9 June 2026

National Stock Exchange of India Limited
“Exchange Plaza”,
Bandra - Kurla Complex,
Bandra (E),
Mumbai – 400 051

BSE Limited
Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai – 400 001

Dear Sirs,

Sub: Disclosure under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 (‘Listing Regulations’) – Update on material litigation

Ref: “Vodafone Idea Limited” (IDEA/532822)

This is in continuation of the intimation dated August 14, 2023 disclosing the details of material litigations.

It is hereby informed that the Hon’ble Bombay High Court yesterday i.e. on 8 June 2028 passed an order quashing the Demand Notices issued by Department of Telecommunications (“DoT”) imposing One Time Spectrum Charges (‘OTSC’) on the Company (erstwhile Idea Cellular Limited) and erstwhile Spice Communications Limited (since merged with the Company), aggregating to Rs. 2,113 crores and also ordered return of Bank Guarantee(s) given to DoT.

The order was uploaded on the website of Hon’ble Bombay High Court yesterday evening.

We hereby submit the details of change in the status/development in relation to aforementioned litigation as ‘Annexure A’ in terms of SEBI Master Circular No. SEBI/HO/49/14/14(7)2025-CFD-POD2/I/3762/2026 dated 30 January 2026.

Kindly take the same on record.

Thanking you,

Yours truly,

For **Vodafone Idea Limited**

Pankaj Kapdeo
Company Secretary

Encl: As above

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Annexure A

Details of change in the status/development in relation to proceedings of material litigation

Sl. No.	Particulars	Details
1.	Brief details of litigation	In respect of levy of One Time Spectrum Charge ('OTSC'), the DoT had raised demand on Idea Cellular Limited ("ICL") and erstwhile Spice Communications Limited (since merged with ICL), ICL now known as Vodafone Idea Limited, in January 2013 for spectrum beyond 6.2 MHz in respective service areas for retrospective period from July 1, 2008 to December 31, 2012 and for spectrum held beyond 4.4 MHz in respective service areas effective January 1, 2013 till expiry of the period as per respective licenses. The above demand amounted to alteration of financial terms of the licenses issued in the past and therefore the Company filed a petition in the Hon'ble High Court of Bombay, which, vide its interim order dated January 28, 2013, had directed the DoT that no coercive action shall be taken against the impugned Demand. Further, DoT while approving the merger of Vodafone India Ltd. and Vodafone Mobile Services Ltd. with ICL in 2018, revised the demands to Rs. 3,322 crores and demanded Bank Guarantee ('BG') for securing OTSC from erstwhile ICL. ICL furnished the BG under protest. The submission of BG under protest for the incremental amount was challenged by the Company before Hon'ble TDSAT, which granted a stay in favor of the Company. However, DoT obtained a stay on the said TDSAT order from Hon'ble Supreme Court. The Hon'ble Bombay High Court yesterday i.e. on 8 June 2026 passed an order quashing the Demand Notices issued by DoT imposing OTSC on the ICL and erstwhile Spice Communications Limited (since merged with the Company), aggregating to Rs. 2,113 crores and ordered return of Bank Guarantee(s) given to DoT. The writ petitions were filed in 2013.
2.	The details of any change in the status and/ or any development in relation to such proceedings.	The Hon'ble Bombay High Court yesterday i.e. on 8 June 2028 passed an order quashing the Demand Notice issued by DoT imposing OTSC on the ICL and erstwhile Spice Communications Limited (since merged with the Company), aggregating to Rs. 2,113 crores and ordered return of Bank Guarantee(s) given to DoT.

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3.	In the case of litigation against key management personnel or its promoter or ultimate person in control, regularly provide details of any change in the status and / or any development in relation to such proceedings.	Not Applicable
4.	In the event of settlement of the proceedings, details of such settlement including - terms of the settlement, compensation/penalty paid (if any) and impact of such settlement on the financial position of the listed entity.	Not Applicable

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1461 OF 2013

Bharti Airtel Limited and another … Petitioners

Vs.

Union of India … Respondent

WITH

WRIT PETITION NO.2029 OF 2013

Vodafone Idea Limited … Petitioner

Vs.

Union of India and others … Respondents

Mr. Harish Salve, Senior Advocate with Mr. Darius Khambata, Senior Advocate a/w. Mr. Fereshte Sethna a/w. Ms. Anuradha Dutt, Ms. Suman Yadav, Ms. Nikhita Suri, Mr. Prakalathan Bathey, Mr. Mohit Tiwari, Ms. Naira Jejeebhoy, Ms. Payal Nayak, Mr. Gurudas Khurana, Ms. A. Das and Ms. Sushmita Singh Chauhan i/b. DMD Advocates for Petitioners in WP/1461/2013.

Mr. Aspi Chinoy, Senior Advocate a/w. Ms. Sneha Jaisingh, Ms.Jaidhara Shah and Mr. Manan Parekh i/b. M/s. Bharucha & Partners for Petitioner in WP/2029/2013.

Mr. Anil Singh, Additional Solicitor General a/w. Mr. Aditya Thakkar, Mr. Gauraj Shah, Mr. D. P. Singh, Mr. Adarsh Vyas, Ms. Yugandhara Khanwilkar, Ms.Simantini Mohite, Ms. Siddha Pamecha, Mr. Krishnakant Deshmukh, Ms.Rama Gupta, Mr. Chaitanya Chavan i/b. Mr. PSM Tripathi for Respondent - UOI in both the Petitions.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.

Reserved on : **APRIL 09, 2026**

Pronounced on: **JUNE 08, 2026**

JUDGEMENT : (*Per Justice Manish Pitale*)

. The petitioners are cellular mobile service operators, aggrieved by imposition of one-time spectrum charge in the year 2012 for spectrum held above 6.2 MHz from the year 2008 onwards. The petitioners claim that the respondent Union of India has no power to impose such one-

PRIYA KAMBLI Digitally signed by PRIYA KAMBLI Date: 2026.06.08 17:48:15 +0530

time spectrum charge and that too retrospectively. The petitioners emphasize that neither is such source of power found in the relevant statutory provision i.e. Section 4 of the Telegraph Act, 1885 nor is it found in the license agreements for allocation and use of spectrum executed between the petitioners and the said respondent from time to time.

2. The petitioners claim that such imposition of one-time spectrum charge is, therefore, rendered unsustainable. It is relevant to note that in both the petitions, upon a *prima facie* view being taken in the matter, this Court had granted interim relief in favour of the petitioners. Upon completion of pleadings and submission of written notes of arguments along with convenience compilation of documents, the petitions are taken up for final hearing and disposal.

3. Rule. Rule made returnable forthwith and with the consent of the learned counsel for the parties, the petitions are taken up for final hearing.

CHRONOLOGY OF EVENTS

4. In the year 1994, the Respondent Union of India, through the Department of Telecommunications, invited participation of private sector enterprises in cellular mobile telephone services. In that context, National Telecom Policy 1994 was formulated and tenders were issued for awarding licenses to private sector enterprises. Pursuant thereto, the petitioners participated in the process and license agreements were executed between the Department of Telecommunications and the petitioners as the cellular mobile service operators. The clauses of the license agreements executed between the petitioners and the Department of Telecommunications were identical and therefore, reference is being made to license agreement dated 29.11.1994 executed between the

petitioner Bharti Airtel (petitioner in Writ Petition No.1461 of 2013) and the Department of Telecommunications. The said license agreement consisted of 13 clauses and 4 Schedules i.e. Schedules ‘A’ to ‘D’ pertaining to various aspects of providing cellular mobile telephone services. During the course of discussing the rival submissions, reference will be made to the relevant clauses of the license agreements as well as the Schedules. But, it is relevant to note here that clause 13(ii) reserved a right in the Department of Telecommunications, representing the Union of India, to modify the terms and conditions of the license covered under Schedules ‘A’ to ‘D’ if in the opinion of the authority, it was necessary or expedient to do so in the interest of the general public or for the proper conduct of telegraphs or for security considerations. Schedule ‘C’ contained clauses pertaining to license fee, which was fixed as per clause 19.1 and also the necessity of taking a separate license as per the Wireless Planning and Co-ordination (WPC) Wing of the Ministry of Communications under clause 20.1 onwards of Schedule ‘C’. Thus, the petitioners were required to pay a fixed license fee and also a separate amount towards royalty for use of spectrum as per the terms and conditions specified by the WPC Wing. It is relevant to note that the rates were fixed and they were not on revenue share basis.

5. In the year 1999, the respondent framed a new policy i.e. National Telecom Policy, 1999 (NTP-99). The respondent was required to frame the said new policy in the year 1999, upon realizing that the objectives of the Telecom Policy of the year 1994 could not be achieved and that the exercise of privatization had not achieved entirely satisfactory results. It was found that despite rolling out of the cellular mobile networks in Metros and States, the operators, like the petitioners, found that the actual revenue realized by the projects was far short of the projections, despite the fact that the operations had just commenced. The respondent Union of India realized that if necessary steps were not taken

in the light of the experience under the Telecom Policy of the year 1994, further development of the sector would also be adversely affected, and therefore, NTP-99 was formulated. The respondent also realized that there were far-reaching developments in the telecom, IT, consumer electronics and media industries worldwide and that, there was a need for convergence of markets and technologies for realignment of the industry. In that light, NTP-99 was formulated with specific objectives enumerated therein, including the objective of achieving efficiency and transparency in spectrum management, to encourage development of telecom facilities in remote, hilly and tribal areas of the country, as also to create a modern and efficient infrastructure for convergence of IT, media, telecom and consumer electronics for propelling India into becoming an IT superpower.

6. Under the said NTP-99, the basis of payment of license fee underwent a radical change and now the license fee was stipulated to be paid on revenue share basis. The operators like the petitioners would also have to pay specific amounts for usage of spectrum and this too would be based on revenue sharing. Apart from this, operators like the petitioners were required to pay a one-time entry fee. In the light of the said NTP-99, the respondent Union of India, through the Department of Telecommunications, offered a migration package to all cellular operators, including the petitioners. In that light, a communication dated 22.07.1999 was addressed to all cellular operators specifying the cut-off date of migration to NTP-99 regime as 01.08.1999. It was further specified that the operators opting for migration would be required to pay one-time entry fee, being equivalent to the license fee due and payable by the existing licensees / cellular operators upto 31.07.1999. It was specified that going forward, license fee would be a percentage of the gross revenue under the license. The other conditions included the term of the license being increased to 20 years from the date of the

license agreement instead of 10 years, as provided earlier and that, upon migration, the licensees would forego the right of operating in the regime of limited number of operators as per the existing license and that the licensees would operate in a multi-poly regime. It was further specified that upon acceptance of the migration package, all disputes raised by the licensees against the Union of India would stand withdrawn.

7. On 23.06.2000, the Telecom Regulatory Authority of India (TRAI) established under the Telecom Regulatory Authority of India Act, 1997, sent a communication to the Secretary of Department of Telecommunications in the context of references pertaining to NTP-99. In the said communication, the TRAI, *inter alia*, stated that the revenue share parted with as license fee represented a payment for frequency spectrum, which was a highly limited natural resource. The petitioners emphasized on the said statement and claimed that sharing revenue as license fee and payment of one-time entry fee for migration to NTP-99, represented payment towards spectrum, which is a limited natural resource.

8. On 24.10.2000, TRAI recommended allotment of additional frequency to existing operators like the petitioners. In this backdrop, the respondent Union of India, through the Department of Telecommunications, addressed letters to cellular operators like the petitioners with regard to amendment of license agreements as a consequence of migration to the revenue share regime under NTP-99. Such a communication dated 29.01.2001 was addressed to the petitioner Bharti Airtel Limited, which specified the nature of amendments in the license agreements, including the basis of charging license fee, provisionally fixed at 15% of gross revenue, period of license being increased to 20 years, sharing of infrastructure in the area of operation

and other such factors. It was specified in the said communication that the other terms and conditions of the license agreement would remain unchanged.

9. Thereupon, the respondent Union of India, through the Department of Telecommunications, WPC Wing, issued orders dated 22.09.2001, 01.02.2002 and 18.04.2002. The petitioners have relied upon the contents of these orders. A perusal of the same would show that allotment of any additional bandwidth beyond 4.4 MHz was to attract additional license fee and royalty in the form of increased revenue share.

10. On 23.08.2002, the Cellular Operators Association of India (COAI), of which the petitioners are members, communicated to the respondent Union of India through the Department of Telecommunications that its members accepted the spectrum charges on percentage revenue basis and accordingly necessary action was being taken to withdraw all legal proceedings instituted in courts and the Telecom Dispute Settlement and Appellate Tribunal (TDSAT). Accordingly, all such legal proceedings stood withdrawn. On 29.07.2003, a Committee constituted by the Department of Telecommunications, for efficient use of spectrum by cellular services, submitted its report making various observations. It was recommended that additional spectrum could be allotted even beyond 10 MHz upto 15 MHz. The petitioners emphasize that even this report nowhere recommended charging any amount towards one-time spectrum charges.

