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

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**CWP-5529-1998 (O&M).
Date of Decision: 26.11.2024.**

**FOOD CORPORATION OF INDIA THROUGH ITS DISTRICT
MANAGER**

... Petitioner(s)

Versus

UNION OF INDIA THROUGH SECRETARY AND OTHERS

... Respondent(s)

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

Present: Mr. Pranav Chadha, Advocate, and
Mr. J.S. Virk, Advocate,
for the petitioner.

Mr. Prateek Mahajan, Advocate and
Mr. Daanish Mahajan, Advocate,
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the Bills dated
01.03.1995 for a sum of Rs.1,91,404/- for the period from 08.09.1990 to
07.09.1994 and also to the notice dated 20.06.1996 whereby the respondent
No.2 had informed that in the event of failure by the petitioner in the
payment of the above said outstanding amount, the respondents will be left

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with no alternative except to withdraw the services of telephone number working for Food Corporation of India (hereinafter referred to as 'FCI') at Gurdaspur.

2 Learned counsel for the petitioner contends that the petitioner-FCI had applied for a Tele-printer Exchange (hereinafter referred to as 'Telex connection') to the respondents No.2 and 3 on 23.06.1987 and as per the requirement of the Telecom Department, a sum of Rs.10,000/- was deposited vide receipt No.0431-093. The said application was processed by the respondents and they issued a demand Note dated 11/14.03.1988 calling upon the petitioner to deposit a sum of Rs.48,751/- so that the telex connection is installed as per the application. The needful was also done by the petitioner against Receipt No.68335 dated 23.03.1988. A telex connection was later installed in the office of the petitioner-FCI at Gurdaspur on 08.09.1989. It is argued that the said telex connection did not become operative due to some mechanical default in the machine. The petitioner-FCI immediately wrote letters to respondent No.2 for putting the telex machine into a running condition. Communications dated 18.04.1990 and 01.05.1990 were also sent to the respondents, however, despite written complaints and subsequent reminders, the needful was not done and the machine remained out of order ever since the date of its installation and the respondents failed to put the telex machine in its working order. In the meantime, the respondent No.2 sent another bill to the petitioner for a sum of Rs.45,717/- against rent for the period 08.09.1990 to 07.09.1991. The

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said amount was deposited by the petitioner with an understanding that the telex machine will be put in a working order. It is contended that despite the deposit of the aforesaid amount, the respondents failed to put the machine in a working order despite oral assurances given to put the machine in its working order after the bill is deposited with the Telecom Department. Accordingly, the amount was deposited, however, the defect was still not rectified. It is specifically submitted that not even a single telex message has ever passed through this telex machine right from the date of its installation at the premises of the petitioner-FCI. The petitioner-FCI, however, received a bill for Rs.200/- dated 11.05.1993 for telex no.291 as the meter reading showed that the telex machine had been used. The petitioner-FCI raised a strong protest with the respondents that since the machine is lying out of order right from the date of its installation, the question of running the meter of telex no.291 does not arise. It is submitted that without responding to the said objection and the correspondences sent by the petitioner, the respondents raised a bill for Rs.1,91,404/- for the period 08.09.1990 to 07.09.1994 notwithstanding that the telex was disconnected w.e.f. 09.06.1990. It is contended that the said demand is unsustainable and that the respondents have unnecessarily sought deposit of the amount notwithstanding that the machine remained out of order and was never functional and further that the grievances raised by the petitioner-FCI were never redressed.

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3 Learned counsel for the respondents, on the other hand, refers to the written statement and submits that as per the records maintained by the A.E.P. (Electrical) in the office of the G.M.T.D. Jalandhar, consumption/usage has been shown on monthly basis during the period the Telex Connection remained operative and that the machine was in perfect working order since its installation. It is further submitted that bill for advance rent from 08.09.1990 to 07.09.1991 was sent to the petitioner. The payment particulars were not intimated and, as such the telex connection was disconnected on 09.06.1990. Intimation was however sent by the petitioner on 05.07.1990 that the payment had already been made on 10.05.1990. A formal intimation regarding payment of Rs.45,717/- being advance rent for the period from 08.09.1990 to 07.09.1991 was received from T.D.E. Pathankot in the month of September 1990.

4 Learned counsel contends that the bill of May, 1993 for a sum of Rs.200/- was issued inadvertently and the same was cancelled in March 1994. A further plea had been taken that the Telex connection was provided to F.C.I. Gurdaspur under rent and guarantee terms being long distance connection and its guarantee period was 5 years and annual rent was fixed at Rs.45,611/- for line and Rs.1740/- for accessories. As per rule 487-D of P & T Manual Volume X, the rent was to be paid for the entire period of guarantee and the less amount was to be recovered from the guarantor. Since the petitioner committed default in deposit of the said amount, a demand was raised. A further argument has been raised that the petition

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filed before this Court is barred on the ground of delay and laches, as such, cognizance thereof need not be taken.

