

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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**CWP-20485-2017 (O&M).
Date of Decision: 18.01.2023.**

Vodafone Mobile Services Limited

.. Petitioner

Versus

**Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar, Mohali
and another**

... Respondents

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

Present: Mr. Vishal Gupta, Advocate,
for the petitioner.

Mr. P.P.S. Bhatia, husband of respondent No.2 in person.

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition has been filed against the Award dated 01.06.2017 (Annexure P-3) passed by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar, Mohali, whereby the application filed by the respondent No.2-applicant under Section 22 C of the Legal Services Authorities Act, 1987, has been allowed and the petitioner (herein) has been directed to pay compensation to the tune of Rs.40,000/-.

Briefly summarized, the facts of the present case are that the respondent No.2-applicant had been contacted by the representatives of the petitioner Company in relation to her Mobile Phone No.9876971100 wherein they asked her to port her number from the existing BSNL Service Provider to Vodafone and explained the various features that were likely to be more advantageous apart from assurance of a better service.

Accordingly, the requisite documents for porting the number from BSNL to Vodafone were submitted by respondent No.2-applicant. A message was thereafter received by respondent No.2- applicant on 09.04.2016 that her mobile connections stands ported from BSNL to Vodafone. The services on the SIM, however, were disconnected and/or unavailable. Respondent No.2-applicant approached Mr. Rajesh Sharma, the representative of the petitioner and apprised him of the said problem. She was told that 09.04.2016 being a Saturday and next day 10.04.2016 being a Sunday, the problem would be rectified on 11.04.2016 in a brief moment of ten minutes. Respondent No.2-applicant also contacted the customer care of the petitioner Company on the same day requesting for resumption of mobile services on her SIM Card. She also undertook various steps for activation as advised by the customer care Executive, however, when the services were not resumed, the customer care personnel also showed their inability and asked respondent No.2-applicant to wait till Monday i.e. 11.04.2016. Respondent No.2-applicant continued to contact the officials/representatives of the petitioner Company and after some time, they also stopped taking her calls. A message was also sent via Email on 11.04.2016 to the Nodal Officer of the petitioner Company and a complaint in this regard was also lodged. An Email was also sent to the All India Head of the petitioner Company. On 13.04.2016, finally a call was received at 17:06 P.M. and the petitioner was again asked to carry out certain steps for activation. Despite undertaking the said steps like re-inserting of the SIM card etc, the services did not resume. Respondent No.2-applicant was thereafter directed to approach the showroom of the petitioner Company situated in Phase 3-B2 S.A.S. Nagar, Mohali and another SIM Card was issued to her. The services

on the telephone were resumed only on 13.04.2017 at around 2:00 P.M. Since respondent No.2-applicant was not provided services from 09.04.2016 to 13.04.016, the instant application was preferred before the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar, Mohali, claiming compensation to the tune of Rs.50,000/- along with expenses.

Upon notice, respondent (petitioner Company herein) filed reply wherein it was pleaded that there was no deficiency on the part of the petitioner Company and that the services could not be availed on account of technical defect in the manufacturing of the SIM card. The same was incurable at the ends of the petitioner Company and the SIM Card had to be replaced on 13.04.2016 whereafter the services are being provided without any interruption and to the complete satisfaction of the respondent No.2-applicant

An offer of settlement in terms of Section 22 C (4) of the Legal Services Authorities Act, 1987 was duly made and terms of possible settlement were supplied to the parties for their consideration and as the effort of the settlement failed to persuade the parties to amicably resolve the dispute, adjudication in terms of Section 22 C (8) of the Act was undertaken by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar, Mohali.

The Award was finally passed in favour of the respondent No.2-applicant for a sum of Rs.40,000/- in lump sum to meet the ends of justice.

Aggrieved thereof, the present petition has been filed.

Learned counsel for the petitioner Company has argued that the compensation awarded is shockingly disproportionate to the deficiency

alleged against the petitioner. He further submits that there was no default in so far as the petitioner is concerned since the defect was a technical defect in the SIM Card and not in the facilities/Services being offered by the petitioner. He further submits that the delay occurred on account of the fact that 09.04.2016 and 10.04.2016 was a Saturday and Sunday and as a result, the technical support for rectifying the deficiency/defect was not available. It is also submitted that the non-availability of service was only of one day and not five days as is being alleged.