11. On 27.10.2003, the TRAI recommended introduction of Unified Access Services (UAS) licensing regime. It was observed that migration to NTP-99 had resulted in huge growth in subscriber base, thereby resulting in increased income to the Government due to revenue share paid by the operators like the petitioners as license fee, instead of fixed annual license fee under the earlier regime. On 11.11.2003, the

Department of Telecommunications issued guidelines for UAS license. These guidelines, *inter alia*, specified that the existing operators, after migrating to a UAS license, would continue to provide services in already allocated / contracted spectrum with freedom to use any technology without restriction and that no additional entry fee would be charged on the operators for migration to the UAS license. In this backdrop, the petitioners and other operators entered into license agreements for various areas in the year 2004-05. Copies of some of these agreements as samples have been placed on record by the petitioners. The terms and conditions incorporated in the schedules annexed to these agreements provide in detail about various matters. The financial conditions clearly stipulated that no additional entry fee was to be charged on the operators like the petitioners for migration to the UAS license and that the license fees would be payable annually @10% of the Adjusted Gross Revenue (AGR), excluding spectrum charges. It was specified that separate spectrum charges would be paid by the licensees like the petitioners. It was also specified that any additional bandwidth beyond 4.4 MHz, if allotted, would attract additional license fee as revenue share (typically 1% additional revenue share if bandwidth allocated was upto 6.2 MHz). One of the conditions reserved the right of the licensor i.e. the Department of Telecommunications to modify any of the conditions in the aforementioned three contingencies pertaining to public interest or interest of the security of the State or for the proper conduct of telegraphs.

12. On 11.08.2005, a committee under the Chairmanship of the Wireless Advisor of the WPC Wing of Department of Telecommunications gave recommendations concerning spectrum related issues. One of the recommendations, upon which the petitioners have placed emphasis, records that no additional one-time charge or entry fee should be taken from the existing service providers like the

petitioners as it would enable them to roll out their services faster and also to offer the services at affordable tariffs. It was clarified that such service providers should be required to pay revenue share for spectrum charges based on the total spectrum with them. The subsequent guidelines for UAS license dated 14.12.2005 issued by the Department of Telecommunications also did not refer to any one-time spectrum charge and instead provided for levying recurring spectrum charges on revenue share basis, to be notified separately from time to time, by the WPC Wing. Thereafter, on 28.08.2007, the TRAI gave its recommendations on review of license terms and conditions. This document contained observations to the effect that imposition of an additional acquisition fee for quantum of spectrum beyond the thresholds of 6.2 MHz for GSM and 5 MHz for CDMA may not be legally feasible in view of the higher level of usage charges being collected by the Government and the necessity of further penetration of wireless services in semi-urban and rural areas where affordability of services to the common man was a key to further expansion. It was further specifically recommended that one-time spectrum charge would be paid for getting additional spectrum beyond 10 MHz. The petitioners have placed much emphasis on the said portions of the document as they admittedly were allocated spectrum only upto 10 MHz. On 19.10.2007, the respondent Department of Telecommunications issued a press release in line with the aforementioned recommendations of the TRAI by stating that a spectrum enhancement charge, in addition to annual spectrum charges based on revenue share, could be levied at the time of additional spectrum allotment to the licensees beyond 10 MHz. Thereafter additional spectrum was allocated to the petitioners for various circles and copies of the orders have been placed on record.

13. In this backdrop, on 09.07.2008, the respondent Department of Telecommunications wrote to the TRAI, stating that there was a need for

collecting one-time spectrum enhancement charges beyond 6.2 MHz. On 16.07.2008, the TRAI sent a communication to the respondent agreeing with the proposal for enhancement of spectrum usage charges. But, on the proposal to levy one-time spectrum charge beyond 6.2 MHz, the TRAI sought clarifications from the respondent. It is relevant to note that in the meanwhile, the COAI of which the petitioners are members had challenged the press release dated 19.10.2007, proposing imposition of spectrum enhancement charge beyond 10 MHz. By order dated 31.03.2009, the TDSAT held against the COAI primarily on the basis that the operators had no vested right for spectrum beyond 6.2 MHz. The petitioners claim that the aforesaid observation was made on the basis of clause 43.5 of UAS license extracted in the order of TDSAT, which was materially different from the said clause of the migrated licenses issued to the petitioners. This aspect would be considered in this judgement while considering the rival submissions. The respondent, in the meanwhile, appointed a committee under the chairmanship of the then Additional Secretary of the Department of Telecommunications Mr.Subodh Kumar, to submit a report regarding allocation of access spectrum and pricing. The committee in its report, *inter alia*, recommended that an option should be given to the licensees to pay an upfront charge for spectrum beyond 6.2 MHz from the date they exercise such an option. It was further recommended that if such an option was exercised, the annual spectrum usage charges for the spectrum held should be 3% of AGR instead of the higher rate being levied at that point in time. The recommendations of this committee have been referred to and arguments have been addressed by the rival parties, which shall be dealt with in this judgement.

14. In this backdrop, on 11.05.2010, the TRAI submitted its recommendations on spectrum management and licensing framework. It was in these recommendations that for the first time, the TRAI

recommended one-time spectrum charge on spectrum held beyond 6.2 MHz. According to the petitioners, this recommendation appeared to be contradictory to the earlier recommendations.

15. It is relevant to note that the respondent specifically relies on certain communications / orders issued from the year 2008 onwards, wherein it was indicated that a charge would be levied for grant of additional spectrum. The petitioners raised objections to the said recommendations of the TRAI. In the meanwhile, on 25.02.2010, the respondent issued an order revising the spectrum charges. A bunch of petitions were filed before the TDSAT challenging the said order. On 01.09.2010, the TDSAT dismissed the petitions, upholding the increased charges imposed by the respondent. The said order of the TDSAT was challenged before the Supreme Court and by an order dated 22.10.2010, the Supreme Court stayed the order of TDSAT subject to certain conditions.

16. In this backdrop, on 02.02.2012, the Supreme Court passed its judgement in the case of *Centre for Public Interest Litigation and others Vs. Union of India*, **(2012) 3 SCC 1**, also known as the *2G Spectrum case*. It is relevant to note here that the said judgement did not deal with licenses granted prior to 10.01.2008. On 08.11.2012, the Union Cabinet took a decision directing that one-time charge would be levied upon all spectrum holdings beyond 4.4 MHz pertaining to existing operators at 2012 auction determined price. It was further directed that a one-time charge would be levied for spectrum held beyond 6.2 MHz from July 2008 onwards. This was followed by the impugned decision dated 28.12.2012 of the respondent through its Department of Telecommunications (WPC) Wing, specifying the rates at which the one-time spectrum charge would be levied for spectrum held above 6.2 MHz for the period 01.07.2008 to 31.12.2012. The respondent invoked Section 4 of the Telegraph Act while issuing the said order.

17. Consequently, the respondent issued demand notices to the petitioners, specifying the amounts payable by the petitioners towards one-time spectrum charges.

18. Being aggrieved by the said orders / decisions and the demand notices, the petitioners filed the present writ petitions before this Court in January 2013. It is an admitted position that in these petitions, an interim order has been operating to the effect that no coercive action is to be taken against the petitioners in pursuance of the impugned orders / decisions, during the pendency of the petitions.

19. During the pendency of these petitions, on 11.08.2016, a Division Bench of the Madras High Court upheld the impugned decisions in a challenge raised by a cellular operator i.e. Aircel. A challenge raised to the said judgement is pending in the form of C.A.No.2230-2231 of 2017 before the Supreme Court. The respondent heavily relied upon the said judgement of the Madras High Court. During the pendency of these petitions, the respondent issued revised demand notices to the petitioners. Certain orders have been passed by the TDSAT in the context of the one-time spectrum charges and reference is made to the orders dated 04.02.2019 and 04.07.2019. Both the orders have been challenged before the Supreme Court and the challenge is pending. The pleadings in the present petitions were completed in the meanwhile and upon filing of convenience compilations of documents, the petitions were taken up for hearing.

SUBMISSIONS

20. Mr. Haresh Salve, learned senior counsel and Mr. Darius Khambata, learned senior counsel appeared on behalf of the petitioner - Bharti Airtel Limited in Writ Petition No.1461 of 2013 and made the following submissions:

(a) It was submitted that the impugned decisions and demand notices issued by the respondent, imposing one-time spectrum charge, are wholly unsustainable as there is no source of power with the respondent to levy such charge and that too, retrospectively for the period from 2008 to 2012. The learned senior counsel referred to the Telecom Policy of the year 1994 and NTP-99, as also the license agreements executed and amended subsequently, to contend that there was no source of power available to the respondent to have issued the impugned decisions and demand notices. On this basis, it was contended that the impugned decisions and demand notices were rendered unsustainable and that they deserved to be set aside.

(b) It was submitted that in terms of the license issued as per the Telecom Policy of the year 1994, a fixed license fee was chargeable under clause 19 of Schedule C to the license agreement and a separate license was required to be obtained from the WPC Wing of the respondent for making payment towards spectrum usage under clause 20 of Schedule C to the license agreement. This regime underwent a significant change under NTP-99, wherein the concept of revenue sharing for payment of license fee was introduced. It was further submitted that when cellular operators like the petitioners herein accepted the migration package under NTP-99, they also paid entry fee equivalent to license fee due and payable by the existing licensees upto 31.07.1999. On this basis, it was submitted that payment of entry fee and license fee, as percentage of gross revenue from 01.08.1999, was the payment made for allocation of spectrum. Since there was no dispute about

the petitioners having paid the said amounts, there was no question of liability to pay any further amount for allocation of spectrum.

(c) The learned senior counsel referred to the UAS licence regime and the specific agreements executed with the respondents as per the UAS guidelines. Upon referring to various clauses of the said agreements as also the amendment in the original license in the light of the migration package, it was submitted that additional bandwidth was allotted upon additional license fee being charged by the respondent as revenue share, thereby indicating that no further charge could be levied, much less retrospectively.

(d) Reference was made to clause 5.1 in such agreements, wherein the respondent, as a licensor, had reserved its right to modify the terms and conditions of the license only under three contingencies viz. public interest, interest of security of the State and proper conduct of telegraphs. In the present case, there was neither any modification in the agreements, nor any reference to the aforesaid three contingencies, while claiming one-time spectrum charge by the impugned decisions and that too retrospectively.

(e) In this context, the learned senior counsel for the petitioner referred to a chart filed along with the additional affidavit, giving details of the spectrum allocated to the aforesaid petitioner in various circles, to emphasize that such allocation of spectrum never exceeded 10 MHz. It was also brought to the notice of this Court that the clauses of UAS licenses were satisfied, as enhanced revenue share was paid

on each occasion that the spectrum allocation was increased upto 10 MHz.

(f) Attention of this Court was specifically invited to clause 18.3 of the UAS license agreement of the year 2005, wherein it was specified that additional bandwidth would be allocated, which would attract additional license fee as revenue share. Reference was also made to clause 43.5 thereof, to contend that although the respondent, as a licensor, had the right to amend or modify the procedure of allocation of spectrum, including quantum of spectrum, at any point in time without assigning any reason, such modification or amendment would obviously be for the future and not for a previous period. It was also emphasized that the aforesaid clause 43.5 did not specify a cap on allocation of spectrum.

(g) The learned senior counsel then submitted that although the TRAI, in its recommendation, had indicated that additional acquisition fee beyond allocation of 6.2 MHz may not be legally feasible, the recommendations of the Committee chaired by Mr.Subodh Kumar took a turn around and for the first time, coined the idea of charging one-time fee for spectrum allocated beyond 6.2 MHz. It was further submitted that one-time entry fee cannot be a species of license fee, as licence fee is charged at the time of grant of license. It was submitted that the power of respondent under Section 4 of the Telegraph Act, read with the license agreements specifically executed between the parties, would show the basis of charging license fee specifically agreed upon between the parties and that there was no question of retrospectively charging one-time spectrum

charge by the impugned decisions.

(h) It was emphasized that the respondent was unable to justify the impugned decisions in the reply affidavit filed before this Court. In this context, reference was made to paragraph Nos.5 to 9, 14, 15 and 21 of the affidavit-in-reply filed on behalf of the respondent. It was submitted that reliance on Section 4 of the Telegraph Act was wholly misplaced and clauses 23.5 and 43.5 of the license agreement clearly did not confer power upon the respondent, as the licensor, to unilaterally impose the one-time spectrum charge retrospectively from the year 2008. It was emphasized that clause 23.5 of the license merely recorded that detailed guidelines for allocation of frequency spectrum and charges thereof would be separately issued from time to time. This only indicated that whenever the charges were to be increased or modified, they would be specified from time to time and that the said steps were taken by the respondent periodically, with no dispute that whenever the percentage of charge under the revenue share regime was increased/modified, the petitioners abided by the same and paid the charges. There was no question of imposing one-time spectrum charge over and above such charges and that too, retrospectively.

