

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 8974 of 2001 (O&M)
Date of decision: 17.2.2016

M/s Prime Protiens Limited

.. Petitioner

v.

Union of India and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Rajesh Punj, Advocate for the petitioner.

Mr. Dheeraj Jain, Advocate for respondents No. 1 and 2.

...

Rajesh Bindal J.

The petitioner has approached this court impugning the award of the Arbitrator dated 26.4.2001 (Annexure P-10) passed under Section 7B of the Indian Telegraph Act.

Learned counsel for the petitioner submitted that the petitioner is a duly registered company carrying on its business at Ludhiana. Many telephones have been installed at its premises, the bills of which are being paid on time. The dispute pertains to one telephone No. 31806, which was installed on 12.11.1994. On this telephone, STD and ISD facilities were also available. The average billing of the aforesaid bill was not more than ₹ 5,000/- per month. In the month of May, 1995, the petitioner received a bill of ₹ 88,931/- and in September, 1995, bill of ₹ 4,351/- was raised. The same being exorbitant, application dated 7.10.1996 was submitted for providing detailed print out of the telephone numbers, on which calls were made. No response was received. The petitioner approached the civil court. Vide order dated 24.12.1996, the civil court referred the matter to the

Arbitrator. Before the Arbitrator, though the respondents did not file any document but still the plea raised by them was accepted, whereby the Arbitrator held that there may be possibility of consumption by the petitioner being a commercial organisation. The respondents did not produce the details of the calls made despite request by the petitioner and even despite an order passed by the Arbitrator. The relevant record having not been produced, adverse inference was required to be drawn. The fact that average billing of the petitioner for the telephone in question was ₹ 5,000/- per month was not disputed, hence, the petitioner was not required to lead any evidence. No reasoning has been assigned by the Arbitrator in the impugned award.

On the other hand, learned counsel for respondents No. 1 and 2 submitted that as per the admitted case of the petitioner, there was dispute pertaining to two bills raised in May, 1995 and September, 1995 for ₹ 88,931/- and ₹ 4,351/-, respectively. Though the petitioner claimed that average billing per month was ₹ 5,000/- but still the dispute was raised even for bill of ₹ 4,351/-. For the first time, the petitioner asked for details of the calls made vide letter dated 7.10.1996, more than one year after the disputed period. Immediately thereafter, the application was filed in the court. The stand of the respondents was that after so much of delay, the details of the calls made could not be provided. He further submitted that the contention raised by the petitioner in the suit that average billing was ₹ 5,000/- per month was specifically denied. Nothing was produced on record by the petitioner either before the court or before the Arbitrator to substantiate its pleadings. He further submitted that before the Arbitrator, the stand taken by the petitioner was that the bill could not be more than ₹ 15,000/- per month, meaning thereby even the petitioner expected that the bill for the month in question could go beyond ₹ 5,000/-, though his claimed average billing was ₹ 5,000/- per month. It is not in dispute that the petitioner is a commercial organisation having business of export and import and the telephone had STD and ISD facilities. The onus could shift on the respondents only if the petitioner had discharged the initial burden. The petitioner did not file any claim statement before the Arbitrator.

Heard learned counsel for the parties and perused the paper book.

The basic facts which are not in dispute are that the petitioner is a limited company having business of export and import, which had number of telephones installed at its premises. The telephone in question having No. 31806 was installed on 12.11.1994 with STD and ISD facilities. The disputed bills for the aforesaid telephone pertain to the months of May, 1995 and September, 1995 for ₹ 88,931/- and ₹ 4,351/-, respectively. For the first time, the issue regarding bills was raised by the petitioner vide letter dated 7.10.1996.

To challenge the bills, the petitioner claimed that average billing of the petitioner was not more than ₹ 5,000/- per month. It was so pleaded by it in the suit filed. This fact was specifically denied by the respondents in the written statement filed. Before the Arbitrator or even before this Court, the petitioner has not produced any material to show that its average billing for the telephone in question, ever since it was installed, was ₹ 5,000/- per month, hence, for the plea raised to dispute one bill, is not substantiated from any material produced on record by the petitioner. To claim that this record being in possession of the respondents and having not been produced, adverse inference should have been drawn is totally misconceived. The petitioner had disputed the bills and got the Arbitrator appointed. Initial onus was on it to establish its prima facie case, in which it failed.

It is further relevant to mention that before the Arbitrator in the proceedings on 19.1.2001, the stand taken by the petitioner was that the bills should not exceed ₹ 15,000/- per month, meaning thereby even the petitioner did not dispute the fact that bill for the period could exceed ₹ 5,000/-, as was average monthly billing claimed by it. Nothing has been pointed out by the petitioner that there was any dispute pertaining to billing of any of other telephone installed at its premises.

Further, the bills being disputed by the petitioner were raised in May, 1995 and September, 1995. The telephone connection of the petitioner was disconnected in July, 1996. First letter written by the petitioner to the

department seeking details of the calls made is dated 7.10.1996, more than one year after the bills were raised. The definite stand of the respondents is that after so much of delay, the details could not be provided, the telephone connection being from cross bar exchange. It is further evident from the record that before the Arbitrator, the petitioner did not file any claim statement.

For the reasons mentioned above, I do not find any merit in the present petition. Accordingly, the same is dismissed.

(Rajesh Bindal)
Judge

17.2.2016
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(Refer to Reporter)