

DISPUTE RESOLUTION MECHANISM IN THE INDIAN TELECOM SECTOR



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Origin & Importance of Telecommunications

“telecommunication” - compound of “tele” (Greek) meaning 'far off', and “communicare”(Latin), meaning 'to share'.

- **Present meaning-** transmission of signals over a distance for purpose of communication.
- **Means of communication in early days :** drums, smoke signals, flags, etc.
- **Present Status:** involve sophisticated high-speed, submarine optical cables laid on ocean floors and artificial satellites circling the Earth in space.
- **As of 2023, Telephone Subscribers-117.226 Crore, Internet Subscribers-86.590 Crore & Broadband Subscribers-83.222 Crore in India**
- As the demand for signal transmission has increased, the speed of transmission has also increased.
- Recently, scientists at Karlsruhe Institute of Technology in Germany have succeeded in transmitting 26 terabits (equal to about 700 DVDs or about 4 million average paperback books) of data per second at the distance of 50 kilometers.[See The Indian Telecom Sector Legal and Regulatory Frame work, Nishith Desai & Associates ,July 2011]
- USSD (Unstructured Supplementary Service Data) is a Global System for Mobile Communications (GSM) protocol that is used to send text messages establishes a real-time communication session between the phone and another device -- typically, a network or server- used for mobile payments

Modern system of communications in India

- started with establishment of telegraph network.
- various telegraph statutes - enacted by Government of India laying foundation of present regulatory framework governing telecommunications (both wired and wireless)
- telecommunications in India started as a state monopoly. (See Tatapress Yellow Pages Case)
- In the 1980s, telephone services and postal services came under the Department of Posts and Telegraphs
- In 1985, government separated Department of Post & created Department of Telecommunications ("DoT").
- Early reforms: government set up two new public sector undertakings: Mahanagar Telephone Nigam Limited ("MTNL") and Videsh Sanchar Nigam Limited ("VSNL").
- MTNL looked after telecommunications operations in two megacities, Delhi and Mumbai. VSNL provided international telecom services in India.

Modern system of communications in India

(contd..)

In 1990s Indian telecom sector- was liberalized and private sector participation was permitted through gradual process

- **First**, telecom equipment manufacturing sector was completely deregulated.
- The government then allowed private players to provide value added services ("VAS") such as **paging services**
- In 1994, the government unveiled the National Telecom Policy 1994 ("**NTP 1994**")- which recognized that existing government resources would not be sufficient to achieve telecom growth and hence private investment should be allowed to bridge the resource gap especially in areas such as basic services.
- **New telecom Policy 1999** ("NTP 1999") - largely focused on creating environment for attracting continuous investment in the telecom sector and allowed creation of communication infrastructure by leveraging on technological development
- **Main objective of NTP 1999**: to create modern and efficient telecommunications infrastructure taking into account the convergence of IT, media, telecom and consumer;

Modern system of communications in India (contd..)

- The Government corporatized the operations wing of DoT in October 2000 -as Bharat Sanchar Nigam Limited ("BSNL") which operates as a public sector undertaking
- Thereafter in 2002, the monopoly of VSNL also came to an end
- Government introduced the Cellular Mobile Telephone Service ("CMTS") license and the Basic Telecom Service ("Basic") license allowing private players to provide telecom services in India
- Thereafter, the Government simplified the licensing regime and introduced the **Unified Access Service** ("UAS") License, combining the two licenses, i.e. Basic and CMTS
- **DoT introduced National Telecom Policy 2012** ("NTP 2012") - to align efforts of policy makers, stakeholders and law makers to achieve a common goal i.e., to transform socio-economic scenario through accelerated equitable & inclusive economic growth by laying special emphasis on providing affordable and quality telecommunication services in rural and remote areas.

Ministry of communications & Information technology

Telecom Commission - in October, 2018, redesignated as the '**Digital Communications Commission**'

