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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.03.2024

Pronounced on: 30.04.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.26601, 32967, 32978, 26607, 26613, 26614, 26616, 26617, 26619,
26620, 26621, 26622, 26623, 26624, 26625, 26631, 26632, 26635, 32942,
26627, 26628, 26629 & 30549 of 2023

and

W.M.P.Nos. 26013, 26066, 26068, 32635, 32636, 32637, 26041, 26047,
26048, 26015, 26020, 26022 to 26031, 26033 to 26040, 26042 to 26046,
26049, 26050, 26052 to 26064, 26070 to 26078, 32623, 32628, 32632, 32653,
32654, 32657, 30178 & 30179 of 2023, 4731, 4756, 4758, 4765, 4767, 4733,
4737, 4769, 4739, 4772, 4788 & 4792 of 2024

W.P.No.26601 of 2023:

Sify Technologies Ltd.

Having its Registered office at

II Floor, Tidel Park, No.4,

Rajiv Gandhi Salai, Taramani,

Chennai – 600 113.

...Petitioner

Vs.

1. Union of India,

Represented by Secretary to the Government,

Ministry of Communication & Information Technology,

Department of Telecommunication,

Sanchar Bhawan, 20 Asoka Road,

New Delhi – 110 117.

2. The Principal Controller of Communication Accounts,

Department of Telecommunications,

Tamilnadu Circle, R.K. Nagar Telephone Exchange Building,

7th Floor, #238, R.K.Mutt Road,

Chennai – 600 028.

...Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Declaration declaring the provisions of the Unified License agreement bearing No.20-408/2013-AS-I dated 27.06.2014 in so far as it empowers the respondents to levy license fee for the ISP-A, NLD and ILD services licensed to the petitioner on the revenue earned by the petitioner from its non-licensed activity to be ultra vires the Constitution of India and the Indian Telegraph Act, 1885.

For Petitioners: Mr.SatishParasaran, Senior Counsel
Mr.Madhan Babu and
Mr.Subhang P.Nair

For Respondents: Mr.AR.L.Sundaresan,
Additional Solicitor General
assisted by Dr.G.Babu,
Senior Panel Counsel
(for respondents in WP.No.26601 of 2023)

Mr.V.Chandrasekaran, Senior Panel
Counsel
(for Respondents in all other writ
petitions)

COMMON ORDER

Writ Petition (W.P.No.26601 of 2023) has been filed by Sify Technologies Ltd. seeking a declaration to declare the provisions of the Unified License agreement bearing No.20-408/2013-AS-I dated 27.06.2014, in so far as it empowers the respondents to levy license fee for the ISP-A, NLD and ILD services licensed to the petitioner on the revenue earned by the petitioner from



its non-licensed activity, ultra vires the Constitution of India and the Indian Telegraph Act, 1885.

2. The remaining Writ Petitions have been filed by Sify Technologies Ltd and ABT Limited challenging demand notices issued by the respondents for the following periods:

SIFY TECHNOLOGIES:

S.No.	W.P.No.	Financial Year
1	26607 of 2023	2014-2015
2	26624 of 2023	2014-2015
3	26616 of 2023	2014-2015
4	26635 of 2023	2015-2016
5	26613 of 2023	2015-2016
6	26625 of 2023	2015-2016
7	26632 of 2023	2016-2017
8	26617 of 2023	2016-2017
9	26623 of 2023	2016-2017
10	26631 of 2023	2017-2018
11	26628 of 2023	2017-2018
12	26614 of 2023	2017-2018
13	26629 of 2023	2018-2019
14	26627 of 2023	2018-2019
15	26621 of 2023	2018-2019
16	26619 of 2023	2019-2020
17	26620 of 2023	2019-2020
18	26622 of 2023	2019-2020

ABT LIMITED:

S.No.	W.P.No.	Financial Year
1	30549 of 2023	2017-2018
2	32942 of 2023	2018-2019
3	32978 of 2023	2019-2020
4	32967 of 2023	2020-2021



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3. At the time of admission, the respondents had agreed that there were certain errors that had arisen in the quantification of the demand in the impugned notices and the parties were given liberty to ascertain the exact liability.

