

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WP(C).No. 16292 of 2013 (J)

PETITIONER(S) :

SUBBAYAN ACHARI,
T.C.41/1982, VILAKKUMUKKU VEEDU,
MANACAUD P.O.,
THIRUVANANTHAPURAM.

BY ADVS.SRI.R.KRISHNA RAJ &
SMT.E.S.SONI.

RESPONDENT(S) :

1. THE BHARAT SANCHAR NIGAM LTD.,
REPRESENTED BU ITS GENERAL MANAGER, TELECOM,
THIRUVANANTHAPURAM SECONDARY SWITCHING AREA,
THIRUVANANTHAPURAM-695 003.
2. ARBITRATOR AND ASSISTANT GENERAL MANAGER
(ADMINISTRATION),
OFFICE OF THE CHIEF GENERAL MANAGER, TELECOM,
BSNL KERALA CIRCLE, THIRUVANANTHAPURAM - 695 033.

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

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT P1. COPY OF THE O.P.NO.8703/1988 DATED 31.10.1988.
- EXHIBIT P2. COPY OF THE JUDGMENT IN O.P.8703/88 DATED 15.03.1988.
- EXHIBIT P3. COPY OF THE OBJECTION OF THE PETITIONER DATED 16.01.1988.
- EXHIBIT P4. COPY OF THE OBJECTION OF THE PETITIONER DATED 03.08.1988.
- EXHIBIT P5. COPY OF THE CERTIFICATE OF POSTING DATED 19.04.1988.
- EXHIBIT P6. COPY OF THE JUDTGMET IN RSA NO.130/2012 DATED 12.06.2012.
- EXHIBIT P7. COPY FO THE COUNTER AFFIDAVIT IN O.P.8703/88 DATED 15.11.1988.
- EXHIBIT P8. COPY OF THE ARBITRATION AWARD DATED 10.04.2013.
- EXHIBIT P9. COPY OF THE LETTER OF THE RESPONDENT DATED 10.08.1988.
- EXHIBIT P10. COPY OF THE TELEPHONE BILL DATED 01.05.1988.
- EXHIBIT P11. COPY OF THE TELEPHONE BILL DATED 01.07.1988.
- EXHIBIT P12. COPY OF THE CERTIFICATE OF POSTING DATED 16/01/1988.
- EXHIBIT P13. COPY OF THE REVENUE RECOVERY NOTICE DATED 23/12/1988.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

K. VINOD CHANDRAN, J.

W.P(C). No.16292 of 2013

Dated this the 1st day of June, 2015.

JUDGMENT

The petitioner is aggrieved with the arbitration award passed by the Arbitrator under Section 7B of the Indian Telegraph Act, 1885 (for brevity, the Act of 1885) produced at Ext.P8 herein. The litigation has a chequered career in so far as the petitioner as also the Government of India, at that point of time, who is the predecessor of the first respondent had series of litigations with respect to the subject matter of the above writ petition.

2. The petitioner was issued with two bills for a telephone in his name dated 01.01.1988 and 01.03.1988 for an amount of Rs.11,695/- (Rupees Eleven thousand six hundred and ninety five only) and Rs.11,937/- (Rupees Eleven thousand nine hundred and thirty seven only) respectively. The petitioner, on a complaint that the said bills issued were far in excess of the use

of the telephone, relied on the earlier bills issued in the name of the petitioner and sought for reference of the dispute under Section 7B with a writ petition numbered as O.P. No.8703 of 1988. The said writ petition was dismissed by Ext.P2 judgment on 15.03.1989.

3. Later, after about ten years in the year 1998, the Government of India filed a suit against the petitioner for recovery of the amounts due under the said bills. The suit was decreed and in appeal the decree was affirmed. However, in the second appeal filed by the petitioner herein, as is seen from Ext.P6, the entire proceedings were set aside on the ground that a suit would not be maintainable going by the provisions of Section 7B of the Act of 1885. The respective parties were left to agitate their claims as provided under law. Again the Government of India initiated proceedings under Section 7B of the Act of 1885, which ended in an arbitration award being passed at Ext.P8; in pursuance of which, revenue recovery proceedings were initiated.