Respondent No.2-applicant has appeared through her husband Mr.Parminder P.S. Bhatia/authorized representative and has submitted that services on the number were not available from 09.04.2016 to 13.04.016 i.e. for a period of 05 days and not for one day as is being alleged. He submits that the contemporaneous evidence record of sending messages/Emails to the Regional Heads as also the All India Head pointing out the deficiency and non-resumption of services on the mobile phone of respondent No.2-applicant duly reflects the same. Further, the fact that the representatives of the petitioner Company themselves accept to have suggested for the change of the SIM Card and the same was issued again only on 13.04.2016 from the Showroom of the petitioner Company, clearly establishes that defect was incurable and the services had not actually resumed till 13.04.2016. Had there been resumption of services on 11.04.2016, as has been suggested, there was no reason for replacing the SIM Card on 13.04.2016. He further submits that respondent No.2-applicant cannot shun away the accountability on account of defect in the SIM Card which is issued by the petitioner Company itself.

I have heard the learned counsel for the petitioner Company as well as the authorized representative appearing on behalf of respondent No.2-applicant and have gone through the documents appended along with the present petition.

In so far as the contention of the petitioner Company that the SIM Card was activated after a gap of one day is concerned, the said submission fails to inspire any confidence. The evidence produced by the petitioner Company suggests that the number was ported on 09.04.2016 and respondent No.2-applicant had been informed by the representative of the petitioner Company that the activation shall take place on 11.04.2016 and the defect cannot be removed due to office being closed. Hence, the period of 9th, 10th and 11th of April 2016 cannot be now disputed by petitioner to submit that service had resumed and it must be concluded that the services were not available. Evidently Emails had also been sent by the respondent No.2-applicant to the Nodal Officer of the petitioner Company on 11.04.2016 at 7:06 P.M. which shows that even on the said date the services had not been resumed. Another Email was sent by respondent No.2-applicant to the All India Head of the petitioner Company Mr. Sunil Sood on 13.04.2016 and a call had also been received by her on the same day at around 7:06 P.M. as per which she undertook various exercises for activation of the SIM Card like re-insertion of the SIM Card. It is also not disputed that SIM Card was changed on the asking of the petitioner Company at 2:00 P.M. when the services were resumed. No data have been placed on record by the petitioner Company demonstrating that the respondent No.2-applicant was availing the internet/calling facility on her number for the period of 11.04.2016 till 13.04.2016. The said data would

have been clearly available with the petitioner Company and there was no reason as to why the said best and primary evidence to show that the services had been restored on the above said number has been withheld by the petitioner Company. The petitioner Company having withheld the best evidence available with them, an inference has to be drawn against them for such a lapse.

The same thereafter leads to the next issue as to whether the compensation in question was disproportionate harsh or whether it was reasonable. The compensation as claimed by respondent No.2-applicant was a sum of Rs.50,000/- for period of 05 days for non-activation of the services on her number.

Learned counsel for the petitioner Company contends that the services were not available for a period of one day and just compensation would have been Rs.10,000/- to Rs.15,000/-. If the above said yardstick is to be applied for the non-availability of the services for a period of 05 days, the just compensation, as per the yardstick of the counsel for the petitioner Company, itself would come out to Rs.75,000/-. The compensation awarded by the Permanent Lok Adalat (Public Utility Services), S.A.S Nagar, Mohali, is Rs.40,000/-. The said compensation cannot be said to be unjust or shockingly disproportionate to the inconvenience and harassment caused to the respondent No.2-applicant during the period. There can be no single objective yardstick for such assessment and the same has to be determined on case to case basis.

The High Court in exercise of its power of judicial review does not substitute a discretion exercised by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar, Mohali, unless such a discretion exercised

is demonstrated to be shockingly disproportionate and/or is not well conceived on an objective assessment of the documents available on record. In the absence of any such compelling circumstances as would demonstrate that the award of compensation of Rs.40,000/- for the inconvenience suffered by respondent No.2-applicant for a period of 05 days suffers from any illegality, perversity; impropriety or gross failure in appreciation of evidence and law, I do not find any reason to interfere in the Award dated 01.06.2017 (Annexure P-3) passed by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar, Mohali. The present petition is accordingly devoid of any merits and the same is hereby dismissed.

January 18, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No