PTIFormer Director General, CAG, R.P. Singh.

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On a day that former Director General, CAG, R P Singh made what the Congress Party terms “explosive disclosures” which should lead to a “serious review”, other facts raise questions about not only the timing of Mr. Singh’s expose, but also about the rigour of the Rs. 2,645 crore loss which has become the basis of the Congress attack on Comptroller and Auditor General (CAG), Vinod Rai.

According to documents with *The Hindu*, Mr. Singh is contradicting not just most public statements that he has ever made but also documents that he himself has signed which support rather than oppose the CAG’s loss figures.

Presumptive loss

His minimalist figure of a Rs 2,645 crore loss is the mainstay of the Congress attack, prompting even Congress President, Sonia Gandhi to break her silence for the first time since the CAG’s 2G report was tabled in Parliament in November 2010, with Parliamentary Affairs Minister Kamal Nath and Law Minister, Ashwini Kumar joining the Congress call for a probe into the working of the CAG.

The documents show that Mr Singh is perfectly willing to ignore TRAI’s recommendations when citing a lower loss figure of Rs. 2,645 crore, while simultaneously citing the same TRAI recommendations to rubbish the Rs. 1.76 lakh crore loss estimate.

In Section 9.1.3 of a 15-page “secret and confidential” note dated May 31, 2010, under the head “Undue haste in processing applications for new UASL”, Mr Singh throws up the Rs 2,645 crore loss figure based on indexation of the 2001 price of Rs 1,658.57 crore for pan-India spectrum to the Cost Inflation Index in 2007-8, wrongly stating that “the 2001 bid prices was discovered from a nascent market and did not reflect the true value of licence”. In truth, the 2001 rate was discovered through a fiercely competitive bid which not only reflected the true value in 2001 but was in fact used as a benchmark for many years after that.

Additionally, the market indexation is done by mentioning but simultaneously rejecting TRAI’s recommendations: “TRAI did not recommend revision of entry fee”. In any event, this would, just like the other 4 loss estimates by the CAG which Mr Singh now opposes, qualify as nothing other than “presumptive” loss. But in the cover note of the same document, Mr Singh states a loss of Rs. 1.02 lakh crore based on the 3G spectrum price, but rejects it on the basis that, “However, charging for 2G spectrum for rollout was never recommended by TRAI or the Government has never contemplated any charges for the spectrum other than entry fee”.

Mr Singh cherry picks from the TRAI’s recommendations, depending on what he needs to prove, an impropriety that the TRAI had scolded the DoT for doing in 2008. While indexing to Rs. 2,645 crore he ignores the TRAI but to reject the Rs.1.02 lakh crore loss estimate, he quotes the TRAI. Mr Singh’s lack of rigor is also exhibited by the fact that the government did, in fact, contemplate charges beyond entry fee. These are called spectrum usage charges. And this has been the government’s main argument for keeping entry fee low and detailed in Finance Minister P Chidambaram’s letter to the PM dated January 15, 2008.

Mr Singh subjugates the government’s role vis-à-vis the TRAI recommendations to the same doublespeak. While justifying his loss estimate of Rs. 2,645 crore, he argues that the government should have overruled the TRAI recommendations to protect the country’s financial interest, but in refusing to admit the Rs. 1.02 lakh crore loss, he is happy to accept that the government had never contemplated any charge for spectrum other than the entry fee.

3G rates OK, not OK

Mr Singh has argued on several television channels that Rs. 37,000 crore (he really means Rs 36,279 crore) which is the loss estimate for spectrum awarded beyond the contracted amount can be collected. This is taken from his draft report of September 2010 and by his admission, is based on a DoT report of May 2009 and TRAI’s May 2010 Recommendations linking the charge to 3G auction price. Ironically, the calculation of Rs.1,76,645 (Rs.1.76) lakh crore also comes from the same TRAI May 2010 report. This has 3 elements: a loss of Rs.1,02,498 crore on account of 122 licenses, a loss of Rs. 37,154 crore on account of dual technology and a loss of

Rs. 36,993 crore from loss on spectrum beyond contracted amount. Mr Singh has supported a Rs 37,000 crore loss estimate which in exacting terms became the Rs. 36,993 crore in the final report. Mr Singh is happy to oppose the 3G calculation for licences given illegally by Mr Raja in the UPA regime but is willing to defend the 3G price linkage for excess spectrum which began in the NDA regime.

In summary, the two loss figures of Rs. 2,645 crore for 122 licenses and Rs. 37,000 crore for spectrum beyond contracted amount that Mr Singh has admitted to, are based on completely different criteria, while the latter is based entirely on the 3G pricing which he himself opposes in part for losses caused by the 122 illegal licences given by Mr Raja.

False claim

Mr Singh’s allegation that no guidelines were issued for him to audit the 2G scam is seen by audit experts a surprising since any DG level officer knows exactly what guidelines to follow as well as the rigour enshrined in such audits, which take place across the country and throughout the year. Reports are prepared based on auditing standards and standard practices contained in CAG manuals. These are standard documents which are used as guidelines. No specific guidelines need to be issued for every audit. Only material findings find place in the CAG report.