(i) The learned senior counsel for the petitioner relied upon the judgement of the Supreme Court in the case of *Union of India Vs. Association of Unified Telecom Service Providers of India*, **(2011) 10 SCC 543**, to contend that the license granted under proviso to section 4(1) of the Telegraph Act, was in the nature of a contract between the licensor i.e. respondent – Union of India and the licensees i.e. the

petitioners. The terms and conditions of the license became part of the contract and therefore, the respondent could levy any charge only within the four corners of the contract. It was submitted that the levy of one-time spectrum charge retrospectively was foreign to the terms of the contract.

(j) In support of the said contention, reliance was also placed on the judgment of the Supreme Court in the case of *Bharti Airtel Limited Vs. Union of India*, **(2015) 12 SCC 1**. The learned senior counsel appearing for the said petitioner steered clear of the argument regarding Article 14 of the Constitution of India and arbitrariness, emphasizing that the terms of contract was the only relevant factor. It was submitted that none of the three contingencies contemplated under clause 13(ii) of the original license agreement of the year 1994 and clause 5.1 of the subsequent license agreement, was satisfied for the respondent to claim a right to modify the terms of contract, quite apart from the fact that there was actually no modification of the terms of the contract in accordance with law before the respondent issued the impugned decisions and demand notices. On this basis, it was submitted that the petition deserved to be allowed.

(k) The learned senior counsel for the petitioner submitted that the judgement of the Madras High Court in the case of *Aircel Cellular Ltd. Vs. Union of India*, **2016 SCC OnLine Mad 8463**, upon which respondent has placed much reliance, wrongly interpreted clause 13(ii) of the license agreement executed as per the Telecom Policy of the year 1994. It was submitted that the approach adopted by the Madras High Court, to the effect that any revenue

generation contemplated by means of one-time spectrum charge, has to be treated as a step in public interest, was not borne out from the material on record. It was submitted that the objectives of NTP-99 as well as the clauses of the specific terms of the licenses executed after migration to NTP-99, were ignored by the Madras High Court and much emphasis was erroneously placed on the meaning of the term 'modify', to reach conclusions in favour of the respondent. It was submitted that the said judgement is the subject matter of challenge pending before the Supreme Court and that therefore, this Court may independently consider the submissions made on behalf of the petitioner.

(l) On the aspect of maintainability of the petition, the learned senior counsel for the petitioner submitted that the instant petition and the companion petition i.e. Writ Petition No.2029 of 2013, were entertained by this Court since the year 2013. In the companion petition, on 24.02.2014, a Division Bench of this Court had specifically considered and rejected the argument of alternative remedy to approach TDSAT. On this basis, it was submitted that there was no question of doubting the maintainability of petition at this stage of final hearing of the petition.

(m) As regards reliance placed on behalf of the respondent on the judgement of the Supreme Court in the case of *State Bank of India Vs. Union of India and others*, **2026 SCC OnLine SC 202**, it was submitted that the said judgement merely reiterated that spectrum was a natural resource held by the respondent – Union of India in public trust. It was clarified and reiterated that in the context of spectrum, the powers and obligations of the licensor i.e. the respondent

could arise from the license and also, from the statute i.e. the Telegraph Act and the Constitution of India. It was submitted that the said judgement, in no manner, laid down a position of law that would justify the impugned decisions and demand notices, calling upon the petitioner to deposit one-time spectrum charge retrospectively.

(n) The learned senior counsel for the petitioner placed emphasis on the documents on record showing that one-time spectrum charge, if at all, was contemplated only for allotment of spectrum beyond 10 MHz, while it was an admitted position that the petitioner never exceeded 10 MHz when the impugned decisions and demand notices were issued.

(o) The learned senior counsel appearing for the petitioner further emphasized that when migration to NTP-99 was proposed, the respondent itself had specified that amendments to the existing agreements could be signed by the licensor and the licensee and it was further submitted that the TRAI, in its response to the respondent, had specifically recorded that revenue share parted with as license fee, represented payment for frequency spectrum, thereby indicating that payment for the allocated spectrum was always made from time to time.

(p) As per the amendment in the license agreement of the year 1994, under communication dated 29.01.2001 and as per the communications and orders dated 22.09.2001, 01.02.2002 and 18.04.2002 issued by the respondents, it was abundantly clear that allocation of spectrum and payment of additional revenue share were purely

contractual terms and that under NTP-99, the emphasis was not on revenue maximisation, but on efficient utilization of spectrum with penetration into rural and tribal areas, in order to provide affordable cellular service to the population at large. It was submitted that emphasis placed on the alleged warnings given by respondent in certain communications that some charge would be levied on allocation of spectrum, could be of no consequence as license fee was being charged by enhancement of revenue share in terms of the amended agreements as well as UAS licenses issued from time to time.

(q) The learned senior counsel further relied upon judgement of the Supreme Court in the case of *Subodh Kumar Singh Rathour Vs. Chief Executive Officer and others*, **2024 SCC OnLine SC 1682**, to contend that even if the *inter se* relations of parties with the State were governed purely by contract, the method, motive and decision of the State would be subject to judicial review on the grounds of relevance and reasonableness, fair play, natural justice, equality and non-discrimination. It was held therein that a writ could be issued where an executive action was not supported by law.

(r) The learned senior counsel further submitted that even the Supreme Court, in the case of *Natural Resources Allocation, In Re, Special Reference No.1 of 2012*, **(2012) 10 SCC 1**, held that there is no law or logic to support the proposition that disposal of a natural resource for commercial use must be for revenue maximisation. In this context, reference was made to the objectives of NTP-99 to contend that the respondent cannot be permitted to claim

that one-time spectrum charge would augment revenue, which would therefore be in public interest.

(s) The learned senior counsel further placed reliance on judgment of a Division Bench of this Court in the case of *Musale Constructions, Builders and Contractors, Nagpur Vs. Vidarbha Irrigation Development Corporation, Nagpur and another*, **2021 (1) Mh.L.J. 355**, to contend that once a concluded contract was executed between the parties, they were bound by the same and if the parties were to alter/modify the terms of contract, it was required to be done either by express agreement or by necessary implication. Novation in the contract was required to be undertaken and no change to the contract could have been made unilaterally.

(t) Reliance was also placed on the judgment of the Supreme Court in the case of *Sivanandan C.T. and others Vs. High Court of Kerala and others*, **(2024) 3 SCC 799**, to emphasize that the decisions by the respondent as a public authority, have to be passed on the basis of consistency and predictability in decision-making, which was absent in the present case.

(u) On the basis of the aforesaid submissions, both the learned senior counsel submitted that the petition deserved to be allowed.

21. Mr. Aspi Chinoy, learned senior counsel appearing for Vodafone Idea Limited i.e. the petitioner in Writ Petition No.2029 of 2013, made the following submissions:

(a) The learned senior counsel invited attention of this Court to Section 4 of the Telegraph Act to submit that the

respondent, as a licensor, clearly had the authority to impose terms and conditions at the time of grant of license. It was submitted that under the said statutory provision, the respondent had no power to alter the terms and conditions of the grant, after the license had been granted. The said statutory provision nowhere stipulates any power in the respondent as a licensor, to unilaterally change the terms of the contract, after the license had been granted. On this basis, it was submitted that only the clauses of the contract/subject licenses could be considered, while construing the impugned decisions issued by the respondent.

(b) It was submitted that the respondent, as a licensor, could not have unilaterally sought to change the terms of the contract by imposing one-time spectrum charge without there being any provision in the contract itself. It was submitted that under Section 60 of the Contract Act, novation of the contract must precede the contract-making process and the parties must be *ad idem* as regards the terms and conditions. It was submitted that a definite consideration was an essential element of a binding agreement. It was submitted that in the present case, at the time of grant of license, the terms were clearly fixed as per the agreement between the parties and yet, the respondent issued the impugned decisions and demand notices claiming one-time spectrum charge and that too retrospectively. In support of the aforesaid contention, reliance was placed on the judgement of the Supreme Court in the case of *Delhi Development Authority and another Vs. Joint Action Committee, Allottee of SFS Flats and others*,

(2008) 2 SCC 672.

(c) By placing reliance on the judgement of the Supreme Court in the case of *Bharat Sanchar Nigam Limited and another Vs. BPL Mobile Cellular Limited and others*, **(2008) 13 SCC 597**, the learned senior counsel submitted that the respondent was clearly bound by the terms of the contract i.e. the license and if the same was to be altered/modified, it was required to be done either by express agreement or by necessary implication, which would negate the application of the doctrine of '*acceptance sub silentio*'.

(d) It was submitted that the respondent unilaterally issued the demand notices, without modifying or altering the terms of the contract. This despite the fact that on earlier occasions, when the licenses were modified, specific offers were made on behalf of the respondent, which were accepted by the petitioners, particularly while migrating to NTP-99. It was submitted that under Section 4 of the Telegraph Act, since there is no power with the respondent to suddenly change the terms of contract and to unilaterally claim one-time spectrum charge and that too retrospectively, the right of the petitioners to insist upon the very terms of the contract, could not be taken away.

(e) In support of the said contention, reliance was placed on the judgement of the Supreme Court in the case of *J. S. Yadav Vs. State of Uttar Pradesh and another*, **(2011) 6 SCC 570**. The learned senior counsel further placed emphasis on the judgement of the Supreme Court in the case of *MGB Gramin Bank Vs. Chakrawarti Singh*, **(2014) 13 SCC 583**, particularly on the meaning of the word

'vested'. It was submitted that if the respondent was allowed to act in such a manner, without any source of power being demonstrated, how could business be done by private entities like the petitioner? It was emphasized that while paragraph No.28 of the note submitted on behalf of the respondent referred to Section 4 of the Telegraph Act and the specific question regarding absence of power raised on behalf of the petitioners, neither the said note nor the oral submissions made on behalf of the respondent dealt with the said question. On this basis, it was submitted that the petitions deserve to be allowed and the impugned decisions/demand notices deserve to be quashed.

22. Mr. Anil Singh, learned ASG, while opposing the petitions, made the following submissions:

(a) It was submitted that in the light of the fact that dispute raised by the petitioners in these petitions falls within the domain of TDSAT, the present writ petitions ought not to be entertained. It was submitted that TDSAT was the appropriate forum in which the dispute could be decided and on this short ground, the petitions ought not be entertained.

(b) It was submitted that one of the grounds taken in the petitions was that at the relevant time, the TDSAT was not available and it was perhaps for the said reason that this Court entertained the petitions. Now, the TDSAT is very much available and therefore, the petitions ought to be disposed of on this short ground. It was emphasized that the disputes raised by the petitioners are based on pure contractual relationship between the respondent as licensor

and the petitioners as licensees and that therefore, the writ petitions do not deserve to be entertained.

(c) The learned ASG copiously referred to the note submitted on behalf of the respondent and while reading through the same, he submitted that spectrum being a material resource of the public, of which the respondent was a trustee, the amounts to be recovered as one-time spectrum charge were to be utilized for common good and therefore, no objection could be raised to the impugned decisions and the impugned demand notices.

(d) It was emphasized that in repeated communications, the petitioners were put to notice that they would be required to pay charge towards allocation of spectrum and therefore, they cannot claim that they were caught by surprise or that the charge was being levied retrospectively. It was submitted that the charge for allocation of spectrum was clearly different from the charge for its usage. The documents on record demonstrated that beyond 4.4 MHz, the petitioners were allocated spectrum virtually free of charge and that therefore, even in terms of NTP-99, the petitioners were liable to pay separate charge towards allocation of spectrum, distinct from the charges that were being levied for using the spectrum.

(e) It was submitted that the controversy was decided in favour of the respondent in identical challenges raised before the Madras High Court in the case of **Aircell Cellular Ltd. Vs. Union of India** (*supra*). It was submitted that the Madras High Court referred to the right reserved with the respondent as licensor in clause 13(ii) of the license

agreement to modify the conditions of the license. It was found that levy of one-time spectrum charge was in public interest, thereby satisfying one of the contingencies for modification of the terms and conditions of license.

(f) In this context, reliance was also placed on the judgement of a Division Bench of this Court in the case of *Laya Binaykumar Pandey Vs. Medical Council of India and others*, **2006 (6) Mh.L.J. 438**, to contend that once a co-ordinate High Court had taken a view, this Court should normally adopt the same, unless it is found that the view cannot be sustained. It was submitted that the view adopted by the Madras High Court in the case of **Aircell Cellular Ltd. Vs. Union of India** (*supra*) was clearly a logical and reasonable view. Therefore, this Court may not take a different view in the matter and that the present petitions may be dismissed on the said ground also.

