

(2002) 04 MAD CK 0184

In the Madras High Court

Case No : Writ Petitions No. 20776 of 2000, 20777 of 2000 and 691 of 2001 and W.M.P. No's. 30214 of 2000, 30215 of 2000 and 937 of 2001

K. Ramagopal

APPELLANT

Vs

Bharat Sanchar Nigam Ltd.

RESPONDENT

Date of Decision : 05-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 04 MAD CK 0184

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : S. Balaji, for the Appellant; S. Udayakumar, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

V. Kanagaraj, J.—Writ Petition No.20776 of 2000 has been filed praying to issue a Writ of Mandamus directing the respondents to forthwith restore the service connection for Telephone No.8268822 installed in the petitioner's premises at No.12, Manohar Avenue, Egmore, Chennai-8.

2. Writ Petition No.20777 of 2000 has been filed praying to issue a Writ of Mandamus directing the respondents to cause an investigation to be made in respect of each of the connections provided under the Premium Rate Service and to cancel such services if they do not conform to the guidelines issued by the Department for the provision of these services.

3. Writ Petition No.691 of 2001 has been filed praying to issue a Writ of Certiorarified Mandamus calling for the records relating to Bill No.96040, dated 18.12.2000 on the file of the first respondent and quash the same and direct the respondents to raise a fresh bill excluding charges for 0900 series billed under the premium rate services.

4. All the above three writ petitions have been filed by one and the same person and the reliefs prayed for by him are also connected to each other and hence

they have all been heard together and this common order is passed.

5. The averments of all the above petitions, in general, are that the petitioner is an advocate practicing in the Madras High Court and is having a Telephone Connection No.8268822 to his residence at No.12, Manohar Avenue, Chennai-600 008, since 17.3.1991; that he was paying the bills raised by the respondent regularly within the stipulated time which had never exceeded Rs.6000/-; that the highest bill charged was by Bill No.76498 dated 18.8.2000 for Rs.5820/-, while so, the petitioner was served with a bill dated 18.10.2000 for Rs.34,976/- with a note that the same should be paid on or before 7.11.2000 and the statement of the reading is also shown in the annexure charging for 27,675 units, out of which 14,390 are STD calls; that the STD meter reading statement discloses that the petitioner made calls to the telephone numbers starting with `0900" and charges were claimed for 13,712 units towards the same; that the petitioner had not made any of the said calls and since there was a steep rise in the local calls, he immediately wrote to the 2nd respondent on 19.10.2000 and submitted his earlier bills, showing that they had not exceeded Rs.5820/-, which represented charges for 4536 units including STD calls and that the petitioner never made any of the above calls starting with 0900 and that the petitioner did not know as to whom the numbers belonged and there was a spurt in the recording of ordinary calls; that subsequently the petitioner met the 2nd respondent on 24.10.2000 and explained that he never made any of the calls to the telephone numbers beginning with `0900" and that the petitioner had no connection with any of the owners of the above STD numbers and that the 2nd respondent told him that he received similar complaints and also assured the petitioner that he would issue a provisional bill as per the regulations which could be paid in order to avoid disconnection; that the 2nd respondent also informed that the Telephone Department had provided connections to the respective holders of telephone with `0900" series under a scheme by which calls were charged at the rate of 70 paise to be paid to the subscribers of telephone and informed the petitioner not to pay the amount; that thereafter on 24.11.2000 the petitioner's telephone had been jammed for which he lodged a complaint with Fault Service of the respondent to rectify the defect and since there was no response, the petitioner made enquiries and he was informed that the Telephone connection had been disconnected for non-payment of bills.

6. The further averments of the petitioner are that the disconnection is wholly illegal and the procedure for disconnection has not been followed; that whenever there was an excess billing which is disputed and such excess billing exceeds 100% over the previous six months" bills, the 2nd respondent is required to raise a provisional bill and the investigation is to be made within two months and if the investigation department finds the bills raised to be correct, a fresh bill is to be sent giving 15 days time to pay the bills; that on verification, the petitioner was told that this scheme had been put in operation about a year back under a scheme called "Intelligent Network Series", which enabled the subscriber to use services like stock market, astrology, weather condition and consultation service

