitor Locator Register (VLR) would be taken into account for this purpose.
4. The petitioner has, inter alia, contended that unjustly and illegally, the criterion for allocation of spectrum was changed in terms whereof, from the home location register, wherein the number of registered subscribers used to be noticed, the respondent asked for variable line subscribers. The petitioner applied for allocation of the said spectrum

despite the fact that the said policy decision should have been given only a prospective effect. It is contended that not only its earlier application had been kept pending, even the new application which was filed upon compliance of all requirements contained in the aforementioned policy decision dated 29.3.2006, the same had also been kept pending for reasons best known to the respondent.

5. This petition had been filed by the petitioner sometimes in December, 2007. When a question was raised as to whether the petitioner was entitled to allocation of spectrum, the learned Solicitor General, made a statement before this Tribunal that the petitioner would be granted the spectrum in terms of the policy decision. Yet again, on 16.1.2008, it was represented before this Tribunal that the matter was under process.
6. However, a Miscellaneous Application being M.A. No. 29 of 2008, was filed on behalf of the respondent, inter alia, contending that the said concession was wrongly recorded as on the same day in relation to two other petitions, a prayer was made that allocation of spectrum may be made in terms of new policy decision.
7. It is not in dispute that during pendency of this petition, the policy decision in relation to allocation of spectrum was furthermore changed on or about 9.1.2008 which reads thus :-

Service Area	The minimum subscriber base required for allotment of CDMA carriers of nominal 1.25 MHz bandwidth each				
	2.5 MHz Carr	3.75 MHz 4 th Carr	5 MHz	2 Carr.	3 rd
Metro Service	5	20	No Criteria*	5	No Criteria* 20

Area Delhi & Mumbai Chennai & Kolkata											
Telecom Circles as Service Area Category 'A' Circle Category 'B' Circle Category 'C' circle	<table> <tr> <td>No Criteria*</td> <td>8</td> <td>50</td> <td>No Criteria*</td> <td>8</td> </tr> <tr> <td>50</td> <td>No Criteria*</td> <td>6</td> <td>40</td> <td></td> </tr> </table>	No Criteria*	8	50	No Criteria*	8	50	No Criteria*	6	40	
No Criteria*	8	50	No Criteria*	8							
50	No Criteria*	6	40								

- Initial allotment for roll-out of the network.
- The spectrum allotment is subject to availability of spectrum.
- The active subscribers peak traffic averaged over a month (for a minimum of 40 mErlang per subscriber) in the Visitor Locator Register (VLR) would be taken into account for this purpose.

Yet again, on 17.1.2008, it was laid down :-

Service Area	Subscriber base supported by CDMA spectrum in MHz (eligibility for allotment of next step)				
	2x2.5 MHz Carr	2x3.75 MHz Carr	2x5 MHz Carr	2x6.25 MHz Carr	2x7.5 MHz Carr
		5 Carr	6 Carr	2 Carr	3 Carr
Metro Service Areas	5	20	30	50	4

Telecom Circles as Service Area Category 'A' and 'B' Circle Category 'C' circle	8	50	80	100
	6	40	60	80

@ Present upper limit for spectrum allotment

- These are the figures of active subscribers (VLR) averaged over a month. In addition, peak traffic, averaged over a month should be 40 mErlangs per active subscriber in the criteria.
- The spectrum allotment is subject to availability of spectrum.
- The active subscribers as peak traffic averaged over a month (for a minimum of 40 mErlang per subscriber) in the Visitor Locator Register (VLR) would be taken into account for this purpose.

8. Indisputably, the respondent had appointed a Committee, commonly known as Bandhopadhyay Committee, sometimes in the year 2007, which submitted its report on or about 6th / 7th November, 2007. It is, however, now not in dispute that thereafter, a comprehensive reference was made to another Committee, commonly known as Subodh Kumar Committee in May, 2008, which submitted its report in July, 2008. It is also not in controversy that the respondent referred the question for comprehensive recommendations by the Telecom Regulatory Authority of India (TRAI) which has since submitted a report on or about 11.5.2010. While the matter stood thus, TRAI, by

another communication dated 18.5.2010, requested the respondent that it intends to submit recommendations on the issues of 3-G pricing as also re-farming of spectrum.

A question which has been raised before us is as to whether having regard to the aforementioned event, which took place subsequent to the filing of the petition, this Tribunal will have any jurisdiction to grant any relief to the petitioner herein.

By an order dated 12.7.2010, this Tribunal observed as under:-

“We may notice that the Telecom Regulatory Authority of India (TRAI) on or about 11th May, 2010 had made certain recommendations. The said recommendations are pending consideration before the Department of Telecommunications (DoT) of the Government of India. The respondent, Cellular Operators Association of India (COAI) had filed an application in Petition No.3 of 2008, inter alia, praying for a direction upon the DoT not to take a decision relying on or on the basis thereof. Our attention, while hearing the said application, was drawn to a letter of Chairman, TRAI dated 18.05.2010 stating that it had separately initiated an exercise to further study its recommendations as made in Para 3.82 thereof as also on the question of re-farming of 800/900 MHz spectrum as contained in Para 1.47 thereof.

The TRAI asked the DoT to await its recommendations on both the aforementioned issues before taking any final decision.

In the said MA No.170 of 2010 filed by COAI, the DoT stated that it would take a decision only on receipt of the further recommendation of TRAI. On the basis the said stand taken by the DoT, this Tribunal did not think it necessary to issue any separate order thereupon.

The said MA was disposed of.

It is in the aforementioned situation as also in view of the fact that the matter has been pending before us for a long time and the TRAI as also the DoT are yet to take any final decision, a question arises as to whether this Tribunal has any jurisdiction to pass any order, as has been prayed for by the petitioner.

We have had the prima facie view of the learned counsel for the parties.