- **responsible for:**
 - ❖ Formulating the policy of Department of Telecommunications for approval of the Government;
 - ❖ Preparing the budget for the Department of Telecommunications for each financial year and getting it approved by the Government; &
 - ❖ Implementation of Government's policy in all matters concerning telecommunication
- **Department of Telecommunications** ("DoT")- responsible for Telecom Policy; Licensing and Coordination matters relating to telegraph, telephones, telecom wireless data; international cooperation in matters connected with telecommunications, promotion of standardization, Research & Development (R&D) in telecommunications; and promotion of private investment in the sector
- **Telecom Regulatory Authority of India** ("TRAI")- a **statutory body, sector regulator** and plays a pivotal role in development of the telecom, broadcasting and cable services.
- worked towards providing a fair and transparent environment which encourages competition and level playing field for service providers and protecting the interest of consumers and enabling technological advancement.
- The Telecom Disputes Settlement & Appellate Tribunal (TDSAT) performs the role of an appellate body.
- **Wireless Planning and Co-ordination Wing** ("WPC")- Spectrum Allocation & Management
- **TEC** - Technical body for equipment approvals

LEGAL AND REGULATORY FRAMEWORK OF TELECOM LAWS AND POLICIES

- DoT has issued telecommunication policy statements at regular intervals. They are:
 - ❖ **National Telecom Policy, 1994**
 - ❖ **New Telecom Policy, 1999**
 - ❖ **Broadband Policy, 2004**
 - ❖ **National Telecom Policy, 2012**
 - ❖ **National Digital Communications Policy, 2018**
- Primary statutes that regulate telecommunication services in India are:
 - **The Indian Telegraph Act, 1885**
 - **The Indian Wireless Telegraphy Act, 1933**
 - **The Telegraph Wires (Unlawful Possession) Act, 1950**
 - **The Telecom Regulatory Authority of India (TRAI) Act, 1997**
 - **The Information Technology Act, 2000**
 - **The Mobile Banking (Quality of Service) Regulations, 2012**
 - **The Mobile Banking (Quality of Service) (Second Amendment) Regulations, 2016**

Role of Central Government and TRAI

- Observations made by the Supreme Court in the case of *Delhi Science Forum v Union of India* (1996) 2 SCC 405 : “Central Government is expected to put such conditions while granting licences, which shall safeguard the public interest and the interest of the nation. Such conditions should be commensurate with the obligations that flow while parting with the privilege which has been exclusively vested in the Central Government by the Act” (Para 11)
- In *Union of India vs. TRAI* , 74 (1998) DLT 282 ,the High Court held, inter alia, that **TRAI does not possess the power to issue directions to the Government in latter's capacity as Licensor** .

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- In *General Manager, Telecom v M. Krishna* (AIR 2010 SC 90) a dispute arose regarding the non-payment of bills by the respondent due to which the telephone connection of the respondent was disconnected. The respondent filed a complaint before the District Consumer Disputes Redressal Forum, Kohzikode, which allowed the complaint and directed the appellant to reconnect the telephone and pay compensation. A writ filed by the appellant in the High Court of Kerala challenging the jurisdiction of the consumer forum was dismissed. The appellant then came before the Supreme Court by way of special leave. The Supreme Court held that as there is a special remedy by way of arbitration provided in the Indian Telegraph Act, and the remedy under the Consumer Protection Act, is by implication barred. It is well settled that a special law overrides a general law. Accordingly, the Supreme Court set aside the order of the Kerala High Court as well as the order of the District Consumer Forum.

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- In the context of TDSAT's power to adjudicate upon TRAI's Regulations, the **Delhi High Court** in *Telecom Regulatory Authority of India v. The Telecom Disputes Settlement and Appellate Tribunal & Anr.* – [WP (C) No: 2838 of 2005 – Order & Judgment dated 23.12.2005] has held that TDSAT, which has derived its jurisdiction under the specific statutory provisions of the TRAI Act and has not been created under any constitutional provisions, does not have the jurisdiction or the competence to decide on the constitutionality of a statutory provision, under which it has been created. And for the same reasoning, TDSAT would not have the competence to adjudicate on the vires of the subordinate legislation i.e. the Regulations framed and effectuated in exercise of power conferred under the TRAI Act.

Introduction to Dispute Resolution- Most Common Disputes in Telecom Sector

Disputes related to:-

- Licensing and other ancillary matters;
- Policy and legitimate expectations;
- Interconnection;
- commercial agreements between Service Providers;
- competition / anti-competitive practices;
- End user;
- Spectrum; &
- disputes arising due to Regulatory actions, etc.

