SUPREME COURT OF INDIA

Department of Telecommunications

Vs.

Gujarat Coop.Milk Mkting. Federation Ltd.

C.A.No.8249 of 2010

(R.V.Raveendran)

24.09.2010

JUDGEMENT

R.V.Raveendran, J.

1. Leave granted.

2. The respondent was the subscriber of telephone bearing No.40193, in Anand Town installed at the residence of its Managing Director (for convenience we will also refer to the Managing Director as the `subscriber').

> "The bi-monthly bills in regard to the said telephone were usually around Rs.8500. The appellant served on the respondent the following two bills aggregating to Rs.454,652 :
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> Bill date Period of the bill Amount 1.4.1996 16.1.1996 to 15.3.1996 362,723/- 1.6.1996 16.3.1996 to 15.5.1996 91,929/- The huge billing was on account of a large number of international calls known as `party calls' or `sex talk calls' to number 001-4152-085-234 and several calls to 001-4152-085-220/230/236/239."

3. The respondent made a written complaint dated 25.4.1996 after the receipt of the first bill stating that it had been mischievously and unscrupulously billed for large number of international calls made from some other numbers, but shown as having made from its number. It also complained in the said letter that many a time, when the subscriber lifted the telephone for making calls, he used to hear some ongoing talk. The Divisional Engineer of the appellant after verification informed the respondent by letter dated 21.5.1996 that the bills were correct for the following reasons:

> "(a) Total line was underground and no portion of the line was exposed;

(b) Absolute control to make a call or not to make a call, was with the subscriber as the phone had dynamic lock facility.

(c) The telephone was working continuously and there was no complaint of the telephone being out of order. (Note : If the line is misused externally, the telephone of the subscriber will be dead with no dial tone).

(d) The bills showed that the calls were made daily over a long period and not on any particular single day.

(e) As the telephone was connected to an electronic exchange, there was no chance of excess metering."

4. The respondent filed an administrative appeal to the General Manager, Kheda Telecom District, Nandiad. However as the bills amounts were not paid, the telephone was disconnected on 29.5.1996. A writ petition (SCA No.4188/1996) filed by the respondent was disposed of by the High Court by order dated 29.7.1997 directing the General Manager of the appellant to examine the appeal filed by the respondent in regard to the bills in question and render a reasoned order after giving a hearing to the respondent. After hearing, the General Manager, Kheda Telecom District, Nadiad made an order dated 12.2.1998 rejecting the appeal and confirming the demands under the two bills, for the following reasons: (i) The subscriber had not made use of the STD/ISD dynamic locking facility which was available through a sophisticated electronic exchange; (ii) all rooms in the residence of the subscriber had plug/socket arrangements and all family members and visitors could use the parallel lines for making ISD calls (in particular `party line calls') even without the knowledge of the subscriber; (iii) the possibility of any external misuse was ruled out as the Distribution Point Box was located within the campus premises of the respondent which was under around the clock security of the security guards employed by the respondent and no part of the underground cable was exposed; (iv) significantly during the disputed period not even a single complaint was booked from the 4 telephone; and though in the complaint dated 25.4.1996, it was stated for the first time that many a time when the subscriber lifted the phone to receive the call he heard someone talking on the line, no such complaint was ever made prior to 25.4.1996 to the department; and (v) the disputed ISD calls were `party line international sex talk calls' which originated from the subscriber's telephone and having regard to the fact that these calls were made in between the calls to other stations in India in such close proximity that there was no chance of possible misuse by any third party or staff of telecom department.

5. Feeling aggrieved, the respondent again approached the High Court by filing another writ petition (SCA No.1416/1998). The said petition was disposed of on the ground of availability of alternative remedy of arbitration under section 7B of the Indian Telegraph Act, 1885 (`Act' for short). The respondent challenged the said order in a Letters Patent Appeal wherein by order dated 21.10.1989 the Division Bench directed the dispute to be referred to arbitration. In pursuance of it, the Central Government in exercise of power under section 7B

of the Act appointed Mr. Vineet Bhatia, Deputy General Manager, Telecom East and Arbitrator for Ahmedabad Telecom district as Arbitrator for deciding the dispute.

