

Petition No.521 of 2011

(M.A. No. 9 of 2012)

Aircel Cellular Ltd. & Anr. ... Petitioners

Vs.

Union of India (DoT) ... Respondent

Petition No.522 of 2011

(M.A.No.10 of 2012)

Tata Teleservices Limited & Anr. ... Petitioners

Vs.

Union of India (DoT) ... Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON
HON'BLE MR. P.K.RASTOGI, MEMBER

For Petitioners : Dr. Abhishek Manu Singhvi, Senior Advocate
in P.No.518/11 Mr. C.S.Vaidyanathan, Senior Advocate
Mr. Manjul Bajpai, Advocate
Mr. Sanjeeb Panigrahi, Advocate

For Petitioners Dr. Abhishek Manu Singhvi, Senior Advocate
in P.No.519/11 Mr. Gopal Jain, Advocate
Mr. Kaushik Mishra, Advocate
Mr. Ankur Sood, Advocate

For Petitioner Mr. S. Ganesh, Senior Advocate
in P.No.520/11 Mr. Gopal Jain, Advocate
Mr. Kaushik Mishra, Advocate
Mr. Ankur Sood, Advocate

For Petitioner
in P.No.521/11

Mr. Meet Malhotra, Senior Advocate
Mr. Gopal Jain, Advocate
Mr. Kaushik Mishra, Advocate
Mr. Ankur Sood, Advocate

For Petitioners
in P.No.522/11

Mr. C.S. Vaidyanathan, Senior Advocate
Mr. Ramji Srinivasan, Senior Advocate
Mr. Manjul Bajpai, Advocate

For Respondent UoI (DoT)

: Mr. A.S. Chandhiok, ASG
Mrs. Maneesha Dhir, Advocate
Mr. K.P.S. Kohli, Advocate
Mr. Abhishek Kumar, Advocate

ORDER

Respondent DoT has filed these applications raising questions of lack of jurisdiction of this Tribunal to adjudicate any dispute between the parties hereto contending that the petitioners having not been granted 3G licences and, thus, being incapable of rendering 3G services, could not have entered into any agreement inter-se to render the same; particularly in view of the prayers made by them for a declaration that they are permitted to enter into ICR arrangement for providing all kinds of services as provided in Clause 2.2 of the UAS licence including 3G service to their subscribers through ICR/Roaming arrangement whether intra circle or inter circle.

2. The crux of the matter is the validity of an order passed by DoT dated 23.12.2011 whereby and whereunder the petitioners were directed to stop providing 3G services in all such service areas where they had been providing services under intra service roaming arrangement, although they hold only 2G licence. They were also asked to confirm stoppage of such services by 1500 hrs. of 24.12.2011.

3. These petitions were filed on 23.12.2011. We heard learned counsel for the parties at great length on the issue of interim order, as has been prayed for by the petitioners.

4. This Tribunal, by an order dated 24.12.2011 inter-alia on the premise that the Union of India is required to file a short reply, posted the matter on 03.01.2012 for further hearing permitting it to file such a reply within a week.

5. These Miscellaneous Applications have been filed on 06.01.2012 questioning the jurisdiction of this Tribunal and praying inter-alia for the following reliefs :-

“(a) Dismiss the captioned petition with costs;

(b) In any event, pending consideration by Hon’ble Delhi High Court in Writ Petition (Civil) No. 7189/2011 – Yakesh Anand Vs. Union of India and Others and Writ Petition (Civil) No. 8289 of 2011 – Sanchar Nigam Executives Association (India) Vs. Union of India and others.”

6. Before, however entering into the merit of these applications, we may notice basic facts of the matter.

7. Admittedly, the petitioners hereto are holders of licences.

Pursuant to a notice inviting applications, they participated in the auction held for grant of 3G spectrum. In some of the circles, some of these licensees became successful bidders in the auction of 3G spectrum and others did not. It is also not in dispute that before the said auction was held, probable questions and answers thereto were formulated and answered.

8. The petitioners admittedly have entered into agreements inter-se, whereby and whereunder the existing licensees who either did not bid or did

not become successful in the 3G auction, could render 3G services in the areas/circles with the other party thereto who were successful bidders in respect of 3G spectrum.