4. On 10.10.2023, 01.11.2023 and 29.11.2023, the parties reported progress in the matter and ultimately on 29.11.2023, the Court noted the submission of the respondents that there was no further scope for reduction of the demands. The process of hearing of the Writ Petitions on the legal issues involved, thus commenced.

5. WMP Nos.4769, 4788, 4731, 4737, 4756 and 4765 of 2024 have been filed seeking amendment of the prayer in the Writ Petitions insofar as the original prayers had addressed the demands raised at the first instance and not the reduced demands. These Miscellaneous Petitions are ordered. Registry is directed to carry out necessary amendments to the prayers.

6. Heard Mr.Satish Parasaran, learned Senior Counsel for Mr.Madhan Babu and Mr.Subhang P.Nair, learned counsel for the petitioners and Mr.AR.L.Sundaresan, learned Additional Solicitor General assisted by Dr.G.Babu, learned Senior Panel Counsel and Mr.V.Chandrasekaran, learned Senior Panel Counsel for the respondents.

7. The submissions made on behalf of SIFY are as follows:



SIFY offers integrated Information and Communications Technology (in short 'ICT') Solutions and Services. The Telecom Network managed by it connects 45 data centres across India. According to SIFY, the services offered by it may be broadly classified as follows:

1. TELECOM SERVICES

- i. ISP
- ii. ILD
- iii. NLD

2. CLOUD & MANAGED SERVICES:

- i. IaaS, PaaS, SaaS – (Platform as service, Software as service,)
- ii. Managed DC Services
- iii. Managed Security Services
- iv. Managed Network Services

3. DATA CENTRE BUSINESS:

- i. Co-Location Services
- ii. White Labelling
- iii. Hosting

4. APPLICATION INTEGRATION SERVICES:

- i. I-Test-Online Examination
- ii. E-Learning'
- iii. App Testing
- iv. Forum NXT – Application
- v. SAP, Oracle & Microsoft managed services
- vi. Application Development & Maintenance

5. TECHNOLOGY INTEGRATION SERVICES:

- i. Data Centre Transformation
- ii. Network Integration
- iii. Information Security Services
- iv. Collaboration Services
- v. End User Computing Services
- vi. Collaboration Tools'



8. Of the above five lines of services, only services encompassing Internet Service provider service (ISP), International Long Distance service (ILD) and National Long Distance service (NLD) require telecom licences. SIFY has sought and has been granted licences in terms of Chapter IX, Chapter X and Chapter XI of the Unified Licence Agreement bearing No.20-408/2013-AS-I dated 27.06.2014 (in short 'ULA'). There is a categorical statement by SIFY to the effect that it does not provide mobile services to the general public and hence it has not sought a licence to render Access Services covered under Chapter IX of the ULA. This position is not disputed by the respondents.

9. The writ petitions filed by SIFY challenge 18 notices, all dated 22.08.2013, for financial years 2014 to 2020 and, in the case of ABT, financial years 2017-18 to 2020-21. The notices raise demands of arrears of licence fee. The notices are challenged as untenable in light of the judgments of the Hon'ble Supreme Court in the case of *Union of India v. Association of Unified Telecom Service Providers of India and others*¹ (in short 'AUTSPI'), *In Re Mandar Deshpande*², *Union of India v. Association of Unified Telecom Service Providers of India*³ and the order of the Telecom Disputes Settlement and Appellate Tribunal (in short 'TDSAT') in *Netmagic Solutions Pvt. Ltd. v. Union of India*⁴.

¹2020(3) SCC 525

²2020 (7) SCC 267

³Civil Appeal Nos.6328 to 6399 of 2015 judgment dated 01.09.2020

⁴R.A.No.7 of 2020 in Telecom Petition No.56 of 2020 dated 19.11.2020



10. The Petitioners rely upon the position that identical demands raised in the cases of Public Sector Undertakings (in short 'PSU') had been reversed/withdrawn after the respondents were directed by the Hon'ble Supreme Court to re-consider the same. This was owing to the fact that licences issued to the PSUs did not relate to mobile services.