6. The Arbitrator after hearing made an award dated 4.5.2000 holding that the bills were proper and the respondent had to make complete payment of the said bills. The following summary of the reasoned award is extracted below:

> "1. Though STD/ISD dynamic locking facility for the telephone was available, it was not used by the subscriber.
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> 2. There was no possibility of external misuse from distribution point or pillar or from the Main Distribution Frame, as these were under lock and key or around the clock supervision.
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> 3. Even though the subscriber stated that he used to hear some cross talk on the line during the period of the disputed bill, no complaint was registered with the Telephone Department. Therefore the said complaint was apparently an afterthought made up after receiving the first bill for the disputed period.
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> 4. All the rooms in the house of subscriber had plug and socket arrangement and there were two telephone instruments in the house and as such calls could be made from anywhere in the house.
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> 5. The calls preceding/succeeding the disputed calls were admittedly made by the subscriber. Hence no misuse by diversion was possible.
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> 6. The disputed calls were `international party line calls'. For dialing these numbers there was no need to establish any prior relationship between caller and the called numbers. As such there was no age/sex bar for dialing these numbers and hence could have been done by any of the family members of the subscriber. From the school details of his son, presented by the subscriber vide his letter dated 3.5.2000, it was clear that his final Pre-Board examinations for X Std. were concluded on 03.02.1996 and the disputed calls started from the very next day. As such, the possibility of these calls having made by the son of the subscriber cannot also be ruled out."

7. The said award was challenged by the respondent in a writ petition (SCA No.8734/2000). A learned Single Judge of the High Court allowed the writ petition with costs of Rs.5000 and quashed the bills dated 1.4.1996 and 1.6.1996 and the consequential demand notice dated 4.5.2000. The last para of the order of the learned Single Judge extracted below, demonstrates the manner in which he viewed the entire matter:

> "This is a peculiar case showing the adamant attitude on the part of the respondent authorities. The bill has been issued in the year 1996 and there were about three round of litigations. The Arbitrator who was appointed was subordinate to the General

Manager who is bound to be influenced by the decision of the General Manager or could not have taken a contrary view to the order of his superior. Therefore, before the argument was started, an opportunity was given to the counsel for the respondent to reconsider their decision. However the officer as well as the learned counsel, who is an officer of the Court, has not accepted the said suggestion. It was also open to the respondent to issue a revised bill as per the decision of this court or at least average bills for the last six months. It goes without saying that the adamant attitude of such litigants increases the unwanted litigation. Therefore, the respondent shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) by way of costs."

The findings recorded by the learned Single Judge in support of his order, in brief are:

(i) As the appeal against the Bills had been decided by the General Manager, Kheda Telecom District on 12.2.1998 upholding the bills, the Arbitrator should have been a person higher in rank to the General Manager.

As the Arbitrator was of a lower rank of a Deputy General Manager, the decision of the Arbitrator was not valid in law and on this ground alone the writ petition had to be allowed.

(ii) The Arbitrator had decided the matter on inferences and presumptions without any evidence. Reference to the existence of parallel telephone lines and subscriber's son being at home after examinations, to infer that he might have misused the telephone was a finding which was without basis in the absence of evidence that the subscriber's son had in fact misused the telephone. Similarly, the assumption by the Arbitrator that any member of subscriber's family could have used the phone for making `party line calls' was a casual presumption.

(iii) A complaint dated 25.4.1996 was made by the subscriber stating that the first bill dated 1.4.1996 was excessive. Even assuming that there was misuse of the phone, in the house of the subscriber, when the subscriber came to know about the misuse when the bill was received, he would have restricted or prevented the misuse. That means the next bill dated 1.6.1996 should have been a normal bill. But the said bill was also excessive thereby demonstrating that the mischief calls continued even during the second bill period. This showed that there was a possibility of someone else misusing the number of the subscriber for making ISD calls.

(iv) The complaint dated 25.4.1996 stating that the subscriber sometimes used to hear ongoing talk, when he lifted the phone for making calls, was not properly considered by the Arbitrator.

The Letters Patent Appeal filed by the appellant against the said order of the learned single Judge, has been dismissed by a Division Bench by a brief non-speaking order dated 23.1.2007. The said order is challenged in this appeal."

8. The scope of interference in writ jurisdiction in regard to Arbitral awards under section 7B of the Act was considered by this Court in *M.L.Jaggi v. Mahanagar Telephones Nigam Ltd.*[1] :