Dispute Settlement Fora

- Telecom Disputes Settlement and Appellate Tribunal (TDSAT)
- Competition (Old MRTP) Commission
- Consumer Disputes Settlement Commissions
- High Courts
- Supreme Court
- **ADR**

TRAI

- **Est.** u/s 3 of the TRAI Act, 1997
- **Composition:** Chairman, max.2 whole-time members & max.2 part-time members
- **Term:** not >3 years or until 65 years whichever is earlier
- **Powers & Functions (S.11):** to make recommendations either on request from Licensor(Govt) or suo motu on need & introduction of new service provider, terms and conditions of license, revocation of licence, technological improvement in the services, type of equipments to be used & efficient management of available spectrum etc
- **Functions:** ensuring compliance with terms and conditions of license, fixing terms of inter-connectivity, ensuring technical compatibility, laying down standards of quality etc
- **TRAI is empowered to notify the rates at which the telecommunication services within India and outside India are to be provided.**

TDSAT

- **Est.** u/s 14 of the TRAI Act, 1997 in 2000
- **Composition:** Chairperson & not > Two members
- **Qualifications:** Chairperson-is/has been judge of the SC/CJ of HC, Members- Secretary to Central/State Govt. for not < 2 years/persons well versed in technology, telecommunications, industry, commerce or administration.
- **Term of office:** not > 3 years (Age: Chairperson not > 70 years, members-not > 65 years)
- **Powers:** similar to Civil Court, not bound strictly by CPC but has to follow principles of natural justice, proceedings deemed to be judicial proceedings, right to legal representation permitted, appeals to Supreme Court, orders passed by TDSAT executable as a decree, civil courts not to have jurisdiction.

Adjudication by TDSAT (Sec.14)

Disputes between:

- licensor and licensee
- Two or more Service Providers
- Service Providers and Group of consumers

Excluding :

- *Matters relating to MRTP Act,1969/Competition Act 2002
- *Individual consumer complaints maintainable before consumer for a u/CP Act,1986
- *Disputes between telegraph authority and any other person under Indian Telegraph Act

- **Who can make application for settlement of disputes or Appeal?:** Central or State Govt/local authority/any person (Sec.14-A)
- **When?:** aggrieved by direction, decision or order passed by TRAI- within 30 days from receiving copy of such direction or order
- **Time for disposal :** As expeditiously as possible –within 90 days
- **TRAI Act would prevail over the Arbitration and Conciliation Act**, being a special statute, in view of the Supreme Court judgment *Gujarat Urja Vikas Nigam Ltd. V. Essar Power Ltd* [(2008) 4 SCC 755]
- **The Mediation Centre of TDSAT** has been established to facilitate parties to arrive at a mutually agreed resolution of their differences with the help of trained Mediators. Presently, the Centre has a panel of eight qualified and experienced Mediators **(in 2018)**.

Current Disputes and Resolution Approaches

- **Whether a Cable Operator is a Service Provider or not:**
In *Sea T.V. Network Limited versus Star India Limited* [in Petition No. 41(C) of 2005 dated 24.08.2005],- it was **held** that ... for the purpose of Section 2(j) of the TRAI Act apart from the Government as a service provider and the licensee, even broadcaster, multi system operator, cable operators or distributors of TV channels will **have to be construed to be service providers** and if so construed, any dispute between them will be a dispute that has to be settled by this Tribunal under section 14 of the Act.
- The Delhi High Court has also **held that** broadcasters are service providers under the TRAI Act.

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- **Hotels are Consumers:** In *Hotel & Restaurant Association and Anr V. Star India Private Ltd* [Civil Appeal 2061 of 2006 – Order & Judgement dated 24.11.2006], the SC reversed decision of the TDSAT and held that - making a provision for extending facilities and amenities like Television etc. to the boarders would not constitute a sale by a hotel to a guest; if a Television set is provided in all the rooms, as part of the services rendered by the hotel management by way of an amenity, wherefor the guests are not charged separately, the same would not convert a guest staying in hotels into consumers or subscribers; that the hotels *stricto sensu* do not retransmit the signals to any other person, it merely make the services available to its own guests, which in other words, would mean to itself; and that **the hotels are therefore consumers.**

Spectrum Management

- **Spectrum** - use of radio waves or frequencies in telecommunications
- **Perception in the past:** spectrum is property of government, and government could use it in a manner that suited it and that government had exclusive rights to regulate and allocate spectrum
- Due to historic judgment of Supreme Court in 1995 in ***Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal*** [1995 SCC (2) 161] which **decided that spectrum is actually public property.**
- The SC held- “There is no doubt that since the airwaves/frequencies are a public property and are also limited, they have to be used in the best interest of the society and this can be done either by a central authority by establishing its own broadcasting network or regulating the grant of licences to other agencies, including the private agencies”
- This judgment has changed the perception of ownership of spectrum in India and the way the government handles and manages spectrum in today’s scenario.



