

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

+ **CS(OS) No.2069/1992**

% **December 6, 2012**

M/S ARVIND KHANNA Plaintiff

Through: Mr. Girish Aggarwal with
Ms.Mugdha Pandey, Advs.

VERSUS

INTERNATIONAL AIRPORT AUTHORITY OF INDIA

..... Defendant

Through: Mr. Aruneshwar Gupta with
Mr. Manisha Raghav & Mr. Nikhil Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? Yes.

VALMIKI J. MEHTA, J (ORAL)

1(i). This is a suit filed by the plaintiff for recovery of Rs.22,73,930.50/- alongwith interest. The amount as claimed in the suit has been broken up as per para 33 of the plaint which reads as under:-

“That as per the terms between the defendant and the plaintiff, and on the basis of Rs.1,19,17,936/- cash collection on the basis of actual meter reading of the STD Pay Phones and deposited by the plaintiff with the defendant, the plaintiff is entitled for the sum of Rs.18,64,274/- on account of salary and supervision

charges, Rs.2,59,656.50 towards profit and 1,50,000/- the amount of security and Bank guarantee, totalling Rs.22,73,930.50 which the defendant is liable to pay to the plaintiff. However, the amount admitted by the defendant payable to the plaintiff on account of manning charges upto 15.4.1992 is Rs.18,62,800/- and a sum of Rs.3,35,075/- on account of profit but the said amount as per the statement enclosed with the letter of the defendant dated 22.4.1992 under the signature of Shri O.S.Tyagi has been deducted from the total amount of the MTNL's Bills instead of making payment to the plaintiff, which is unconstitutional, against the terms and illegal.”

(ii) The facts of the case are that the plaintiff was appointed to run nine phone booths by the defendant/International Airport Authority of India. Six booths were granted with effect from 6.1.1990. Three other booths were thereafter granted w.e.f. 14.3.1990, 18.4.1990 and 1.5.1990. With respect to the six booths, the contract between the parties is encompassed in two documents being the letter dated 5.1.1990/Ex.P1 of the plaintiff to the defendant and the letter dated 23.2.1990/Ex.P2 of the defendant to the plaintiff. After the expiry of original term of six months for which the booths were granted, for all the nine booths the period was extended for two years in terms of the letter dated 22.11.1990/Ex.P7 of the defendant to the plaintiff, and which contains more or less the same terms as contained in Ex.P2.

(iii) The main aspects of the contract in terms of the documents

Ex.P1 and Ex.P2 were that the plaintiff had to employ manpower for operating the telephone booths at the two terminals of the defendant; plaintiff had to collect the charges from the customers who utilize the phone services from the phone booths; the total collection was to be deposited with the defendant; the defendant was to make payment of the bills of the phones to MTNL; out of the difference which would still be remaining balance with the defendant, the plaintiff was first to be paid with respect to the expenses incurred for the phone booths i.e the salary and supervision charges which the plaintiff had to incur for manning of the booths, and finally the net balance which was then available was to be divided in the ratio of half and half between the plaintiff and the defendant i.e the profit sharing ratio was 50-50.

(iv) Disputes and differences arose between the parties because the plaintiff complained to the defendant that the phone booth which was in Terminal II i.e the Cargo terminal was being misused during the night hours for making STD/ISD calls leading to bills to be paid to MTNL being unnecessarily inflated. The plaintiff contends that it is not liable to pay the extra charges which have been shown in the bills of the MTNL qua the booth in question, to the extent the same contain charges of illegal calls

made through the line in the phone booth in the cargo Terminal/Terminal II.

