

(2012) 04 BOM CK 0067
In the Bombay High Court
Case No : Writ Petition No. 108 of 2005

Colorcon Asia Pvt. Ltd.

APPELLANT

Vs

Bharat Sanchar Nigam Limited

RESPONDENT

Date of Decision : 30-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Telegraph Act, 1885 — Section 7B, 7B(2)

Citation : (2012) 04 BOM CK 0067

Hon'ble Judges : U.V. Bakre, J;A.P. Lavande, J

Bench : Division Bench

Advocate : S.G. Dessai, with Mr. S.D. Padiyar, for the Appellant; Mahesh Amonkar, Central Government Standing Counsel, for the Respondent

Judgement

U.V. Bakre, J.—In this Writ petition, the petitioner has prayed for the following reliefs:

- a) For a writ of mandamus or any other writ or direction under article 226 and/or 227 of Constitution of India to quash and set aside the award dated 11/02/2005 u/s 7B of the Indian Telegraph Act passed by Shri R.K. Maheshwari, Arbitrator TDM BSNL Jalna (Maharashtra) in the Arbitration case of Telephone No. 2883400(PRI) between the petitioner M/s Colorcon Asia Pvt. Ltd. Verna Goa V/s. BSNL through its General Manager.
- b) For a further writ of mandamus or any other appropriate writ or direction under Article 226 and/or 227 of the Constitution of India to quash and set aside the telephone bills under No. 90077621 dated 14/12/2003 for the call period from 1/11/2003 to 31/11/2003 and No. 92000611 dated 14/01/2004 for the call period from 1/12/2003 to 31/12/2003 in respect of telephone No. 2883400 and command the respondent to bill the petitioner on the average billing of the petitioner before and after the disputed bill period.

The petitioner is a Private Limited Company incorporated under the Companies

Act and having its registered office at Plot No. M-14 to M-18 at Verna Industrial Estate, Verna-Goa and is wholly owned subsidiary of Colorcon Ltd. United Kingdom. The petitioner is also having its factory at the same address. The Respondent is a Government of India Enterprise and is a licensed telecommunication service provider. The petitioner started its operations in Goa in the year 2003 and has become BSNL subscriber w.e.f. 1st March 2003. The petitioner is availing of the facilities of Integrated Services Digital Network (ISDN), Primary Rate Interface (PRI) from the respondent for telephone services of 100 numbers starting from telephone No. 4 2883400 to 2883499, though the billing is done under telephone number 2883400. The system fitted is a Siemens system. The petitioner has opted for itemized billing so that important details such as the date on which the call is made, the time when the call is made; the duration of the call made; the destination number to which the call is made and the number of units charged, are known.

2. For the call period from 01/04/2003 to 30/04/2003, the petitioner was issued a bill for Rs. 76,548/- for 56,702 metered calls. For the period from 01/05/2003 to 30/05/2003, the petitioner was issued a bill for Rs. 1,08,293/- for metered calls 80,383. For the call period from 01/06/2003 to 30/06/2003 and 01/07/2003 to 31/07/2003, the petitioner was issued bills for an amount of Rs. 82,415/- and Rs. 99,903/- respectively for metered calls 59,400 and 72,894. For the call period from 01/08/2003 to 31/08/2003, the petitioner again received a bill for an amount of Rs. 74,680/- and for metered calls 64,432. For the call period from 01/09/2003 to 30/09/2003, the petitioner was issued a bill for Rs. 60,638/- for metered calls 42,597 and for the call period from 01/10/2003 to 31/10/2003, the petitioner's bill came to Rs. 78,493/- for metered calls 56,374. The petitioner has paid all these bills within the time permitted. Thus, during the above entire period the metered calls are ranging between 42,000/- to 80,000/- and odd and the bills are also in the range of Rs. 60,000/- to Rs. 1,10,000/-.

3. For the call period from 1/11/2003 to 30/11/2003, the petitioner received a huge bill dated 14/12/2003 for an amount of Rs. 10,45,317/- for 8,02,380 metered calls. Again for the call period 1/12/2003 to 31/12/2003, the petitioner received a bill dated 14/1/2004 for an amount of Rs. 23,40,931/- for 19,46,249 metered calls. These are the disputed bills.