and it is provided for registration charge of Rs.3,000/- and monthly charges for PRM service of Rs.1600/-; that the calling users had to pay for the call per unit worked out at the rate of two, three, four, eight and twelve seconds per unit call; that the Chennai telephones agreed to pay 70 paise per unit out of the charges to be payable by the subscriber of the telephone; that up to August, 2000, these calls have been treated as local calls but charged at the rate of Rs.1.20 per two seconds; that after realizing that this system had been used by unscrupulous elements both within the department and outside, they were metered as STD calls from September, 2000; that from the statement furnished, it is noticed that the ordinary calls metered is 14390 units as against 4356 units metered for STD and ordinary calls under bills dated 18.8.2002; that under bill dt.18.10.2000 the calls recorded against the special service is 13654 calls; that the remaining calls were regular STD calls consuming 6.30 units and hence the petitioner wrote to the 2nd respondent on 27.10.2000 objecting the disconnection and stating that the petitioner never used his Telephone to make calls to the telephones bearing '0900" series which were used for immoral purposes and against public morality; that after disconnection of telephone, the petitioner requested the 2nd respondent to restore the telephone connection and his request was not complied with by the Department and since the steps taken by the petitioner to rectify the defect have become vain, the petitioner filed these writ petitions.

7. In the common counter affidavit filed on behalf of the respondents, besides generally denying the allegations of the writ petitions, the respondents would also specifically deny that the petitioner's earlier bills never exceeded Rs.5,488/- and would submit that the complaint of the petitioner was rejected by DE Internal, HRD-I after due investigation vide his letter No. DE/HRD-1/INTL/EMC/2000-2001/36 dated 18.12.2000; that the petitioner's allegation in his letter dt.27.11.2000 that the excess billing of his telephone line was due to calls made to '0900" series is false; that his telephone connection was disconnected on 21.11.200 for non-payment of the bills; that the petitioner preferred another excess metering complaint in respect of bill dt.18.12.2000 for Rs.13,325/- and in that bill, out of 8853 STD call units, 8367 were related to PRM service numbers; that it was observed that no fault had been registered during the said period and the normal procedure for issue of provisional bill does not apply to the petitioner and on observation of spurt, the telephone line was placed under charge observation from 4.9.2000 to 12.9.2000; that it was observed that the calls to disputed (PRM) numbers were made in between normal/regular calls of the petitioner, that too in the day time itself; that the petitioner is provided with Dynamic Locking facility at free of cost, wherein he could control origination of STD/ISD/PRM/Local calls; that the petitioner has failed and ignored to make use of the said facilities and shifted the blame on the respondents; that the petitioner has admittedly made wide use of the following PRM service numbers: (i) 0900-334440, (ii) 0900-334554, (iii) 0900-334469, (iv) 0900-334577 and (v) 0900-334555.

8. The respondent would further submit that the petitioner is connected to FETEX

type analog Electronic exchange, wherein provision of detailed billing is not possible for PRM type calls and as such from 4.9.2000 the PRM calls of this exchange were routed viz. another Digital Electronic Exchange so that details of PRM calls be furnished in the bills; that the details of PRM calls made before 4.9.2000 could not be furnished; that the contention of the petitioner that there was a spurt in recording the ordinary calls is totally incorrect; that the petitioner is making contradictory statements in the petition; that there is no prima facie reason to believe that the calls were not made by the petitioner (subscriber); that since the petitioner has not cleared the dues, his telephone line was eventually disconnected on 21.11.2000; that when the split bill is not issued, the petitioner has to pay the bill under protest as per the existing rules; that the Subscriber never chose to pay the bill and the disconnection was done as per the rules of the Department and the excess metering complaint was rejected vide letter dated 18.12.2000 in letter No. DE/HRD/INTL/EMC.2000-2001/36; that in view of the order passed by this court in W.M.P.No.30214 of 2000 in W.P.No.20776 of 2000, the subscriber(petitioner) paid 25% of the telephone disputed bill dated 18.10.2000 at Rs.8,744/- and the telephone connection has been restored. On such averments, the respondents would pray to dismiss the writ petitions with costs.