11. The petitioners now claim parity with the PSUs in light of the identity in factual position being that (i) they does not hold the requisite access service licences and (ii) are not in the business of providing mobile services to the general public.

12. This very issue has been considered by the TDSAT in the case of *Netmagic Solutions*⁵ that had applied the ratio of the judgment in *AUTSPI's* case to a non-PSU. The respondents are quick to point out that an appeal has been filed as against that decision of TDSAT which is pending before the Supreme Court though without the benefit of any interim orders.

13. The petitioners argue that there is no intelligible differentia for treating private ISP licensees any differently and thus the move of the respondents to treat the private players as distinguishable from the PSUs in this regard, is arbitrarily, irrational and baseless.

14. ABT is engaged in the business of windmill power generation and also operates a data centre as an Internet Service Provider. The revenue on the

⁵Foot Note: Supra 4
<https://www.mhc.tn.gov.in/>



basis of which the present demands are raised, relates to data centres substantially used for internal business purposes. The percentage of income from data centres/ISP services is meagre with compared with the income from other business activities, and comprises only 0.2% to 0.3% of the total income. To elaborate, even that income arises only from captive usage of the services by other business verticals of ABT and there has been no third party use of the data centre. Thus, ABT stands on an even better footing than SIFY in so far as their activities are compared.

15. For their part, the respondents first maintain that the rationale of the Supreme Court judgments relate solely to demands raised on PSUs whose core operation does not relate to provision of telecom services. This is distinguishable from the case of the petitioners since the petitioners hold telecom licences providing commercial telecom/internet services to the general public. Reliance is placed on the judgment in *L.Chandrakumar v. Union of India*⁶. This is their first argument.

16. Secondly, the respondents rely on the terms of the licence in support of the demands. The ULA under which licences have been issued to the petitioners contains the definition of ‘Gross Revenue’ as well as ‘Aggregated Revenue’ on the basis of which the demands have been raised. The definitions are as follows:

⁶1997 (3) SCC 261
<https://www.mhc.tn.gov.in/judis>



Definition of Gross Revenue and AGR under UL-ISP:

‘3.1 Gross Revenue : The Gross Revenue shall be inclusive of all types of revenue from Internet services, revenue from Internet access service, revenue from internet contents, revenue from Internet Telephony service, revenue from activation charges, revenue from sale, lease or renting of bandwidth, links, R&G cases, Turnkey projects, revenue from IPTV service, late fees, sale proceeds of terminal equipments, revenue on account of interest, dividend, value added services, supplementary services, interconnection charges, roaming charges, revenue from permissible sharing of infrastructure etc., allowing only those deductions available for pass through charges and taxes / levies as in the case of access services, without any set-off for related item of expense etc.

3.2.....’

‘Definition of Gross Revenue and AGR under UL-NLD:

‘3.1 REVENUE’ for the purpose of levying License fee as a percentage of revenue shall mean the Gross total Revenue income accruing to the Licensee by way of providing NLD service under the License including the revenue on account of supplementary / value added services and leasing of infrastructure, interest, dividend etc as reduced by the component part of a pass-through nature actually paid to other telecom service providers to whose networks the Licensee’s NLD network is interconnected, for carriage of calls. The Gross Revenue shall also include previous debits (e.g. bad debts recovered, of excess provision in earlier years). It is clarified that any lease or rent charges for hiring of infrastructure shall not be so deducted. Service tax and sales tax collected and passed on to the Government (s) from customers of the Licensee shall not form a part of the Revenue.’

‘Definition of Gross Revenue and AGR under UL-ILD:

3.1 The Gross Revenue shall include all revenues accruing to the Licensee on account of goods supplied, services provided, leasing of infrastructure, use of its resources by others, application Fee, installation charges, call charges, late Fees, sale proceeds of instruments (or any terminal equipment including accessories),



handsets, bandwidth, income from Value Added Services, supplementary services, access or interconnection charges, any lease or rent charges for hiring of infrastructure etc. and any other miscellaneous items including interest, dividend etc., without any set off of related items of expense, etc.

