IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

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CWP-16046-1999 (O&M).
Date of Decision: 17.11.2023.

UNION OF INDIA AND OTHERS

... Petitioners

Versus

SHRI SATISH CHANDER AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Nitin Rathee, Advocate, for
Mr. Anil Rathee, Advocate, for the petitioners.

Mr. Navjot Dhiman, Advocate,
for respondent No.1.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the award dated 12.08.1999 (Annexure P-5) passed by the Arbitrator which was received in the office of the petitioner on 17.08.1999.

The petitioner-UOI has approached this Court against the said award averring that respondent No.1 had initially filed two complaints under Section 13 of the Consumer Protection Act, 1996, before the District Consumer Disputes redressal Forum, Fatehgarh Sahib, on 04.08.1998 and 22.9.1998 claiming that he has a telephone connection bearing No.22119 and also had the STD/ISD Facility. He had been regularly paying the bills, however, the Department sent a bill for a sum of Rs.16,403/- on 1.7.1988. The said bill was subject matter of challenge in the said proceedings. In the second complaint, the bill dated 01.09.1998 for an amount of Rs.98,935/- sent to the respondent-complainant was challenged.

On receipt of the notice from the Consumer Court in complaint No.77 dated 4.8.1998, and complaint No.96 of 22.9.1998, the petitioner-Department submitted a detailed reply controverting the allegations leveled therein and clarifying that the bill dated 1.7.1998 had been prepared correctly as per the meter reading and calls made by the complainant. The respondent/complainant had been using the ISD facility on his telephone and was making international calls. A further objection with respect to the maintainability of the proceedings before the District Consumer Disputes Redressal Forum, Fatehgarh Sahib, was also raised in view of the statutory provisions under Section 7-B of the Indian Telegraph Act, providing for the remedy of an arbitration.

On the basis of pleadings of the parties, District Consumer Disputes Redressal Forum, Fatehgarh Sahib, disposed of the said complaints vide order dated 15.04.1999 and directed the General Manager, Telephones, Patiala to refer the disputes relating to the bills dated 01.07.1998 and 01.09.1998 to the Arbitrator who should be an expert. The detailed procedure for conducting the reference proceedings before the Arbitrator was also prescribed. Pursuant thereto, an order dated 15.04.1999 was passed by the Government of India, Ministry of Telecommunication whereby the Chief Accounts Officer in the office of General Manager, Telephones, Ludhiana was appointed as Arbitrator for determination of the dispute.

The parties led their evidence before the Arbitrator and even the Computer floppy of the calls made by the petitioner was also produced. Since the complainant had STD/ISD facility and was having a dynamic code, it corroborated the claim made by the petitioner and established that the bill had been rightly raised. However, the arbitrator directed a rebate of 5000 calls in the bill dated 1.7.1998 and a rebate of 38000 calls in the bill dated 1.9.1998 which is unjustified. The rebate was granted only on the ground that the record pertaining to the period 1.04.1998 to 25.5.1998 and for the period from 8.8.1998 to 15.8.1998 had not been produced before the Authorities.

It is contended that the bimonthly bill is raised by the petitioner and that for the period commencing from 16.04.1998 to 15.06.1998, the bill was raised on 01.07.1998 and that bill pertaining to the period 16.06.1998 to 15.08.1998 was raised on 01.09.1998. In case the above said period from 16.04.1998 to 25.05.1998 is taken into consideration, during the bill for the said period, the record was amiss for a total number of 39 days and that a rebate of only 5000 calls has been given for the above said 39 days and in relation to the billing period from 16.06.1998 to 15.08.1998, the record was missing only w.r.t. the period commencing from 08.08.1998 to 15.08.1998 i.e. 08 days, yet a rebate of 38000 calls had been extended to the petitioner. It is contended that the above said determination of rebate by the Arbitrator has been arbitrary and without any objective basis. A reference is also made to the judgment of the Hon'ble Supreme Court in the matter of ***M.L. Jaggi***

Vs. Mahanagar Telephones Nigam Ltd., reported as 1996 (3) SCC 119, to contend that where an award of the arbitrator is non-speaking and is not supported by reasons, the same can be interfered with by the Court conducting review of the above said award.

