

## HC upholds laws empowering CAG to conduct audit of private telcos

The Delhi High Court on Monday permitted an audit of private telecom firms by the national auditor to check whether they had underpaid licence fee to the government, a ruling that can have a bearing on other sectors such as power and oil as well. A bench of Justices Pradeep Nandrajog and V Kameswar Rao said the Comptroller and Auditor General has the power to audit all the revenue receipts of the government.

Telecom companies pay a part of their revenue — between 3% and 8% in most cases — as their licence fees to the government. The government had asked CAG to audit the books of the operators following allegations that some of them under-reported revenues so as to pay a lower licence fee.

The companies challenged the move in the high court after the telecom tribunal rejected their plea to quash the government's order on grounds that CAG, being an auditor of government finances, has no power to examine the books of private firms.

### **Limited to revenue receipts**

Where there is a contractual obligation on the licence holder to pay a share of its revenue to the government, "there is no way by which the Centre can determine its dues" without examining the books, the court said.

The companies have to furnish their accounts to the CAG in two weeks. It also told the CAG to limit its audit to examining revenue receipts.

Industry sources fear this rationale could be extended to other revenue sharing agreements and private public partnerships in other sectors, such as oil and power. Arvind Kejriwal, for instance, has already ordered a CAG audit of power distributors in the national capital.

Ashok Sud, President of the COAI, which had approached the court along with the Cellular Operators Association of India against the audit, said the industry body was mulling whether to challenge the ruling in the top court. COAI executives could not be reached for comment.

"The judgment has sidestepped the basic issue of whether the CAG has the power to address the books of private companies or not. That was the main contention," said Gopal Jain, a senior lawyer. According to some lawyers, special audits were permissible under the licence agreements and the telecom companies had never objected to it. Maneesha Dhir, the lawyer for the DoT, said the CAG can now undertake a revenue audit of these companies.

Senior lawyer Aman Lekhi, who appeared for the CAG, said that it would have been constitutionally impermissible to put a "restrictive" interpretation on the power of the auditor as this case involved the exploitation of a national resource, such as airwaves, by private entities.

In 2009, the Telecom Regulatory Authority of India had asked the telecom department to conduct a special audit of the financial accounts of five telecom companies — RCOM, TTSL, Vodafone, Airtel and Idea Cellular — for 2006-08, observing that some operators were under-reporting their revenues.

The HC termed the licence agreements of the telecom firms with the government as akin to a joint venture, an enterprise for mutual gain, and ruled that the law has to change with the times to deal with emerging economic situations.

These companies had argued that since they maintained accounts according to the sector regulator's rules, they can't be forced to show their books to the CAG. Maintenance of accounts would be of a matter of necessity in such cases as what has to be paid by the telecom provider to the government would be determined on that basis, the court said.

The ct said that it has to mould the law to deal with the inadequacies of "subjecting privatised utilities to traditional corporate regulation".

The court cited many reasons why it was directing a CAG audit, saying "oligarchies and secretive rule cannot be defeated unless the knowledge of the insider is transformed into public knowledge, available to all".

### **ET View: Ill-thought out ruling**

n principle, there can be little objection to the government carrying out an additional audit of the sources of its income, to make sure it gets its full due. But there are two practical difficulties in the case of the CAG doing this audit for telecom companies. One is the agency's doubtful capacity to carry out commercial audit — manifest in the constraints CAG audit places even on well-functioning PSUs. The other is lack of a redressal mechanism, in case the CAG comes up with erroneous finding.

The tax department vets company accounts to see if the government is getting its fair due. Its ruling is subject to appeal in a tribunal and the courts. This prevents miscarriage of justice. In the case of the CAG, the appeal is with MPs who are members of the Public Accounts Committee. In practice, undue publicity cuts short measured consideration of CAG reports. To subject private company accounts to possibly arbitrary vetting with no real possibility of appeal would be plain wrong. Just as the court felt obliged to improvise law beyond the remit of the Company Law to let the CAG vet non-government company accounts, it should have improvised law to appeal CAG findings as well.

*(Economic Times)*