As prayed for by Mr. Ramji Srinivasan, the learned senior counsel appearing on behalf of the petitioner that he would like to address us on the question of maintainability of this petition as also on the jurisdiction of this Tribunal to grant reliefs as prayed for by the petitioner, we direct that the matter be listed for further hearing on 26.07.2010 irrespective of any part-heard.

We make it clear that no adjournment shall be granted on that date. The petitioner may bring on record the recommendations of TRAI as also the aforementioned letter dated 18.05.2010.”

9. Mr. Ramji Srinivasan, the learned Senior Counsel appearing on behalf of the petitioner and Mr. Mansoor Ali Shoket, the learned counsel, inter alia, would contend:-

- (i) Having regard to the policy decision contained in NTP, 1999, all the operators having been issued a technology neutral operation as also a level-playing field, the respondent no. 1, while allocating only 5 MHz spectrum to the petitioner, could not have allocated 10 or more than 10 MHz spectrum to the GSM operators.
- (ii) The recommendations of TRAI dated 11.5.2010, keeping in view the prayers made in this petition, could not cover the issues raised by the petitioner herein.
- (iii) The respondent No. 1 was bound to give effect to its policy decision and in any event, ought to have allocated spectrum to the petitioner in terms of the agreement and in view of the fact that the level playing field had not been maintained, this petition is maintainable.

- (iv) In view of the plea raised by the petitioner which has not been denied or disputed, the respondent no. 1 having allocated more spectrum to the private respondents herein, much more than what was needed by them, the first respondent should take steps for obtaining the spectrum back and/or levying additional charges from them.
- (v) The purported claim on the part of the respondents that the CDMA technology is more efficient and therefore requires less spectrum is not correct as TRAI itself in its recommendations dated 13.5.2005 clearly stated otherwise.
- (vi) In any view of the matter, the first respondent was bound to maintain parity in the matter of allocation of spectrum keeping in view its above objects. This Tribunal, having directed MTNL and BSNL to refund the excess spectrum, there is absolutely no reason as to why a similar direction should not be issued.
- (vii) The Respondent No. 1 committed a serious illegality in so far as it did not allocate spectrum for the third and fourth carriers in terms of the agreement and in any event, in terms of its policy decision, which had been taken subsequent thereto, namely, in the years 2006, 2007 and 2008, it had no jurisdiction to apply the new guidelines in the case of an existing licensee nor did it refuse to decide on the application filed by the petitioner as all pre-requisites therefor had been complied with.

10. Mr. Vikas Singh, the learned senior counsel appearing on behalf of the respondent, on the other hand, would submit

:-

- (a) The CDMA operators and GSM operators, cannot be treated on equal footing as the technology is different, efficiency is different and the policy is different.

- (b) The term 'technology neutrality' referred to in NTP 1999 would only mean that the operators were free to adopt any of the technologies available in the market and the same by itself would not mean that irrespective of the technology involved, they would be entitled to allocation of equal quantity of spectrum.
- (c) Bandhopadhyay Committee, which submitted its report in November, 2007, having been superseded by Subodh Kumar Committee, no relief can be granted to the petitioner relying on or on the basis thereof.
- (d) The matter relating to return of excess spectrum allegedly granted to the GSM operators being a part of the recommendations of TRAI dated 11.5.2010, this Tribunal cannot grant any relief to the petitioner as has been prayed for or otherwise.
- (e) The first respondent having changed its policy decision immediately prior to filing of the petition and/or during pendency thereof, and the petitioner having not submitted the VLR figures despite opportunities having been granted and having been called upon to do so by the respondent on several occasions, it was not entitled to allocation of spectrum in the third and fourth carrier.

11. Mr. Vaidyanathan, the learned senior counsel appearing on behalf of the GSM operators, urged :-

- (i) As the matter relating to allocation of spectrum involves a policy decision on the part of the respondent, this Tribunal cannot issue any direction which is akin to similar to issuance of a writ of in the nature of a mandamus and as the petitioner has failed to show existence of a legal right unto itself and a corresponding legal duty in the respondents, it is not entitled to any relief.
- (ii) In any event, the petitioners themselves, having contended in the earlier round of the litigations that the CDMA technology is four to five times more efficient than the GSM technology, is now estopped from raising

any other contention.

12. Mr. Meet Malhotra, the learned senior counsel appearing on behalf of the TRAI urged that no relief had been claimed against the Regulator and in any event no directions / Orders having been made/issued by TRAI, this petition is not maintainable against it.
13. The only question which arises for consideration in this petition is as to whether in view of subsequent events, this petition has become infructuous and/or whether this Tribunal's jurisdiction being limited, no relief can be granted in favour of the petitioner.

We may, at the outset, notice the reliefs prayed for by the petitioner:-

- “(a) Hold and Declare that in view of the Policy of the Government of India, as enshrined in the NTP’99 , as well as the principle of Technology Neutrality, the CDMA Operators, such as the Petitioners, are entitled to a Level Playing Field and equal treatment vis-à-vis the GSM Operators, consequent to the Migration to the Unified Access Service Licence (UASL) Regime w.e.f. November, 2003 in all respects, including the allocation of spectrum , a scarce National resource;*
- (b) Direct the Respondents to amend the Terms of Reference of the Committee constituted by them on 6/7.11.2007, or constitute such other Committee, so as to include revision of Spectrum Allocation Procedure and Quantum of Spectrum to CDMA Operators also on the principle of non-discrimination, parity of Level Playing Field;*
- (c) Direct the Respondents to secure return of all excess spectrum held by all such GSM operators beyond contracted spectrum and ensure future allocation of spectrum beyond contracted amounts in a transparent and non-discriminatory manner on the basis of a comprehensive Spectrum Policy, failing which, declare that the*

Petitioners are also entitled to the same allocation of spectrum upto 10+10 MHz and on same terms without requiring any upfront payment.

