



W.P.No.34580 of 2014 and M.P.No.1 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.09.2022

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.34580 of 2014

and

M.P.No.1 of 2014

Customer Broadcast
RR Tower IV, 5th Floor
T.V.K. Industrial Estate,
Guindy, Chennai 600032
Rep.by its Chief Executive
Officer Mr. V. Bharathram

.. Petitioner

vs.

1.M/s. Bharat Sanchar Nigam Limited,
Vellore Telephnes,
No.1, Infantry Road,
Vellore-632001.
Rep.by its Divisional Engineer (NW/Ops).CFA,
BSNL, Ranipet.

2. Smt.S.V. Umavathi,
Arbitrator, BSNL,
Deputy General Manger (HR & Admn.)
Bharat Sanchar Nigam Limited.,
Vellore Telephones
No.1 Infantry Road, Vellore.

.. Respondents



W.P.No.34580 of 2014 and M.P.No.1 of 2014

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for records on the file of the 2nd Respondent in the Arbitration Case No.PCCA/TN /Arbitration/2013/006 and to quash the impugned order dated 27.11.2014 and to direct the 1st Respondent to restore the connection, besides directing the first respondent to pay compensation for damages.

For Petitioner : Mr.V. Balasubramanian

For Respondents : Mr. M.S.Velusamy
Standing counsel for BSNL [for R1]

ORDER

Challenging the Award passed by the Arbitrator/2nd Respondent the writ petition is filed to quash the impugned order dated 27.11.2014 and to direct the 1st Respondent to restore the connection and also to direct the 1st Respondent to pay compensation for damages.

2. The Writ Petitioner is the unit of M/s. Ultramarine & Pigments Ltd., a company registered under the Companies Act, 1996 and engaged in rendering BPO services in India for overseas clients and employed 76 number of people and was operating from their Ranipet Unit at 25-B, Lapiz Digital Service, SIPCOT, Ranipet-632403. The Petitioner has obtained PRI



W.P.No.34580 of 2014 and M.P.No.1 of 2014

Connection bearing No.04172-243000 from the First Respondent on payment of Rs.16,545/- on 24.09.2011 without any ISD facility and the connection was meant mainly for inbound calls that can be received in the above Number and no ISD calls can be made from the facility. He has received bill for every month from 06.10.2011 till 20.03.2012 which were not disputed. However, they received a bill for a sum of Rs.8,835.88 for the bill dated 20.04.2012 and a bill for Rs.14,02,785.24 for the bill dated 20.05.2012. The above said number was disconnected abruptly. On enquiry, the Petitioner came to know that 8200 ISD calls were metered to 56 countries in three days between 5th and 7th of May 2012. The Petitioner called for an investigation and a Special Team of the 1st Respondent came to the Petitioner's premises and inspected the premises. Thereafter, Arbitrator was appointed.

3. It is the main contention of the Petitioner before the Arbitrator that they never had ISD facility. Further, the result of investigation has not been informed to the Petitioner besides they claimed compensation.



W.P.No.34580 of 2014 and M.P.No.1 of 2014

4. The 1st Respondent contended before the Arbitrator, that the bill dated 20.05.2012 for the period from 16.04.2017 to 15.05.2012 shows the ISD calls made to different countries for which the total usage charges including other charges as detailed in the bill is Rs.14,02,785.24 and the Bill dated 20.04.2012 for the period from 16.03.2012 to 15.04.2012 for Rs.8,835.88. According to the 1st Respondent the ISD calls were made from the claimant company ISDN PRI number. All the calls were made from any ISDN PRI telephone is connected to the electronic telephone exchange equipments and no one can tamper or alter the system once connected to claimant's equipments. Comparing with the 1st Respondent's exchange, the expert technical committee based on the complaint by the claimant, found there was no mistake in the respondent equipment and all the ISD calls are made only from the claimants company from their channels.

5. It is the contention of the 1st Respondent that these facts are known to the Petitioner. The documents filed by the Petitioner itself contained all these details. Learned Arbitrator considered the entire issue including cross examination of the claimant and evidence of witnesses and found that the



W.P.No.34580 of 2014 and M.P.No.1 of 2014

bill raised by the BSNL is correct and the claimant is liable to pay the amount. Challenging the same, this Writ Petition is filed.

6. Learned counsel appearing for the Petitioner would submit that there is no proper opportunity given to the writ petitioner to make cross examination and no technical report Was given to them. Without opportunity being granted, learned Arbitrator has concluded the issue merely based on the oral evidence of R.W.1. The 1st Respondent given an ISD facility by default even without any request from the petitioner. Therefore, the petitioner should not be penalised for that and the the Arbitrator also failed to notice that the calls made on 21.03.2012 was a local call and not an ISD, which was demonstrated by cross examination. Therefore, the Arbitrator's finding that the Petitioner company made the ISD calls without any evidence is not acceptable. When the facility cannot be misused anybody including the petitioner and the service provider at Delhi, the liability cannot be fastened on the Petitioner. Hence, it is his contention that the Award of the learned Arbitrator suffers from illegality and relevant materials have not been considered. Learned counsel also submitted that



W.P.No.34580 of 2014 and M.P.No.1 of 2014

when the technical report has been relied upon by the department the same has not been filed before the Learned Arbitrator. Therefore, entire award suffers from illegality and the same has to be set aside.

