



Telcos' review petitions on cancelled licences rejected

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Govt petition separated from others, to be heard in open court on April 13.

The Supreme Court on Wednesday dismissed the review petitions moved by seven telecom companies impacted by its February decision cancelling 122 licences issued in January 2008. The telcos are Uninor, Sistema Shyam, Idea Cellular, Etisalat, S Tel, Tata Teleservices and Videocon.

However, the review petition of the central government has been separated from the others and will be heard in open court in the afternoon of April 13. This is a rare move, as review petitions are usually heard in chambers. The petition, filed by the department of telecom (DoT), had raised questions on the function of policy-making but did not challenge the licence cancellation. The DoT had also filed a clarificatory petition in the Supreme Court, asking its views on the indicative timeline of 400 days for the auction of 2G spectrum after the cancellation of 122 licences.

On Wednesday, the court also dismissed former telecom minister A Raja's review petition in the 2G scam case and observed that "in the garb of seeking review, they want re-hearing of the case and we do not find any valid ground, much less justification to entertain the prayer."

A review petition moved by Prime Minister Manmohan Singh was also dismissed, with the observation that there was no ground for reconsideration. The original petition against him was moved by Janata Party leader Subramanian Swamy.

Swamy's complaint was that he was not given sanction by the Prime Minister to prosecute officials concerned in the scam. The court had observed that under the Prevention of Corruption Act, "in every case where an application is made to an appropriate authority for grant of prosecution in connection with an offence it is the bounden duty of such authority to apply its mind urgently to the situation and decide the issue without being influenced by any extraneous consideration." This rule will stay after the dismissal of the review petition.

In rare cases, review petitions have been heard in open court. Recently, the judgment appointing a committee to pursue black money stashed in foreign tax havens was heard in open court following a review petition by the government. However, the two judges were split on the verdict and it has been referred to a larger bench. In the past, the trial of Congress leader A R Antulay was also a subject of a review petition heard in open court. The constitution bench reversed the judgment of the court, and allowed Antulay's petition.

Of the impacted companies, Unitech Wireless (a joint venture between Norway's Telenor and Unitech Group) and Sistema Shyam (a JV between Russia's Sistema and Shyam Group), the most aggressive of the new players with a pan-India licence, expressed disappointment at the development.

Unitech Wireless in a statement said it planned to file a curative petition in the court. Sistema said it would explore the future course of legal action. Curative petitions are filed after the dismissal of a review petition and heard by three senior-most judges.

Uninor said, "By entertaining the review petition and hearing the case again, the Supreme Court would have been able to appreciate arguments and evidence that challenged the very basis of its order. We are disappointed that the court has declined to do so. We will now move a curative petition and again urge the Supreme Court to keep its order in abeyance until these arguments are seen and appreciated by the new bench. The court must ensure that no one has any reason to hold grievance that their evidence was ignored, especially when considering it would only strengthen the sanctity of any order."

In another statement, Sistema said, "SSTL has maintained that being a pure play CDMA operator, its legal case is significantly different compared to other mobile operators. It is extremely disappointing to know that SSTL's review petition has not been accepted. To protect its interests further, SSTL currently is in the process of deliberating its future course of legal actions."

Telecom secretary R Chandrasekhar expressed happiness over the court's move to accept the DoT petition. Commenting on the development, he said, "The companies have a window of opportunity by participating in the auction process. We are preparing to carry out an auction as per the SC directions. Our clarificatory petition talks about the timeline of 400 days that we need to follow. The SC did not fix four months for conducting the auction, it was an indicative order which would be operative after four months."

H P Ranina, a senior corporate lawyer, said, "They can't take many steps now and will have to accept the Supreme Court decision. I don't think they can file curative petitions. They can be filed if there is an issue of natural justice. The only thing they can do is that the countries which these companies are from can invoke the bilateral agreements they have with India and claim compensation from the Indian government. But, that is going to take a long time."

Vyapak Desai, head of international litigation, Nishith Desai Associates, "Curative petition is at a much higher pedestal and can be filed in the rarest of rare cases. If a party is aggrieved by an order and establishes violation of principles of natural justice, it can file such a petition subject

to the fulfilment of other conditions as laid down by the Supreme Court."

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- * Review petitions of seven telcos - Videocon Telecommunications, S Tel, Sistema Shyam Teleservices, Tata Teleservices, Unitech Wireless, Etisalat DB and Idea Cellular - dismissed
- * DoT petition raising questions on policy-making, but not challenging the licence cancellation, to be heard in open court on April 13
- * Former telecom minister A Raja's plea dismissed for lack of "any valid ground"
- * Prime Minister Manmohan Singh's review petition rejected, as there was no ground for reconsideration

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