(v) The contention of the defendant however is that in terms of Clause 13 of the letter of the defendant to the plaintiff dated 23.2.1990/Ex.P2, if there was a discrepancy between the MTNL bills and the collection deposited by the plaintiff with the defendant, then it was the plaintiff which had to absorb the deficiency. What the defendant effectively pleads is that the plaintiff cannot rake up the issue of inflated charges, and if there was an issue of inflated charges, it was for the plaintiff to pursue the matter with MTNL, and defendant had no role in this regard. The defendant in fact pleaded that not only the plaintiff was not entitled to the amount claimed, but the fact of the matter was that it was the plaintiff which was liable to pay to the defendant a sum of ₹ 38,82,385/-.

2. The following issues were framed in this suit on 11.4.2001:-

- “(1) Whether the suit is bad for misjoinder of parties especially M/s. Omnital and M/s. MTNL and is liable to be dismissed? OPD
- (2) Whether the plaintiff is entitled to an amount of claim of Rs.22,73,930.50 from the defendant on account of excessive billing of the manning of the STD pay phone booth more particularly which the bills were issued by MTNL? OPD
- (3) Whether the plaintiff has not performed his part of obligations in accordance with the work order dated

23.2.1990? OPD

- (4) Whether the defendant had assured the plaintiff that the defendant shall be entirely responsible for the issues due to excessive billing by MTNL and undertook the responsibility of dealing with MTNL for refund of excessive bills paid by the defendant? OPD
- (5) Whether clause 13 as contained in the letter dated 23.2.1990 issued by the defendant is liable to struck down as illegal and void being unconscionable and against public policy and violative of Section 23 of the Contract Act? OPD
- (6) Whether the defendant is entitled to counter-claim of Rs.16.49 lacs with interest from the plaintiff? OPD
- (7) Whether the plaintiff is entitled to interest, if any on what rate? OPD
- (8) Relief.”

Issue No.6

3. So far as issue No.6 is concerned, I may state that the counter claim was dismissed on account of the non-payment of Court fees, however, the defendant has filed a suit claiming the amount of ₹ 18,58,422/- from the plaintiff alongwith interest, and which suit being CS(OS) No.701/1995. This issue therefore does not call for decision in the present suit.

Issue No.1

4. This issue is with respect to whether the suit is not maintainable

on account of non-joinder of M/s. Omnitel (which had supplied the phone equipments) and M/s. MTNL (whose lines were provided in the phone booths). Counsel for the defendant does not press this issue and this issue is therefore decided as not pressed accordingly.

Issue Nos.2 to 4

5. All these issues can be dealt with together inasmuch as the main point for consideration is as to whether plaintiff is entitled to the suit amount of ₹ 22,73,930.50/- and which has been broken up in different parts as stated in para 33 of the plaint reproduced above. If the plaintiff has not performed his part of the obligation in terms of the agreement between the parties, then the plaintiff will not be entitled to the suit amount.

6(i) In order to decide these issues, firstly we will have to refer to the two main documents Ex.P1 and Ex.P2, being the letters dated 5.1.1990 of the plaintiff to the defendant and the letter dated 23.2.1990 of the defendant to the plaintiff. Since most of the terms of these two documents are relevant, I reproduce both these documents in entirety as below:-

“Ex.P1

To

Dy.General Manager (Elect.)
I.A.A.I.Hqrs.
Chanakyapuri

New Delhi.

Sub:- Operation of STD Pay phones at IGI Airport.

Dear Sir,

With reference to your discussion held in the office of Member (F&A) we agree to deploy 21 persons for operations of STD Pay phone as per the following terms and conditions:-

1. Staff shall be paid as per labour contract act.
2. IAAI shall be paid 50% of profit after deduction of the following expenditure;

Expenditure details:

21 nos. Staff x Rs.1500	=	Rs.	31,500.00
25% Supervisory expenditure	=	Rs.	7,875.00
25% maintenance charges	=	Rs.	<u>7,875.00</u>
TOTAL :	=	Rs.	<u>47,250.00</u>

In the first year, the expenditure shall be Rs.39,375/- as maintenance charges shall not be considered for equipment being in guarantee period of manufacturers. The maintenance of the equipment shall be responsibility of IAAI.