- (d) Hold and declare that the Petitioners are entitled to immediate allocation of Spectrum for their 3rd and 4th CDMA Carriers within their contracted Spectrum Allocation in all areas where the Petitioners have satisfied the Subscriber Number norms as per the Spectrum Allocation Guidelines / Office Order dated 1.12.2006;*
- (e) Direct the Respondent to submit the Report of the said Committee to this Hon'ble Tribunal and not to implement the same without prior approval by this Hon'ble Tribunal."*

14. It is beyond any doubt or dispute that the Central Government, while issuing NTP 1999, assured a level playing field as also its adherence to the principles of 'technology neutrality'.

'Technology neutrality' and 'level playing field', however, stand on different footings.

What is 'Technology Neutrality' has been explained by this Tribunal in Petition No. 286 of 2007 (Cellular Operators Association of India and Others v. Union of India and others) disposed of on 31.3.2007, to mean that any operator would have an option to adopt technology of its choice, stating:-

- (i) "The argument of the learned counsels for Petitioner is that what is important is whether there is a specific provision providing for allocation of dual spectrum rather than the lack of prohibition against doing so. We do not agree with this proposition. Even if we did, the very fact that clause 23.1 speaks of any digital*

technology being permitted so long as it is as per standards means that the licensee is entitled to provide its services in any technology including two or more technologies. It is a different matter that this issue was never closely examined till the matter was referred by the DOT to TRAI. The counsel for Petitioner stressed on the use of the word 'or' in clause 43.5 (i) to point out that only one of the technologies is permissible. The sentence reads as follows. " Initially a cumulative maximum of 4.4 MHz +4.4 MHz shall be allocated in the case of CDMA-based systems@200 KHz per carrier or 30 kHz per carrier on a maximum of 2.5 MHz +2.5 MHz shall be allocated in the case of CDMA-based systems @1.25 MHz per carrier, on case-by-case basis subject to availability." But a reading of the entire clause shows that it is meant for the initial allocation. In fact, the entire clause proceeds on the assumption that service providers would seek initial and additional spectrum in a given band. This does not mean that there is a prohibition on seeking spectrum in other bands. The licence is essentially a permission to provide Cellular services to the consumers. In what band it is provided is not really relevant. So long as technology is an approved technology, the service provider is free to provide such service. It is true that the assignment of spectrum is subject to its availability and also the guidelines that are prescribed from time to time. But this, per se, does not prohibit the use of dual technology.

- (ii) *The Recommendations in chapter 4 of the TRAI's Recommendations dated 28.8.2007 are equally significant. Para 4.6 states that "technological neutrality is being effectively pursued in terms of freedom to choose any technology by the licensee". Having said this, it goes on to state that "however, the specific mention of certain spectrum bands reveals the framework of licence as structured by the Department." Having analysed the various aspects, Para 4.16 of the Recommendations states that "the licensee is given the option of choosing technology of its own.*

- (iii) *The next question that is to be addressed is the Petitioners' contention that even assuming that technology neutrality and allocation of dual spectrum are to be permitted, the CDMA operators ought not to be given GSM spectrum of 4.4 MHz + 4.4 MHz but smaller quantities as are being given in the form of additional allocation to existing operators i.e. 1.8 MHz/1 MHz. We have considered the matter and find that the start up spectrum for GSM has always been 4.4 MHz +4.4 MHz. This is evidently an account of technical considerations and has its basis in the cell configuration.*
- (iv) *We now turn to the contention of the Petitioners that while TRAI had recommended levy of spectrum usage charges on combined spectrum, DOT unilaterally changed it to permit levy of spectrum usage charges separately for GSM and CDMA spectrum with the result that CDMA operators would be paying much lower spectrum usage charges. We have analysed the matter. GSM and CDMA are admittedly separate streams. They have their own architecture and consequently, DOT has prescribed separate subscriber linked criteria. It is therefore difficult to club both these streams for the purpose of charging the spectrum usage charges.*
- (v) *Technology, particularly in a sector like telecommunications, is forever evolving and the demand is always growing. Spectrum being a scarce resource has to be utilised most efficiently and the parameters of the efficiency also have to keep pace with the advances in technology. It would, therefore, be incorrect to assume or to argue that criteria once established will remain frozen. It is noteworthy that three Committees which went into the issue -- TRAI, TEC, and the DOT Spectrum Review Committee -- have all stated that the criteria need revision. In a situation such as this, it would be inappropriate to argue that the criteria laid down in March 2006 should be applied. There is also no evidence on record to indicate that the Petitioners, who have received the above letters from the DOT, have reminded the Government about allocation of*

spectrum. It is also true that the subscriber base of these petitioners has also increased and could be accommodated within the available spectrum.”

15. We have noticed heretofore that the concept of level playing field stands on a different footing. It, for all intent and purport, would have relevance not only in the context of Article 14 of the Constitution of India but also Article 19(1)(g) thereof. It has been so held by the Supreme Court of India in *Reliance Energy Ltd. and Another v. Maharashtra State Road Development Corporation Ltd* [2007(8)SCC1] in the following terms:-

