

(2008) 09 SC CK 0157

In the Supreme Court Of India

Case No : Civil Appeal No. 5912 of 2008 (Arising out of SLP (C) No. 20515 of 2006)

Saji Geevarghese

APPELLANT

Vs

Accounts Officer (Telephone Revenue) and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Telegraph Act, 1885 — Section 7B

Citation : AIR 2009 SC 785 : (2009) 1 GLH 357 : (2008) 12 JT 684 : (2009) 1 KLT 378 : (2009) 1 LW 794 : (2009) 2 RLW 1326 : (2008) 15 SCALE 82

Hon'ble Judges : R. V. Raveendran, J; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : M.P. Raju, Abraham, M. Pattiyani, Manju A. Pattiyani, Jose Abraham, Suma Jose and Ashwani Bhardwaj, for the Appellant; K.C. Kaushik, Rahul Kaushik, Shilpi Kaushik, Ashok Kumar Singh and P.V. Dinesh, for the Respondent

Final Decision : Allowed

Judgement

R.V. Raveendran, J.—Delay condoned. Leave granted. Heard the learned Counsel. This appeal relates to a telephone subscriber's grievance in regard to excess billing.

2. Appellant received a bill dated 11.7.1995 for Rs. 91,621/- in regard to his telephone (No.239473 of Pattazhi, Kollam). On 28.7.1995 the appellant lodged a complaint with the first respondent alleging excess metering and/or misuse in regard to his telephone. He stated that no action had been taken in spite of his meeting the concerned Junior Engineer and complaining about the bill. He requested that the demand for the payment of the Bill may be kept 'pending' till enquiry into his complaint. (According to the appellant, he had earlier received another excess bill (dated 11.1.1995) for Rs. 79170/- and he had orally complained about it, but paid the amount in view of an assurance of the telecom department to enquire into his complaint). The first respondent sent a reply dated 8.8.1995 informing him that the matter was being enquired into and called

upon him to settle the bill, pending such enquiry. When matters stood thus, the appellant was served another bill dated 11.9.1995 for Rs. 581,717/- for 403630 calls. As the amounts of bills dated 11.7.1995 and 11.9.1995 were not paid, the telephone was disconnected on 27.9.1995. The respondents also issued a notice dated 30.11.1995 demanding payment of the arrears of Rs. 677,338/- by 13.12.1995. They also threatened to permanently close the telephone and recover the amount as revenue arrears, if the amount was not paid. Though appellant reiterated his request for action on his complaint, the department, by letter dated 15.3.1996 merely reiterated the demand for payment. Appellant therefore approached the High Court for relief. The High Court by order dated 26.4.1996 disposed of the petition with a direction to the Telecom department to refer the dispute to statutory arbitration u/s 7B of the Telegraph Act, 1885.

3. In pursuance of the above, the department appointed the fourth respondent as Arbitrator on 1.8.1996 and referred the excess billing dispute in regard to the following three bills for arbitration:

Date of Bill	Number of Calls	Bill Amount
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(i) 11.01.1995	54300	Rs. 79,170/-
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(ii) 11.07.1995	62270	Rs. 91,621/-
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(iii) 11.09.1995	403630	Rs. 5,81,717/-
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The appellant contended before the Arbitrator that the bills for 1994 would show that the number of calls made (bimonthly) were only 1580, 2860, 3310 and 13220, as per bills dated 11.5.1994, 11.7.1994, 11.9.1994 and 11.11.1994. Even in 1995, that is, for the periods 25.12.1994 to 24.2.1995 and 25.2.1995 to 24.4.1995, the number of calls were only 2800 and 4100 as per bills dated 11.3.1995 and 11.5.1995. He pointed out that the Bill dated 11.1.1995 for the period 25.10.1994 to 25.12.1994, bill dated 11.7.1995 for the period 25.4.1995 to 25.6.1995 and bill dated 11.9.1995 covering the period upto 25.8.1995 showed an unbelievably large number of calls as having been made (54300, 62270 and 403630 respectively). He attributed the unexplained spurts to some fault in the system (metering circuit) or some collusive mischief by the telephone staff in collusion with other users.