4. Though revenue recovery proceedings were initiated at the earlier point of time, the learned counsel appearing for the

first respondent would contend that at that point of time it could not be pursued under the Kerala Revenue Recovery Act since the Department of Telecom was not notified under the Revenue Recovery Act. At present the BSNL is notified to invoke the provisions for recovery under the Revenue Recovery Act and the first respondent has sought to execute the award passed under Section 7B. The award was passed in an arbitration initiated by the Government of India; and in favour of the Government of India and could be recovered by BSNL, who has succeeded to the assets and liabilities of the Department.

5. The learned counsel for the petitioner would contend that the recovery would be hit by the limitation provided under the Limitation Act, 1963 and that even the arbitration award indicates that there is no proper consideration of the objections filed by the petitioner. The petitioner would in fact specifically refer to the report appended along with Ext.P7 objection, as Ext.R3A to contend that the allegation itself is that during the relevant time the telephone was used by one another, who is stated to be the landlord of the petitioner.

6. The learned counsel for the respondent would contend

that the recovery proceedings having been initiated by the Department of the Government of India, limitation as provided under Article 112 of the Schedule to the Limitation Act would only be applicable. This Court is inclined to accept the said contention of the learned counsel appearing for the respondents. A period of 30 years is available to the Government of India, which had initiated the arbitration proceedings under Section 7B of the Act of 1885 and in whose favour the award was passed. The subject bills were of January and March, 1988. It was the petitioner, who challenged the same and sought for arbitration in the earlier writ petition, which was rejected as per Ext.P2. There is nothing stated about the revenue recovery proceedings in Ext.P2. The revenue recovery proceedings initiated by the Department at the earlier instance, admittedly was not a proper proceeding.

7. The claim of the petitioner for reference for arbitration was declined, since it was found that the petitioner had never raised an objection with respect to the bill and that the petitioner had also admitted the shifting of the telephone to building No.42/604. Neither at the time of shifting nor after that; was any objection raised and the bill properly served on the petitioner was

also not objected to. It was on such findings that this Court declined the prayer of the petitioner under Section 7B in Ext.P2.

8. It is to be noticed that the petitioner's prayer under Section 7B was specifically declined by the Court and it was not as if the Department raised an objection on that ground. The suit filed in the year 1998 was within the limitation period, as provided under Article 112 of the Limitation Act. But the same eventually was found to be not maintainable under the provisions of Section 7B, by this court in a Second Appeal filed by the petitioner, as is evidenced at Ext.P6. It was only in such circumstances that arbitration was invoked by the Department under Section 7B on 17.10.2012 when the limitation of 30 years as provided under Article 112 again had not expired. In any event, the proceedings before the Civil Court was one bonafide filed and Section 14 of the Limitation Act would definitely be attracted in so far as extending the period of limitation. That need not be gone into, since at the time of initiation of arbitration, as is indicated in Ext.P8, the Government of India, Ministry of Communications and Information Technology had initiated arbitration and the BSNL, who may not essentially be

entitled to claim limitation of thirty years seeks only to execute Ext.P8 for reason of the first respondent having taken over the Department with all his assets and liabilities. The contention of limitation raised has to be negated.

9. The learned counsel for the petitioner had specifically challenged the appreciation of the facts in Ext.P8, which strictly, cannot be examined by this Court under Article 226. This Court has been persuaded to do so only on the persuasive plea made by the learned counsel. The contention raised on the basis of the report filed is that, admittedly the telephone was found used by one another and that the shifting had been effected by the Department to the said building. The report clearly found that the shifting of the telephone was as requested by the petitioner and was effected to a building bearing No.T.C.42/604. That the said building was in the possession of a third party by name Prabhakaran Nair is proved and admitted. As has been held by this court in Ext.P2, the petitioner himself had sought for shifting of the telephone from his earlier residence at T.C. No.42/612 to T.C. No.42/604. The petitioner had been residing with his wife, who was working at Varkala and later transferred to Cherthala. It

was also found that on issuance of the bills, the petitioner himself met the Inspector of the Department in his Office and expressed his willingness to clear the dues within one month. He had also admitted that the telephone was used by one another. However the telephone connection being in the name of the petitioner and the same having been shifted to the third party's building on the request of the petitioner, the petitioner could not have challenged the bills issued in his name. These facts were affirmed by this Court in Ext.P2 and also in the award on arbitration.

No interference is warranted to the said findings in Ext.P8. The earlier finding in Ext.P2, which has become final as against the petitioner; also restrains this Court in causing interference. For all the above reasons, the writ petition stands dismissed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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