

(1989) 09 GAU CK 0036

In the Gauhati High Court

Case No : Civil Rule No's. 72 (SH) of 1989 and 598 of 1985 (Gauhati)

Santokh Singh

APPELLANT

Vs

Divisional Engineer, Telephones, Shillong and Others

RESPONDENT

Date of Decision : 26-09-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Telegraph Act, 1885 — Section 7, 7B
Telegraph Rules, 1951 — Rule 439, 442, 443

Citation : AIR 1990 Guw 47

Hon'ble Judges : S.K. Hom Choudhury, J;B.P. Saraf, J

Bench : Division Bench

Advocate : N.M. Lahiri, M.Z. Ahmed and G.N. Sahewalla, for the Appellant;
Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.P. Saraf, J.—This writ petition raises many issues of vital importance to a vast majority of the citizens and relate to the working of the telecom Department of the Government of India in the matter of complaints regarding excessive and inflated bills on account of local calls at S.T.D. stations, arbitrary rejection of the complaints, disconnection of the telephones, denial of the various safeguards granted to the subscribers under the rules and certain other allied issues.

2. The petitioner Sardar Santokh Singh is a permanent resident of Shillong. He has also a small business in Police Bazar. He has two telephone connections -- one at his residence (No, 26711) and another at his shop (No. 23711). These two telephones he was having for more than last 20 years. He used to get the telephone bills on account of rental, call charges, trunk calls etc. in respect of the said telephone connections which were paid regularly. On one or two occasions when he received bills which were excessively high and inflated, he filed complaints with the authorities. The complaints were attended to and the bills were reduced by giving suitable rebate. As the petitioner has very limited use of

the telephone, the total outgoing calls were also very nominal. This is evident from the following chart showing the amount due on account of trunk calls and number of chargeable local calls as per the telephone bills in respect of telephone No. 26711 for a number of periods preceding the periods during which the disputed bills were received :

Bill dated	For the period ending	Amount charged for Trunk Call	Number of Local calls
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21-7-82	5-7-82	Rs. 153.00	109
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21-9-82	5-9-82	Rs. 253.00	100
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21-11-82	5-11-82	Rs. 156.50	103
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21-1-83	5-1-83	Rs. 213.00	169
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21-3-83	5-3-83	Rs. 44.00	9
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21-5-83	5-5-83	Rs. 204.00	Nil
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21-7-83	5-7-83	Rs. 342.00	329
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3. In the bills for the immediately succeeding periods, the number of local calls shot up abruptly to excessively high figures. The position will be clear from the following chart :

Bill dated	For the period ending	Amount charged for Trunk Calls	Local calls charged
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21-9-83	5-9-83	Rs. 245.00	13879
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21-11-83	5-11-83	Rs. 193.00	18,819
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21-1-84	5-1-84	Rs. 113.00	10019
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The bill dated 21-9-83/21-10-83 was for the period 6-7-83 to 5-9-83 and this bill was for Rs. 2,009.50. The petitioner submitted a complaint against excessive billing in respect of the said bill and while it was pending consideration, he received another bill dated 21-11-83 for the next bi-monthly period amounting to Rs. 9,428.00. The petitioner was shocked to receive such an inflated bill and immediately on its receipt filed another complaint. This time he also submitted an application to the Divisional Engineer, Phones, Shillong requesting him to withdraw the STD facility itself. While his complaints were pending still another bill dated 21-1-84 was received by him for the next bi-monthly period this time showing the amount due as Rs.4,968/-.

In this connection it may be pertinent to mention that earlier in 1982 also, the petitioner was once faced with a similar situation when a bill in respect of the same telephone was served on him showing local calls charged as 3579. It was bill for the period ending 5-7-82. The petitioner filed a complaint. The complaint, however, was attended to and the Accounts Officer on investigation of the

complaint granted a rebate of 3000 calls out of 3579 calls charged in the bill and asked the petitioner to pay Rs. 231.60 which he paid. Things, thereafter, went on smoothly till October, 1983 when the petitioner got a highly inflated bill for the period from 6-7-83 to 5-9-83 followed by two further bills for still much higher figures. It is interesting to note that even after the petitioner on receipt of excessive bills applied for barring the STD facility in respect of the said telephone and the said facility was withdrawn on 9-1-84. On payment of necessary fee of Rs. 50/-, the bill for the period from 1-2-84 to 31-3-84 came as high as Rs. 4,968/-. It may also be noted that the first disputed bill for the period from 6-7-83 to 5-9-83 for Rs. 2,009.50 in respect of which complaint was filed was revised and a fresh bill for Rs. 6,139/- was issued on the ground that there was some mistake in recording the local calls from the meter.

5. The case of the petitioner is that no action was taken on his complaint nor any intimation was given to him in regard thereto. But on 2-2-84 his telephone No. 26711 was disconnected without any notice to him to that effect. On 8-2-84 the petitioner received two registered letters (Annexure I and II to the writ petition) one being letter dated 3-2-84 issued by the Accounts Officer of the office of the Divisional Engineer, Phones, Shillong informing him that no rebate in respect of the complaint for the period from 6-9-83 to 5-11-83 was admissible; and another of the same date informing that the telephone 26711 was disconnected on 2-2-84. Admittedly, the telephone was disconnected even before the letter informing about rejection of the complaint against excess billing was communicated to the petitioner. The petitioner then made a representation dated 10-2-84 to the Director of Telecommunication, N.E. Telecom Circle, Shillong (respondent No. 4). In the said representation detailed information was given in regard to the past bills and the disputed bills and prayer was made to do justice. The petitioner, thereafter, received another letter dated 21-3-84 issued by same Accounts Officer this time informing him about rejection of his earlier complaint in respect of bill dated 5-9-83 and directing him to pay the demand. The petitioner having failed to get justice in the hands of any of the officials of the Department made a representation dated 6th April, 1984 to the General Manager of Telecom, N.E. Telecom Circle, Shillong (Annexure-V) wherein entire facts and circumstances were narrated with a request to call for the records of the case, examine the record of bills of the petitioner for last few years and to dispose of the representation judiciously. However, either it was too small a matter or the General Manager was too big to attend to such grievances of ordinary subscribers like the petitioner that he did not even acknowledge the same, not to speak of taking any action thereon. The only person in the Department who was active was the Accounts Officer who was doing his job most scrupulously disconnecting the telephone, and rejecting the complaints. It does not appear from the records that he even took pains to go through the long letters and/ or representation filed by the petitioner from time to time. He was, however, taking all possible actions against the petitioner even without caring for the Rules contained in the Manual or the Government circulars. This time he sent a

