

(2003) 05 DEL CK 0039
In the Delhi High Court
Case No : Civil Writ No. 1769 of 1994

Mangal Sain and Sons

APPELLANT

Vs

Mahanagar Telephone Nigam Ltd.

RESPONDENT

Date of Decision : 19-05-2003

Acts Referred:

Citation : (2003) 3 ARBLR 331 : (2003) 104 DLT 993 : (2003) 69 DRJ 413 :
(2003) 2 RAJ 610

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : D.K. Rustagi and Aswini Dubey, for the Appellant; Ravi Sikri, for the Respondent

Judgement

S.K. Mahajan, J.—Petitioner had a telephone line bearing No. 7223339 installed at the residence of one of its partners. This telephone line had STD facility. Another telephone line bearing No. 7126030 was also installed at the same place in the name of the wife of one of the partners of the firm. One Mr. Virender Kumar who is the son-in-law of one of the partners of the firm was the General Manager (Planning), Department of Tele-communication. During his visit to Delhi between 22nd November, 1992 and 26th November, 1992, the respondent provided a temporary telephone line bearing No. 7251316 for his use at the address of the petitioners as he was staying with the partner of the firm. This telephone line also had STD facility. Mr. Virender Kumar left Delhi on 26th November, 1992 and the telephone line bearing No. 7251316 was dis-connected on the same day. In January, 1993 a telephone line was sanctioned in the name of one Mr. Rakesh Mehta at his residence in Rana Pratap Bagh. Telephone line bearing No. 7251476 was provided at the residence of Mr. Rakesh Mehta on or about 7th January, 1993. On receipt of a bill for about Rs.60,000/- by Mr. Rakesh Mehta for STD calls made between 7th January, 1993 and 14th January, 1993, he made a complaint dated 22nd February, 1993 with the respondent alleging inter alias that during the period during which STD calls were alleged to have been made, his telephone was not even energised and he was, Therefore, not

liable to make payment of the said bill. On receipt of the complaint from Mr. Rakesh Mehta, respondent referred the matter to its Vigilance Branch for investigation. The Vigilance Branch of the respondent after making alleged investigations gave its report on April 13, 1993. In terms of the report, the availed calls during the period 7th January, 1993 to 14th January, 1993 were alleged to have been made by Mr. Mahesh Rastogi from telephone No. 7126030. The respondents, Therefore, issued a bill in the name of the petitioner for payment of the aforesaid calls. This petition was thereafter filed by the petitioner for quashing the aforesaid bill on the ground that firstly the bill could not be diverted to the petitioner as there was no such provision in the rules framed by the respondents and secondly principles of natural justice were violated as no opportunity of hearing was given by the respondents to the petitioner before raising the aforesaid demands against the petitioner.

2. In the counter-affidavit the stand taken by the respondent is that the disputed telephone calls were made by the petitioners from the telephone provided at their residence and as the recovery was based upon the report of the Vigilance Cell, the petitioner was liable to make payment of the same. It is, however, not denied that no opportunity of hearing was given to the petitioners before raising the demand.

3. Without going into the merits of the controversy as to whether or not the disputed telephone calls were made from the telephone line provided at the residence of the petitioner, in my opinion, this petition can be disposed of on the short ground that the subject bill was raised by the respondents in the name of the petitioner without granting an opportunity of hearing to him either to appear before the Vigilance Cell or any other hearing to show cause as to why the order could not be passed against the petitioner for recovery of the aforesaid amount. It is now well settled that non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of natural justice is unnecessary. Natural justice is a valuable procedural safeguard for the affected person. Petitioner could not be fastened with the liability without giving him an opportunity of hearing. Their being a clear violation of principles of natural justice, the demand raised by the respondents against the petitioner cannot be sustained.

4. The respondents in the counter affidavit have also stated that the petitioner had an alternate remedy of getting the matter referred to arbitration u/s 7B of the Indian Telegraph Act. There is force in the argument. There being a dispute about payment of the bill it would be appropriate that the matter about the payment of the disputed amount is referred to an Arbitrator u/s 7(B) of the Indian Telegraphs Act and the Arbitrator will give an opportunity of hearing to the parties before deciding as to whether or not the disputed calls were made from the telephone line installed at the residence of the petitioners and whether or not they are liable to make payment of the same.

5. In this view of the matter, I dispose of this petition with a direction to the

Union of India to appoint an Arbitrator within six weeks from the date of this order to decide the disputes as to whether or not the telephone calls made from telephone line 7251476 can be diverted to the petitioner and whether the petitioner is liable to make payment of the same. Till decision of the matter by the Arbitrator, the respondent will not claim any amount from the petitioners in respect of the aforesaid bill and no telephone line of the petitioners will be disconnected for non-payment of the aforesaid disputed amount.

6. Copy of the order be given duly to counsel for the parties.