
(2012) 06 GAU CK 0145
In the Gauhati High Court
Case No : Writ Petition (C) No. 429 of 2011

G.M. Telecommunication, BSNL, Agartala and others	APPELLANT
Vs	
Swapan Kumar Bhattacharyya	RESPONDENT

Date of Decision : 22-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Consumer Protection Act, 1986 — Section 12, 15, 19
Telegraph Act, 1885 — Section 7B

Citation : AIR 2012 Guw 156

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : P.K. Biswas, ASG, for the Appellant;

Final Decision : Allowed

Judgement

I.A. Ansari, J.—This writ petition, made under Article 226 of the Constitution of India, puts to challenge the order, dated 23-08-2011, passed by the learned State Consumer Dispute Redressal Commission (in short, "the State Consumer Commission"), Tripura, in Appeal No. FA 24 of 2011, whereby by the learned Commission has directed the petitioners to pay to the respondent herein Rs. 25,000/- as compensation, with further direction that the respondent's telephone connection be restored within a period of 15 days. With the directions, so issued, the State Consumer Commission allowed the appeal, with cost of Rs. 5,000/- cost being payable to the Legal Aid Account of the Commission. I have heard Mr. P.K. Biswas, learned Senior Assistant Solicitor General, for the petitioners, and the respondent, Mr. Swapan Kumar Bhattacharyya, who has appeared in person.

2. The writ petition has been resisted, at its threshold, by the respondent on the ground that the writ petition is not maintainable inasmuch as remedy, in the form of appeal to the National Commission is available, in terms of Section 19 of the Consumer Protection Act, 1986 (in short, "the CP Act"), to a person, who is

aggrieved by the order of the State Consumer Commission.

3. Resisting the objection, so raised by the respondent, it has been pointed out, on behalf of the petitioners, that in the case at hand, the District Consumer Disputes Redressal Forum (in short, "District Forum") had no jurisdiction to entertain the "complaint", which the respondents had instituted. Consequently, according to the writ petitioners, neither the District Forum nor the State Consumer Commission had the jurisdiction to entertain the complaint or the power to give reliefs, which have been granted to the respondent. As the actions of the District Forum as well as the State Consumer Commission are without jurisdiction, Mr. Biswas, learned Assistant Solicitor General, contends that the State Consumer Commission's direction, which stand impugned in the present writ petition, giving some reliefs to the respondent, are not sustainable in law.

4. Before determining the question as to whether the present writ petition is maintainable or not, imperative it is to note that this Court has to, first, decide if a proceeding, in terms of the provisions of the CP Act, was maintainable in the context of the facts of the present case. This, in turn, necessarily, involves ascertainment of facts, which gave rise to the orders, which stand impugned in the present writ petition.

5. The respondent herein is a subscriber of telephone under the Bharat Sanchar Nigam Limited (in short, "BSNL") and, on the ground, inter alia, that the telephone of the respondent had frequently been out of order/ service and, thus, remained virtually disconnected despite repeated requests, made by the respondent, as consumer, to the appropriate authority, seeking smooth functioning of his telephone. The respondent, alleging deficiency in service, made a complaint, purportedly under the CP Act to the learned District Forum, seeking remedy of his grievances. Based on this application, Case No. CC 3 of 2007 came to be registered, u/s 12 of the CP Act, by the District Forum.

6. The learned District Forum disposed of the complaint by order, dated 11-05-2011, holding that the disputed bills were illegal and void and that the present petitioner, BSNL, shall raise average bill for the period of the disputed bills consistent with other previous bills, which had been raised during different months of the year 2006. Aggrieved by the fact that the reliefs, so granted by the learned District Forum, were wholly inadequate the respondent herein, as complainant, preferred an appeal in terms of Section 15 of the CP Act. The learned State Forum, having considered the matter, issued the directions, which we have already indicated above.

7. Agitating that not only the complaint, which had been made u/s 12, but also the appeal, which had been made u/s 15 of the CP Act, were misconceived inasmuch as neither the District Forum nor the State Forum had the jurisdiction to entertain the complaint, in question, and grant any relief, it has been pointed out, on behalf of the writ petitioners, that u/s 7B of the Indian Telegraph Act, 1885, disputes, in respect of telephone appliances, etc., are required to be

referred to, and decided by, Arbitrator to be appointed by the Central Government either specifically for determination of a given dispute or, generally, for determination of disputes and, hence, the dispute, in the present case being covered by Section 7B, the said dispute was not amenable to the jurisdiction of District Forum u/s 12 of the CP Act. This apart, even the appeal, which had been made, u/s 15 of the CP Act in the State Consumer Commission is not maintainable and the remedy of the respondent lied, if he had any grievances in respect of the functioning of the said telephone, in seeking appointment of Arbitrator and resolution of the dispute, if any, in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

8. Resisting the contentions raised on behalf of the petitioners, the respondent herein has submitted that the service, which had been offered by the present petitioners, suffered from serious deficiencies and, hence, remedy, under Consumer Protection Act, 1986, was available and the respondent, as consumer, has rightly taken recourse to the provisions of the CP Act for remedy of his grievances.