9. The impugned order dated 23.12.2011 was, therefore, passed keeping in view the said agreements/arrangements entered into by and between the petitioners inter-se, stating :-

“It has been brought to the notice of the licensor that you are providing services in certain service areas to your customers which are otherwise presently available by virtue of 3G spectrum in 2.1 GHz band only and which cannot be provided with the spectrum Allocated (in the form of carrier of 200 KHz each) to you in the 900/1800 MHz bands under the provisions of CMTS/UAS licenses granted to you, through the above mentioned intra service area roaming arrangements. This has been further corroborated by your communications in which you have informed DoT about the above mentioned Intra Service Area roaming arrangements for the purposes of meeting the security requirements and various other your communications in the matter.

2. *On examination of your various communications in the matter vis-a-vis the terms and conditions of CMTS/UAS licence, terms and conditions of the NIA for auction of 3G and BWA spectrum alongwith queries & responses issued in this regard and the amendment of license for right to use of 3G spectrum issued to the successful bidders, it has been concluded that provision of the services by you*

which are presently available by virtue of 3G spectrum in 2.1 GHz band only, to your customers through the above mentioned intra service area roaming arrangements is not permissible.”

10. Petitioners, in their respective petitions inter-alia, referring to various questions and answers issued by the respondent, contend that in terms of the UAS licence, the licensees were entitled to render 3G services also in an area where they hold the 2G licence, questioning the validity of the said order.

11. In these applications, the respondent would, however, contend that keeping in view the nature of the reliefs prayed for by the petitioners as also the fact that they, being not 3G licensees, cannot be permitted to invoke the jurisdiction of this Tribunal under Section 14(1)(a)(i) and (ii) of the Telecom Regulatory Authority of India Act, 1997 ('The Act').

In support of the said application, Mr. Chandhiok, learned Additional Solicitor General, appearing on behalf of the applicants inter-alia, would urge :-

- (i) Licensee within the meaning of Section 14 of the said Act would mean a licensee, who is authorised to render 3G and not 2G services;

- (ii) The licensees by way of these petitions or otherwise could not have questioned the validity of the licence agreements nor by reason thereof can be permitted to indirectly ask the licensor to grant 3G licences in their favour;
- (iii) The petitioners, in any event, cannot be permitted to approach this Tribunal for issuance of a direction to alter the conditions of licence or otherwise;
- (iv) Having regard to the fact that the petitioners admittedly are not 3G licensees, this Tribunal will have no jurisdiction.

12. Dr. A. M. Singhvi, Mr. C.S. Vaidyanathan, Mr. Meet Malhotra and Mr. Gopal Jain appearing on behalf of the petitioners, on the other hand, urged :-

- (i) This Tribunal, being an expert Tribunal, has the requisite jurisdiction to decide all disputes between the licensor and the licensee;
- (ii) Interpretation of the conditions of licence agreement would, thus, also fall within the purview of Section 14 (1) (a) of the Act;
- (iii) Even in terms of the preamble of the Act, this Tribunal having been constituted to adjudicate not only disputes

between a licensor and a licensee but also to protect the interest of the service providers and the consumers; the petitioner could not invoke the jurisdiction of any other court.

- (iv) If it is held that these petitions are not maintainable, the petitioners for all intent and purport would become remediless, as a petition under Article 226 or 32 of the Constitution of India would not be maintainable in respect of the issue of validity or otherwise of the order of the licensor dated 23.12.2011.
- (v) It is fallacious to contend, keeping in view the nature of the terms of UAS Licence, that the holder of 2G spectrum cannot render 3G services as only one category of licence is contemplated, whereby and whereunder the licensees are entitled to render all services.

13. The question is as to whether the nature of the license and/or alleged violation of the conditions thereof by the licensees can be adjudicated upon by this Tribunal alone and no other body or forum;

14. We may at the outset notice the prayers made in two of these petitions :-

“Petition No.518/2011

(i) *Declare/ hold that the Petitioners are permitted, both intra circle and inter circle, ICR arrangement for provision of all kinds of services as provided in clause 2.2 of the UAS License including 3G services to its subscribers through ICR/ roaming arrangements, in all areas where Petitioners have roaming arrangements irrespective of nature of Spectrum;*

