



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

The ‘In Pari Delicto’ Case: Loop Telecom and Trading Limited v Union of India

Aditi Shah^a

^aDES Shri Navalmal Firodia Law College, Pune, India

Received 10 August 2023; *Accepted* 28 August 2023; *Published* 30 August 2023

INTRODUCTION

The telecommunication industry is one of the most important fields in today’s world and almost everything relies on it. India wanted to introduce a 2G spectrum zone for telecommunications in the country which would allow people to use ‘wireless telephone technology’ for the use of mobile phones. Hence in the year 2008, the Telecom Ministry under Mr. A. Raja issued 122 licenses of the 2G spectrum to 85 companies on a ‘First Come First Serve (FCFS)’ basis. Spectrum, like any other natural resource, is finite and scarce. Hence, it should be used sparingly, and its allocation must be done carefully. The allocation of a ‘Unified Access Service Licence (UASL)’ by the Department of Telecommunication to any inexperienced company being attached to politicians and bureaucrats drew public attention and a Public Interest Litigation (PIL) was filed by the Centre for Public Interest Litigation (CPIL) against the Department of Telecommunication and the Union of India. By the judgment of the Supreme Court in Centre for Public Interest Litigation v Union of India¹ (also known as the 2G Spectrum Case), the 2G licenses that were

¹ Centre for Public Interest Litigation v Union of India WP (C) No 2302/2010

granted by the Union of India to all the companies were quashed. Loop Telecom and Trading Limited was one of the companies whose license was canceled, and it demanded to be entitled to the refund of entry fees that it paid.

FACTS OF THE CASE

- In the year 2007, Loop Telecom paid an entry fee of Rs. 1457 crores and applied for the grant of UASL in 21 service areas of India. The telecom company obtained the required grant a year after its application and subsequently entered into UASL agreements with the union government.
- However, on 2 February 2012, the Supreme Court declared that the licenses allocated by the Department of Telecommunication and the Union of India under the First Come First Serve (FCFS) policy were illegal and arbitrary. Thus, the decision of the Supreme Court in the 2G spectrum case resulted in quashing of the UASLs which were already allocated to various companies.
- After this verdict, Loop Telecom approached the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) seeking a refund of the entry fee that it paid for obtaining the UASL. However, this appeal was rejected by the tribunal in 2015. According to the TDSAT, the Court's cancellation of licenses does not indicate that the contracts are void and unenforceable by Section 65² and therefore the company cannot seek any restitution.
- It was decided that in this case, the principle of 'in pari delicto potio rest condition defendentis' meaning that 'where both the parties are guilty of wrongdoing, the defendant is stronger' would apply under Section 65³ to demand any restitution.
- The company then decided to move its case to the Supreme Court but withdrew the plea later since its promoters were held in a criminal case by a Central Bureau of Investigation (CBI) special court.

² Indian Contract Act 1872, s 65

³ *Ibid*

- In 2017, when its promoters were acquitted by the special court, Loop Telecom filed a subsequent claim before the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) claiming a refund.
- In 2018, the TDSAT again rejected Loop Telecom’s plea, and aggrieved by this, the company took the matter to the Supreme Court under Section 18 of the Telecom Regulatory Authority of India Act 1997⁴.

ISSUES RAISED

1. Whether the plea of the appellant for the refund of entry fees is maintainable or not.

ARGUMENTS BY THE APPELLANT

Senior Advocate Abhishek M. Singhvi appeared for the company. In its petition, Loop Telecom claimed that it suffered a significant loss as a result of the Supreme Court’s decision to revoke the Unified Access Service Licence (UASL) that the Government had granted by its ‘flip-flop’ FCFS policy. In light of this incident, the appellant company demanded a refund of the entry fee that it paid along with compensation for loss of reputation and an added 12% interest. It contended that it was entitled to all the above-mentioned reliefs based on a civil, contractual, and constitutional basis.

ARGUMENTS BY THE RESPONDENT

Countering these submissions, Additional Solicitor General Vikramjeet Banerjee, for the union government, pointed out that the UASL Guidelines, which were released by the Department of Telecommunication on 14 December 2005, clearly rendered the admission fee paid by the company to be non-refundable. It also contended that the acquittal of the company’s promoters had no bearing on the findings of the court in the 2G spectrum case. The 2G spectrum case was related to the allocation of the UASLs to various companies and how the allocation of the spectrum was stage-managed by the then officials and these companies which resulted in the

⁴ Telecom Regulatory Authority of India Act 1997, s 18

violation of public law. Hence, this should preclude the appellant company from claiming any restitution or refund.

JUDGEMENT

The court's bench comprised Justice Dhananjaya Y. Chandrachud, Justice Surya Kant and Justice Vikram Nath. The court did not accept the contentions of the appellant that the responsibility for the fraud committed in the FCFS policy was only to be taken by the union government and that the telecom company was free from any charge regarding the same. The court determined that Loop Telecom was in pari delicto (equal fault) with the Department of Telecommunication and the former union government officials and that they all benefited from the 'First Come First Serve' policy, which was designed to favour a group of private bidding entities at the expense of the public funds. Secondly, the court stated that the acquittal of the promoters from the CBI special court does not in any sense imply that they were not part of illegally obtaining the UASLs and hence there was no use in relying on those findings. Thirdly, the Hon'ble Supreme Court further criticized the appellant's behavior in approaching multiple courts seeking the same relief. Hence, on 3rd March 2022, the Supreme Court said that it shall uphold the tribunal's decision of not entertaining the company's claim for a refund of the entry fee. The court concluded that there was no merit in the appeals and thus dismissed them accordingly.

ANALYSIS

In this case⁵, the appellant company believed that it was entitled to a refund of the entry fee that it paid while acquiring the Unified Access Service Licence (UASL), along with some added interest. It claimed that under Section 65⁶, the contract was void since the union government canceled all the licenses and failed to abide by the contract. Section 65 says that "when an agreement is discovered to be void, or when a contract becomes void, any person who has received advantage under such agreement or contract is bound to restore it, or make

⁵ *Loop Telecom and Trading Limited v Union of India* C App No 1447-1467/2016

⁶ Indian Contract Act 1872, s 65

compensation for it, to the person from whom he received it.”⁷ However, in this situation, the appellant company was in *pari delicto* (equal fault) with the defendant since it was also involved and a part of the illegal distribution of licenses under the name of the ‘First Come First Serve’ policy. Moreover, taking into consideration the illegality of the contract and the appellant knowing its illegality, the contract should be considered void ab initio.

Furthermore, as ruled by the Hon’ble Supreme Court in *Sitaram v Radha Bai*⁸, there are a few defenses to the rule of *in pari delicto* that the plaintiff can resort to. They are as follows:

- (i) The illegal purpose has not been carried out before the subject money is paid or goods are delivered;
- (ii) The plaintiff does not have to rely upon the illegality to make out the claim; and
- (iii) The plaintiff is not in *pari delicto* with the defendant. However, considering the above points, even if the appellant had tried, they would not have been able to claim any defense since none of the conditions for defense are met.

CONCLUSION

The ‘First Come First Serve’ method of allocating the 2G spectrum was an arbitrary and constitutionally infirm act. Hence, the decision taken by the Hon’ble Supreme Court and the Telecom Disputes Settlement and Appellate Tribunal was perfectly in consonance with the principles of law and equity. Both the parties had unclean hands and were at equal fault and hence no monetary relief should be provided.

⁷ *Ibid*

⁸ *Sitaram v Radha Bai* AIR 1959 SC 781