In the case of *Reliance Natural Resources Limited v. Reliance Industries Ltd* [(2010) 7 SCC 1] , it was observed that – “natural resources are vested with the Government as a matter of trust in the name of the people of India, thus it is the solemn duty of the State to protect the national interest and natural resources must always be used in the interests of the country and not private interests. Most recently, the Supreme Court in the case of *Centre for Public Interest Litigation and Ors. Vs. Union of India (UOI) and Ors* held that “In conclusion, we hold that the State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good.”

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- In *Centre for Public Interest Litigation and Ors. Vs. Union of India* [(2012)3SCC1] , the SC held that :- “In conclusion, we hold that the State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good.”
 - Most of the developed countries like USA, Canada, UK, etc, hold the same view that spectrum is public property and the government is only the caretaker of this public property

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- **Spectrum management** -combination of administrative and technical procedures with legal connotations necessary to ensure efficient operation of radio communication services without causing harmful interference
 - **Levels at which spectrum is managed:** National & International
 - **International Management of Spectrum:** by international organizations for harmonizing use of spectrum between countries. E.g., International Telecommunication Union ("ITU") , Asia-Pacific Telecommunity ("APT") to which India is a signatory.

Supreme Court Cancels 122 Telecom Licenses With Good Intentions

- Several non-governmental organizations and individual citizens ("Petitioners") had filed a public interest litigation against the Union of India and various private companies in relation to allocation of 2G spectrum. In relation to this public interest litigation, on February 2, 2012, SC criticized the first come first served policy of the government for distribution of 2G spectrum and delivered an order against thirteen respondents cancelling 122 telecom licenses granted in various service areas for 2G spectrum. The SC has also levied fines against certain telecom operators and directed the Telecom Regulatory Authority of India ("TRAI") to formulate a fresh policy for allocation of 2G spectrum.

Questions Raised By The Supreme Court in 2G Spectrum case

- Whether the Government has the Right to Alienate a Natural Resource other than by Following a Fair and Transparent Method? Whether the TRAI Recommendations were Flawed?
- Whether the Grant of UAS Licenses to the Respondent Operators is Flawed due to Arbitrariness and Malafides and is Contrary to Public Interest?
- Whether the Principle of first come first Served Followed by the DoT for grant of the UAS Licenses to the Respondent Operators is Ultra Vires Article 14 of the Constitution.
- Whether the Licenses Granted to Ineligible Applicants and Those who Failed to Fulfill the Terms and Conditions of the License are Liable to be Quashed?

Some Recent decisions of TDSAT

- In *Prabhu Cable Network v. Sun Distribution Services Pvt.Ltd* (4th Aug.2015), the TDSAT directed both the applicant and respondents to negotiate with each other for activation / reactivation and entering into subscription agreement [petitioner denied signals by R on ground of receiving pirated signals in case of Colors channel-denial-app.of adv.commissioner-no proof of piracy-involvement of a competitor etc]

M/s Reliance Communications Ltd., Navi Mumbai Vs. Bharat Sanchar Nigam Ltd., New Delhi (8th July, 2015)

- **The dispute** - with regard to certain bills raised by the respondent on the challenged the demand notices
- The petitioner and the respondent entered into an Interconnect Agreement for Basic Telephone Services for Kerala Circle on 25.01.2002. Subsequently, when the petitioner migrated to the UASL, an addenda to the Interconnect Agreement was signed between the parties on 21.09.2005.
- The Tribunal vide interim order dated 4.01.2008 stayed the operation of these notices directing the petitioner to deposit 65% of the total demand. The petition was disposed of by the Tribunal by judgment dated 15.4.2010 directing the respondent to handover the relevant CDRs (Call Data Record) to the petitioner so as to enable it to offer explanation about the same
- The respondent filed an appeal against the above judgment of the Tribunal before the Hon'ble Supreme Court being Appeal No. 4882-4883 of 2010. This appeal was disposed of vide order dated 29.09.2010 recording the statement of the learned Solicitor General appearing for BSNL that it would be providing CDRs to Reliance Communications Ltd. (the petitioner herein) within 4 weeks of the date of the order to quantify IUC charges payable as per agreement.