3.2.AGR: for the purpose of levying License Fee as a percentage of revenue shall mean the Gross Revenue as reduced by: Call charges (access charges) actually paid to other telecom service providers for carriage of calls; service tax for provision of service and sales tax actually paid to the Government, if gross revenue had included the component of service tax and sales tax.'

17. They draw attention to the fact that the definition of 'gross revenue' in all three instances provides for the inclusion of '*all revenues accruing to the licenses*' and hence the demand has rightly been raised on the total revenue without any distinction between the source of such revenue.

18. Thirdly, the respondents assail the maintainability of the writ petitions stating that there is an effective and efficacious remedy available to the petitioners before the TDSAT. As far as reliance on the decision of the TDSAT in *Netmagic Solutions*⁷ is concerned, the matter is subjudice before the Hon'ble Supreme Court in Civil Appeal No.9012 of 2022 and hence the appropriate course of action is for this Court to direct the petitioners to approach TDSAT and take its chances before that forum. Hence, the petitioners must be relegated to alternate remedy.

19. Fourthly, the attempt of the petitioners is in itself, to challenge the first proviso to Section 4 of the Indian Telegraph Act, 1885 to the extent to

⁷Foot Note Supra 4
<https://www.mhc.in.gov.in/judis>



which it empowers the licensor to levy licence fee as it thinks fit. According to the respondents there is no justification for such a plea and in this context, they rely on the judgment of the Supreme Court in *State of Orissa and others v. Harinarayan Jaiswal and others*⁸. On this score, there is no defence by the petitioners and they do not press or pursue this argument any further.

20. Fifthly, respondents point out that various statutory documents had not been provided by the petitioners at the first instance, and it was only at the intervention of the Court that those documents were provided by the petitioners. They have been duly taken into account and pass-through charges have been allowed reducing the demands substantially.

21. Having heard all learned counsel, my decision is as under. SIFY has approached this Court earlier in WP.Nos.30299 to 30302 of 2013 seeking writs of prohibition as against the respondents from levying licence fee on revenue from non-licensed activities.

22. Parallely, WP.Nos.30303 to 30307 of 2013 had been filed seeking a declaration to the effect that the phrase '*as it thinks fit*' in the first proviso to Section 4 of the Indian Telegraph Act, 1885 does not empower the respondents to levy and collect licence fee on non-licensed activities and that such an interpretation of the first proviso of Section 4 of the Indian Telegraph Act, 1885

⁸1973 (2) SCC 36
<https://www.mhc.tn.gov.in/judis>



would render it unconstitutional. Interim protection has been obtained by SIFY in those writ petitions which are still pending.

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23. While so, the Unified Licence Scheme had been introduced by the Government of India and licence holders under the old regime migrated to the new regime. SIFY obtained three licences under the ULA under Chapters IX, X and XI relating to Internet Service, National Long Distance Service and International Long Distance Service respectively. There is no dispute on the fact that both SIFY and ABT maintain separate accounts in respect of the revenue from the licensed services. The affidavit filed in support of the writ petitions reveals at paragraph 11, that SIFY maintains a clear bifurcation of the revenue from telecom services and from other business activities.

24. The income reflected is duly audited and certified by their auditors and licence fee is paid at 8% of the AGR, in addition to a one-time entry fee of Rs.15 crore. There is thus an enabling mechanism for the Department of Telecommunication (in short 'DoT') to recognise income from licensed and non-licensed services in the formats provided in the ULA itself.

25. In the case of *AUTSPI*⁹, the question formulated touched upon the definition of gross revenue under the licence agreement. In the regime under the National Telecom Policy, 1999, an option was given to a licensee to migrate from fixed licence fee model to revenue sharing fee model. The migration

⁹Foot Note Supra 1
<https://www.mhc.in.gov.in/queis>



package provided, under clause (iii) thereof, that 15% of the gross revenue of the licensee would be fixed as provisional licence fee.

