

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 9460 of 2014 (F)

PETITIONER(S) :

VISHAL BASTHICHAND,
AGED 33 YEARS, SON OF LATE SRI.BASTHICHAND,
RESIDING AT 51/240,
CHILAVANOOR ROAD, SHALIBHADRA,
ERNAKULAM - 682 020.

BY ADVS.SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SMT.ANILA PETER
SRI.J.VIVEK GEORGE
SMT.C.PRABITHA

RESPONDENT(S) :

1. ACCOUNTS OFFICER (TR OSP) ,
O/O PGMT, BSNL, CTO BLDG; KARIKKAMURI CR. ROAD,
KOCHI 16.
2. ACCOUNTS OFFICER,
(TR), BSNL MOBILE, TRIVANDRUM - 695 040.
3. DIVISIONAL ENGINEER (CS) ,
O/O.PGMT, BHAVAN, KALATHIPARAMBIL,
KOCHI - 682 016.
4. PRINCIPAL GENERAL MANAGER,
BSNL BHAVAN, ERNAKULAM, KOCHI -682 016.

BY SRI. C.S.RAMANATHAN, SC, BSNL &
BY SRI.MATHEWS K.PHILIP, SC, BSNL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P1: TRUE COPY OF THE CUSTOMER AGREEMENT ENTERED INTO BETWEEN THE PETITIONER AND THE 3RD RESPONDENT DATED 31/10/2011.
- EXT.P2: TRUE COPY OF BILL NO.720560941 ISSUED BY THE 2ND RESPONDENT TO PETITIONER DATED 03/11/2011.
- EXT.P3: TRUE COPY OF RECEIPT NO: 5729196 ISSUED TO THE PETITIONER DATED 3/11/2011.
- EXT.P4: TRUE COPY OF BILL NO.723819174 ISSUED BY 2ND RESPONDENT TO PETITIONER DATED 3/12/2011.
- EXT.P5: TRUE COPY OF BILL NO.728365210 ISSUED BY 2ND RESPONDENT TO PETITIONER DATED 3/1/2012.
- EXT.P6: TRUE COPY OF BILL NO.731550411 ISSUED BY 2ND RESPONDENT TO PETITIONER DATED 3/2/2012.
- EXT.P7: TRUE COPY OF BILL NO.735303944 ISSUED BY 2ND RESPONDENT TO PETITIONER DATED 3/2/2012.
- EXT.P8: TRUE COPY OF BILL NO.738972650 ISSUED BY 2ND RESPONDENT TO PETITIONER DATED 3/4/2012.
- EXT.P9: TRUE COPY OF RECEIPT NO.CR12040170 ISSUED BY THE 1ST RESPONDENT TO PETITIONER DATED 3/4/2012.
- EXT.P10: TRUE COPY OF BILL NO.742802023 ISSUED BY 2ND RESPONDENT TO PETITIONER DATED 3/5/2012.
- EXT.P11: TRUE COPY OF BILL NO.747115575 ISSUED BY 2ND RESPONDENT TO PETITIONER DATED 3/6/2012.
- EXT.P12: TRUE COPY OF BILL NO.748413842 ISSUED BY 2ND RESPONDENT TO PETITIONER DATED 11/6/2012.
- EXT.P13: TRUE COPY OF BILL NO.750366271 ISSUED BY 2ND RESPONDENT TO PETITIONER DATED 20/6/2012.
- EXT.P14: TRUE COPY OF BILL NO.750825984 ISSUED BY 2ND RESPONDENT TO PETITIONER DATED 3/7/2012.

EXT.P15: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT DATED 23/6/2012.

EXT.P16: TRUE COPY OF THE COMMUNICATION BEARING NO.TR(MOB)/PG CELL COMPL/2010-12/47 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 4/7/2012.

EXT.P17: TRUE COPY OF THE BILL NO.754673596 ISSUED BY THE 2ND RESPONDENT TO PETITIONER DATED 3/8/2012.

EXT.P18: TRUE COPY OF THE BILL NO.758292133 ISSUED BY THE 2ND RESPONDENT TO PETITIONER DATED 3/9/2012.

EXT.P19: TRUE COPY OF THE COMMUNICATION NO.TRA/DF/DSP/ 9446317222/ 511947314/651 DATED 25/02/2013.

EXT.P20: TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE CHIEF GENERAL MANAGER, TELECOM, BSNL, ERNAKULAM REGION DATED 20/3/2013.

EXT.P21: TRUE COPY OF THE NOTICE NO.MS/MKTG/ARB/VISHAL BASTICHAND/2013-14/02 DATED AS TVM THE 19/8/2013 ISSUED BY ARBITRATOR TO THE PETITIONER.