registered notice dated 19-12-84 to the petitioner asking him to deposit a sum of Rs. 20,719.50 being the entire amount of the excess bill which were disputed by the petitioner and for non-payment of which his telephone No. 26711 was disconnected. The petitioner was also threatened that if no payment was made of the aforesaid amount within 28-12-84, the other telephone working in his shop being telephone no. 23711 would also be disconnected. The said notice was sent by registered post and it was received by the petitioner on 29-12-84 after the date fixed for payment. However, without even awaiting for the service of the said notice on the petitioner his residential telephone No. 23711 in respect of which admittedly nothing was outstanding was, disconnected on 29-12-84 itself. Few days later, by letter dated 2-1-1985, he was informed that his telephone No. 23711 had been disconnected on 29-12-84 for non-payment of dues amounting to Rs. 20,719.50. The petitioner thereafter, approached this Court challenging the excess bills issued by the Telecom Department, arbitrary rejection of the complaints in regard thereto, disconnection of telephone No. 26711 in respect of which disputes regarding excess billings were raised and also the disconnection of the other telephone No. 23711 in respect of which neither there was any dispute in regard to billing nor any amount was outstanding. The petitioner also prayed for interim order directing the respondents to re-connect both his telephones. This Court by order dated 5-8-85 in Misc. Case No. 724 of 1985 directed the respondents to restore both the telephones within 24 hours and also directed the petitioner to deposit a sum of Rs. 5,000/- which would be adjusted against current/past bills. The telephones were accordingly restored and with that stopped further excess billing also. There was no new dispute except the one which is the subject-matter of the present writ petition. The petitioner has also challenged the validity of Rules 441 and 443 of the Indian Telephone Rules.

6. On behalf of the respondents an affidavit was filed by the Accounts Officer of the office of the Divisional Engineer, Telephones, Shillong. All the statements made in his affidavit are based on records. It was stated in the affidavit that on receipt of the complaint from the petitioner in regard to the bill dated 21-9-83/21-10-83 the bill was split up provisionally and out of the 13879 calls charged in the bills the petitioner was asked to pay for 800 local calls and the remaining amount for 13,079 local calls was kept in dispute to be settled after investigation was over. This amount admittedly was paid by the petitioner. It is stated in the affidavit that on investigation it was found that there was nothing wrong in the meter or other equipment. Moreover calls for the subsequent periods were also high. So the complaint was rejected vide letter dated 21-3-84 (Annexure I to the affidavit) and the petitioner was asked to pay the amount. In regard to the complaint in respect of bill dated 21-11-83/15-12-83 it is stated that the petitioner was informed that the complaint was under investigation and he was advised to pay the bill in full on or before 20-1-84 to avoid disconnection. It is also stated that in the said letter it was mentioned that if excess was found unjustified the same would be adjusted in his future bills. It is, however, admitted that telephone No. 26711 was disconnected on 2-2-84 even while the

complaints were pending investigation. It is repeatedly stated in the affidavit that as nothing wrong was found in the meter, the complaint regarding excess bill could not be entertained. So far as the non-consideration of the complaint by the Divisional Engineer, Telephones and other higher authorities is concerned, it is stated that no such complaints under the Departmental Rules can be entertained unless the subscriber first pays the bills in full before he approaches the higher authorities. Regarding disconnection, it is boldly contended that the Post and Telegraph Department has full right to disconnect not only the telephone in respect of which there is a dispute regarding the bills, but also other working telephones. This contention is based on Rule 443 of the Indian Telegraph Rules. There are also statements in the affidavit to the effect that there being STD facility the subscriber used it excessively and later lodged the complaint to avoid payment of the bills. It has also been stated that "there was no proof that the petitioner had not used the telephone to the extent shown in the bills". It may be worthwhile to mention that the aforesaid statements also have been sworn as true to information derived from records, It is difficult to understand how the aforesaid statement could be made from records. These can at best speculations or inferences. Besides, though the entire affidavit is based on information derived from records, no records were produced before the Court in support thereof. In short, the case sought to be made out in the counter filed on behalf of all the respondents and the Post and Telegraph Department seems to be that if there is excess billing, whatever may be its magnitude, on receipt of complaint, the Department has only to verify the correctness of the meter as well as recording of the reading therefrom and if these are found to be in order the complaint may be rejected unless the subscriber can prove that the telephone was not used by him to that extent. So far as the right to disconnect is concerned, it is contended that once telephone bills are issued and they remain unpaid, the Department has all the rights to disconnect the telephone without reference to the subscriber. The Department has also the right to disconnect all other telephone connections with the subscriber who is in default. It is contended that if any irreparable loss or substantial injury is caused to the subscriber he has to blame himself and not the Department.

7. Before dealing with the various submissions of the petitioner and the very bold stand of the Department, it may be worthwhile to mention that one of the reasons advanced in the counter in support of the inflated bills is that the petitioner had some business connection at places like Srinagar, New Delhi, Patna, Bombay, Baroda, Gorakh-pur, Imphal, Tezpur etc. wherein he sometimes used to make trunk calls. He might have made STD calls to these places which might have resulted in such excess bills. This speculation has also been pressed in service in justification of the fantastically high bills.

8. The petitioner in his affidavit-in-reply filed in connection with the Misc. Case arising out of the aforesaid case categorically stated that his gold business was completely suspended with effect from 30-12-82 and, as such, there was no question of making calls to the above places. It was also stated that at the

relevant time there was no STD facility from Shillong to most of the places mentioned in the counter. This according to the petitioner shows the manner the Department treats the consumers even in the Court. No reply was filed by the Department. Even at the time of hearing the respondent could not show that at that time Shillong was connected by STD facility to the various places mentioned by them in the counter.

9. We have considered the entire facts and circumstances of the case very carefully. The facts of the present case present a very grim picture of the working of the Telecom. Department. The petitioner in this case was represented by Mr. N. M. Lahiri and Mr. M. Z. Ahmed and the respondent by Mr. Purkayastha. We have heard both the counsel at great length.

