

ITEM NO.7

COURT NO.1

SECTION XIV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

I.A.Nos.78 & 82/2016 in Civil Appeal No(s).10660/2010

CENTER FOR PIL & ORS.

Appellant(s)

VERSUS

UNION OF INDIA & ORS.  
(For directions and impleadment)

Respondent(s)

Date : 06/01/2017 These applications were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE N.V. RAMANA  
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Appellant(s)/Applicant(s) :

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Mr. Kaushik Poddar, Adv.  
M/s. Suresh A. Shroff & Co., Adv.  
Mr. Chandra Prakash, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

I.A.No.82/2016 :

1. The averments made in paragraph 10 of the counter

affidavit filed by the Central Bureau of Investigation, to the instant application, indicate the names of the accused in RC 22(A)/2011-DLI. The same is extracted hereinunder :

"10. That on 29.08.2014, a chargesheet in CBI V. Dayanidhi Maran, case no. RC 22(A)/2011-DLI, against the following eight accused persons u/s 120B IPC and section 7, 12 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 was filed:

(i) Mr. Dayanidhi Maran, the then Minister of Communications & Information Technology, Govt. of India,

(ii) Mr. Kalanithi Maran, Director of M/s. Sun Direct TV Pvt. Ltd., Chennai,

(iii) Mr. Augustus Ralph Marshall, Director of M/s. Astro All Asia Networks Plc., UK and M/s. Maxis Communications Bhd., Malaysia,

(iv) Mr. Ananda Krishna Tatparanandam, Malaysia,

(v) M/s. Sun Direct TV Pvt. Ltd., Chennai, India,

(vi) M/s. Astro All Asia Networks Limited, UK and also at Malaysia,

(vii) M/s. Maxis Communications Berhad, Malaysia,

(viii) M/s. South Asia Entertainment Holdings Ltd., Mauritius."

2. The charge-sheet dated 29<sup>th</sup> August, 2014, pertains to 2G Spectrum licences, originally awarded to M/s. Aircel Ltd., in November, 2006. By the time the licences were awarded, majority shares of M/s. Aircel Ltd., had been transferred to a subsidiary company of M/s. Maxis Communications, Berhad, Malaysia (Accused No.vii). Mr. Ananda Krishna Tatparanandam (Accused No.iv in the

aforesaid charge-sheet), is stated to be the controlling owner of M/s. Maxis Group of Companies. The other outstation accused, in the charge-sheet are accused No.iii (Mr. Augustus Ralph Marshall), and accused No.vii (M/s. South Asia Entertainment Holdings Ltd.).

3. The predicament expressed in I.A.No.82/2016, and the eventual prayer made therein, emerges on account of non-service of summons on Mr. Ananda Krishna Tatparanandam (Accused No.iv) and M/s. Maxis Communications, Berhad, Malaysia (Accused No.vii), and the other accused referred to above (Accused No.iii and vi).

4. In so far as, the instant aspect of the matter is concerned, the factual position depicted in the reply affidavit, filed on behalf of the Central Bureau of Investigation, reveals as under :

"21. That on 31.08.2016, a letter was received by the Ld. Special judge from the Attorney General's Chambers, Malaysia, dated 17.08.2016, inter alia stating that upon consideration of the facts disclosed in the Request for Assistance and further clarifications supplied by the CBI, the requirements as per the provisions under section 20(1)(f) of the Mutual Assistance in Criminal Matters Act, 2002 [Act 621] were not fulfilled, and hence the requests to serve the summons could not be acceded to."

5. It is imperative to ensure, in our considered view, that the process of law should not be permitted to be frustrated by non-service of summons on the accused. In order to enforce the presence of accused Nos.iii-Mr.

Augustus Ralph Marshall, iv-Mr. Ananda Krishna Tatparanandam, vi-M/s. Astro All Asia Networks Limited and vii-M/s. Maxis Communications Berhad, Malaysia, we propose to restrain, earning of any revenue, by using the 2G Spectrum licences, which were originally granted to M/s. Aircel Telecommunications. The instant order is to bring to the notice of accused Nos.(iii), (iv), (vi) & (vii) the proposed action, that is likely to be taken.

6. List for further consideration on 3<sup>rd</sup> February, 2017.

7. The restraint of use of 2G Spectrum (licences whereof were originally granted to M/s Aircel Telecommunications, in November 2006), would obviously entail adverse consequences, to the spectrum subscribers. We do not wish our order to have any such impact. It is therefore, that we direct the Ministry of Communications & Information Technology to devise ways and means, whereby, the earlier subscribers (of the 2G Spectrum licences, granted in favour of M/s. Aircel Telecommunications) can be transferred provisionally, to some other service provider, in case the necessity to pass the proposed order arises.

8. It will be open to accused Nos.(iii), (iv), (vi) and (vii), to enter appearance before this Court, and make their representation in consonance with law, failing which, it is made clear to all concerned, that the proposed order shall be passed.

9. The Union of India is directed to publish the instant

order, in two leading newspapers in Malaysia. It is also clarified, that in case the proposed order is passed, it will not be open to any of the accused, to raise an objection with reference to any monetary loss, emerging out of the proposed order.

10. In the meantime, the selling and trading in the 2G Spectrum under consideration, shall remain stayed.

(Sarita Purohit)  
Court Master

(Renuka Sadana)  
Assistant Registrar