*“36. We find merit in this civil appeal. Standards applied by courts in judicial review must be justified by constitutional principles which govern the proper exercise of public power in a democracy. Article 14 of the Constitution embodies the principle of “non-discrimination”. However, it is not a free-standing provision. It has to be read in conjunction with rights conferred by other articles like Article 21 of the Constitution. The said Article 21 refers to “right to life”. It includes “opportunity”. In our view, as held in the latest judgment of the Constitution Bench of nine Judges in *I.R. Coelho v. State of T.N.*, Articles 21/14 are the heart of the chapter on fundamental rights. They cover various aspects of life. “Level playing field” is an important concept while construing Article 19(1)(g) of the Constitution. It is this doctrine which is invoked by REL/HDEC in the present case. When Article 19(1)(g) confers fundamental right to carry on business to a company, it is entitled to invoke the said doctrine of “level playing field”. We may clarify that this doctrine is, however, subject to public interest. In the world of globalisation, competition is an important factor to be kept in mind. The doctrine of “level playing field” is an important doctrine which is embodied in Article 19(1)(g) of the Constitution. This is because the said doctrine provides space within which equally placed competitors are allowed to bid so as to subserve the larger public*

interest. “Globalisation”, in essence, is liberalisation of trade. Today India has dismantled licence raj. The economic reforms introduced after 1992 have brought in the concept of “globalisation”. Decisions or acts which result in unequal and discriminatory treatment, would violate the doctrine of “level playing field” embodied in Article 19(1)(g). Time has come, therefore, to say that Article 14 which refers to the principle of “equality” should not be read as a stand alone item but it should be read in conjunction with Article 21 which embodies several aspects of life. There is one more aspect which needs to be mentioned in the matter of implementation of the aforesaid doctrine of “level playing field”. According to Lord Goldsmith, commitment to the “rule of law” is the heart of parliamentary democracy. One of the important elements of the “rule of law” is legal certainty. Article 14 applies to government policies and if the policy or act of the Government, even in contractual matters, fails to satisfy the test of “reasonableness”, then such an act or decision would be unconstitutional.”

16. The concept of ‘Equality’ contained, inter alia, in Article 14 of the Constitution of India, would not, however, mean that unequals are to be treated equally. It is now well-settled that the concept of equality applies only in regard to the case where the persons required to be compared stand on equal footings. It is a positive concept. No equality can be claimed in illegality, and even if some directions have been issued which has its foundation thereon, the same cannot be followed. **(See Kuldeep Singh v. Govt of NCT [2006(5)SCC702] and State of UP v. Neeraj Avasthi [2006(1)SCC667] page 61 para 75).**
17. The question as to whether the CDMA operators and GSM operators stand on equal footings is essentially a question of fact which is required to be determined by the appropriate authority. Moreover, the respective stand taken by the parties hereto are distinct and different.

Whereas in the earlier round of litigation initiated by COAI in the matter of launch of CDMA technology culminating in COAI vs. Union of India 2003(3)SCC 186 the respondent took a categorical stand that the petitioner had a superior technology, to which the private respondents joined issues, TRAI opined:-

Technology Neutrality (TRAI Regulation 2.1.1 page 488 Vol.III page 482 – 487) Recommendations dated 13.5.2005) :

“As already discussed earlier, at this point of time the criterion of allocation of additional spectrum is linked to number of subscribers and is different for CDMA and GSM operators. The existing level of allocated spectrum, no. of existing subscribers, the availability of spectrum and licensing terms and conditions, etc. might have been kept in view while deciding these criteria. However, efforts should be made to gradually move in the direction wherein the spectrum allocation criterion is technology neutral. It is, therefore, recommended that the present spectrum allocation criterion may be reviewed such that while retaining the subscriber base approach, the quantum and steps for additional spectrum allocation are technology neutral. The revised spectrum allocation guidelines must keep the spectrum availability, efficiency of utilization and area of coordination in mind.”

18. We may, however, notice different stand taken by the parties therein.

The Petitioner itself, through its Industry Association (ABTO, now AUSPI) had filed a comparative analysis of CDMA Vs. GSM by Qualcomm with its Written Submissions before this Tribunal in 2003 which stated, inter alia, that CDMA spectrum has over five times the capacity of equal MHz of GSM spectrum. In the document attached to the Affidavit, it was averred that the **capacity of CDMA spectrum is 4.8 – 5.2 times greater than the Erland**

capacity of GSM. It was submitted that it was the claim of CDMA being a superior / more efficient technology that were used by the Petitioners / CDMA operators to effect a backdoor entry into mobile services.

However, the Cellular Operators Association of India stated :

“8. Whilst maintaining that a comparative analysis of the two technologies is not the context in which the reference has been made by the Government, we nevertheless strongly disagree with the various statements made in the Consultation Paper claiming that CDMA is a more efficient technology than GSM. We do not agree with this view as in any comparison, the efficiency or otherwise of any technology will depend on the basic assumptions and the specific situation taken into consideration.

12. We believe that it would be difficult, if not impossible for anybody to categorically conclude on such a globally controversial subject as to which technology is more efficient. We believe that it would be best to leave the decision to market forces to determine which technology delivers greater value to customers.”

19. The contention of the petitioner, therefore, itself was whether based on the Qualcomm Report or otherwise, operation-wise it is technologically more efficient from the utilization of spectrum point of view. If the jurisdictional fact in a case of this nature is required to be found by an authority which is an expert body, in our opinion, despite being an expert tribunal as at present advised, we cannot take that burden on ourselves in absence of any material, far less any cogent or reliable material having placed by the parties to establish their respective cases, one way or the other.

20. There cannot be any doubt or dispute that even the principles of Estoppel may be held to be applicable in a case of this nature, where the petitioner having obtained an order from the Supreme Court of India relying on or on the basis thereof, cannot now be permitted to turn around and contend otherwise, but we need not go into the said question at

present, in as much as the competent authority, namely, the first respondent itself, has taken a firm stand before us, that CDMA operators and GSM operators do not stand on equal footings from the point of view of superior efficiency.

21. Whatever be the level of efficiency so far as CDMA Technology is concerned, which, however, indisputably, is said to be superior to the GSM technology. We, are of the opinion that the petitioner in this Petition has not been able to establish that it was entitled to be treated equally so as to attract the 'Equality Principle' contained in Art. 14 of the Constitution of India or in terms of the doctrine of 'level playing field' or otherwise. We, however, intend to make it clear that if any occasion arises therefor, parties would be entitled to raise this question.