10. We have given our careful consideration to the facts and circumstances of the present case. We have also carefully scrutinised the law on the subject namely, the Indian Telegraphs Act, 1885 (hereinafter the Act), the Indian Telegraph Rules, 1951 (hereinafter the Rules), and the executive instructions, guidelines etc. issued by the Ministry of Communications, Government of India to the all Heads of Telecom Circles/Districts on the subject from time to time. All this elaborate exercise as indicated above, was done in view of the magnitude of the problem of excess or inflated billing, rejection of complaints lodged by the subscribers in a perfunctory manner and arbitrary disconnection of telephones. Similar complaints are heard from subscribers not only in Shillong or the North Eastern Region but all over the country. It is one of those thousands of cases where the subscribers, instead of availing the STD facility which has been introduced after spending huge money from the public exchequer, are running after the Department to get their telephones STD barred even on payment of charges for the same. We can have a feel of the dimensions of the problem from the fact that the problem of excess billing even had its echo in the Parliament of the country. On 31st March, 1987 there was a complaint in the Parliament that even the Members of Parliament were subject to excess billing. It was alleged that when they were out of station their phone bills in Delhi went up. It was reported in the Times of India of 1st April, 1987. The further evidence of the magnitude is available from Report of the Estimates Committee of the Parliament (7th Loka Sabha 26th Report dated 26th April, 1987) wherein it is observed that complaints of faulty and inflated billing had been received by it from a large number of subscribers of non-official organisations from all parts of the country, Even in our own High Court hardly a day passes without a writ petition by a subscriber aggrieved of excess billing, disconnection or threatened disconnection for non-payment of demands based on such bills. It is in view of such wide dimension of the problem which is affecting a vast majority of the telephone subscribers in the country, more particularly in the North Eastern region, that we decided to look into the entire gamut of the Rules etc. on the subject and to examine meticulously the working of the Department in this regard.

11. We have examined the problem mainly in two parts -- (1) the problem of

excess billing, its causes and the remedy available to a subscriber who is a victim of such excess billing; and (2) the power of the Department to disconnect telephones for alleged non-payment of the regular bills and/or disputed bills which contain charges for excess local calls. To properly appreciate the problem before us we perused the relevant rules and the executive instructions on the subject issued by the Government of India. Though at the first limb of hearing we could not lay our hands on any book or manual containing relevant rules, or any instructions etc. issued by the concerned Ministry on the subject and were virtually left to decide the points only on the basis of the statements made in the writ petition and in the counter, in course of the day on our insistence we were provided with the following publications :

Post & Telegraphs Manual, Vol. XIV and Swamy's Treatise on Telephone Rules -- a private publication. The Posts & Telegraphs Manual Vol. XIV deals with working of the telephone revenue particularly dealing with accounting. We were also furnished with a Circular issued by the Government of India, Ministry of Communications, Department of Telecommunications being No. 4-59/85-TR dated 9th April, 1986 addressed to all Heads of Telecom. Circles/Districts which exhaustively deals with the problem of excess metering and suggests the manner of disposal of the complaints in that regard, It gave us a little comfort to find from the said communication that at least the concerned Ministry of the Government of India is aware of the serious problem of excess billing and even its causes. It has enumerated the causes of excess billing in the following terms :

"4.1. In general excess billing complaints arise from telephone 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 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".

The following suggestions have been made to deal with complaint on the basis of its nature enumerated above. These suggestions are :

"4.2 As far as 4.1 (a) is concerned, we can convince the subscriber only through suitable observations/discussions.

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.P.S. must be locked. Access to unauthorised persons to sensitive areas in the Exchanges should be avoided and in case of any suspicion about a particularly member of the staff, suitable action must be taken."

It also suggests advance action in case of possibility of excess billing complaint

and also the manner of investigation in disposal of the complaints in regard to excess billing. Before adverting to the same we may at this stage refer to para 434 of Chapter XV of Vol. XIV of Posts and Telegraphs Manual (shortly "the Manual") which deals with the possible causes of false metering in case of STD stations and the procedure to deal with the same. The relevant portion of Para 434 reads as follows :

"434. In cases of STD stations, possibility of false metering under certain extreme conditions cannot be ruled out. It could be due to landing of the subscriber on an engaged switch train up to the point of outgoing carrier channel relay set on which STD call is in progress. In some cases a help up condition of subscriber's line (after making an STD call) could occur either on account of short circuit of the line or due to faulty operation of the hook switch. The detailed investigations in respect of the complaints against the inflated bills for local calls enormously in excess of the normal calling rate for local subscribers (in STD stations) takes quite long to get completed. The amount involved in such cases is quite often egregiously out of all proportions to the subscriber's normal calling rate. Leaving the entire amount of the disputed bills to be settled only after prolonged period of investigation in each case will entail sizeable accumulation of outstanding. The following action should therefore be taken in such cases.

(i) When a complaint regarding excess charge for local calls is received and such calls are found to exceed the highest one obtaining during the three preceding quarters by more than 100% at STD stations and more than 50% at non-STD stations, unless the complainant pays the bill on his own under protest or otherwise, A.O.T.R. may defer enforcement of recovery of the amount of the disputed bill till investigation of the complaint is completed, and a decision as to whether some rebate for the excess charge is justified or not, is taken.

(ii) Action should be taken to cancel the disputed bill and split it up into two bills- one to include charges which are correctly payable by the subscriber including local calls, local call charge being computed to be equal to the average number of calls metered during the SIX BI-MONTHLY periods (one year) immediately preceding the disputed periods plus 10% over the average. A second bill should be prepared for the balance and marked as "part local call bill (disputed)". While the subscriber may be required to pay the first bill within 7 days of its issue, payment of the second bill may not be insisted upon.

(iii) The revised bill so prepared and handed over to the complainant for immediate payment should be marked by means of a special rubber stamp impression in bold characters, "Local call charge provisional and subject to adjustment on investigation of the complaint". In case after taking delivery of such bill for payment the subscriber claims subsequently that he has misplaced the bill and wants another copy thereof for payment, such copy which may be issued to him should bear a similar rubber stamp impression.

(iv) Cancellation of the original disputed bill should be recorded in the appropriate

records as provided for in the rules. Of the two bills issued, the one immediately payable should be entered in the usual bill register for the month during which the bill is issued. The second bill -- the part local call bill (disputed) should be entered in a separate register for the month to be opened specially for the purpose.

(v) In the event of the first bill referred to above, which is immediately payable, remaining unsettled within seven days from the date of issue thereof, the telephone may be disconnected after issuing the usual reminder, care being taken to ensure that disconnection is not ordinarily delayed beyond a month or so, from the date of the original bill.

(vi) On completion of investigation of the complaint if the second bill is still found to be payable it may be asked to be paid by the party within 15 days from the date of our intimation to the party to this effect. Disconnection may be enforced in the event of non-payment after observing due formalities.

In case the "part local call bill (disputed)" is found to need revision, it may be cancelled and a new bill for the correct amount issued through the usual bill register for the month of issue, for payment in the usual course.

