

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. . 423 Of 2010

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

CENTRE FOR PUBLIC INTEREST LITIGATION

THROUGH ITS GENERAL SECRETARY,

43, LAWYER'S CHAMBERS,

SUPREME COURT OF INDIA

NEW DELHI-110001

...PETITIONER NO. 1

LOK SATTA

THROUGH ITS NATIONAL COORDINATOR

DR. JAYAPRAKASH NARAYAN

FLAT NO. 801&806

SRINIVASA TOWERS, BEGUMPET

HYDERABAD-500016

...PETITIONER NO. 2

TELECOM WATCHDOG

THROUGH ITS SECRETARY

305, LOTUS CHAMBERS

2079/38 NALWA STREET

KAROL BAGH, DELHI-110003

...PETITIONER NO. 3

COMMON CAUSE

THROUGH ITS CHIEF EXECUTIVE

MR. KAMAL KANT JASWAL

5, INSTITUTIONAL AREA, NELSON MANDELA MARG

VASANT KUNJ, NEW DELHI

...PETITIONER NO. 4

MR. J M LYNGDOH

FORMER CHIEF ELECTION COMMISSIONER

144, PRAGATI RESORT

CHILUKURU BALAJI TEMPLE ROAD

PRODDUTUR VILLAGE, SHANKARPALLY MANDAL

RANGA REDDY DISTRICT, ANDHRA PRADESH

...PETITIONER NO. 5

MR. T S KRISHNAMURTHY

FORMER CHIEF ELECTION COMMISSIONER

9, GOKUL TOWERS, II FLOOR

ALWARPET, CHENNAI-600018

...PETITIONER NO. 6

MR. N GOPALASWAMI

FORMER CHIEF ELECTION COMMISSIONER

5, LEO MADHURAM

39, GIRI ROAD, T NAGAR

CHENNAI-600017

...PETITIONER NO. 7

MR. P SHANKAR

FORMER CENTRAL VIGILANCE COMMISSIONER

3, GILCHRIST AVENUE, HEMINGTON ROAD

CHENNAI-600031

...PETITIONER NO. 8

MR. JULIO F. RIBEIRO

IPS RETD.

51, SAGAR TARANG

WORLI SEAFACE

MUMBAI-400030

...PETITIONER NO. 9

MR. PARANJOY GUHA THAKURTA

SENIOR JOURNALIST, AGE 55 YEARS

S/O LATE SHRI P G THAKURTA

K-33, SOUTH CITY-1

GURGAON-122001

...PETITIONER NO. 10

ADMIRAL (RETD.) R. H. TAHILIANI

MENTOR, TRANSPARENCY INTERNATIONAL INDIA

R/O 290, DEFENCE COLONY

SECTOR-17, GURGAON-122001

...PETITIONER NO. 11

VERSUS

UNION OF INDIA

THROUGH ITS SECRETARY

DEPARTMENT OF TELECOMMUNICATIONS

SANCHAR BHAWAN, 20 ASHOKA ROAD

NEW DELHI-110001

... RESPONDENT NO. 1

ETISALAT DB TELECOM PVT. LTD.

(SWAN TELECOM), 7-B, VANDANA BUILDING

11, TOLSTOY MARG, NEW DELHI-01

... RESPONDENT NO. 2

UNITECH WIRELESS GROUP
THE MASTERPIECE, 10
GOLF COURSE ROAD, SECTOR-54
DLF PHASE-V, GURGAON-122002 ... RESPONDENT NO. 3

LOOP TELECOM PVT. LTD
(SHIPPINGSTOP DOTCOM P. LTD)
708-709, PRAKASH DEEP BUILDING
7, TOLSTOY MARG, CONNOUGHT PLACE
NEW DELHI-110001 ... RESPONDENT NO. 4

