



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL No. 12219 OF 2018

Union of India

... Appellant

versus

Sistema Shyam Teleservices Limited

... Respondent

J U D G M E N T

SANJAY KUMAR, J

1. By order dated 10.05.2018, the Telecom Disputes Settlement and Appellate Tribunal, New Delhi, disposed of Telecommunication Petition No. 63 of 2016 filed by the respondent, Sistema Shyam Teleservices Limited, purportedly implementing certain directions of this Court, as per its own interpretation. Aggrieved by such interpretation, the Union of India through its Department of Telecommunication (DoT), filed the present appeal.

2. In substance and in effect, this appeal turns upon the judgment dated 02.02.2012 of this Court in Writ Petition (Civil) Nos. 423 of 2010 and 10 of

2011, reported in ***Centre for Public Interest Litigation and others vs. Union of India and others***¹, and the later orders passed by this Court on applications filed in the context thereof. By the aforesaid judgment, this Court had declared illegal the grant of Unified Access Service licences and allotment of 2G Band Spectrum to various parties, including the respondent herein, and quashed the same. However, this Court ordered that this direction would become operative only after four months. This was not to benefit the licensees whose licences stood quashed, but in the interest of the general public who were dependent upon the telecom services offered by those licensees, so that such services would not be abruptly disrupted. The intention of this Court was that, during the interval of those four months, the Telecom Regulatory Authority of India should undertake auction of 2G Band Spectrum in the 22 service areas, as was done for the allocation of Spectrum in the 3G Band, and make recommendations for grant of licences. The Government of India was to consider such recommendations and take an appropriate decision thereon within one month so as to issue fresh licences. Further, this Court also imposed costs upon the licensees who had been benefited at the cost of the public exchequer. Significantly, the respondent was one amongst them and had to pay costs of ₹50 lakh.

¹ (2012) 3 SCC 1

3. However, as the process of the fresh auction could not be concluded within the time frame contemplated by this Court, several applications came to be filed by the DoT itself seeking extension of time. The first such application was the DoT's I.A. No. 5 of 2012. However, the prayer made by the DoT therein was accepted in part and this Court made it clear that the DoT had to finalize the auction on or before 31.08.2012. The existing licensees were held entitled to continue to operate till 07.09.2012. Thereafter, the DoT filed I.A. No. 8 of 2012 seeking further extension of time. It stated that the auction process would start on or before 12.11.2012 and sought time to complete the auction process in a further period of 40 days therefrom. This Court accepted the prayer to the extent of allowing time till 11.01.2013 for conducting and completing the auction and the existing licensees were held entitled to continue to operate till 18.01.2013. The I.A. was kept pending and was taken up again on 14.01.2013. It was, however, adjourned on that date to 04.02.2013 and the existing licensees were allowed to continue with their operations till the next date of hearing. The matter was then taken up on 15.02.2013. The order passed by this Court in I.A. Nos. 8 and 11 of 2012 on 15.02.2013 forms the basis for the present litigation. The order reads thus:

'(i) The entire spectrum released as a result of quashing of the licences on 2.2.2012 should be auctioned without further delay.

(ii) Since, the issue relating to allotment of spectrum in 900 MHz. band was not subject matter of consideration in Writ Petition Nos.423/2010 and 10/2011, we deem it proper to make it clear that judgment dated 2.2.2012 will have no bearing on the litigation, if any, filed in the matter of allotment/re-allotment of spectrum in 900' MHz, band and the competent judicial/quasi-judicial forum shall be free to adjudicate upon the pending matters or which may be filed hereinafter in relation to the allotment of spectrum in 900 MHz. band and connected issues.

(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 02.02.2012 and this date shall be decided separately.' *(emphasis is ours)*

4. Pursuant to clause (iii) of the above order dated 15.02.2013, the DoT issued show-cause notice dated 17.11.2014 to the respondent, followed by demand notice dated 22.09.2016. By the show-cause notice dated 17.11.2014, the DoT pointed out that the respondent had continued with its services up to 02.10.2013 in 8 circles and called upon the respondent to explain why the reserve price of ₹636.90 crore, along with interest thereon, should not be recovered from it, in terms of the order dated 15.02.2013 passed by this Court. The DoT's demand notice dated 22.09.2016 quantified the amount due, along with interest payable thereon, at ₹820.5242 crore and called upon the respondent to deposit the same within 15 days.

5. In the meanwhile, the respondent filed I.A. No. 14 of 2013 in W.P. (C). No. 423 of 2010 before this Court, praying that it should be allowed to continue with its operations beyond 18.01.2013 till conclusion of the fresh auction process, allocation of 800 MHz Spectrum and commencement of operations by the successful bidders. By order dated 11.03.2013, this Court noted that, in the auction conducted on that very day, the respondent had emerged as the only bidder for 800 MHz Band Spectrum in 8 service areas. This Court, accordingly, directed that the respondent would be entitled to continue to operate its services in the 8 service areas for which its bid had been accepted and disposed of its application.