Counsel for the respondents, on the other hand, has contended that the Arbitrator had duly considered all the submissions advanced by the respective parties and that as the petitioners were raising the bill, the burden lay upon the petitioner to justify the demand raised by them. The missing of the record is not disputed and that the burden of proof required to be discharged by the petitioners, having not been discharged, it cannot capitalize on its own lapse. It was on the said account that the arbitrator exercised a discretion and passed the Award, after taking into consideration the corresponding record of telephone usage. Rebate of 5000 calls in the bill dated 1.7.998 and 38000 calls in the bill dated 1.9.1998 was thus justifiably granted. It is further submitted that the respondent had submitted three different complaints to the petitioners about the exorbitant bills being raised, however, the petitioner did not conduct any enquiry into the same. It cannot thus be permitted to capitalize on the lapses committed by its own officials. A prayer was thus made for dismissal of the present writ petition. He places reliance on the judgment of Hon'ble the Delhi High Court in ***CWP No.1986 of 1999, decided on 06.03.2000, in the matter of Sudhir Kapoor Vs. Mahanagar Telephone Nigam Limited and another***, wherein it was held that when there is no error apparent on the face of record, the Arbitrator is the sole judge of the facts. Adequacy and sufficiency of evidence is not a matter for the Court to judge. So long as the finding of the arbitrator is based on some evidence, it does not warrant interference under Article 226 of the Constitution of India. Reliance was also placed on the judgment of this Court in the matter of ***Sukhdev Singh Vs. Union of India and others, in CWP No.5395 of 1997, decided on 08.01.2014***, wherein it is held that where an award of an arbitrator under Section 7 B of the Telegraph Act, is based on facts and is duly punctuated with reasons, no fault can be found with the same. The adequacy of reasons cannot be supplanted by the Court conducting the judicial review of such an Award.

I have heard the learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition with their able assistance including the award passed by the Arbitrator.

The undisputed facts which emerge from a perusal of the same are to the effect that bill dated 01.07.1998 and 01.09.1998 were in relation to the period from 16.04.1998 to 15.06.1998 and 16.06.1998 to 15.08.1998 respectively. The record pertaining to the period of 39 days commencing w.e.f. 01.04.1998 to 25.05.1998 in the billing cycle of 16.04.1998 to 15.06.1998 and the record pertaining to the period from 08.08.1998 to 15.08.1998 for the billing period from 16.06.1998 to 15.08.1998 was undisputedly not made available to the arbitrator. It is not in dispute that the burden lies on a party which makes a claim, to establish that the demand has been raised on the basis of a cogent material and that the claimant is entitled to receipt of the said amount. At the same time, it is also noticed that the writ petition pertains to the year 1999 and in relation to a dispute of the year 1998. Already a period of nearly 25 years has elapsed. In view of the judgment of the Hon'ble Supreme Court in the matter of ***Saji Geevarghese Vs. Accounts Officer (Telephone Revenue) and others, reported as (2009) 1 SCC 644***, it would be inappropriate at this juncture and after a lapse of so many years to send the case to the Arbitrator for re-consideration, if in the opinion of the Court, an award suffers from non-application of mind and reflects certain glaring errors of fact and law. Thus, with a view to put an end to the litigation and to do justice amongst the parties, the merits of the controversy are being examined by this Court.

The arbitrator in his award has recorded his reasons as under:-

> *"On going through the records made available and oral arguments of both the parties it is established that though International Subscriber Facility (ISD) is available with the petitioner since 25.6.96 with dynamic code, he did not make its much use upto 1.5.98 and he never raised any complaint or dispute. The bills dated 1.7.98 & 1.9.98 which included 11600 & 67710 gross local call units respectively are apparently abnormally high compared to previous bills. The respondent stated that bills have been raised as per exchange records and the petitioner has actually used the telephone. On perusal of print out of detailed billing numerous ISD calls have been made. The respondent stated that International calls have been made at entertainment/Sex telephone numbers by the petitioner and secret code has been operated from time to time by him. The fault card of telephone produced by the respondent did not show anything wrong with the telephone. The respondent further stated comparison of bills of different cycles is not relevant as it depends upon actual use of telephone as per his need.*