4. The case of the petitioner in short is as follows:

The petitioner has business relations with U.S., U.K., France, Switzerland, China, Singapore, Korea, Japan, Pakistan, Bangladesh, etc., but they have no business relations with countries like Kuwait, Morocco, Nepal, Oman, Qatar, Saudi, Sri Lanka and U.A.E. The petitioner has a five working day one shift (9 a. m. to 6 p. m.). The ISD/STD facilities are locked after working hours and on non-working days (Saturdays and Sundays). Despite opting for itemized bill and repeated requests made from time to time, the respondent has not supplied the itemized bills to the petitioner. Upon receipt of the first exorbitant bill for Rs. 10,45,317, the petitioner contacted the respondent and questioned the officials about the

same and also demanded for issue of itemized bill. Upon persistent demands, a list of calls purportedly made and attributed to the bill, on a CD, was issued to the petitioner. A perusal of the same disclosed that majority of the numbers dialed were not the regular business numbers being dialed from the petitioner's premises or on behalf of the petitioner. Upon dialing the non-business numbers reflected in the bill, it was revealed that most of the numbers were of Arabic countries where the petitioner does not have any business transaction and/or relations. Even the timings of the calls made were after office hours of the petitioner and even at midnight. By letter dated 29/12/2003, the petitioner represented against the said exorbitant bill pointing out all the details and making it clear that they cannot proceed with the payment of such huge bill. By letter dated 07/01/2004, the petitioner again informed the General Manager, (Finance) of the respondent about the excessive telephone billing and about investigations made by them and result thereof. It was made clear that the petitioner was strongly feeling that the lines were tampered with and there was some kind of fraud which has resulted in excessive billing. No action was coming forth from the respondent and on the contrary, another huge bill of Rs. 23,40,931/- was received by the petitioner. By letter dated 20/01/2004, the petitioner brought to the notice of the respondent that since the average bills were approximately Rs. 80,000/- per month, the petitioner was paying a sum of Rs. 2.00 lakhs for the months of November and December 2003 which amount was more than by 25% of the petitioner's average bill. Thereafter, the payment on the disputed bills was worked out on average billing for the earlier periods and the Senior Accounts Officer (TR) made an endorsement on the disputed bills for accepting part payments of Rs. 1,00,000/- each and accordingly on 23/01/2004, the petitioner paid an amount of Rs. 1.00 lakh each for the disputed bills.

5. By letter dated 27/1/2004, the General Manager Telecom informed the petitioner that the case of the petitioner was personally gone through by him and there was no negligence on the part of BSNL and the only lapse was in not providing the itemized bill at his request. It was further stated in the said letter dated 27/1/2004 that if the petitioner felt that a third party arbitrator was necessary in the matter, then it should write so to the respondent and the matter would be taken up with BSNL headquarters for appointment of third party arbitrator to examine the case. By letter dated 10/3/2004, the petitioner informed the respondent that they had taken all the preventive measures and the respondent was still in control of locking of ISD facility. The petitioner also pointed out that it was impracticable for an employee to make calls by sitting continuously for 6 to 8 hours at a time and to make calls from morning to night and on non-business numbers and that 80% of the bill was in the same manner. However, the petitioner's out-dialing facilities in respect of the telephone lines were barred on 10/03/2004. The petitioner requested for arbitration in terms of Section 7B of the Indian Telegraph Act, 1885 for going into the billing dispute with regard to November and December 2003. By letter dated 12/3/2004, the Chief Accounts Officer intimated the decision of the General Manager of the

respondent stating that the lines would be restored on payment of 50% of the amount and the remaining 50% of the amount would be kept disputed and the matter would be referred for arbitration if the BSNL's new Delhi headquarters approves the proposal for arbitration in the matter upon CGMT Mumbai's recommendations. It was also informed that the balance 50% amount will have to be paid within one month in case the arbitration proposal is not accepted. On 23/03/2004, the petitioner filed Writ Petition bearing No. 152/2004 in this Court since the arbitrator was not appointed and telephone connection was also not restored. During the course of the petition, a statement was made by the respondent that the matter would be referred to the arbitration upon which the petitioner made the payment of 50% of the amount by deducting what was paid earlier and thereafter the petition was dismissed as withdrawn on 26/03/2004. Thereafter on 07/07/2004, the petitioner was given a notice of appointment of arbitrator.

