

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.11.2016

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.27006 of 2013

and M.P.No.1 of 2013 and WMP.No.26315 of 2016

Door Sabha Nigam Limited  
Represented by its Managing Director,  
P.Mahalingam,  
Tidel Park, 1106 -D, South Block,  
No.4, Rajiv Gandhi Salai,  
Taramani, Chennai 600 113. .. Petitioner

Versus

- 1.The Chief General Manager,  
BSNL - Chennai Telephones,  
78, Purasawalkam High road,  
Chennai 600 010.
- 2.The Senior General Manager TR & Finance,  
Office of the Chief General Manager,  
BSNL - Chennai Telephones,  
78, Purasawalkam High road,  
Chennai 600 010.
- 3.The Deputy General Manager (Sales),  
BSNL - Chennai Telephones,  
Office of Senior General Manager (E.B),  
Chennai Telephones, No.70, Ritherdon Road,  
Vepery, Chennai 600 007.
- 4.The Accounts Office (TR),  
BSNL - Chennai Telephones,  
99, Jawaharlal Nehru Road,  
Chennai 600 078. .. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records of the 4<sup>th</sup> respondent in the impugned Es Bill bearing No.302033781 dated 08.07.2013 issued for the petitioner for its Customer id 4019154798 and Account Number 9033012867, quash the same insofar as it levies a sum of Rs.47,96,293.42/- as One time Charges and forbear the Respondents from in any manner levying demanding and collecting a sum of Rs.11,000/- per PRI in the future monthly Bills of the petitioner.

For Petitioner : Mr.N.L.Rajah, Senior Counsel  
Mr. Arun Arbumani for  
For Respondents : Mr.S.Gopinathan

#### O R D E R

The petitioner is leading a private independent conferencing service. Earlier when they had sought for 85 Integrated Services of Digital Network Primary Rate Interface (ISDN PRIs) from Adyar Telephone Exchange, the first respondent had offered to provide the same from K.K.Nagar, Telephone Exchange, since he did not have adequate capacity of 85 PRIs and consequently the petitioner's offer was shifted to K.K.Nagar. Thereafter, the petitioner had offered to move their operations from K.K.Nagar to Tidel Park in the year 2011. However, the respondent had agreed to provide PRI lines from K.K.Nagar itself, assuring that the petitioner can pay the same rate without involving any additional charges. By letter dated 28.02.2011, the third respondent had informed the petitioner that they had necessary instructions for extending 16 PRI lines to Tidel park, at an additional cost per PRI would be Rs.11,000/- in addition to the rent of Rs.1750/- p.m./ per PRI. Subsequently, the respondents raised a Demand Notice dated 10.03.2011, for a sum of Rs.12,133/- (Rs.11,000/- + Rs.1,133/- towards Service Tax) as Miscellaneous Charges for each PRI. Accordingly, the petitioner paid a total sum of Rs.1,94,128/. Thereafter, the petitioner had paid the monthly charges, usage charges, service tax etc., for every month. Whiles, the fourth respondent had raised a Bill dated 08.07.2013, by which a sum of Rs.47,96,293.42/- was levied as One Time Charges without defining "one -time charges". Subsequently, in reply to the petitioner's query, the respondent had clarified that the one time charges was levied towards the rent of Rs.11,000/- per PRI-p.m. for 16 PRIs extended from K.K.Nagar to Tidel Park from 01.04.2011 to 30.06.2013. In another letter dated 22.07.2013, the second respondent had stated that the additional cost of

Rs.11,000/- per PRI is levied in addition to the rent of Rs.11,750/- p.m. per PRI lines and therefore, the additional charges totalling a sum of Rs.1.76 lakhs is payable to 16 PRI lines for the petitioner's office at Taramani from K.K.Nagar, Telephone Exchange from the date of installation. Aggrieved against the levy of one time charges, the petitioner has preferred the present writ petition.

2. Heard Mr.N.L.Rajah, Senior Counsel appearing for the petitioner and Mr.S.Gopinathan, learned counsel appearing for the respondents.

3. The learned Senior counsel appearing for the petitioner would submit that the demand of the respondents is a non-just claim, since the respondents had indicated to the petitioner that a sum of Rs.12,133/- into 16 PRIs was leviable for every month. According to him, the said charge was only a one time charge which is the Fiber cost per PRI and therefore, the cost cannot be recurring every month. The learned senior counsel would further submit that the demand of one time charges was not preceded with any show cause notice and hence is in violation of the principles of natural justice. Above all, the respondents decision to extend the PRIs from K.K.Nagar was their own decision and that when there were telephone exchanges prevailing at Adyar as well as in Tidel Park itself, there was no justification on them to provide the lines from K.K.Nagar Telephone Exchange. The learned Senior counsel would also submit that there are no regulations provided under the Telegraphic Act enabling the respondent to include the one time charges in the monthly bill of the petitioner.