(ii) *Injunct/ Restrain DoT and Term Cells from acting in any manner contrary to or in breach of the terms of the License Agreements, which permit and allow, both intra-circle and inter-circle roaming arrangements between the licensees, in all areas where Petitioners have roaming arrangements irrespective of nature of Spectrum;*

(iii) *Direct DoT/ TERM Cells/ Respondents not to initiate, take or pursue any adverse steps/ proceedings against the Petitioners with respect to the Petitioners’ ICR arrangements for provision of 3G services, either as steps pursuant to DoT’s impugned order dated 23.12.2011 or otherwise.”*

“Petition No.519/2011

(i) *Set aside and quash the impugned communication issued by the DoT;*

(ii) *Restrain the DoT and the Term Cells from acting in a manner contrary to or in breach of the terms of the License Agreement, which permit and allow, both intra-circle and*

inter-circle, roaming arrangements between the licensees, in all areas where Petitioners having roaming arrangements between the licensees, irrespective of nature of Spectrum;

(iii) Grant stay of the impugned communication issued by the DoT;”

15. It is one thing to say that at the trial, the petitioners may be held to be not entitled to any relief, but it is another thing to say that they are not entitled to any hearing at all.

16. The question of maintainability of these petitions vis-à-vis the jurisdictional question, in our opinion, must be considered having regard to the subject matter of dispute. If, on consideration of the pleas taken by the parties and/or evidences adduced by them at the trial, it is found that this Tribunal cannot grant any relief, the same itself cannot be a ground to hold at this stage that this Tribunal has no jurisdiction to adjudicate on the questions raised.

17. It is also not a case where the principles analogous to Order VII Rule 11 of the Code of Civil Procedure (the CPC) can be resorted to.

18. In effect and substance, the submission raised by the learned Additional Solicitor General comes within the purview of Order XIV Rule 2 of the CPC. Respondent has not filed any reply. The jurisdictional facts have not yet been raised; issue of jurisdiction is yet to be framed.

The provisions of the Act keeping in view the purpose and object for which this Tribunal has been constituted should receive liberal construction.

The jurisdiction of the Civil Court stands excluded in terms of Section 15 of the Act.

19. We may notice that the Supreme Court of India in Cellular Operators Association of India v. Union of India, (2003) 3 SCC 186, opined as under:-

“27. TDSAT was required to exercise its jurisdiction in terms of Section 14-A of the Act. TDSAT itself is an expert body and its jurisdiction is wide having regard to sub-section (7) of Section 14-A 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 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.

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29. *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 and C.F. Forsyth, p. 260.) Only when a question of law or a 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.”*

The Supreme Court of India yet again in *Union of India v. Tata Teleservices (Maharashtra) Ltd.*, (2007) 7 SCC Page 517, while considering the question as to whether a counter claim on behalf of the Union of India would be maintainable against a bidder of a license, where no licence had been or could be granted, stated the law as under:-

“20. *In the case on hand, the notice inviting tender defined a “licensee” as a registered Indian company that will be awarded licence for providing the service. Now, pursuant to that invitation, the predecessor of the respondent submitted its tender and the appellant accepted it. A letter of intent was also issued. The respondent accepted and started negotiating for certain modifications, which apparently the appellant was willing to consider. But ultimately, the contract did not come into being. The*

licence was not actually granted. It is the case of the appellant that the appellant had suffered considerable loss because of the respondent walking out of the obligation undertaken by acceptance of the letter of intent.

21. *According to the learned Additional Solicitor General appearing for the appellant, such a dispute would also come within the purview of Section 14 of the Act going by the definition of licensee and the meaning given to it in the notice inviting tenders. The argument of the learned Senior Counsel on behalf of the respondent is that the expressions “licensor” and “licensee” are defined in the Act and the respondent had not become a licensee and the appellant had not become a licensor since the agreement was never entered into between the parties for providing telecom services in the Karnataka Telecom Circle and the attempt to rope in an intending licensee to whom a letter of intent has been issued or the entering into a contract is proposed, cannot be countenanced since the respondent has not become a licensee within the meaning of the Act and consequently this was not a dispute that came within the purview of Section 14(1) of the Act.*

22. *We have already indicated that a specialised tribunal has been constituted for the purpose of dealing with specialised matters and disputes arising out of licences granted under the Act. We therefore do not think that there is any reason to restrict the jurisdiction of the tribunal so constituted by keeping out of its purview a person whose offer has been accepted and to whom a letter of intent is issued by the Government and who had even accepted that letter of intent. Any breach or alleged breach of obligation arising after acceptance of the offer made in response to a notice inviting tender, would also*

normally come within the purview of a dispute that is liable to be settled by the specialised tribunal.