Para 435 deals with the powers of the authorities to grant rebate to the subscribers who are victims of excess metering. It reads :

"435. (i) In those cases where false metering is found to have occurred in the STD stations due to meters having worked under certain extreme conditions, the details of investigations will be referred to the Head of the Circle/District who may, if so satisfied, authorise at his discretion the bill adjustment subject to the condition that the amount of the rebate allowed in such cases is limited to Rs. 1000 per quarter per subscriber that such a rebate is not allowed to the same telephone number in respect of more than 2 quarters in a calendar year and that after the quarter the telephone of the subscriber is placed under observation for a month.

(ii) The power to authorise bill adjustment/rebate can be exercised only in respect of STD stations where metering equipment is in order and does not cover non-STD stations."

We may now once again revert to the circular dated 9-4-1986 referred to above. It contains elaborate guidelines to the officials of the Department. These following advance actions in case of a possibility of an excess billing complaint have been recommended-

"(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."

There is also guidelines to the officers in regard to investigation of cases of such complaints. These are contained in para 6 of the aforesaid circular which is reproduced below :

"6. Investigation of an excess billing complaint

6.1 It has been noted that subscribers do not at present have a clear picture as to whom they should contact in case of a suspicion of excess billing. It is necessary that in every important telephone system, one or more specific officers are identified for this purpose. Suitable offices properly furnished should be provided to receive the subscribers and process their complaints including issue of split bill. Widest possible publicity should be given that in case of a suspicion of any excess billing these officers are to be contacted.

6.2. It will be useful to give suitable guidelines to the subscribers in regard to the information to be given by them in support of their excess billing complaints.

6.3 The excess billing complaint must be acknowledged immediately on its receipt. This should be done by every officer, who received the excess billing complaint. It is possible that the subscriber may address the higher authorities than prescribed in accordance with para 6.1 above. In such cases, such authorities while acknowledging the complaint should indicate that the complaint has been forwarded to the prescribed officer in this regard and to request the subscriber to further contact him only.

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

6.6 The Exchanges should be requested to submit the reports in this regard within a prescribed period -- maximum 15 days. Suitable forms have already

been designed for this purpose. These may be modified if considered necessary. On receipt of these reports, the prescribed officers must evaluate all the evidence and make a suitable recommendation to the officer in whose competence the application lies. The powers of various officers for grant of rebates have been prescribed in Office letter No. 2-3/83-TR dated 21-3-86.

6.7 It is possible that the excess bill exceeds the previous bi-monthly bills by substantial amounts. In such cases, temporary relief to the subscriber by way of issuing a split bill may be justified. As already prescribed a split bill may be issued if the bi-monthly bill for local call charges exceeds double the maximum amount of the previous 6 bi-monthly bills for local call charges. The split bill for local call limited to the average of local calls billed in the preceding six bi-monthly periods plus 10% thereof and should be issued with a clear statement that this is a purely provisional bill pending further investigation into excess billing complaint and if after investigation the Department comes to the conclusion that the original bill is justified, the subscriber will have to pay the full bill or as may be determined by the competent authority.

6.8 The prescribed officer should obtain the orders of the competent authority as soon as possible, if necessary by submitting the cases personally. In any case, the cases must be disposed of within 2 months from the date of receipt of the complaint."

Guidelines have also been issued in Paras 7 and 8 of the said circular in regard to decisions of the complaints of excess billing and the manner of conveying the same in the following terms :

"7. 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 subscriber's equipment or a reasonable doubt exists about the possibility of some mischief, the competent officer may grant suitable rebate.

7.3. In every case, the final reply should go to the complainant within a maximum period of 2 months from the date of receipt of the complaint.

7.4 To give credibility to the investigation in the department, individual typed replies should go to the subscribers, giving very briefly the investigations carried out, the results thereof and the reasons for the final decision.

8. It has been decided that all excess billing complaints remaining pending at present must be disposed of within 2 months as per above guidelines."

In para 9, summarising the various directions given above, the authorities concerned have been asked to enforce the following arrangements ;

"9. It is requested that immediate action be taken on the above lines. To recapitulate proper arrangements may be enforced for-

(a) taking fortnightly readings, identifying spurts and following them up,

(b) identifying one or more officers, who will receive excess billing complaints from the subscribers and giving proper publicity in this regard. Such officers must be housed in readily accessible, properly furnished offices, and

(c) establishing a proper procedure for handling excess billing complaints, and

(d) prompt disposal with individual replies."

12. From a reading of the aforesaid provisions contained in the Manual and the Circular it is clear that the Government is aware of the serious problem of excess billing as also of its causes. It also knows that even if no defect is found in the meter, possibility of false metering cannot be ruled out. In technical terms, it is conscious that there may be false metering "due to landing of the subscriber on an engaged switch train up to the point of outgoing carrier channel relay set on which STD call is in progress". It is aware that in some cases on account of some short circuit in the line or due to faulty operation of the hook switch the subscriber's line after making a STD call might be held up and all this may result in the meter's recording local calls enormously in excess of the normal calling rate for local subscribers. It is also the admitted position that excess billing may occur on account of deliberate mischief by some other subscribers in league with the staff of the telephone Department.

13. As to relief in such situations, the following position emerges from the aforesaid provisions. Immediately on receipt of complaint regarding excess charge for local calls where the calls are found to exceed the highest one obtaining during the six preceding quarters by more than 100% at STD stations, the officer concerned is required to defer enforcement of recovery of the amount of the disputed bill till investigation of the complaint is completed, and a decision as to whether some rebate for the excess charge is justified or not, is taken. There is also provision for cancellation of the disputed bill and preparation of two bills -- one to include charges which are correctly payable by the subscriber including local calls, local call charge being computed to be equal to the average number of calls metered during the six bi-monthly periods (one year) immediately preceding the disputed periods plus 10% over the average. Such a

bill is called "split bill". Another bill may be prepared for the balance and marked as "part local call bill (disputed)". Though the subscriber is required to pay the first bill within 7 days, the officers have been directed not to insist on the payment of the second bill till final decision is taken on the complaint lodged by a subscriber after making proper investigation on the lines indicated in the Manual and in the circular.

14. We are constrained to note that despite all the elaborate safeguards provided in the Manual and the Circular and the guidelines issued in regard to dealing with the complaints of excess billing, issue of revised bills immediately on receipt of a complaint, instruction to keep the disputed excess demand in abeyance till disposal of the complaint after proper investigation, the officials of the Department at the field levels and their higher ups at the Telecom. Circle and District level are taking the subscribers for a ride. Either they are blissfully ignorant of all these relevant provisions or they are intentionally ignoring the same for reasons best known to them.