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26. This gross revenue would be the total revenue of the licensee company excluding PSTN related call charges paid to DoT/MTNL and service tax collected by the licensee from the subscribers on behalf of the Government. On receipt of the recommendations of the TRAI and the decision of the Government, the final adjustment of provisional dues was to be effected depending upon the percentage of revenue share. This revenue-share model was projected as being beneficial to the telecom service providers, designed such that the Government becomes a partner or sharer of the gross revenue.

27. The Central Government was expected to expend its share of the adjusted gross revenue to remote and uncovered areas, rural areas, tribal areas and hilly areas to spread maximum tele-connectivity by extending subsidies for establishment of telecom infrastructure in those areas. The fee fixed originally at 15% was reduced to 13% and thereafter to 8% in 2013.

28. In the case of *AUTSPI*¹⁰ three Judges of the Hon'ble Supreme Court considered Cross Appeals filed by the Telecom Service Providers and by the Union of India challenging orders of the TDSAT on inclusion of various revenue streams in AGR.

¹⁰Foot Note Supra 1
<https://www.mhc.tri.gov.in/juris>



29. Inter alia, they considered the demand of licence fee where spectrum licence had not been granted which arose in the appeals filed by Videocon and S.Tel. before the TDSAT. The appeals had been allowed holding that when spectrum licence had not been issued, there was no play of the licence and no revenue generated on that account.

30. The findings at paragraph 163¹¹ (page 615 and 616) reveal that spectrum licence had been issued to those service providers. However, though the licence had been issued, no revenue had been generated/earned on that count. The authorities sought to demand licence fee on the basis of other activities and such demand had been quashed by the TDSAT as unreasonable and unsustainable. The conclusion of the TDSAT was upheld and paragraph 163¹² reads as follows:

'163. Concerning demand of licence fee in the circle where the licensee was not granted spectrum: When the spectrum itself has not been issued, licence activity has not come into play, no revenue is generated. TDSAT has held that the demands of licence fee based on other activities, are bad, unreasonable, invalid, and unsustainable. During the period in question, the UAS licence came bundled with the spectrum, and it is evident that without a spectrum, the licensee could not work out the licence. The finding recorded by the TDSAT is appropriate. Once there is no activity under a licence, merely on the basis that the licence has been issued, no revenue earned, it cannot be shared. Still, there is no activity under the licence, i.e., based on non-licensed activities, the revenue sharing could not have been asked. It would be an unreasonable and unconscionable

¹¹ 2020 (3) SCC 525

¹² Foot Note Supra 11
<https://www.mhc.in.gov.in/juris>



bargain to pass on such a liability. We agree with finding recorded by TDSAT in the case of Videocon & S. Tel.'

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31. The conclusions as above are directly on point and applicable in the present case as well. In a case where license has been issued for spectrum but the licensee has not derived any revenues therefrom, or in a case where no licence was even sought or issued, there is no legal justification to impose fee on the other revenue earned. In fact, the case of the petitioners is on a higher footing than the licensees before the TDSAT and Supreme Court as no spectrum license has admittedly been issued to them. Thus, the question of computing license fee on the entirety of the revenue streams simply does not arise.

32. The types of licences issued by DoT are as follows:

- i. Cellular Mobile Telephony Services/ Universal Access Service License/ Unified License-Access (CMTS/UASL/UL-Access)
- ii. Infrastructure Provider-II/National Long Distance (IP-II/NLD)
- iii. Internet Service Provider (ISP)/ Unified License-ISP (UL-ISP)
- iv. International Long Distance (ILD)/ Unified License-ILD (UL-ILD)
- v. Commercial VSAT/ Unified License- Commercial VSAT

33. The licence at serial No.(i) relates to spectrum which is for mobile telephony. Admittedly, spectrum licence has not been issued to either of the petitioners before me i.e. SIFY or ABT. SIFY has been issued licences at serial Nos.(ii), (iii) and (iv) and ABT had been issued the licence at serial No.(iii) alone.