23. *We see no reason to restrict the expressions “licensor” or “licensee” occurring in Section 14(a)(i) of the Act and to exclude a person like the respondent who had been given a letter of intent regarding the Karnataka Circle, who had accepted the letter of intent but was trying to negotiate some further terms of common interest before a formal contract was entered into and the work was to be started. To exclude disputes arising between the parties thereafter on the failure of the contract to go through, does not appear to be warranted or justified considering the purpose for which TDSAT has been established and the object sought to be achieved by the creation of a specialised tribunal.*

24. *In Cellular Operators' Assn. of India v. Union of India this Court had occasion to consider the spread of Sections 14 and 14-A of the Act. This Court held that the scope of Sections 14 and 14-A are very wide and is not confined by restrictions generally imposed by judge-made law on the Tribunal exercising an appellate jurisdiction. Of course, Their Lordships were considering in particular, the case of appellate jurisdiction. But this Court further said that the Tribunal has the power to adjudicate on any dispute but while answering the dispute, due weight had to be given to the recommendations of the authority under the Act which consists of experts. This decision, though it did not directly deal with the power of TDSAT as the original authority but was dealing with the power of TDSAT as an appellate authority and the power of this Court in appeal, clearly gives an indication that there is no need to whittle down the scope of Sections 14 and 14-A of the Act.”*

20. If that is the extent of this Tribunal's jurisdiction, namely, to adjudicate on a dispute, although, the relationship between the parties did not reach the stage of licensor and licensee, we fail to see any reason why interpretation of a condition of the license cannot be the subject matter of a dispute between the parties hereto.

21. The orders impugned in these petitions have been issued by the respondent in its capacity as a licensor.

It admittedly has affected the rights of the petitioners herein who are licensees under the Indian Telegraph Act.

22. Mr. Chandhiok, learned Additional Solicitor General, however, would place strong reliance upon a recent decision of the Supreme Court of India in the case of Union of India v. Assn. of Unified Telecom Service Providers of India, (2011) 10 SCC 543.

Our attention has been drawn to the fact of the matter involved therein as also the submissions made on behalf of the respondents therein to submit that the interpretation of the definition of, 'adjusted gross revenue' and the question as to whether any dispute between a 'licensor' and the 'licensee'

should be construed to be all disputed as submitted by the respondent therein had been answered in negative.

23. The question which arose for consideration in the said matter was as to whether the licensees having accepted the condition of licenses including the definition of the term `adjusted gross revenue' could file petitions before this Tribunal questioning the validity thereof.

24. It was held by the Supreme Court of India :-

“46. A reading of Section 14(a)(i) of the TRAI Act would show that the Tribunal has the power to adjudicate any dispute between a licensor and a licensee. A licensor, as we have seen, has been defined under Section 2(ea) of the TRAI Act to mean the Central Government or the Telegraph Authority who grants a licence under Section 4 of the Telegraph Act and a licensee has been defined in Section 2(e) of the TRAI Act to mean any person licensed under sub-section (1) of Section 4 of the Telegraph Act providing specified telecommunication services. The word “means” in Sections 2(e) and 2(ea) of the TRAI Act indicates that the definitions of licensee and licensor in Sections 2(e) and 2(ea) of the TRAI Act are exhaustive and therefore would not have any other meaning. As Justice G.P. Singh puts it in his book Principles of Statutory Interpretation, 12th Edn., at pp. 179-80:

“... When a word is defined to ‘mean’ such and such, the definition is prima facie restrictive and exhaustive;”

47. A dispute between a licensor and a licensee referred to in Section 14(a)(i) of the TRAI Act, therefore, is a dispute after a person has been granted a licence by the Central Government or the Telegraph Authority under sub-section (1) of Section 4 of the Telegraph Act and has become a licensee and not a dispute before a person becomes a licensee under the proviso to sub-section (1) of Section 4 of the Telegraph Act. In other words, the Tribunal can adjudicate the dispute between a licensor and a licensee only after a person had entered into a licence agreement and become a licensee and the word “any” in Section 14(a) of the TRAI Act cannot widen the jurisdiction of the Tribunal to decide a dispute between a licensor and a person who had not become a licensee. The result is that the Tribunal has no jurisdiction to decide upon the validity of the terms and conditions incorporated in the licence of a service provider, but it will have the jurisdiction to decide “any” dispute between the licensor and the licensee on the interpretation of the terms and conditions of the licence.

