

(2004) 03 MAD CK 0232

In the Madras High Court

Case No : Civil Revision Petition (PD) No's. 2218 and 2219 of 1999 and CMP.
No. 12289 of 1999

The General Manager, Telecommunications and Others

APPELLANT

Vs

K. Natrayan

RESPONDENT

Date of Decision : 22-03-2004

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2004) 3 CTC 241 : (2004) 4 LW 530 : (2004) 3 MLJ 246 : (2004) 4
RCR(Civil) 89

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : K. Kumar, A.C.G.S.C, for the Appellant; K.V. Sundararajan, for the
Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Aggrieved by the common order passed by the learned District Munsif, Karur dated 29.04.1999 made in I.A.No.121 and 166 of 1999, the General Manager, Telecommunications, Trichy and others have preferred the above revisions under Article 227 of the Constitution of India.

2. The respondent herein - former Member of Parliament has filed a civil suit in O.S.No.107 of 1999 on the file of District Munsif, Karur, praying for declaration, declaring the action of the defendants in disconnecting the suit telephone connections as illegal, arbitrary and also prayed for decree of mandatory injunction directing the defendants to restore the suit telephone connections. The plaintiff has also prayed for permanent injunction restraining the defendants from disconnecting the suit telephone connections without giving any show cause notice. Pending disposal of the said suit, the petitioner / plaintiff filed I.A.No.121 of 1999, praying for mandatory injunction restraining the respondents / defendants to restore the suit telephone connections till the disposal of the suit and also prayed for ad-interim mandatory injunction to the same effect. The said

application was resisted by the Telephone Department by filing counter affidavit. Since the Court below has granted interim injunction, the respondents / defendants filed separate petition for vacating the said injunction order. Both the applications were heard together. As many as Exs.A.1 to A.11 were marked on the side of the petitioner / plaintiff and Exs.B.1 to B.18 on the side of the respondents / defendants. By the impugned order dated 29.04.1999, the learned District Munsif disposed of the said applications by referring the matter in dispute for arbitration u/s 7-B of the Indian Telegraph Act, 1957 (in short "the Act"). In the same order, the learned Judge directed the parties to maintain status quo and not interfere with the usage of the telephone connections by the petitioner. Questioning the said common order, the Telecommunication Department has filed the above revisions.

3. Heard the learned Additional Central Government standing counsel for the petitioners and the learned counsel for the respondent.

4. Even at the foremost, Mr. Kumar, learned Additional Central Government standing counsel appearing for the petitioners would submit that in the light of the fact that the issue raised / questioned relates to dispute concerning telephone, as per Section 7-B of the Act, the proper course is to agitate the same by way of arbitration proceedings and the same cannot be entertained by the Civil Court. He also contended that no direction of any nature can be granted by the Court. On the other hand, the learned counsel appearing for the respondents would submit that till award being passed, as per Sub-section (2) of Section 7-B of the Act, he is free to move the competent civil Court to vindicate his grievance.

5. I have carefully considered the rival submissions.

6. There is no dispute that the respondent / plaintiff is a former Member of Parliament and the dispute relates to suit telephone Nos.60777 and 63777. The dispute arose due to disconnection of the above telephones on 16.02.1999 for non payment of charges. In this regard, it is useful to refer the relevant provision, namely 7-B (1) and (2) of the Indian Telegraph Act, 1957.

" 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 the 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. "

7. By drawing my attention to the said provision, particularly sub-section (1) of

Section 7-B of the Act, the learned Additional Central Government standing counsel submits that inasmuch as the dispute relates to telephone disconnection / non payment of the dues, in view of the bar under sub-section (1) referred to above, the same cannot be agitated and considered before the civil Court; the only remedy available is by way of arbitration proceedings. The learned counsel also refers Section 9 of the CPC (in short "CPC"), which says that the civil Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. In view of Section 9 of CPC and in the light of the bar provided under sub-section (1) of Section 7-B of the Act, it is contended that the civil Court has no jurisdiction to entertain a suit of this nature, particularly filed by the plaintiff.