4. The telecom department contended before the Arbitrator that there were no faults or defects in the system and as the telephone was connected to an electronic exchange there was no chance of misuse or excess metering. They alleged that the appellant was a heavy caller and was probably using the telephone for international calls and unauthorized FAX facility. They submitted that there was no error in the bills.

5. The Arbitrator made an award dated 9.1.1997. After referring to the facts he concluded : "On deep analysis of the case, I found that there was no proper monitoring of the calls originated from the petitioner's telephone by Telegraph Authority and I found that the appellant was eligible for rebate and by extending

the benefit of doubt, I allow 40000 calls in favour of the petitioner, in the disputed bill dated 11.9.1995 issued for Rs. 5,81,717/-... I do not find any justification to allow any rebate in favour of the petitioner for the disputed bills dated 11.1.1995 and 11.7.1995." Accordingly, he upheld the three bills for Rs. 79,170/-, Rs. 91,621/- and Rs. 5,81,717/-, and granted limited relief to an extent of 40,000 calls in regard to the bill dated 11.9.1995.

6. The appellant challenged the said award before the Kerala High Court. A learned Single Judge of the Kerala High Court by order dated 24.7.2002 dismissed the appellant's writ petition, being of the view that it was not possible to disturb the findings recorded by the Arbitrator who was a quasi judicial authority, in judicial review under Article 226 of the Constitution of India. The appellant filed a writ appeal which was also dismissed on 16.6.2005. The Division Bench upheld the award on the following reasoning:

The petitioner's telephone was having STD/ISD facility. There is no evidence of misuse of the instrument either by the department staff or by any outsider. Enquiry was also conducted on the basis of the complaint of the petitioner. If the petitioner had got any doubt regarding the system, he could have availed of the dynamic locking facility which he has not availed....

The said judgment is under challenge in this appeal.

7. Section 7B of the Telegraph Act, 1885 makes the awards of Arbitrators final and conclusive between parties. The only remedy available to a subscriber aggrieved by an award is to seek judicial review by way of a writ petition. The High Court will not however sit in appeal over the Award, but will only examine its correctness and legality, within the limited confines of judicial review. (Vide M.L. Jaggi Vs. Mahanagar Telephones Nigam Ltd. and others, . We have examined the award keeping in view the aforesaid principles. The facts disclosed by the telecom department in the affidavits filed by the department before the High Court, show that the award of the Arbitrator suffers from non-application of mind which had led to several apparent, in fact, glaring errors of fact and law. We may refer to some of them briefly.

8. The award of the Arbitrator upholds the bill dated 11.7.1995 for Rs. 91,671/- relating to the period 26.4.1995 to 25.6.1995 and directs the subscriber to pay the said amount. The affidavits the department clearly shows that the bill dated 11.9.1995 for 403630 calls, is a consolidated bill for the period 25.12.1994 to 25.8.1995 and it includes the amount due for the calls made during the period covered by the bill dated 11.7.1995 (as also the period covered by two other bills dated 11.3.1995 and 11.5.1995). In other words, having regard to the bill dated 11.9.1995 for 403630 calls, the earlier bills dated 11.3.1995, 11.5.1995 and 11.7.1995 for 2800, 4100 and 62770 calls got cancelled. As the period covered by the bill dated 11.7.1995 was covered by the subsequent bill dated 11.9.1995, the Arbitrator ought to have held that bill dated 11.7.1995 was not payable. But he has mechanically and without application of mind, upheld the bill dated

11.7.1995 as also the bill dated 11.9.1995 without noticing that the bill dated 11.7.1995 cannot survive in view of the bill dated 11.9.1995.