6. On 12/08/2004, the Claim statement along with annexures was filed by the petitioner before the arbitrator. The respondent filed the reply. The arbitrator made the award on 11/2/2005 holding that the disputed November, 2003 and December, 2003 bills issued by the respondent were correct and shall be paid by the petitioner. The arbitrator has added that the petitioner is free to take legal/police action against the thieves who had made calls from the lines.

7. The said award dated 11/2/2005, according to the petitioner, is arbitrary, unreasonable, illegal and bad in law based on no evidence and is opposed to the principles of natural justice. The petitioner has challenged the said award on various grounds which are mentioned in the petition and which are taken for discussion hereinafter.

8. The respondent has not filed any affidavit-in-reply in answer to the writ petition.

9. Shri S. G. Dessai, learned Senior Counsel, argued on behalf of the petitioner, whereas, Shri Mahesh Amonkar, learned Central Government Standing Counsel (C.G.S.C.) argued on behalf of the respondent.

10. Learned Senior Counsel, on behalf of the petitioner, submitted that the average bills of the petitioner in the year 2003-2004 oscillate from Rs. 60,000/- to Rs. 1,10,000/-, but there is sudden spurt in the bills of November and December 2003 which came down to normal in January 2004 at Rs. 58,657/-. According to Senior counsel, this is not possible without there being mischief some where not attributable to the petitioner and which cannot at all be held to be pertaining to regular business calls of the petitioner. Learned counsel argued that the calls can be made from outside the factory premises of the petitioner provided the person making them has necessary technical knowledge. He pointed out that the telephone signals are coded and hence somebody knowing these codes can tamper with the system. He has relied upon "Saji Geevarghese Vs. Accounts Officer (Telephone Revenue) and others" [(2009) 1 SCC 644].

Learned Senior Counsel contended that the judgment in the case *supra* is fully applicable to the present case. By referring to paragraphs 18 and 19 of the judgment (*supra*) cited by him, he pointed out that there is a circular dated 9/4/1986 containing relevant guidelines which are applicable. It is his grievance that the guidelines mentioned in the said circular have not at all been followed by the Department and have not been considered by the learned Arbitrator. He further pointed out that in various paragraphs, the arbitrator has pointed out the mistake of the department of the respondent, but still the petitioner has been blamed. According to Senior Counsel, the petitioner does not have any monitoring system of EPABX uses. Inviting our attention to the connectivity diagram in respect of ISDN-PRI of the petitioner, learned Senior Counsel showed that the transmission is connected from Margao Exchange to the Verna transmission room and from there further connections are given to various customers including the petitioner. Learned counsel contended that there is possibility of tampering with the system at Verna transmission room by the employee of the respondent or by some miscreants in connivance with the said employee. He pointed out that from time to time, the petitioner had brought to the notice of the respondent the possibility of the telephone lines being tampered with but no action was taken by the respondent and even no proper investigations were made. Learned Senior Counsel further invited our attention to the report made by Siemens in respect of the huge amount of telephone bills. As per the report of Siemens, the Direct Inward Station Access-Direct Station Outward Access (DISA-DOSA) have not been activated ever through which external out-going calls can be initiated from any telephone line outside colorcon. According to learned Senior counsel by 15th of November, the department should have informed the petitioner about the spurt, but this has not been done. He further argued that the equipments for monitoring are with the Department. He has also pointed out that the learned arbitrator is from the panel of BSNL and has only supported the case of the respondent. He has relied upon "Madhav Vinayak Rajwade Vs. Mahanagar Telephone Nigam Ltd. and anr. [1994 Mh. L. J. 264] and "Santokh Singh Vs. Divisional Engineer, Telephones, Shillong and others (AIR 1990 Gauhati 47).

11. Per contra, Mr. Mahesh Amonkar, the learned

C.G.S.C. argued that the system allotted to the petitioner is PRI system with EPABX which is the exclusive property of the petitioner and PRI line has been provided on optical fibre cable (OFC) via Verna Exchange. According to him, tapping of line en-route is not feasible at all. He further argued that the case of "Saji Geevarghese" (*supra*) relied upon by the petitioner does not pertain to PRI connection but to a single line telephone connection. Therefore, according to him, the said citation cannot be applied to the present case. He contended that the petitioner took up the complaint regarding excessive billing 10 days after the date of receipt of the November 2003 bill, and therefore, there is delay and afterthought. He further contended that except for few numbers of Arabic countries, the petitioner has not explained about the S.T.D calls and I.S.D calls