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34. The case of *Mandar Deshpande*¹³ is a corollary to the judgment in *AUTSPI*¹⁴. Demands of license fee had been raised in the case of several PSUs and had been questioned in *Mandar Deshpande*¹⁵. The PSUs sought a quash of the demands mainly on the ground that they were not holders of spectrum licenses and were not engaged in the business of mobile telephony. The Bench, comprising of the same coram as in the case of *AUTSPI*¹⁶ observed that the judgment in *AUTSPI* had not dealt with PSUs or the nature of licences issued to them.

35. In the course of that hearing, the respondents filed two affidavits which assume importance. In additional affidavit (MA Diary No.9887 of 2020 dated 10.06.2020) filed after the judgment in *AUTSPI*, the Union of India clarifies that non-telecom PSUs do not operate access service licences, meaning that they have not been granted mobile telephony/spectrum license.

36. At paragraph 4, they differentiate between those PSUs who do not hold ASL, and those private telecom service providers whose cases were dealt with under the judgment in *AUTSPI*. This distinction would not apply in the case of BSNL and MTNL. At paragraph 7, the details of non-telecom PSUs, licences held by them and the demands raised have been tabulated as follows:

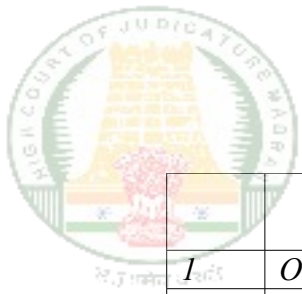
S.No	NAME OF PSU	TYPE OF LICENSE	DATE OF ISSUE	OF	PRESENT STATUS	OF	ESTIMATED AMOUNT
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¹³ Foot Note Supra 2

¹⁴ Foot Note Supra 1

¹⁵ Foot Note Supra 2

¹⁶ Foot Note Supra 1



			<i>LICENSE</i>	<i>THE LICENSE</i>	<i>OUTSTANDING (Rs.IN CRS)</i>
1	Oil India Ltd.	NLD	27.12.2007	Valid as on date	40,108.42
2	Railtel Corporation of India	ISP-IT	23.07.2003	Valid as on date	44.76
3	Railtel Corporation of India	UL-ISP	18.10.2016	Valid as on date	53.79
4	Railtel Corporation of India	NLD	07.07.2006	Valid as on date	360.93
5	Railtel Corporation of India	IP-II	01.02.2002	Migrated to NLD 07.07.2006	-
6	Power Grid Corporation of India Ltd.	UL-ISP	02.05.2017	Valid as on date	412.14
7	Power Grid Corporation of India Ltd.	NLD	05.07.2006	Valid as on date	31,841.90
8	Software Technology Parks of India	Ul-ISP	30.04.2004	Valid as on date	48.57
9	Software Technology Parks of India	Com. VSAT	22.03.2004	Surrendered on dt.31.10.2008	36.51
10	Noida Software Technology Park Ltd.	ISP-IT	19.11.2007	Valid as on date	3.37
11	Gail India Limited	IP-II	15.01.2001	Valid as on date	3,40,366.09
12	Gail India Limited	ISP	27.02.2002	Valid as on date	-
13	Gail India Limited	CMRTS	27.06.2012	Valid as on date	-
14	Delhi Metro Rail Corporation	IP-II	02.12.2004	Valid as on date	8,329.01
15	ERNET India	UL-ISP	15.01.1999	Valid as on date	57.41
16	ERNET India	CUG- VSAT	16.09.2004	Valid as on date	-
17	ONGC	Wireless	11.06.2012	Request for surrender in DoT dt. 05.12.2019	0.02



18	ONGC	CUG- VSAT	31.03.2007	Valid as on date	2.00
19	Gujarat Narmada Valley Fertilizer	ISP-IT	23.04.2002	Expired on 07.08.2015	6,510.66
20	Gujarat Narmada Valley Fertilizer	Comm- VSAT	18.06.2002	Valid as on date	9,848.54
21	NICSI	Comm- VSAT	19.06.2009	Surrendered on 31.03.2017	1,205.07
	GRAND TOTAL				4,28,175.58 [cr]

37. Out of the above 21 PSUs, Railtel Corporation of India (Serial Nos.2 to 5) and Power Grid Corporation of India Ltd. (Serial No.7) hold ASL.