VIDEOCON TELECOMMUNICATIONS LTD.
(DATACOM SOLUTIONS PVT LTD)
IV FLOOR, 248, PHASE-IV
UDYOG VIHAR, GURGAON-122015 ... RESPONDENT NO. 5

S TEL LTD.
I FLOOR, TOWER-B, UNITECH CYBER PARK
SECTOR-39, GURGAON-122001 ... RESPONDENT NO. 6

ALLIANZ INFRATECH (P) LTD
G-11, SECTOR-11
NOIDA-201301 ... RESPONDENT NO. 7

IDEA CELLULAR
& ADITYA BIRLA TELECOM LTD.
(SPICE COMMUNICATIONS PVT LTD)
1005-1006, FLOOR 10, KAILASH BUILDING
26, KASTURBA GANDHI MARG
NEW DELHI-110001 ... RESPONDENT NO. 8

TATA TELESERVICES LTD
INDIACOM BUILDING, 2A
OLD ISHWAR NAGAR, MAIN MATHURA ROAD
NEW DELHI-110065 ... RESPONDENT NO. 9

SISTEMA SHYAM TELE SERVICES LTD
(SHYAM TELELINK LTD)
RAINBOW TOWERS, 3, RAINBOW CIRCLE
VAISHALI NAGAR, JAIPUR-302021 ... RESPONDENT NO. 10

DISHNET WIRELESS LTD & AIRCEL LTD
5TH FLOOR, DLF CYBER CITY 10A
NEAR SHANKAR CHOWK
GURGAON-124002

... RESPONDENT NO. 11

VODAFONE ESSAR SOUTH LTD.
& VODAFONE ESSAR SPAECTEL LTD.
C-48, OKHLA INDUSTRIAL AREA PHASE-II
NEW DELHI-110020

... RESPONDENT NO. 12

AND

IN THE MATTER OF:

CENTRE FOR PUBLIC INTEREST LITIGATION & ORS.

...THE PETITIONERS

VERSUS

THE UNION OF INDIA & ORS.

...THE RESPONDENTS

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING APPROPRIATE WRIT FOR CANCELLATION OF THE ENTIRE ALLOCATION OF 2G SPECTRUM AND TELECOM LICENCES ISSUED BY THE DEPARTMENT OF TELECOMMUNICATIONS

To,

**THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES
OF THE HON'BLE SUPREME COURT OF INDIA**

The Humble Petition of the
Petitioners above-named

MOST RESPECTFULLY SHOWETH: -

1) That the petitioners are filing the instant writ petition in public interest seeking appropriate writ for cancellation of the entire allocation of 2G spectrum and telecom licences issued by the Department of Telecommunications (hereinafter '**DoT**') on the basis of 2 press releases issued on 10th January

2008. Allocation of precious 2G spectrum and licences carried out by the DoT under its then Minister A. Raja was marred by multiple illegalities, corruption and favouritism. Irregularities and illegalities have also been recorded and commented upon by 2 detailed judgments of Delhi High Court and detailed report of the Comptroller and Auditor General of India (hereinafter '**CAG**'). According to the CAG, 85 of the 122 licences were given to companies who were not even eligible and as many as 343 applications were wrongly not even considered by the DoT. Now, Telecom Regulatory Authority of India (hereinafter '**TRAI**') has recommended that 69 of the 122 licences be cancelled since the licencees have failed to roll-out their services as mandated by the condition on which they got the licences.

2) According to the calculations made by the CAG, the said allocation caused a loss of a whopping Rs. 1.76 lakh crores making it the biggest scam in the history of the Indian republic. DoT under its then Minister A. Raja ignored the advice of the Prime Minister, Finance Minister, Law Minister, Finance Secretary, Telecom Secretary, Member (Finance), TRAI and avoided the deliberations of the Cabinet, EGoM or the Telecom Commission and went on to arbitrarily award the precious 2G spectrum (a scarce finite asset) at throwaway prices in a non-transparent manner, and followed unfair processes designed to benefit a few favoured companies. At the instance of the CVC, CBI registered an FIR against "unknown officers of the DoT" and "private individuals" under the Prevention of Corruption Act and other sections of IPC.

