
(1998) 08 MAD CK 0042

In the Madras High Court

Case No : W.A. No. 1616 of 1997 and C.M.P. No. 18269 of 1997

General Manager, Madras Telephones and Another

APPELLANT

Vs

Dr. Mrs. Irfana Hameed

RESPONDENT

Date of Decision : 13-08-1998

Acts Referred:

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

Citation : AIR 1999 Mad 228

Hon'ble Judges : M.S. Liberian, C.J;E. Padmanabhan, J

Bench : Division Bench

Advocate : S. Sethuraman, Addl. Central Govt. Standing, for the Appellant;
Zaffarullan Khan, for the Respondent

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—The appellants, The Madras Telephones, being aggrieved by the order passed by the learned single Judge on 15-10-

1997 in W. P. No. 11464 of 1994 has preferred the present writ appeal. For convenience, the parties to this appeal will be referred as arrayed in

the writ petition.

2. Heard Mr. S. Sethuramari, Additional Central Government Standing Counsel for the appellants and Mr. Zafarullah Khan for the respondent.

3. The writ petitioner had file W.P. No. 11464 of 1994 praying for the issue of writ of certiorari calling for the records, from the respondent in

connection with the impugned letter No. RD/XVIII/RA2/MMC/1, dated 31-5-1994 and quash the same. Originally, the petitioner was the

subscriber of the Telephone No. 3262499 which was since been changed to 8253821. The writ petitioner is an medical practitioner. Before

proceeding further, it is essential to set out the very letter of demand, which necessitated the writ petitioner to invoke the jurisdiction of this Court

under Article 226 of the Constitution.

Sub : Suspected Beneficiary of M. M. C. Case Bill D/- 07-10-1990 and 07-12-90 in respect of Tel. No. 8262499 -- (New No. 8253821) --

Reg.

On investigation of Excess metering complaint of Tel. No. 864808, it is found that you had used the above telephone line for STD calls as detailed

below.

Till. Dt. No. of calls made by using the Tele. line Diff. of L.C.C. to be paid

07-10-90 77416 S. Nos. 864808 862490 Rs. 83,697

07-12-90 129712 865798 863217477258 Rs. 1,41,423

You are therefore, requested to pay the difference of Local Call charges shown in the last column amounting to Rs. 2,25,120/- on or before 30-6-

1994 and produce the paid receipt to Accounts-Officer-TR (Central-11), Madras Telephones, 1st Floor, 146, Greams Road, Madras-6, to avoid

disconnection of your telephone.

4. It is the specific case of the petitioner that the impugned communication dated 31-5-1994 suffers with error apparent on the face of the record

and it proceeds as if the petitioner had used number of other telephone and on that score in all Rs. 2,25,120/- is due and sought to be recovered

from the writ petitioner.

5. According to the petitioner her regular bimonthly bills were less than Rs. 10,000/- and the writ petitioner had no occasion to make STD calls

using Telephone Nos. 864808; 863217; 865798; 862490 and 477250.

6. It is the grievance of the petitioner that no details have been furnished by the respondent nor given an opportunity to state the objections, nor the

respondents have taken into consideration the objections raised by the writ petitioner.

7. According to the petitioner, there was some delay in payment of the bill by her, which resulted in disconnection of Telephone No. 8262499 on

9-1-1991 and the same was reconnected only during April, 1993. Even after April, 1993, the Telephone Bill was in the order of Rs. 3,000/- or

there about and there was no reason at all to demand Rs. 2,25,120/- being the

difference of local call and STD charges. The petitioner had not used the various telephone numbers mentioned in the impugned communication and hence the writ petition to quash the said impugned communication.

8. The respondents, though they have been served and entered appearance through their Advocate, have not chosen to file their counter till the final disposal of the writ petition.

9. The learned single Judge by order dated 15-10-1997 allowed the writ petition, quashed the impugned communication and also held that the petitioner is liable to pay Rs. 15,000/- only for the periods 7-10-90 to 7-12-1990 and the writ petitioner was directed to pay the said sum of Rs.

