

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG. CHIEF JUSTICE MR. ASHOK BHUSHAN
&

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WA.No. 1371 of 2012 () IN WP(C).13479/2006

AGAINST THE JUDGMENT IN WP(C) 13479/2006 DATED 14-03-2012

APPELLANT/RESPONDENTS:

1. UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF TELECOMMUNICATION, NEW DELHI.
2. BHARAT SANCHAR NIGAM LIMITED
REPRESENTED BY THE GENERAL MANAGER (TELECOM)
THIRUVANANTHAPURAM.
3. ARBITRATOR & D.E. TELECOM, BSNL
CHERUVATHUR, KAZARAGOD DISTRICT, KERALA-671 313.

BY ADV. SRI. MATHEWS K. PHILIP, SC, BSNL

RESPONDENT/PETITIONER:

P.A. AHAMMED
ADVOCATE, POWERLINES BUILDING, VANCHIYOOR
THIRUVANANTHAPURAM. 695 035.

BY SRI. P. GOPALAKRISHNAN NAIR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 06-01-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

SO.

ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J.

W.A. No. 1371 of 2012

Dated this the 6th day of January, 2015

J U D G M E N T

Ashok Bhushan, Ag.CJ

Heard learned counsel for the appellant as well as learned counsel appearing for the respondent/writ petitioner.

2. This writ appeal has been filed against the judgment and order dated 14.3.2012 in writ petition No.13479 of 2006. The petitioner was appointed as Standing Counsel for the Central Government for conducting the cases of various departments other than Income Tax and Railways in the Subordinate Courts of Thiruvananthapuram during the period 1990-97. A facility of telephone was extended to the petitioner in his office, which was in the court complex. A letter dated 18.12.1996 was issued to the petitioner, Ext.P3 enclosing the telephone bills from 1.12.1993 to 1.10.1996. The letter itself mentioned that the telephone was provided on 27.11.1990 as a temporary service connection in the capacity as Central Government Standing Counsel representing post and telegraph cases. It is stated in the letter that free calls

for such telephones is only 1150 per billing period. The petitioner was asked to settle the bills. The petitioner approached the civil court. Thereafter the matter was referred to the Arbitrator. The Arbitrator give an award, Ext.P5 on 20.3.2006, whereby the Arbitrator noticing the laches on the part of the Department in giving bills allowed 10% rebate in the bill amount. The Arbitrator observed that there was delay in issuing the bills in time by the Department of Telecommunication to the petitioner. It is useful to refer to paragraph 6 of the Arbitrator's award, which is to the following effect :

"6. Further it is observed that there was delay in issuing the bills in time by the DOT to the petitioner. Had the bills were issued by DOT in time, the petitioner could have controlled the calling rate from his telephone and he could have clearly understood about the limited admissibility of free calls. That privilege is found denied to the petitioner since bills were issued very late. As such 10% of the call charges in each bill is allowed as rebate to the petitioner for the above deficiency of service."

3. In pursuance to the award, Ext.P6 was issued demanding Rs.2,77,075/-. The petitioner filed the Writ petition challenging Ext.P5 and P6, where the following reliefs were claimed:

"(i) to issue writ of certiorari or other appropriate writ direction or order quashing Exts.P5 & P6 and to declare that the petitioner is not liable to pay the amount

claimed against him under Ext.P6 demand for the telephone charges, while he was holding the office of the Central Government Standing Counsel.”

4. The case of the petitioner in the writ petition was that as per the revised Scheme containing the terms and conditions for the engagement of Standing/Additional Standing Government Counsel, Ext.P7 the petitioner, as a Standing Counsel was entitled for the facility of telephone. Since no bills were issued till 18.12.1996, the petitioner was throughout under the belief that telephone is a facility provided to the office and no bills are payable.

5. In the writ petition, counter affidavit was filed by the department where although averment was made that telephone bills were issued, no specific materials were annexed to show that bills were issued prior to 18.12.1996.