48. Coming now to the facts of the cases before us, Clause (iii) of the Letter dated 22-7-1999 of the Government of India, Ministry of Communications, Department of Telecommunications, to the licensees quoted above made it clear that the licence fee was payable with effect from 1-8-1999 as a percentage of gross revenue under the licence and the gross revenue for this purpose would be total revenue of the licensee company excluding the PSTN related call charges paid to DoT/MTNL and service tax calculated by the licensee on behalf of the Government from the subscribers. It was also made clear in the aforesaid Clause (iii) that the Government

was to take a final decision after receipt of TRAI's recommendation on not only the percentage of revenue share but also the definition of revenue. In accordance with this Clause (iii) the Government took the final decision on the definition of adjusted gross revenue and incorporated the same in the licence agreement. Once the licensee had accepted Clause (iii) of the Letter dated 22-7-1999 that the licence fee would be a percentage of the gross revenue which would be the total revenue of the licensee company and had also accepted that the Government would take a final decision not only with regard to the percentage of revenue share but also the definition of revenue for this purpose, the licensee could not have approached the Tribunal questioning the validity of the definition of adjusted gross revenue in the licence agreement on the ground that adjusted gross revenue cannot include revenue from activities beyond the licence.

49. If the wide definition of adjusted gross revenue so as to include revenue beyond the licence was in any way going to affect the licensee, it was open for the licensees not to undertake activities for which they do not require licence under Section 4 of the Telegraph Act and transfer these activities to any other person or firm or company. The incorporation of the definition of adjusted gross revenue in the licence agreement was part of the terms regarding payment which had been decided upon by the Central Government as a consideration for parting with its rights of exclusive privilege in respect of telecommunication activities and having accepted the licence and availed the exclusive privilege of the Central Government to carry on telecommunication activities, the licensees could not have approached the Tribunal for an alteration of the definition of adjusted gross revenue in the licence agreement.”

25. The Apex Court opined that, although, the petition shall not be maintainable at the instance of the respondents (who were yet to become licensees) but a dispute can be raised by the licensee after the license agreement has been entered into at an appropriate stage when the dispute can be raised, if a particular demand raised by the licensor on the licensee, stating:-

“63. Section 14(a)(i) of the TRAI Act, as we have seen, provides that the Tribunal can adjudicate any dispute between the licensor and the licensee. One such dispute can be that the computation of adjusted gross revenue made by the licensor and the demand raised on the basis of such computation is not in accordance with the licence agreement. This dispute however can be raised by the licensee, after the licence agreement has been entered into and the appropriate stage when the dispute can be raised is when a particular demand is raised on the licensee by the licensor. When such a dispute is raised against a particular demand, the Tribunal will have to go into the facts and materials on the basis of which the demand is raised and decide whether the demand is in accordance with the licence agreement and in particular the definition of adjusted gross revenue in the licence agreement and can also interpret the terms and conditions of the licence agreement. We, however, find from the order dated 7-7-2006 that instead of challenging any demands made on them, the licensees have questioned the validity of the definition of adjusted gross revenue in the licences given to them and the Tribunal has finally decided in its order dated 30-8-2007 as to what items of revenue would be part of adjusted gross revenue and what items of revenue would not be part of adjusted gross revenue without going into the facts and materials relating to the demand on a particular licensee.”

26. Interpretation of a condition of license as also the grievance of a licensee that a demand has wrongly been raised having regard to the definition of 'adjusted gross revenue' if found to be maintainable, we do not see any reason why interpretation of conditions of licence, so far as the same relates to the activities of the licensor are concerned, shall be outside the jurisdiction of this Tribunal.

