
(1994) 04 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No. 10003 of 1984

Velur D. Narayanan

APPELLANT

Vs

General Manager, Madras Telephones, Madras and another

RESPONDENT

Date of Decision : 13-04-1994

Acts Referred:

Telegraph Act, 1885 — Section 7B
Telegraph Rules, 1885 — Rule 441

Citation : AIR 1995 Mad 290 : (1994) 2 LW 371 : (1994) WritLR 629

Hon'ble Judges : Jayasimha Babu, J

Bench : Single Bench

Advocate : K.P.H. Thulsiram, for the Appellant; P.D. Dinakaran, for the Respondent

Judgement

Jayasimha Babu, J.—Petitioner, a practising advocate is the subscriber of Telephone No. 612665. Being aggrieved by the demand made by

1st respondent under the bill dated 7-9-1984 for payment of Rs. 1959.75, this writ petition has been filed to have the said bill quashed. During the pendency of this petition, the petitioner paid to the bill under protest.

2. It is the case of the petitioner that he is not liable to pay this amount as the amount claimed is grossly disproportionate to the number of calls made from this telephone during the period to which the bill relates.

3. The respondent has filed a counter contesting among other things, that the petitioner should be directed to avail of the remedy provided u/s 7B of the Indian Telegraphs Act (hereinafter called as the Act) and that a writ petition is not the proper remedy for resolving the dispute between the petitioner and the respondent.

4. In the counter-affidavit, the respondents have contended that the calling

pattern on the subject telephone No. 612665 did not warrant any special consideration for giving any rebate. Therefore, the excess metering complaint preferred by the petitioner was regretted for any rebate. No

other details like No. of calls made during the billing period, and the calling pattern for earlier periods have been furnished by the respondents.

5. It is evident that a dispute exists between the department and the subscriber regarding proper charges leviable by the department and the amount properly payable by the subscriber for the use of the telephone.

6. Indian Telegraphs Act, 1885 provides a special forum of resolving such disputes. Section 7B of the said Act provides for arbitration. The said section reads as follows:--

7B. 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 arbitrator 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 be questioned in

any Court.

It is clear that dispute of this nature has to be determined in the arbitration and the arbitrator has to be appointed by the Central Government in

accordance with the section.

7. The learned counsel for the respondent brought to my notice the rulings of this Court in W.P. No. 5747 of 1984 dated 5-3-1993; W.A. No. 44

of 1989 dated 14-12-1990 and W.P. No. 12693 of 1990 dated 28-8-1990, and the ruling reported in M/s. P.T. Bell and Co., Madras Vs. The

Union of India and others, also, in which it has been held that the dispute of this nature has to be taken before the Arbitrator in accordance with

Section- 7B of the Indian Telegraphs Act.

8. Learned counsel for the petitioner while not seriously disputing the applicability of Section 7B to a dispute of this nature, submitted that in the

decisions referred to above, there is no reference to Rule 441 of the Indian Telegraph Rules and that in view of that rule, the arbitrator may not

have the power to direct the scaling down or revise the charges mentioned in the bill sent by the Department to the subscriber. Rule 441 of Indian

Telegraph Rules reads as follows:--

The telegraph authority shall designate the officers who shall maintain the accounts in respect of the number of calls and the charges due from

subscribers. Such accounts shall be conclusive proof that the charges mentioned therein have been incurred.

The apprehension of the petitioner is that this rule would bind the hands of the Arbitrator and come in the way of granting relief to the subscriber

even if the arbitrator finds in favour of the subscriber.

9-11. The power to frame rules under Indian Telegraphs Act, 1885 has been conferred on the Central Government by Section 7 of the Act which

runs as follows: --

7(1). Power to make rules for the conduct of telegraphs: The Central Government may from time to time, by notification in the official Gazette

make rules consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons

licensed under this Act.

12. Any rule framed in exercise of the powers given to the Central Government u/s 7(1) of the Act must be consistent with the Act and every rule

made under the Act must, if it is possible to do so, be construed harmoniously with the provisions contained in the Act. If a rule is inconsistent with

the provisions of the Act, it will be ultra vires.

13. Section 7B of the Act expressly provides that, if a dispute concerning any telegraphic line appliance, or apparatus arises between the

telegraphic authority and the person for whose benefit the line, appliance or apparatus has been provided, the dispute shall be determined by

arbitration. This provision for arbitration will apply to all the disputes except those specifically excluded in the Act. A dispute between a telephone

subscriber and the authority is not excluded from the scope of arbitration u/s 7B of the Act, under any of the other provisions of the Act. What has

not been excluded in the Act from the scope of the statutory arbitration cannot be excluded by the rules made in exercise of the powers conferred

by the Act. The power to make rules is expressly limited to framing of rules consistent with the provisions of the Act. Any rule which operates to

exclude matters from the purview of the arbitrator u/s 7B, contrary to the provisions of the Telegraph Act would be clearly ultra vires.

14. Rule 441 of the Telegraph Rules has to be read with Section 7B of the Act. When so read, it is clear that the charges mentioned in the bill sent

to the subscriber will constitute conclusive proof that the charges mentioned therein has been incurred, unless in the statutory arbitration it is found

that the charges levied are excessive or incorrect. If the rules were to be construed as precluding arbitrator from examining the correctness or

otherwise of the charges levied in the bill sent to the telephone subscriber, the rule would be clearly ultra vires of the powers conferred on the

Central Government u/s 7(i) of the Act. If it is possible to construe, the rule in a manner which is consistent with the provisions of the Act and

thereby, save it from being declared as ultra vires such a construction should be preferred.

15. The statutory arbitrator to whom a dispute is referred for arbitration u/s 7B of the Indian Telegraphs Act is therefore not precluded from

examining the correctness or otherwise of the bill sent by the telegraph authority to the telephone subscriber. The finality attached to the accounts

maintained by the telegraph authority is subject to the decision to be rendered in the arbitration proceedings. What is conclusive is not the accounts

maintained by the telegraph authority, but the award made by the arbitrator, as expressly provided in Section 7B(2);

7B(2). The Award of the arbitrator appointed under sub-section (I) shall be conclusive, between the parties to the dispute and shall not be

questioned in any Court.

16. The arbitrator appointed under S. 7B of the Act can therefore grant relief to the subscriber if he finds that there has been excess billing.

17. The respondent shall refer the dispute raised by the grading the bill dated 7-9-1984 in respect of the petitioner's telephone No. 612665 to the

arbitrator within four weeks from the date of receipt of a copy of this order.

18. Order accordingly.