EXT.P22: TRUE COPY OF ARBITRAL AWARD DATED 30/10/2013.

RESPONDENT(S) ' EXHIBITS :

EXT.R1(A): TRUE COPY OF THE LETTER DATED 31/05/2012.

EXT.R1(B): TRUE COPY OF THE CIRCULAR DATED 24/10/2011.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.M. Shaffique, J.

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W.P (C) No. 9460 of 2014

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Dated this, the 6th day of March, 2015.

J U D G M E N T

Petitioner challenges Ext. P22, an Arbitration award passed by an Arbitrator exercising power under the Indian Telegraph Act. By virtue of the above said award, the dispute raised by the petitioner has been resolved as under:

“Award made on this day on 30th day of October 2013 Shri. B. Sriramachandra Murthy, Addl. GM(S&M-CM), O/o. CGMT, BSNL, Kerala Circle, Trivandrum passes the following award:

1. A discount of 40% data usage charges is allowed to the customer and the customer should make the payment of the remaining 60% data usage charges for the month of June 2012, which comes out to be Rs. 63,348/- + applicable taxes.
2. BSNL will revise the bill and issue to the petitioner as per the above amount along with applicable taxes within 15 days from the date of this award.
3. The petitioner is given an option to pay the entire bill at a time or can make the payment in two instalments. If the customer opts to make the payment in two instalments, the first instalment should be paid for Rs.40,000/0 within 15 days after issue of the revised bill from BSNL. The balance amount should be paid as the 2nd instalment within 30 days after the issue of the revised bill from BSNL.
4. If payment is not made by the petitioner, BSNL may go ahead with Revenue Recovery proceedings.”

A perusal of the award indicates that the arbitrator has

considered the factual aspects involved in the matter wherein a demand made by the BSNL for an amount of Rs. 1,21,107/- came to be disputed and accordingly the matter was referred to the Arbitrator. It is indicated by the Arbitrator that the customer had come to know about the change only after visiting the BSNL accounts office subsequent to the receipt of bill for Rs. 76,942/- for the period from 1.6.2012 to 10.6.2012. After having referred to the facts and figures, certain conclusion had been arrived, which is extracted as under:

“(a) BSNL mentioned that the usual practice of intimating the change of plan of the customer is by sending SMS to the customer and the same had been followed in this case also. But, the customer had not received the SMS as he is using this connection for iPad data usage purpose.

(b) The customer came to know about the change only after visiting the BSNL accounts office, subsequent to the receipt of bill for Rs. 76,942/- for the period from 01.06.2012 to 10.06.2012.

(c) During June-2012, the customer received three bills for a total amount dues of Rs. 1,22,127/- which includes the data usage charges shown in the bill as ‘GPRS/WAP call facility’, for the period 01.06.2012 to 10.06.2012 for an amount of Rs. 67,344/- and for the period of 11.06.2012 to 19.06.2012 for an amount of Rs. 38,236/-. As per these bills issued during June, 2012 it is seen that the total data usage charges was Rs.1,05,580/- during June-2012. This shows that the customer actually used the data usage to the tune of 107 GB during 01.06.2012 to 30.06.2012. During the hearing, the customer has accepted that he has actually used the connection for the above data usage. However, he was not

aware that he will be charged for the data usage.”

2. It is submitted by the learned counsel for the petitioner that the BSNL had acted against the usual practice being followed by which change of plan was informed by way of SMS to the customer. But, as far as the present situation is concerned, no such change had been informed to the petitioner.

3. Respondents have filed counter affidavit supporting the stand taken by the Arbitrator.

3. The Arbitrator having found that the liability cannot be denied by the petitioner reduced 40% of the demand. Under such circumstances, when the Arbitrator has exercised his powers to reduce the demand, having taken into consideration certain factual aspects including the contention raised by the petitioner that he was not aware of the change in plan, in the absence of any illegality being committed by the Arbitrator, it may not be possible for this Court to entertain a challenge against the award passed by the Arbitrator. The scope of judicial review is limited to the question as to whether any illegality had been committed by the Arbitrator while passing the order. No such material is available to indicate that the Arbitrator has committed any illegality in passing the

award. Under such circumstances, I do not think that the challenge against Ext. P22 order is sustainable.

4. During the pendency of the writ petition, the petitioner had already remitted Rs. 20,000/-. Having regard to the request of the petitioner, I am of the view that some more time can be granted to the petitioner to discharge the liability. Accordingly, the petitioner is granted time to pay the entire amount in three equal monthly instalments payable from 7th April, 2015.

Subject to the above direction, the writ petition is dismissed.

Sd/-

A.M. Shaffique, Judge.

Tds/