6. In the writ petition, an interim order was passed by this court directing the petitioner to deposit an amount of Rs.25,000/-. The writ petition was heard finally. The learned Single Judge after noticing the facts of the case took the view that since the delay/lapses borne on the part of the department, a line has to be struck in between. The learned Single Judge directed that justice

will be served, if the petitioner is directed to deposit a sum of Rs.25,000/- apart from Rs.25,000/- already deposited as per the interim order dated 25.5.2006, as the final satisfaction of the outstanding claims. With the aforesaid direction, the writ petition was disposed of. The appellant, aggrieved by the judgment of learned Single Judge has come up in appeal.

7. Learned counsel for the appellant submits that as per the office memorandum dated 30.4.1992, The Ministry of Law, Justice and Company Affairs was to pay only monthly retainer to the Standing Counsel and installation and annual rental charges of telephone, if any provided to them. He submits that there was no provision in the scheme indicating that free telephone will be allowed to the Government Standing Counsel. It is submitted that Government Standing Counsel is entitled for certain free calls, which is already extended to the petitioner. He submits that the petitioner ought to have been aware that he has to pay the bills and non-payment of bills were not justified. He submits that the petitioner was liable to pay the bill and learned Single Judge committed error in closing the matter on payment of Rs.50,000/- only. Learned counsel for the appellant submits that even if there

is some delay in presenting the bills that was not a ground to quash the very liability of payment of bills.

8. Learned counsel for the respondent/petitioner refuting the submission of learned counsel for the appellant submits that although the scheme clearly stated that the Additional Standing Counsel shall be liable to pay all the expenditure regarding the facility of telephone, the said condition is not included in the case of a Government Standing Counsel. He submits that since the bills were never given, the petitioner was throughout under the belief that the telephone was a perquisite of the office. He submits that the respondent having represented already by conduct that no payment is to be made by the petitioner, was not justified in raising the bill at the fag end of his career as Government Standing Counsel, which is in 1997.

9. We have considered the submission of learned counsel for the parties and perused the records. Before we proceed to consider the respective submissions, it is useful to refer to the relevant scheme where mention has been made with regard to telephone facility. The petitioner had relied on Ext.P7 Clause (VII) Retainer and other perquisites. It is useful to quote clause (VII),

which is to the following effect :

"VII. RETAINER AND OTHER PERQUISITES :

1. Retainer payable to Standing Government Counsel :-

The Standing Government Counsel will be paid a monthly retainer of Rs.1000/- (Rupees one thousand only) which will include charges for staff, office rent, postage and all other establishment charges. The Additional Standing Government Counsel will not be entitled to any retainer and other perquisites mentioned herein.

2. The reainer will be paid by the Department of Legal Affairs, Ministry of Law, Justice and Company Affairs, New Delhi.

3. Perquisites :- The Standing Government Counsel will be allowed the facility of telephone and furniture in the office allotted for the use of the Standing Government Counsel in the premises of the District and Subordinate Courts for conducting the cases on behalf of the Government of India. However, such a facility will be available to him subject to the availability of the premises and the requirements of the Department of Legal Affairs.

The Additional Standing Government Counsel will be entitled to the grant of telephone connection on priority basis. However, the expenditure on the Registration and installation of the telephone and all other expenditure connected with the utilization of this facility will be borne by the Additional Standing Government Counsel."

10. Learned counsel for the appellant on the other hand has referred to the circular dated 30.4.1992, Ext.P2, where reference has been made to Clause 2(c), which reads as follows :

"2. For the guidance of various Ministers/Departments,

the following clarifications are given for settling the fee bills, TA/DA, etc. payable to Standing/Additional Standing Government Counsel for their engagement in the District and Subordinate Courts, Commissions of Inquiry, Motor Accident Claim Tribunals, Industrial Tribunals, Labour Tribunals, Consumer Redressal Forums, etc., throughout India.

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(c) The Ministry of Law, Justice and Company Affairs, (Department of Legal Affairs) will only be making payment of monthly retainer to Standing Government Counsel and installation and annual rental charges of telephone, if any, provided to them."