Moreover, as a DG, if he believed that some additional guidelines were needed, he had every right to bring the audit to a halt, but he did no such thing. Instead he used his own indexation figure and judgment to calculate the loss figures.

No dissent

A review of the documents leading up to the audit, including several signed by Mr Singh himself, fail to reveal even the slightest hint of objection to the Rs. 1.76 lakh crore loss estimate. His report, filed to Ms. Rekha Gupta, DEI-RC on September 9, 2010, duly signed in not one but two places, shows that he details all four sets of losses presented in the final CAG report without objection. These include the loss estimate based on the S Tel offer, on Swan’s transaction with Etisalat, Unitech’s M&A with Telenor, as well as the 3G auctions.

Singh vs SC

On Friday, however, Mr Singh receded on all three counts. He claimed that the S Tel offer was invalid since it was withdrawn in Delhi High Court. Wrong. The S Tel offer was very much valid when the scam took place in 2008. Further, it was never withdrawn from the High Court. It was only in the Supreme Court in April 2010, when S Tel withdrew its case – and not the offer – that the matter was closed. Even then, the Supreme Court upheld the Delhi High Court finding which concluded that ex-Telecom Minister A Raja had illegally and arbitrarily advanced the cutoff date.

Mr Singh now claims that the Unitech and Swan transactions cannot be taken as losses because they were mere “equity infusion under the agreements of the companies”. While submitting his draft report in September 2010, he made no mention of this argument. Moreover, Mr Raja, his lawyers along with the lawyers of Unitech and Swan insisted on the same argument in the Courts. This was rejected both by the CBI Special Court dealing with the 2G scam and the Supreme Court in its judgment of February 2, 2012, which cancelled the 122 licenses. The Supreme Court held, contrary to Mr Singh’s claim, that the owners of these companies had “offloaded equity” for large profits.

In effect, the CAG was right in November 2010 and the finding was upheld by none other than the Supreme Court, contrary to Mr Singh’s sudden counter claims.

Spin on 3G comparison

After first having rejected the 3G pricing by suggesting charging for 2G spectrum rollout was never recommended by TRAI, Mr Singh went silent while submitting his report in September 2010, until on Friday, when he decided to wax eloquent on the technical differences between 2G and 3G spectrum. He told a TV channel, “2G is for voice telephony and it is a different technology. Its application is different. 3G, on the other hand, is used for mass transfer of data and image transfer. The nature of utilization and the service is different. They don’t even have identical usage.”

Meanwhile, the Congress, which was objecting to the CAG entering into policy prescription, appears perfectly willing to back an auditor-turned-telecom specialist. Sadly, Mr Singh is wrong on all counts and in fact he stands contradicted by none other than the UPA’s own Union

Ministers, who while addressing the press conference on the recent 2G auctions, stated that the 3G spectrum was being used for voice. In reality, they are based on the same GSM technology, not different, as Mr Singh claims. The consumers are the same and in most cases, the handsets are same, though 3G does arguably have a higher capacity to carry data.

TRAI the specialist

What Mr Singh forgets to note while citing TRAI selectively to oppose the equation of 2G with the 2010 3G auction prices is that the same TRAI, on May 11, 2011, in a statutory recommendation titled ‘Spectrum Management and Licensing Framework’, noted in Table No. 3.4, from pages 187 to 193, that “the MHz by MHz and circle-wise comparison of 2G spectrum with 3G in fact argued the case for its parity while taking into consideration spectral efficiency, traffic, and quality of service”. The TRAI, a specialist regulator set up under an Act of Parliament concluded in Section 3.82 that, “The authority therefore recommends that 3G prices be adopted as the current price of spectrum in the 1800 MHz (2G) band.”

This calculation and assertion came mid-way through the 3G auction. In September, Mr. Singh himself took this exact same rationale and quoted the 3G parity in detail in his letter of September 28, 2010. In Section 5.3 of his “Performance Audit Report”, he liberally quoted the TRAI’s May 2010 recommendations and concluded “if price is calculated at 3G rates which can also be taken as one of the indicators of assessing the value of 2G spectrum allocated to UAS licenses in 2008, the value works out to Rs. 1,11,511 crore against the Rs. 9,013 crore realized by DoT.”

He further used the same 3G parameter to calculate the loss for dual technology licenses all of which added up to the final report of November 2011, and the figure of Rs. 1.76 lakh crore. Ironically, Mr. Singh doesn’t have a single line or paper to show by way of his disagreement or dissent to the final CAG report. On the contrary, he is a signatory of multiple letters including those of May 31, 2010, September 28, 2010, and is a co-signatory on page 59 of the final CAG report of November 8, 2011.

It is also learnt that Mr Singh was asked to do a transaction audit but he wanted to do a performance audit and he was allowed to do so. Moreover the findings were reviewed by 5 officers of his seniority, who agreed with the findings and yet Mr Singh did not protest. It was Mr Singh who made the presentation to the PAC and at the press conference where he never spoke a word against the report, its process, robustness or integrity.