3) Thus, it is in the fitness of things, and in the interest of the telecom sector and the national exchequer, that the allocation of 2G spectrum and telecom licences made by DoT pursuant to its 2 press releases issued on 10.01.2008 be held to be illegal, licences be cancelled, spectrum be taken back by the Government and then auctioned as was done in 2001 and has been done in 2010. Internationally, in most legal systems, transactions tainted by bribery / corruption or made in violation of established norms and

procedures are considered illegal and unenforceable. The same must be held in this case. In addition, punitive damages must be imposed on companies that made false declarations or who violated their undertakings given to the government.

THE PETITIONERS

4) Petitioner No. 1, Centre for Public Interest Litigation, is a registered society formed for the purpose of taking up causes of grave public interest and conducting public interest litigation in an organized manner. Its founder President was the late Shri V.M. Tarkunde and its Executive Committee consists of several senior advocates including Shri Fali S. Nariman, Shri Shanti Bhushan, Shri Anil Divan, Shri Rajinder Sachar, Shri Colin Gonsalves among others. CPIL has also filed another PIL regarding 2G spectrum allocation seeking a thorough court-monitored investigation.

5) Petitioner No. 2 is Lok Satta, a registered society dedicated to political and governance reforms and fight against corruption, through its National Coordinator Dr Jayaprakash Narayan. The Lok Satta movement has done pioneering work in the field of election reforms, right to information and anti-corruption campaigns. Its work formed the basis of 2002 landmark judgment of this Hon'ble court mandating certain disclosures by election candidates.

6) Petitioner No. 3 is Telecom Watchdog, a non-governmental organisation registered under the Societies Registration Act, 1860, with the purpose of sincerely working for the noble cause of protecting the national interest, the interest of telecom consumers, and the public at large. It has established its credentials as a genuine public interest organization in several cases filed before the Hon'ble Delhi High Court, Hon'ble Supreme Court, Telecom Tribunal, and the Standing Committees of Parliament, dealing with telecommunication issues based on extensive research. Telecom Watchdog had sent a detailed complaint to CVC regarding 2G spectrum allocation.

7) Petitioner No. 4, Common Cause, is a registered society that was founded in 1980 by late H. D. Shourie for the express purpose of raising common problems of the people and securing their resolution. It has brought before the Hon'ble Supreme Court of India and Hon'ble High Courts various Constitutional and other important issues and has established its reputation as a bona fide public interest organization. Common Cause has raised the issue of arbitrary allotment of 2G spectrum for the past 3 years.

8) Petitioner No. 5, 6 and 7 are Mr. J M Lyngdoh, Mr. T S Krishnamurthy and Mr. N Gopaldaswami respectively. All of them are former Chief Election Commissioners (CECs).

9) Petitioner No. 8 is Mr. P Shankar, former Central Vigilance Commissioner.

10) Petitioner No. 9 is Julio F. Ribeiro, a retired IPS officer. He has served as DGP of Gujarat, DGP of Punjab, Commissioner of Police, Mumbai and as DG of CRPF.

11) Petitioner No. 10 is senior journalist Mr. Paranjoy Guha Thakurta. Educated at St. Stephan's college and Delhi School of Economics, he started his career as a journalist in 1977. He has worked in publications such as Business India, Business World, The Telegraph, India Today and The Pioneer. He anchored about 1400 daily discussion programs on CNBC and since 2007 he anchors 2 weekly programs for Lok Sabha Television. He is a visiting faculty member for over a dozen institutions including IIMs, IIT, FTII, IIFT, DU, JNU, JMI. Mr. Thakurta has repeatedly raised the issue of arbitrary allotment of spectrum in different forums.