Profit = 20% of MTNL Bill – Expenditure i.e. Rs.39,375/- for first year. In case of increase in staff expenditure shall be increased correspondingly and additional staff shall be decided mutually.

3. In case of loss, the firm shall bear the loss.
4. No separate rent shall be paid for the space occupied and IAAI shall give free permit to our staff.
5. In case of increase in minimum wages, 50% increase shall be added to the agreed rate of Rs.1,500/- and paid to us as staff wages.

6. We agree to deposit Rs.50,000/- within one week as security deposit.

7. Apart from this, one lakh shall be given as Bank Guarantee to IAAI.

8. All the collection shall be made by us and we shall deposit the bill of IAAI to MTNL directly and pay IAAI profit within one week of receipt of bill from IAAI/.

Thanking you,

Yours faithfully,

:: ARVIND KHANNA ::

Ex.P2

“No.AAD/EINCS/30/419/

Dated: February 23, 1990.

M/s Arvind Khanna
A-103 Lok Vihar
New Delhi: 110034.

Subject: Operational contract for STD phones at IGI Airport.

Sir,

We are pleased to inform you that the IAAI management has decided to entrust you with the responsibility of manning the STD booths as IGI Airport, as per the following terms and conditions.

- 1) This operational contract will be for a period of six months from 6.1.90 initially and thereafter the operational contract shall be decided suitably depending upon the observations made during the above period.

- 2) You are required to deposit Rs.50000/- in cash and submit a bank guarantee for Rs.1 lac within one week from the date of issue of this order, as security deposit.
- 3) The firm will not pay any rental for the space occupied.
- 4) Free permits will be issued to the staff of the contractor who are been employed to man the STD booths.
- 5) The firm would deploy necessary skilled staff to run the following positions on round the clock basis for issue of coins and necessary assistance to the users.

	<u>Locations</u>	<u>No. of positions</u>
a)	Terminal II Departure -	2
b)	Terminal II Arrival -	1
c)	Terminal IA -	1
d)	Terminal IB -	1
e)	Terminal IC -	1

However, the IAAI reserves the right to increase or decrease the number of position as per the requirement.

- 6) The firm shall recruit 4.2 person per position. In addition the firm shall recruit necessary supervisory staff. The staff for the purpose will be recruited with the concurrence of the undersigned.
- 7) The firm has to strictly observe the IAAI contractors labour regulations in force.
- 8) The firm has to be produce necessary licence to employ personnel from the competent authority.
- 9) M/s. Omnitel Industrial will provide necessary STD instruments. Any malfunctioning of the same may be rectified in Lisan with the supplier IAAI electronics staff working round the clock will provide necessary assistance

for the smooth functioning of the system.

- 10) The staff manning the STD booths will be under the overall supervision of the Electronics staff working round the clock at respective terminals.
- 11) The firm will deposit with IAAI all the collection on completion of every month. The firm has to maintain a register for recording the meter reading daily booth wise, meter reading should be forwarded to the office of the SML.
- 12) The firm has to clear the MTNL bill after obtaining the cheque from the IAAI.
- 13) If there is a discrepancy between the MTNL bill and the collection deposited with IAAI, the firm **will absorb the deficiency.**
- 14) The payment for the services of the firm will be on a profit sharing basis. The profit sharing will be on 50-50 basis by the form and IAAI on the basis of the following calculations.

-20% of the billing amount shall be received from MTNL in the franchise scheme 80-20. Out of this 20% the staff expenditure @ 1500/- per person for the total no. of person employed vide para 6 as skilled personnel will be paid to the firm. Besides firm will be paid 25% of the above for supervisory charges. The balance profit will be shared between the firm and IAAI equally. However, the staff expenditure is more than the income from MTNL under franchise scheme, this loss will be absorbed by the form. IAAI would not therefore share the loss.
- 15) M/s Arvind Khanna is to execute and sign an agreement in a non-judicial stamp paper of Rs.5/- at their cost within 10 days from the date of this letter.

