

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

**Dated 9<sup>th</sup> December, 2014**

**Appeal No.18 of 2013**

S. Tel. Pvt. Ltd.

...Appellant

Versus

Telecom Regulatory Authority of India

...Respondent

**BEFORE:**

**HON'BLE JUSTICE MR. AFTAB ALAM, CHAIRPERSON  
HON'BLE MR. KULDIP SINGH, MEMBER**

For Appellant : Mr. Amit Gupta, Advocate  
Ms. Sumati Jumrani, Advocate

For Respondent -TRAI : Mr. Saket Singh, Advocate

**ORDER**

**By Aftab Alam, Chairperson** – *In Centre for Public Interest Litigation & others Vs. Union of India & others* the Supreme Court found and held that a number of licences under section 4 of the Indian Telegraph Act, 1885 and large

segments of spectrum were given by the Central Government illegally to a number of telecom operators. Consequently, by the judgment and order dated 2 February 2012<sup>1</sup>, the Court quashed all those licences and released the spectrum, held under those licences, back to the Union of India. The licences quashed by the Supreme Court order also included the six Unified Access Service (UAS) licences, held by the petitioner in six Service Areas.

While quashing the licences, however, the Court directed that the order would come into effect after four (4) months of its pronouncement. Nonetheless, the petitioner, admittedly, shut down its services in the five Service areas within a few days of the Supreme Court order. (In the sixth Service Area of J&K it had not commenced the service under the licence because it was not allocated any spectrum there).

On receipt of complaints about the shutting down of the services by the petitioner, the Telecom Regulatory Authority (TRAI) issued to it a Direction dated 11 April 2012. In the Direction the TRAI referred to various clauses of the licence and asked the petitioner to restore all network connectivity, ensure continuity of service to its subscribers and maintain the quality of service till its licences were

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<sup>1</sup> (2012) 3 SCC 1

operational and to furnish the compliance report to the Authority within three days from the date of the Direction.

The petitioner challenged the TRAI's direction before the Tribunal in Appeal no. 2 of 2012. The Tribunal dismissed the appeal by a detailed judgment and order dated 5 September 2012. Against the Tribunal's judgment the petitioner preferred an appeal (Civil Appeal No. 8484 of 2012) before the Supreme Court. The appeal was dismissed as withdrawn by order dated 10 December 2012 with liberty to the petitioner to approach the TRAI.

In pursuance of the liberty given by the Supreme Court, the petitioner filed a representation before the TRAI requesting for reconsideration and with-drawl of the Direction dated 11 April 2012. The TRAI rejected the representation by a well-considered and detailed order dated 24 October 2013. The petitioner has once again brought the matter to the Tribunal by filing the present appeal against the order passed by the TRAI.

We have heard Mr. Amit Gupta, Advocate, appearing for the appellant at some length but we do not find any substance or merit in the appeal as would be apparent by simply referring to the orders passed by the Supreme Court.

The operative directions in the Supreme Court judgment dated 2 February 2012 are contained in paragraph 102 of the judgment, of which, sub-paragraphs (i) and (ii) only are relevant for the present. These are as under:

“102. In the result, the writ petitions are allowed in the following terms:

- (i) The licences granted to the private respondents on or after 10.01.2008 pursuant to two press releases issued on 10.01.2008 and subsequent allocation of spectrum to the licensees are declared illegal and are quashed.
- (ii) **The above direction shall become operative after four months.”**

(emphasis added)

By directing that the direction in sub-para (i) by which the grant of licenses and the allocation of spectrum to the licensees were declared illegal and were quashed would become operative after four months of the judgment, the Supreme Court clearly kept the subject licences alive and subsisting and operative until 1 June 2012. This was evidently because the court wanted to avoid the sudden collapse of a substantial part of the telecom services in the country that would have left the subscribers of the operators under the subject licenses completely in the lurch.