6. Assailing the aforestated show-cause notice dated 17.11.2014 and demand notice dated 22.09.2016, the respondent filed Telecommunication Petition No. 63 of 2016 before the Telecom Disputes Settlement and Appellate Tribunal, New Delhi (hereinafter, referred to as 'the TDSAT'). Its prayer therein was to declare and hold both the notices to be illegal and to quash and set aside the same. Meanwhile, the DoT issued revised demand notice dated 14.02.2017, whereby the respondent was called upon to pay ₹926.5089 crore (₹584.94 crore towards the reserve price from 02.02.2012 to 02.10.2013 along with ₹341.5689 crore towards the interest thereon from 02.02.2012 to 02.10.2013).

7. By its order dated 10.05.2018, the TDSAT disposed of the petition with directions. Therein, the TDSAT took note of the events and developments since the passing of the judgment dated 02.02.2012 by this Court and opined that the main issue was as to the 'starting date' for raising a demand in terms of the direction of this Court in its later order dated 15.02.2013. Observing that the respondent would fall within the ambit thereof and was, therefore, required to pay the reserve price as per the said order, the TDSAT opined that this Court had not specified the date from which the reserve price was to be paid. Based on this understanding, which we find to be wholly erroneous, the TDSAT opined that the licences and the allocation of Spectrum to such licensees remained legally operative under the judgment of this Court till 01.06.2012 initially. Reference was then made by the TDSAT to the order dated 24.04.2012, whereby this Court had permitted the existing licensees to continue to operate till 07.09.2012; the order dated 27.08.2012, granting extension till 18.01.2013; and the order dated 14.01.2013, further extending the time for licensees to continue with operations till 15.02.2013. The TDSAT concluded from these orders that the existing licensees were allowed to continue to operate and, therefore, no charge, in terms of the reserve price, could be levied upon the respondent by the DoT till the last extension, i.e., till 15.02.2013.

8. The TDSAT then considered the order dated 15.02.2013 passed by this Court. Referring to the affidavit dated 08.01.2013 of R. Chandrashekhar, Secretary, DoT, which found mention therein, the TDSAT rejected the argument of the respondent that the DoT was estopped from demanding the levy from 02.02.2012. Having stated so, the TDSAT, however, opined that as the existing licensees were permitted to continue with their operations till 15.02.2013 by this Court and it was on that date that the direction was issued for payment of the reserve price, the effective date for commencement of such liability would be 15.02.2013. The respondent's argument that the later order dated 11.03.2013, passed by this Court upon its I.A. No.14 of 2013, implied that the respondent was not bound by the condition imposed by the earlier order dated 15.02.2013 was also rejected by the TDSAT.

9. The TDSAT then considered the question as to what would be the 'end date' for such levy. Noting that the respondent was successful in the auction held on 11.03.2013 in relation to 8 circles, the TDSAT observed that the DoT was not entitled to continue to charge the respondent till 02.10.2013, when it was actually issued a new licence, as the Letter of Intent (LoI) was issued to the respondent for the 8 circles in question on 30.04.2013 itself. The TDSAT further noted that the said LoI specifically provided that the effective date for reckoning the term of 20 years for which the Spectrum had been

acquired by the respondent, through such auction, started from the date of the LOI. The TDSAT, accordingly, concluded that the end date for levy of the reserve price would be 30.04.2013 and not beyond. For the remaining 13 circles that had been under the operation of the respondent, the TDSAT observed that the end date would be the date of stopping of operations, i.e., 23.03.2013. In consequence, the respondent was held liable to pay the reserve price from 15.02.2013 to 30.04.2013 in respect of 8 circles and from 15.02.2013 to 23.03.2013 for the remaining 13 circles.

10. As regards the interest payable by the respondent, the TDSAT noted that the revised demand notice dated 14.02.2017 levied interest from 15.02.2013 itself, unlike the earlier demand notice dated 22.09.2016 which proposed the levy of interest from 17.11.2014, i.e., the date of the DoT's show-cause notice. In that regard, the TDSAT noted that the DoT could have issued the demand at any time after 15.02.2013, but it chose to do so only in November, 2014, when the show-cause notice came to be issued. Further, the said notice gave a window of 21 days to explain why the principal and interest amounts should not be recovered. Therefore, *per* the TDSAT, the amount did not become recoverable till 08.12.2014, upon expiry of those 21 days. The TDSAT, accordingly, concluded that interest would be payable only from that date and not earlier. The DoT was directed to issue a revised

demand in accordance with its directions, preferably within four weeks, and the respondent was given three weeks' time from the date of issuance of the revised demand to make the payment. If the respondent failed to make the payment within that time, the DoT was held entitled to charge interest for the delayed period. With these directions, the TDSAT disposed of the petition.

11. Pursuant to the directions of the TDSAT, the DoT issued revised demand notice dated 12.06.2018, calling upon the respondent to deposit ₹106.05233 crore within the time allowed by the TDSAT. The DoT, however, added the caveat that this demand was issued based on the order dated 10.05.2018 of the TDSAT and was without prejudice to any legal recourse that the DoT may resort to. The respondent, admittedly, paid this amount.

