IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 26.09.2019

CWP No.18618 of 2017 (O&M)

M/s Bharti Airtel Ltd. ...Petitioner

Vs.

Varinder Pal Singh & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjiv Pabbi, Advocate, for the petitioner.

Ms. Sarika Gupta, Advocate, for respondent No.1.

RAJIV NARAIN RAINA, J.

1. Challenge in this petition is to the order dated 01.06.2016 passed by the Permanent Lok Adalat (Public Utility Services), SBS Nagar in a billing compliant moved by respondent No.1, a subscriber of mobile connection No.97xxxxxx11. The petitioning-company disconnected the said connection for alleged default in payment.

2. Respondent No.1 is a Doctor by profession running his hospital in Nawanshahr, District SBS Nagar. He had purchased three mobile connections from the petitioning-company on 'Add On Facility' about 10 years prior to the complaint. These were post-paid connections. He was been regularly paying his outstanding bills to respondents No.2 & 3 i.e. Lilly Telecom and Payal Telecom, both at Nawanshahr. The Doctor complained to the Permanent Lok Adalat that without reasonable cause, the petitioning-company had disconnected his mobile connection No.97xxxxxx11 on the pretext that the applicant is a defaulter and he has not paid his bills and an

amount of Rs.1099/- was pending. The Doctor pleaded that in the previous bills it was nowhere mentioned regarding any pending amount against him. He wrote to the petitioning-company through e-mail stating that nothing is due against him. But they did not pay any heed to his protest. He submitted in his complaint that the company called him up on his other numbers and at odd times harassing him even when he was operating patients or was driving his car. These unwanted calls to the complainant have made given him hyper tension. He asked for restoration of the connection and compensation of Rs.50 lakhs alongwith litigation expenses of Rs.1 lakh for harassment and loss.

3. On notice, the company filed reply before the PLA stating that the complaint was frivolous and vexatious and was fit to be dismissed under Section 26 of the Consumer Protection Act, 1986. That the complainant is not entitled to any compensation whatsoever and that the compensation claimed is excessive. There has been no deficiency of services on the part of the company and complex questions of facts are involved, which require evidence and can be decided only in the civil court and not by the Consumer Forum [forgetting that they were filing reply in the Permanent Lok Adalat constituted under the State Legal Services Authority Act]. They insisted that an amount of Rs.1181.52 is outstanding against the complainant, who is now respondent No.1 and, therefore, disconnection is justified. They attached the statement of accounts, wherein the outstanding amount payable is recorded. They referred to Section 7-B of the Indian Telegraph Act to urge that the remedy under the general law is barred and the dispute can be determined by arbitration concerning any telegraph line, appliance or apparatus between the Telegraph Authority and the person for whose benefit the line, appliance or

apparatus is or has been provided. The special law overrides the general law. Therefore, forum had no jurisdiction to try the complaint and the complaint deserves to be dismissed with costs of Rs.10,000/-.

4. The Permanent Lok Adalat (Public Utility Services), SBS Nagar by an order passed on 01.06.2016 allowed the complaint with a detailed discussion on the facts of the case. The PLA has awarded compensation of Rs.25,000/- against the petitioner apart from directing the petitioning-company to restore the mobile connection No.97xxxxxx11 within a week failing which the company would pay compensation at the rate of Rs.100/- per day till re-activation.

5. Learned counsel for the respondent submits that the dispute with regard to the disconnection of mobile No.97xxxxxx11 by the petitioning-company in the month of July, 2015 on account of alleged arrears of outstanding dues in a sum of Rs.1181.52 was misplaced since the company produced on record bills etc. showing no arrears and rather a credit of Rs.1,80,200/- was provided by the petitioning-company to the Doctor, which was not availed. The PLA looked into all these evidences in proceedings under Section 22(C) of the Act for settlement of dispute/s between the parties, but the obduracy of the petitioning company led to failure and consequent adjudication on merits.

6. Ms. Sarika Gupta for the doctor points out to the preliminary objections in the written statement stating clearly and emphatically therein that execution proceedings were initiated. In execution proceedings, the petitioner company gave an undertaking to deposit the decretal amount of compensation with interest. The company also gave a written undertaking that they shall make the payment of the amount ordered by the PLA as well

as furnished an additional undertaking that the company will not prefer any appeal against the order. Therefore, the dispute stands settled between the parties with the intervention of the PLA. The company cannot wriggle out of its undertaking. It is not the case of the petitioner before this Court that person signing for them on the undertaking was not authorized to bind them or had exceeded his instructions.

7. The petitioner company has not filed a replication to the written statement. Once having accepted this position, no interference is called for in the orders of the PLA on any of the grounds taken in the petition or urged before me. The judgment relied upon by Mr. Pabbi in Rajinder Singh Vs. Permanent Lok Adalat & others, (2017-3) 187 PLR 226 has no bearing on this case and when read it is in fact in favour of respondent No.1. Learned Single Judge in *Rajinder Singh's* case supports ample powers of the PLA to settle the dispute and in case of failure, then to decide on merits. This Court held that the PLA has to act as a conciliator and then as an adjudicator.

8. The information of the existence of elements of settlement has now taken concrete shape with the company giving undertaking by way of letter of Brinder Singh, Manager Legal, Bharti Airtel Ltd. dated 02.08.2017 and placed on record as Annex R-3. This letter with the heading "To whomsoever it may concern" was obviously a response to Execution Application No.19/2016 dated 25.11.2016, wherein the PLA had ordered the Bailiff of the Civil Judge (Senior Division), Chandigarh to attach the office procurements and all goods lying there of the judgment debtor unless an amount of Rs.89,737/- i.e. Rs.25,000/- together with interest at the rate of 9% from the date of order till payment + compensation was made.

9. In view of the above, no interference is warranted and the writ petition is ordered to stand dismissed with costs of Rs.10,000/- for approaching the Court after giving undertaking before the Executing Court. The interim stay order granted by order dated 21.08.2017 stands automatically vacated. The amount of compensation as awarded by the PLA and the cost imposed today be paid to the petitioner within a period of two months from the date of receipt of certified copy of this order.

26.09.2019 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes/No*