The petitioner in paragraphs 84 and 87 stated as under:-

"84. From the above record it is evident that there was no criteria for allocation of spectrum from 4.4+4.4 MHz to 6.2+6.2 MHz for the first and second cellular operators. The only criteria prescribed based on subscriber numbers was in respect of additional spectrum allocation from 6.2+6.2 MHz to 8+8 MHz issued vide order dated 1.2.2002. In the licence agreements signed by the GSM operators with Government there is no provision for allocation of spectrum beyond 6.2+6.2 MHz. The spectrum allocation guidelines based on subscriber numbers were issued for the first time for spectrum from 4.4+4.4 MHz to 6.2+6.2 MHz vide order dated 29.3.2006. For the 3rd and 4th Cellular licenses the initial allocation of spectrum itself was 6.2+6.2 MHz. (The 3rd operator was the government operator (BSNL/MTNL) and the 4th operator was a private operator in all the telecom service areas).

From the above it is clear that at all points of time the licenses issued to the GSM operators had mandated a maximum allocation of 6.2+6.2 MHz only and nothing beyond the said allocation for spectrum. However, the Respondents issued spectrum much beyond 6.2+6.2 MHz without any transparent spectrum policy of Government and without any reasonable criteria based on detailed scientific studies with respect to

technological developments and without any extra payment to the GSM operators most arbitrarily. It is submitted that spectrum beyond 4.4 MHz was allocated to the GSM operators much before the criteria laid down for the same on 29.3.2006. The spectrum allocation upto 10+10 MHz was made to different GSM operators without there being any criteria or guidelines for the same. Such allocation of additional spectrum beyond the licence mandated spectrum is illegal, arbitrary and in violation of the license conditions.

87. *It is, therefore, imperative that the DoT be directed to take steps forthwith to amend the Terms of Reference to the Spectrum Committee so as to require the Committee to also consider and give effect to the avowed Policy of the Government of India, as enshrined in NTP, 1999 of Technology Neutrality and Level Playing Field between similarly situated Service Providers, and also the various Guidelines of the Government of India, including the UASL Guidelines, as well as the various Recommendations of the TRAI, including that of May, 2005 requiring parity between GSM and CDMA Operators on method of allocation and QUANTUM of Spectrum between the two as more fully set out herein, and announced a comprehensive, non-discriminatory Spectrum Policy.”*

22. Our attention has also been drawn, as indicated heretobefore, to para 66 of the petition, wherein, also discrimination has been alleged.
23. Spectrum admittedly is a scarce national resource. Allocation of spectrum, therefore, must be made keeping in view not only the scarcity of the raw material required for operation by the operators but also their own requirements of others like ‘defence’. It cannot, therefore, be said that allocation in the desired quality thereof must be made by the first respondent irrespective of existence of any legal right. It has not been shown that the policy decision adopted by the first respondent, is either unconstitutional or contrary to the National Policy. It has also not been shown that the said policy decision had been adopted without taking into consideration all relevant factors and on irrelevant and extraneous consideration not germane therefor.

24. The petitioner has failed to produce any material to show that the policy decision adopted by the respondent is arbitrary or purely discriminatory in nature. The jurisdiction of the Tribunal in this regard is limited. While acknowledging that a Court of Law is entitled to consider the validity, legality or the constitutionality of policy decision adopted by a competent authority and the same may be interfered with in an appropriate case but there cannot be any doubt or dispute whatsoever, that the court's jurisdiction in this behalf is limited. The consideration which would weigh with the Court in interfering with the policy decisions must be premised on constitutional or the legal scheme.

25. Mr. Vaidyanathan has placed before us a few decisions which we may notice :-

In *State of Orissa v. Prasana Kumar Sahoo*, (2007) 15 SCC 129, it was stated at page 135 :

"20. *It may be that some other persons similarly situated have been appointed. But Article 14 as is well known contains a positive concept. A writ of mandamus can be issued by the High Court only when there exists a legal right in the writ petitioner and corresponding legal obligation in the State. Only because an illegality has been committed, the same cannot be directed to be perpetuated by a court of law."*

Yet again in *Hindi Hitrakshak Samiti v. Union of India*, (1990) 2 SCC 352, at page 355 the law has been laid down in the following terms :

"7. *It is difficult to contend that the actions flowing from non-acceptance of any policy perspective, amount to direct and causal violation of the fundamental right of the citizens guaranteed under the Constitution of India. Court is not the forum to adjudicate upon the questions of policy unless such a policy is the direct mandate of the Constitution.*

8. *It is well settled that judicial review, in order to enforce a fundamental right, is permissible of administrative, legislative and governmental action or non-action, and that the rights of the citizens of this*

country are to be judged by the judiciary and judicial forums and not by the administrators or executives. But it is equally true that citizens of India are not to be governed by the judges or judiciary. If the governance is illegal or violative of rights and obligations, other questions may arise but whether, as mentioned hereinbefore, it has to be a policy decision by the government or the authority and thereafter enforcement of that policy, the court should not be, and we hope would not be an appropriate forum for decision.

9. *In the background of the facts and the circumstances of the case and the nature of controversy that has arisen, we are of the opinion that proper and appropriate remedy in a situation where enforcement of the right depends upon the acceptance of a policy of examination for admission in any particular language to the institution on that basis, is a matter of policy. Whether in particular facts and the circumstances of this case admission to medical or dental institution by conducting examination in Hindi or other regional languages would be appropriate or desirable or not, is a matter on which debate is possible and the acceptance of one view over the other involves a policy decision. It cannot be appropriately dealt with by this Court, and order under Article 32 of the Constitution in those circumstances would not be an appropriate remedy."*

We may also refer to *Meerut Development Authority v. Assn. of Management Studies*, (2009) 6 SCC 171, at page 191 wherein it was opined :

"67. *The expression "public interest" if it is employed in a given statute is to be understood and interpreted in the light of the entire scheme, purpose and object of the enactment but in the absence of the same it cannot be pressed into service to confer any right upon a person who otherwise does not possess any such right in law. In what manner has this Court to arrive at any conclusion that MDA's decision in calling for fresh tender from the interested persons for making the land available for residential use is not in public interest? Repeated attempts were made before us to say that providing the land in question for educational use will be more appropriate and subserve public interest than making it available*

for residential use. Public interest floats in a vast, deep ocean of ideas, and "imagined experiences". It would seem to us wise for the courts not to venture into this unchartered minefield. We are not exercising our will. We cannot impose our own values on society. Any such effort would mean to make value judgments.