made during out of office hours. It is the submission of the learned C.G.S.C. that the circular dated 9/4/1986 is of the time when PRI system and EPABX were not in use and that the guidelines therein pertain to single line telephone facilities and, therefore, the same is not applicable. He sought to rely upon the guidelines issued by BSNL which are dated 19/10/2005. He contended that only if the fault is with the Exchange equipment, then rebate can be given if there is sudden spurt and otherwise not. Shri Amonkar, the learned C.G.S.C. has relied upon "Department of Telecommunications V. Gujarat Cooperative Milk Marketing Federation Ltd." (2010 AIR SCW 5961). The learned C.G.S.C. has urged that no fault can be found with the award of the arbitrator and hence the petition is liable to be dismissed.

12. We have gone through the entire material on record in the light of the arguments advance by the learned counsel for the parties and in the light of the citations relied upon by them.

13. There is no dispute that the Arbitrator's Award u/s 7B(2) of the Act is treated as final and the only remedy to challenge the same is a writ petition. In this regard the learned Senior Counsel for the petitioner has relied upon "B. Narayan Vs. General Manager, Bangalore Telephones and ors." (AIR 1998 Karnataka 278), wherein it has been held that no statutory remedy is provided against the award of the Arbitrator u/s 7B and the only remedy remaining to challenge it is writ petition.

14. The observations on the scope of interference in writ jurisdiction in regard to Arbitral awards u/s 7B of the Act, as considered by the Apex Court in M.L. Jaggi Vs. Mahanagar Telephones Nigam Ltd. and others, , have been incorporated by the Apex Court in paragraph 8 of the case of "Gujarat Co.operative Milk Marketing Federation Ltd.", (supra) as under:

It is seen that u/s 7B, the award is conclusive when the citizen complains that he was not correctly put to bill for the calls he had made and disputes the demand for payment. The statutory remedy open to him is one provided u/s 7B of the Act. By necessary implications, when the Arbitrator decides the dispute u/s 7B, he is enjoined to give reasons in support of his decision since it is final and cannot be questioned in a court of law. The only obvious remedy available to the aggrieved person against the award is judicial review under Article 226 of the Constitution. If the reasons are not given, it would be difficult for the High Court to adjudge as to under what circumstances the Arbitrator came to his conclusion that the amount demanded by the Department is correct or the amount disputed by the citizen is unjustified. The reason would indicate as to how the mind of the Arbitrator was applied to the dispute and how he arrived at the decision. The High Court, though, does not act in exercising judicial review as a Court of appeal but within narrow limits of judicial review, it would consider the correctness and legality of the award. No doubt, as rightly pointed out by Mr. V. R. Reddy, Additional Solicitor General, the questions are technical matters. But nonetheless, the reasons in support of his conclusion should be given.

15. In paragraph 2 of the impugned award, the learned Arbitrator has held thus:

This PRI line was provided by BSNL from Margao EWSD exchange and built up to the complainant premises on Optical Fiber Cable (OFC) via Verna Exchange. The telephone signals when transmitted on OFC line is first converted and coded into optical form and again in the customer premises it is converted into original voice form. This type of line is totally different from ordinary telephone line on copper pair where tapping/diversion/parallel of line is feasible en-route. However, diversion/tapping/ parallel of lines built on OFC is not feasible and in the present case ruled out. Even if someone tries to tap the OFC line then no calls can be made or listened from the tapping point. Moreover an alarm will be raised to the exchange informing that the line is not working. Hence, allegation of complainant for tapping of line en-route is not proved.

Relying mainly on this finding of the learned Arbitrator, in paragraph 2 of the award, the learned C.G.S.C. has contented that the tapping of the line of the petitioner is not possible. However, the above findings of the Arbitrator, on the PRI line and its working, are without any evidence on record and are based on his personal knowledge. In the parawise reply filed by the respondent before the Arbitrator, the above is not stated.