(g) The learned ASG further submitted that in the aforesaid recent judgement of the Supreme Court in the case of **State Bank of India Vs. Union of India and others** (*supra*), it was categorically held that spectrum was a valuable natural resource of which the respondent – Union of India is a trustee and that therefore, no fault can be found with the respondent in issuing the impugned decisions and demand notices. It was emphasized that spectrum was utilized by the petitioners for commercial gains and having enjoyed the said spectrum, they cannot be permitted to avoid the liability of payment of requisite charges.

(h) The learned ASG referred to the original license agreement executed as per the Telecom Policy of the year 1994, as

also the amended licence, post acceptance of migration package by the petitioners as also the UAS agreements executed from time to time. It was emphasized that clauses of all the aforesaid documents clearly demonstrated that the respondent was justified in levying charge for additional allocation of spectrum, apart from the charges levied for usage thereof. It was claimed that the respondent – Union of India had the sole prerogative of fixing the amount of compensation payable by the petitioners for commercial usage of spectrum, which is a valuable natural resource.

(i) By referring to the judgement of the Supreme Court in the case of **Bharti Airtel Limited Vs. Union of India** (*supra*), it was emphasized that the obligations of the respondent, not only flow from the contract between the parties, but also from the provisions of the statute i.e. the Telegraph Act and also the Constitution of India. It was emphasized that as per the said judgement, in the event of any conflict in the obligations, the role of respondent – Union of India, as a trustee and custodian of natural resources for the public at large, would prevail and therefore, the petitions deserve to be dismissed.

(j) It was emphasized in terms of the aforesaid recent decision of the Supreme Court in the case of **State Bank of India Vs. Union of India and others** (*supra*), that grant of telecom license, including the right to use spectrum, does not result in transfer of ownership or proprietorship interest, rather it is a limited, conditional and revocable privilege to use spectrum for specified purposes and for a defined duration.

(k) Much emphasis was placed on clauses 5.1 and 18.3 of the UAS licenses, claiming that modification was well within the power of the respondent – Union of India in public interest and therefore, within the terms of contract, one-time spectrum charge could be imposed. Even otherwise, under Section 4 of the Telegraph Act, the respondent – Union of India had statutory power to ensure appropriate charge being levied on the petitioners for utilization of spectrum, which is a scarce natural resource. The aspect of public interest and Constitutional goals cannot be ignored while deciding such a controversy.

(l) It was claimed that in the agreement executed in the years 1994 and 2005, license allocation fee, license usage fee and spectrum usage fee were charged, but no fees was charged for spectrum allocation. Therefore, it cannot be said that this was a case of double charge.

(m) It was submitted that the contention of retrospective charge is also not sustainable because the petitioners were clearly put to notice from the year 2007-2008 about spectrum allocation pricing to be determined by the respondent. Yet, the petitioners did not surrender the spectrum and they did not challenge the approach adopted by the respondent while continuing to exploit the spectrum commercially and that the impugned decisions manifested only computation of charge payable, which exercise was undertaken in the year 2012/2013 for the additional spectrum allocated for the earlier years.

(n) It was claimed that one-time spectrum charge was levied to make it a level playing field, so that new allottees were not

put to disadvantage as against the petitioners, who were players already operating in the sector.

(o) On this basis, it was submitted that the petitions deserved to be dismissed and that the interim orders ought to be vacated.

ANALYSIS AND FINDINGS

Maintainability of the Petitions :

23. The learned ASG, at the outset, submitted that the petitions ought to be disposed of on the ground of availability of alternative remedy of approaching the TDSAT. We find substance in the contention raised on behalf of the petitioners that in Writ Petition No.2029 of 2013, a Division Bench of this Court specifically considered the said submission and rejected the same while continuing the interim order in favour of the petitioner. In the said order, the Division Bench of this Court deliberated on the aspect that power of the respondent under Section 4 of the Telegraph Act was one of the issues raised on behalf of the petitioner and that such an issue along with other aspects of the matter deserved to be considered and determined by this Court exercising writ jurisdiction. The same reasoning would apply to the companion Writ Petition No.1461 of 2013. The objection regarding maintainability having been rejected at the outset when the writ petitions were entertained, is enough for this Court at this stage, after more than a decade of pendency of these petitions, to refuse to consider the said objection regarding maintainability.

24. We also find that the writ petitions were entertained way back in the year 2013, not merely because the TDSAT was not available. In any case, we find that the questions raised for consideration on behalf of the

petitioners concern interpretation of statutory provisions, the effect of clauses of licenses executed between the parties and such matters certainly do not require leading of evidence. The issues can certainly be entertained, considered and decided in writ jurisdiction. Even otherwise, the rule of relegating a party to an alternative remedy is a self-restraint exercised by the Writ Court, being a rule of prudence and not a rule of law. Considering the long pendency of these petitions, and the specific issues raised on behalf of the rival parties, we do not find any substance in the contention raised on behalf of the respondent that the writ petitions ought not to be entertained and that the petitioners ought to be relegated to the alternative remedy. Even otherwise, the respondent itself is relying upon a judgement of the Madras High Court rendered in a writ petition filed by a similarly situated cellular operator like the petitioners herein. Hence, the objection regarding maintainability raised on behalf of the petitioners is rejected and this Court is proceeding to consider the rival submissions on merits.

Spectrum as a Natural Resource :

25. The learned ASG has placed much emphasis on the fact that spectrum is a scarce natural resource belonging to the people of the country and that the respondent Union of India acts as a trustee with regard to the said natural resource. It is claimed that the petitioners cannot have any proprietary right or vested right in such a natural resource. It is asserted that this aspect has to be taken into consideration by the Court while considering the manner in which the relevant statutory provisions and the clauses of the license agreements are to be interpreted.

26. The Supreme Court in its judgement in the case of **Centre for Public Interest Litigation and others Vs. Union of India** (*supra*), also

known as the '*2G Spectrum case*', observed that spectrum has been internationally accepted as a scarce and finite natural resource, which is susceptible to degradation in case of inefficient utilization. The high economic value of the said natural resource was noted in the light of its demand in the telecom sector. It was also observed that since such natural resources are public goods, the doctrine of equality, emerging from the concepts of justice and fairness must guide the State in determining the actual mechanism for distribution of such natural resources. It was emphatically held that the State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution ought to be guided by constitutional principles including the doctrine of equality and larger public good. This was reiterated in various judgements. It is significant to note that in the Constitution Bench judgement in the case of **Natural Resources Allocation, in Re, Special Reference No.1 of 2012** (*supra*), it was authoritatively laid down that although such natural resources, of which the State acts as a trustee for the people, are to be dealt with in such a manner that the common good is best subserved, revenue maximization is not the only way in which the common good can be subserved. Where revenue maximization is not the object of a policy of distribution, such considerations can assume secondary treatment as compared to developmental considerations.

27. In the recent judgement of the Supreme Court in the case of **State Bank of India Vs. Union of India and others** *(supra)*, upon which the learned ASG placed much emphasis, it was reiterated that spectrum is a natural resource held by the respondent Union of India in public trust. But, it was further clarified that when the respondent Union of India deals with the question of distribution of rights in such natural resources like spectrum, it is nothing but grant of a conditional privilege of exploiting spectrum as a natural resource and it does not confer any

proprietary right in cellular operators like the petitioners herein.

28. Even if the said position of law is applied to the issues raised in these petitions, we find that once the respondent Union of India through the Department of Telecommunications executed documents in the form of licenses in favour of the petitioners, by exercising statutory power under Section 4 of the Telegraph Act, the respondent Union of India acting as a trustee of the people, is required to abide by the contractual terms. It cannot be contended that since spectrum is recognized as a scarce and finite natural resource, the respondent Union of India would be entitled to resile from the terms of the contract i.e. the license, or act in any manner unilaterally and then to justify the same by taking shelter of the concepts of 'common good', 'public good', 'public interest', etc. Since spectrum is recognized as a scarce and finite natural resource, it is all the more reason for the respondent Union of India as a trustee of the people to ensure that appropriate terms and conditions are incorporated in the licenses so as to best subserve the common good. This can be ascertained by the manner in which the respondent Union of India itself evolved its policies pertaining to the telecom sector, based on experiences gained after putting into operation such policies from time to time. In this backdrop, it would be appropriate to refer to the policies adopted by the respondent Union of India regarding distribution of spectrum from 1994 onwards.

Telecom Policies of Union of India:

29. Initially, the Union of India exclusively established and maintained telecommunication services in India. Upon the opening up of the economy in the year 1991 and a paradigm shift in the approach to governance, with the gates being opened for participation of the private sector, particularly in the telecom sector, the Telecom Policy of 1994

was adopted. Under the said policy, licenses were granted for cellular mobile telephone services and other such services across various cities and circles to private operators like the petitioners herein. In that context, license agreements were executed.

30. A perusal of one such license agreement dated 29.11.1994 executed between the petitioner Bharti Airtel and the respondent Union of India shows a clear bifurcation between a fixed license fee and a separate fee determined by the WPC Wing of the Department of Telecommunications for usage of spectrum. The license was valid for 10 years. Clause 13(ii) reserved the right in the respondent Union of India to modify the terms and conditions of the license covered under Schedules A to D in case of three contingencies. Firstly, in the interest of general public; secondly, for proper conduct of telegraphs and thirdly, for security considerations. The financial aspect was covered under Schedule 'C' of the license, wherein clause 19 provided for a fixed annual license fee, which would not include separate license fee charged by the WPC Wing for using the radio frequencies. Clause 20 pertained to such separate license to be taken from the WPC Wing permitting utilization of appropriate radio frequency. Under the said license, a cumulative maximum of upto 4.5 MHz of spectrum was made available. Clause 20.4 specified that the license fee and royalty payable for grant of license would be subject to revision from time to time.

31. It was noticed that under the Telecom Policy of the year 1994, the cellular service operators like the petitioners were not able to make the projected financial gains and that, the policy of fixed license fee and other aspects appeared to be floundering. Litigation was instituted, at the behest of COAI and in this backdrop, NTP-99 was formulated. Under the said new policy i.e. NTP-99, there was a major shift from fixed license fee model to a regime of revenue sharing. The existing operators

like the petitioners were permitted to shift from the earlier regime to the regime of revenue sharing. In that context, the respondent Union of India itself proposed a package for migration of existing licensees like the petitioners to the NTP-99 regime. As per the said policy and the migration package, the licensees ready to accept the migration package were required to pay an entry fee equivalent to the license fee dues payable by such licensees upto 31.07.1999 and thereupon, acceptance of the revenue sharing regime. It was clarified that after the terms and conditions of the package were accepted, appropriate amendments would be carried out to the existing license agreements. It is pertinent to note here that during the evolution of the said NTP-99, certain references were made to the TRAI and in response thereto, on 23.06.2000, the TRAI opined that revenue share parted with as license fee represented payment for frequency spectrum, which is a highly limited natural resource. It was stated that such revenue sharing as license fee ought to be seen a price being paid for the opportunity of using spectrum in the then prevailing situation of limited competition. It was not being recommended as a means for raising revenue. Accordingly, on 29.01.2021, the respondent Union of India addressed a letter to one of the petitioners i.e. Bharti Airtel Limited, specifying the manner in which the existing agreement would be amended. It was specifically stated that with effect from 01.08.1999, the license fee payable would be equal to a prescribed percentage as share of gross revenue of the licensee company. Provisionally, the licensor i.e. the respondent fixed 15% of the gross revenue as license fee. The period of license was increased to 20 years from its initial date of commencement. It was also specifically recorded that apart from the amendments specified, all other terms and conditions of the license agreement would remain unchanged.

32. At this stage, it would be appropriate to refer to the objectives and targets of NTP-99 recorded in the policy document issued by the respondent Union of India. The relevant portion reads as follows:-

"The objectives of the NTP 1999 are as under:

- Access to telecommunications is of utmost importance for achievement of the country's social and economic goals. Availability of affordable and effective communications for the citizens is at the core of the vision and goal of the telecom policy.
- Strive to provide a balance between the provision of universal service to all uncovered areas, including the rural areas, and the provision of high-level services capable of meeting the needs of the country's economy;
- Encourage development of telecommunication facilities in remote, hilly and tribal areas of the country;
- Create a modern and efficient telecommunications infrastructure taking into account the convergence of IT, media, telecom and consumer electronics and thereby propel India into becoming an IT superpower;
- Convert PCO's, wherever justified, into Public Teleinfo centres having multimedia capability like ISDN services, remote database access, government and community information systems etc.
- Transform in a time bound manner, the telecommunications sector to a greater competitive environment in both urban and rural areas providing equal opportunities and level playing field for all players;
- Strengthen research and development efforts in the country and provide an impetus to build world-class manufacturing capabilities.
- Achieve efficiency and transparency in spectrum management.
- Protect defence and security interests of the country.
- Enable Indian Telecom Companies to become truly global players.
- In line with the above objectives, the specific targets that the NTP 1999 seeks to achieve would be:
- Make available telephone on demand by the year 2002 and sustain it thereafter so as to achieve a teledensity of 7

by the year 2005 and 15 by the year 2010

- Encourage development of telecom in rural areas making it more affordable by suit able tariff structure and making rural communication mandatory for all fixed service providers.
- Increase rural teledensity from the current level of 0.4 to 4 by the year 2010 and provide reliable transmission media in all rural areas.
- Achieve telecom coverage of all villages in the country and provide reliable media to all exchanges by the year 2002.
- Provide Internet access to all district head quarters by the year 2000.
- Provide high speed data and multimedia capability using technologies including ISDN to all towns with a population greater than 2 lakh by the year 2002."