A confirmation of acceptance of this award may be sent to undersigned.”

(ii) As per Ex.P1, the plaintiff referred to the discussions with the concerned officer of the defendant and agreed to deploy 21 persons for the phone booths subject to the term of 50% of the profit to be paid to the plaintiff after deducting the expenditure incurred by the plaintiff towards salaries and supervision charges. I am not referring to maintenance expenditure as stated in Ex.P1 because the same is not the subject matter of the issue in the present case. One another important aspect contained in letter Ex.P1 is that the defendant was only entitled to share all profits and if there were losses, it was the plaintiff which was to bear the losses.

(iii) So far as the terms contained in Ex.P2 are concerned, the important terms are the Clauses 11 to 14 and more particularly Clause 13. The net effect of Clauses 11 to 14 is that the plaintiff after making collections from the phone booths would maintain a register/record and deposit at the end of the month the total collections with the defendant. The defendant will thereafter issue the cheques with respect to bills raised by the MTNL for payment to MTNL. It is clearly provided in Clause 13 that in case there is any discrepancy between the bills raised by the MTNL and the collections deposited by the plaintiff with the defendant, it will be the

plaintiff firm which will be liable to absorb the deficiency i.e issues as to inflated billing or wrong billing or other aspects of billing are for the plaintiff to absorb and the defendant would have no role in the same. After the entire expenditure was met and as stated above, the profit was to be shared half and half between the plaintiff and the defendant.

7(i) Though the plaint does not give details as to how the figures of salaries and supervision charges or the profit amount claimed by the plaintiff is arrived at by reference to the different months and qua the different heads of the expenditure, however, it is agreed by the counsel for the parties that two documents, as stated hereinafter, contain the respective cases of the defendant and the plaintiff with regard to the bills issued by the MTNL, collections deposited by the plaintiff with the defendant, the salary and supervision charges to be incurred, and finally the amount of profits which have to be divided between the plaintiff and the defendant.

(ii) These two documents are the letters Ex.P14 from the defendant to the plaintiff dated 22.4.1992 and Ex.P44 from the plaintiff's Advocate to the defendant dated 30.4.1992. What really is relevant is reference to the two annexures, one each to the two letters Ex.P14 and Ex.P44. The annexure to the defendant's letter Ex.P14 is given an exhibit number

Ex.P13, however, there is no exhibit mark to the annexure to the plaintiff's Advocate's letter Ex.P44. It is however agreed by the counsel for the defendant that the annexure does exist to Ex.P44 and which is annexed immediately following the document Ex.P44 in the court file.

(iii) Since the calculations which are stated in the annexures to Ex.P14 & Ex.P44 are relevant in order to determine the controversy in the present suit, I am reproducing both the annexures of the defendant and the plaintiff respectively to Ex.P14 & Ex.P44 below:-

“Ex.P14/(of the defendant)

**STATEMENT OF ACCOUNTS FOR MANNING STD/PAY
PHONES BY M/S. ARVIND KHANNA, TERMINAL-I**

(1)	Amount as per MTNL Bills upto 15.1.92, TR-I & II	Rs.	1,36,56,630-00
(2)	Amount as per MTNL Bills from 16-1-92 to 15.2.92 TR-I	Rs.	2,99,999-00
(3)	Amount as per Meter reading at TR-I from 16-2-92 to 13-8-92	Rs.	4,13,109-00
(4)	Amount as per meter reading at TR-II from 16-1-92 to 13.4.92	<u>Rs.</u>	<u>14,26,536-00</u>
	Total:	Rs.	1,57,96,263-00
(5)	<u>LESS:</u> Amount deposited by the contractor upto 12.3.92	<u>(-)Rs.</u>	<u>1,17,39,966-00</u>
	BALANCE :	Rs.	40,56,297-00
(6)	<u>LESS:</u> Manning charges upto 15.4.92	<u>(-)Rs.</u>	<u>18,62,800-00</u>
		(-)Rs.	21,93,497-00
(7)	Profit @50% to be paid to contractor	<u>(-)Rs.</u>	<u>3,35,075-00</u>
(8)	Total amount due from the	<u>Rs.</u>	<u>18,58,422-00</u>