12. The aforestated sequence of events puts it beyond the pale of doubt that the existing operators, including the respondent herein, were given a lease of life, despite their licences being quashed, only to ensure that the general public was not inconvenienced by disruption of the telecom services that were being provided by them. However, the expectation of this Court that the process of a fresh auction would only take four months proved illusory, as the DoT sought extensions therefor, time and again. In consequence, the licensees whose licences already stood quashed were permitted to continue with their operations, only to protect the interest of the

general public and not for the benefit of such licensees. However, when this Court was informed of the fact that an auction had been held in November, 2012, but no bids had been received, and this Court was told that an auction was proposed to be conducted on 11.03.2013, this Court directed that the Spectrum released as a result of the quashing of licences on 02.02.2012 should be auctioned without further delay.

13. This Court also took note of the fact that the licensees, whose licences were quashed more than a year earlier, were still continuing to operate pursuant to the extension orders passed from time to time and, accordingly, issued a direction that such licensees who had continued with their operations after 02.02.2012, irrespective of whether they had participated in the auction conducted in November, 2012, should pay the reserve price fixed for the purpose of that auction. This direction levied a premium upon such licensees who were continuing to garner the benefit of the licences illegally granted to them, which already stood quashed, by requiring them to pay the reserve price fixed for the auction held on 12.11.2012. No doubt, the said reserve price was slashed by 50 per cent while fixing the reserve price for the auction held in March, 2013, but this fact was also within the knowledge of this Court when the order dated 15.02.2013 was passed, as that decision was taken in January, 2013 itself. As the direction of this Court in its order

dated 15.02.2013 was binding on the parties thereto and attained finality, it necessarily has to be given effect to fully. The question of diluting the same by reading into it a later date of commencement does not arise and there is no possibility of extending any benefit to the respondent in variance thereof.

14. In this regard, we may note that the understanding of the TDSAT that this order did not indicate the 'starting date' is factually incorrect. This Court specifically directed that those licensees who had continued their operations 'after 02.02.2012' should pay the reserve price fixed for the auction held in November, 2012, and it is manifestly clear from the context that such liability commenced from 02.02.2012 itself. This aspect was, therefore, not open to interpretation and inquiry, whereby the TDSAT could have applied its own logic and decided that the commencement date would be 15.02.2013. Had that been the intention, this Court would have simply said that such liability would commence from the date of that order. The very fact that this Court referred to the date '02.02.2012' in the context of the licensees who continued with their operations, clearly demonstrates that 02.02.2012 was the commencement date for levy of the liability in terms of that order.

15. As regards the concluding date, we find ourselves in agreement with the TDSAT's finding that, once the Lol was issued to the respondent on 30.04.2013, stipulating that the 20 years term thereunder commenced from

that date, the question of the levy of this liability continuing beyond that date till the issuance of the licence in October, 2013, does not arise. The Lol issued by the DoT in this regard negates the argument to the contrary. More so, as the order dated 11.03.2013 passed by this Court in I.A. No. 14 of 2013 noted the fact that the respondent had emerged successful in the auction held for 8 circles and held the respondent entitled to continue operations in those 8 circles. This was, therefore, not a case of a new entrant who had to await issuance of a licence and who could not have commenced operations on the strength of a Lol. As the respondent was an existing licensee, its continued operations beyond 30.04.2013 were protected by the order dated 11.03.2013 of this Court and the clear terms of the Lol, which categorically stated that the 20 year-term commenced from the date of issuance thereof.

16. Insofar as the issue of interest is concerned, we find that the TDSAT was correct in permitting the DoT to levy interest only from the expiry of the time stipulated in the show-cause notice dated 17.11.2014. As rightly pointed out by the TDSAT, inaction and delay were on the part of the DoT itself, as it failed to act upon the order dated 15.02.2013 passed by this Court till 17.11.2014. Having slept over the matter for that length of time, the DoT cannot take advantage of its own lassitude and seek to mulct upon the respondent interest liability for that period.

17. On the above analysis, we hold that the respondent is liable to pay the reserve price fixed for the auction held in November, 2012, from 02.02.2012 till 30.04.2013 in respect of the 8 circles for which its bid was accepted in March, 2013, and from 02.02.2012 till 23.03.2013 for the remaining 13 circles, wherein it continued operations during that period. Interest shall be paid by the respondent on the aforestated sums @ SBI's Prime Lending Rate only from 08.12.2014, being the date of expiry of the 21 days stipulated in the show-cause notice dated 17.11.2014. The amount already paid by the respondent company shall be adjusted against the total amount due in terms of this order and the balance amount shall be paid by the respondent within 3 months from the date of receipt of the demand raised by the Department of Telecommunication, Government of India, pursuant to this order.

The appeal is allowed in the aforestated terms.

Parties shall bear their own costs.

.....J
[SANJAY KUMAR]

.....J
[K. VINOD CHANDRAN]

New Delhi;
February 20, 2026.