

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated : August 17, 2012

Petition No. 493 of 2012

Reliance Communications Ltd. ...Petitioner

Vs.

Union of India & Anr. ...Respondent

BEFORE:

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

For Petitioner : Mr.Ramji Srinivasan, Sr. Advocate
With Mr. Nakul Mohta, Ms. Shikha Sarin,
Mr. Kawaljit Singh Bhatia, Mr. Vivek Paul
Oriel, Advocate

For Respondent No.1 : None

For Respondent No.2 : Mr.Saket Singh, Advocate

J U D G M E N T

The Petitioner, a licensee under Section 4 of the Indian Telegraph Act, 1885, is before us questioning the guidelines issued by the First Respondent herein being dated 3.7.2012.

2. It has also prayed for a direction upon the said Respondent to allow the CDMA operators also to have access to two blocks of

spectrum of 1.25 MHz in 800 MHz CDMA band which is said to have been allowed to the existing GSM operators in 1800 MHz band.

3. The question as to whether the aforementioned guidelines can be impugned before us at this stage fell for our consideration in Vodafone India Ltd. and Ors. vs. Union of India & Anr. , Petition No.461 of 2012 disposed of on 1.8.2012. The principal contention of the Petitioner is that by reason of the impugned guidelines whereas the GSM operators have been allowed to obtain additional spectrum depending upon the number of subscribers, the CDMA operators like the Petitioner have been deprived therefrom.

The said question has arisen, inter alia, having regard to the decision of the Supreme Court of India in Centre for Public Interest Litigation vs. UOI disposed of on 2.2.2012, since reported in (2012) 3 SCC 1.

4. The Supreme Court of India by reason of the aforementioned judgment declared a large number of licenses and/or the benefit obtained by the licensees during the period in question to be illegal and were directed to be quashed. In view of the aforementioned decision, 2G Spectrum allocated to the concerned licensees having become available, the same had been directed to be put on auction.

5. The Petitioner urges that the recommendations made by the Telecom Regulatory Authority of India (TRAI) pursuant to and in

furtherance of the aforementioned judgment of the Supreme Court of India should not have been accepted by the Union of India, inter alia, having regard to its existing right to obtain a pair of spectrum of 1.2 MHz.

6. In terms of the recommendations in this behalf made by the Respondent No.2, the available spectrum on 800 MHz band is stated to be as under:

Table 2.1
Spectrum availability on the 800 MHz Band

S.No.	Service Area	Total Spectrum	Spectrum assigned presently	Spectrum to be vacated due to cancellation of Licence	Available spectrum
1.	Delhi	20	16.25	2.5	3.75
2.	Mumbai	20	15	2.5	3.75
3.	Kolkata	20	13.75	2.5	5
4.	Maharashtra	20	15	2.5	3.75
5.	Gujarat	20	12.5	2.5	7.5
6.	AP	20	16.25	2.5	2.5
7.	Karnataka	20	13.75	2.5	6.25
8.	Tamil Nadu	20	13.75	2.5	5
9.	Kerala	20	15	2.5	5
10.	Punjab	20	15	2.5	3.75
11.	Haryana	20	13.75	2.5	6.25
12.	UP-West	20	13.75	2.5	6.25
13.	UP-East	20	13.75	2.5	5

14.	Rajasthan	20	15	0	0
15.	MP	20	12.5	2.5	6.25
16.	West Bengal	20	11.25	2.5	7.5
17.	HP	20	10	2.5	10
18.	Bihar	20	13.75	2.5	6.25
19.	Orissa	20	11.25	2.5	8.75
20.	Assam	20	10	5	12.5
21.	North East	20	10	5	12.5
22.	J & K	20	10	5	10
	Total	440	291.25	60	137.5

7. The recommendations in this behalf made by the TRAI, inter alia, are as under:

“3.39 Accordingly, the Authority recommends the following structure for the auction of spectrum in future:

- As regards the auction of spectrum in 1800 MHz and 800 MHz bands to be conducted immediately following these recommendations, it should be held in single stage.
- In all auctions at least 5 MHz of spectrum shall be offered, except where the spectrum available is less than 5 MHz.
- Spectrum shall be offered in blocks of 1.25 MHz each.”

8. Mr. Ramji Srinivasan, learned counsel appearing on behalf of the Petitioner would contend that:

1. The license agreement entered into by and between the Petitioner and the First Respondent being in the nature of Unified Access Service in terms whereof the technology being neutral,

Petitioner is entitled to a level playing field vis-à-vis the GSM operators.