contractor till date

- N.B. :-Amount shown at Sl.No.3, 4 & 5 is approximate.
Exact calculations shall be done after receipt of Bills
from MTNL.
- (2) Amount shown against Sl.No.3 & 4 are based on
Meter readings provided by M.T.N.L.”

Ex.P44 (of the plaintiff)

“Statement showing the amounts due to M/s Arvind
Khanna from I.A.A.I. on account of services rendered
for manning & supervising STD/ISD Pay Phones at IGI
Airport w.e.f. 6.1.1990 to 15.4.1992

1.	On the basis of cash deposited from collections of S.T.D. Pay Phones based on the actual meter reading. (Total amount deposited with I.A.A.I. w.e.f. 6.1.1990 to 15.4.1992)	Rs.1,19,17,936/-
2.	On account of salaries to the skilled workers numbering 38 for manning 17 STD Pay Phones round the clock, plus supervision charges.	Rs.18,64,274/-
3.	Profit	Rs.2,59,656.50
4.	Cash security deposited with the IAAI.	Rs.50,000.00
5.	Bank Guarantee in favour of IAAI.	<u>Rs.1,00,000.00</u>
	Total	<u>Rs.22,73,930.50</u>
	For M/s Arvind Khanna	

8(i) A reference to the aforesaid two annexures shows that the
defendant claims that the total bills which were raised by the MTNL for total
period of contract for the phone booths add to ₹ 1,57,96,263/- A reference

to the response of the plaintiff Ex.P44 with its annexures shows that there is no comment or response or refusal by the plaintiff with respect to this amount of ₹ 1,57,96,263/-. Therefore, this figure of ₹ 1,57,96,263/- can and is being taken as the total amount of bills raised by the MTNL with respect to the phone lines which were provided in nine booths contracted out to the plaintiff for the entire contract period.

(ii) In terms of the contract, the plaintiff had to deposit the total collections with respect to phone booths with the defendant at the end of the month. Out of the balance available after the deposit of the bills of MTNL, the salary and supervision charges had to be deducted and thereafter the net balance was to be divided in the profit sharing ratio of half and half between the plaintiff and the defendant.

(iii) On the aspect of the amount deposited with the defendant by the plaintiff, whereas plaintiff states the figure to be ₹ 1,19,17,936/-, the defendant states this figure at ₹ 1,17,39,966/-. The issue is as to which of these two figures has to be taken. In my opinion, considering the fact that the defendant did not give a further response to the annexure contained in Ex.P44 by disputing the same, I would prefer to take the figure as stated by the plaintiff being ₹ 1,19,17,936 instead of the figure of ₹ 1,17,39,966 of the

defendant.

(iv) The next aspect is what should be taken as the figure of salary and supervision charges to be paid by the defendant to the plaintiff. Defendant has argued that this should be an amount of ₹ 18,62,800/-, whereas the plaintiff states that it should be ₹ 18,64,274/-. There is difference just about ₹1500/- odd in two figures and therefore I once again would accept the figure of the plaintiff being ₹ 18,64,274/-.

(v) It is also undisputed that a security of ₹ 50,000/- is lying with the defendant and for which amount credit will have to be given to the plaintiff.

(vi) Plaintiff has also given the bank guarantee of Rs.1,00,000/- to the defendant and this original bank guarantee continues to remain with the defendant. Considering the judgment of the Supreme Court in the case of ***Bank of India Vs. Nangia Constructions (I) Pvt. Ltd. & Ors. (2008) 7 SCC 290***, the plaintiff should also be given the benefit of the figure of ₹ 1 lakh leaving the defendant at liberty to invoke and encash the bank guarantee in terms of the judgment of the Supreme Court in the case of ***Bank of India (supra)*** or also any other legal basis which the defendant is entitled to.