16. In paragraph 5 of the award, the learned Arbitrator has observed that from the calling pattern it is worth to mention that at/around the same time bonafide/genuine calls and non-bonafide calls of complainant(petitioner) were originated and if lines were diverted then a fixed pattern of non-bonafide calls would have been recorded. According to the Arbitrator, therefore, this confirms that there was no tapping of the line en-route. In paragraph 8, the learned Arbitrator has observed that the EPABX of the petitioner might have been used by some miscreants in connivance with some employee or supplier of EPABX, who are having knowledge of software changes required to enable DISA/DOSA. It is pertinent to note that the Arbitrator therefore was satisfied that there were some non-bonafide calls. The learned Arbitrator ought to have asked the parties to separate the bonafide calls admitted by the petitioner from the non-bonafide calls and ought to have asked the petitioner to pay for the bonafide calls and he should have seen whether the Department had conducted proper investigation regarding the non-bonafide calls. The learned Arbitrator does not appear to have done this exercise.

17. In paragraphs 9 and 10 of the impugned award, the learned Arbitrator has observed thus:

9. The bill for the month of November-03 was issued by BSNL on 14/12/2003 and reached to the complainant on 19/12/2003. If this could have been issued earlier, then non-bonafide calls could have been minimized. Moreover, the bill was issued in a very routine manner. During the generation of bill itself such heavy amount bill should have been detected and verified. Based on the observation from the exchange, customer could have been alerted immediately

by respondent. This is the highest amount of bill raised by BSNL Goa so far, still sensitivity had not been shown by respondent before the dispatch of bill.

10. BSNL is having computerization at large particularly for billing; hence early issue of bills for few PRI lines is possible. In the exchange fortnightly meter reading was taken, but not used effectively to alert customer for heavy uses of his line. Although it is legally not binding, but as pleaded by complainant BSNL internal order necessitates this. Respondent should Have telephonically informed to complainant and number should have been put under incoming and outgoing observations. As incoming observations would have been useful to trace the real beneficiary of the disputed calls.

18. Again in paragraph 12 the learned Arbitrator has stated as follows:

The detail bill (itemized) for the period of dispute was not provided by BSNL although charges for this was billed by respondent. When respondent was aware of technical problem in giving itemized bill then Respondent should not levy a charge for this service and could have informed the customer in advance. However, malafide intention of respondent for delay in giving the detail bill was not proved. It is only due to negligence on the part of respondent.

19. From the above paragraphs of the award, it can be understood that though the learned Arbitrator has found serious lapses on the part of the respondent, however, he has tried to explain those lapses by calling them as only negligence.

20. The respondent has not produced on record the alleged BSNL internal order which necessitates taking fortnightly meter reading, as referred to in paragraph 10 of the award. If such an internal order was produced by the respondent, the Court could have had information as to what are the other guidelines in the said internal order.

21. The contention of learned C.G.S.C. is that the judgment in "Saji Geevaghese" should not be relied upon as the same pertains to a single line telephone connection. However, a perusal of the judgment in "Gujarat Cooperative Milk Marketing Federation Ltd." relied upon by the learned C.G.S.C. shows that this also pertains to a single line telephone number.

22. In the case of "Saji Geevarghese" (supra), reference has been made to the circular dated 9/4/1986. The learned C.G.S.C. has alleged that the said circular is not applicable to ISDN-PRI - EPABX system and has relied upon some new guidelines which are dated 19/10/2005. As has been rightly contended by the learned Senior Counsel for the petitioner, the petitioner has been availing the facilities of ISDN PRI from the year 2003 and the disputed bills are also of the year 2003 and the impugned award is dated 11.02.2005. In such circumstances, the guidelines which are dated 19/10/2005 cannot at all be made applicable to the present case. It is not the case of the respondent that after 9/4/1986 any further circular was issued till 19/10/2005. It is mentioned in these revised guidelines dated 19/10/2005 that most of the procedures prescribed in the

existing instructions issued under No. 4-59/85-TR dated 09/04/1986 dealing with the Excess Metering Complaints, framed in an era of strowger and cross bar exchanges have become obsolete. This means that prior to the revised guidelines dated 19/10/2005, the only instructions which were in existence were by way of the said circular dated 09/04/1986.

23. In the case of "Saji Geevarghese " (supra), the Hon"ble Apex Court had directed the Department to produce the departmental guidelines for disposing excess billing complaints. Initially, the Department had produced before the Supreme Court the current guidelines dated 19/10/2005. The Apex Court, however, directed the respondents to produce the guidelines in force during the disputed billing period (1994- 1995) and in response to that the Department produced the circular dated 9/4/1986. The relevant provisions from the said circular dated 9/4/1986, as extracted by the Apex Court, are as follows:

4. Avoiding excess billing complaints

4.1. In general, excess billing complaints arise from telephones having STD facility. They arise because of:

(a) the subscriber, his family, friends and employees having used STD and not being conscious of the extent to which they have used it, or

(b) a fault in the metering circuit, or some transient fault in the system; and

(c) possible deliberate mischief by other subscribers in league with our staff.