Be that as it may, at paragraphs 8 to 10, the Union of India states as follows:

'8.It is submitted that Public Sector Undertakings form a class in themselves as they substantially discharge governmental functions and represent public funds. It is submitted that a liability of more than Rs.4 lakh crores, which would fall upon the PSUs, may not be in larger public interest, more particularly when these PSUs are not providing mobile services the way in which commercial service providers are providing. The requirement of license by these PSUs may be based upon some of their own internal requirements and not for commercial exploitation the way in which other telecom service providers require the services except the two PSUs not mentioned in the list stated above.

9.It is respectfully submitted that in view of the very peculiar nature of these PSUs [as against private sector telecom service providers] the PSUs may require a different treatment from such commercial telecom service providers. It is submitted that this Hon'ble Court is a Court of Record and, therefore, it has an inherent power to do complete justice between the parties. This Hon'ble Court, being the highest constitutional Court of the country, has an inbuilt jurisdiction, which is in the nature of equity jurisdiction. This Hon'ble Court may consider giving a different treatment to all PSUs and may be pleased to differentiate them from private sector telecom service providers



by way of appropriate and suitable modification of the judgment so that the economic health of these PSUs may not get adversely effected.

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10.It is submitted that this equity jurisdiction of this Hon'ble Court is invoked only in case of public sector undertakings as they provide important governmental services and the Government has majority stake in the said PSUs. The purpose of invoking this jurisdiction is public interest and that too limited to the public sector undertakings.'

38. The argument put forth by the Union was that, barring Railtel Corporation of India and Power Grid Corporation of India Ltd., none of the licensees were in the business of mobile telephony. Even the two exceptions used the telecom licences only to facilitate their internal operations. The licenses were never commercially exploited. The Union thus urged exercise of equity jurisdiction of the Supreme Court in their cases to quash the demands raised.

39.This affidavit was taken note of in *Mandar Deshpande*¹⁷ and the plea of the Union accepted. At paragraph 4, the Bench accepts the distinction put forth by the Union, adding that PSUs are not in the actual business of providing mobile services to the general public. The DoT was directed to re-consider the demands and report compliance.

40. In compliance, an additional affidavit was filed on 18.06.2020 relating to the demands made, wherein the Union confirms waiving the demands raised on the non-telecom service providers. At paragraph 5 of that

¹⁷Foot Note Supra 2
<https://www.mhc.tr.gov.in/juris>



affidavit, they refer to the detailed representations received from the non-telecom PSUs raising the following issues:

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- i. That, the PSUs are owned by the Government of India and are substantially engaged in discharging functions of delivering non-telecom public goods and services.*
- ii. That, the core operations of the PSUs are not the provision of Telecom Services. That the Telecom Licenses have been essentially taken by such PSUs for captive purposes and they are not in the business of providing mobile services to the general public.*
- iii. That, the revenue received by them from providing Telecom services forms a very small part of their total revenue [0.0002% for GAIL, 0.00028% for DMRC and 0.001% for Oil India etc]*
- iv. That this Hon'ble Court has clarified that the AGR judgment dated 24.10.2019 is not applicable on them.'*

41. The representations were found acceptable for the following reasons set out in paragraph 6 of that affidavit:

- (a) These non-telecom Public Sector Undertakings are non-telecom entities involved in providing services such as power transmission, oil and gas exploration and refining, Metrorail services etc. and that they are not into the business of providing mobile services to general public*
- (b) These non-telecom public sector undertakings which have substantial governmental interest in terms of finance and management including ownership have taken licenses essentially for their captive uses*
- (c) None of these non-telecom public sector undertakings are holding Access Service License [ASL] which clearly distinguishes them from other private telecom service providers who are into the actual business of providing mobile services to the general public*
- (d) The revenue received by such non-telecom public sector undertakings under the head of telecom services forms a very negligible and a small part of their total revenue [eg. 0.0002% for GAIL, 0.00028% for DMRC and 0.001% for Oil India etc.].'*



42. In conclusion, the Union withdraw the demands made on account of non-telecom revenue from the non-telecom PSUs as directed by the Court. The same issue came up before the TDSAT in the case of *Netmagic Solutions*¹⁸ and, referring to the aforesaid judgments and the affidavits filed by the Union, the ratio in *Mandar Deshpande*¹⁹ came to be applied in the case of private telecom service providers as well.