9. The Arbitrator upheld the bills dated 11.7.1995 and 11.9.1995 by accepting the explanation of the telecom department that completion of several revolutions of the meter had been missed and that had lead to underbilling in the bills dated 11.3.1995, 11.5.1995 and 11.7.1995 and that was rectified in the consolidated bill dated 11.9.1995. According to the department, the meter was a five digit meter and could record the numbers running from '0' to '99999'. After reaching '99999', the meter would again start recording from '0'. By way of illustration, it was stated that for the period 25.4.1995 to 25.6.1995 covered by the bill dated 11.7.1995, the opening reading was 82886 and closing reading was 45655. The bill dated 11.7.1995 was prepared for 62770 units assuming that between the two reading, the meter had completed an revolution, that is it had reached 82886 to 99999 and then started from '0' to 45655. But it is alleged that between the two readings it had completed one more complete revolution, that is the meter ran from 82886 to 99999, then it ran one full round from '0' to '99999', and then again started from '0' to 45655. According to the department the number of called meter was therefore 162,769 units and not 62,770 units. For this purpose, the department has relied on the fortnightly meter reading record.

10. But the missing of one revolution cannot offer any explanation as to why the Bill dated 11.3.1995 was only for 2800 units and the Bill dated 11.5.1995 was only for 4100 units. The Bill dated 11.3.1995 covered the period 25.12.1994 to 25.2.1995. For this period, the opening reading was 75985 and the closing reading was 65508. There is no way the completion of revolution could have been ignored and the number of units was $(99999-75985)+(65508)= 89523$. There is no way the number of units could be shown as only 2800 for the period 25.12.1994 to 25.2.1995. But the bill was only for 2800 units. This remains unexplained. The Bill dated 11.5.1995 covered the period 25.2.1995 to 25.4.1995. The opening reading was 65508 and the closing reading was 82886. It is stated by the department that during the billing period one revolution was completed and therefore, the number of units was $(99999-65508) + (82886) = 117378$. Even if the completion of the revolution was missed, the Bill for the period should have been for 17378 units (that is 82886-65509). But the bill for 11.5.1995 is only for 4100 units. This is also not explained. Therefore, it is clear that missing or overlooking the completions of revolutions could not the real reason for the alleged underbilling for the periods covered by the bills 11.3.1995 and 11.5.1995. This becomes relevant because the Arbitrator did not find any irregularity in the bills for the periods covered by the Bills dated 11.3.1995 and 11.5.1995 which were for 2800 units and 4100 units. But the department ultimately charged the subscriber for 89523 calls (as against 2800 calls shown in the Bill dated 11.3.1995) and for 117378 calls (as against 4100 calls shown in the Bill dated 11.5.1995) for the said periods under the Bill dated 11.9.1995.

11. The Arbitrator having recorded a finding that there was a lack of monitoring by the department in respect of calls originating from Appellant's telephone, has failed to consider its serious consequences on the subscriber, with reference to the facts of the case. He has routinely given a 10% rebate by directing a rebate of 40000 calls in the bill dated 11.9.1995 on account of "benefit of doubt". This is arbitrary. He ought to have considered the question as to what should be the relief when the errors in billing were due to lack of monitoring and inspection of the department and the department claimed there was a huge underbilling for a back-period and sought to rectify such underbilling.

12. The Department's guidelines give an indication as to the consequences of lack of monitoring and inspection whenever there were unexplained spurts. They also lays down the procedure when spurts in calls are noticed. On 10.4.2008, this Court directed the department to produce the departmental guidelines for disposing of excess billing complaints. Initially the respondent produced the current guidelines dated 19.10.2005 along with an affidavit. By subsequent order dated 3.9.2008, this Court directed the respondents to produce the guidelines in force during the disputed billing period (1994-95). In response to it, the department has produced the circular dated 9.4.1986 as the relevant guidelines applicable, along with its affidavit dated 23.9.2008. We extract the relevant provisions from the said circular:

4. Avoiding excess billing complaints

4.1) In general, excess billing complaints arise from telephones having STD facility. They arise because of: (a) the subscriber, his family, friends and employees having used STD and not being conscious of the extent to which they have used it, or (b) a fault in the metering circuit, or some transient fault in the system; and (c) possible deliberate mischief by other subscribers in league with our staff.

