

(2008) 12 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No. 14365 of 1999

R. Annamalai (deceased), A. Prabhavathi, A. Ramanathan
and A. Aravindan

APPELLANT

Vs

The Arbitrator and Divisional Engineer (Maintenance),
Telecom District Manager and The Accounts Officer, Office of
the Telecom District Manager, Department of
Telecommunications

RESPONDENT

Date of Decision : 02-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Prevention of Damage to Public Property Act, 1984 — Section 2, 3(2)
Telegraph Act, 1885 — Section 7B

Citation : (2008) 12 MAD CK 0026

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Subbiah, for the Appellant; K. Ramakrishna Reddy, SCGSC, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—This writ petition is filed against the Award of the Arbitrator dated 19.07.1999 rejecting the complaint made by the

petitioners alleging that there was an excess billing in respect of the petitioner's phone numbers 323685 and 320839, Thoothukudi.

2. It is stated in the affidavit that the original petitioner (R. Annamalai) was a partner in the A.S.K. Ramiah Nadar Firm which is carrying

manufacturing and trading in coconut oil at No. 18 and 18A, Palayamkottai Road, Thoothukudi. The original petitioner had telephone number

320839 for his business and the other telephone number 323685 at his residence. The petitioner when he was given a bill which did not

commensurate with the normal calls made by him, sent a legal notice. Thereafter he filed a suit in the District Munsif Court, Thoothukudi in O.S.

No. 536 of 1996. He also filed subsequently seven more suits in the very same Court resisting payment of the telephone bills. Subsequently he withdrew the suits.

3. He filed a writ petition before this Court being W.P. No. 339 of 1998. This Court dismissed the writ petition stating that the petitioner should avail the remedy of arbitration provided u/s 7B of the Telegraph Act.

4. Section 7-B reads as follows:

7-B. Arbitration of disputes.- (1) Except as otherwise expressly provided in this Act, if 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, for 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 disputes under this section.

(2) The award of the arbitrator appointed under Sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court.

Thereafter, the petitioner moved the arbitrator.

5. The petitioner's contention was two fold and they are as follows:

a) There was a large scale misuse of telephone facility by making ISD calls in Thoothukudi Town. Even the District Collectorate was not spared. A

complaint was made by the P.A. to the District Collector and a First Information Report was registered in the Police Station North, Thoothukudi in

Cr. No. 841 of 1998. Therefore when there is a wide spread complaints about misuse, the Arbitrator should have obtained a report on the

outcome of the investigation which would have helped the case of the petitioner.

b) He secondly submitted that the Arbitrator having found that the guidelines were not followed by the Officers, he should have granted relief to the

petitioner. The fact that the Arbitrator had given an unsolicited advice that ISD locking facility should have been used by the petitioner, however

that cannot be put against him.

7. The writ petition was admitted on 01.09.1999 and pending the writ petition, an interim stay was granted for four weeks initially. Subsequently it

was made absolute on 29.08.2003. However, Mr. S. Subbiah, learned Counsel for the petitioners states that the petitioners have paid

approximately 50% of the amount demanded by the respondents. Since the original petitioner died on 07.12.2002, his wife and two sons have

come on record by orders of this Court.

8. In response to the notice issued by this Court, on behalf of the second and third respondents a counter affidavit dated 09.09.1999 has been

filed. It is necessary to refer to paragraphs 3, 4 and 14 of the counter affidavit, which reads as follows:

3. Regarding Para 1 to 3 of the affidavit I state that the petitioner is admittedly doing coconut business both in India and abroad. I reliably

understand that the petitioner's children are studying in foreign countries.

4. Regarding Para 4 and 5, I state that the petitioner did not prefer any complaint about excess bills to departmental officers but had issued a

lawyer notice on 28 June 96 alleging excess billing of call charges in bill dated 11 June 96 for telephone number 320839. The petitioners earlier

bills also used to be heavy which he had been paying without dispute. The respondents got his complaint investigated by a committee consisting of

three senior officers of Tuticorin Telecom District. After a thorough investigation and scrutiny of the complaint, the committee found that the

petitioner's telephone had been used for making ISD/STD calls and there was absolutely no other reason attributable to the respondents or to the

equipments to which the telephone was connected for any wrong or excess billing and that the call charges claimed in the bill dated 11 June 96

were to the extent of the actual usage of the telephone only.

