(1981) 07 DEL CK 0003

In the Delhi High Court

Case No : First Appeal No. 406 of 1980

Union of India and Another APPELLANT

Vs

Usha Spinning and Weaving Mills Ltd. RESPONDENT

Date of Decision : 31-07-1981

Acts Referred:

Citation : AIR 1982 Delhi 111 : (1981) 20 DLT 407 : (1981) RLR 668

Hon'ble Judges : J.D. Jain, J

Bench : Single Bench

Advocate : Mahinder God and S.K. Taneja, for the Appellant;

Judgement

J.D. Jain, J.

(1) The respondent-company is a subscriber with regard to telephone connection No. 619880 which was installed at D-l, Lajpat Nagar, Part Iii, New Delhi, on 16th June, 1979. A consolidated bill for Rs. 1.679/ 98 P. inclusive of rental, phonogram and trunk call charges for the period 16th June, 1979 to 20th November, 1979, was raised by the Telephone Department of the appellant against the respondent-company. However, for the subsequent period 21st November, 1979 to 20th February, 1980, the telephone bill escalated to Rs. 15,146/35P., the meter reading showing as many as 37,504 local calls. The respondent-company made a representation to the Telephone Department with regard to the exorbitant number of calls registered on their aforesaid telephone, inter alia, urging that the steep rise in the number of calls was attributable to misuse of the telephone lines by the Line and other staff of the Telephone Department. However, this assertion of the respondent-company appears to have been refuted in categorical terms vide letter dated 16th May, 1980, of the Area Manager (South). Thereupon, the respondent-company moved an application u/s 20 of the Arbitration Act praying that the dispute between the parties fell within the ambit of Section 7-8 of the Indian Telegraph Act 1885, as amended from time to time, i (hereinafter referred to as the Act), which provided for statutory arbitration in respect of disputes 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.

(2) The application was resisted by the appellant-Union of India on the short ground that the bill in question was not exorbitant, excessive or erroneous. They refuted that the Line Staff of the Telephone Department had misused the telephone resulting in the escalation of the amount of the bill. On the other hand they asserted that the bill had been issued on the basis of the calls recorded in the associated Meter and it was apparently due to the excessive use of S.T.D. facility available on the said telephone. They further contended that any default in payment of the bill entails disconnection of the telephone concerned under Rule 44-3 of Indian Telegraph Rules and as such the dispute in question did not fall within the domain of Section 7-B of the Act.

(3) The aforesaid contention of the appellant-Union of India was, however, spurned by the learned Sub-Judge as being untenable and he directed that the dispute between the parties be referred to statutory arbitration in terms of Section 7-B of the Act read with Section 20 of the Arbitration Act. Feeling aggrieved the appellant has come up in this appeal against the aforesaid order dated 11 the August, 1980 of the learned Sub-Judge.

(4) The controversy between the parties lies in a narrow compass inasmuch as all that has to be seen in whether the dispute between the parties, as detailed above, falls within the purview of Section 7-B of the Act or not. It may be mentioned here that the learned counsel for the appellant has fairly and candidly conceded that a telephone appliance or apparatus falls within the definition of the expression "telegraph" as given in Section 3(1) of the Act. In other words, it is beyond the pale of controversy that Section 7-B would be attracted to a dispute concerning any telephone line, appliance or apparatus. Thus, the short question for determination is whether the instant suit is a dispute concerning any telegraph line, appliance or apparatus, as contemplated by Section 7-B which reads as under :

"(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."

(5) The words underlined by me above are of great significance as they provide key to the correct interpretation of the said Section. On its plain language the expression "any dispute concerning any telegraph line, appliance or apparatus" is of wide amplitude and will take within its sweep all kinds of disputes which relate

to the functioning and working of any telegraph line, apparatus or appliance. In the instant case, the contention of the respondent-company is that threat of disconnection on the part of Telephone Department is illegal inasmuch as it is founded on an inflated bill due to misuse of telephone by the Line and other staff of the Department. Surely, it is not the same thing as saying that the telephone bill is exorbitant due to faulty meter reading or incorrect records maintained by the Telephone Department. The respondent-company has made a specific averment that the higher number of calls registered on the aforesaid telephone is due to malfunctioning of telephone line as a result of misuse by the staff of the Telephone Department. No doubt, non-payment of telephone bill entails disconnection under Rule 443 of the Telegraph Rules but the said Rule presupposes that the bill raised by the Telephone Department is correct, being based on proper functioning of the telephone apparatus or the line. But the moment the correctness of the bill is challenged on the ground of malfunctioning or misuse of the lines, surely a dispute concerning the telegraph line, apparatus or appliance within the meaning of Section 7-B will spring up.

(6) The learned counsel for the appellant has adverted to Raghubar Dayal Kanodia Vs. Union of India (UOI) and Others, , wherein it was held that a dispute relating to actual reading of meter involving question as to whether the meter had been correctly and honestly read and the readings had been correctly and honestly noted down is not one falling within the purview of Section 7-B. A perusal of the report would show that in the said case a revised bill for telephone calls which was in respect of calls many more times in number than the calls recorded in the original bill was raised by the Department. It was, inter alia, stated that the earlier bill did not reflect the correct position and in support of their claim a special register which was being maintained for recording the calls registered by the meter of the telephone from time to time was pressed into service. It was in this context that the aforesaid finding was given. However, the following observations made by the learned Judge are very significant in this context :

"HOWSOEVER extended meaning be given to the language used is the aforesaid Section, to my mind, the dispute which has been raised by these two petitions cannot be brought within the ambit of that section. There is no dispute that ''any apparatus, appliance or telegraph line had not functioned properly or correctly and that the bills had been wrongly made as a result of defective operation or functioning of the Meters in question. The dispute centres round the actual readings of the Meters and the basic question is as to whether in each case the Meter had been correctly and honestly read and the readings had been correctly and honestly noted down."

(7) Evidently, this authority is of no avail to the appellant. It is for the simple reason that the dispute between the parties centres round the functioning of the telephone itself and not the meter reading or recording of the calls registered by the meter. It matters little whether the mal-functioning of the telephone was

accidental, arising out of some defect in the telephone line or apparatus or appliance or whether it was as asequelto machinations on the part of the Line or other staff of the Telephone Department. In both the cases result would be the same, namely, that the recording of calls is not based on proper and correct functioning of the telephone line, apparatus or the appliance. At any rate when the telephone connection is sought to be cut off in exercise of power conferred by Rule 443 and it is resisted on the ground that the Department itself is to be blamed for the faulty operation and functioning of the telephone, the dispute cannot be said to be one outside the purview of Section 7-B. In this view of the matter, I am fortified by a Bench decision of Madhya Pradesh High Court in Rasiklal Jethu Bhai Parakh v. Divisional Engineer, Telegraphs, (1964) 9 M.P.L.J. 831. In that case the telephone installed at the residence of the petitioners was sought to be disconnected on the ground of unauthorised use by them, the allegation being that the petitioners were allowing its user by third parties. This was refuted by the petitioners. Having regard to these facts, their Lordships held that the dispute between the petitioners and the telegraph authority, namely, whether the telephone installed at the petitioners'' business premises could or could not be disconnected is a dispute falling u/s 7-B of the Act. The instant case, to say the least, stands on a better footing. Needless to say that Section 7-B clearly requires that a dispute of this kind has to be determined by arbitration in the manner laid down therein.

(8) The sum up, Therefore, this appeal being devoid of any merit is hereby dismissed. However, no order is made as to costs.