33. A perusal of the above objectives and targets of NTP-99 clearly shows that the impetus was on efficient utilization of spectrum, introduction of a multi-poly environment and a concerted effort to provide universal affordable service to all uncovered areas and rural areas, including remote, hilly and tribal areas of the country. NTP-99 as a policy document did not emphasize on revenue maximization as its objective or target. Instead, the emphasis was on providing universal service and increasing rural teledensity, so that the net of cellular services was spread all across the country. The aspect of common good, public good and public interest needs to be appreciated from the aforesaid angle while considering the rival submissions. Subsequently, the telecommunication policy evolved further. But, since in these petitions we are concerned with the Telecom Policy of 1994 and NTP-99, this Court has referred to the shift in policy discernible from the policy document itself.

License Agreements, Communications and Orders issued in the light of the Telecom Policies :

34. License agreements were executed in the year 1994 with operators like the petitioners herein. Copy of one such agreement dated 29.11.1994 executed between the petitioner Bharti Airtel and respondent Union of India has been placed on record. A perusal of the same shows that license was granted initially for a period of 10 years, extendable for one year or more at a time. The license was governed by the provisions of the Telegraph Act as modified from time to time. There were four Schedules ‘A’ to ‘D’ annexed to the license agreement, which specified terms and conditions regarding various aspects of the matter including area of service, tariff, financial aspects, etc. Clause 13(ii) provided as follows:-

> “13. It is further agreed and declared by the parties that notwithstanding anything contained hereinbefore, that
>
> (i) …
>
> (ii) The Authority reserves the right to modify at any time the terms and conditions of the licence covered under Schedules "A", "B", "C", and "D", annexed hereto, if in the opinion of the Authority it is necessary or expedient to do so in the interests of the general public or for the proper conduct of telegraphs or security consideration.”

35. Clause 19 in Schedule ‘C’ to the license provided for payment of liecence fees. It was a fixed lumpsum license fee to be charged as per the formula stated in clause 19 and its various sub-clauses. Clause 19.3 specifically recorded that the annual license fee as prescribed did not include license fees payable to WPC Wing of the respondent for the use of radio frequencies, which was required to be paid separately as per clause 20.

36. As per clause 20.1 of Schedule C to the said license agreement, a separate license was required to be obtained from the WPC Wing of the

respondent for permission to utilize radio frequency spectrum. It was specified under clause 20.3 that cumulative maximum of upto 4.5 MHz would be made available and under clause 20.4 thereof, license fee and royalty would have to be paid for grant of license, which would be subject to revision from time to time. A sample calculation of the license fee and royalty was given in the said clause itself. Thus, the regime under the 1994 Telecom Policy pertained to fixed license fee.

37. As noted hereinabove, there was a paradigm shift in NTP-99 to the revenue share model in the light of the experience of the working of the Telecom Policy of 1994. In that light, as per communication dated 22.07.1999, issued by the respondent Union of India to all the cellular operators including the petitioners, a migration package was proposed for interested licensees in respect of which the cut-off date was fixed as 01.08.1999. A one-time entry fee was specified, which was equivalent to the license fee dues payable by the existing licensees upto 31.07.1999 and the regime of revenue sharing towards license fee was introduced. Apart from other conditions, the respondent Union of India imposed a condition that upon migration to NTP-99, the licensees through their association would withdraw all pending litigation. As a matter of fact, such litigation was withdrawn by the COAI as per its communication dated 23.08.2002, as the cellular operators including the petitioners accepted the migration package.

38. The TRAI in its aforesaid communication dated 23.06.2000 issued to the Secretary of the Department of Telecommunication of the respondent made recommendations in respect of NTP-99, including the multi-poly regime sought to be introduced. The payment of revenue share as license fee was recorded as payment for spectrum, which was noted to be a highly limited natural resource. On 29.01.2001, the respondent issued letters to the cellular operators, including the

petitioners, for amendment of the existing license agreements. A perusal of the letter addressed to the petitioner Bharti Airtel shows that provisionally the respondent as licensor fixed 15% of the gross revenue as license fee and the period of license was increased to 20 years. The amendments pertained to sharing of infrastructure by such service providers like the petitioners with any other service provider in the areas of operation as also direct inter-connectivity between license providers with all other such service providers. All other terms and conditions of the existing license agreements were directed to remain unchanged.

39. On 22.09.2001, the respondent issued an order / communication addressed to all service providers including the petitioners and their association (COAI) pertaining to royalty and license fee charges towards WPC Spectrum usage. It was specifically recorded therein that any additional bandwidth fee, if allotted, would attract additional royalty and license fee as revenue share, typically 1% additional revenue share. These documents also specifically stated that the license fee and royalty for use of spectrum would be separately payable as per details and prescription given by the WPC Wing. Thus, revenue share for allotment of additional bandwidth was recorded to be distinct from the royalty and license fee for usage of spectrum. This is significant for considering the rival submissions. On 01.02.2002, the respondent issued further such order / communication, stating that additional spectrum could be allotted upon achieving a customer base of 5 lakhs or more in a service area and that such allocation would be beyond the allocated spectrum of 6.2 MHz. It was also specified that the licensees would pay ‘spectrum charge’ with effect from 01.08.1999 on revenue share basis at the rate of 2% of adjusted gross revenue (AGR) for spectrum upto 4.4 MHz and 3% of AGR for spectrum upto 6.2 MHz. It was further specified that for the additional spectrum of 1.8 MHz if assigned for any one or more places in a service area, beyond 6.2 MHz, a further additional charge of 1% of

AGR would be levied, thereby taking the total spectrum charge to be paid by such operators at 4% of AGR. It was further specified that spectrum charge of 4% of AGR would also cover allocation of further spectrum, which may be allocated in future to add upto ‘total spectrum allocation’ not exceeding 10 MHz in the service area.

40. On 18.04.2002, the respondent issued a further order recording that migration to revenue sharing concept was basically to simplify the system by charging for spectrum and it was in no way to link the grant of frequency spectrum. Thereafter, the said order specified royalty charges and license fee for usage of the spectrum. The aforementioned series of orders / communications issued by the respondent demonstrates that as per the revenue sharing model, ‘spectrum charge’ was incorporated in the license fee by increasing the percentage of revenue share at each stage of allocation of spectrum. We find substance in the contention raised on behalf of the petitioners that the respondent chose to impose such increased share of revenue as license fee for allocation of spectrum, and therefore, it cannot be said that additional spectrum upto 10 MHz was allocated to the petitioners without any charge. This is significant because the respondent has taken a stand that although the petitioners were making payment of usage charges towards spectrum by revenue sharing but they were allocated spectrum virtually free of charge. The aforementioned orders / communications issued by the respondent itself do not support the stand taken on its behalf in these petitions.

41. In this backdrop, on 11.11.2003, the respondent issued guidelines for unified access services license i.e. the UAS license, on the basis of recommendations made by the TRAI. The said guidelines specifically recorded that no additional entry fee would be charged to the service providers like the petitioners for migration to the UAS license. In these

guidelines also at clause (xvi), the respondent reserved its right to modify the guidelines in the three above-noted contingencies pertaining to public interest, interest of national security, consumer interest and for proper conduct of the telegraph / services. It is interesting to note that as per an order dated 15.04.2004 issued by the WPC Wing of the respondent, charges for spectrum even beyond 10 MHz were specified. It was stated that for additional spectrum of 2.5 MHz beyond 10 MHz, an additional charge of 1% of AGR would be levied, thereby taking the total percentage to 5% of AGR. An additional spectrum of 2.5 MHz beyond 12.5 MHz would attract a further additional charge of 1% of AGR, taking the total percentage to 6% of AGR. It is significant to note that this order also used the expression 'charges for assignment of additional spectrum', thereby indicating that this was nothing but a charge towards allocation of additional spectrum.

42. In this backdrop, in the year 2005, UAS license agreements were executed. Copy of such license dated 16.03.2005 executed between the petitioner Bharti Airtel and the respondent Union of India through Department of Telecommunications has been placed on record. It shows that the effective date of the license continued to be 29.11.1994 and that the terms and conditions stood amended and revised as per the schedule annexed to the license agreement. The relevant clauses of the said license agreement are required to be perused in the light of the submissions made on behalf of the rival parties on the most crucial aspect of the matter pertaining to the entitlement of the respondent Union of India to claim one-time spectrum charge retrospectively from the year 2008 for 'allocation of spectrum'.

43. The relevant clauses read as follows:-

> "5.1 The LICENSOR reserves the right to modify at any time the terms and conditions of the LICENCE, if in the opinion of the LICENSOR it is necessary or expedient to do so in public

interest or in the interest of the security of the State or for the proper conduct of the telegraphs. The decision of the LICENSOR shall be final and binding in this regard.

xxx xxx xxx xxx

18. <u>FEES PAYABLE</u>:

18.1 <u>Entry Fee</u>:

No additional entry fee shall be charged from CMSPs for migration to UASL.

18.2 <u>Licence Fees</u>:

The Licensee shall pay Licence fee annually @ **10% of Adjusted Gross Revenue (AGR)**, excluding spectrum charges. Separate spectrum charges would be required to be paid by the licensee.

The Licensor reserves the right to modify the above mentioned Licence Fee at any time during the currency of this Agreement.

18.3 <u>Radio Spectrum Charges</u>:

18.3.1 In addition to the licence fee as per clause 18.2, the Licensee shall pay spectrum charges on revenue share basis of 2% of AGR towards WPC Charges covering royalty payment for the use of cellular spectrum upto 4.4 MHz + 4.4 MHz and Licence fee for Cellular Mobile handsets & Cellular Mobile Base Stations and also for possession of wireless telegraphy equipment as per the details prescribed by Wireless Planning & Coordination Wing (WPC). Any additional band width, if allotted subject to availability and justification shall attract additional Licence fee as revenue share (typically 1% additional revenue share if Bandwidth allocated is upto 6.2 MHz + 6.2 MHz in place of 4.4 MHz + 4.4 MHz).

18.3.2 Further, royalty for the use of spectrum for point to point links and access links (other than Cellular Service Spectrum) shall be separately payable as per the details and prescription of Wireless Planning & Coordination Wing. The fee/royalty for the use of spectrum /possession of wireless telegraphy equipment depends upon various factors such as frequency, hop and link length, area of operation etc. Authorization of frequencies for setting up Microwave links by Cellular Operators and issue of Licences shall be separately dealt with WPC Wing as per existing rules.

18.3.3 The above spectrum charge is subject to unilateral review by WPC Wing from time to time which shall be binding

on the licensee.

xxx xxx xxx xxx

23.5 The frequencies shall be assigned by WPC from the designated bands prescribed in National Frequency Allocation Plan - 2002. (NFAP-2002) as amended from time to time. Based on usage, justification and availability, spectrum may be considered for assignment, on case by case basis. The frequencies assigned may not be contiguous and may not be same in all cases, while efforts would be made to make available larger chunks to the extent feasible. The detailed guidelines for allocation of frequency spectrum and charges thereof etc. would be separately issued from time to time.

xxx xxx xxx xxx

43.1 A separate specific authorization and licence (hereinafter called WPC licence) shall be required from the WPC wing of the Department of Telecommunications, Ministry of Communications & I.T. permitting utilization of appropriate frequencies / band for the establishment, possession and operation of Wireless element of the Telecom Service under the Licence Agreement of Unified Access Service under specified terms and conditions including payment for said authorization & WPC licence. Such grant of authorization & WPC licence will be governed by normal rules, procedures and guidelines and will be subject to completion of necessary formalities therein.

xxx xxx xxx xxx

43.5 Subject to availability and as per Guidelines issued from time to time, the spectrum allocation and frequency bands will be as follows:

(i) For wireless operations in SUBSCRIBER access network, the frequencies shall be assigned by WPC wing of the Department of Telecom from the frequency bands earmarked in the applicable National Frequency Allocation Plan and in coordination with various users. Initially a cumulative maximum of upto 4.4 MHz + 4.4 MHz shall be allocated in the case of TDMA based systems (@ 200 KHz per carrier or 30 KHz per carrier) or a maximum of 2.5 MHz + 2.5 MHz shall be allocated in the case of CDMA based systems (@ 1.25 MHz per carrier), on case by case basis subject to availability. While efforts would be made to make available larger chunks to the extent feasible, the frequencies assigned may not be contiguous and may not be the same in all cases or within the whole Service Area. For making available appropriate frequency

> spectrum for roll out of services under the licence, the type(s) of Systems to be deployed are to be indicated.
>
> (ii) The Licensee operating wireless services will continue to provide such services in already allocated/contracted spectrum.
>
> (iii) In the event, a dedicated carrier for micro-cellular architecture based system is assigned in 1880-1900 MHz band, the spectrum not more than 3.75 + 3.75 MHz in respect of CDMA system or 4.4 + 4.4 MHz in respect of TDMA system shall be assigned to any new Unified Access Services Licensee.
>
> (iv) The Licensor has right to modify and/or amend the procedure of allocation of spectrum including quantum of spectrum at any point of time without assigning any reason."