68. *The impugned judgment illustrates "the danger of judges wrongly though unconsciously substituting their own views for the views of the decision-maker who alone is charged and authorised by law to exercise discretion". With respect, we find that the High Court virtually converted the judicial review proceedings into an inquisitorial one. The way proceedings went on before the High Court suggest as if the High Court was virtually making an inquiry into the conduct and affairs of MDA in a case where the Court was merely concerned with the decision-making process of MDA in not accepting the offer/tender of AMS in respect of the disputed plot on the ground that the offer so made was less than that of the reserved price fixed by MDA."*

In another case viz. *M.P. Rural Agriculture Extension Officers Assn. v. State of M.P.,(2004) 4 SCC 646*, at page 653, whereupon reliance has been placed, it was stated :

"13. *Pay Commissions are constituted for evaluating the duties and functions of the employees and the nature thereof vis-à-vis the educational qualifications required therefor. Although the Pay Commission is considered to be an expert body, the State in its wisdom and in furtherance of a valid policy decision may or may not accept its recommendations. The State in exercise of its jurisdiction conferred upon it by the proviso appended to Article 309 of the Constitution of India can unilaterally make or amend the conditions of service of its employees by framing appropriate rules. The State in terms of the said provision is also entitled to give a retrospective effect thereto. A policy decision had been adopted by the State that the post of Extension Officers shall be filled up only by graduates. Such a policy decision ex facie cannot be termed to be arbitrary or irrational attracting the wrath of Article 14 of the Constitution of India. A dying scale was provided by the State for the non-graduates. Fresh recruitments were to be made only from amongst the persons who held the requisite educational qualification. With a view to avoid any discrimination between the new recruits and the serving employees who possessed the same qualification, the State cannot be said to have acted illegally in granting a higher scale of pay also for the existing degree-holders."*

We are, however, not oblivious of various decisions of the Supreme Court of India where the policy decision has been interfered with.

26. Mr. Mansoor Ali Shoket, however, has drawn our attention to a few decisions of the Supreme Court of India. We may notice the same.

In *Cellular Operators Assn. of India v. Union of India*, (2003) 3 SCC 186 the Supreme Court of India emphasized the requirements of level playing field. It opined that this Tribunal has wide jurisdiction.

It was observed :

"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, 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 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 record, after hearing the counsel for the parties concerned."

In *Union of India v. Tata Teleservices (Maharashtra) Ltd.*, (2007) 7 SCC 517, at page 522 with regard to the jurisdiction of the Tribunal, it has been held as under :

"The section indicates that TDSAT has been constituted to adjudicate on any dispute between a licensor and a licensee or between two or more service providers. Though it also includes adjudication on a dispute between a service provider and a group of consumers, it excludes matters coming within the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under the Monopolies and Restrictive Trade Practices Act, 1969, the complaint of an individual consumer that is maintainable before a Consumer Disputes Redressal

Forum and a dispute between a telegraph authority and any person referred to in Section 7-B of the Telegraph Act, 1885.

8. Section 14-A of the Act provides that:

“14-A. Application for settlement of disputes and appeals to Appellate Tribunal.—(1) The Central Government or a State Government or a local authority or any person may make an application to the Appellate Tribunal for adjudication of any dispute referred to in Clause (a) of Section 14.”

Section 14-A, therefore, contemplates not only the filing of a claim before TDSAT by a licensee or a consumer, but also by the Central Government or a State Government which could be a licensor or a service provider.”

There is no quarrel with the aforementioned propositions of law. This Tribunal is bound by the same. We, however, are of the opinion that, the said decisions are not applicable to the facts of the present case having regard to the nature of the controversy involved herein.

27. It may also not be held that by taking an ‘off-hand attitude’ we are laying down a law that any policy decision is beyond the purview of the judicial review. It is not. But, as noticed heretofore, in this case, no such case has been made out.

28. We, therefore, are of the opinion, that prayer (a) cannot be granted.

So far as the prayer (b) is concerned, a reference to the report of the Committee being dated 6th/7th November, 2007, indisputably, has been superseded by the report of the another Committee and furthermore was a subject matter of reference by the first respondent itself to TRAI. This Tribunal, having regard to the statutory scheme contained in Section 11 of the Telecom Regulatory Authority of India Act, 1997 (the Act), is of the opinion that the matter relating to recommendations involving spectrum allocation procedure and quantum to the CDMA operators vis-à-vis the GSM operators lie within the province of the TRAI only. It, having made recommendations as noticed

heretofore, on or about 11.5.2010, which is pending consideration before the first respondent, no other or further Committee, even assuming, any direction could be issued in that behalf, can be directed to be appointed.

29. We may now consider prayer '(c)' of the petition.

Mr. Srinivasan, in our opinion, is not correct in contending that the recommendations of TRAI do not cover the subject matter of this Petition. TRAI has specifically done so.