12) Petitioner No. 11 is Admiral Tahiliani. He is the former Governor and

Chief of Naval Staff. He has served for many years as Chairperson of Transparency International India and now serves as its Mentor.

THE RESPONDENTS

13) Respondent No. 1 is the Union of India through its Secretary, Department of Telecommunications (DoT).

14) Respondent No. 2 to Respondent No. 12 are the beneficiaries of the allotment of the 2G spectrum and/or licences issued by the DoT since January 2008.

THE CASE IN BRIEF

15) The entire 2G spectrum scam was a multi-stage, well thought out, deliberate act where a criminal conspiracy was hatched between private companies/persons and officials of Department of Telecom (DoT) in order to circumvent an open transparent auction process and choosing first-come-first-served (FCFS) method for awarding licenses bundled with 2G spectrum to favored few by violating several provisions of the law and established rules, deviating from TRAI recommendations, while pretending to follow them. Additionally, established procedure for giving licenses with spectrum since 2003 was also vitiated and manipulated while making public claims that department is following existing precedents of the policy that existed since 2003. The act was carried out by DoT officials in collusion with private enterprises and is matter of the CBI FIR.

16) The modus-operandi of the said scam was:

- Granting 2G spectrum at 2001 prices when it was a nascent market rather than at contemporary market prices in 2008 when there was huge demand and the prices had increased by at least 10 times.

- Inviting companies who were not in the telecom business to put in applications for licences for 2G spectrum.
- Granting licences on “first come first served” basis rather than through a transparent public auction. Even the FCFS method was not properly applied as priority was fixed at the last moment from the date of compliance with LOI conditions rather than the date of receipt of applications. This was purposely done to favour select companies who had advance knowledge of DoT announcements.
- Resorting to the announcement of arbitrary cut-off date (01.10.2007) to stop legitimate applicants from applying, thereby creating sellers (who were not in the telecom business) and buyers (genuine telecom companies who could not apply or were left out due to the manner in which cut-off date was implemented).
- Advancing the cut-off date retrospectively and illegally to award precious 2G spectrum only to a handful of applicants (122 out of 575).
- Cherry-picking and manipulating multiple recommendations of the TRAI to award licences to a favoured few companies in violation of the TRAI Act.
- Further allowing these companies to sell equity or conduct private auctions and garner large sums.
- Ignoring specific directions of the Law Ministry to seek the opinion of the Empowered Group of Ministers (EGoM) in the matter.
- Deliberately ignoring that most of the licensee applicants did not even fulfill the mandatory eligibility criteria.
- Not cancelling the licence of the firms who failed to carry out their mandatory network roll-out obligations.

17) The DoT had in the past followed the policy of FCFS but it had been

discontinued due to unavailability of spectrum. Since 2006-07 new licences with spectrum were not allotted and the applications were kept pending by DoT. But after Mr. A Raja took over as the Telecom Minister, process of allotment of precious and scarce national resource Spectrum was initiated in 2007 by the Department of Telecommunications (DoT). A copy of the press release issued when Mr. Raja took over as Minister is annexed as **Annexure P1**. (Page _____) Universal Access Service (UAS) Licences along with 2G Spectrum for telecom services were sought to be awarded. At that time, the latest recommendation of TRAI was of 28.08.2007 on “Review of license terms and conditions and capping of number of access providers.” A copy of the relevant pages of TRAI recommendations are annexed as **Annexure P2**. (Page _____)

18) After a few favoured companies had put in their applications (for eg. Unitech Group on 24.09.2007 had put in 22 applications for UAS licenses through 8 companies), Telecom Ministry issued a press note on 25.09.2007 (ante-dated as 24.09.2007) stating that it would not accept applications beyond 01.10.2007. A copy of the said Press Note is annexed as **Annexure P3**. (Page _____) During the next five days, 343 additional applications were received.