> "It is seen that under Section 7-B, the award is conclusive when the citizen complains that he was not correctly put to bill for the calls he had made and disputed the demand for payment. The statutory remedy opened to him is one provided under Section 7-B of the Act. By necessary implications, when the Arbitrator decides the dispute under Section 7-B, he is enjoined to give reasons in support of his decision since it is final and cannot be questioned in a court of law. The only obvious remedy available to the aggrieved person against the award is judicial review under Article 226 of the Constitution. If the reasons are not given, it would be difficult for the High Court to adjudge as to under what circumstances the Arbitrator came to his conclusion that the amount demanded by the Department is correct or the amount disputed by the citizen is unjustified.
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> The reason would indicate as to how the mind of the Arbitrator was applied to the dispute and how he arrived at the decision. The High Court, though does not act in exercising judicial review as a court of appeal but within narrow limits of judicial review it would consider the correctness and legality of the award. No doubt, as rightly pointed out by Mr. V.R.Reddy, Additional Solicitor General, the questions are technical matters. But nonetheless, the reasons in support of his conclusion should be given."
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> (emphasis supplied) Though the learned Single Judge referred to the said decision, he has ignored the law laid down therein. The learned Single Judge has proceeded as if he was sitting in appeal over the award of Arbitrator. He also assumed, without any basis, that the Arbitrator had proceeded on presumptions and inferences, when in fact it is the learned Single Judge who made assumptions and drew inferences, not based on evidence. We may briefly refer to them."

9. The learned Single Judge held that the Arbitrator had without any evidence assumed that the son or other family members of subscriber must have used the telephone available on account of plug/socket arrangement in every room as also an extra telephone, parallel lines for making the "international party calls". The basis for the billing is not the said assumption or inference. The basis is the clear evidence consisting of the records of Telecom and the meters which showed that the billed calls, that is, the international party line calls, were regularly being made from the said telephone. The inference drawn by the Arbitrator that the subscriber's son or other family members must have made the calls from a parallel line by using the plug and socket facility available in various rooms, has to be read in the context of the assertion of the subscriber that he had not made any such party calls. The Arbitrator had three facts before him : (1) that the department records showing that the disputed international party calls were made from the telephone in question regularly; (2) that the

subscriber had plug and socket facility in several rooms with an extra telephone which could be used any time by any one in the house; and (3) that the subscriber had not made use of the STD/ISD dynamic lock facility, though available.

> "Therefore when there was an assertion by the subscriber that he had not made any such calls, the Arbitrator merely made an inference from the proved facts that even if the subscriber had not made the calls, it was possible that his family members including his son (who had returned home a day prior to the commencement of `party calls') could have made such calls by using the plugs and sockets arrangement and parallel lines in several rooms without the knowledge of the subscriber. The Arbitrator was only dealing with a contention by the subscriber that he had not made any such calls and giving his reasons for rejecting such a contention"

10. The learned Single Judge next inferred that even if such calls were being made earlier, after receiving the bill dated 1.4.1996, the subscriber would have naturally restricted any such calls; and the fact that even after receipt of the first bill, there were such `party calls' as was evident from the second bill, made it improbable that the subscriber's phone was used for making such `party calls' and therefore it had to be inferred that someone else was mischievously using the said telephone connection for making unauthorised ISD calls. This inference is also contrary to facts. The first bill dated 1.4.1996 was for the period 16.1.1996 to 15.3.1996. Though the second bill dated 1.6.1996 was subsequent to complaint dated 25.4.1996, the said bill related to the period 16.3.1996 to 15.5.1996, major portion of which was prior to 25.4.1996. Further, the second bill was only for Rs.91,929/- as against the first bill for Rs.3,62,723/-. The amount of the second bill and the period for the second bill demonstrates that after receipt of first bill and complaint, there was in fact some kind of control and reduction in such phone calls. Therefore the inference by the learned Single Judge was absolutely baseless.

11. The finding of the learned Single Judge that the Arbitrator had not given importance to the complaint in the letter dated 25.4.1996 that he had heard cross talk on the line is also incorrect. The Arbitrator has dealt with this matter. The simplest explanation is the existence of plug-socket facility and parallel lines. If the parallel line was being used and the subscriber lifted the receiver, he would certainly hear the conversation or talk, which was not from any external source, but from the very same telephone.

12. The last assumption by the learned Single Judge was with reference to an affidavit filed by the Telecom Department in some criminal proceeding against some departmental employee unconcerned with this case, admitting that its employee had tampered with the instruments for making international calls, and as a result the department had to grant rebates to several subscribers. But that cannot be a ground for granting rebate in this case, as no irregularity was found in this case. The fact that in some case, some departmental employee had committed some tampering, is not a ground for inferring that there must have been tampering in this case. The High Court has inferred that the fault was with the department

because it refused to refer the matter for CBI for investigation. The learned Single Judge has observed:

> "It is also required to be noted that the petitioner had requested for an investigation into the matter by Central Bureau of Investigation.
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> According to the petitioner, if such an investigation is resorted to, it would unearth the mischief and it was further stated that the petitioner was ready and wiling to bear the costs thereof. Even this was not accepted by the respondent authority, which would indicate that the respondent did not want to go deep into the matter."
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> Reference to CBI is not a condition precedent for raising a bill, merely because the subscriber demands it."

