

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.16577 OF 2006

ORDER:

This writ petition is filed seeking a direction to the respondents to settle forthwith all the claims of the petitioner corporation pertaining to WLL Mobile Handsets as per the agreement dated 27-01-2004 and in pursuance of the agreement, the insurance policies issued thereon by the respondents in connection with the insurance of WLL Mobile Handsets.

2. It is the case of the petitioner that the BSNL introduced WLL Mobile connections all over the country including Guntur District and that the BSNL Corporate Office, New Delhi, issued guidelines for entering into an agreement with insurance companies for insurance coverage of WLL Mobile Handsets to compensate the loss either by fire, theft, damage, non-return of hand sets by the customers. The petitioner corporation entered into an agreement dated 27-01-2004 with the Oriental Insurance Company (hereinafter referred to as "the respondent company") and insured the WLL Mobile handsets delivered to the customers of the petitioner and obtained several policies.

It is agreed that the claims shall be settled by the respondent company within 30 days on receipt of claim from the petitioner. The handsets issued to the customers have not been returned by them and that the petitioner has issued notices to all the customers for non-payment of dues and requested them for payment of pending dues and also return the handsets within 14 days and in response to the said notices, some of the

customers cleared the dues and returned the handsets and some of the customers have not returned the same. The petitioner vide letter dated 12-01-2005 requested the respondent company to settle the claims to cover the loss due to non-return of handsets by the customers amounting to Rs.77,22,372/- towards 1234 hand sets, but the respondent company has not settled the claims made by the petitioner on one pretext or the other.

3. Heard.

4. It is seen from the record that the petitioner has not placed before this Court any record to show that the attempts made by the petitioner to recover the hand sets from the subscribers who have taken the hand sets. That apart, policy agreement, condition No.8 provides for adjudicating the dispute under arbitration by invoking the provisions under Arbitration and Conciliation Act, 1996. The petitioner has made the claim in pursuance of the agreement for providing insurance in respect of the hand sets in the event of loss due to non return of hand sets by the subscribers or loss of hand sets on account of subscriber's disappearance, damage, fire etc. A premium of Rs.62.58 Ps., per hand set per annum was collected by the Insurance company towards cost of the hand set of Rs.6,258/- insured amount. The petitioner in his affidavit has categorically stated that the litigation is civil in nature, but for the arbitration clause, the petitioner could not move the civil Court.

5. The learned counsel for the respondent company vehemently argued and opposed for passing orders in favour of

the petitioner and pleaded to dismiss the writ petition as not maintainable.

6. The writ petition is not maintainable, because, it is civil in nature, but for the arbitration clause as per the agreement, the grievances of the petitioner cannot be gone into under Article 226 of Constitution of India and thus, the writ petition is liable to be dismissed as not maintainable.

7. Accordingly, the writ petition is dismissed, giving liberty to the petitioner to avail the remedies available to him under law. As a sequel, the miscellaneous petitions pending if any shall stand closed.

Date: 16-03-2018.
Shr.

T.AMARNATH GOUD, J