15. From the facts of the instant case, it is evident that there was abnormal spurt in the number of local calls. In the last six bimonthly periods the local calls were 109, 100, 103, 169, 9 and the highest number was 329. The average was 137 calls. In the next three periods it went up to 13879, 18819 and 10019 i.e. 100 to 150 times of the average. There is no ostensible reason for such a spurt in the number of calls. Earlier also on one occasion about a year back there was a similar complaint of excess billing. It was in the bill for the period ending 5-7-82 wherein the local calls were recorded as 3579. At that time the complaint of the petitioner was attended to. The grievance was found justified and rebate of 3000 calls was given by the authorities. He was asked to pay for 579 calls. This time, however, the complaint was rejected simply on the ground that "the meter and the associate accessories were found to be in order". Nothing was stated about the possibility of other causes referred to in the Manual and in the Circular, namely, a fault in the metering circuit or some transient fault in the system or possible mischief by other subscribers in league with the staff of the Department and the like. Evidently, the investigation was perfunctory. There was no application of mind. The rejection of the complaint was arbitrary. The petitioner was not allowed even to have respite of getting his bill split into two and paying the first based on the average of the six bi-monthly periods and getting stay of payment of the second bill, namely, excess call bill, which is clearly visualised in the Manual and the Circular. On the other hand, he was asked to pay the entire demand pending investigation. It is distressing to note that even the telephone was disconnected without waiting for the outcome of the investigation or communicating the result thereof to the subscriber. Not content with it, the other telephone working at his shop premises was also disconnected though there was no dispute in regard to payment of any bill in respect of the same.

16. We asked the learned counsel for the Department to satisfy us as to the reasonableness and/or legality of the aforesaid actions. On the face of the

provisions contained in the Manual as well as the elaborate guidelines given by the Government of India in its circular dated 9-4-86, it was difficult for him to support the same. He, however, made some general submission that in the event of nonpayment of the bill within 15 days from the date of its issue the Department has a right to disconnect the telephone without any notice to the subscriber. In the instant case according to him no payment was made within the aforesaid time limit and, as such, the Department had the power to disconnect the telephone. In regard to rejection of the complaint against excess billing, it was submitted that "the petitioner could not prove that he did not make any STD calls" and, as such, the Department having found no fault in the meter or its reading was justified in rejecting his complaint. We are not at all impressed by the submissions of the learned counsel for the Department. We do not find any basis or justification for the attempt made by the Department to shift the onus of proving that no STD calls to the extent shown in the bill were made on the subscriber. We asked the learned counsel and the officer of the Department who was assisting him in the Court to inform us as to in what manner, according to them, the subscriber could have proved it but we could get no answer. We also asked him whether in the instant case they could rule out the possibility of other causes of excess billing like fault in the metering circuit, or some transient fault in the system, or some deliberate mischief by some other subscribers in league with their own staff, which admittedly are rampant. But hereto there was no answer.

17. We are, therefore, satisfied that the action of the Department in the instant case was arbitrary and illegal. The rejection of the complaint in regard to excess billing was not justified. In our opinion, unless the Department has got some material with it to show that the petitioner made excessive use of the telephone which might justify the exorbitant bill, it could not just reject his claim on the ground that the recording of the reading from the meter was correct when it is an admitted position that the meter can record exhorbitantly high number of calls even without the subscriber making any such calls. The rejection of complaint was done in a perfunctory manner. No attempt was made to rule out the possibility of other major causes referred to above including possibility of mischief by its own employees. There is no reference to fortnightly meter readings. In short, nothing had been done except verifying the reading of the meter, comparing it with that shown in the bill. On finding it correct, the complaint was rejected just mechanically without any application of mind whatsoever. Normally, in such a case, we would have directed the Department to examine the matter afresh and to give suitable rebate to the subscriber. But we are not doing so as in our opinion it will be a totally futile exercise. If the Department could not find out the cause even soon after the complaint was filed, there is no possibility by any amount of investigation after lapse of long six years to find out anything further at this stage. Under the circumstances, we direct the department to prepare fresh bills for the relevant periods under dispute including local calls, local call charge being computed equal to the average number of local

calls charged during the six bi-monthly periods immediately preceding the period to which the first disputed bill relates plus 10% over the average and to grant rebate for calls in excess thereof in all the disputed bills.

18. In view of the importance of the subject and the elaborate discussion made above we deem it necessary to issue certain directions to the Department in the matter of dealing with the complaints regarding excess or inflated billing, which we hereby do in the following terms.

17. As soon as complaint regarding excess billing for local calls is made by a subscriber and such calls are found to exceed the highest one obtaining during the six preceding bimonthly periods by more than 100% at STD stations and more than 50% at non-STD stations the concerned Accounts Officer or any other authorised officials shall immediately on receipt of the complaint defer enforcement of recovery of the amount of the disputed bill till investigation of the complaint is completed and a decision as to whether a rebate for the excess charge is justified or not, is taken.

(ii) The concerned officer shall issue a fresh bill, termed in their own terminology, as "split bill" to include charges which are regularly payable by a subscriber including the local calls, the local call charge being computed to be equal to the average number of calls metered during the six bi-monthly periods (one year) immediately preceding the disputed periods plus 10% over such average.

(iii) Such "split bill" shall be paid by the subscriber within 7 days of its presentation to him,

(iv) The payment of the balance amount of the disputed bill shall remain stayed till the settlement of the disputed bill or disposal of the complaint.

(v) If, as a result of the investigation, it is found that there had been a significant spurt in the number of calls in a particular period or periods, unless the authorities are satisfied that there had been special occasion or function which might have given rise to a genuine spurt or there is reasonable indication or material to show that genuine STD calls had been made from the subscriber's telephone to the extent shown in the bill, his complaint shall not be rejected on the ground that the meter was found to be in order and that the reading was correctly recorded therefrom. In other words, if the possibility of false metering on account of fault on the metering circuit or in the subscriber's equipment or any other technical fault or some mischief by the employees of the Department cannot be ruled out or if the reasons for such spurt are unknown, full rebate visualised by the rules shall be granted to the subscriber by the appropriate authority. We may make it clear that "full rebate" shall mean rebate to the extent of the difference between the local calls charged in the disputed bill and the average number of calls during six bi-monthly periods preceding the disputed bill plus 10% thereof as indicated above. In other words, the "split bill" shall become final bill and the balance demand shall stand cancelled.

(vi) If the result of observations and materials on record indicate genuine STD calls having been made from the subscriber's number, the concerned authority shall estimate the number of calls that can reasonably be attributed to such user and sustain the bill to that extent only and grant relief in respect of the balance calls (being in excess of such estimated number). In such cases, the authority concerned before taking a final decision in the matter on the lines indicated above, intimate the subscriber the result of observations and material, if any, available with it as well as the proposed decision in regard to rebate to enable him to have his say in the matter. It should take a final decision only on consideration of the materials in the light of representation, or reply, if any, submitted by the subscriber.

