

(2008) 07 CAL CK 0016
In the Calcutta High Court
Case No : C.O. No. 13564 (W) of 1993

Bhumendranath Guharay

APPELLANT

Vs

General Manager, Calcutta Telephones and Others

RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Telegraph Act, 1885 — Section 7B, 7B(1)

Citation : (2008) 4 CHN 534

Hon'ble Judges : S.P. Talukdar, J

Bench : Single Bench

Advocate : Prasanta Kumar Mukherjee and Tapas Kumar Majumdar, for the Appellant; Archana Sengupta and Anil Kumar Gupta, for the Respondent

Judgement

S.P. Talukdar, J.—The petitioner approached this Court with the prayer for restraining the respondent/Calcutta Telephones from disconnecting his residential telephone with the then number 37-2708 since re-numbered 359-0439 and presumably, must have been re-numbered again. This was over alleged non-payment of bills of cycles 1, 3 and 5 of 1993.

2. Heard learned Counsel, Mr. Mukherjee, appearing for the petitioner who referring to the factual backdrop of the present case submits that the writ petitioner was subscriber of a particular telephone which was a domestic connection. Inviting attention of the Court to the copies of the various bills annexed to the writ application, it is submitted that ordinarily over a protracted period of time, the writ petitioner was receiving bill for the amount of Rs. 500/- and around in respect of that particular telephone.

3. It is then alleged that to the utter shock and surprise of the writ petitioner, he suddenly received a bill for an abnormally high amount, i.e., Rs. 8,000/-and odd. This was followed in a few subsequent bills as well. The petitioner immediately approached the concerned respondent authority being the General Manager of the Calcutta Telephones and submitted an application dated 26th March, 1993.

He raised dispute over such bill amount.

4. This, however, did not bring an end to his alleged misery since even thereafter, he continued to receive such bills with highly inflated amount. The petitioner, thereafter, received a letter whereby he was informed that the STD/ISD facilities in respect of that particular telephone had been withdrawn with effect from 26th March, 1993. Such intimation of withdrawal of the said STD/ISD facilities, however, did not give relief to the writ petitioner for long since even thereafter, he received bills which included charges for STD/ISD calls. The petitioner, in such circumstances, was left with no choice but to seek redress before the Court of Law. In response to this, the respondent authority filed affidavit-in-opposition, inter alia, denying all the material allegations made by the writ petitioner. It seems to be the specific stand of the respondent authority that the complaint of the writ petitioner was looked into and nothing wrong could be found with the system.

5. In this context, Mrs. Sengupta who appears as respondent authority drew attention of the Court to the relevant correspondence being Annexure "N" at page 48 to the writ petition. Mrs. Sengupta further submits that the Writ Court should not entertain the present application in view of the specific provision being 7B of the Indian Telegraph Act. Section 7B relates to Arbitration of Disputes. The same is reproduced as hereunder:

(1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been, provided, the dispute shall be determined by arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of disputes under this section.

(2) The award of the arbitrator appointed under Sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court.

6 Referring to this, Mrs. Sengupta submits that the Writ Court has no reasons nor any justification for entertaining the grievance of the writ petitioner. In this context, she further refers to the decision of the learned Single Bench of this Court in the case of East India Commercial Co. (P) Ltd. and Another Vs. Union of India (UOI) and Another, .

7. In response to this, Mr. Mukherjee categorically submits that Section 7B of the Indian Telegraph Act cannot and does not stand in the way of the Writ Court entertaining the grievance of the writ petitioner.

8. Mukherjee in support of his contention has referred to a number of decisions. Reference has been made to the decision in the case of Radha Raman Samanta v. Bank of India and Ors. reported in 2004(1) SCC 606, in support of the

contention that the power under Article 226 of the Constitution can be exercised for the enforcement fundamental rights available under Part III of the Constitution and also for any other purpose.

9. Mr. Mukherjee then refers to the decision in the case of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, . The Apex Court in the said case hold as follows:

...the following legal principles emerge as to the maintainability of a writ petition of:

a) In an appropriate case, a writ petition, as against a State or an instrumentality a State arising out of a contractual obligation is maintainable.

b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

c) A writ petition involving a consequential relief of monetary claim is also maintainable.

10. The Apex Court in the said case also referred to the decision of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, .

11. It seems to be categorical stand of the writ petitioner that it lodged a complaint before the appropriate authority alleging excess bill but there had been no suitable response. It is further claimed that even subsequent to the intimation that the STD/ISD facilities had been withdrawn as reflected from the correspondence dated 26.3.1993, the petitioner continued to receive." bills indicating charges for STD/ISD facilities.

12. Mr. Mukherjee referring to the peculiar factual backdrop of the present case submits that there is no reason as to why this Court will not entertain the present application. Mr. Mukherjee submits that the so-called "terms and conditions" between the subscriber and the Calcutta Telephone authority are hardly known to any subscriber since there had been no publication of the same nor there is any such method so as to enable the subscriber to know about the same. Mr. Mukherjee further submits that the entire action taken by the respondent authority suffers from arbitrariness and it is neither fair nor reasonable.