5 Responding to the above, learned counsel for the petitioner-FCI contends that there was no delay on the part of the petitioner and that they had initially approached the District Consumer Disputes Redressal Forum, Gurdaspur, by filing Case No.449 of 1996 instituted on 11.07.1996 however, on account of lack of territorial jurisdiction, the complaint was returned vide order dated 17.09.1996 for its presentation before the competent Forum within a period of one month. The petitioner thereafter preferred the same before the District Consumer Disputes Redressal Forum, Jalandhar, by filing Comp. No.292-DF-1996, instituted on 15.10.1996, which was disposed of vide order dated 10.03.1998 to be presented before an appropriate Forum on the ground that there were certain disputed questions of fact. Petitioner has thus approached this Court without any undue delay.

6 I have heard the learned counsel appearing on behalf of the respective parties and have gone through the record of the case with their able assistance.

7 The facts which emerge from a perusal of the same are that the telex connection had been released in favour of the petitioner on the application so submitted and the rent for the period from 1989-1990 and 1990-1991 had been duly deposited by the petitioner. It is also not in dispute that the telex connection was disconnected by the respondents on

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09.06.1990. It is further undisputed from the stand of the respondents, that the intimation of the payment for the period 08.09.1990 to 07.09.1991 was sent by the petitioner-FCI on 05.07.1990 along with the detail that advance payment of the rent for the said period was already made on 10.05.1990.

8 It is in the said background that this Court examines the dispute involved in the present writ petition. A subsequent demand of rent amounting to Rs.1,91,404/- for the period from 08.09.1990 to 07.09.1994 was raised vide Annexure P-14, even though the advance rent for the period commencing w.e.f. 08.09.1990 to 07.09.1991 of Rs.45,717- had already been paid in May 1990 and the connection had been disconnected in June 1990. I find that the stand of the respondents is not tenable and is liable to be rejected for the following reasons:-

- (i) That the petitioner had deposited an advance rent for the entire period from September 1989 to September 1990 against a receipt which stands duly acknowledged by the respondents themselves. Notwithstanding the issuance of the advance rent for the entire period till September 1990, the telex connection was disconnected by the respondents in June 1990 even though a period of three months still remained. The advance rent for the year 1990 to 1991 had also been deposited by the petitioner in May 1990, but nonetheless the respondents failed to make necessary corrections in their own record.

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It is not the case of the respondents that the telex connection was at any point of time restored or was reconnected. Hence, there was no usage of the said telex connection since 09.06.1990. Notwithstanding the same, the respondents raised a bill of Rs.200/- in May 1993 but realised their mistake and cancelled the same in March 1994. Further, the specific stand of the respondents for demanding the rent is on the ground that there was a guaranteed term for which the services had to be produced, however, neither such terms and conditions have been produced before this Court nor the application form, which would invariably be in possession of the respondents, has been produced to ascertain the terms and conditions. Hence, certain terms and conditions have been sought to be enforced against the petitioner herein without disclosing or bringing the original documents on record. The said record being in possession of the respondents, withholding of the same would lead to an adverse inference against the respondents itself.

(ii) Still further, the respondents were also in possession of the record pertaining to the usage of the telex machine yet they have not brought on record any evidence to establish that there was an actual usage of

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the telex machine or that any message had passed through the same. The communications/letters appended by the petitioner about the telex machine not being operational are also not disputed by the respondents. There is also no averment in the reply filed by the respondents as to whether the said defects were checked and removed in time and a functional machine had been restored or not. The complaints and reminders sent by the petitioner are also not disputed but the outcome thereof is not informed.

(iii) The specific case of the petitioner was that even though advance rent for the period upto September 1990 had already been deposited yet, the services were disconnected in June 1990, when rent already stood paid. The respondent has failed to make reference of any usage bill generated during the said period. In the absence of any bill being raised, there can be no presumption of non-payment or even any usage. Hence, the contemporaneous evidence of the petitioner suggests that the facility was dysfunctional and no evidence has been led by respondents to show that the stand of the parties was false.

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(iv) Further, so far as the contention of the respondents that the petition was barred by delay and laches is concerned, I am of the opinion that the demand was raised by the respondents in the year 1995 along with the notice sent to the petitioner against which the petitioner immediately approached the consumer Forum. It is thus not a case where the petitioner was not vigilant and had not been pursuing its remedies rather, the appropriate remedies were pursued in the appropriate forums. Hence, the contention of delay and laches is declined.

9 For the foregoing reasons, I am of the opinion that the petitioner has well established his case about the demand being wrongly and illegally raised by the respondents against the petitioner even for the period when the connection had already been disconnected and for the period of nearly 09 months prior thereto, its service was also deficient and the defects had not been removed despite the complaint and reminders submitted by the petitioner.

10 The present writ petition is accordingly allowed. The demand communicated by the respondents and as recalculated, to the sum of Rs.1,47,147/-, is set aside. The respondents are directed to refund the advance rent/fee deposited by the petitioner-FCI in May 1990 for the period commencing w.e.f. September 1990 to 1991. The above said amount is

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ordered to be refunded along with interest @ 6% per annum to the petitioner-FCI, in view of Section 34 of the Code of Civil Procedure, 1908, from the date of its deposit till its actual release. Let the above said amount along with interest be refunded to the petitioner by the respondents within a period of three (03) months of the receipt of certified copy of this order. In case of failure of the respondents to do the needful, the official who is found to be in lapse would be liable to pay a cost of Rs.10,000/- for the delay of every month from his own pocket.

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

November 26, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No