15,000/- within 60 days from the date of receipt of the order copy. The learned Judge had proceeded on the basis that the telephone has been

installed in a residential premises and as it has not been located in a factory or an industry, had taken the view that the impugned demand is

excessive and that the Bill has not been arrived at on the basis of real reading and hence the writ petitioner is not liable to pay the entire amount

demand in the impugned communication. Being aggrieved by the said order, the respondent have preferred this writ appeal.

10. The learned Additional Central Government Standing Counsel contended that the statutory provisions contained in Section 78 of the Indian

Telegraph Act, 1885 should have been directed to be resorted to by issuing directions to the Central Government to refer the dispute for arbitration

and in exercise of jurisdiction under Article 226, there can be no interference with the impugned demand.

11. Per contra, Mr. Zafarullah Khan, the learned counsel for the writ petitioner contended that ex facie the impugned communication dated 31-5-

1994 is illegal, arbitrary and suffer with error apparent on the face of the record as the petitioner had never used any of the five telephone numbers

set out in the impugned letter and that there is no requirement to refer the matter of arbitration.

12. On a consideration of the order passed by the learned single Judge, we are unable to accept the view taken by the learned Judge as the

jurisdiction under Article 226 in respect of the disputed question effects is rather too limited and it cannot be restored to. Further, when the

statutory provisions of the Indian Telegraph Act provides for an arbitration, the remedy of the writ petitioner is to raise a dispute and such a dispute

has to be adjudicated by the Arbitrator in terms of Section 7-B of the Indian Telegraph Act.

13. The impugned communication ex facie would show that the writ petitioner is sought to be fastened with liability in respect of the telephone

connections with respect to which the writ petitioner had no connection and no occasion to use. The impugned communication ex facie deserves to

be explained by the respondents. The respondents also have not chosen to file a counter-affidavit to sustain the demand. However, on that score

this Court will not be justified in deciding the disputed questions with respect to the billing of the telephone connection's in exercise of writ

jurisdiction.

14. The question which is raised by the learned counsel for the respondents is no longer res integra and on various occasions, this Court had

directed the Central Government to refer the dispute to an Arbitrator in terms of Section 7-B of the Indian Telegraph Act, 1885. Section 7-B of

the Act reads thus :--

7B. Arbitration of Disputes.--(1) Except as otherwise expressly provided in this Act, if any dispute concerning any telephone line, appliance or

apparatus arises between the telephone 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.

15. In *M/s. P.T. Bell and Co., Madras Vs. The Union of India and others*, ; *P.T. Bell and Co. v. The Union of India* and in 1994 Wri LR 629;

Vellore D. Narayanan v. The General Manager, Madras Telephones, this Court has taken the consistent view that the writ petition is not

maintainable and the relationship between the Telephone Department and the subscriber being contractual and in case of dispute as to billing, the

subscriber should seek for an arbitration and such a dispute with respect to excess billing or any other dispute requires to be decided by arbitration

as provided in the Indian Telegraph Act, 1885.

16. The said consistent view is being followed by this Court in various other cases and it is admitted by the Counsel for the respondent that this

Court has been issuing directions to the respondent to refer the dispute for an arbitration while passing interim directions with respect to the

continuance of telephone connections subject to certain terms or condition that will be imposed by this Court depending upon the individual case.

17. The learned counsel for the writ petitioner has also relied very much upon the very impugned communication and contended that on the face of

the impugned communication, this Court should quash the communication and the petitioner need not be referred to arbitration. However, we are

unable to accept the request of the learned counsel for the writ petitioner, as, it is essential to follow the procedure prescribed in this respect. We

are also inclined to follow the consistent view taken by the various learned Judges of this Court.

18. That apart, in *M.L. Jaggi Vs. Mahanagar Telephones Nigam Ltd. and others*, , their Lordships of the Supreme Court while reiterating the

requirement to refer the dispute to an arbitrator appointed u/s 78 of the Indian Telephone Act, which is a statutory remedy open to a subscriber

and the arbitrator has to assign reasons, in support of the award, held thus at page 2478 (of AIR) :--

It is a statutory remedy provided under the Act and, therefore, in a dispute as regards the amount claimed in the demand raised, the only remedy

provided is by way of arbitration u/s 7-B of the Act. By operation of Subsection (2) thereof, the award of the arbitrator made under Sub-section

(1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court.