7. Learned counsel appearing for the Respondent submitted that the Writ Petition challenging the Award itself is not maintainable. Learned Arbitrator has considered the evidence on both sides after analysing the cross examination and found that international calls have been made from the service connections given to the Petitioner. R.W.1 is also one of the member included in the Technical Team. He has clearly given evidence. Therefore, submitted that the Award cannot be interfered.

8. Heard both sides. With regard to the maintainability of the writ petition, it is relevant to note that even while filing the writ petition the question of maintainability has been raised. In this regard it is relevant to note that Section 7(B) of the Indian Telegraphic Act reads as follows:

“7B. Arbitration of disputes:-



WEB COPY



W.P.No.34580 of 2014 and M.P.No.1 of 2014

(1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been provided, the dispute shall be determined by arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of disputes under this section.”

Sub-clause (2) makes it very clear that The award of the arbitrator appointed under sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any court.

9. In this regard the Division Bench of Kerala High Court in Francis Mukkanical vs. The General Manager, BSNL [O.P.(ARB) No.219 of 2007 dated 01.08.2012] has held as follows:

“7. If the legislature states that the decision or order shall be final and conclusive, that would not



W.P.No.34580 of 2014 and M.P.No.1 of 2014

fetter the remedies available under the Constitution. But, it definitely inhibits recourse to jurisdiction which gets excluded by that provision. Therefore, excepting to the extent of remedies that may be available under the Constitution, that to say, in writ jurisdiction, the award would be conclusive. It cannot be questioned through an application under the Act.”

Considering the above, this Court has entertained this Writ Petition. Therefore, the contention of the Respondent that the writ petition is not maintainable cannot be countenanced.

10. Now with regard to the Award, the main grievance of the writ petitioner is that the report of the technical team has not been furnished and no opportunity was given to them. It is relevant to note that the Arbitrator was appointed at the instance of the Petitioner and the petitioner referred a claim. The petitioner's company System Administrator was examined as C.W.1. The bills for the two months was disputed. The Bill dated 20.04.2012 for a sum of Rs.8,836/- and another bill dated 20.05.2012 for a



W.P.No.34580 of 2014 and M.P.No.1 of 2014

sum of Rs.14,02,785/- were disputed by the claimant. Bill dated 20.05.2012 for a sum of Rs.14,02,785/- has been raised considering the meter reading of the service connections (4 Nos.) given to the Petitioner company.

11. It is the case of the respondent that Rs.11 lakhs worth of international calls were made from the above said PRI number and 8,200 ISD calls were metered to 56 countries in three days. It is relevant to note that the petitioner was engaged in BPO services in India for overseas clients. The main grievance of the Petitioner is that the technical team report has not been furnished and no opportunity was given. C.W.1 was examined on the side of the writ petitioner before the Arbitral Tribunal wherein he has clearly admitted that the company have its service provider at Delhi, after the disconnection of the service by BSNL they do not have any further contact. It is also admitted without permission of the Petitioner they cannot use the server for incoming or outgoing. It is also admitted that it has been given to 30 channel, it can be used by different person at a time for both incoming and outgoing. It is also admitted by CW1 that the BSNL has given the full details of the call made from their system for the calls



during the disputed period. The petitioner has also not verified any person to whom the calls were made in different places in a country. It is also categorically admitted by CW1 that after inspection BSNL has informed that one Shri. Mukthar the employee of the petitioner made ISD calls. However, the petitioner has not enquired him. The Petitioner has also not produced the records and the details of the use by the service provider in Delhi.

12. RW1 is a person included in the Technical Team has given evidence before the Arbitrator stated that the system used by the petitioner is not transparent. The system is opened to Delhi person via team viewer via Broad band. As the system is connected with the broadband, anybody can have access to it. It is also specifically stated that one Mr.Mukthar employee of the petitioner has made ISD calls. When the technical person has also given substantial evidence before the Arbitrator and all the details are already known to the Petitioner, it cannot be said that there is no opportunity has been given to the Petitioner. When the arbitrator considered the evidence of both sides and arrived a conclusion, writ court cannot re-appreciate the entire evidence. When proper opportunity has been



W.P.No.34580 of 2014 and M.P.No.1 of 2014

given in the Arbitral proceedings and evidence have been considered and relevant questions also put with regard to the particular meter, which is also known to the petitioner, it cannot be said that there is no opportunity given to the petitioner. When the technical person is also examined by the respondent he substantiated the claims of bill, it cannot be said that the Arbitration Award is based on irrelevant materials. Accordingly, I do not find any merit in this writ petitioner.

13. In view of the above, the writ petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

14.09.2022

Speaking/Non speaking order

Index : Yes/No

Internet : Yes/No

ggs

To

1.M/s. Bharat Sanchar Nigam Limited,
Vellore Telephnes, No.1, Infantry Road,
Vellore-632001.
Rep.by its Divisional Engineer (NW/Ops).CFA,
BSNL, Ranipet.



WEB COPY



W.P.No.34580 of 2014 and M.P.No.1 of 2014

N.SATHISH KUMAR, J.

ggs

W.P.No.34580 of 2014
and W.M.P.No.1 of 2014

14.09.2022