19) As on this date, i.e. stated cut-off date, DoT received 575 applications for UAS licences by 46 companies. A list of applicants is annexed as **Annexure P4**. (Page _____)

20) DoT on 19.10.2007 issued a press release which clearly deviates from TRAI recommendations regarding roll-out and mergers & acquisitions. A copy of the said press release is annexed as **Annexure P5**. (Page _____)

21) The Law Minister wrote to DoT that considering the importance of the issue, it should be referred to an Empowered Group of Minister. The opinion of

the Law Secretary along with that of the Law Minister dated 01.11.2007 is annexed as **Annexure P6**. (Page _____) This was rejected by the Telecom Minister who stated that the advice of the Law Ministry was 'out of context.'

22) After a lot of concerns were raised, the Prime Minister wrote to the Telecom Minister Mr. Raja directing him to ensure that 2G spectrum was allocated in a fair, transparent and efficient manner and also to ensure that licence fee was properly revised and auction is considered. A copy of the letter written by the Prime Minister dated 02.11.2007 is annexed as **Annexure P7**. (Page _____) The then Telecom Minister replied on the same day rejecting the suggestions made by the Prime Minister. Two letters sent by the then Telecom Minister on 02.11.2010 are annexed as **Annexure P8 (colly)**. (Page _____)

23) Secretary, Ministry of Finance on 22.11.2007 wrote to the Department of Telecommunications expressing concerns over the procedure adopted for the allocation of 2G spectrum. The letter also stated, "It is not clear how the rate of Rs. 1,600 crore, determined as far back as in 2001, has been spliced for a license given in 2007 without any indexation, let alone current valuation. Moreover, in view of the financial implications, the Ministry of Finance should be consulted in the matter before you finalize the decision. I request you to kindly review the matter." This demand for the review was rejected. A copy of the said letter of the Finance Secretary is annexed as **Annexure P9**. (Page _____) This was also rejected by the DoT.

24) On 25.11.2007, Telecom Secretary and Member Finance of the Telecom Commission wrote an internal note indicating that only proper and legally justifiable way of allocating spectrum would be through auctions. A copy of the said note is annexed as **Annexure P10**. (Page _____)

25) On 10th January, 2008, DoT issued 2 controversial press releases making major changes in policy implementation regarding spectrum allocation. The first press release stated that DoT has decided to issue licences on first-come-first-served basis. It stated that those who applied till 25.09.2007 would be given licences. Thus, the last date for submission of the applications was advanced from 01.10.2007 to 25.09.2007 by an announcement made much after that period was over. A copy of the said release is annexed as **Annexure P11**. (Page _____) Later in the same day DoT at about 2.45 pm posted an announcement on its website that those who apply between 3.30 to 4.30 pm would be issued licences. Those who deposited their fees along with documentation first were favoured in accordance with the controversial 'first come first served' system. Thus the favoured few companies had their drafts of hundreds of crores of rupees and documentation ready. A copy of the said announcement is annexed as **Annexure P12**. (Page _____) The DoT awarded 122 LOIs to the favoured ones on the same day. Pan-India licenses consisting of 22 Circles were awarded at about Rs 1,658 crore. FCFS definition was changed from the "date of application" to "date of submission of compliance to LOI". In addition, the DoT released 2G start-up spectrum to 22 new licensees on the same day, who were awarded UAS license without spectrum in 2006. A list containing the details of these licensees is annexed as **Annexure P13**. (Page _____) Chairman of TRAI wrote a letter to DoT on 14.01.2008 protesting that TRAI recommendations were not only violated by the DoT and but it violated the provisions of law also. A copy of the said letter is annexed as **Annexure P14**. (Page _____)

26) The new UAS licensees sold their licenses at very high premium. Swan Telecom sold 45% of its shares for Rs 4,200 crores which had obtained the licence for only Rs 1,537 crores without having any assets. Unitech Wireless sold 60% of its stake to Telenor for Rs 6,200 crores which had obtained the spectrum for Rs. 1,651 crores. Tata Teleservices sold 26% of its share to NTT DoCoMo, Japan for Rs. 13,230 crores. Shyam Telecom also sold majority of

its shares to Sistema.