The respondent further stated that on 6.7.98 Sh. Madan Lal, Sr. TO (Phones), Sirhind Telephonically informed the petitioner regarding increase rate of calls followed by JTO (Indoor). Sirhind letter no. SRD/Genl/1998/8 dated 13.7.98. The petitioner denied having received this letter or phonic message dated 6.7.98 from Sh. Madan Sr. TO (P) of Deptt. of Telecom. Instead he (Petitioner) stated that he received anonymous calls from telephone exchange, Sirhind inter-alia to communicate that in future telephone readings will be increased day by day to burden him to the extent of Rs.50000/- or Rs.60000/-. So he was forced to represent to GMT, Patiala vide letter dated 29.7.98 to investigate the case. He made another complaint to AO(TRA), Patiala vide letter dated 23.9.98 against bill dated 1.9.98. He apprehended either there was some fault in telephone exchange or his telephone has been misused by some other party as the bills received by him are abnormally high. The respondent admitted that investigation of the complaints of the petitioner was not done.

It stands established that telephone no. SRD-22119 is having STD/ISD facility with dynamic secret code. It also stands established that secret code has been operated by the petitioner from time to time. Fault card placed on the records also confirms that there was no fault with the telephone during the relevant period. In respect of telephones having STD/ISD facility there is every possibility of variation in the calling pattern. On the other hand it also stands confirmed that complaints of the petitioner regarding excessive bills were not investigated by the respondent and he was not informed of the results thereof, which is the part of duty of the respondent.

So keeping in view the above stated facts and observing principle of natural justice and equity, I am of the view that a *rebate of 5000 calls in bill dated 1.7.98 covering period of 16.4.98 to 15.6.98 and 38,000 calls in bill dated 1.9.98 covering period of 16.6.98 to 15.8.98 is justified and hence granted."*

It is evident from a perusal of the same that the arbitrator has not referred to any material on the basis whereof the rebate of 5000 calls for a period of 39 days has been extended whereas a rebate of 38000 calls has been extended for the missing of the record for a period 08 days commencing from 8.8.1998 to 15.8.1998. Considering that the record had not been made available and that it would neigh be impossible at this juncture and after a lapse of so many years to trace the said record, it has become necessary to apply an objective and equitable criteria to ascertain the possible usage. Even though the arbitrator has made a reference to the earlier calls/bills, however, there is no reference made about the earlier calls and as to whether the same pertain to the corresponding period and/or reflect the actual usage. There is apparently no objective basis for the arbitrator to come to arrive at a conclusion about granting the rebate of 5000 calls and 38000 calls. Considering that a rebate of 5000 calls has been extended with respect to the missing record for the period of 25 days whereas for a missing period of merely 08 days, the rebate has been extended of 38000 calls, it would have been more objective and equity based in case the criteria would have been rationalized.

Hence, in order to strike a balance, the rebate ought to have been based on a uniform criteria. I am of the view that the rebate should have been exercised with respect to the corresponding number of days for which the record is missing. Hence, the bill for the period of 60 days or 02 months ought to be divided by the total number of days to arrive at an average daily usage. The said average daily usage be multiplied by the number of days for which the record is missing. The amount so arrived at for the missing period be then deducted from the total bill. Accordingly, the present petition is disposed of in above terms.

The question which arises is in relation to award of interest for delayed payment. The respondent has undisputedly not deposited the amount and retained the same for his own use and denied the usage thereof to the petitioner. Ordinarily, the interest is @ 6% per annum as per Section 34 of the Code of Civil Procedure, 1908. However, considering that a valid dispute existed, it will be appropriate to suitably balance the rate of interest. The respondent is hence liable to pay the amount along with interest @ 4½ per cent per annum with effect from the date of filing of the petition before the arbitrator till its final payment.

Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

November 17, 2023.
raj arora

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*