9. Therefore, a conclusion of the above is that the plaintiff claims

adjustment of ₹ 1,41,91,866/- but it was liable to account for ₹ 1,57,96,263/- i.e the plaintiff has not accounted and paid to the defendant an amount of ₹ 16,04,397/-. The question is that whether it is the plaintiff who is liable to pay this amount to the defendant or whether the claim of the plaintiff must succeed on account of the fact that this difference essentially arises from the claim of the plaintiff that the bills of the MTNL were inflated on account of illegal user of the phone lines at Terminal II/Cargo Terminal of the defendant.

10. So far as the aspect that misuser of the telephone lines did take place, could not be disputed on behalf of the defendant inasmuch as the defendant itself had filed an arbitration claim with MTNL making detailed references to the misuser of the telephone lines. The plaintiff has filed in this regard the claims and averments made by the defendant in this Court in Suit No.249/1993, whereby the present defendant (plaintiff in the Suit No.249/1993) had asked for reference of the disputes between the defendant herein and MTNL to arbitration in terms of Section 7B of the Indian Telegraph Act, 1863 read with Section 20 of the Arbitration Act, 1940. This document/petition has been exhibited as Ex.DW1/P1. I may note that the petition was allowed and the disputes were referred to arbitration vide order

dated 13.5.1996/Ex.DW1/P2 passed in the said petition. I am informed on behalf of the defendant that the claim petition which was filed before the Arbitrator was rejected and the claim dismissed. The Award in this regard has been filed in other suit CS(OS) No.701/1995 of the defendant and it has been exhibited as Ex.PW1/D2 in the said suit.

11. Learned counsel for the plaintiff very vehemently argued that once the defendant admits that there was misuser of telephones, and it had filed a claim in arbitration against MTNL, the plaintiff being a bonafide person must be exempted from the excessive billing which has been caused on account of misuse of telephone lines. Though in equity I did find a lot of strength in the argument which was raised on behalf of the plaintiff, however, equity can have no role to play once the law comes in. Parties are bound by Clause 13 of the terms agreed upon and which specifically states that in case of any issues of billing i.e. difference between the actual collections and the higher bills of MTNL, it would be the plaintiff which would have to absorb the excess. The plaintiff entered into this contract with open eyes. Plaintiff was aware that in the relevant days, there was a possibility of phone lines being misused, however, the plaintiff in terms of Clause 13 did take upon himself the liability to absorb the difference. After

having taken over the phone booths and working out the contract, it is not permissible for the plaintiff to renege from his commitment merely because the plaintiff has written certain letters to the defendant that the plaintiff is not bound by Clause 13. The plaintiff cannot take up such a stand, inasmuch as, whereas the contract with respect to the first six phone booths commenced from 6.1.1990 and the first period of six months ended on 6.7.1990, the first letter which is written by the plaintiff to the defendant in this regard is much later on 22.11.1990/Ex.P17. Therefore, having worked out the contract and having taken benefit thereupon the plaintiff cannot be allowed to backtrack. Acting upon the terms of the contract amounts to acceptance of the terms of the contract as contained in the document/Ex.P2. In fact, there cannot be any doubt in this regard inasmuch as when the contract for all the phone lines was again extended for two years vide Ex.P7 dated 22.11.1990 with its annexures, once again vide Clause 13 of the said annexure to Ex.P7 dated 22.11.1990 the contract was extended only subject to this term that the plaintiff was to absorb the deficiency/any issue with respect to billing of MTNL. In my opinion, it is not permissible for the plaintiff to blow hot and cold inasmuch as the plaintiff need not have continued with or taken extension of the contract for a period of two years if Clause 13 was not

acceptable to the plaintiff, and the plaintiff should have forthwith surrendered all the phone booths. The plaintiff on the contrary continued with the contract, acted upon the same, and therefore, by mere writing of letters plaintiff cannot be allowed to run away from its contractual commitments. I therefore hold that in terms of Clause 13, it was the plaintiff who had to absorb any deficiency with respect to the bills, and if the plaintiff had any issue of inflated bills, it was the plaintiff who was bound to pursue the matter with MTNL. The defendant cannot be fastened with any liability in this regard in view of the categorical language of Clause 13 reproduced above.