13. Mr. Mukherjee has laid emphasis on the Division Bench decision of the Gauhati High Court in the case of Santokh Singh Vs. Divisional Engineer, Telephones, Shillong and Others, . Mr. Mukherjee painstakingly has gave into the details of the said case which I do not think is necessary to be dealt with in details for effective adjudication of the controversy raised in the present writ application. Their Lordships, however, in the said case dealt with Section 7B of the Act. After taking the same into consideration, learned Division Bench of the Gauhati High Court in the said case did not find any reason for not entertaining

the writ application. There had been detailed reference of various guidelines and instruction issued to the concerned telephone authorities and I do not think, as indicated earlier, there is any justification for reference to the same.

14. Mrs. Sengupta has relied upon the Division Bench decision of the Kerala High Court in the case of Union of India (UOI) and Others Vs. S.J. Pandit, . It is submitted that Their Lordships dissented from the stand taken by the Gauhati High Court in the case as referred to earlier.

15. It is further mentioned that the learned Single Bench of this Court relying upon the Division Bench decision of the Kerala High Court took the view that the telephone authorities certainly have the power to disconnect the line for non-payment of the bills.

16. In fact, such a right of the telephone authorities can hardly be questioned and there is no doubt nor any dispute in that regard. The question which arises in the factual backdrop of the present case is whether in this particular case, the telephone authorities were justified in issuing a notice of such disconnection.

17. It cannot be disputed that the writ petitioner as subscriber brought it to the notice of the General Manager of the Calcutta Telephones and ventilated his grievance over his sudden receipt of bills for highly inflated amount. In response to this, the respondent authority does not seem to have taken any appropriate action.

18. What is most curious is that even after serving notice intimating withdrawal of STD/ISD facilities, the writ petitioner received bills for availing of the said facilities. Thus, the said bills do suffer from inherent absurdity. In this context, submission made by Mr. Mukherjee that the ground of notice at page 48 suffers from non-application of mind just cannot be brushed aside. It is true that Section 7B of the Act provides for arbitration of any dispute between the authority and the subscriber. The question that requires decision in this case is whether that can be a sufficient alternative remedy in the present case. The dispute as referred to in Section 7B of the Act concerns any telephone lines, appliances or apparatus.

19. In the present case, the writ petitioner has not raised any dispute in regard to the telephone line, appliances or apparatus but his grievance relates to billing system. He also lodged complaint which was brought to the notice of the concerned authority that his residential telephone was being used by some strangers or outsiders and that could only be possible with the assistance of telephone official. This is far too serious an allegation and there is no such material on record so as to suggest that this serious aspect has been properly looked into or any effective enquiry was made in that regards.

20. It is, however, important to note that the writ petitioner specifically alleged that some organization/person who described itself himself as some sort of "fortune teller" was using the said telephone. This grievance continues to remain

unredressed;

21. So far maintainability of the writ application is concerned, I do not think that Section 7B of the relevant Act stands in the way of entertaining the grievance as ventilated herein. In fact, the jurisdiction of the Writ Court can very well be invoked whenever there is an allegation of injustice. When there is an alternative efficacious remedy available, this Court takes a judicious approach and does not ordinarily entertain such an application under Article 226 of the Constitution of India. It is one thing that an application is not maintainable and another thing that an application does not deserve to be entertained. Maintainability and entertainability are not synonym.

22. After due consideration of all relevant aspects and the facts and circumstances of the present case, I do not find any reason whatsoever for not entertaining the present writ application under Article 226 of the Constitution. In fact, the decisions as referred to by and on behalf of the respondent authority does not lend any support to the proposition that the present application is not maintainable. The decision of the learned Single Bench of this Court, as referred to earlier, is on a different aspect altogether. As stated earlier, this Court is of the firm view that there is no dispute raised in the present case regarding the power of the authority to issue notice for disconnection in case of non-payment of electric bills. But this is too simplistic approach and there is something more than what meets the eyes. In the backdrop of the present case, this Writ Court cannot afford to be indifferent to the grievances of the writ petitioner.

23. The materials on record go a long way to substantiate the claim of the writ petitioner that his grievances have not been properly looked into. The entire fact relates to three bills as referred to earlier.

24. In such circumstances, I think the present writ application deserves to be disposed of with the following directions.

25. The writ petitioner is directed to submit a representation annexing thereto the gist of the grievances as ventilated in the present writ application as well as its annexures before the respondent authority being the respondent No. 1 herein within a period of six weeks from this date. The said authority being General Manager, Calcutta Telephones, on receipt of the said representation must consider the grievances of the writ petitioner in their proper perspective and must take appropriate action or pass necessary order in accordance with the rules within a period of six weeks of course, after giving the writ petitioner or his representatives an opportunity of hearing.

26. Action to be so taken or order to be so passed must duly be communicated to the writ petitioner within a further period of four weeks.

27. This, however, does not prevent the writ petitioner from taking immediate stops towards payment of the rental charges in respect of the said three bills. The remaining amount may be left for decision by the respondent No. 1.

28. Then will, however, be no order as to costs.

29. Urgent xerox certified copy of the order, if applied for, be given to the parties expeditiously.