44. It is crucial to note that in clause 18.1 of the UAS license, it was specified that no additional entry fee would be charged from the operators like the petitioners for migration to UAS license. In clause 18.2, the annual license fee was specified at 10% of the AGR, excluding spectrum charges. Clause 18.3 specified the payment towards spectrum charges on revenue share basis and royalty, as prescribed by the WPC Wing. Clause 18.3.3 specified that the charges for spectrum could be unilaterally reviewed by WPC Wing from time to time and would be binding on the licensee. A proper analysis of clause 18.2 pertaining to license fee as against clause 18.3 pertaining to radio spectrum charges, shows that the power of unilateral review with the WPC Wing of the respondent, concerned charges to be specified for use of spectrum. This is crucial as the respondent seeks to rely upon clause 18.3.3 to claim that it was entitled to unilaterally impose one-time spectrum charge and that too, retrospectively from the year 2008 as part of license fee for 'allocation of spectrum'.

45. We are unable to agree with such an interpretation sought to be foisted on behalf of the respondent on clause 18.3.3 of the UAS license, as it ignores the overall scheme under the license as also, the specific import of clause 18.1, stating that no additional entry fee would be

charged for migration and clause 18.2, which specifically stipulates the annual license fee being equivalent to 10% of AGR.

46. We are also unable to agree with the respondent that clause 23.5 could be relied upon to claim that one-time spectrum charge could be levied retrospectively for allocation of spectrum, for the simple reason that the terms of the license agreement would have to be modified within the four corners of the UAS license agreement for bringing about any such additional levy.

47. Similarly, reliance placed on clause 43.5 of the UAS license cannot come to the aid of respondent to justify the impugned decisions, as any modification, if at all, could operate only for the future and not retrospectively.

48. On 11.08.2005, a Committee constituted under Chairmanship of Wireless Adviser of the respondent submitted its report, wherein it was observed as follows:

> "No additional one-time charge (entry fee) need be charged from the existing service providers. This would enable them to roll out their services faster and also offer the services at affordable tariffs. However, they should be required to pay the revenue share for spectrum charges based on the total spectrum with them for 2G and 3G services."

49. This was followed by guidelines for UAS licenses issued by the respondent through the Department of Telecommunications on 14.12.2005. The said document also specified that the licencees shall pay spectrum charges on revenue sharing basis and there was no reference to any one-time spectrum charge. The TRAI then made recommendations on review of license terms and conditions. It was crucially recorded at paragraph No.2.75 of the said recommendations as follows:

> "**2.75** The Authority has noted that the allocation beyond 6.2 MHz for GSM and 5 MHz for CDMA at enhanced spectrum usage charge has already been implemented. Different licensees are at different levels of operations in terms of the quantum of spectrum. Imposition of additional acquisition fee for the quantum beyond these thresholds may not be legally feasible in view of the fact that higher levels of usage charges have been agreed to and are being collected by the Government. Further, the Authority is conscious of the fact that further penetration of wireless services is to happen in semi-urban and rural areas where affordability of services to the common man is the key to further expansion.
>
> (Emphasis supplied)"

50. It is even more significant to note that in the said recommendations at paragraph No.6.6, it was recorded as follows:

> "**6.6** Any licensee who seeks to get additional spectrum beyond 10 MHz in the existing 2G bands i.e. 800, 900 and 1800 MHz after reaching the specified subscriber numbers shall have to pay a onetime spectrum charge at the above mentioned rate on prorata basis for allotment of each MHz or part thereof of spectrum beyond 10 MHz."

51. The above-quoted portions of the recommendations of the TRAI clearly show that one-time spectrum charge, if at all, was contemplated only for allocation of additional spectrum beyond 10 MHz. In other words, no such one-time spectrum charge was even recommended for additional spectrum allotted to service providers like the petitioners upto 10 MHz. It is an admitted position that the controversy in the present petitions is concerned only with the spectrum charges payable for spectrum upto 10 MHz. The allocation of such additional spectrum beyond 4.4 MHz upto 10 MHz was made in the terms of the policy of the respondent itself, by charging additional revenue share by percentage points from time to time. It appears that despite this position and the clear recommendations of the TRAI, the respondent contemplated one-time spectrum charge for additional spectrum beyond 6.2 MHz and in that context, communications were addressed on behalf of the respondent to the TRAI such as the one addressed on 09.07.2008.

52. This was in contradiction to a press release issued by the respondent itself on 19.10.2007, wherein it was stated that in addition to annual spectrum charges based on revenue share, a spectrum enhancement charge may be levied at the time of additional spectrum allotment to licensees beyond 10 MHz. As a matter of fact, it was specified that for each additional MHz beyond 10 MHz, a spectrum enhancement charge at the rate of ₹ 16 crores, ₹ 8 crores and ₹ 3 crores for various categories would be charged. Hence, it appears that the respondent, for the first time, some time in the year 2008, sent the communications to the TRAI, expressing its intention to propose one-time charge for additional spectrum beyond 6.2 MHz.

53. In response, on 16.07.2008, the TRAI sent a communication to the respondent, seeking clarifications with regard to the ‘suitable one-time charge’ for additional spectrum beyond 6.2 MHz. It is pertinent to note that the press release dated 19.10.2007, whereby the respondent intended to levy spectrum enhancement charge for additional spectrum allotment beyond 10 MHz, was challenged by COAI by filing petition before the TDSAT. The said petition was dismissed. The TDSAT, *inter alia*, found that the cellular operators/service providers like the petitioners, did not have vested right in spectrum beyond 6.2 MHz under the UAS license. It is to be noted that an appeal against the said order of the TDSAT, is pending before the Supreme Court being Civil Appeal No.3472 of 2009. We find substance in the contention of the petitioners that clause 43.5 of the UAS license extracted in the order of the TDSAT is different from clause 43.5 of the license quoted hereinabove, as the clause quoted hereinabove does not provide for a maximum cap on spectrum that may be allotted.

54. It appears that subsequent thereto, another Committee was constituted by the respondent under the Chairmanship of the then

Additional Secretary of the Department of Telecommunications. The report of the said Committee, for the first time, specifically recommended an upfront charge for spectrum assigned beyond 6.2 MHz. It was recommended that those licensees, who had obtained additional spectrum beyond 6.2 MHz, prior to 17.01.2008, should be given an option of paying an upfront charge for the remaining period of spectrum assigned from the date when annual spectrum usage rates became uniform or a subsequent date from which they exercise the option. If they were to exercise the option, the annual spectrum usage charges would become 3% of the AGR, instead of higher rate being levied.

55. Apart from the fact that the drift of the said recommendations appeared to chart a new course, the language used in clause (f) of the said recommendations shows that if the option of paying upfront charge was to be exercised, the spectrum usage charges would drop to 3% of AGR from the higher rate being levied. In any case, the said recommendations were not clear about the point in time or the period for which the upfront charge would be levied. It is strange that additional spectrum was allocated from time to time on revenue sharing basis by the respondent itself, in terms of the UAS license and subsequently, such recommendations were being made by the Committee, whose Chairman was one of the officers of the respondent.

56. It is in this backdrop that on 11.05.2010, the TRAI, for the first time, recommended levy of one-time charge for spectrum held beyond 6.2 MHz. This was in contrast with its own earlier recommendations. The petitioners raised objections to the said recommendation of the TRAI, *inter alia,* stating that such approach was illogical. At this stage came the judgement of the Supreme Court in the case of *Centre for Public Interest Litigation and others Vs. Union of India and others*, **(2012) 3 SCC 1**, also known as the 2G spectrum judgement. It is crucial

to note that while spectrum was recognized as a scarce and limited natural resource, it was specifically recorded that the licenses issued between the years 2001 to 2007 were not the subject matter of the said petition. It is in this backdrop that the impugned decisions were issued by the respondent – Union of India, through the Department of Telecommunications, levying one-time charge for spectrum held beyond 6.2 MHz from the year 2008 onwards.

57. This Court has referred to the aforementioned documents, including licenses, communications, orders, etc., to consider the approach adopted by the respondent in the process of implementation of NTP-99, whereby a paradigm shift took place from the regime of fixed license fees to the revenue share model. The license fee specifically included revenue share and the documents indeed show that where additional spectrum beyond 6.2 MHz was allotted from time to time, additional revenue share was added and charged.

58. In other words, allocation of additional spectrum was on the basis of consideration in the form of increased revenue share as percentage points of AGR. The TRAI, in its recommendations, indicated that there was no question of any spectrum enhancement charge or one-time spectrum charge being levied, in the light of the aforesaid percentage point increase of revenue share at every stage of allocation of additional spectrum to the petitioners and others. As a matter of fact, recommendation for payment of one-time spectrum charge, if at all, in terms of the above-quoted paragraph No.6.6 of the recommendations of the TRAI dated 28.08.2007, show that such a recommendation was only if the additional spectrum was to be allotted beyond 10 MHz. Therefore, upto 10 MHz, even the TRAI was of the view that there was no question of charging any one-time spectrum charge.

59. Yet, the respondent seems to have changed its tune midway through the process of implementation of NTP-99, by claiming that one-time spectrum charge would be levied for additional spectrum beyond 6.2 MHz. Such sudden change in approach cannot be justified. In any case, it has to be in consonance with the power available to the respondent either under the statute i.e. Section 4 of the Telegraph Act or within the clauses of license agreements.

60. At this stage, it would be appropriate to refer to the above-quoted objectives and targets of NTP-99. The emphasis therein was clearly on spreading the net of cellular services throughout India with specific reference to the rural areas to increase rural teledensity and to provide affordable services in remote, hilly and tribal areas of the country. It was also meant for efficient utilization of spectrum. Thus, revenue maximisation was clearly not the objective or target of NTP-99. The emphasis was clearly on affordable telecommunication services and cellular service being made available to as many persons as possible, by spreading the net wide into the rural and tribal areas.

61. It is crucial to understand that the policy decision taken by respondent, while framing NTP-99 envisaged revenue sharing model to determine the consideration for grant of license and also, to apply the model of revenue sharing, even while imposing charges for usage of spectrum. We are unable to agree with the respondent that the petitioners were allotted spectrum ‘virtually free of charge’. The aforesaid documents and the manner in which the objectives and targets of NTP-99 were sought to be achieved, shows that there was no place for imposition of one-time spectrum charge by the impugned decisions in the year 2012, retrospectively for the period beginning in the year 2008. This brings us to the question of source of power with the respondent to levy such one-time spectrum charge in a retrospective manner by the

impugned decisions in the year 2012.

Source Of Power To Levy one-time Spectrum Charge:

62. As noted hereinabove, the petitioners before this Court have repeatedly questioned the source of power available to the respondent to impose the impugned decisions for payment of one-time spectrum charge in the year 2012, retrospectively from the year 2008. The respondent asserts that it has statutory power to do so under Section 4 of the Telegraph Act and it is further asserted that certain clauses of the aforementioned license agreements can be said to be the source of power.

63. The relevant portion of Section 4 of the Telegraph Act reads as follows:

> "4. Exclusive privilege in respect of telegraphs, and power to grant licences.- [(1)] Within [India], the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:
>
> Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain, or work a telegraph within any part of [India]:"

64. A perusal of the above-quoted provision indeed shows that the respondent - Union of India (Central Government) can issue license on such conditions and in consideration of such payment as it thinks fit for establishment, maintenance or working of telegraphs within any part of India. It is crucial to note that the respondent can grant such license on conditions and consideration of payments, as it thinks fit. It appeals to logic that imposition of conditions and determination of consideration of payments, has to be crystallized at the time of grant of license. After all, it is only when private operators like the petitioners agree to the proposed conditions and consideration of payments that a concluded

contract comes into existence. Certainty of consideration is indeed a crucial aspect of any such contract/license. If there is uncertainty, it would be impossible for the parties to the contract to be able to reach a considered decision as to whether such a contract can to be executed.