4. On the other hand, the learned counsel appearing for the respondent would submit that the impugned demand raised by them was for the rent for 16 PRIs at the rate of Rs.11,000/- each. According to him, as per the Tariff Rs.1750/- will be charged per month for customers who are within a distance of 3 km from Telephone Exchange. If the customer's premises is above 3 km then Rs.1000/- is to be levied for additional kilometer. Since the petitioner is at Tidel Park, which is beyond 3 km and additional resources are used for building up the circuit like Optical Fibre Cable and transmission equipments, the charges were levied for 11 km (i.e.)  $\text{Rs.1100/-} \times 11 = \text{Rs.11,000/-}$  in addition to Rs.1750/- per month.

5. I have carefully considered the submissions made by the respective counsels.

6. On a bare perusal of the impugned demand, it is seen that a sum of Rs.47,96, 239.42 has been shown as one time charges. There is no explanation in the impugned demand as to what one time charges is for. The petitioner had produced the demand

note issued by the third respondent, which reads as follows:

"This Demand Note in Triplicate with full payment in cash/cheque/Bank draft in favour of BSNL Chennai Telephones may be presented at counter in office/post office during working hours. This demand Note is for MISC Fee for 16 ISDN PRA of Door Sabha Nigam Ltd K.K.Nagar, Telephone Exchange Building to 11<sup>th</sup> Floor, D Block No.4, Rajiv Gandhi Salai, Tidal Park, Taramani, Chennai 600 113.

Name : M/s.Door Sabha Nigam Ltd  
D Block, 11<sup>th</sup> Floor, TIDEL PARK,  
No.4,Rajiv Gandhi Salai, Taramani,  
Chennai 600 113.

Request Type : ISDN-MISC Charges  
Telephone No. : 2370 2000 - 23702479  
16 X 30 = 480  
ISDN Type : PRA No. of PRA-16  
Per PRA Fiber Cost Rs.11000/- ( As per Ref-1)  
Service Tax 10.3% Rs. 1133 /-

Total Rs.12133/-

For 16 PRA 12133 X 16 = Rs.1,94,128/-  
(Rupees One Lakh Ninety Four Thousand One hundred  
and Twenty Eight only)"

7. I am unable to understand as to how the cost of Optical Fiber could be a recurring cost payable by the petitioner. The respondent's stand that the additional cost of Rs.11,000/- per PRIs is in addition to the monthly rent of Rs.1,750/- per PRI is baseless.

8. The respondents are unable to produce any regulations to the effect that the material cost of Optical fiber to provide the service should be included in every month bill. The learned counsel appearing for the respondent has also not established that PRI services were extended by them from K.K.Nagar Telephone Exchange at the request of the petitioner. As a matter of fact , when the petitioner had made a request to move their office from K.K.Nagar to Tidel Park, the respondents had accepted the request and has chosen to provide the PRI lines from K.K.Nagar itself, which decision was not on the request of the petitioner. The petitioner's specific stand that the said offer to provide PRI lines itself would be at the same rate, without involving

any additional charges, has not been denied by the respondents. It was only by a subsequent clarification that the respondents have informed the same to the petitioner. The interpretation of the respondents with regard to one time charges was never in contemplation of the petitioner.

9. Hence, the principles of legitimate expectation and primary estoppel are applicable to the facts of their case. On the ground of violation of the principles of natural justice also, the petitioner is liable to succeed in this writ petition. When the petitioner in unequivocal terms has expressed the Optical Fiber cost for each PRI is Rs.11,000/-, it can only be concluded that the cost of the Fiber cannot be a recurring cost, in view of the fact that an additional sum of Rs.1750/- is being levied towards the monthly rent for each PRI. Furthermore, prior to the impugned bill dated 08.07.2013, the respondents had all along levied and claimed the monthly rents in addition to the usage charges and had not demanded any additional amount. While that being so, the unilateral decision including the one time charges, ought to have been preceded by a notice calling upon the petitioner to show cause as to why the one time charges should not be paid. The submission made by the learned senior counsel for the petitioner that the claim is unjust and in violation of the principles of natural justice, is acceptable.

10. Under such circumstances, the reasoning of the respondents justifying the demand towards one time charges, is unjustifiable. Accordingly, the impugned ES Bill bearing No.302033781 dated 08.07.2013 issued for the petitioner for its Customer id 4019154798 and Account Number 9033012867 relating to the levy of a sum of Rs.47,96,293.42 as One time Charges is liable to be quashed and is hereby quashed. Consequently, the respondents are restrained from in any manner levying, demanding or collecting a sum of Rs.11,000/- per PRI in the petitioner's future monthly bills.

In the result, the writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd  
To

- 1.The Chief General Manager,  
BSNL - Chennai Telephones,  
78, Purasawalkam High road,  
Chennai 600 010.
- 2.The Senior General Manager TR & Finance,  
Office of the Chief General Manager,  
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BSNL - Chennai Telephones,  
Office of Senior General Manager (E.B),  
Chennai Telephones, No.70, Ritherdon Road,  
Vepery, Chennai 600 007.
- 4.The Accounts Office (TR),  
BSNL - Chennai Telephones,  
99, Jawaharlal Nehru Road,  
Chennai 600 078.

+1cc to Mr.N.L. Rajah, Advocate, S.R.No.70331

sv(CO)  
md(/10/2016)

W.P.No.27006 of 2013  
and M.P.No.1 of 2013 and  
WMP.No.26315 of 2016

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