27) One of the petitioners herein, Telecom Watchdog, also made complaints to various government bodies including the CVC. It specifically highlighted that Essar illegally obtained two UAS licenses for the same service areas across the country. In 2008, it acquired another pan-India UAS license through Loop Telecom Pvt Ltd, whereas it already has 33.01 per cent stake in another operating company – Vodafone Essar Ltd. A company cannot even apply for licence if it is already in operation with 10 per cent or more equity stake. A copy of this complaint dated 04.05.2009 is annexed as **Annexure P15**. (Page _____)

28) A detailed and well-documented complaint was made to CVC by Shri Arun Agarwal, an expert in exposing financial scams, on the 2G spectrum allotment which according to his calculation has cost the country Rs 50,000 crores. His complaint specifically dealt with the case of a company known as Swan Telecom which had no assets and yet was granted spectrum at throwaway prices. A copy of the said complaint dated 19.05.2009 is annexed as **Annexure P16**. (Page _____) The said complaint inter-alia states:

“As for the mystery as to who owns Swan Telecom, which even the Ministry of Company Affairs is not able to solve, the answer is: it is the company/person which bought 992 crore worth of Re 1/-, 8% preference shares invested by Reliance Communication in Swan Telecom by paying a hefty premium of Rs. 999 which was overvalued by 99900% is the actual owner of Swan Telecom. The company which bought the investment of Reliance Communication at the fantastic overvalued price is reportedly registered in Mauritius.

The trading of Swan Telecom, by transfer of ownership of the holding company owning 90% of the shares- Tiger Trustee- took place on the very day that the other license application of the ADAG group-Reliance

Communication- was given the license. The fact that the Swan Telecom with an asset of Rs 1100 crores in paid up capital was sold for a mere Rs 4.99 crores on the very day the license was granted to Reliance Communication -18/10/07- establishes that the sale was a bribe for giving the license.”

29) The decision to advance the cut-off date post-facto was held to be arbitrary and illegal by a Delhi High Court on 01.07.2009. The Court held: *“The respondent cannot be allowed to arbitrarily change the cutoff date and that too without any justifiable reasons...the impugned press release dated 10.01.2008 is quashed.”* A copy of the said judgment is annexed as **Annexure P17**. (Page _____) Thus the very basis on which spectrum and licences were allotted was held to be illegal.

30) In October 2009, acting on various complaints, CVC directed the CBI to register a case and investigate the allotment of 2G spectrum. CBI after preliminary investigation, registered a case and filed an FIR on 21.10.2009 under various sections of the IPC and Prevention of Corruption Act. The case has been registered by CBI vide RC DAI 2009 A 0045 dated 21.10.2009 u/s 120-B of IPC r/w Sec 13(2) r/w Sec 13(1)(d) of Prevention of Corruption Act, 1988 against *“unknown officers of the Department of Telecommunications (DoT) and unknown private persons/companies and others”*. A copy of the said FIR is annexed as **Annexure P18**. (Page _____) In an unprecedented move, CBI raided the offices of Department of Telecom on 22.10.2010.

31) On 16.11.2009, CBI sought help from the Directorate General of Income Tax regarding information on Ms. Nira Radia of M/s Noesis Consultancy and records pertaining to middlemen regarding award of 2G spectrum licences. A copy of the letter of CBI to DGIT is annexed as **Annexure P19**. (Page _____) Pursuant to the said request, certain information was given by the Income Tax department which clearly shows the serious offences under the

Prevention of Corruption Act have been committed. It shows that a large number of corporate players were involved in influencing the policies of Department of Telecommunications using extraneous and illegal means. The information received shows that one middleman Ms. Nira Radia was directly in touch with the Telecom Minister A. Raja. A copy of the said letter along with their internal reports is annexed as **Annexure P20**. (Page _____)