9. During arguments, the learned counsel appearing on behalf of the petitioner in all the above writ petitions, citing the format of the application for 'Premium Rate Service' under the caption 'Intelligence Network Services' particularly, the format meant for Tariff for PRM service column 8 therein, which is concerned with the commission services provided connection given by Chennai Telephones at 0.70 per unit, would take this court to the disputed bill amounting to Rs.34,916/- dated 18.10.2000 payable by 7.11.2000 wherein call charges for the month commencing from 1.8.2000 to 30.9.2000 alone has been shown as Rs.32,810/- for the telephone No.8268822, which according to the petitioner never exceeded the sum of Rs.5,800/= at any point of time in the past.

10. Further drawing the attention of the court to the details of the STD/ISD calls annexed to the telephone bill of the petitioner sent by the respondents,, the learned counsel would point out that the numbers commencing with '0900' are shown to have been made by the petitioner from his telephone almost every-day or many times a day, using the same at a time even to the extent of the units more than 1000 and would exhort that it is nothing but misuse of the petitioner's telephone by miscreants with the connivance of the linemen who could connect any telephone to anyone he wants in an illicit manner and the petitioner neither knows the number nor any member of his family made such calls often as brought forth in the chart giving the details of the calls.

11. Learned counsel would also point out that the numbers commencing with '0900' are only local numbers and have been used wanting some special information for the person who is the subscriber; that it is almost like doing an international call being charged with Rs.1.20 per two seconds and the peculiar

feature of the system is that from out of this charge of Rs.1.20 per two seconds, 50 paise would go to the department and 70 paise would go to the subscriber of the telephone.

12. The learned counsel would point out an advertisement at Page 4 of the popular Indian News Daily "The Hindu" dated November 27, 2000 depicting the pictures of young girls and glaringly given advertisements in capital letters in the following manner:

"LOVE 2 talk English/Hindi/Tamil/Malayalam 0900 33 45 78 Service available in Chennai Rs.1.20 per 2 sec."

"Heart Line Tamil/Malayalam/Telegu 0900 33 45 54 English/Hindi 0900 33 44 69 services available in Chennai @ Rs.1.20/- per 2 secs."

"Fun, Exciting Chat Make friends Have great fun 24 ENGLISH 0900 33 44 20 HOURS TAMIL 0900 33 44 30 Chat line (c) Service available in Chennai on STD phones Rs.1.20 per two seconds"

"loose Weight Call our expert Gain Confidence Call our expert Dietitian 0900 33 44 60 Service available in Chennai on STD phones Rs.1.20 per seconds"

Learned counsel would also bring to the notice of this court a letter written by the famous writer and former Member of Parliament Sri R.K. Narayan, published in the "Letters to the Editor" column of "The Hindu" dated 7.2.2000 as to how the telephone bills are inflated owing to a very large number of calls to "0900" numbers charged to his account. Since it is vitally connected to the case in hand, I extract the said letter hereunder:

"Telephone nightmare:

Sir, -- My recent telephone bill (till October 31,2000) has been inflated by about Rs.10,000/= owing to a very large number of calls to 0900 numbers charged to my account.

Neither anyone having access to my telephone nor I made these calls. My neighbours have also received similar excess demands of Rs.65,000/= and Rs.10,000/= respectively, all of these due to the unauthorised 0900 calls charged to their telephone accounts.

All these calls were made at the middle of night, when the entrance doors of our apartments were kept locked. The front gate to the apartment block - manned by watchmen - is always kept locked at nights. All of us are senior citizens of ages ranging from 64 to 94.

It is incorrect to say - as the officials of Chennai Telephones allege - that the telephones were misused from inside by unauthorised visitors. I can only guess that the telephone line must have been tampered with from outside, by someone having access.

Our complaints to the Divisional Engineer and the Deputy General Manager have

not so far resulted in any response other than formal acknowledgments and advice to pay up.

I have no interest in, and did not seek a connection to, the 0900 special facility (premium rate service). Chennai Telephones decided to enable this special facility on my telephone connection without my consent or request and without even informing me. My neighbours have also been similarly connected without their consent and knowledge. We learnt about these connections only on receipt of the recent inflated bills.

This is neither an STD facility nor an ISD facility, which starts with 00. What is more, not all the customers of Chennai Telephones have been connected to the 0900 service. Chennai Telephones enabled this service to those customers they chose, without the consent of the subscribers concerned and then sent them inflated bills, with threats to disconnect the phones if they did not pay up. I also learn that the 0900 special facility was barred during the installation of a few new exchanges.