14. Regarding the alleged equipment failure, I would like to state that the sophisticated EWSD system which is working in Tuticorin with effect

from 06.8.1996 no physical motors are available. Motoring takes place on software HI-technological discs and tapes, manipulation is not at all

possible in this software motoring system and there cannot be any intrusion into the sophisticated equipments. During the commissioning of the

exchange the software and the hardware system were checked for their correctness and accuracy by the qualified acceptance and testing staff. As

such the accuracy in the systems are achieved by their best performance. Hence there is no actual usage of the telephones by the petitioner by making STD/ISD calls.

9. The learned Counsel for the petitioners submitted that the Arbitrator has not discharged his statutory duties and since he has not given any acceptable reason on the complaint given by the petitioner, the order of the Arbitrator must be set aside.

10. Before dealing with the arguments made by the learned Counsel it must be noted that there is no allegation of any malafide or bias on the part of the Arbitrator. On the other hand, a perusal of the Award clearly shows that the Arbitrator also pulled up the Department for not carrying out their duties properly on the complaints received by them. But the Arbitrator has clearly found that in the case of the petitioner's complaint, the petitioner was solely responsible for the calls made from his telephone numbers and there was no fault on the Department.

11. With reference to the First Information Report pending in the Police Station, the Arbitrator has clearly remarked that it has got no relevance to the case on hand. However, Mr. S. Subbiah, learned Counsel for the petitioners states that it is very much relevant since when the head of the District, himself had made a complaint it must be presumed that there must have been large scale misuse and on that account the petitioners should not suffer. He also drew the attention of this Court to the Central Act 3 of 1984, namely the Prevention of Damage to Public Property Act, 1984 and referred to Section 2(b)(vi) and 3(2)(e) of the said Act. This is for the purpose of showing that misuse of telephone has to be prevented.

Hence the citizens are entitled to know the outcome of a complaint made by the District Collector.

12. The learned Counsel also referred to a judgment of the Division Bench of the Gauhati High Court in Santokh Singh v. Divisional Engineer, Telephones, Shillong and Ors. reported in AIR 1990 Guw. 47.

13. The argument that the complaint made by the District Collector has relevance cannot be countenanced by this Court. When there is a misuse of a particular telephone number and the owner of the telephone number approaches the police, then the police will have to investigate and find out the identity of the accused. But that by itself cannot help the case because the

present writ petition is only concerned with the arbitration

proceedings where when a specific complaint was made a denial has come from the Department.

14. In that view of the matter, the proceedings of the Arbitrator cannot be extended to include all kinds of allegations so as to create a suspicion in

the activities of the Department. On the other hand, the Arbitrator had rightly refused to extend the scope of his arbitration proceedings. Though

Mr. S. Subbiah, learned Counsel contended that the Court cannot technically deal with the matter and it is also a Court of equity. By the exercise

of discretion the Court's power under Article 226 cannot be expanded so as to conduct a roving enquiry and also to act as an ombudsman over

the telephone department. The judgment of the Gauhati High Court is only giving certain guidelines to the Department for acting in the future. In

paragraph 30 they have also emphasised the need for arbitration in such case of complaints.

15. In the present case, the petitioner after long drawn litigation, by moving Civil Courts and thereafter before this Court and finally reached the

Arbitrator cannot be heard to complain that the arbitration proceedings have become futile. Paragraphs 3, 4 and 14 as found in the counter

affidavit clearly shows that the petitioners are not ordinary citizens using the phone only for domestic purpose, but they are traders and that too

involved in international trade.

16. As rightly contended by Mr. R. Ramakrishna Reddy, learned Senior Central Government Standing Counsel, in the present case, the entries of

the telephone bills regarding the calls made clearly showed that there were entries of domestic calls, STD calls followed by ISD calls. Thereafter,

once again there were domestic calls and STD calls made by the petitioners. The learned Counsel for the petitioners admitted that his clients have

no quarrel over the billing regarding the domestic calls and STD calls. Taking that admission, the learned Senior Central Government Standing

Counsel submitted that if such a stand is accepted, then the petitioners will have to explain as to how in between those calls ISD calls came to be

made by some strangers. He also submitted the Exchange in Thoothukudi was not a manual Exchange, but ECM Exchange. Therefore, there is no

scope for any misuse. Even if it has misused it could be easily detected. In the

present case, the three Officers of the Department comprising of a Committee have gone into the working of the Exchange and found that there was no misuse of the facility given in that electronic exchange.

17. Under such circumstances, there is no case made out to interfere with the Award of the arbitrator impugned in the writ petition. Hence, this writ petition is dismissed. No costs.