

**(2013) 10 GUJ CK 0067**  
**In the Gujarat High Court**

**Case No :** Special Civil Application No. 6399 of 2002

Gujarat Sports

APPELLANT

Vs

Union of India

RESPONDENT

**Date of Decision :** 22-10-2013

**Acts Referred:**

**Citation :** (2013) 10 GUJ CK 0067

**Hon'ble Judges :** Rajesh H. Shukla, J

**Bench :** Single Bench

**Advocate :** Bomi H. Sethna, for the Petitioners No. 1, for the Appellant; Bharat S. Shah, for the Respondent(s) No. 1 and Ms. Alka R. Vyas, Advocates for the Respondent(s) No. 1, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

Rajesh H. Shukla, J.—The present petition has been filed by the petitioner under Articles 14, 19(1)(g), 21 and 226 of the Constitution of India for the prayer inter alia that appropriate writ, order or direction may be issued quashing and setting aside the issuance of bill dated 20.7.2001 for telephone connection No. 6304219 and also quash and set aside the impugned communication dated 2.7.2002 at Annexure-G and also restraining the Respondents from disconnecting the telephone connection on the grounds stated in the memo of petition in detail. Heard learned Counsel Shri Bomi H. Sethna for the petitioner. Learned Counsel Shri Sethna referred to the papers and submitted that the petitioner is having two telephone lines. He submitted that the petitioner is a registered partnership having shop for sale of sports articles. He submitted that an excess bill produced at Annexure-A has been received for telephone connection/line No. 6304219. Learned Counsel Shri Shethna submitted that it is with regard to the premises in the office situated in the complex as stated in the cause-title and the petitioner has been making payment of the dues regularly. However, the excess bill has been received and the petitioner is shocked and surprised to note that for the period from 1.5.2001 to 30.6.2001, 17162 STD calls are found to be made and

between 9.5.2001 to 11.5.2001 and from 11.5.2001 to 26.5.2001 many STD calls were found to be made after the close of the shop. He has also referred to the facts to emphasize that there is misuse and abuse of the telephone lines. He submitted that the telephone numbers, for which the calls are found to have been charged are party talk lines or sex calls which are not made by the petitioner and there is apparently a misuse with collaboration of the staff. He emphasized about the timings that no such calls could have been made from the shop at such hours. He submitted that the junction boxes are out in the open and not within the control and supervision of the consumer like the petitioner. He submitted that, therefore, the same could be misused with active collaboration of the lineman and the consumer like petitioner cannot be saddled with the liability to make the payment. He referred to the papers to submit that there can be such mistakes including the computerized mistakes. He has also referred to the call details produced at Annexure-D. He therefore submitted that the present petition may be allowed.

2. Learned Counsel Mr. Bharat S. Shah for the Respondent referred to the papers, including the affidavit in reply and submitted that as stated in detail, such petition is not maintainable as it involves disputed questions of facts. He further submitted that the petition also suffers from the vice of suppressio veri suggestio falsi as relevant facts are not disclosed. He submitted that whether there is misuse of the line or not, is a matter of appreciation of evidence, which could be examined with reference to the details and the material, including call details. Learned Counsel Mr. Shah therefore submitted that admittedly, the petitioner has not applied for dynamic lock facility though it is available. Further, it was submitted that pursuant to the application made by the petitioner, he was heard personally on 24.8.2001 and, as no case was made out, his representation has been rejected. Learned Counsel Mr. Shah also submitted that, from the record, which has been examined, it is observed that no fault in the telephone connection has been found in the fault history record and the telephone was in order and was working throughout. Learned Counsel Shri Shah submitted that the petitioner cannot shirk his responsibility by making allegations that the lineman was responsible for such calls without any justification. Learned Counsel Shri Shah also submitted that during personal hearing also, it has been apprised that the investigation reports are available and, at no point of time, it has been demanded by the petitioner, and therefore, it is too late now to make any grievance. Learned Counsel Shri Shah referred to the communication at Annexure-H and submitted that, as stated, fault history record has been also verified, and some of the calls were also made even during working hours. He therefore submitted that the present petition may not be entertained.

3. In view of this rival submissions, it is required to be considered whether the present petition can be entertained or not.

4. It is well accepted that the primary responsibility for payment of the bill/charges is on the consumer like the petitioner. Admittedly, the line was working

and in order. The call records produced at Annexure-D referred to the recording of the calls made from this line also. Further, the opportunity of hearing has been given to the petitioner and on the basis of the call history record, the bill has been issued, which cannot be questioned. Therefore, the allegations about misuse in connivance with, or tampered with the assistance of the lineman or the staff, cannot be accepted without any basic material to draw any such inference. Be that as it may, as rightly contended, the issues involved are disputed questions of facts, which can be examined on the basis of evidence by both the sides at the trial, where the petitioner also may have to be confronted with technical aspects of the call record or the fault history record, and the petitioner may also have the opportunity to establish about misuse of the line by somebody, which is beyond his control. However, as stated above, since, as a consumer, it is a primary responsibility of the petitioner to make the payment in respect of the calls made which cannot be avoided, and the petitioner, as a consumer is primarily responsible for the payment of the dues. At the same time, it will be open for the petitioner to avail appropriate remedy and when such remedy is availed of in the civil court, the same may be considered on its own merits. Therefore, only on the short ground that it requires a closer examination of the record and material, which is not permissible in exercise of discretion under Article 226 of the Constitution of India, the present petition deserves to be dismissed only on this ground with liberty as stated above reserved to the petitioner to take appropriate steps. It goes without saying that if any such proceedings are filed, the same shall be considered in accordance with law on merits. The present petition therefore deserves to be dismissed and accordingly stands dismissed. Interim relief, if any, shall stand vacated. However, it is clarified that pursuant to the order passed by this court (Coram: Ms. R.M. Doshit, J.) dated 31.3.2003, the disputed bills seems to have been paid by the petitioner, and therefore, there is no further direction required as prayed for in view of the discussions made herein above. The present petition stands dismissed. Rule is discharged. Interim relief, if any, shall stand vacated. No order as to costs.