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4.3) We have to be vigilant about 4.1(b) and ensure that as far as possible, metering circuits are tested and kept in proper order.

4.4) In regard to 4.1(c) we must ensure that all possible points at which such mischief can take place are suitably guarded. D.Ps must be looked, access to unauthorised persons to sensitive areas in the Exchange should be avoided and in case of any suspicion about a particular member of the staff, suitable action must be taken.

5. Advance action in case of a possibility of an excess billing complaint.

5.1) Detailed instructions have been issued separately in regard to watching the meter readings of various subscribers and action to be taken on them.

5.2 These broadly consist of

(a) Meter readings being taken every fortnight;

(b) Identifying all subscribers whose current fortnightly readings show a sudden spurt; and

(c) In case of such sudden spurts being noticed, placing the telephone line on observation and deputing responsible staff to the subscriber's premises to check up that there has been no special occasion which might have given rise to such spurts.

5.3) In order to establish the Department's credibility and to satisfactorily investigate complaints about excess billing it is necessary that these steps are taken conscientiously. It appears that in many stations, while meter readings are being taken regularly every fortnight, the difference is not being struck and all cases of spurts are not being brought out.

5.4) In all cases, the meter readings registers must provide for the difference being noted. Somebody should be held personally responsible to identify and report all cases of spurts to the officer-in-charge. Failure in this regard must be taken notice of. If an excess billing complaint reveals a spurt, which had not been reported, suitable educational and disciplinary notice should be taken of the concerned staff.

5.5) As far as possible all telephone lines showing a sudden spurt should be put on observation. For this purpose immediate steps must be taken to provide suitable observation equipment in all exchanges having STD facilities, so that once a spurt is noted, the line is actually put on observation.

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6. Investigation of an excess billing complaint

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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 that no useful purpose is served by undertaking such investigations after an excess billing complaint has been received.

Guidelines for decisions and conveying the same 7.1 In all cases in which the investigations reveal that

(a) there has been significant spurt in a particular period;

(b) in case of a spurt, there had been some special occasion which might have given rise to a genuine spurt; and

(c) the observations indicate genuine STD calls having been made from the subscriber's number no rebate may be granted and the complaint may be suitably informed with due courtesy explaining briefly the investigations carried out and the results thereof.

7.2 On the other hand, if it is found that there had been, in fact, a spurt for reasons unknown or there is a reasonable doubt as to the possible faults on the metering circuit or the subscribers' equipment or a reasonable doubt exists about the possibility of some mischief, the competent officer may grant suitable rebate.

12. What becomes apparent from the guidelines, is the obligation on the part of the department to record the meter reading fortnightly and if there is a sudden spurt, place the telephone line under observation and depute responsible staff to check whether there was any special reason giving rise to the spurts. The reason is apparent. Only contemporaneous investigation and checking can disclose the real reason for the spurt. Any amount of subsequent monitoring may not be of any use to identify the real cause for the spurt (unless the cause is faulty meter/system and that fault had continued).

13. In this case the stand of the department is that meter is capable of recording a maximum of 99999 units, and after completing one revolution of 99999 units, the meter will again start from the reading '0' (zero); that the meter had completed one revolution each during the periods 10.1.1995 to 25.1.1995, 10.3.1995 to 25.3.1995, 25.4.1995 to 10.5.1995 and 25.5.1995 to 10.6.1995; that the completion of such revolutions in January, March, April-May and May-June of 1995 was not noticed nor recorded by the department and consequently they had sent bills showing lesser number of calls than the actual numbers. The department claims that after receiving the complaint dated 28.7.1995 from the appellant, it inspected the installation and also verified the meter readings and discovered that the completion of four revolutions in January, March, April-May and May-June, 1995, had been missed while billing; and that therefore, it prepared a consolidated bill dated 11.9.1995 for the period 25.12.1994 to 25.8.1995 (covering the four bimonthly periods of bills dated 11.3.1995, 11.5.1995, 11.7.1995 and 11.9.1995), setting right the omissions and errors. It is thus clear that during the billing period for the bill dated 11.9.1995 (25.6.1995 to 25.8.1995), the appellant did not make 403630 calls, but had made only 33960 calls. The actual position according to the department is as follows (extracted from the affidavit dated 10.8.1999 filed in the High Court) :