32) The Division Bench of the Delhi High Court headed by Hon'ble Chief Justice on 24.11.2009 dismissed the appeal challenging the decision of the single judge regarding the cut-off date and also imposed a cost of Rs. 20,000 on Union of India stating that its actions were tantamount to changing the rules after the game has begun and were arbitrary and irrational. A copy of the order of the Division Bench is annexed as **Annexure P21**. (Page _____) On 12.03.2010, this Hon'ble court refused to interfere and disturb the findings of the Delhi High Court which held the change in cut-off date to be illegal. A copy of the said order of this Hon'ble court is annexed as **Annexure P22**. (Page _____)

33) CAG submits its final report on the issue of 2G spectrum allocation in November 2010. It estimates the loss of astronomical Rs.1.76 lakh crores to the exchequer. It directly indicts Mr A Raja. It also indicates collusion between DoT officials and industry. The CAG also finds out that out of 122 UAS licenses issued on 10.01.2008, 85 licenses were issued to ineligible companies. The CAG indicts the DoT for subverting all procedures and norms in allocating 2G spectrum. A copy of the said report dated 08.11.2010 is annexed as **Annexure P23**. (Page _____) TRAI also writes to DoT on 18.11.2010 stating that 69 out of 122 licences have failed to fulfill their mandatory roll-out obligations. A copy of the said letter is annexed as **Annexure P24**. (Page _____)

34) The CAG in the conclusion of its reports has stated the following:

In conclusion, it is observed that despite having themselves sought the opinion of the Ministry of Law and Justice, the Department of Telecommunications decided to ignore the advice received. The concerns of the Ministry of Finance were also not addressed for reasons which are not convincing. In fact, the directions of the Hon'ble Prime Minister evoked a response from the Hon'ble Minister of Communications and Information Technology on the same day. The letter contained assurances with regard to the availability of spectrum for all applicants as also with regard to the strict adherence to the FCFS policy for allocation of spectrum. The assurances, however, were not adhered to. The methodology for allocation of 2G spectrum, a scarce finite national asset and for which there was an unprecedented demand for allocation, was not deliberated upon by the full Telecom Commission. Audit is of the view that such discussion with different stake holders represented in the Telecom Commission would certainly have benefitted Department of Telecommunications in arriving at a more credible and transparent procedure for allocation as also for ascertaining the true value of 2G spectrum. The entire implementation process does not withstand the test of scrutiny, and hence, the widely held belief that it has benefitted a few operators and has not been able to maximise generation of revenue from allocation of such a scarce resource. This has now been confirmed in Audit. The role of Telecom Regulatory Authority of India would also appear to have been reduced to that of a hapless spectator as its recommendations were either ignored or applied selectively. The entire process of allocation of 2G spectrum raises serious concern about the systems of governance in the Department of Telecommunications which need to be thoroughly reviewed and revamped. The fact that there has been loss to the national

exchequer in the allocation of 2G spectrum cannot be denied. However, the amount of loss could be debated. To ensure that such lapses do not occur in any Ministry or Department of the Government, there is an imperative need to fix responsibility and enforce accountability for the lapses highlighted in the Audit Report.

35) The show cause notices that the DoT is now planning to issue to ineligible allottees of spectrum and licencees and the ones who failed to meet their roll-out obligations, proceeds from the erroneous premise that there was nothing irregular *per se* in the exercise of spectrum allocation. These notices only obfuscate the real issues and divert attention from the massive fraud perpetrated on the nation by the DoT itself.