13. There was thus no ground for the High Court to interfere with the findings arrived at by the Arbitrator in exercising the power of judicial review. By assuming a non-existing appellate jurisdiction and by making wrong assumptions and drawing wrong inferences, the learned Single Judge has interfered with a reasoned arbitral award.

14. We may next deal with the conclusion of the learned Single Judge that the award was invalid because it was made by an Arbitrator who was junior in rank, when compared to the officer who passed the appellate order dated 12.2.1998. It is a usual practice for the government departments to have the employees of the department (high level officers unconnected with the contract) as Arbitrators. The mere fact that the Arbitrator is of a rank lower than the officer who rejected the claim of the subscriber would not invalidate the arbitration or can be a reason for imputing bias to the Arbitrator (see *Secretary to Govt., Transport Department v. Munuswamy Mudaliar*[1] *and Indian Oil Corporation Ltd. v. Raja Transport (P) Ltd.*[2]. In Indian Oil Corpn. Ltd. (supra) this court held thus:

> "The fact that the named Arbitrator is an employee of one of the parties is not ipso facto a ground to raise a presumption of bias or partiality of lack of independence on his part.
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> There can however be a justifiable apprehension about the independence or impartiality of an Employee-Arbitrator, if such person was the controlling or dealing authority in regard to the subject contract or if he is a direct subordinate (as contrasted from an officer of an inferior rank in some other department) to the officer whose decision is the subject matter of the dispute. Where however the named Arbitrator though a senior officer of the government/statutory body/government company, had nothing to do with execution of the subject contract, there can be no justification for anyone doubting his independence or impartiality, in the absence of any specific evidence. Therefore, senior officer/s (usually heads of department or equivalent) of a government/statutory corporation/public sector undertaking, not associated with the

contract, are considered to be independent and impartial and are not barred from functioning as Arbitrators merely because their employer is a party to the contract."

(emphasis supplied) In this case, the Arbitrator had neither dealt with the matter at any point of time nor was he a subordinate of the appellate authority in the concerned telecom district who decided the matter. The bills related to a telephone installed at the premises in Anand/Nadiad falling within the jurisdiction of the General Manager Telecom Kheda Telecom District, Nadiad and the appellate order dated 12.2.1998 was passed by the General Manager of Kheda Telecom District, Nadiad. The Arbitrator was working as a Deputy General Manager (T) East & Arbitrator Ahmedabad Telecom District, not under the General Manager who passed the appellate order but in a different telecom district. Therefore, there was no justification for the learned Single Judge to hold that the award was invalid merely because the Arbitrator was of a rank lower than that of the officer who passed the appellate order. It should also be noted that the appeal was decided by the General Manager, Kheda Telecom district in pursuance of a direction of the High Court. Again in a subsequent proceeding the High court directed that the matter should be referred to arbitration under section 7B of the Act and accordingly the dispute was referred to arbitration and the departmental officer functioning as Arbitrator decided the matter. There is nothing irregular or erroneous in the said procedure."

15. The last para discloses the learned Single Judge had virtually prejudged the matter and was prejudiced against the appellant. The learned Single Judge allowed himself to be swayed by the following irrelevant factors in deciding against the appellant: (i) the respondent had come up before the High Court thrice; and (ii) the department counsel did not agree with the suggestion of the learned Single Judge to reconsider the bill amounts by issuing a revised bill on the basis of the average of the bills for last six months. The learned Single Judge proceeded on the basis that the attitude of the department was adamant and it was indulging in unnecessary litigation. The department was simply pursuing a legitimate claim. The matter had been decided by a statutory Arbitrator. Therefore if the department decided not to give up or reduce its claim that cannot be held against the department. The order shows that the learned Single Judge had tried virtually to force the department to agree for suggestions which obviously the officers and the counsel for the department could not agree.

"Such attitude on the part of the High Court requires to be discouraged.

Unfortunately the division bench did not examine any of these aspects and merely affirmed the decision of the learned Single Judge."

16. We therefore allow this appeal, set aside the order of the learned Single Judge and the Division Bench and dismiss the writ petition filed by the respondent challenging the bills.

[1]1996 (3) SCC 119 *[2]1988 (Supp) SCC 651* *[3]2009 (8) SCC 520*