1. Subsequently, a joint inspection by a team that included the representative of both the parties was carried out on 13.2.2004. The inspection report is available at page 856 of the paper book. As per this report, international calls were being illegally received through broadband link provided by M/s Reliance Infocom. These calls were then automatically being transited using a CISCO make router AS-5300 and suitable converters through telephone lines also provided by Reliance Infocom. Though the calls were received from other countries, these were reflected in the call data records (CDRs) as local and STD calls.

➤ Held: We find that the respondent is, therefore, well within its rights to invoke the clause 6.4.6.

The Vodafone decision (SC January 20, 2012)– a synopsis

- Controversy surrounding the taxability in India of offshore transfer of shares of a Cayman Islands company by the Hutchison Group to the Vodafone Group
- the Supreme Court reversed the decision of the Bombay High Court and held that the Indian tax authorities did not have territorial jurisdiction to tax the offshore transaction, and therefore, Vodafone was not liable to withhold Indian taxes.

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- On the applicability of withholding tax (Section 195 of the Act) and representative assessee (Section 163 of the Act) provisions Supreme Court held that:
 - The question of withholding tax at source would not arise as the subject matter of offshore transfer between the two non-residents was not liable to capital gains tax in India. For the purposes of Section 195 of the Act, tax presence has to be viewed in the context of the transaction that is subjected to tax, and not with reference to an entirely unrelated matter.
 - The Supreme Court further observed that as there was no incidence of capital gains tax in India, the provisions under Section 163 of the Act, for treating Vodafone as a representative assessee of HTIL, were not applicable
 - **Ground:** Both the companies were incorporated not in India but offshore. Both the companies have no income or fiscal assets in India, leave aside the question of transferring, those fiscal assets in India. Tax presence has to be viewed in the context of transaction in question and not with reference to an entirely unrelated transaction.

COAI & Ors. Vs. Union of India & Ors. [(2003) 3 SCC 186]

- ▶ the Hon'ble Supreme Court has observed as under:
“.... The contention that until decision of the Tribunal afresh, the fixed service operators may not be permitted to provide WLL with limited mobility to the consumers cannot be accepted since that would be grossly detrimental to the consumers' interest and also on account of the fact that several fixed service operators have already provided the facility in question ...”

M/s Praja Cable Net V. M/s Eenadu Television Pvt. Ltd [TDSAT Dt-3 rd April, 2014]

- Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi-system operator, head ends in sky operator; (HITS operators and multi system operators shall also, on request, re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators:)
- Provided that this provision shall not apply in the case of a distributor of TV channels having defaulted in payment.- Regulation 3.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004
- **Held**– Respondent (ETV) cannot refuse signals & decoder boxes to Petitioner (Local Cable Operator)- as R failed to produce evidence regarding the benami operation and outstanding dues.

In exercise of the power vested in it under Section 14(b) of the Act, TDSAT does not have the jurisdiction to entertain the challenge to the regulations framed by the Authority under Section 36 of the Act.... SC in its judgment, **Bharat Sanchar Nigam Limited v. Telecom Regulatory Authority of India** dated December 6, 2013...TDSAT has no power to decide constitutionality of law

- See **L. Chandra Kumar v. Union of India** (1997) 3 SCC 261- “....The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts.
- In **Union of India v. TATA Teleservices (Maharashtra) Ltd.** (2007) 7 SCC 517, the two Judge Bench of Supreme Court referred to the scheme of the Act and observed: “The conspectus of the provisions of the Act clearly indicates that disputes between the licensee or licensor, between two or more service providers which takes in the Government and includes a licensee and between a service provider and a group of consumers are within the purview of TDSAT. ...

DSM in Telecom: Relating International to National Practices

- **The importance of swift and efficient mechanisms**
- Competition, deregulation and the technological revolution continue to change the way the telecommunication sector functions. As a study commissioned by ITU and the World Bank states:
“Old business models and commercial arrangements are being abandoned or bypassed while new ones emerge. An era characterized by regional monopolies providing plain old telephone service is colliding with one that has multiple ICT [information and communication technologies] service providers using IP [Internet Protocol], wireless and broadband technologies.” These trends, along with increasing globalization, unleashing market forces and emerging and varying customer needs are changing the nature and complexity of disputes that arise in the telecommunication sector.
- The ITU/World Bank study indicates that: “Disputes can be enormously destructive to the sector and effective dispute resolution is increasingly central to successful deployment of modern information infrastructure. This is particularly so where it is necessary to encourage investment and competition to reach the underserved billions of people on the wrong side of the digital divide.”

