

(1995) 07 GUJ CK 0034
In the Gujarat High Court
Case No : L.P.A. No. 399/95

Govindbhai Premjibhai Chovatia

APPELLANT

Vs

Chief General Manager, Gujarat Telecom Circle, Ahmedabad
and Others

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226
Telegraph Act, 1885 — Section 7B, 7B(1)

Citation : AIR 1996 Guj 153 : (1996) 1 GLR 413

Hon'ble Judges : B.N. Kirpal, C.J;H.L. Gokhale, J

Bench : Division Bench

Advocate : S.K. Patel, for Y.S. Lakhani, for the Appellant; Ketan Dave, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Kirpal, C.J.—The challenge in the writ petition, which has been dismissed by the learned single Judge and against the dismissal of which the present Letters Patent Appeal has been filed, is to the correctness of the demand raised by the Department of Telecommunications.

2. Briefly stated the facts are that the appellant was given a public booth, commonly known as S.T.D./P.C.O. Centre. When the Bill for the period from 1-4-1994 to 11-4-1994 was received, the appellant raised a complaint and according to the appellant, the demand which was made was very high. It was alleged that the representation of the appellant and other S.T.D./P.C.O. Centre holders was wrongly rejected by the authorities concerned.

3. Being aggrieved a writ petition, being Special Civil, Application No. 5399 of 1994 was filed in this Court, wherein the learned single Judge of this Court vide order dated 17th August, 1994, permitted the appellant to make representation and to produce the documentary evidence in support of his contentions.

According to the appellant, the daily collection sheets of the appellant showed the amount different from what was sought to be claimed by the department from the appellant. It is pertinent to note that the daily collection sheets are maintained by the appellant whereas, according to the respondents, the billing is done on the basis of the meter reading in the automatic electronic exchange, which has recently started operation from March, 1994. The learned single Judge by the said order dated 17th August, 1994 permitted the respondents to recover 25% of the amount claimed, but the current bills were to be paid by the appellant.

4. After granting the opportunity of hearing to the appellant, fresh decision was taken by the respondents on 31st December, 1994, rejecting the representation of the appellant. This gave rise to the filing of the second writ petition, being Special Civil Application No. 88 of 1995. In answer to the writ petition, affidavit-in-reply was filed by the respondents wherein it was stated that the automatic electronic exchange installed at Keshod town was not defective and the bill issued to the appellant-petitioner was not excessive. It was further alleged that there was an increase in the business of the appellant and that the complaint of the appellant was thoroughly investigated and it was found that there was no excessive billing at all. It was further contended that the question whether the automatic electronic exchange is defective or not could not be effectively adjudicated by the Court while entertaining petition under Article 226 of the Constitution of India.

5. The learned single Judge (Coram: J. M. Panchal, J.) by the impugned judgment dated June 30, 1995 dismissed the said Writ Petition. The learned single Judge took note of the facts stated in the Affidavit-in-reply to the effect that charging machines maintained by the appellant could be locally programmed and pulse rate could be changed by the licensee behind the back of the department and, therefore, the charging machines could not be treated as basis for billing purpose. The learned single Judge further held that the disputed question of fact, like the questions which were involved in the present case, could not be gone into in a petition under Article 226 of the Constitution of India. Further more, the High Court does not sit in appeal over the decision rendered by the Competent Authorities. The writ petition was therefore, dismissed.

6. In the present Appeal the aforesaid submissions have been reiterated. The learned Counsel for the appellant also relied upon the decision of the Allahabad High Court in the case of Raghubar Dayal Kanodia v. Union of India, AIR 1970 Allahabad 143, in support of his contention that the provisions of Section 7-B of the Indian Telegraph Act, 1885 (hereinafter referred to as the Act) are not applicable to the present case.

7. In our opinion, the judgment of the learned single Judge does not call for any interference. Firstly, the provisions of Section 7-B of the Act are clearly attracted to the facts of the present case. Section 7-B of the said Act reads as under:

"7-B. 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 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."

It is no doubt true that the learned Judge of the Allahabad High Court, in the case of Raghubar Dayal (*supra*), came to the conclusion that the said Section 7-B was not applicable, but the grievance in that case was not with regard to the alleged defect in the meter recording the number of the calls which have been made, but the grievance was that reading was not correctly recorded. It was with regard to this grievance that the learned Judge observed that Section 7-B of the said Act has no application.

8. In our opinion, Section 7-B of the Act has to be widely construed. Section 7-B, like any arbitration clause, provided that 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 would be determined by arbitration. A dispute with regard to the recording of the calls would necessarily fall within the ambit of Section 7-B of the said Act. In this connection we are fortified by the decisions of the different High Courts, which have held that the provisions of Section 7-B of the Act would be applicable. These decisions are reported at 1964 MPLJ 831; AIR 1982 Delhi 111; AIR 1977 Delhi 132; AIR 1977 Orissa 46; AIR 1981 Orissa 11; AIR 1980 Kerala 201.

9. The learned single Judge was therefore, right in coming to the conclusion that an adequate alternative remedy, under the Telegraphs Act by way of arbitration, was available. In fact, due to the existence of Section 7-B, even the jurisdiction of the Civil Courts u/s 9 of the Code of Civil Procedure, would be regarded as impliedly ousted. Therefore, even a civil suit challenging the correctness of the bills so raised would not be maintainable in a Civil Court. It is no doubt true that the interim order had been issued requiring the appellant-petitioner to pay only 25% of the bill to be paid. It is pertinent to note that now it has been held by a catena of decisions that the demand which has been raised by such tax authorities providing public facilities should not be lightly interfered with or stayed. The Court should rarely, if ever, interfere with the payment of the bills which are raised. Of course, if there is dispute with regard to the amount which is being demanded, that dispute has to be decided in accordance with law but

merely because a dispute is raised should be no ground to grant the stay of the demand. The proper exercise of the jurisdiction would be to see that the payment of the bill as demanded, is made and if the grievance is upheld in arbitration the excess amount paid can be adjusted in future bills and if need arises or the Court so determines, even the interest on the excess amount paid can be awarded. The public Corporations do not and cannot continue to function and provide the requisite services without due payments being made. Even the direction of providing bank guarantee in place of payment of tax is of no assistance because public Corporations cannot run merely on bank guarantees.

10. For the aforesaid reasons, we find no merit in this appeal and the same is accordingly dismissed. Interim orders granted by the learned single Judge are vacated.