27. Mr. Chandhiok, learned Additional Solicitor General has also relied upon an unreported order of the Supreme Court of India in M/s Tata Tele Services Ltd vs UOI, Civil Appeal No.4878/2011 disposed of on 19.8.2011 which is in the following terms :-

“Having heard learned senior advocates on both sides, we are of the view that, in substance, the matter concerns impugned allocation of spectrum. This matter, in our view, can only be challenged by way of judicial review, as held in our earlier judgment in PTC India Limited Vs Central Electricity Regulatory Commission, reported in 2010 (4) SCC 603. In the circumstances, we dismiss this civil appeal with a rider, namely, if so advised, the appellants may adopt appropriate proceedings in accordance with law and if they do so, then the matter will be decided uninfluenced by observations of TDSAT, if any, on the merits of the case.

No order as to costs”

28. We may, however, place on record that in PTC India Ltd. vs. Central Electricity Regulatory Commission, through Secretary, (2010) 4 SCC 603 itself it was observed as under :-

“93. For the aforesaid reasons, we answer the question raised in the reference as follows:

The Appellate Tribunal for Electricity has no jurisdiction to decide the validity of the Regulations framed by the Central Electricity Regulatory Commission under Section 178 of the Electricity Act, 2003. The validity of the Regulations may, however, be challenged by seeking judicial review under Article 226 of the Constitution of India.

94. Our summary of findings and answer to the reference are with reference to the provisions of the Electricity Act, 2003. They shall not be construed as a general principle of law to be applied to Appellate Tribunals vis-à-vis Regulatory Commissions under other enactments. In particular, we make it clear that the decision may not be taken as expression of any view in regard to the powers of the Securities Appellate Tribunal vis-à-vis Securities and Exchange Board of India under the Securities and Exchange Board of India Act, 1992 or with reference to the Telecom Disputes Settlement and Appellate Tribunal vis-à-vis Telecom Regulatory Authority of India under the Telecom Regulatory Authority of India Act, 1997.”

We, furthermore, are not aware of the facts involved in the said appeal.

Prima facie, it appears to us that different contentions are being raised by the respondent herein in different cases.

29. The parties hereto have entered into an agreement relying on or on the basis of condition of license which have been explained by the DoT itself.

We may notice some of the questions and answers from the document titled “Auction of 3G and BWA Spectrum-Queries & Responses” prepared by DoT before the 3G auction :-

“No.	Query	Response
11.	Please clarify 3G roaming is mandated or whether it will be a bilateral decision between operators?	At present, mandatory roaming is not part of the Government’s telecoms policy. Roaming arrangements are based on bilateral decision between operators.
12.	Will intra circle roaming be allowed in areas where an operator does not have a 3G network?	Intra-circle roaming will be governed by the UAS/CMTS licence provisions and applicable Government regulations.
48	Dot order No. 842-725/2005-VAS/269 dated 12th June 2008 allows intra-circle roaming amongst UASL licenses.	The roaming policy is applicable to the licences and not to specific spectrum bands. Hence, roaming will be permitted. However, at

After 3G auctions not all existing UASL licensees will hold 3G spectrum in any licensed areas due to the limited 3G blocks on offer. Will customers of UASL licenses who do not hold 3G spectrum be allowed to roam on the 3G Networks of other UASLs in the same licensed area? Furthermore, till such time a more 3G Blocks are released into the market, will it not be customer friendly for the government to mandate that 3G spectrum holders allow the customers of operators not holding 3G spectrum in the same licensed area to roam on their networks under an administered pricing mechanism?

present, mandatory roaming or MVNO is not part of the Government's telecoms policy.

205 Request confirmation that the license term of a company which is the result of a merger between 2G & 3G licensees could be shortened to the term of the 2G licensee regardless of the fact that the award of 3G spectrum entitles an entity to a licence duration of 20 years?

There are no separate 2G and 3G service licences. Entities with 3G spectrum would necessarily need to have an UAS or CMTS licence or obtain/acquire an UAS licensee. Upon merger of licences, if the period of the existing UAS/CMTS licence of the licence with lesser remaining term is expiring before the period of expiry of the right to use the 3G Spectrum, then the period of validity of

UAS/CMTS licence with respect to the usage of 3G Spectrum or BWA Spectrum only will get extended to 20 years from the time of award of the 3G Spectrum or BWA Spectrum (awarded as part of the current Auction). However, terms of extension, if any, of the right to use any spectrum other than 3G Spectrum or BWA Spectrum associated with the licence and the terms thereof beyond the original term will be specified in due course.

