**(2005) 08 MAD CK 0106**

**In the Madras High Court**

**Case No :** Writ Petition No''s. 2931 of 2000, 27545, 27546, 26516, 28076, 27844 and 28077 of 2003 and W.P.M.P. No''s. 33655 and 32433 of 2003

Samy Fuel Service APPELLANT

Vs

Union of India (UOI) RESPONDENT

**Date of Decision :** 02-08-2005

**Acts Referred:**
Telecom Regulatory Authority of India Act, 1997 — Section 4
Telegraph Act, 1885 — Section 7B

**Citation :** (2006) WritLR 242

**Hon'ble Judges :** P.D. Dinakaran, J

**Bench :** Single Bench

**Advocate :** S. Subbaiah, for the Appellant; R . Santhanam, SCGSC in W.P. Nos. 2931/2000, 28076, 27545, 27546 of 2003 and K. Kannan, SCGSC in W.P. Nos. 28077, 26516 and 27844 of 2003, for the Respondent

# Judgement

P.D. Dinakaran, J.—1. In W.P.No. 2931 of 2000, the petitioner seeks for issue of a writ of certiorari to call for the records relating to the communication dated nil enclosed with supplementary bill No. 4421854 dated 23.12.1999 issued to the petitioner by Accounts Officer (T.R.) Department of Telecommunication, Tuticorin 628 003 (the second respondent herein) and quash the same.

1.2. In W.P. Nos. 27545, 27546, 26516, 27844, 28076 and 28077 of 2003, the petitioner seeks a writ of declaration declaring that the first amendment brought to the Tele Communication Tariff (I Amendment) Order 1999 published in Gazette of India Extraordinary Part-III, Section 4 dated 31.3.1999, in so far as it related to the Clause granting a one time waiver from the prior reporting and publication requirements in respect of services covered by schedules III, IV, VI, VII, VIII and IX is concerned, as arbitrary, illegal, discriminatory and invalid.

2.1. The brief facts leading to the filing of W.P.No. 2931 of 2000 are as follows: As per the telephonic rules, a subscriber is permitted to have a single telephone connection at two different places and the rent payable is at the rate of Rs. 1500/- per kilometre. It is the case of the petitioner that the distance between the petitioner''s administrative office and their petrol bunk is 3.6 kilometres. The petitioner is paying Rs. 7,500/- per annum for all the years. The petitioner also paid the annual rent in advance for the year ending 31.3.2000. The petitioner, however, received a letter on 19.1.2000 with supplementary bill dated 23.12.1999 revising the license fee at Rs. 24,558/- deducting the sum already paid viz. Rs. 7,500/- and adding service tax at 5%, in all a sum of Rs. 17,911/- was demanded. As the revision is exorbitant, the petitioner has filed this writ petition.

2.2.1. The brief facts leading to the filing of W.P. Nos. 27545, 27546, 26516, 27844, 28076 and 28077 of 2003 are as follows: The petitioners in all these writ petitions are having a single telephone connection at two different places and they are regular in paying their dues. But, by way of supplementary bills, the respondents demanded the revised tariff from the petitioners and service tax thereon.

2.2.2. Aggrieved by the said demand made by way of the supplementary bills, the petitioners filed W.P.No. 1405 of 2001 and batch cases to quash the supplementary bills. This Court in W.P. Nos. 1405 of 2001 etc. batch of cases, by order dated 28.01.2003, directed the petitioners therein to make appropriate representation to the Telecom Regulatory Authority of India within four weeks and on receipt of such representations, the Telecom Regulatory Authority of India was directed to pass orders on the said representations and till such time, status-quo was ordered, and liberty was given to the respondents therein to proceed against the petitioners therein who have not filed any such representation within the said period.

2.2.3. On the representations made by the petitioners in the batch of writ petitions, viz., W.P. Nos. 1405 of 2001 etc., as directed by the order of this Court dated 28.01.2003, the Telecom Regulatory Authority of India, by order dated 19.5.2003, even though found that there is a violation of publication by the BSNL, the Authority will not be able to provide any relief to the subscribers, as there is no such provision in Telecom Regulatory Authority of India Act, 1997, as amended by TRAI (Amendment) Act, 2000. However, the Authority observed that respondents 2 and 3 could hold discussions with the affected parties on commercial consideration and offer relief.

2.2.4. When the petitioners were awaiting the response from the respondents, the respondents, by letters even dated 09.09.2003, demanded a sum of Rs. 32,415/- from each of the petitioners, as though the petitioners did not send any representation within the time allowed. As the demand has been made without adhering to the provisions of the Act, the petitioners have preferred W.P. Nos. 27545, 27546, 26516, 27844, 28076 and 28077 of 2003.

3. Mr. S. Subbaiah, learned counsel appearing on behalf of the petitioners in the

 

above writ petitions states that, assuming that the impugned tariff rate was demanded as fixed by the tariff circular No. 4/99, the respondents are not entitled to demand the impugned tariff as the tariff Circular No. 4/99 fixing the tariff rate was not individually served, and moreover, the impugned demand is exorbitant.

4. Per Contra, Mr. R. Santhanam and Mr. R. Kannan, learned counsel appearing for the respondents, strongly placing reliance on the decision of the Apex Court in Kanoria Chemicals and Industries Ltd. and Another Vs. State of U.P. and Others, , contend that the revision of contractual rate for supply of electrical energy, in the instant case the tariff rate for lease circuits, Voice Mail Service and Radio Paging, need not be served individually and the demand based on such revision of contractual rate cannot be challenged for want of opportunity as it does not suffer any violation of principles of natural justice.

5.1. It is settled law that neither the Government nor the Public Sector Undertakings are obliged to give hearing to the consumer before revising the contractual rates, either in the case of electricity service connection or telecom connection. In the instant case, the impugned demand is initiated to recover the arrears, based on the revised tariff rate, from the date of issuance of the tariff circular. Merely because the arrears were not collected in the bills served on the petitioners for the said month, will not be an estoppel for the respondents to claim the arrears.

5.2. In other words, from the date on which the revised rate came into force by the the Circular No. 4/99, it is binding on the contractual parties to pay the revised tariff rate fixed by the Government or the Public Sector Undertakings. Hence, in my considered opinion, the contention made on behalf of the petitioner is not tenable. Therefore, the impugned demands of arrears is fully justified.

6.1. The next question that arises for consideration is as to the quantum of demand made by the respondents based on the revised tariff rate, for the period during which the petitioners availed the facility.

6.2. This contention as also admitted by the respondents demands a finding on the factual aspect, which cannot be agitated in these writ petitions.

7. Therefore, while upholding the Circular No. 4/99 revising the tariff for leased circuits, voice mail service and radio paging, and the power of the respondents to demand arrears of revised tariff, with regard to quantum demanded, suffice it to direct the respondents to refer the matter for arbitration u/s 7-B of the Indian Telegraph Act.

8. The petitioners in each of the writ petitions are directed to pay 25% of the tariff demanded within eight weeks from the date of receipt of a copy of this order, and the same shall be subject to the final order to be passed in the arbitration proceedings, referred to above. On such payment within eight weeks, the petitioners shall make application for appointment of an arbitrator and on

receipt of such application, the respondents shall appoint an arbitrator and proceed further in accordance with law, and till then, the respondents shall not disconnect the service connections provided to the petitioners.

In the result, these writ petitions are disposed of accordingly. No costs. Consequently, connected W.P.M.Ps. are closed.