65. The Supreme Court, in the case of **Delhi Development Authority and another Vs. Joint Action Committee, Allottee of SFS Flats and others** (*supra*), observed as follows:

> "66. The stand taken by DDA itself is that the relationship between the parties arises out of the contract. The terms and conditions therefor were, therefore, required to be complied with by both the parties. Terms and conditions of the contract can indisputably be altered or modified. They cannot, however, be done unilaterally unless there exists any provision either in contract itself or in law. Novation of contract in terms of Section 60 of the Contract Act must precede the contract-making process. The parties thereto must be ad idem so far as the terms and conditions are concerned. If DDA, a contracting party, intended to alter or modify the terms of contract, it was obligatory on its part to bring the same to the notice of the allottee. Having not done so, it, relying on or on the basis of the purported office orders which are not backed by any statute, new terms of contract could (*sic* not be) thrust upon the other party to the contract. The said purported policy is, therefore, not beyond the pale of judicial review. In fact, being in the realm of contract, it cannot be stated to be a policy decision as such.
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> xxx xxx xxx xxx
>
> 80. A definite price is an essential element of binding agreement. A definite price although need not be stated in the contract but it must be worked out on some premise as was laid down in the contract. A contract cannot be uncertain. It must not be vague. Section 29 of the Contract Act reads as under:
>
> > '29. Agreements void for uncertainty.- Agreements, the meaning of which is not certain, or capable of being made certain, are void.'

> A contract, therefore, must be construed so as to lead to a conclusion that the parties understood the meaning thereof. The terms of agreement cannot be vague or indefinite. No mechanism has been provided for interpretation of the terms of the contract. When a contract has been worked out, a fresh liability cannot be thrust upon a contracting party.
>
> 81. It is well settled that a definite price is an essential element of a binding agreement. Although a definite price need not be stated in the contract, but assertion thereof either expressly or impliedly is imperative."

66. Thus, certainty of consideration or a definite price is clearly an essential element of a binding contract. Even if a definite price is not stated in the contract, it must be either expressly or impliedly asserted. If at all any modification or change is to be made with respect to consideration, it cannot be done unilaterally, unless the contract provides for the same and novation of the contract, if any, must precede the contract-making process. The parties to the contract should be clear and agreeable to the modification of the terms of contract.

67. On the same lines, the Supreme Court, in the case of **Bharat Sanchar Nigam Limited and another Vs. BPL Mobile Cellular Limited and others** (*supra*), held as follows:-

> "51. In the instant case, the resources to be leased out were subject to agreement. The terms were to be mutually agreed upon. The terms of contract, in terms of Section 8 of the Contract Act, fructified into a concluded contract. Once a concluded contract was arrived at, the parties were bound thereby, If they were to alter or modify the terms thereof, it was required to be done either by express agreement or by necessary implication which would negate the application of the doctrine of '*acceptance sub silentio*'. But, there is nothing on record to show that such a course of action was taken. The respondents at no point of time were made known either about the internal circulars or about the letters issued from time to time not only changing the tariff but also the basis thereof."

68. The said position of law was followed by a Division Bench of this Court in the case of **Musale Constructions, Builders and Contractors, Nagpur Vs. Vidarbha Irrigation Development Corporation, Nagpur and another** (*supra*). In the said judgement, this Court held as follows:-

> "15. The impugned circular by which the revised instructions are issued cannot be made applicable to the case of the petitioner, as it would amount to alteration of the terms of the contract entered into between the petitioner and the first respondent unilaterally, which is not permissible in view of the settled legal position. The Hon'ble Supreme Court in BSNL (supra) found that where the Department of Telecommunication (DoT) claimed charges from the mobile companies on the basis of the internal circular issued, contrary to the contracts entered into between the parties, held: 'the circulars having no statutory force would not govern the terms of the contract, such circulars cannot ipso facto be given effect to unless they become part of the contract. Once a concluded contract was arrived at between the parties concerned, they were bound thereby. If the parties were to alter/modify the terms of contract, it was required to be done either by express agreement or by necessary implication which would negate the application of the doctrine of 'acceptance sub silentio'. Any novation in contract was to be done on the same terms as are required and entered into a valid and concluded contract and no change into the contract could have been made unilaterally. When a contract entered into between the parties, what is determinative is enforcement of the terms and conditions to be governed by the contract, subject, of course, to the application of the statute and statutory provisions. Promise on the part of the government was acted upon by the respondents, therefore, the Government now should not ordinarily be permitted to take a different stand.'
>
> This Court in *C-5 Facility and Security Services, Nagpur Vs. B.S.N.L.*, held that "the parties are bound by the agreement and the respondents ought not to have modified part of the terms of the agreement unilaterally, the reasons assigned by the respondent for issuance of corrigendum would not be enough to unilaterally modify the terms and conditions of the agreement, particularly when petitioner deployed Security Guards exclusively within the framework of the contract."

The Hon'ble Apex Court in *Suresh Kumar Wadhwa Vs. State of Madhya Pradesh and others, 2017 MhLJ Online (S.C.) 120 AIR 2017 SC 5435,* held:-

26. Equally well-settled principle of law relating to contract is that a party to the contract can insist for performance of only those terms/conditions, which are part of the contract. Likewise, a party to the contract has no right to unilaterally "alter" the terms and conditions of the contract and nor they have a right to "add" any additional terms/conditions in the contract unless both the parties agree to add/alter any such terms/conditions in the contract.

27. Similarly, it is also a settled law that if any party adds any additional terms/conditions in the contract without the consent of the other contracting party then such addition is not binding on the other party. Similarly, a party, who adds any such term/condition, has no right to insist on the other party to comply with such additional terms/conditions and nor such party has a right to cancel the contract on the ground that the other party has failed to comply such additional terms/conditions."

69. At this stage, it would be appropriate to refer to the position of law with regard to the contract or licence agreement executed by the respondent, while exercising power under Section 4 of the Telegraph Act. In the case of *Union of India and another Vs. Association of Unified Telecom Service Providers of India and others,* **(2011) 10 SCC 543**, the Supreme Court observed as follows:

"39. The proviso to sub-section (1) of Section 4 of the Telegraph Act, however, enables the Central Government to part with this exclusive privilege in favour of any other person by granting a licence in his favour on such conditions and in consideration of such payments as it thinks fit. As the Central Government owns the exclusive privilege of carrying on telecommunication activities and as the Central Government alone has the right to part with this privilege in favour of any person by granting a

licence in his favour on such conditions and in consideration of such terms as it thinks fit, a licence granted under the proviso to sub-section (1) of Section 4 of the Telegraph Act is in the nature of a contract between the Central Government and the licensee.

40. A Constitution Bench of this Court in *State of Punjab* v. *Devans Modern Breweries Ltd.* [(2004) 11 SCC 26] relying on *Har Shankar case* [(1975) 1 SCC 737] and *Panna Lal* v. *State of Rajasthan* [(1975) 2 SCC 633] has held in para 121 at p. 106 that issuance of liquor licence constitutes a contract between the parties. Thus, once a licence is issued under the proviso to sub-section (1) of Section 4 of the Telegraph Act, the licence becomes a contract between the licensor and the licensee. Consequently, the terms and conditions of the licence including the definition of adjusted gross revenue in the licence agreement are part of a contract between the licensor and the licensee. We have to, however, consider whether the enactment of the TRAI Act in 1997 has in any way affected the exclusive privilege of the Central Government in respect of the telecommunication activities and altered the contractual nature of the licence granted to the licensee under the proviso to sub-section (1) of Section 4 of the Telegraph Act."

70. This was followed in the judgement of the Supreme Court in the case of **Bharti Airtel Limited Vs. Union of India** (*supra*), relevant portion of which reads as follows:

"32. At the outset, we agree with the licensees that a licence granted under Section 4 of the Act is a contract between the Government of India and the licensees.

33. In *Union of India v. Assn. of Unified Telecom Service Providers of India*, relying upon an earlier Constitution Bench judgment of this Court in *State of Punjab v. Devans Modern Breweries Ltd.*, which in turn relied upon two earlier decisions of this Court in *Har Shankar v. Excise and Taxation Commr.* and *Panna Lal v. State of Rajasthan*, this Court held: (*Assn. of Unified Telecom Service Providers of India case, SCC p. 564, para 40*)

'40. … Thus, once a licence is issued under the proviso to sub-section (1) of Section 4 of the Telegraph Act, the licence becomes a contract between the licensor and the

> licensee. Consequently, the terms and conditions of the licence including the definition ... are part of a contract between the licensor and the licensee."
>
> 34. Therefore, now it is the settled position of law that a licence granted under Section 4(1) of the Telegraph Act such as the one granted to each of the licensees herein is a contract between the licensor and the licensee.’

71. The above-quoted position of law makes it abundantly clear that when the respondent - Union of India (Central Government) exercises its power under Section 4 of the Telegraph Act and executes a license agreement in favour of parties like the petitioners herein, such licenses are nothing but contracts consisting of clauses, terms and conditions that are binding on the parties to the contract. Such a contract in the form of license, must have a definite price and clearly discernible consideration in terms of the position of law noted hereinabove. The terms of contract are the determining factors and the source of power for the respondent – Union of India to justify its impugned decisions, must have its source in the terms of contract. The respondent obviously cannot claim statutory power under Section 4 of the Telegraph Act to act as per its own whim, notwithstanding the terms of contract/license executed as per the power available under the said provision.

72. The respondent claims that the source of power for issuing the impugned decisions, for retrospective imposition of one-time spectrum charge, is found in clause 13(ii) of the original license agreement dated 29.11.1994, executed under the Telecom Policy of the year 1994; in clauses 5.1, 18.3, 23.5 and 43.5 of the UAS license agreement executed in the year 2005, in the light of NTP-99 and the consequential acceptance of migration package as well as amendments in the original license agreement by the petitioner.

73. The interpretation of the clauses quoted hereinabove, clearly indicates that the respondent is not justified in finding its source of power to impose one-time spectrum charge retrospectively in the year 2012, in the aforementioned clauses of the license agreements.

74. Clause 13(ii) of the 1994 agreement and clause 5.1 of 2005 agreement, both reserve the right in the respondent as the licensor, to modify the terms and conditions of the license in three contingencies i.e. in public interest, interest of the security of the State or proper conduct of telegraphs. In the first place, while issuing the impugned decisions, there is no reference to any of the three contingencies. When this Court specifically put pointed queries to the learned ASG appearing for the respondent in this regard, it was claimed that the impugned decisions were issued in public interest.

75. We have already noted hereinabove that the objectives and targets of NTP-99 pertained to spreading the net of cellular telecommunication facility and providing affordable services throughout the country with specific emphasis on rural areas as well as remote tribal and far-flung areas. The objectives also included efficient utilization of spectrum. Revenue maximisation was clearly not an objective or target of NTP-99. The policy was formulated by the respondent itself and 'public interest' or common good would have to be construed in the context of the objectives and targets of NTP-99. As already noted hereinabove, the Constitution Bench of the Supreme Court has laid down that the concept of 'common good' has to be interpreted and appreciated in a holistic manner and that revenue maximisation is not the only way in which the common good can be subserved. It was held that revenue consideration may assume secondary position to developmental consideration. Thus, the argument of 'public interest' raised on behalf of the respondent in the context of NTP-99, does not hold good. In any case, the respondent

earned far more revenue under the revenue share regime of NTP-99, as compared to fixed license fee under Telecom Policy of 1994. Revenue was also augmented by taxes levied on the enhanced earnings of the cellular operators, due to the large scale increase in the subscriber base.

76. This is quite apart from the fact that in terms of law clarified by the Supreme Court in the aforementioned judgements pertaining to certainty of consideration, the respondent cannot be permitted to change the very consideration of grant of license, after it has been granted and the parties have proceeded on the basis of such license agreement. The respondent cannot be permitted to change the contract midway to change the goal post and then claim that it took the decision in 'public interest'. The respondent is bound by the terms and conditions of the contract i.e. the aforementioned licenses.

77. The respondent did not propose any modification of the terms of contract and issued the impugned decisions abruptly and unilaterally, imposing one-time spectrum charge retrospectively from the year 2008 on the petitioners. The consideration for grant of license, as per revenue sharing regime introduced under NTP-99, and manifested in the amended license agreements, was specific and as noted hereinabove, at each stage when additional spectrum was allocated, additional charge as percentage point of the AGR was imposed and the same was paid by the petitioners. They also paid charges for usage of such spectrum in terms of the amended license agreements. In other words, the petitioners had paid the entire consideration as per the terms and conditions of contract/licenses and yet, the respondent suddenly chose to impose one-time spectrum charge and that too, retrospectively.

78. This Court finds substance in the contention raised on behalf of the petitioners that such decisions taken on whims by the respondent, which are not justifiable either under the statute or under the terms of

contract/licenses, cannot be sustained and if held otherwise, it would be impossible to conduct business. Thus, we find that the respondent has not been able to identify any source of power to issue the impugned decisions and the consequent demand notices.

