



Appeal Against 2G Acquittals

What is the issue?

\n\n

\n

- Recently, Enforcement Directorate (ED) has moved the Delhi High Court in appeal against the acquittals in the trial court verdict on 2G.

\n

- Click [here](#) to know more on the verdict

\n

- There were multiple flaws in the spectral allocations and the prosecution in the trial court that needs further scrutiny.

\n

\n\n

What are the anomalies?

\n\n

\n

- Cases against impropriety in the coal-block allocations and the 2G spectrum allocations were essentially similar in nature.

\n

- While both involved accusations of wrongful allocation of public resources for private profit, one resulted in conviction and the other in acquittal.

\n

- The difference in verdicts points strongly to the possibility that the trial court misapplied law and misunderstood in terms of the case.

\n

- **2G case** - First-Come-First-Serve (FCFS) policy was criticised, as it had been unjustly tampered to benefit certain players at the cost of the exchequer.

\n

- While the Supreme Court (SC) held that the tweaks were arbitrary, it had been muted on the substantive merit of the FCFS policy itself.

\n

- Subsequently, conviction of the accused couldn't be secured as malafide

intentions were not established beyond doubt.

\n

- **Coal Scam** - Contrarily, the court held that in the allocation of coal-blocks, reasonable precautions to preclude losses were not exercised.

\n

- Coal secretary H.C.Gupta was convicted under the Prevention of Corruption Act (PoCA)1988 for his non-diligence which led to a loss of public money.

\n

- Logically, if lack of due diligence to prevent exchequer losses is a valid ground for conviction, then the 2G case should have also resulted in conviction.

\n

\n\n

Was PoCA effectively employed?

\n\n

\n

- PoCA of 1988 explicitly states that contravention of “public interest” is also a corrupt practice, along with “abusive use of office for pecuniary gains”.

\n

- Hence, the burden of proof to show that all the safeguards and precautions were exercised to ensure no public loss lies clearly on the accused.

\n

- But the prosecution failed to press on this and rather the debates were centered on the charges of whether money was laundered to tweak FCFS.

\n

- This formed the crux of why the case was dismissed for lack of evidence, and speaks volumes on the incompetence of the prosecution.

\n

\n\n

What is the legality of the FCFS policy?

\n\n

\n

- FCFS has been a long standing state policy in allocating natural resources.

\n

- Despite its misuse in the spectrum issue, the SC has not denounced it.

\n

- SC has stated that it respects the prerogative of the state to determine policy and that any policy must be tenably based on desired outcomes.

\n

- FCFS’s allocative channel grants ‘first movers advantage’ and is best suited

to incentivise firms to explore and discover resources by taking financial risks.

\n

- Notably, it is useful in sectors like oil & gas exploration, where the seeker would have to spend considerable resources in the discovery of the resource.

\n

- Hence, the economics of demand and supply along with other significant aspects if any are to be employed to select the resource allocation mode.

\n

- **2G case** - The very fact that the competing players far outnumbered the slots available implies that the resources commanded good value in the market.

\n

- In such circumstances, auctioning would have led to a fuller realisation of value for both the state and the players, but it was not employed.

\n

\n\n

What is the issue with licence transfers?

\n\n

\n

- The purpose of allotting spectrum is to enable players to utilise the resource for enhancing tele-connectivity and tele-density in the country.

\n

- Hence, a substantive entry and exit criteria should have been established and subsequent transfer of spectrum should have been regulated.

\n

- But this was not the case and there were clear cases of spectrum transfers that had benefited the initial non serious buyers enormously.

\n

- Notably, across sectors, unregulated subsequent licensing transfers of natural resources has effectively made it a free trading commodity, which is not desired.

\n

\n\n

Source: Indian Express

\n



IAS PARLIAMENT

Information is Empowering

A Shankar IAS Academy Initiative