
(2005) 02 KL CK 0053
In the High Court Of Kerala
Case No : W.A. No. 66 of 2005

Mohan Dasa Prabhu

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

Telegraph Act, 1885 — Section 7B

Citation : AIR 2005 Ker 146 : (2005) 2 CivCC 45 : (2005) 1 ILR (Ker) 631 : (2005) 1 KLT 933

Hon'ble Judges : B. Subhashan Reddy, C.J.;A.K. Basheer, J

Bench : Division Bench

Advocate : R. Lakshmi Narayan, for the Appellant; B. Jayasankar and John Varghese, for the Respondent

Final Decision : Allowed

Judgement

B. Subhashan Reddy, C.J.—This Writ Appeal has been filed aggrieved by the order of the learned Single Judge in dismissing the Writ Petition. Writ Petition has been filed questioning the award of the Arbitrator appointed u/s 7B of the Indian Telegraph Act, 1885. The Arbitrator came to be appointed because of the dispute in the quantum of telephone bills dated 1.5.1997 and 1.7.1997 raised against the appellant. Appellant's case is that being a small shop owner and the average bi-monthly bill for all times to come having not exceeded Rs.1,000/-, there was a sudden spurt in the bills dated 1.5.1997 and 1.7.1997, which are hereinafter referred to as the "disputed bills" and inspite of complaint being lodged soon after the receipt of the disputed bills, proper enquiry has not been conducted and that even the Arbitrator had failed to conduct the enquiry properly and that the learned Single Judge has not appreciated these contentions well.

2. Learned counsel for the appellant submitted that guidelines have been issued regarding the checking of excess billing and scientific way of method has been suggested for the process of checking into the excess billing and to determine whether it is a normal handling by the telephone subscriber or foul play played

by any other person or the staff of the telephone department by even resorting to looping and particularly STD and ISD calls. The said kind of investigation has not been done and this aspect has not been appreciated either by the Arbitrator or by the learned Single Judge. Learned counsel has placed before us those guidelines and also cited a Division Bench judgment of the Gauhati High Court in Santokh Singh Vs. Divisional Engineer, Telephones, Shillong and Others, which has very comprehensively dealt with the alarming situation arising out of the excess telephone billing and referred to the guidelines which have been issued by the Telephone Department. Learned Central Government Standing Counsel countered the above arguments of the appellant's counsel to the effect that the disputed bills have been properly levied basing upon the use by the appellant or by the persons allowed by him and that complaints of the appellant were properly enquired into not only by the officers of the telephone department but also by the Arbitrator and the learned Single Judge also correctly rendered his judgment and that in a Writ Petition under Article 226 of the Constitution of India including the Writ Appeal therefrom, the High Court cannot sit in appeal to review the award of the Arbitrator and that the Writ Appeal deserves to be dismissed.

3. It is true, that the High Court under Article 226 of the Constitution of India exercising the judicial power cannot act as an Appellate Authority. But the High Court can certainly go into the aspects as to whether decision making process by the concerned lower authority has been properly followed or not. If the decision making process is erroneous, the High Court can certainly intervene in exercise of its plenary jurisdiction under Article 226 of the Constitution of India. That is more so in cases of this nature where the suit is barred and the Arbitrator's decision is final as there is no appeal provided against his award. Further the action complained of is not administrative in nature and is quasi-judicial. Mulcting the appellant with exorbitant telephone charges of Rs.69,202/- and Rs.38,350/- under the two disputed bills results in civil consequences and audi alteram partem rule has to be strictly followed. Audi alteram partem rule is not an empty formality, but as to be effective. Element of fair play has to be observed and all the relevant material as is necessary to go into the decision making process has to be gathered and for that proper enquiry has to be conducted keeping also in view, the guidelines laid in that regard which have been mentioned supra. Among the guidelines prescribed, the following are more important:

"6.4. Once the complaint has been received very prompt action must be taken to investigate the same. For this purpose the prescribed officer must call for the following details from the officers in charge of exchanges concerned.

(a) the record of fortnightly readings in respect of 6 preceding bi-monthly periods and for all the available succeeding bi-monthly period.

(b) an extract of fault card for the disputed period-

(c) spurt report, action taken on the same and the result thereof. This will

include (a) observations in the exchanges and (b) any field investigations if carried out.

6.5. In this connection, it has been decided that no field investigation is called for to determine whether there was any occasion for a special spurt after a complaint has been received. This should have been made, if justified, immediately after the spurt was noticed in the fortnightly readings. It has been noticed in the fortnightly readings. It has been noticed that no useful purpose is served by undertaking such investigations after an excess billing complaint has been received".

4. The facts in the above case are similar to the instant case. From the date of installation of the telephone in the appellant's premises till the first of the disputed bills dated 1.5.1997, the average bi-monthly bill has never exceeded Rs. 1,000/-. There was a sudden spurt in the bill dated 1.5.1997 and again in the following bi-monthly bill dt. 1.7.1997. According to the above guidelines, the moment there was a spurt and atleast within 15 days thereof action ought to have been taken, but the same has not been taken by the authorities. The Arbitrator ought to have considered this point and also other essentials of the guidelines to detect the sudden spurt in the billings, but he has failed to do the same. In fact, the department itself accepts that one of the reasons for the sudden spurt could be a fault in metering or the fraud played by the staff themselves. All these relevant factors which have got bearing on the decision of the Arbitrator have not been followed by the Arbitrator and as such we have no hesitation to hold that the decision making process by the Arbitrator is faulty and consequently his award is fit to be set aside and the matter is required to be re-enquired into taking into consideration the above stated factors.

In the result, we allow the Writ Petition setting aside the impugned award passed by the third respondent and remit the matter back to him to render award afresh by affording opportunity to the appellant and also the representative of the telephone department in the light of what is stated above. Pending disposal of the arbitration proceedings pursuant to this remand, no further amount shall be collected from the appellant relating to the disputed bills and further collection or refund shall depend upon the result of the said arbitration proceedings. The Writ Appeal is allowed to the extent indicated above. No costs.