19. In *Telecom District Manager, Goa and others Vs. V.S. Dempo and Co., and others*, , while considering the scope of Section 7-B of the

Indian Telephone Act, their Lordships of the Supreme Court held thus (Para 3) of AIR :--

A reading thereof would indicate that if any dispute concerning any telegraph line, appliance or apparatus arises between the telephone authority

and the person for whose benefit the line, appliance or apparatus is, or has been provided, the dispute shall be determined by an arbitrator, such

determination shall be referred to an arbitrator appointed by the Central Government either specifically for the determination of the dispute or

generally for the determination of the dispute under this section. The award of the arbitrator shall be conclusive between the parties to the dispute

and its correctness is prohibited from being question in a Court of law. It would, otherwise, be clear that any dispute regarding the billing of the

meter and the liability on a subscriber thereon when its correctness is disputed, should be referred to the arbitrator by the Central Government. The

arbitrator's award shall be final. In a recent judgment considering the provisions of the Act, this Court has explained that when the arbitrator's

award is final, it would be subject, to only judicial review. The judicial review by the High Court or this Court would be possible only when the

arbitrator gives reasons in support of the conclusions he reaches, be it technical or on factual basis. The Administrative Instructions issued by the

Union of India that the dispute shall be referred only when there is a reference by the Court is obviously in defiance of the language used in Section

7-B. The power to refer the dispute has been given by Parliament only with a view to see that the authority acts within reasonable limits and that

when the subscriber disputes the correctness of the meter reading or operation of the apparatus etc., instead of litigating the dispute in a Civil

Court, it should be decided by the Arbitrator u/s 7-B. Obviously, pending proceedings the Act intended to operate without undue delay to secure

public revenue and also flow of electrical operation envisaged under the Act. Under those circumstances, we are of the view that the Court is right

in directing that the authority under the Act is enjoined to make reference u/s 7-B without any direction by the Court and if need be it is for the

subscriber to approach the Court.

20. In the light of the above two pronouncements of the Apex Court and the earlier views taken by this Court, this writ appeal deserves to be

allowed and the order passed by the learned single Judge, which we are unable to approve, has to be set aside. We are unable to comprehend as

to how the learned single Judge has arrived at the figure of Rs. 15,000/- and directing the subscriber to pay the said sum in lieu of the demand of

Rs. 2,25,120/- which is the demand made by the respondents in terms of the impugned communication.

21. Sitting in writ jurisdiction under Article 226, it is not open to this Court to strike the impugned demand on mere assumptions and moreso, when

a statutory remedy has been provided in Section 7-B of the Indian Telegraph Act. Even if the impugned communication suffers with error apparent

on the face of the record and even if the demand is viewed as one made without application of mind or without reference to record, it would not

only be proper but also the prerequisite of law that the party should be referred to arbitration as provided in Section 7-B of the Act.

22. In the circumstances, the order passed by the learned single Judge is set aside and the following directions are issued :--

(i) The appellant, Union of India shall refer the dispute to an Arbitrator u/s 7-B of the Indian Telegraph Act within eight weeks from today, and the

arbitrator shall adjudicate the dispute raised by the writ petitioner after affording sufficient opportunity to either side and record reasons in support

of the award that may be passed by the Arbitrator;

(ii) The writ petitioner shall pay a sum of Rs. 10,000/- less the amount if any already paid towards the demand, within eight weeks from today and

the writ petitioner's telephone connection shall not be disconnected for the balance amount demanded in the impugned communication and the

writ petitioner will not be liable to pay any further amount till the Arbitrator passes an award and it is open to the Appellants to take appropriate

action depending upon the ultimate order passed by the Arbitrator.

23. The writ appeal is allowed and the writ petition is ordered in the above terms. No costs. Consequently, C.M.P. No. 18269 of 1997 is

dismissed.