4.3. We have to be vigilant about 4.1(b) and ensure that as far as possible, metering circuits are tested and kept in proper order.

4.4. In regard to 4.1(c) we must ensure that all possible points at which such mischief can take place are suitably guarded. DPs must be looked, access to unauthorised persons to sensitive areas in the exchange should be avoided and in case of any suspicion about a particular member of the staff, suitable action must be taken.

5. Advance action in case of a possibility of an excess billing complaint.

5.1. Detailed instructions have been issued separately in regard to watching the meter readings of various subscribers and action to be taken on them.

5.2. These broadly consist of

(a) meter readings being taken every fortnight;

(b) identifying all subscribers whose current fortnightly readings show a sudden spurt; and

(c) in case of such sudden spurts being noticed, placing the telephone line on observation and deputing responsible staff to the subscriber's premises to check up that there has been no special occasion which might have given rise to such

spurts.

5.3. In order to establish the Department's credibility and to satisfactorily investigate complaints about excess billing it is necessary that these steps are taken conscientiously. It appears that in many stations, while meter readings are being taken regularly every fortnight, the difference is not being struck and all cases of spurts are not being brought out.

5.4. In all cases, the meter reading registers must provide for the difference being noted. Somebody should be held personally responsible to identify and report all cases of spurts to the officer-in-charge. Failure in this regard must be taken notice of. If an excess billing complaint reveals a spurt, which had not been reported, suitable educational and disciplinary notice should be taken of the staff concerned.

5.5. As far as possible all telephone lines showing a sudden spurt should be put on observation. For this purpose immediate steps must be

taken to provide suitable observation equipment in all exchanges having STD facilities, so that once a spurt is noted, the line is actually put on observation.

6. Investigation of an excess billing complaint.

6.5. In this connection, it has been decided that no field investigation is called for to determine whether there was any occasion for a special spurt after a complaint has been received. This should have been made, if justified, immediately after the spurt was noticed in the fortnightly readings. It has been noticed that no useful purpose is served by undertaking such investigations after an excess billing complaint has been received.

7. Guidelines for decision and conveying the same:

7.1. In all cases in which the investigations reveal that:

(a) there has been significant spurt in a particular period;

(b) in case of a spurt, there had been some special occasion which might have given rise to a genuine spurt; and

(c) the observations indicate genuine STD calls having been made from the subscriber's number, no rebate may be granted and the complainant may be suitably informed with due courtesy explaining briefly the investigations carried out and the results thereof.

7.2 On the other hand, if it is found that there had been, in fact, a spurt for reasons unknown or there is a reasonable doubt as to the possible faults on the metering circuit or the subscriber's equipment or a reasonable doubt exists about the possibility of some mischief, the competent officer may grant suitable rebate.

24. The Apex Court, in the case of "Saji Geevarghese (supra) has observed that

what becomes apparent from the guidelines, is the obligation on the part of the Department to record the meter reading fortnightly and if there is a sudden spurt, place the telephone line under observation and depute responsible staff to check whether there was any special reason giving rise to the spurts. The Hon"ble Supreme Court has further observed that the reason for the above is apparent. Only contemporaneous investigation and checking can disclose the real reason for the spurt. Any amount of subsequent monitoring may not be of any use to identify the real cause for the spurt (unless the cause is faulty meter/ system and that fault had continued). In the present case, admittedly, the above guidelines were not followed by the respondent. No contemporaneous investigation was carried out. The learned Arbitrator has not at all considered this important aspect.