We may for the said purpose notice the following:

“1.62 *As per ITU, both 800 and 900 MHz have been identified as IMT bands. As discussed in the consultation paper, there is a growing interest in deploying UMTS in the 800 and 900 MHz frequency bands in order to reduce the cost of coverage for mobile communications services, especially in rural areas. The 900 MHz band is very valuable for providing 3G and LTE services. Being a sub 1GHz band, the 900 MHz band has the same advantages over other bands as have been mentioned earlier for the 700 MHz band.*

1.70 *Regarding the 800 MHz band, spectrum is not even available for allocation to the operators as per their contractual requirement. Apart from the fulfillment of contractual obligations, additional spectrum is required for the CDMA operators for the EVDO services. The Authority is also recommending refarming of spectrum in the 450 and 1900 MHz band. In case sufficient spectrum is refarmed in those bands, then the Authority would also like to assign 800 MHz band for future technologies.*

1.71 *The next question is the timing of refarming. The Authority is of the opinion that as the operators were given the spectrum as per the terms and conditions of the license and subsequent administrative orders of the Government, to take it back at this stage may not be legally tenable. The first two licenses are due for renewal in 2014/2015, which would be the time the 900 MHz/800 MHz bands can be refarmed.”*

30. The jurisdiction/power of the Central Government in this behalf is a statutory one. It may, having regard to the provisions contained Sec. 11 of the 1997 Act, may accept or reject the recommendations of TRAI. It, however, before

doing so, should comply with the statutory provisions contained in the 5th Proviso appended to Sub-section (1)(b) of Sec.11 of the Act).

We may also place on record the fact that Reliance Communications Ltd. has withdrawn a similar petition recently.

31. The first respondent has been awaiting the further recommendations of TRAI in terms of its letter dated 18.5.2010. The matter, indisputably, thus, is pending consideration before the Government of India.
32. Mr. Ramji Srinivasan has placed strong reliance upon two decisions of this Tribunal being Petition No. 286 of 2007 disposed of on 31.3.2009 and the Orders passed in Petition No. 116 of 2007 being dated 5.2.2009 and 15.4.2009.

The Tribunal in Petition No. 286 of 2007 directed as under:-

“On the issue of subscriber linked criteria, we hold that the Petitioners’ contention that the subscriber linked criteria were designed to adversely affect the interests of the existing GSM operators does not merit consideration. We hold that in arriving at the subscriber linked criteria, TRAI failed to observe the principle of transparency. It is expected of institutions like TRAI to follow a uniform procedure while making its Recommendations. It cannot choose the procedure to suit its convenience. We hold that TRAI was wrong in arriving at revised subscriber norms based on a theoretical simulation and that too, without an opportunity being given to all stakeholders to debate the issue. TRAI ought to have been more careful, painstaking and transparent in attempting this exercise. However, an analysis of the actual subscriber of different service providers in the Metro Circles reveals that the figures are close to the criteria laid down by TRAI. We hold that DOT, given the background of the Recommendations of TRAI, TEC and the DOT Spectrum Review Committee was right in adopting the criteria recommended by TRAI as an interim measure. We however direct the DOT to appropriately revise these figures within one month of the receipt of the report of the Committee constituted by it in June 2008, and apply the same to all the allotments that were made in pursuance of the 17.1.2008 order.”

33. What has, therefore, been directed, is a matter which is required to be done by the DOT with a prospective effect. This Tribunal did not issue any direction either to cancel any policy decision made or directing the private operators to return the excess spectrum.
34. So far as the Orders dated 5.2.2009 and 15.4.2009 are concerned, passed in Petition No. 116 of 2007 are concerned, we may also notice the same.

Order dated 5.2.2009

“Heard the counsels for both the parties. It appears to us that the following will be the appropriate course of action:

1. *The petitioners who were earlier basic operators and who have migrated to UASL regime, should be treated on par with the cellular operators from the date on which they migrated to UASL.*
2. *In so far as the date of charging for Microwave spectrum is concerned, the following would be the arrangement:*
 - a) *For the period prior to 31.3.05, it will be from the date of operationalization, and not from the date of earmarking.*
 - b) *For the period 1.4.05 till 31.1.09, it will be from the date of expiry of four months from the date of SACFA clearance.*
 - c) *From 1.2.09, it will be two month from the date of SACFA clearance provided the party concerned has made a proper application within two months from the date of earmarking. It is further clarified that in the event the party does not make a proper application within two months from the date of earmarking, it will be charged for the earmarked spectrum from the date of earmarking.*

It is also further clarified in the event a party which has been earmarked spectrum at any date prior to the date of this order does not apply for SACFA clearance within two months from the date of this order, it will be charged from the date of earmarking irrespective of the above suggestions.

It shall be incumbent upon the WPC Wing of the DoT to inform the applicant within 15 days of the date of application if the said application is not in order, failing which, it will be deemed to be a valid application. If the SACFA clearance is, for any reason declined, the party would be free to apply afresh for SACFA clearance in which case the date of charging will be on expiry of two months from the date of SACFA clearance.

Counsel for respondents submits that he will seek instructions on the above proposed arrangement and revert within four weeks. Accordingly, the matter is adjourned to 25.3.2009 for hearing.”

Order dated 15.4.2009

“The order dated 5.2.2009 was dictated in presence of counsel for the parties. That was proposed to be the final order in this case. Counsel for the respondent requested for time to seek instructions. On his request, the matter was adjourned to 25.3.09. On 25.3.09 again request was made on behalf of the respondent for adjournment. Nobody present on behalf of the respondent was in a position to assist the Tribunal. Again on request of respondent, the matter was finally adjourned for today. It was made clear that no further adjournment will be granted. Today. Mr. K. Singhal, Advocate is present on behalf of Mr. Vineet Malhotra, Advocate. He wants to make some submissions. However, Mr. Munesh Kumar, the departmental representative who is present, states that he is not aware of what Mr. Singhal wants to submit before the Tribunal and, therefore, he does not want Mr. Singhal to make any submissions. In view of this Mr. Singhal does not want to say anything further.

In these circumstances, we make the order proposed as per the proceedings dated 5.2.2009 absolute subject to the following clarification:

(a) Learned counsel for the petitioners pointed out that sometimes the spectrum is allocated during the quarter and the liability is raised for the entire quarter. He seeks a direction that spectrum should be charged on pro rata basis depending on the date of allocation. We direct that where spectrum is allotted in the first half of a quarter, the allottee shall be liable to pay for the entire quarter. If, however, spectrum is allotted during the second half of a quarter, the liability will be pro rata.