36) Under these circumstances, petitioners humbly submit to this Hon'ble court that the entire process of allotment of spectrum was non-transparent, unfair and tainted with all kinds of violation of rules and procedures. Even according to the CBI FIR crimes under Prevention of Corruption Act were committed during allotment of 2G spectrum and telecom licencees. The CAG has computed that the national exchequer suffered a loss of Rs. 1.76 lakh crores. The very basis of the allotment, i.e. the cut-off date, was held to be illegal by the courts. Thus, the allotment of 2G spectrum made pursuant to press releases issued on 10th January 2008 should be cancelled in its entirety and spectrum & licence should be freshly allotted after a transparent auction process. The Government of India should also be directed to recover from the licencees of 2G spectrum the windfall profits they may have received by selling the spectrum, or as equity in companies in which the sole or substantial asset is the spectrum obtained through irregular means.

37) The Government of India or its agencies or public sector companies may be contemplating to allocate, or in the process of allocating other

resources in telecom sector in the form of 2G, 3G or WiMax or other licenses without any transparent, fair, or competitive processes. The Government and its agencies and undertakings should be prohibited from issuing any such license or allocate any spectrum or other resources without following transparent, fair, competitive procedures.

38) The Petitioners have not filed any other writ, complaint, suit or claim in any manner regarding the matter of dispute in this Hon'ble court or any other court or tribunal throughout the territory of India.

GROUND

- A. That the 2G spectrum and telecom licences were awarded by the DoT in most arbitrary and illegal manner which is a complete violation of rule of law resulting in violation of Article 14 of the Constitution.
- B. That the very basis of the entire allocation was the cut-off date which was retrospectively advanced by the DoT. This change in the cut-off date was held to be illegal by 2 detailed judgments of the Delhi High Court (which were not interfered by this Hon'ble Court). Hence the very basis of the spectrum and licence allocation has been held to illegal.
- C. That according to the CAG, 85 of the 122 licencees were not even eligible and according to TRAI 69 of 122 licencees have not roll-out their services violating mandatory undertakings.
- D. That the arbitrary issuance of licences cost the exchequer a huge sum of Rs. 1.76 lakh crores as per the CAG report and it is essential that this loss is redeemed.
- E. That the companies which got the licence out of turn as brought about by the CAG report cannot be the beneficiaries of their own wrong. It

is in the fitness of things that the entire spectrum be taken back by the Government and put to auction so that scarce spectrum can be fairly and transparently allocated giving proper revenue to the national exchequer.

F. That the DoT violated the provisions of the TRAI Act by not resending the recommendations back to TRAI before deviating from its crucial recommendations on no cap, roll-out obligations and on mergers & acquisitions.

G. That the prevailing corruption in the country in high places seriously impairs the right of the people of this country to live in a corruption and criminal free society. This is a violation of Article 21 of the Constitution. The right to life guaranteed to the people of this country also includes in its fold the right to live in a society, which is free from crime and corruption.

PRAYERS

In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court in public interest may be pleased to: -

a. Issue an appropriate writ cancelling the entire allocation of 2G spectrum and telecom licences made by DoT on or after 10.01.2008 pursuant to its 2 press releases issued on 10th January 2008.

OR

b. Issue an appropriate writ canceling the allotment of spectrum and telecom licence made by the DoT on or after 10.01.2008 of the 85 licencees who have been found to be ineligible by CAG and of the 69 licencees who have been found not to have been rolled-out their services by TRAI.

c. Direct the Union of India to recover punitive damages from companies

that made false claims or declarations in their applications for UAS licences and from those companies which defaulted on their undertakings given to the government.

d. Direct the Union of India to recover windfall profits that may have been obtained through sale of spectrum, or as equity in companies whose sole or substantial asset is the spectrum allocated by the Government.

e. Issue an appropriate writ prohibiting the Union government, or its departments from allocating any other resources or spectrum without following fair, transparent and competitive processes in future.

f. Issue or pass any writ, direction or order, which this Hon'ble court may deem fit and proper under the facts and circumstances of the case.

Petitioners
Through

PRASHANT BHUSHAN
Counsel for the

Petitioners

Drawn By: Pranav Sachdeva
Drawn On: December 2010

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