2. It is inconceivable in law that whereas the new CDMA operators who may take part in the process of auction for the first time would be granted a pair of 3.75MHz (three blocks of 1.25 MHz) of spectrum, the Petitioner would continue to have only 5Mhz spectrum.

9. It was urged that in the name of liberalization of spectrum wherefor the auction process was started in terms of paragraph 9 of the said guidelines, Petitioners cannot be deprived of the quantum of spectrum to which it is otherwise entitled to and by reason of such guidelines or otherwise, the existing rights of the Petitioner and other CDMA licensees cannot in law be permitted to be taken away.

10. Mr. Saket Singh, learned counsel appearing on behalf of Respondent No.2, on the other hand, has drawn our attention to paragraph 13 of the said guidelines which is in the following terms:

"13 Other issues

- The Government of India reserves the right to amend or modify these terms and conditions before the commencement of auction process. The final conditions shall be as indicated in the bidding document."

11. We may at this juncture place on record that the first Respondent has not entered appearance despite service of notice.

We must also place on record, however, that paragraph 13 of the aforementioned guidelines was also relied upon by the first Respondent in the aforementioned case of Vodafone.

12. We may notice the relevant Clauses of the guidelines dated 3.7.2012.

1. "Frequency Bands

Spectrum in 1800 MHz & 800 MHz bands shall be allocated for telecom services through auction.

2. Eligibility for bidding for spectrum in 1800MHz and 800 MHz bands.

Eligibility criteria shall be as below:

- Holder of CMTS/UAS licenses or who fulfils the eligibility for obtaining a Unified Licence (UL); and
- The companies/licensees whose licenses are stated to be quashed as per the direction of Supreme Court will be treated as new entrants.

Guidelines for Unified License (UL) will be issued separately.

3. Objectives of Auction

The objectives of the auction are:

- Obtain a market determined price of spectrum through a transparent process;
- Ensure efficient use of spectrum and avoid hoarding;
- Stimulate competition in the sector;
- Promote rollout of telecom services;
- Maximise revenue proceeds from the Auctions within the set parameters.

4. Amount of Spectrum and Number of Blocks and size of Blocks of Spectrum to be Auctioned Auction in 1800 MHz band:

- Block size shall be 1.25 MHz (paired).
- In 1800 MHz band, a minimum of 8 blocks each of 1.25 MHz (10MHz), will be put to auction in all service areas. In

addition, a provision may also be made for spectrum up to 3 blocks each of 1.25 MHz (3.75 MHz), wherever available, for topping up the 8 blocks of spectrum put for auction i.e. upto a total of 11 blocks each of 1.25 MHz to meet the requirement of new entrants, if such an exigency arises.

- The existing operators will be allowed to take maximum two blocks of 1.25 MHz each.
- New entrants will be required to bid for minimum of 4 blocks each of 1.25 MHz.
- New entrants will also be allowed to bid for one additional block of 1.25 MHz.

Auction in 800 MHz band:

- Block size shall be 1.25 MHz (paired).
- 3 blocks each of 1.25 MHz (3.75 MHz) will be put to auction. In addition, a provision may also be made for spectrum of 1 block of 1.25 MHz, wherever available, for topping up the 3 blocks of spectrum put to auction to meet the requirement of new entrants, if such an exigency arises.
- Existing operators will be allowed to bid for 1 block of 1.25 MHz.
- New entrants will be required to bid for a minimum of 2 blocks each of 1.25 MHz.
- New entrants will also be allowed to bid for one additional block of 1.25 MHz.

13. It has been brought on record that the Petitioner both prior to as also after issuance of the aforementioned guidelines by a letter dated 29.6.2012 and 5.7.2012 made representations to the first Respondent which are pending consideration.

14. The legal effect of the guidelines having been noticed by us in the case of Vodafone (supra) need not be reiterated again.

15. The guidelines issued by the Central Government are not final. The Central Government is entitled in terms of paragraph 13

aforementioned or even otherwise in law to modify the terms and conditions at any point of time and before the commencement of auction process.

16. The impugned guidelines, therefore, in our opinion, being not final, cannot be held to be conclusive and binding on the parties hereto.

17. We, therefore, are of the opinion that this petition is not maintainable at this stage keeping in view the provisions of paragraph 13 of the aforementioned guidelines. We are furthermore of the view that the first Respondent herein would be well advised to dispose of the Petitioner's representations dated 29.6.2012 and 5.7.2012 as expeditiously as possible.

18. There cannot moreover be any doubt or dispute that Petitioner would be at liberty to approach this Tribunal in the event any cause of action arises therefor.

This petition is dismissed with the aforementioned observations.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

August 17, 2012
'anu'