30. It is not in dispute that some of the petitioners either did not bid for 3G spectrum or remained unsuccessful. It is true that so far as the successful bidders of 3G auction are concerned, the licence had been amended by inserting Clause 23.7. However, only by reason thereof the concept of a license may not be held to have changed or varied giving rise to two different categories of licence, namely, 2G licence or 3G licence. The construction of the respondent is open to question, particularly in view of the categorical stand taken by the DoT itself that the nature of the licenses remains the same and the licensees cannot be categorised as 2G license or 3G license.

31. What would be the effect of the guidelines issued before 3G auction is required to be considered.

32. In G.P. Singh's Principle of Statutory Interpretation, 13th Edition (2012) page 783, it has been opined :-

“When with the object of speedy adjudication of certain matters which are widely defined, jurisdiction conferred on Tribunals or Special Courts and jurisdiction of normal Courts is excluded, the wide language used cannot be narrowly construed, and it is now a well-established principle that the jurisdiction of a Court created specially reduction of disputes of certain kinds should be construed liberally.”

In K.A. Abdul Jaleel vs. T.A. Shahida reported in (2003) 4 SCC 166, a three Judge bench of the Supreme Court of India stated the law thus:-

“...It is also apparent that whereas the agreement marked as Exhibit A-1 was executed on 17-9-1994, the appellant pronounced talaq on 1-11-1995. The wording “disputes relating to marriage and family affairs and for matters connected therewith” in the view of this Court must be given a broad construction. The Statement of objects and reasons, as referred to hereinbefore, would clearly go to show that the jurisdiction of the Family Court extends, inter alia, in relation to properties of spouses or of either of them which would clearly mean the properties claimed by the parties thereto as a

spouse of the other; irrespective of the claim whether the property is claimed during the subsistence of a marriage or otherwise.

12. *The submission of the learned counsel to the effect that this Court should read the words “a suit or proceeding between the parties to a marriage” as parties to a subsisting marriage, in our considered view would lead to miscarriage of justice.*

13. *The Family Court was set up for settlement of family disputes. The reason for enactment of the said Act was to set up a court which would deal with disputes concerning the family by adopting an approach radically different from that adopted in ordinary civil proceedings. The said Act was enacted despite the fact that Order 32-A of the Code of Civil Procedure was inserted by reason of the Code of Civil Procedure (Amendment) Act, 1976, which could not bring about any desired result.*

14. *It is now a well-settled principle of law that the jurisdiction of a court created specially for resolution of disputes of certain kinds should be construed liberally. The restricted meaning if ascribed to Explanation (c) appended to Section 7 of the Act, in our opinion, would frustrate the object wherefor the Family Courts were set up.”*

To the same effect is the decision of the Supreme Court of India in *Interglobe Aviation Limited v. N. Satchidanand*, (2011) 7 SCC 463, wherein it has been held as under :-

“23. *There is another reason for holding the said clause to be invalid. A clause ousting jurisdiction of a court, which otherwise would have jurisdiction will have to be construed strictly. In this*

case, we are concerned with a clause which provides that all disputes shall be subject to the jurisdiction of the courts at Delhi only. But in this case, the respondent did not approach a “court”. The claim was filed by the respondent before a Permanent Lok Adalat constituted under Chapter VI-A of the Legal Services Authorities Act, 1987 (“the LSA Act”, for short).”

Yet again, in *Ramkanya Bai v. Jagdish*, (2011) 7 SCC 452, , Ravinderan, J speaking for a Division Bench of the Supreme Court of India upon considering the decision of *Dhulabhai vs. State of M.P.* reported in AIR 1969 SC 78, stated the law thus :-

“21. *Section 257 relates to the exclusive jurisdiction of the Revenue Authorities. Any statutory provision ousting the jurisdiction of the civil courts should be strictly construed. A suit for enforcement of an easementary right or for a declaration that the defendant does not have any easementary right over the plaintiff’s property or a suit for injunction to restrain a defendant from interfering with the possession of the plaintiff or exercising any easementary right over the plaintiff’s property, is not barred by the Code. Such suits do not fall under any of the excluded matters enumerated in clauses (a) to (z-2) of Section 257 of the Code.”*

In *IndusInd Media Communications Ltd. Vs. M/s. City Cable* (Petition No. 67 (C) of 2008, this Tribunal has held that :-

“It is one thing to say that the Tribunal has no jurisdiction over the subject matter of the disputes between the parties at all but it would be another thing to say that upon considering the merit of the matter it is found that no relief can be granted to the petitioner.