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- Indeed, as the number of disputes moves to a different order of magnitude, efficient and responsive dispute settlement mechanisms are increasingly being seen as a prerequisite for an orderly growth of the telecommunication sector. Policy-makers and regulators are recognizing expeditious and effective dispute resolution as an important objective of telecommunication policy and regulation.

[“Dispute Resolution in the Telecommunications Sector: Current Practices and Future Directions. Discussion Paper — Executive Summary.” Study commissioned by ITU and The World Bank available at https://www.itu.int/ITU-D/treg/publications/ITU_WB_Dispute_Res-E.pdf]

CENTRE FOR PUBLIC INTEREST LITIGATION

V. UNION OF INDIA

(SC- APRIL 08, 2016.)

the petitioner challenged the decision of the Government of India, taken sometime in March 2013, allowing voice telephony to respondent No. 2 (Reliance Jio Infocomm Ltd.) on payment of Rs.1,658 crores entry fee. Allegation of the petitioner is that the aforesaid amount at which the license for voice telephony is granted to respondent No. 2 is a pittance inasmuch as in normal course grant of this license would have fetched a whopping sum of Rs.25000 crores approximately.

- This insinuation is based upon a draft report of the Comptroller and Auditor General of India (CAG) which report estimated the aforesaid license fee/entry fee. It is also alleged that respondent No. 1, while allowing voice telephony to respondent No. 2, has not revised the Spectrum Usage Charges (SUC) matching with the charges which are paid by other operators who bought voice telephony.
- It is stated in the petition that whereas the other operators pay 3% to 5% revenue annually depending upon quantum of the spectrum they hold, respondent No. 2 in contrast would be paying just 1% of the revenue. In this way, alleges the petitioner, an undue favour is given to respondent No. 2 by charging abysmally less entry fee and demanding much lesser SUC, thereby causing loss of revenue to the Government over 20 years license period. It has also resulted in disturbance in the level-playing field between respondent No. 2 vis-a-vis other operators.

► The SC dismissed the PIL on the ground that

- the main consideration that prevailed with the Government in keeping the SUC at 1% of AGR was that BWA spectrum was to be used for rural development
- the license granted to respondent No. 2 empower the licensor/Government to change the terms of license and, therefore, whenever it is felt necessary and expedient in public interest, the percentage of SUC can be increased.

Vodafone Mobile Services Ltd. Vs. Union of India

[TDSAT Dated 31st January, 2014]

- The petitioners - mobile telephone service providers under the Licenses granted by the Central Government to them under section 4 of the Indian Telegraph Act, 1885.
- Their licenses, on completion of the 20 years period stipulated therein, were due to expire at the end of November 2014. On commencement of the nineteenth year of the licence period, they had approached the Central Government for taking steps for renewal of their licenses for another period of 10 years as provided in the terms of the licence.
- Failing to get any favourable response, the petitioners went to the Delhi High Court seeking appropriate directions. High Court, having noted the rival contentions directed R to consider and dispose of their representations.
- Finally their applications for extension of their licences were rejected the R. Faced with the prospect of losing the spectrums assigned to them under their respective licences, they moved the TDSAT challenging the orders of DoT. (2 out of 3 petitioners were also taking part in the auctions for sale of spectrum)
- TDSAT **held-** “all the petitioners have been holding, for years, spectrums far in excess of the contracted quantum and that too in the most premium band and that on payment of entry fee at rates fixed in 2001” & “the denial of extension of the licences to the petitioners is based on good reasons as envisaged under clause 4.1 of the UAS licence and the relevant provision in the CMTS licence and the petitioners can claim no right for extension of their licences under the aforesaid provisions of their licences”

References:

- The TRAI Act, 1997
- Manjul Bajpai, Telecom Law and Telecom Dispute Settlement Mechanism in India – A Bird's Eye View, 2008, available at <http://tdsat.nic.in/>
- The Indian Telecom Sector Legal and Regulatory Framework- Nishith Desai Associates, July 2014 available at <http://www.nishithdesai.com/>
- “Dispute Resolution in the Telecommunications Sector: Current Practices and Future Directions. Discussion Paper — Executive Summary.” Study commissioned by ITU and The World Bank to Debevoise & Plimpton and McCarthy Tétrault .Available at <http://www.itu.int/>
- Cellular Operators Association of India & Ors. Vs. Union of India & Ors. (Petition No.1 of 2001) reported in (2003) 3 SCC 186.
- <http://www.tdsat.nic.in/>