
(2018) 06 MP CK 0086
In the Madhya Pradesh High Court
Case No : Arbitration Case No.10 of 2015

M/S Prime Tel Inc.

APPELLANT

Vs

Bharti Televentures Ltd. & Others

RESPONDENT

Date of Decision : 21-06-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6), 34, 43

Citation : (2018) 06 MP CK 0086

Hon'ble Judges : HEMANT GUPTA, CJ

Bench : Single Bench

Advocate : Rajendra Tiwari, Mukesh Agrawal

Final Decision : Dismissed

Judgement

The petitioner has sought for appointment of an Arbitrator in respect of the dispute arising out of franchise agreements dated 25.3.2004 & 01.11.2004.

2. The petitioner is a franchisee under the said agreements, who was to provide services of maintaining analog direct exchange lines. The period of

agreements was for two years. The agreements gave right to the parties to terminate the agreement after giving 30 days advance notice. Clause

2.1 of the Agreement (Annexure P/2) dated 25.03.2004 reads as under:-

2.1 Subject to the Commercial Terms as stated in Clause 3 herein, BTNL hereby appoints Prime Tel Inc as its Franchisee to retail and provide the

Services to the subscribers for and on behalf of the BTNL. Franchisee hereby accepts appointment as the non-exclusive Franchisee of BTNL at

Indore. The Agreement shall come into force from the Commencement date and shall be for a period of 2 years unless terminated earlier in

accordance with Article 11 hereinbelow. On the expiry of the term of this Agreement the Parties hereto may mutually agree in writing to extend the

term of this Agreement for such specified period and on such terms as mutually agreed between the parties, provided that such further Agreement is executed 30 days prior to the expiry of the first and initial terms of this Agreement.â??

3. The similar term of period of operation as two years is part of agreement dated 01.11.2004 (Annexure P/3). Similar clause of period of the agreement is also part of the agreement dated 01.11.2004.

4. The petitioner served a notice on 3.4.2006 to the respondents to refrain from encashing the bank guarantee submitted by it. Thereafter, the

petitioner submitted a statement of claim of Rs. 44,12,639/- before the Sole Arbitrator appointed on the request of the respondents herein. Such Sole

Arbitrator has given his detailed Award on 21.6.2010 rejecting the claim of the petitioner. Such Award was made the subject-matter of challenge

under Section 34 of the Arbitration and Conciliation Act, 1996 (for short â??the Actâ?). Such award was maintained by the learned Additional

District Judge, Bhopal on 28.1.2016. Arbitration Appeal No.29/2016 (M/s Prime Tel Inc. Vs. Bharti Televentures Ltd.) against the said order is

pending before this Court.

5. The petitioner has sought for appointment of an Arbitrator under Section 11(6) of the Act when it served notice Annexure P/10 on 18.1.2010. The

relevant extract from the notice reads as under:-

â??1. That, your company entered into a agreement dated 25.3.2004 by which my client was engaged and appointed as Franchisee of BTNL to

provide services to the subscribers for and on behalf of BTNL at Indore Jail Road (B.T.F. Franchisee area). This agreement was for a period of 2

years unless terminated earlier by way of prior notice as referred in Article 11.

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3. That my client installed the telecommunication net work from May, 2004 and used the network upto October, 2004. Your company arbitrarily and

without cancellation of agreement as per Article 11 of the Agreement between the parties and without assessing the network cost of my client took

over the services which were provided by me client to the subscribers nearly 613 in Indore Jail Road area, from 1st Nov. 2004 and directly used my

client's set up network without paying network cost of Rs.18,00,000/- (Rupees Eighteen lakhs) till date, after several verbal and written request to your

company's authorities. And that said amount remained unpaid to my client till date.

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5. That, even today from 1st of Nov. 2004 the total network of Indore Jail Road area is under your custody and your company workers are using my

clients network till date for which you have failed to provide commission of revenue of Rs.60,000/- per month which is a great loss to my client and

which your Company is liable to compensate to my client till your Company uses my client's network.

6. The argument of the petitioner is that the agreement was not terminated; therefore, cause of action to seek arbitration arises on account of failure

of the respondents to appoint a valuer. It is also pointed out that after the notice was served upon the respondents for appointment of an Arbitrator on

18.1.2010, the petitioner filed a petition under Section 11(6) of the Act before Indore Bench of this Court which petition (Arbitration Case No.8/2010-

M/s Prime Tel Inc. Vs. Bharti Televentures Ltd. and others) was dismissed for want of territorial jurisdiction on 28.11.2014. It is thereafter, the

present petition has been filed before this Court on 12.3.2015. Therefore, the petition cannot be said to be barred by limitation.