Later, on an application filed by the Central Government, the Supreme Court by order dated 24 April 2012 extended the time for conducting the auction for grant of fresh licenses and allocation of spectrum upto 31 August 2012. By that

order, the Supreme Court also allowed the licensees whose licenses were quashed to continue to operate till 7 September 2012. The relevant part of the order dated 24 April 2012 is as under:

“Accordingly the application is disposed in the following terms:

- 1) The time specified in judgment dated 2.2.2002 in Writ Petition No.423 of 2010 and Writ Petition No.10 of 2011 for conducting the auction for grant of fresh licenses and allocation of spectrum is extended up to 31.08.2012. This would necessarily mean that the applicant shall have to finalise the auction on or before 31.08.2012.
- 2) The existing licenses shall be **entitled** to continue operate till 07.09.2012.”

(emphasis added)

The time for the conduct of auction was further extended upto 11 November 2012 and the affected licensees were permitted to continue till 18 January 2013. On 14 January 2013, the Supreme Court allowed the licensees whose licenses were quashed to continue their operations till the next date of hearing and on 15 February 2013 the Supreme Court finally made the following directions:

“In view of the above, we issue the following directions:

- (i) xxxxxxxxxxxx
- (ii) xxxxxxxxxxxx
- (iii) Such of the licensees, who continued operation after 2.2.2012, whether or not they gave bid in the auction conducted on 12.11.2012 and 14.11.2012, shall pay the

reserve price fixed by the Government for the purpose of conducting auction in November 2012.

- (iv) The licensees, who did not give bid in the auction conducted on 12.11.2012 and 14.11.2012 or who remained unsuccessful shall forthwith discontinue their operations in the concerned circles/areas and the successful applicants should be allowed to operate in those circles/areas.
- (v) The issue relating to liability of the licensees, who discontinued their operations between 2.2.2012 and this date shall be decided separately.;"

Mr. Gupta strenuously argued that in the order dated 24 April 2012, the Supreme Court observed that the existing licensees would be "entitled" to continue to operate till 7 September 2012. The use of the word "entitled" shows that there was no mandate to operate but the court conferred upon the existing licensees the right to continue till that date. The petitioner, in its discretion, chose not to exercise the right given by the Supreme Court and therefore, it cannot be held that the petitioner violated the terms of the licence in any manner. Mr. Gupta further contended that the order dated 15 February 2013, carved out a separate category for licensees who continued after 2 February 2012 and by implication there would also be a category of licensees who did not operate after that date.

The reading of the Supreme Court order dated 15 February 2013 by Mr. Gupta is clearly wrong as would be evident from a later order of the court. While hearing an application filed by the licensees, whose licenses were quashed,

challenging the notice dated 22 November 2012 issued by the Department of Telecommunication whereby the service providers were asked to pay certain damages and penalty, the Supreme Court on 1 August 2013 passed the following order:

“In our opinion, it is not necessary for the Court to adjudicate upon the legality/justification of the demand created by the respondents except to clarify that the Department shall not be entitled to levy damages and penalty for the period after 1.6.2012 for the applicant’s failure to carry on business which it was doing prior to 1.6.2012.”

From the above order it is clear that upto 1 June 2012, the affected licensees were under the obligation to carry on the services and it was only after 1 June 2012 when it was open to them either to continue or not to continue the operations.

As may be seen from the series of orders passed by the Supreme Court, no order of the later date superceded or modified the original direction of the Supreme Court that its direction quashing the grant of licenses and allocation of spectrum would come into effect after four months of the order. It, therefore, follows that all the petitioner’s licences continued to remain subsisting and operative till 1 June 2012 and it could exercise the discretion to continue or not to continue its operations only after 1 June 2006. It was open to the petitioner to surrender its licenses following the procedure laid down in the licence itself or to continue its operations in the five circles, in any event, upto 1 June 2012, the date till when the

licenses were kept alive in terms of the Supreme Court order. It did not follow either of the two courses and therefore, the TRAI was perfectly justified in giving the impugned directions in exercise of its powers under Section 13 read with sub-clauses (i) and (iii) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory of India Act 1997.

In light of the discussions made above, we find no merit in the appeal and reiterating the earlier view expressed in the Tribunal's order date 5 September 2012, we reject the appeal with costs, quantified at Rs.25,000/-.

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**(Aftab Alam)**  
**Chairperson**

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**(Kuldip Singh)**  
**Member**

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