19. It may be observed that we have given the aforesaid directions in view of the fact that it is the telephone department alone who has got the full control over the entire operation of the telecom system including the lines, metering circuits, instruments, operation of the hook switch or functioning of its employees and the like. If any one of these causes exist or if a deliberate mischief has been committed by the staff of the department, we find it difficult to visualise the ways and means by which a subscriber can establish the same. There is no denial that such causes do exist. It is also admitted that by any amount of field investigation possibility of such causes or mischief cannot be ruled out. It is because of this that the Government of India, Ministry of Communication itself has decided that no field investigation is called for to determine whether there was any cause for special spurt after the complaint has been received. This according to them, should have been made, if justified, immediately after the spurt was noticed in the "fortnightly readings". It has been rightly pointed out to all the Telecommunication Circles that no useful purpose would be served by undertaking such field investigations after an excess billing complaint has been received. We appreciate the sincerity, clarity and frankness with which the Ministry has accepted the real state of affairs. It cannot, therefore, be said that the authorities after receipt of the complaint by field investigation can detect that the spurt was justified unless they can find any just reason to satisfy that STD facility, in fact, was used by the subscriber. This can be done either by regular observation based on fortnightly meter reading which they are required to do as a part of their duty or by pointing out to some material which can convince a reasonable person about the possibility of such spurt taking place as a result thereof. Otherwise, the benefit shall have to be given to the subscriber as admittedly there is no means by which he can establish his bona fides except making averment to that effect.

20. In this connection it may be worthwhile to mention that in view of the ever growing problem of excess metering complaints financial powers delegated to various authorities to grant rebate have also been enhanced from time to time. At present, the Circle Telecom Boards can grant rebate on excess metering on telephone calls up to Rs. 50,000/- per billing period subject to the maximum of rupees one lakh for three billing periods for one telephone in a financial year.

Similarly the Chief General Manager has been given the power to grant rebate up to Rs. 40,000/- per billing period subject to a maximum of Rs. 80,000/- for three billing periods in a financial year per telephone. All Telecom District Managers, Area Managers, Deputy General Managers in Metro and Major Districts and Regional Directors in Telecom Circles are having powers to grant rebate up to Rs. 20,000/- per billing period subject to a maximum of Rs. 40,000/- for three billing periods in a financial year per telephone. The Deputy Area Managers in Districts and Telecom Engineers in Telecom Circles are empowered to grant rebate of Rs. 2,000/- per telephone connection for one billing period in a financial year.

21. After having decided the questions relating excess billing we are left with two more important points to be decided. The first is when the telephone charges are payable and when a subscriber can be said to have defaulted in payment so as to empower the Department to disconnect his telephone. The second one is whether telephone connection can be disconnected for alleged non-payment of a bill without serving any notice on the subscriber informing him of the alleged default and proposed disconnection.

22. In this connection we may refer to Rules 439, 442 and 443 of the Rules. These rules read :

"439. Charges when payable.-- Charges for calls in message rate or measured rate system shall become payable on presentation of a bill therefor. The periods for which bills shall be prepared and the dates by which they shall be payable shall be fixed by the Telegraph Authority".

"442. Service of notices and bills.-- Any notice, bill or demand from the Telegraph Authority for any fee or charges due from a subscriber may be served by delivery to the subscriber, or by sending it by post to the address of the subscriber or by leaving it at the premises in or upon which the apparatus is installed".

"443. Default of payment.-- If, on or before the due date, the rent or other charges in respect of the telephone service provided are not paid by the subscriber in accordance with these rules, or bills for charges in respect of calls or phonograms or other dues from the subscriber are not duly paid by him, any telephone or telephones or any telex service rented by him may be disconnected without notice. The telephone or telephones, or the telex so disconnected may, if the Telegraph Authority thinks fit, be restored, if the defaulting subscriber pays the outstanding dues and the reconnection fee together with the rental for such portion of the intervening period as may be prescribed by the Telegraph Authority from time to time. The subscriber shall pay all the above charges within such period as may be prescribed by the Telegraph Authority from time to time".

23. Rule 439 provides that the charges for the calls "shall become payable on presentation of a bill therefor". It also provides that the periods for which bills shall be prepared and the dates by which they shall be payable shall be fixed by the Telegraph Authority. We were told by the learned counsel for the Department

that the bills are prepared for bimonthly periods and dates have been fixed on which they shall be prepared and by which they shall be payable. We asked the learned counsel whether the bills are, in fact, being prepared and presented by the dates so fixed to expect payment thereof by the dates fixed for payment, because the latter presupposes service of bill before the date fixed for payment. We awaited for the answer but in vain. In fact, we were told at the Bar, which could not be denied even by the officer of the department present in the Court, that it is common experience that bills are prepared leisurely much after the expiry of the dates fixed for the purpose. If that is so, we fail to understand how the latter part of Rule 439 in regard to fixed date of payment can operate at all.

24. Rule 442 of the Rules says down the manner of service of notices and bills. It provides tht the bills or the demands for any fee or charges due from a subscriber should be "served by delivery to the subscriber, or by sending it by post to the address of the subscriber or by leaving it at the premises in or upon which the apparatus is installed". Rule 439 has thus to be read along with Rule 442. On a conjoint reading of these two rules, it is clear that only on non-payment of the charges after service of the bill in the manner specified above a subscriber can be said to be in default of payment and the question of disconnection of the telephone for such default may arise. Service of the bill, therefore, is a condition precedent for exercise of power of disconnection and there must be material on record to satisfy the authority concerned that the bill had been presented to or served on the subscriber and despite such service/presentation the subscriber has defaulted in making payment. A faint attempt was made by the learned counsel for the Department to contend that the Department has a right to disconnect a telephone if payment of any bill is not made within a fortnight from the "date of its issue". Actual service or date of service is not relevant for the purpose. We are not at all impressed by the aforesaid submission. "Date of issue" naturally means "date of service" of the bill. It can never mean preparation of a bill or just issue thereof by the Department. It is clear from the language of rules 439 and 442. Otherwise also, it is well settled law of the land that unless any bill and/or notice and/or demand is served on the person concerned, he cannot be deemed to be in default for nonpayment of such bill or non-performance of anything contemplated by such notice.

25. The power of disconnection of telephone is a very drastic power and it should not be exercised lightly. It should not be forgotten that telephone service is one of the most essential services today and disconnection thereof may put a citizen to extreme hardship and inconvenience and cause irreparable harm and injury. It may have far-reaching ramifications on his day to day living as well as on his means of livelihood. We, therefore, hold as follows :

(1) Before exercising the drastic power of disconnection of telephone the authority concerned must ensure that the bill and / or notice is served on a subscriber and the period of 15 days thereafter as provided in the rule has

expired and the subscriber has failed to make the payment within such period.

