

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 05.12.2013

+ W.P.(C) 4677/2012

SH. PRITHVI CHAND SHARMA Petitioner

Through: Mr Anil Kumar, Adv.

versus

M.T.N.L. AND ANR Respondents

Through: Mr Rajeev Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

The petitioner is the subscriber of the MTNL Telephone No. 7520386, which was installed at his residence. The petitioner received a bill of Rs 35,297/- for the billing cycle dated 01.11.1995 followed by bill of the cycle dated 01.01.1996 for Rs 89,702/-. According to the petitioner, he protested against the aforesaid billing and wrote a letter dated 09.01.1996 to SDO (Telephones), Idgah Exchange, Delhi, seeking disconnection of STD facility. The petitioner also sought details of the calls made by him from 16.08.1995 to 15.12.1995. This was followed by a bill for the billing cycle dated 01.03.1996 for Rs.26,820/-. Since no

relief was given to the petitioner, despite his having made various complaints, a petition under Section 7-B of Indian Telegraph Act was filed by him before the learned Civil Judge, sometime in the year 1998. The aforesaid petition came to be decided vide order dated 08.09.1999, directing the Central Government to refer the disputes between the parties to the Arbitrator, who was to pass award, within the time stipulated by law in this regard.

2. Vide order dated 11.10.1999, Assistant Director General, Ministry of Communications, Department of Telecommunications, nominated Shri R.K. Singh, CAO(TR), S-II, MTNL, Delhi to be the Arbitrator. He was directed to give award within four months unless extended by mutual consent of the parties. It appears that Mr R.K. Singh did not enter upon the reference and resigned from the service. As a result thereof, Mr K.A Sharma, CAO (Co-od), MTNL, Delhi was appointed as Arbitrator under Section 7-B of the Indian Telegraph Act vide order dated 28.02.2005. The petitioner submitted a claim before the Arbitrator seeking cancellation of bills in question. The claim was contested by the respondent-MTNL. The Arbitrator vide award dated 27.01.2012, directed the petitioner/claimant to pay a sum of Rs 1,57,195/-, towards outstanding bills dated 01.11.1995, 01.01.1996,

01.03.1996, 01.05.1996 and 01.07.1996, along with pendente lite interest at the rate of 12% per annum from the pay dates of the respective bills to the date of award. He further directed that if the payment is not made within two months from the date of award, the petitioner shall also pay interest at the rate of 12% per annum from the date of award till the date of payment. Being aggrieved from the aforesaid award dated 27.01.2012, this writ petition has been filed.

3. It was first contended by the learned counsel for the petitioner that the Arbitrator did not consider the contention of the petitioner and passed an order which does not disclose any reasons in support of the award. I, however, find no merit in this contention. A perusal of the award would show that the Arbitrator duly noted the contentions of the claimant as well as the respondent. The Arbitrator, on merits, took the following view:

“On scrutiny of the case from the facts and records available, it was observed that the claimant had availed the service but disputed the bills and did not pay them and went for arbitration and thereafter raised the issue that arbitrator was not appointed with in time when the undersigned was appointed as arbitrator replacing the originally appointed arbitrator. The question of law involved was clarified overruling claimant’s objection through the order dated 20.08.2009 and the claimant filed

his claim also thereafter seeking cancellation of bills. As such the participation of claimant himself in proceedings of the arbitration establish that the same are intra vires and the claims and contention of the claimant and also respondent are taken on record. It would be pertinent to mention that every subscriber is under an obligation to make the payment of telephone bills for the service provided to claimant by the respondent and the claimant obviously failed to pay the legitimate dues of outstanding telephone bills and neglected and avoided the making payment of telephone bills and claimant has thus caused wilful loss to respondent and avoided to pay outstanding dues by raising one issue after another.

The basis contention brought before civil judge, Delhi for reference to arbitration are narrated below with my findings on the same.

- (i) Whether the three phone bills in question being Ex.P 18, Ex.p21 and Ex. P22 are as a result of misuse of phone line by some one?

Finding 1: The pleading of respondent is that the subscriber had ISD/STD facility with dynamic locking system on his phone and the question of misuse does not arise in such case. He drew the reference to fault record and cable bread down report and stated that there was neither any fault booked by the subscriber nor any cable break down during that period and hence there is no scope of misuse. I find that there was no fault booked by subscriber during that period and cable break down was also not there and having a dynamic locking facility it is the user or subscriber to get his phone locked and pleading of misuse by someone else has therefore no locus standi in this case

and to find that bills raised were as per the usage only.

(ii) Whether these bills were issued on account of some fault in the phone line, apparatus or the exchange?

Finding 2: As already observed in finding one there was no fault in the cable system or fault recorded in the exchange and hence there is no scope for issuance of wrong bills on that account.

(iii) Whether the petitioner is liable to pay these bills?

Finding 3: In view of the evidence on the points of misuse, the claimant is liable to pay these bills.”

It would thus be seen that the Arbitrator duly examined the plea raised by the petitioner and passed a well-reasoned award on merits. He noted that the petitioner was provided with the facility of dynamic STD and, therefore, there was no question of misuse of the telephone. In this regard, he noted that there was no complaint lodged by the petitioner claiming any fault or any cable breakdown during the period in question.

4. It is primarily for the Arbitrator and not for the Court to go into disputed questions of fact and take an appropriate view on them. The Arbitrator duly considered the contentions of the petitioner and having noted that since he had been provided with a dynamic locking facility

and had not made any complaint alleging any cable breakdown during the period in question arrived at a finding that there was no scope for misuse of the telephone by an outsider. The award rendered by the sole Arbitrator, therefore, cannot be interfered with by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution.

As regards interest, since the petitioner has admittedly not paid the amount of the bills, the Arbitrator was fully justified in awarding interest from the continue date of the relevant bills till the date of payment. The petitioner had an opportunity to make payment within two months from the date of the award and in that case, he would not have been liable to pay interest for the period from the date of the award. The petitioner did not, however, make payment within the time granted to him by the Arbitrator.

5. As regards the contention that the petitioner had, vide letter dated 9.1.1996, sought disconnection of the STD facility, I find that the said averment has been denied in the counter affidavit. No such contention was advanced before the arbitrator, and since it involves adjudication of a disputed question of fact, it cannot be entertained in a writ petition.

6. It was at one stage submitted by the learned counsel for the petitioner that the award has been passed only on 27.01.2012, whereas the claim pertains to the year 1995-96. Again, considering that it was the petitioner who filed petition under Section 7-B of the Indian Telegraph Act sometime in the year 1998 and at that time, the aforesaid demand was not time barred, no benefit accrues to the petitioner on account of delay in passing the award.

For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed.

There shall be no order as to costs.

V.K. JAIN, J

DECEMBER 05, 2013
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