Bill date Period Units consumed Units consumed as per bills after taking note served on the of completion of subscriber revolutions

11.3.1995	25.12.1994 to	2800	89523	25.2.1995	11.5.1995	25.2.1995 to	4100
117378	25.4.1995	11.7.1995	25.4.1995 to	62700	162769	25.6.1995	11.9.1995
25.6.1995 to	-	33960	25.8.1995				

What emerges is this : When excess billing was noticed by the Subscriber in the Bill dated 11.1.1995 (for the period 25.10.1994 to 25.12.1994) he complained to the Junior Engineer concerned, but paid the bill. He did not complain when received the bills dated 11.3.1995 and 11.5.1995, as they were showing normal number of calls. He again complained when there was excess billing in the bill dated 11.7.1995 (for the period 25.4.1995 to 25.6.1995). Only thereafter the

department inspected the system and verification of recording. On such verification, it claims to have found not excess billing, but underbilling during the period covered by the period 25.12.1994 to 25.2.1995, 25.2.1995 to 25.4.1995 and 25.4.1995 to 25.6.1995 covered by the bills dated 11.3.1995, 11.5.1995 and 11.7.1995 and consequently sent a revised consolidated bill dated 11.9.1995, by rectifying the alleged underbilling.

14. The significant adverse consequence is that the appellant was denied the opportunity of complaining about excess billing in regard to the period January to June, 1995. As noticed above, the department alleges that in view of omissions noticed in the earlier bills, it sent a revised consolidated bill dated 11.9.1995 for 403630 units for the period 25.12.1994 to 25.8.1995. If the correct number of calls had been recorded and reflected in the respective bills relating to Dec-Feb, Feb-April, and April- June 1995, the Appellant would not have been denied the valuable right of objecting to the excessive billing as and when the bills were presented. If the spurts had been noticed and recorded in time, as it ought to have been done, the verification/inspection/ monitoring mechanism could and would have been activated and the real reason for the spurts would have been identified. On account of the failure to record the meter reading properly in time, the opportunity to monitor, inspect and identify which of the three reasons mentioned in clause 4.1 of the guidelines, resulted in the spurt, was irretrievably lost. The subscriber also lost the valuable right to complaining against excessive billing and setting in motion appropriate inspection, verification and corrections procedures. By reason of the omissions and negligence by the officers of the department, the appellant has been burdened with a bill for 403630 units for 8 months (25.12.1994 to 25.8.1995) as against the normal average bimonthly billing of about 10000 to 15000 calls or 40000 to 60000 calls for the said eight months. According to the department, it merely corrected the errors resulting from the omissions/negligence on the part of its officers. But such correction has resulted not in restoration of normal billing from a position of underbilling, but in an extra-ordinarily excessive billing against the subscriber denying him the legitimate entitlement of objecting to it in time and getting it corrected.

15. The difference in consequences where retrospective correction results in regularisation or normalisation of the bills, and where retrospective correction leads to excessive billing is significant. We will try to demonstrate the significance by an illustration. Let us assume that the average bimonthly billing of a subscriber was around 5000 units during 1993 and 1994; that due to departmental omission or negligence, there was underbilling during 1995 leading to bimonthly billings for about 1000 units only; and that subsequently the errors/ omissions were noticed and corrected and the bimonthly bills were sent for about 5000 units. In such an event, the consumer obviously cannot have a grievance, as the bills were being brought to regular billing quantities. But let us take another situation. Let us assume the average bimonthly billing was around 5000 units in 1993 and 1994; that even during 1995 also, bimonthly bills were sent for around 5000 units; and that in 1996 the department alleges that there was

underbilling in 1995 and sent bimonthly bills each for say 100000 units. Then how does the subscriber defend himself against the claim? How can he set the verification and correction mechanism in motion to establish that the calls to an extent of 100,000 units were not made? The answer is that he cannot. Obviously the department cannot put a subscriber in a position where he cannot verify or seek verification of revised claims relating to back-periods.