On November 30, 2000, there was a news item stating that Chennai Telephones had restricted the use of calls of 0900 without written permission from the subscribers. No such written permission was ever sought or given by any of us."

On such arguments, the learned counsel for the petitioner would pray for the reliefs extracted supra.

13. On the contrary, the learned Additional Central Government Standing Counsel appearing on behalf of the respondents would quote Section 7-B of the Indian Telegraph Act, according to which "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, 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 the disputes under this section;(2) the award of the Arbitrator appointed u/s (1) shall be conclusive between the parties to the disputes and shall not be questioned in any Court" and would pray to refer the matter for arbitration.

14. In support of the contention of the respondent, the learned Central Government Standing Counsel for the respondent would also cite two judgments reported in (1) M/s. P.T. Bell and Co., Madras Vs. The Union of India and others, and (2) Divisional Engineer, Telephones, Cuttack and Another Vs. Beharilal Shyamsundar, So far as the first judgment cited above is concerned it is held therein by a single Judge of this court that "the dispute of excess telephone billing can be referred to an arbitration u/s 7-B of the Act." But in the second judgment cited above it is held that "the jurisdiction of the civil court in the instant case where the plaintiff's telephone connection was sought to be disconnected for non-payment of arrears of dues of another telephone on which

the plaintiff had no connection with it, could not be said to be one covered u/s 7-B of the Act".

15. Needless to mention that the first judgment of the single Judge of this court is only recommendatory in nature and it cannot be taken to have been held as a ruling. So far as the second judgment of a single Judge of the Orissa High Court is concerned, it is held therein that the dispute regarding the billing of the telephone bills is not covered u/s 7-B of the Indian Telegraph Act. Both the above two judgments are not supporting the case of the respondents for the purpose meant, serving as precedents.

16. A reading of the operative portion of Section 7-B of the Indian Telegraph Act would reveal that if any dispute consisting of any telephone appliance or apparatus arises between the telegraph authorities and the consumer, the said dispute could be referred to arbitration and the Section does not at all speak of false billing or wrong billing or tampering or manipulation of the telephones by miscreants much less with the help of linemen, exchange men, etc. which is the dispute raised by the petitioner and therefore Section is inapplicable to the case of the petitioner. Therefore this court, in consideration of all the facts and circumstances brought forth in all the above writ petitions by the petitioner and in further consideration of the judgments cited during arguments, is of the view that the subject matter is not at all covered by Section 7-B of the Act and therefore it is held that the requirements of Section as argued on the part of the learned counsel appearing on behalf of the respondents to refer the dispute to arbitration have no bearing or nexus to the cases in hand.

17. The sum and substance of all the above writ petitions filed by one and the same petitioner is that till the Bill No.76498, dated 18.8.2000, the consumption charge never exceed Rs.6,000/= and even that particular bill was only for a sum of Rs.5,820/= and the next bill served on the petitioner was dated 18.10.2000 for a sum of Rs.34,976/=: which has been charged for 27,675 units out of which 14,390 units are STD calls and since the petitioner was conscious that he never made use of the telephone for the said calls particularly starting with `0900", without even knowing the person who possessed the numbers to which the said calls have been dialed and since all the attempts made by him to rectify any defect that had occurred in the metering or manipulation of his telephone by third parties without his knowledge adopting methods other than legal, the petitioner would ultimately come forward to file the above writ petitions seeking the reliefs extracted supra.

18. Giving the details of the calls that the petitioner did and explaining that in his set up there was absolutely no necessity for him to have made use of the numbers starting with `0900" and attributing all the charges for `0900" series billed under the Premium Rate Services (PRM) to have been manipulated and misused by miscreants probably with the help of the linemen or the exchangemen or the operators in the exchange, the petitioner would protest the sudden spurt and spiralling of the bill to an exorbitant charge indicated supra and

would seek the remedies sought for in the above writ petitions.

19. Though on the part of the respondents, both in the counter and in their arguments, they would deny the pleadings of the writ petitions stating that no fault had been detected and after placing the telephone under charge observation from 4.9.2000 to 12.9.2000, it came to be observed that the calls to disputed (PRM) numbers were made in between the normal/regular calls that too in the day time itself. However, the respondents are not able to establish the misuse of the petitioner's telephone number by anti-social elements with the help of the linemen or the telephone operators in the exchange. That possibility which is the area of suspicion for manipulation and misuse of his telephone so as to get the bill charged with the exorbitant amount, as discussed supra, is still to be ruled out. Therefore, the only conclusion that could be arrived at in the circumstances of the case is that the petitioner has put up a true and genuine case and there is no reason for casting aspersions on the allegations of the writ petitions.