43. Admittedly, there is no distinction whatsoever in the facts and circumstances involving the cases of the non-telecom PSUs and the present petitioners. The critical factor in the case of non-telecom PSUs that weighed with the Court is that they do not possess or operate an access service licence. Admittedly, this fact is equally applicable to the case of the petitioners.

44. The respondents rely on the judgment of the three Judges of the Supreme Court in *Shashikant Laxman Kale and another v. Union of India and another*²⁰. The issue related to grant of exemption under Section 10 (10-C) of the Income Tax Act, 1961. That provision exempted payments received by employees of public sector companies at the time of their voluntary retirement. A plea was made that the benefit under that Section must be extended to private sector companies as well and the restriction of the benefit only to employees of public sector companies rendered the provision discriminatory and hostile.

¹⁸ Foot Note Supra 4

¹⁹ Foot Note Supra 2

²⁰ (1990) 4 SCC 366
<https://www.mhc.in.gov.in/judis>



45. The Court upheld the provision in full and concluded that the differentiation was well founded based on the ground of economic liability/viability of the public sector companies as well as other relevant circumstances. Private and public sector fell within separate classes of employers and there was nothing untoward in the employees of public sector companies being granted a benefit under the Income Tax Act that was denied to the private sector.

46. This judgment has been pressed into service by the respondents for the same reason. Mr.Sundaresan also makes a distinction on the ground that the demands in the case of the non-telecom service providers impinges on public money. That is indeed true. I am also conscious of the fact that the relief granted to the PSUs is by way of equity jurisdiction of the Hon'ble Supreme Court which is unique to that Court.

47. However, I am of the considered view that this Court cannot shut its eyes to the identity in factual and legal position in the two cases. Mobile telephony/spectrum services require a specific licence falling under Chapter I of the ULA. Neither SIFY nor ABT have even sought grant of that licence. The fact remains that the demand for licence fee can be sustained only if that particular activity had been carried on by the licensee.



48. Moreover, the fact the Supreme Court has thought it fit to intervene in the case of an identical demand would also persuade the Court to hold in favour of the present petitioners.

49. In light of the detailed discussion as above, Writ petitions are allowed and miscellaneous petitions are closed.

30.04.2024

Index: Yes

Speaking order

Neutral Citation: Yes

Sl/vs

To

1. Union of India,

Represented by Secretary to the Government,
Ministry of Communication & Information Technology,
Department of Telecommunication,
Sanchar Bhawan, 20 Asoka Road,
New Delhi – 110 117.

2. The Principal Controller of Communication Accounts,

Department of Telecommunications,
Tamilnadu Circle, R.K. Nagar Telephone Exchange Building,
7th Floor, #238, R.K.Mutt Road,
Chennai – 600 028.



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W.P.Nos.26601 of 2023 etc. b:



DR. ANITA SUMANTH, J.

Sl/vs

W.P.Nos.26601, 32967, 32978, 26607,
26613, 26614, 26616, 26617, 26619, 26620,
26621, 26622, 26623, 26624, 26625, 26631,
26632, 26635, 32942, 26627, 26628, 26629 & 30549 of 2023
and
W.M.P.Nos. 26013, 26066, 26068, 32635,
32636, 32637, 26041, 26047, 26048,
26015, 26020, 26022 to 26031, 26033 to 26040,
26042 to 26046, 26049, 26050, 26052 to 26064,
26070 to 26078, 32623, 32628, 32632, 32653,
32654, 32657, 30178 & 30179 of 2023, 4731,
4756, 4758, 4765, 4767, 4733, 4737, 4769, 4739,
4772, 4788 & 4792 of 2024

30.04.2024