...

We, therefore, are of the opinion that this Tribunal can enter into the merit of the matter, having jurisdiction in relation thereto.”

In *Star (India) Pvt. Ltd. v. Bharat Sanchar Nigam Ltd.*, Petition No.172 of 2009 decided on 22.01.2010, this Tribunal has held to have jurisdiction even in regard to a claim by a broadcaster against a Telecom Licensee despite the fact that the TRAI had not made any regulations relating to convergence of two different services, stating that both were service providers.

(See Petition No.413/2010 Computer Sciences Corporation of India Pvt. Ltd vs DoT and Anr., and Petition No.272/2011 Oil India Ltd vs. UOI & Anr.)

33. It is beyond any doubt or dispute that the impugned order has been passed by the respondent in its capacity as a licensor. According to it, the activities of the petitioners are impermissible in terms of the conditions contained in the UAS License held by them. Petitioners dispute the same.

If it is ultimately to be held on construction of conditions of license that such activities on the part of the petitioners are not permissible under the conditions of license and, thus, they are not entitled for any reliefs prayed for and vice versa.

It is, therefore, difficult to hold that this Tribunal has no jurisdiction at all to enter into the merit of the matter.

34. Ms. Maneesha Dhir contended that the petitioners have prayed for an amendment of the petition in the garb of a reply filed to the Miscellaneous Applications of the respondent.

35. The said submission is based on the following statement made in the reply :-

“B. At the outset it is submitted that DoT has wrongly suggested that conferment of any right has been sought by the Petitioners from this Hon. Tribunal. Far from a conferment, the Petitioners are only seeking interpretation and reconfirmation of its existing rights under its License.

C. The first prayer itself is very clear. It seeks this Hon. Tribunal to declare/hold that the Petitioners are permitted both intra and inter Circle ICR arrangement for provision of all kinds of services ‘AS

PROVIDED IN CLAUSE 2.2 OF UAS LICENSE” INCLUDING 3G SERVICES”

The said submission, to our mind is not correct. Petitioners have not sought for a declaration that a new right be conferred on them. What they say is that they have an existing right to enter into an arrangement *inter-se* in term of the license they hold.

36. While considering the question whether this Tribunal lacks jurisdiction in respect of subject matter of the petition, it has to be read as a whole.

A decision has to be arrived at that no relief whatsoever can be granted in favour of the petitioner either because a statute bars the jurisdiction of this Tribunal or no relief on a demurer can be granted at all.

In this case, the learned Additional Solicitor General contends that relief (a) in Petition No.518 of 2011 cannot be granted in the facts and circumstances of this case. He does not say that even the second relief which is in the nature of a decree for injunction also cannot be granted.

Reliefs prayed for in the other petition cannot also be said to be wholly untenable.

37. Before parting with this, we may mention that learned Additional Solicitor General submitted that as a PIL is pending before the Hon'ble High Court of Delhi, this Tribunal should not exercise its jurisdiction.

We are not aware as to what prayers have been made in the said PIL.

A copy of the order dated 11.01.2012 has been produced before this Tribunal, on a perusal whereof it appears that the Union of India has taken a similar stand in the PIL which is being taken before us.

The doctrine of 'Amity' can be applied when similar prayers have been made before two different forums, in which event, one forum should not pass an order inconsistent with the order passed by the other forum.

We have not been informed as to whether any order has been passed by the Hon. High Court of Delhi.

38. Moreover, this Tribunal has the requisite jurisdiction to mould the relief, if it is found that there exists any cause therefor.

39. We, therefore, are of the opinion that this Tribunal has the requisite jurisdiction to enter into the dispute between the parties.

The Miscellaneous Applications are dismissed.

(S.B. Sinha)

Chairperson

(P.K. Rastogi)

Member

'ns'/rkc