11. Although a plain reading of Ext.P7 clause (VII) (3) indicates that where as Additional Government Standing Counsel were entitled to be granted telephone connection on priority basis and they are liable to bear the expenditure of Registration and installation and all other expenditure connected with utilization of the facility of telephone, but with regard to Government Standing Counsel, it was mentioned that however, such a facility will be available to him subject to availability of the premises and requirements of the Department of Legal Affairs and further opening words of the paragraph says that "the Standing Government Counsel will be allowed the facility of telephone and furniture in the office allotted for the use of the Standing

Government Counsel.” Though paragraph 2(c) of Circular dated 30.4.1992 states that the installation and annual rental charges, if any, shall be payable by the Government, the said paragraph does not refers to any payment of telephone bills. Learned counsel for the appellant also refer to circular where it is mentioned that the telephone calls of the Central Government Standing Counsel representing the Post and Telegraph Department will be free up to 1200 calls per bi-monthly billing period.

12. Taking into consideration of the aforesaid circular dated 30.4.1992 as quoted above, we are of the view that the said circular do not indicate in any manner that the telephone connection was to be provided to the Government Standing Counsel free of cost. Paragraph 2(c) only indicate that the installation charges and annual rental charges shall be borne by the Government. Now referring to the facts of the present case, according to the admitted facts telephone connection was provided in the year 1990 and bill for last three year period beginning from 1.12.1993 to 1.10.1996 was sent by letter dated 18.12.1996. The categorical case of the petitioner is that prior to

the said bill, no bills were issued to the petitioner. The petitioner brought on record the letter dated 18.12.1996, Ext.P3. It is useful to refer to the contents of the letter which is to the following effect :

"Copies of the telephone bills issued against phone No.70270 for a period 1.12.1993 to 1.10.1996 are enclosed. This telephone was provided to you on 27.11.1990 as temp. service connection. This was provided to you in the capacity as Central Government Standing Counsel representing P & T cases. Free calls for such telephones is only 1150 per billing period. The enclosed bills are worked out after allowing the permissible free calls of 1150. Copy of the bills prior to Dec.'93 will be sent shortly. You are requested to settle the bills before 31.12.'96."

13. In the additional counter affidavit, apart from general pleadings, there is no material to indicate that the bills were issued to the petitioner prior to 1996. It is also relevant to note that the petitioner continued as Government Standing Counsel of the Government till September 1997 and after coming to know that he is liable to pay, the calls were limited, so that no amount was required to be paid by the petitioner thereafter.

14. Learned Single Judge rightly relied on the delay and laches on the part of the Department in sending bills for reducing the liability of the petitioner towards the bills. In the award,

categorical findings were recorded as noted above that there was delay in issuing the bills by the Department of Telecommunication to the petitioner and that the Arbitrator has further observed that “Had the bills were issued by the Department of Telecommunication in time, the petitioner could have controlled the calling rate from his telephone and he could have clearly understood about the limited admissibility of fee calls.”

15. The facts revealed clearly indicate that the petitioner was under the impression that the telephone is a facility provided to the Government Standing Counsel and due to non raising of bill, he continued under the impression till the letter dated 18.12.1996 was issued demanding the bills for last three years. The delay in issuing the bill was a relevant factor in the facts of the present case, where the question as to whether the telephone is a facility provided to Government Standing Counsel was not clear or no communication was issued to that effect to the petitioner. Learned Single Judge has rightly observed that in the facts of the case, a line has to be struck in between to close the matter. The learned Single Judge observed that payment of Rs. 50,000/- towards the outstanding bills would meet the ends of

justice in satisfaction of the outstanding due. We do not find any error in the exercise of discretion in closing the matter by directing payment of Rs.50,000/- towards it in the facts of the case. Consequently, we do not find any requirement for interference by this Court.

The appeal is dismissed.

Sd/-

**ASHOK BHUSHAN,
ACTING CHIEF JUSTICE**

Sd/-

**A.M.SHAFFIQUE,
JUDGE.**

sou.

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