"(2) If it is so satisfied, then under the scheme of the rules, it has to give a notice to the subscriber about the alleged non-payment and the proposed disconnection thereby giving opportunity to put forward his case, if any, against proposed action.

26. Regarding modes of notice, according to the Department two modes of notice before disconnection are available. One is telephonic notice and other is notice by registered post. In our opinion, the telephonic notice, in fact, is an empty formality and cannot, at any stretch of imagination, be termed a notice in the real sense. It appears that the futility of such formality of telephonic notice was noticed by the Estimates Committee of Parliament as back as in 1982. In its report it was observed :

"The Ministry's insistence on disconnecting telephones by telephonic notice on the ground of alleged non-payment of bills is wholly indefensible and highly unfair. The fact that in 1978-80, as many as 4783 telephones had been wrongly disconnected on this ground even when the relevant bills had already been paid shows how faulty is the system of disconnection of telephone by giving telephonic notice. The Ministry's arguments against giving registered notice to defaulting subscribers before disconnection do not carry conviction with the Committee. Telephonic notice is in fact no notice as the person receiving the call may not be the correct person or may not be responsible or mature enough to understand details of unpaid bills or its implications. The Committee, therefore, strongly reiterate that, whatever else the Department may like to do to effect recovery of unpaid bills, when the final stage to disconnect a telephone on the ground of alleged non-payment of bills is reached, the disconnection should not be ordered unless a written notice is sent to the subscriber at the latter's cost, by registered post, acknowledgment due."

We do not feel we can add anything further to what the Estimates Committee said as back as in 1982. We can only express our regret that despite such clear recommendation of a high powered body like Estimates Committee which was based on very sound reasonings, the Department is still continuing with the highly unfair" and wholly indefensible practice. It also appears that the Department itself introduced a system of issue of a registered notice to a subscriber as back as in 1973. This service was provided to intending subscribers at a nominal charge of Re. 1/- per notice. Consequent to upward revision of postal tariff for registration this charge was revised to Rs. 3/- per notice with effect from 1-5-81 and Rs. 6/- per notice with effect from 23-3-1987 vide Circular No. 2-19/87-TR dated 23-3-1987. It was stated at the Bar that earlier in seventies the telephone department used to supply a form to the telephone subscribers who could sign the same thereby agreeing to pay charges for issuing reminders by registered notice. However, this practice was discontinued. No such forms are supplied nor the subscriber is given any information about existence of any such right which is very valuable under the present state of affairs prevailing

all over the country when there are large number of complaints of non-receipt of bills and arbitrary disconnections of telephones for alleged non-payment of such bills without notice.

27. We are of the opinion that subscribers should not be denied this valuable safeguard against arbitrary disconnection. We, therefore, direct the Department to issue a general notice in the press and through other media informing the subscribers of the availability of such a service of reminder by registered post on payment of Rs. 6/- per notice and give them all facilities to exercise their option. We would rather suggest that to avoid the expected rush of thousands and thousands of subscribers to exercise this option, the Department might specify in the notice that if any subscriber does not want to avail the said service, he might inform in writing to that effect otherwise he shall be deemed to have opted for it and he shall be sent reminder by registered post on charge of Rs. 6/- for the same. This, in our opinion, might be the best way of making this much desired facility available to the subscribers without unnecessary wastage of time and energy both of the subscribers and the Department. We are sure none will grudge paying Rs. 6/- to ensure that his telephone would not be disconnected arbitrarily without prior notice to him. We, therefore, direct that the Department to issue a general notice in the press and the media as indicated above. It should be done within one month from the date of this judgment. The notice should be given widest publicity for information of all concerned.

28. Further as indicated above even under the existing rules no telephone can be disconnected without notice. Notice, in our opinion, means "real and effective notice". We therefore hold that no telephone shall be disconnected without service of proper notice in writing on a subscriber. This notice may be served in any manner the Department thinks fit. But the service on the subscriber must be ensured. This is general safeguard in addition to the one by way of reminder by registered notice which is available on the subscriber agreeing to pay Rs. 6/- per notice.

Another important point for consideration is whether in the event of any dispute regarding payment of bill in connection with a particular telephone, any other telephone rented to the same subscriber may be disconnected in regard to which there is no dispute or default in payment. The department claims such a right under Rule 443 of the Rules which has been extracted above. We have carefully read the said rule. We are of the opinion that it cannot be interpreted to vest with the authorities the power to disconnect any other telephone working in the name of the same subscriber either at the same premises or elsewhere on the ground of default of payment of bill in respect of one of his telephones. This power is confined only to the particular telephone in respect of which there is default in payment and not to other telephones. Such a drastic power cannot be granted to the Telephone Department by inference. If at all it is to be given it has to be given in clear and unambiguous terms. Then also the question will arise whether it is reasonable or not. We do not propose to make any comment

thereon. Suffice it to say that Rule 443 of the Rules as it presently stands, cannot be interpreted to authorise the Telecom. Department to disconnect any telephone other than the one which is subject matter of dispute as, in our opinion, such action will be highly atrocious. The Department cannot coerce the subscriber to make the disputed payment by such means. It must act in accordance with law and, if necessary, file a suit for recovery of the arrears.

Having dealt with the various points, we may also refer to the last submission of the learned counsel for the Department that this Court should not exercise its writ jurisdiction in the instant case in view of availability of alternative remedy u/s 7B of the Act by way of reference of the dispute to an Arbitrator. Section 7B reads :

"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."

31. In our opinion, Section 7B is confined to matters specifically indicated therein and not to all disputed between the telephone department and the subscribers. Had that been the intention of the legislature it would have used a quite different language and would not have confined the scope of the Section to specific disputes, namely, "dispute concerning any telegraph line, appliance or apparatus arising between the telegraph authority and the person for whose benefit the line, appliance or apparatus, is, or has been provided". Accordingly, we hold that the dispute regarding excess billing does not fall within the ambit of Section 7B and, as such, no remedy is available under that Section. It may also be observed that even if a dispute regarding excess billing can be subject matter of arbitration u/s 7B, it would not take away the jurisdiction of the High Court to exercise its jurisdiction under Article 226 of the Constitution. Mere existence of an alternative remedy per se is not a bar to the exercise of jurisdiction by the High Court under Article 226. The High Court in appropriate cases can always entertain a petition under Article 226 even if some alternative remedy is available and the aggrieved party has not exhausted such remedies, if it is satisfied that it is necessary to do so for the ends of justice. The High Court has discretion to grant relief under Article 226 even if there are alternative statutory remedies. We are, therefore, of the opinion that in the instant case the provisions of Section 7B have no application to a case of excess billing. On the facts and circumstances of the case also, we are satisfied that it is a fit case for exercise of writ jurisdiction.