(b) Spectrum for microwave shall include LMDS.

The petition stands disposed of.”

35. Apart from the fact that the matter is pending before the Supreme Court of India, we fail to persuade ourselves to agree with the submissions made by Mr. Srinivasan, that any case has been made out for issuance of such a direction. The said orders have no application to the fact of the present case.
36. We, therefore, are of the opinion that the petitioner has also not made out any case for obtaining any relief as prayed for in Clause 'C'.
37. Let us now consider prayer(d) of the petition. It is contended that in terms of the WPC order dated 1.12.2004 and 1.12.2006 the respondent in an arbitrary manner withheld the allocation of additional spectrum for months together and in stage change the criteria on various occasion. According to the petitioner the respondent having laid down the policy could not have adopted a new policy and/or amend the old policy with retrospective effect which had prejudiced the petitioner. The orders of the WPC being dated 1.12.2004 and 1.12.2006 are not in dispute. The policy decision, although at that point of time was that on fulfilling the certain criteria the further allocation shall be made for third and fourth carrier which is also not in dispute.

The policy decision in respect of allocation of higher spectrum by way of a third and fourth carrier had been noticed by us. The issue involves some disputed question of fact. We may, however, notice that although the matter relating to the change of criteria from HLR to VLR was made in 2006 itself, the petitioner in this petition did not question the legality of the said circular and/or the policy decision contained therein. It submitted to the jurisdiction of the first respondent in so far as it filed a fresh application. The only grievance raised by the petitioner is that its application has been kept pending. The first respondent, however, in its reply, taken a stand that the petitioner did not fulfill the criterion laid down therefor. According to it, it had been asking the petitioner to supply the VLR as

per the norm laid down therein but it failed and/or neglected to do so. The contention of the petitioner, on the other hand, is that all requirements had been complied with.

Mr. Mansoor Ali Shoket had drawn our attention not only to para 66 but also submitted that details have been furnished in April and in June, 2006 itself. Our attention in this behalf has been drawn to the following statement:-

“It is denied that no VLR and traffic data are submitted by the Petitioners for allotment of additional spectrum and it is reiterated that all the VLR data was filed before the Respondents along with application of the Petitioners for third and fourth carrier and the same is available with them.”

38. Our attention was also drawn to the letters dated 19/20.2.2007 and 21.3.2007 in respect of the Orissa Circle and Kolkata Circle respectively which are at page 1347 and 1348 (Vol.6), to contend that no reply thereto was given.

It is true that no reply to the said letters had been brought to our notice. We may, however, notice that the respondent in its reply stated as under:-

“40. In response to para 40, it is submitted that as earlier indicated in the preliminary paragraphs all the telecom service providers including the Petitioner have been requested to provide the latest VLR and traffic data vide this Ministry’s letter dated 27.11.07 to ascertain the eligibility for allotment of spectrum. Subsequently, reminders have been issued on 3.1.08, 10.1.08 and 6.2.08. The requisite information is still awaited from the Petitioner. This information is necessary so that mere statistical subscribers without actual usage by such subscribers are not made the basis for claims of spectrum allotment.”

39. The petitioner in its rejoinder stated as under :-

“It is denied that no VLR and traffic data are submitted by the Petitioners for allotment of additional spectrum and it is reiterated that all the VLR data was filed before the Respondents along with application of the Petitioners for third and fourth carrier and the same is available with them.”

40. Mr. Vikas Singh, however, would submit that although the petitioners have furnished VLR, the same did not conform to the requirements, namely, the details in terms of 40 m Erlang (One Erlang of traffic means a call of one hour's talking time has been made i.e, 1 call X holding time of one hour). The original records have been produced. In a letter dated 28.3.2007, (we although ordinarily would not take on record such additional material, but in view of the fact that the petitioner had not made any specific averment in the petition, but had merely annexed the two letters, amongst a large number of documents contained in Annexure-49, permitted the respondent to do so as an exceptional measure), it was stated as under :-

“I am directed to refer to your letter No. TTSL/CDMA/Orissa/Freq/300 dated 19/20 February, 2007 regarding the assignment of 3rd CDMA carrier in Orissa Telecom Service Area and to state that according to this Ministry's Order No. J-14025/200(17)/2004-NT(CDMA) dated 1.12.2006 the assignment of 3rd CDMA carrier can be made only when the active subscriber base of 1.5 lakh along with peak traffic averaged over a month (for a minimum of 40m Erlangs per subscriber) in the Visitor Locator Register (VLR) have been achieved by an operator for category 'C' telecom service area. Orissa falls in category 'C' telecom service. The information provided by you the peak traffic average over a month in the Visitor Locator Register (VLR) is less than 40mE/Subscriber, but as per this Ministry's order No. J-14025/200(17)/2004-NT(CDMA) dated 1.12.2006, it should be 40mE/Subscriber. You are requested to clarify the same and the complete information in the enclosed proforma after duly authentication may be submitted to this Ministry.”

It, therefore, appears to us that the petitioner has not complied with the requests made by the DOT to furnish the requisite details.

41. Prayer (e) made in the Petition also does not survive keeping in view our opinion rendered in regard to the prayer (b) of the Petition.

42. We would, however, despite our findings, request the first respondent to consider the applications filed by the petitioner herein in regard to the allocation of spectrum keeping in terms its own policy decision and other relevant factors, subject of course, to the petitioner's fulfilling the conditions precedent therefor, for the 3rd and 4th carrier and in accordance with law and in the event, the petitioner satisfies it that all its directions have been complied with.

43. This petition is, therefore, dismissed.

However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J
(S.B. Sinha)
Chairperson

.....
(G. D. Gaiha)
Member

.....
(P.K. Rastogi)
Member

HKC/