20. The system of the respondents does not seem to have any device to monitor the misuse of the telephones of such individuals at large which could only give way for the widespread misuse, some of which are either taken to the door steps of the Court or highlighted in the popular newspapers such as one brought to light by the petitioner in which the victim is no less than a person of the world acclaimed writer and novelist Sri R.K.Narayan who had expressed his bitter experience in the 'Letters to the Editor' column of 'The Hindu' dated 7.2.2000 as to how the telephone bills are inflated owing to the very large number of calls to '0900' series charged to his account, under the caption 'Telephone Nightmare', thus giving a vivid picture of the misuse of his telephone particularly making calls to '0900' whereas the respondent Department had mechanically charged the innocent subscriber without being in a position to either detect as to how the misdeeds occur or safeguard the genuine interest of subscribers from such widespread misuse of their telephones, if it is the case of the respondents that it is not on account of any mechanical defect of the system. The learned Writer would also give instances of his neighbours who have been served with such inflated or excess demands thus ultimately ending up that he could only guess that the telephone line must have been tampered with from outside 'by someone having access', as vividly extracted in Paragraph No.14 supra.

21. While this being the plight of the Honourable, somewhat highly placed and respected citizens of all awareness, needless to mention the sorrowful state of affairs of the common, uneducated and illiterate subscribers. Further more, as brought forth in the pleadings and the arguments on the part of the petitioner, the series starting with '0900' had been put in operation by the respondent under a scheme called 'Intelligent Network Series' for providing the subscribers the value added information based on service to users like stock market, astrology, weather condition, consultation services to members of public etc. But the same is misused by the respondents to issue connections to subscribers who

advertise in the newspapers as providing the services such as (1) 0900-334554 - Heartline (2)0900-334440 - Metro Masala and (3)0900-334518 - Love 2 talk, pertaining to which the subscribers of these numbers indulge in providing indecent entertainment by employing girls who are required to indulge in vulgar talks with the persons dialing the phone and appropriately reciprocate thus the scheme enabling the subscribers of the series only to make huge profits and advertise in all the newspapers. In these circumstances, the petitioner has reason to suspect the operators of these numbers to collude with some of the employees under the first respondent to raise huge bills by maneuvering to record the calls to `0900" series on telephones of other subscribers who had never dialed the numbers which cannot be easily brushed aside. The respondents have refrained from making any investigation on such complaints but only to force the victims of inflated bills to pay the inflated charges under threat of disconnection. Therefore, there is every justification on the part of the petitioner to have come up to file the above writ petitions not only in his personal interest but with the general honest thought and common good of all the subscribers at large. There is no iota of fact or circumstance favouring to doubt the genuineness of the case put up by the petitioner and the burden so heavily cast on the respondents to ward-off or discharge which even to the ray of extent having not been fulfilled. Therefore, the only conclusion that could be arrived at validly is to accept all the cases of the petitioner granting the reliefs as prayed for and the same is decided accordingly.

In result,

- (i) all the above three writ petitions succeed and they are allowed accordingly.
- (ii) In W.P.No.20776 of 2000, there shall be a writ of mandamus issued directing the respondents to forthwith restore the service connection for the telephone No.8268822 installed in the petitioner's premises at No.12, Manohar Avenue, Egmore, Chennai-8.
- (iii) 25% of the amount already deposited in W.M.P.No.30214 of 2000 as per the directions of this court given earlier is ordered to be returned to the petitioner.
- (iv) In W.P.No.20777 of 2000, the respondents are hereby directed to investigate into each of the connections provided under the Premium Rate Service and to cancel such services if they do not conform to the guidelines issued by the Department for the provision of these services.
- (v) In W.P.No.691 of 2001, the bill No.96040 dated 18.12.2000 on the file of the first respondent is hereby quashed and the respondents are directed to raise a fresh bill excluding charges for `0900" series billing under the Premium Rate Services.

Consequently, WMP Nos.30214, 30215 and 937 of 2001 are closed.