16. If the completion of revolutions had been noticed and if the bills for such high number of calls had been sent in time, the appellant would have had an opportunity to complain against the excess billing and consequently the department would have been in a position to monitor the system and ensure that the defects were rectified. In addition it would have also been possible to verify as to whether there was any misuse or deliberate mischief by the staff and/or other subscribers, or whether the excess use was actually by the subscriber himself. This very valuable right was denied to the subscriber on account of the failure of the department to notice the several alleged completion of revolutions resulting in steep spurts. In fact the guidelines clearly state that if there was a spurt even in one fortnight reading, action should be taken. In this case spurts continued for about 16 fortnights, but remained unnoticed by the department. Consequences of such defaults and negligence by the department cannot be visited upon the subscriber by way of increased claims for back- periods.

17. We hasten to add that the correction of errors in the bills or additions of the omitted quantities is not by itself illegal. If the corrections made on noticing the omissions, when incorporated, results in raising a less than average bill to around the normal billing, it may not be open to question. Where the department has clear and acceptable evidence in support of omissions or underbilling which is capable of verification, it may be possible to revise the back-period bills. But where the belated correction of the alleged omissions leads to a huge increase in the normal billing and where there is no acceptable evidence supporting such increased claim, then the subscriber having been denied the opportunity to protest or object to the increased claim and secure monitoring of the installation or inspection of the system, cannot be burdened with a revised increased billing.

18. Coming back to this case, we are conscious that the High Court was not sitting in appeal over the award of the Arbitrator, and the learned Single Judge and Division Bench of the High Court have upheld the award. But the Arbitrator clearly recorded a finding that there was no monitoring by the department in spite of spurts and that had led to defective billing. But he gave only a marginal rebate of 10% without any logical reason for such a small rebate. He also directed double payments. He also ignored the admissions by the department. He upheld a retrospective revision resulting in a huge claim. These visible errors on the face of the award, which ought to have shocked the judicial conscience have been totally ignored by the learned Single Judge and by the Division Bench of the High Court, by a wrong application of the principle that courts will not sit in judgment over Arbitral Awards. The award of the Arbitrator is therefore liable

to be set aside.

19. We are of the view that no useful purpose would be served at this distance of time by remitting the matter to the Arbitrator. To put an end to the litigation and to do complete justice, we propose to modify the Bills. As noticed above the faulty billing was on account of the negligence of the department; and as a result of such negligence, the valuable right of the subscriber to object to the increase and secure monitoring/inspection has been taken away. Therefore, justice can be done in such a situation only by restricting the billing to the average of the bills for one year prior to the disputed period. As we find that there is no proper billing for two months, during the previous year, we propose to take the average of last five bimonthly bills before the disputed period. This shows the average bimonthly use to 15054, rounded off to 15,000.

20. We therefore allow this appeal, set aside the orders of the High Court and the Award of the Arbitrator and direct as follows :

(i) As the bill dated 11.1.1995 for Rs. 79,170/- (for the period 25.10.1994 to 25.12.1994) has been paid without any protest in writing, and the written complaint was only six months later, the appellant cannot avoid liability, even if there might have been some steep spurts during that period.

(ii) In regard to the period 25.12.1994 to 25.8.1995 covered by the consolidated bill dated 11.9.1995, the chargeable units are restricted to 60000 (sixty thousand) in place of the bills dated 11.3.1995, 11.5.1995, 11.7.1995 and 11.9.995.

(iii) The department is directed to send a revised bill relating to the said period (25.12.1994 to 25.8.1995) by cancelling the bills dated 11.3.1995, 11.5.1995, 11.7.1995 and 11.9.1995 already sent.

(iv) Respondents shall pay Rs. 5000/- as costs to the appellant.