25. The bill for the period from 1/11/03 to 30/11/03 was received by the petitioner on 14/12/03. By letter dated 29/12/03, the petitioner informed the respondent about the said exorbitant bill and asked the respondent to complete the investigation. Again by letter dated 7/1/2004, the petitioner informed the respondent about the negligence on the part of the respondent in not intimating the petitioner when the bill exceeded rupees one lakh. The petitioner informed the respondent about its own investigation carried out and about the result of the same. By reply dated 27/1/04, the respondent blamed the petitioner and stated that this matter is to be investigated by the petitioner. By letter dated 15/3/2004, the C.E.O. of Constant Security Services informed the petitioner that a possibility of the miscreants changing the modus operandi and instead of taking lines in fictitious name they may be directly tapping lines of Industries and that this can be comfortably done with the connivance of some officials who may be keeping the miscreants informed about the status of Industrial telephone line. The C.E.O. has further informed the petitioner that the new General Manager Telephones has ordered immediate investigation/inquiry and that the DE Vigilance is personally conducting further investigation. The Siemens have informed the petitioner that upon checking the system it was found that the DISA/DOSA have not been activated ever through which external outgoing calls can be initiated from any telephone line outside Colorcon. The Siemens requested the petitioner to lodge a protest with BSNL for further investigations.

26. By letter dated 4/1/2005, the petitioner informed the respondent that investigation was done by calling the ISD numbers frequently appearing on the itemized bill of November 2003 and during inquiry on number 009745224359, the caller revealed his residence number i.e. 2518421 in Vasco Goa and on calling at his residence, it was found that they call 009745224359 from the STD Booth No. 231914/2531832. The petitioner informed the respondent that further inquiry with other numbers revealed that the calls were mostly made from Kantye Baina area in Vasco and STD Booth number 2510039. The petitioner requested the respondent to investigate further on the matter in the light of the above. In spite of all the said requests made by the petitioner, it does not appear that the Department has properly investigated the matter. It does not appear

that the telephone connection of the petitioner was kept under observations. It is seen that nothing has been done by the Department in compliance with the guidelines contained in the Circular dated 9/4/1986. In the case of "Madhav Vinayak Rajwade" (supra), it has been held that where investigation is made pursuant to a complaint made by a subscriber, it is necessary that a reasoned order be served on the subscriber to have an opportunity to consider any steps required to be taken. It is further observed in the case supra that in paragraph 434A of the Posts and Telegraphs Manual, Volume XIV, an appeal having been provided from the order passed on the investigation made by the department, it is necessary that such order should be a reasoned order. The Apex Court has further held that on specific complaint having being made by the subscriber, the department has to investigate if the meter is correctly registering the calls or not or reasons for excess calls being registered. When the subscriber makes complaint regarding excess calls metered and demands investigation and when the Department merely puts the telephone under observation, but does not show the observation report to subscriber nor calls for any explanation, the subscriber could not be held liable for all calls recorded in the circumstances. It has been held that in such a case, the subscriber shall directly be charged on an average for previous six bi-monthly period. In the said case also, the Hon'ble Apex Court has relied upon Clause 4 of the circular dated 9/4/1986.

27. Though the said circular provides that meter readings should be taken every fortnight and all the subscribers whose current fortnightly readings show a sudden spurt should be identified and in case of such sudden spurt being noticed, such telephone line should be placed on observation and responsible officer should be deputed to the subscriber's premises to check up that there has been no special occasion which might have given rise to such spurts, however, such care has not been taken by the respondent at all. The petitioner had in fact opted for itemized bill but was not supplied with the itemized bills, though charged for the same. According to the learned Arbitrator, the calls made were too excessive and do not appear to be bonafide calls of the complainant (petitioner), as per the calls history and reputation of the petitioner. He has further observed that though the amount of the November bill is the highest amount of bill raised by BSNL Goa so far, however, sensitivity had not been shown by the respondent before dispatch of the bill.

28. It is seen that the learned Arbitrator has not taken into consideration the said circular dated 9/4/1986. In our considered view, the learned Arbitrator has not decided the matter in accordance with the settled principles of law. There is nothing to adjudge as to under what circumstances the Arbitrator came to the conclusion that the huge amount demanded by the respondent and disputed by the petitioner is justified. We are of the view that the matter should be remanded to the Arbitrator to decide about the disputed calls afresh. In the result, the petition is partly allowed. The impugned award dated 11/2/2005 is quashed and set aside. The case is remanded to the Arbitrator to decide about the disputed bills afresh, in the light of the observations made above. The amount of Rs.

16,93,124/- (Sixteen lakhs ninety three thousand one hundred twenty four only) already paid by the petitioner to the respondent shall be subject to the decision of the Arbitrator. The Arbitrator shall decide the matter within a period of ninety days from the date of receipt of this order. Rule made absolute accordingly, with no order as to costs.