9. While considering the rival submissions, it may be noted that Section 7B of the Indian Telegraph Act, 1885, reads as under.

S. 7B Arbitration of Disputes :--

(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 or whose benefit the line, appliance or apparatus is, or has been provided, the dispute shall be determined by arbitration and shall, for the purpose of such determination, be referred to an arbitrator appointed by the Central Government either specifically 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.

10. Close on the heels of Section 7B, Rule 413 of the Telegraph Rules provides that all services, relating to telephone, are subject to Telegraph Rules. A telephone connection can be disconnected by the Telegraph Authority for default of payment under Rule 443 of the Rules.

11. A bare reading of Section 7B clearly shows that the dispute, with regard to functioning of a telephone, is a dispute referable to arbitration. Consequently, deficiency in service, in respect of telephone, would, if arises out of functioning of telephone, lie in an arbitration proceeding. Logically, therefore, in respect of non-functioning of telephone or for excessive billing, the remedy would lie in seeking arbitration and not in making complaint u/s 12 of the CP Act.

12. The above position of law has been clarified by the Supreme Court, in Civil Appeal No. 7687 of 2004, decided on 01-09-2009 : General Manager, Telecom

Vs. M. Krishnan and Another, , wherein the Supreme Court has laid down, in no uncertain words that a case, arising out of disconnection of telephone and/or deficient functioning of telephone, is referable to arbitration in terms of Section 7B and, hence, the District Forum has no jurisdiction to entertain a complaint in such a case. The relevant observations appearing in General Manager, Telecom Vs. M. Krishnan and Another, , read as under :

In our opinion when there is a special remedy provided in Section 7B of the Indian Telegraph Act regarding disputes in respect of telephone bills, then the remedy under the Consumer Protection Act is by implication barred. Section 7B of the Telegraph Act reads as under :

S. 7B Arbitration of Disputes :--

(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 or whose benefit the line, appliance or apparatus is, or has been provided, the dispute shall be determined by arbitration and shall, for the purpose of such determination, be referred to an arbitrator appointed by the Central Government either specifically 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.

Rule 413 of the Telegraph Rules provides that all services relating to telephone are subject to Telegraph Rules. A telephone connection can be disconnected by the Telegraph Authority for default of payment under Rule 443 of the Rules.

It is well settled that the special law overrides the general law. Hence, in our opinion the High Court was not correct in its approach.

In Chairman, thiruvalluvar Transport Corporation Vs. Consumer Protection Council, it was held that the National Commission has no jurisdiction to adjudicate upon claims for compensation arising out of motor vehicles accidents. We agree with the view taken in the aforesaid judgment.

In view of the above, we allow this appeal, set aside the impugned judgment and order of the High Court as well as the order of the District Consumer Forum dated 26-11-2001.

13. Because of what have been discussed and pointed out above, there is no escape from the conclusion that, in the case at hand, the learned District Forum as well as the State Consumer Commission acted without jurisdiction in issuing the directions against the present petitioners and the mere fact that the present petitioners had complied with the directions, which had been issued by the learned District Forum, cannot be taken to have conferred jurisdiction on the learned District Forum or the State Consumer Commission and as the learned

District Forum as well as the learned State Consumer Commission have acted, in the present case, without jurisdiction, there is no impediment, on the part of the petitioners, to impugn the orders passed by the learned State Consumer Commission by way of a writ petition, under Article 226 of the Constitution of India, and the remedy of appeal, which has been provided u/s 15 of the CP Act, to the National Commission, was not necessary to be taken recourse to, when the very jurisdiction of the District Forum and/or State Consumer Commission has been put to challenge and found to be legally correct and sustainable.

14. In the result and for the reasons discussed above, this writ petition succeeds and the impugned order, dated 23-08-2004, passed by the learned State Consumer Commission, is hereby set aside and quashed. In the facts of the present case, we, however, leave the parties to bear their respective costs.