8. Before considering the objection raised by the learned counsel for the respondent, based on sub-section (2) of Section 7-B of the Act, let me consider the decisions relied on by the learned Additional Central Government standing counsel appearing for the petitioners. In the case of Govindbhai Premjibhai Chovatia Vs. Chief General Manager, Gujarat Telecom Circle, Ahmedabad and Others, , Division Bench of the said Court, after referring the very same provision, namely 7-B (1) and (2) of the Act has held,

"9. The learned single Judge was therefore, right in coming to the conclusion that an adequate alternative remedy, under the Telegraphs Act by way of arbitration, was available. In fact, due to the existence of Section 7-B, even the jurisdiction of the Civil Courts u/s 9 of the CPC would be regarded as impliedly ousted. Therefore, even a civil suit challenging the correctness of the bills so raised would not be maintainable in a Civil Court. "

9. There is also a judgment of this Court in the case of G.M., Madras Telephones vs. Dr. Mrs. Irfana Hameed reported in AIR 1999 Mad 228, in which the Division Bench had an occasion to consider whether the dispute relating to excess telephone billing can be agitated by way of writ petition exercising jurisdiction under Article 226 of the Constitution of India. In the light of Section 7-B of the Act, the Division Bench after considering the relevant statutory provision as well as earlier decisions of the Apex Court has concluded that,

"19. The power to refer the dispute has been given by Parliament only with a view to see that the authority acts within reasonable limits and that when the subscriber disputes the correctness of the meter reading or operation of the apparatus etc., instead of litigating the dispute in a Civil Court, it should be decided by the Arbitrator u/s 7-B. Obviously, pending proceedings the Act intended to operate without undue delay to secure public revenue and also flow of electrical operation envisaged under the Act. Under those circumstances, we are of the view that the Court is right in directing that the authority under the Act is enjoined to make reference u/s 7-B without any direction by the Court and if need be it is for the subscriber to approach the Court. "

10. Yet another decision relied on by the learned Additional Central Government

standing counsel is of the Supreme Court in the case of *Munshi Ram and Others Vs. Municipal Committee, Chheharta*, . The said decision relates to civil proceeding, questioning the demand of profession tax under Punjab Municipal Act. By referring Section 9 of CPC and the Punjab Municipal Act, their Lordships have held that it is well recognised that where a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all other forums and modes of seeking it are excluded.

11. It is also worthwhile to refer the unreported decision of this Court dated 13.12.1996. The said decision arose under Water Act. After referring Section 58 of the Water Act, the Division Bench has concluded thus,

"5. Therefore, it is clear that in respect of any matter which is required to be dealt with by the Pollution Control Board and the Appellate Authority constituted under the Water Act, no suit can be entertained by a Civil Court. Similarly, no injunction can be granted by any Court or Authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Water Act on the Pollution Control Board or the Appellate Authority. "

Similarly, after referring Section 46 of the Air Act, the Division Bench has concluded,

"6. It is also clear from the aforesaid provision which is similarly worded as that of Section 58 of the Water Act that the matters which are required be dealt with by the Pollution Control Board and the Appellate Authority are not taken away from the cognizance of the Civil Courts. No injunction also can be granted by the Civil Courts or any other Authority in respect of any action taken or to be taken, pursuant to any power conferred under the Act.

Similar conclusion has also been arrived based on Section 22 of the Environment Act.

12. If we consider these decisions with reference to Section 7-B (1) and (2) of the Act as well as Section 9 of CPC, it leads to an irresistible conclusion that for any dispute relating to telephone 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 the same cannot be agitated before the civil Court. No doubt, the learned counsel for the respondent would submit that inasmuch as no award has been passed by the Arbitrator appointed under Sub-section (1) of Section 7-B of the Act, till such award being passed, the subscriber is free to challenge the same before the civil Court. In the light of the embargo with reference to subject in question which has clearly spelt out in sub-section (1) and as explained and interpreted by this Court as well as the Apex Court, I am unable to accept the said contention. Though the sub-section (1) provides that it is for the concerned authority to refer the dispute for an arbitration, if there is any doubt or dispute regarding the subject provided under sub-section (1), the subscriber can very

well request the authority concerned to refer the question for adjudication by way of arbitration proceedings. In such a circumstance, though the plaintiff withdrew the suit subsequent to filing of the revisions, I hold that in the light of specific bar u/s 7-B and in view of Section 9 of CPC as well as as explained by catena of decisions that in respect of any dispute relating to the matter specifically provided in sub-section (1), the only remedy for the affected person to resolve the same is by way of arbitration proceedings and the civil Court has no jurisdiction to entertain the suit of this nature.

Under these circumstances, the impugned common order passed by the learned District Munsif in I.A.Nos.121 and 166 of 1999, is set aside. However, it is brought to my notice that the dispute in question is now pending before the Arbitrator u/s 7-B of the Act and in view of the order passed by this Court on 28.08.2003 in W.P.No.5580 of 2002, the Arbitrator is free to pass final award as directed in that order. With the above observation, both the revisions are allowed. No costs. Consequently, connected CMP, is closed.