Judicial Review in Contractual Matters
when the State is a Party to Contracts:

79. The Supreme Court, in the case of **Subodh Kumar Singh Rathour Vs. Chief Executive Officer and others** (*supra*), referred to its earlier judgements on the scope of judicial review in contractual matters when the State is party to the contract and it was held that although the *inter se* relation between the parties would certainly be governed by the terms of contract, yet the decision of the State can be the subject matter of judicial review, on the grounds of relevance and reasonableness, fair play, natural justice, equality and non-discrimination, as held in *Mahabir Auto Stores and others Vs. Indian Oil Corporation and others,* **(1990) 3 SCC 752**.

80. This becomes relevant in the present case because while issuing a license purely as a contract under Section 4 of the Telegraph Act, the State i.e. the respondent - Union of India is after all exercising a statutory power. Although the learned senior counsel appearing for the petitioners appeared to be steering clear of the argument pertaining to arbitrariness on the part of the respondent and violation of Article 14 of the Constitution of India, this Court is of the opinion that in terms of the evolution of law with regard to judicial review, even in such contractual matters, the Court can go into the aspect of the approach adopted by the State as a party to the contract. This is particularly relevant when the petitioners in these petitions, are alleging that under the garb of ‘public interest’, the respondent - Union of India, as a party to the contract, has acted beyond the terms of contract and that it has not been able to

identify any source of power to issue the impugned decisions.

81. In this context, in the aforementioned judgement in the case of **Subodh Kumar Singh Rathour Vs. Chief Executive Officer and others** (*supra*), the Supreme Court observed as follows:-

> "55. Thereafter, this Court in its decision in *M.P. Power Management Co. Ltd., Jabalpur v. Sky Power Southeast Solar India Pvt. Ltd.* reported in **(2023) 2 SCC 703** exhaustively delineated the scope of judicial review of the courts in contractual disputes concerning public authorities. The aforesaid decision is in the following parts:-
>
> [...](i)**Scope of Judicial Review in matters pertaining to Contractual Disputes:-**
>
> This Court held that the earlier position of law that all rights against any action of the State in a non-statutory contract would be governed by the contract alone and thus not amenable to the writ jurisdiction of the courts is no longer a good law in view of the subsequent rulings. Although writ jurisdiction is a public law remedy, yet a relief would still lie under it if it is sought against an arbitrary action or inaction of the State, even if they arise from a non-statutory contract. The relevant observations read as under:—
>
> "53. [..] *when the offending party is the State. In other words, the contention is that the law in this field has witnessed an evolution and, what is more, a revolution of sorts and a transformatory change with a growing realisation of the true ambit of Article 14 of the Constitution of India. The State, he points out, cannot play the Dr. Jekyll and Hyde game anymore. Its nature is cast in stone. Its character is inflexible. This is irrespective of the activity it indulges in. It will continue to be haunted by the mandate of Article 14 to act fairly. There has been a stunning expansion of the frontiers of the Court's jurisdiction to strike at State action in matters arising out of contract, based, undoubtedly, on the facts of each case. It remains open to the Court to refuse to reject a case, involving State action, on the basis that the action is, perse, arbitrary*.

> i. *It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.*
>
> ii. *The principle laid down in Bareilly Development Authority (supra) that in the case of a non statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal (supra), may not continue to hold good, in the light of what has been laid down in ABL (supra) and as followed in the recent judgment in Sudhir Kumar Singh (supra).*
>
> iii. *The mere fact that relief is sought under a contract which is not statutory, Will not entitle the respondent-State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary."*
>
> (Emphasis supplied)”

82. We find that to this limited extent, the aspect of unreasonableness does come into picture, as the respondent - Union of India, being party to the contract/license agreement, would have to justify the impugned decisions within the four corners of terms and conditions of the contract. Although we are conscious of the fact that the issues raised herein by the petitioners, do not directly concern arbitrariness in State action, since the subject contract/license agreements are in exercise of statutory power under Section 4 of the Telegraph Act and the Supreme Court has held that a license issued under the said provision is a pure contract, the respondent, as a party to the contract, would still be required to justify its action in issuing the impugned decisions. In the aforementioned judgement in the case of **Subodh Kumar Singh Rathour Vs. Chief Executive Officer and others** (*supra*), the Supreme Court further held as follows:-

> “127. The sanctity of contracts is a fundamental principle that underpins the stability and predictability of legal

and commercial relationships. When public authorities enter into contracts, they create legitimate expectations that the State will honour its obligations. Arbitrary or unreasonable terminations undermine these expectations and erode the trust of private players from the public procurement processes and tenders. Once a contract is entered, there is a legitimate expectation, that the obligations arising from the contract will be honoured and that the rights arising from it will not be arbitrarily divested except for a breach or non-compliance of the terms agreed thereunder. In this regard we may make a reference to the decision of this Court in *Sivanandan C.T. v. High Court of Kerala* reported in **(2024) 3 SCC 799** wherein it was held that a promise made by a public authority will give rise to a legitimate expectation that it will adhere to its assurances. The relevant portion reads as under:-

'*18. The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in Government dealings with individuals. It recognises that a public authority's promise or past conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure*

XXX XXX XXX

45. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.'

(Emphasis supplied)"

83. Thus, the petitioners clearly had a legitimate expectation that the respondent - Union of India would act within the terms of contract and that it would not act in a manner not justified within the terms of contract or a statutory provision, by merely claiming that it was doing so under the garb of 'public interest'. Private entities like the petitioners engage with the Government in contractual matters with such basic legitimate expectation involving certainty in contractual obligations, including certainty regarding consideration of contract.

84. We find that in the present case, the impugned decisions have the effect of placing liability on the petitioners retrospectively for a period starting from the year 2008, while the decisions were taken in the year 2012. Since we have already found that there was lack of power in the respondent Union of India either under the Statute or under the terms of the contract to impose such a retrospective liability, the impugned decisions become nothing but executive orders without any source of power, seeking to impose liability retrospectively. It is a settled position of law, as reiterated by the Supreme Court in the case of *Bharat Sanchar Nigam Limited and others Vs. Tata Communications Limited*, **2022 SCC OnLine SC 1280** that executive orders cannot be made applicable with retrospective effect. Even the power to make retrospective legislations can be exercised if the concerned statute provides for such a power. We find that in the present case, the respondent has not been able to justify its unilateral action of issuing the impugned decisions within the four corners of the terms and conditions of the contract / license agreements or the relevant statutory provision and therefore, the retrospective effect of the same further demonstrates its illegitimacy, rendering the same unsustainable and liable to be set aside.

85. The least that private parties like the petitioners expect from the respondent i.e. the Union of India when such contracts / license

agreements are executed, is that the State as the contracting party would act within the terms and conditions of the contract and that there would be consistency in decision making, demonstrating good administration. As noted hereinabove, the respondent Union of India acted in terms of NTP-99, as also the consequent migration package and amendments to the license agreements with renewed license agreements being executed, by charging additional percentage points of AGR as consideration for grant / allocation of spectrum beyond 4.4 MHz / 6.2 MHz. Suddenly it changed track midway through the working of the contract / license by claiming that 'an upfront charge' or 'one-time spectrum charge' was required to be paid for 'allocation of additional spectrum'. The TRAI in its recommendations, noted hereinabove, clearly stated that such one-time spectrum charge could be levied, if at all, for additional spectrum beyond 10 MHz, but, after the respondent Union of India kept on insisting that it was contemplating levying of such charge, the TRAI also appears to have indicated that such one-time spectrum charge could be levied. As noted hereinabove, in the interregnum, committees appointed by the respondent itself, opined that no additional charge could be levied. As a matter of fact, the UAS license of the year 2005 recorded that no further entry fee would be charged for existing licensees like the petitioners. This clearly indicates inconsistency in the conduct of the respondent, although the terms of the contract / license clearly show that under the revenue sharing regime implemented as per NTP-99, the petitioners were indeed charged with and they paid additional amounts from time to time as percentage points of AGR for assignment / allocation of spectrum upto 10 MHz. We find substance in the contention of the petitioners that in such circumstances, the impugned decisions are clearly rendered unsustainable.

Judgement of the Madras High Court in the case of
Aircel Cellular Limited Vs. Union of India (*supra*)
and Orders passed by the TDSAT :-

86. The respondent has heavily relied upon the judgement of the Madras High Court in the case of **Aircel Cellular Limited Vs. Union of India** (*supra*), to contend that one-time spectrum charge levied on similarly situated cellular service operators / providers was upheld. In fact, reliance was placed on the judgement of this Court in the case of **Laya Binaykumar Pandey Vs. Medical Council of India and others** *(supra)*, to contend that once a co-ordinate Constitutional Court had taken a view in the matter, this Court ought to follow the same.

87. A perusal of the judgement of this Court in the case of **Laya Binaykumar Pandey Vs. Medical Council of India and others** *(supra)* shows that ordinarily such a view taken by a co-ordinate Constitutional Court should be adopted unless the view is found to be unsustainable.

88. We find that the judgement of the Madras High Court, at best, can be of persuasive value for this Court. We have already given hereinabove, detailed reasons as to why we find that the respondent has failed to justify the impugned decisions and the consequent demand notices. A perusal of the judgement of the Madras High Court in the case of **Aircel Cellular Limited Vs. Union of India** (*supra*) shows that much reliance has been placed on clause 13(ii) of the license agreement executed in the year 1994. The Madras High Court found that one of the contingencies contemplated under clause 13(ii) of the said agreement pertaining to 'public interest' stood satisfied for justifying issuance of decisions identical to the decisions impugned herein. We find that the Madras High Court, in its judgement, has reached a conclusion that any revenue generation contemplated by means of imposition of one-time spectrum charge has to be construed as a step in 'public interest'. It is

further held that the respondent was well within its rights under clause 13(ii) of the said agreement to impose such a levy as a licensor. Before reaching such a conclusion, the Madras High Court placed much emphasis on the meaning of the word ‘modify’ by referring to various judgements and dictionary meanings. We are in respectful disagreement with the view expressed by the Madras High Court for the reasons recorded hereinabove and particularly because we find that equating ‘revenue maximization’ to ‘public interest’ in all cases without exception, is unacceptable. As to what can be said to be the public interest would depend on the facts and circumstances of each case. We have also found that the objectives and targets of NTP-99 were specific and revenue maximization was certainly not covered under the same. Even otherwise, we have found that before issuing the impugned decisions, there was no ‘modification’ of the terms and conditions of the license agreements and this was clearly not a case of novation. The respondent unilaterally imposed the levy and that too, without any source of power identifiable in the terms and conditions of the contract or the relevant statutory provision.

89. The contentions raised before this Court on various aspects of the matter were not canvassed before the Madras High Court and therefore, we are unable to agree with the view taken in the said judgement.

90. As regards the orders passed by the TDSAT, we find that the said orders have taken divergent views, some of which appear to be in favour of the position canvassed on behalf of the petitioners. But, since such orders have been challenged before the Supreme Court and the appeals are pending, not much turns upon the contents of such orders. As a matter of fact, this Court has independently applied its mind to the rival contentions raised on behalf of the parties to reach the aforementioned findings, upon a detailed analysis of the rival submissions.

CONCLUSION

91. In view of the findings rendered hereinabove, we have come to a conclusion that the petitioners have been able to make out a case in their favour seeking quashing and setting aside of the impugned decisions and consequent demand notices. The respondent has not been able to justify the said decisions and its action of levying one-time spectrum charge retrospectively upon the petitioners. As a consequence, the writ petitions deserve to be allowed in terms of the prayers made therein.

:: ORDER ::

92. Accordingly, the writ petitions are allowed in the following terms:-

(I) Writ Petition No.1461 of 2013 (*Bharti Airtel Limited and another Vs. Union of India*) is allowed in terms of prayer clause (a), which reads as follows:-

> "(a) That this Hon'ble Court be pleased to quash and set aside the Impugned Decisions date 08.11.2012 and 28.12.2012 and the demand notices dated 08.01.2013 and 27.06.2018 issued by the Respondent imposing a onetime spectrum charge;"

(II) Writ Petition No.2029 of 2013 (*Vodafone Idea Limited Vs. Union of India and others*) is allowed in terms of prayer clauses (a) and (b), which read as follows:-

> "(a) pass a writ, order or direction to quash and set aside the Impugned Decisions dated 08.11.2012 and 28.12.2012 imposing a one-time spectrum charge;
>
> (b) pass a writ, order or direction to quash and set aside the Impugned Demand Note dated 08.01.2013 raised by the Respondent No.1;"

(III) Consequently, the bank guarantees, if any, given by the petitioners shall be returned and they would not be required to keep them alive in

future. Any steps that may have been taken by the respondent in pursuance of the impugned decisions and demand notices also stand quashed and set aside.

93. Rule is made absolute in the above terms. Pending applications, if any, also stand disposed of.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**

Priya / Minal