

# NEWSALERT

## Supreme Court Judgment on 2G- An Analysis



The Hon'ble Supreme Court on 02.02.2012 allowed the Writ Petitions challenging the issuance of award of telecom licenses in January 2008 by former telecom minister A Raja and ordered cancellation of all the 122 Unified Access Service licences ("UAS").

### **The Supreme Court raised important issues, which are:**

- A. Whether the Government has the right to transfer or distribute natural resources or national assets in contravention with the Doctrine of Equality enshrined in the Constitution.
- B. Whether the exercise undertaken by the Department of Telecommunications ("DoT") for grant of UAS licenses to the private parties is vitiated due to arbitrariness and malafides and is contrary to public interest.
- C. Whether the principle of first-come-first-served is ultra vires the provisions of Article 14 of the Constitution.

### **Analysis of the issues by the Supreme Court**

#### **Issue A**

The Court analyzed the aspect of 'Spectrum' being a national asset or not and the applicability of the 'Doctrine of Equality' on the same. The Court observed that the Spectrum has been internationally accepted as a finite and renewable natural resource and has a high economic value which would enhance the growth of the telecom sector. Though, it does not belong to any particular State, but the usage of the same is as per the international norms. Hence, the same to that extent is a 'National Asset'. The Court further observed that the national asset/natural resources are vested with the Government as a matter of trust in the name of people of India and it is the solemn duty of the State to protect the

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

© 2012 Singhania & Partners LLP: S&P House, H186, Sector 63, Noida, NCR Delhi 201301. All rights reserved.

[www.singhania.in](http://www.singhania.in)

national interest and natural resources. The same should always be used in the interest of the country and not private interests and should not vitiate the Doctrine of Equality.

### **Issues B and C**

The Court observed that the principle of first-come-first-served, as used in this matter, has fundamental flaw as this principle involves pure chance or accident. The Court also observed that in matters involving award of contracts or grant of license or permission to use public property, the invocation of the said principle would have inherent dangerous implications. In this principle, whosoever has access to the Government agencies can obtain information regarding the public property and can apply for the same. The Court considered the exercise undertaken by DoT under the leadership of the then Minister of Communications & Information Technology as wholly arbitrary, capricious and contrary to public interest, apart from being violative of the doctrine of equality.

The Court, on the issue of non-interference of judiciary with the policy decisions of the Government in financial matters, held that if the policy framed by the State or its agency/instrumentality and/or its implementation is contrary to the public interest or is violative of the constitutional principles, it would be the duty of the Court to exercise its jurisdiction in larger public interest and ensure that the institutional integrity is not compromised and in such case the Court should reject the Stock plea of the State that the scope of Judicial Review should not be exceeded beyond the recognized parameters.

### **The Supreme Court after analyzing the issues held as under:**

1. The licenses granted to private parties on or after 10.01.2008 were declared illegal and quashed. The said direction would become operative after four months. Within two months, TRAI should make fresh recommendations for grant of licence and allocation of spectrum in 2G band in 22 Service Areas by auction, as was done for allocation of spectrum in 3G band. The Central Government should consider the recommendations of TRAI and take appropriate decision within next one month and fresh licences be granted by auction.
2. Etisalat DB Telecom Private Limited, Unitech Wireless Limited and Tata Teleservices Limited would pay cost of Rs.5 crores each and Idea Cellular Limited, Allianz Infratech (P) Limited, Loop Telecom Limited, STel Limited, Sistema Shyam (MTS) Limited would pay cost of Rs.50 lakhs each.

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

© 2012 Singhania & Partners LLP: S&P House, H186, Sector 63, Noida, NCR Delhi 201301. All rights reserved.

[www.singhania.in](http://www.singhania.in)

3. 50% of the cost would be deposited with the Supreme Court Legal Services Committee for being used for providing legal aid to indigent litigants. The remaining 50% cost would be deposited in the Prime Minister's Relief Fund.
4. The observations and conclusions contained in this order would not, in any manner, affect the pending investigation by CBI, Directorate of Enforcement and others agencies or prejudice the defence of those who are facing prosecution in the cases registered by CBI and the Special Judge, CBI should decide the matter uninfluenced by this judgment.

*If you have any questions concerning the material discussed in this alert, please contact the following members of our corporate practice group:*

**Ravi Singhania**

D +91.120.4631000

E [rs@singhania.in](mailto:rs@singhania.in)

**Dipak Rao**

D +91.120.4631030

E [dr@singhania.in](mailto:dr@singhania.in)

**Shilpa Shah**

D +91.80.4115139

E [ss@singhania.in](mailto:ss@singhania.in)

**Rohit Jaiswal**

D +91.120.4631051

E [rohit@singhania.in](mailto:rohit@singhania.in)

*Singhania & Partners LLP is a full-service national law firm, it provides support to clients in all spheres of corporate and commercial law throughout India and internationally. The firm has considerable experience in cross border transactions in the areas of joint ventures, foreign collaborations, technology transfer, mergers and acquisitions, as well as in assisting its clients in establishing wholly owned subsidiaries in India.*

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

© 2012 Singhania & Partners LLP: S&P House, H186, Sector 63, Noida, NCR Delhi 201301. All rights reserved.

[www.singhania.in](http://www.singhania.in)