Accordingly, we reject the submission based on alternative remedy.

At this stage it will be apposite to observe that the alternative efficacious remedy pointed out to us was the one provided in Section 7B of the Act, namely, reference to arbitration. While considering the said plea we came across a circular issued by the Government of India, in the Department of Telecommunications, New Delhi being No. 13-324/Arb/88-TR dated 13th April, 1989. This is on the subject of Arbitrators in cases of excess metering. It has been addressed to the Chief General Managers (Telecom) of all the Circles, Chief General Managers of Calcutta/ Madras Telecom Districts, Chief General Managers of Telecom, Major Districts, and Telecom District Managers of all the Minor Districts. The relevant part of the letter reads as follows :

"According to Section 7B of Indian Telegraph Act, if any dispute concerning any telegraph line, etc. arises between the Telegraph authorities and the subscriber, the dispute shall be referred to arbitrators appointed by the Central Government. The award of the arbitrators shall be conclusive, and shall not be questioned in any Court.

2. According to the above Act, if anybody approaches the department to appoint an arbitrator, we are bound to do so, but we are aware that if in every case of dispute by subscribers, an arbitrator is appointed, the workload will increase tremendously, and cases will increase to numbers where it will be difficult to find a sufficient number of officers for appointing as arbitrators. To control the overflow of such cases, the Department has decided, as a matter of policy, that arbitrators will be appointed only in such cases where the subscriber approaches the Court with a request to appoint an arbitrator, and the Court orders for the same".

33. The aforesaid instructions made it clear that the Government of India is of the opinion that because of the overflow of such cases it is difficult for it to appoint arbitrators. It has, therefore, taken a policy decision to the effect that all requests for reference to arbitrator shall be rejected and arbitrators shall be appointed only in such cases where a subscriber approaches a Court with a request to appoint Arbitrator and Court orders for the same. We have considered the aforesaid policy decision of the Government and are of the opinion that the Government should not take such a policy decision contrary to the statutory provision contained in Section 7B of the Act. The proper course under the circumstances might be to take steps to delete Section 7B itself. However, once the Department has taken a policy decision to reject all requests for reference of a dispute to arbitrator, its claim that alternative remedy is available to a subscriber u/s 7B of the Act is itself self-contradictory. In fact, as a result of the aforesaid policy decision has become otiose.

34. This circular has also brought to focus one distressing aspect of the litigation between the citizens and the State. The State itself took a policy decision to deny to the subscribers the remedy provided u/s 7B of the Act due to its own

administrative difficulties. Yet in the Court it came forward with a plea that the Court should deny relief to the citizen on the ground of availability of the very same remedy. The circular containing the policy decision in regard to arbitration was not meant for us but it came to our hand just accidentally as it was pinned with some other circular which was supplied to us. That is why when confronted with it, the learned counsel felt little embarrassing. He himself was not aware of it. We do not approve of the State taking any defence in the Courts without satisfying itself that it is just and fair to do so. It must be remembered, that the State is not an ordinary litigant. Ours is a country governed by the rule of law. We have a written Constitution by which the people of India resolved to secure to all its citizens, inter alia, "justice, social, economic and political". The Government of such a country, in a dispute between itself and the citizens, is expected to do what is just and fair to the citizens. It must strive to secure to the citizens all that is stated in the Constitution. It should maintain its majesty. It should not fight cases in the Courts with the citizens, like ordinary litigants who may sometimes try to defeat the claim of their adversaries by all means -- fair or foul. Such attitude of the State in litigation with citizens is not desirable. It does not behove the Government, as in the instant case, to take a stance that the writ petitioner should be thrown out of the Court and denied relief on the ground of availability of alternative efficacious remedy pointing to a provision of the Act when it has itself taken a policy decision not to give effect to it and also issued directions to all concerned in the Department all throughout the country asking them not to entertain requests from the subscribers for remedy provided under the said section. We have made the aforesaid observation with the hope that in future the State and its functionaries shall be careful in taking defences which undermine the prestige and credibility of the State in eyes of the citizens and the Courts and brings it down to the level of an ordinary litigant.

35. Before we conclude, we may like to observe that the millions of telephone subscribers in the country have a just claim to know their rights and duties in relation to the essential services like telephones. We have not come across any handbook issued by the Department which informs the subscribers about their rights and duties. The telephone service in India is run as a State monopoly. The officers concerned, on that account, should not take it that they are doing a favour to the citizens by providing this service. It is not left to their sweet-will to grant telephone service, to continue it or to discontinue it or to deal with the citizens as a subjects of a colonial regime. They are bound by the rules and principles of natural justice and fair play.

There is no scope for arbitrariness, unreasonableness or discrimination. They do not have absolute power which they can exercise at their whims. We, therefore, direct the department to publish a handbook containing all the relevant laws including rules, regulations, circulars etc. dealing with the rights and duties of the subscribers as well as the various authorities of the Department in regard to telephone services, within six months from today. It may be reasonably priced and made easily available to the subscribers. Few copies of the same may be

kept in each and every office of the Department and made easily accessible to the subscribers during office hours.

36. Before parting with the case, we may like to add an explanation as to why we have extensively quoted in our judgment and relevant rules, circulars, guidelines, instructions etc. instead of just referring to the same. It is because at the time of hearing we got an impression that all these rules, circulars etc. are treated by the Department as their prize possession and strictly confidential to be carefully kept away from the gaze of the citizens; whereas in fact they are intended for the use of the authorities as well as the subscribers in particular, and the public in general. Even to this Court they were made available after much hesitation and with difficulty. Under the circumstances, we felt that for a proper understanding of the conclusions arrived at by us on different points in this judgment it is necessary to make the relevant rules, circulars etc. a part of the judgment itself by quoting them in extenso.

37. In the result, the petition is allowed in terms of the directions given above. The authorities concerned shall issue revised bills to the petitioner in accordance with the directions contained in this judgment within one month from today and adjust the amount of Rs. 5,000/- paid by the petitioner in terms of the order passed by this Court. If after such adjustment any amount is found due from the petitioner, he shall pay the same within two weeks from the date of presentation of revised bills. Similarly, if any refund is found due to him, the same shall also be made by the Department within two weeks. In view of the facts and circumstances of the case, we make no order as to costs.

S.K. Homchoudhuri, J.

38. I agree.