12. At one stage, I was inclined on account of equities in the present case to read down Clause 13 in entitling the plaintiff to its claims and disentitling the defendant of the defence based on Clause 13, inasmuch as, the defendant would not have been entitled to benefit of Clause 13 if the officers of the defendant were guilty in misusing the phone lines or taking undue benefit by making STD calls or other calls from the phone lines. I may however note that it is not the case of the plaintiff at any stage during the present suit, or during the correspondence with the defendant, that the misuse in the telephone lines was on account of the misuse by the officers of

the defendant. On the contrary, what the plaintiff alleged was that it was the staff of MTNL, which was responsible for misuse of the phone lines, and this aspect is confirmed by the letter of the defendant to the MTNL which is filed by the plaintiff itself and which is the letter dated 9.1.1991/Ex.P18. Therefore, once the officers of the defendant are not guilty, and misuse of the lines is by the staff of MTNL, I do not find any equity in favour of the plaintiff and against the defendant for the plaintiff to be exempted from the categorical language of Clause 13.

13. Accordingly, issue Nos. 2 to 4 are decided in favour of the defendant and against the plaintiff and it is held that the plaintiff is not entitled to any amount, much less the suit amount from the defendant.

Issue No.5

14. This issue is that the plaintiff contends that Clause 13 is illegal and void being hit by Section 23 of the Contract Act.

15. While dealing with issue Nos. 2 to 4 I have partly dealt with this issue in that, if the phone lines were misused by the officers or employees of the defendant then possibly Clause 13 would be hit by Section 23 of the Contract Act, 1872 inasmuch as no clause can permit a person to be exempted from liability, although, such person himself causes

deliberately losses to the opposite side. Also, in my opinion, in a case where the officers or staff of the defendant may have misused the phone lines then really it would be a case of non-application of Clause 13 and not that the Clause 13 was void by virtue of Section 23 of the Contract Act, 1872. I thus do not find any illegality in Clause 13 to hold the same to be violative of Section 23 of the Contract Act, 1872. I may note that it is not the case of the plaintiff that the plaintiff was forced to sign on dotted lines with the defendant which is a huge organization, so that the case would come under the ratio of *Central Inland Water Transport Corporation Ltd. vs. Brojo Nath Ganguly*, AIR 1986 SC 1571. Also, I may note that the Supreme Court in various other judgments including *S.K.Jain vs. State of Haryana*, 2009 (4) SCC 357 and *Assistant Excise Commissioner & Ors. vs. Issac Peter & Ors.*, 1994 (4) SCC 104 has held that when there is a commercial contract, and a person has an option whether or not to enter into a contract with the Government/State, after having entered into the contract, it cannot take up the defence of unreasonableness of the terms of the contract or that the contract is unconscionable.

16. Accordingly, this issue is decided in favour of the defendant and against the plaintiff and it is held that Clause 13 of the contract is not

liable to be struck down as violative of Section 23 of the Contract Act, 1872.

Issue No.7

17. Since the plaintiff is not entitled to the suit amount there is no question of granting any interest to the plaintiff. This issue is therefore also decided in favour of the defendant and against the plaintiff.

Relief.

18. In view of the above discussion, the suit of the plaintiff has no merit and is accordingly dismissed, leaving the parties to bear their own costs. Decree sheet be prepared.

VALMIKI J. MEHTA, J

DECEMBER 06, 2012

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