7. The only question which arises for consideration is whether cause of arbitration would arise to the petitioner on completion of term of agreement or

any time thereafter such as failure of the respondents to appoint a valuer.

8. I have heard learned counsel for the parties and find that present petition for appointment of an arbitrator is barred by limitation. The duration of the

agreements is two years. Such agreements came to an end by efflux of time on 24.3.2006 & 31.10.2006. It is thereafter, if the petitioner had any

claim against the respondents, the petitioner could claim so within three years in terms of Article 137 of the Limitation Act, 1963. The Limitation Act,

1963 is applicable to the arbitration proceedings under Section 43 of the Arbitration and Conciliation Act, 1996. Such provisions of the Limitation Act,

1963 and the Arbitration and Conciliation Act, 1996 have been examined by this Court in Arbitration Case No.56/2016 (M/s Uttarakhand Purv Sainik

Kalyan Nigam Limited Vs. Northern Coal Field Limited) decided on 11.1.2018, wherein it has been held that the cause of arbitration is analogous to

the cause of action before the Civil Court. Therefore, an aggrieved person has to

invoke the procedure for appointment of an Arbitrator within a period three years from the date cause of arbitration arises. It has been held as under:-

13. The appointment of an Arbitrator under Section 8 of the Arbitration Act, 1940 is without intervention of Court under Chapter-II thereof

whereas reference to arbitration and appointment of an Arbitrator under Chapter-III is through the intervention of the Court. On the other hand,

Section 11 of the Act is amalgamation of both the Chapters in respect of appointment of Arbitrators. The intervention of the Court is not envisaged

under the Act if the parties adhere to the terms of agreement. It is only in the event of failure to appoint an Arbitrator in terms of the agreement the

aggrieved party seeks redressal under Section 11 of the Act.

14. In my opinion, provisions of Section 21 are in relation to arbitration without the intervention of the Court. But, if intervention of the Court is

necessitated, such petition has to be filed within the period of limitation. It has been held in the aforesaid judgments that the period of limitation is for all

applications filed before the Civil Court. Since there is no specific period of limitation prescribed for such like application under Section 11 of the Act,

therefore, as per Article 137, the period of limitation is three years from the date right to apply accrues.

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16. The right to apply accrues when the cause of action accrues. To constitute a cause of action, firstly there has to be existence of right and secondly

its infringement or threat of infringement. The cause of action denotes and determines the starting point of limitation. Such cause of action in relation

to arbitration proceedings is said to be cause of arbitration as held in Panchu Gopal Bose's case (supra) [Panchu Gopal Bose Vs. Board of

Trustees for Port of Calcutta (1993) 4 SCC 338]. The question as to when right to sue accrues depends on the facts of each case, as when the right is

asserted or denied or when the right to claim ascertained amount arises.

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18. It would be matter of determination as to when cause to seek appointment of an arbitrator would arise. It would be cause of action to invoke the

jurisdiction of the civil court under Section 11 of the Act, which would be relevant to determine the period during which, the aggrieved party can

approach High Court in terms of Section 11(6) of the Act. But to hold that there would be no period of limitation to invoke jurisdiction of civil court is

not acceptable after serving of notice contemplated under Section 11(4) of the Act. To say, there is no period of limitation to seek appointment of an arbitrator is not correct.

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20. In view of the above, the jurisdiction of the Court under Section 11(6) of the Act has to be invoked within a period of three years excluding the

period of notice, failing which the dispute cannot be referred to an Arbitrator through the intervention of the Court.â??

9. In the present case, the period of agreements was two years which came to an end on 24.03.2006 and on 31.10.2006. Therefore, the petitioner had

the right to raise dispute within three years and one month of notice period. However, the petitioner filed the petition for appointment of the arbitrator

before the Indore Bench only on 07.05.2010 i.e. beyond the period of three years and one month. Thus, the petition filed by the petitioner under

Section 11(6) of the Act is beyond the period of limitation.

10. The argument that the respondents have not appointed a valuer, therefore, the petitioner has recurring cause of action is not tenable. The failure to

appoint a valuer also gives a cause of action to the petitioner to claim an amount within three years after expiry of period of agreement. But the

petitioner has failed to invoke the jurisdiction to seek appointment of an arbitrator under the Act within three years after expiry of period of agreement.

Therefore, the present petition is barred by limitation. The same is thus dismissed.