

(2003) 02 NCDRC CK 0052

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

GENERAL MANAGER, TELECOM

APPELLANT

Vs

M.Krishnan

RESPONDENT

Date of Decision: Feb. 14, 2003

Citation: 2003 2 CLT 512 : 2003 2 CPJ 312 : 2003 2 CPR 93 : 2009 3 CPC 246 : 2009 5 CTC 62

Hon'ble Judges: Jawahar Lal Gupta , J.B.Koshy , Ramachandran J.

Final Decision: Appeal dismissed with costs

Judgement

1. DOES Section 7B of the Indian Telegraph Act, 1885, oust the jurisdiction of the Consumer Forum as constituted under the Consumer Protection Act, 1986 ? Is the Rule as enunciated in General Manager v. Consumer Disputes Redressal Forum, 2000 (2) KLT 195, in conformity with the provisions of the 1986 Act ? These are the two questions that arise for consideration in this appeal. A few facts as relevant for the decisions of the case may be briefly noticed.

2. THE respondent is a resident of Kozhikode. He is a partner of M/s. Auspins. THE firm has a telephone connection No. 740008 with the Nellikode Exchange. This telephone is installed at T.K. House, Kotttooli, Calicut-16. On March 20, 2001 the respondent was served with a copy of the notice issued to Sri T.K. Reghunath. By this notice, Sri Reghunath was called upon to clear the dues of Rs. 17,103 with respect to telephone number 722060 by August 29, 2001. THE respondent was threatened that in case the bill for telephone No. 722060 was not cleared by the due date his telephone No. 740008 shall be disconnected. This was despite the fact that admittedly no amount was due from the respondent and there was no other default on his part.

On receipt of the above-mentioned notice, the respondent sent a reply vide letter dated August 17, 2001. It was pointed out that he was not responsible for the amount due from T.K. Reghunath. It was further mentioned that he was a tenant in the premises. His telephone could not be disconnected on account of the failure of Mr. Reghunath to pay the bill. The reply, it seems, was not even considered. The telephone of the respondent was disconnected on September 13, 2001.

The respondent felt aggrieved by the action of the authority in disconnecting his telephone. Consequently, he filed a complaint under Sections 12 and 13 of the Consumer Protection Act, 1986. He prayed that the authority may be directed to immediately restore the telephone connection. He also claimed a sum of Rs. 5,000/- as damages.

3. THE complaint was considered by the Consumer Disputes Redressal Forum, Kozhikode. Vide order dated November 26, 2001 the complaint was accepted. THE authorities were directed to restore the connection of telephone No. 740008 "forthwith". A compensation of Rs. 5,000/- was also allowed with interest at the rate of 12 per cent per annum from the date of the filing of the complaint.

The appellants viz., the General Manager Telecom, BSNL, Kozhikode and the Junior Engineer, BSNL, Nellicode Exchange felt aggrieved by the order of the Forum. They filed a petition under Article 226 of the Constitution. It was stated that the Consumer Forum had no jurisdiction to interfere in the matter. Reliance was placed on the decision in the case of General Manager (supra).

4. A learned Single Judge of this Court considered the matter, it was observed that the parties had appeared and adduced evidence. The Forum had given a "decision on merits". Thus, the grievance, if any, can be made by filing "a statutory appeal before the State Forum". With these observations the writ petition was dismissed.

The appellants filed an appeal. The matter was posted before a Division Bench. Reliance was again placed on the earlier decision. On a consideration of the matter, the Bench expressed its reservation about the correctness of the view taken by the Division Bench in the aforesaid case. The Bench felt that a Larger Bench should consider the matter. Thus, the case has been placed before this Bench.

Mr. Pathros Mathai, learned Counsel for the appellants contended that the Indian Telegraph Act, 1885 is a special law. Section 7B provides that all disputes shall be referred to an Arbitrator for decision. In view of this special law, the Consumer Disputes Redressal Forum had no jurisdiction to entertain the complaint made by the respondent. Learned Counsel referred to certain decisions in support of his contention. The claim made on behalf of the appellants was controverted by Mr. Sunny Mathew, learned Counsel for the respondent. He submitted that the Act of 1885 does not provide an adequate mechanism for the protection of the consumer. As against this the 1986 Act applies to all goods and services. Thus, the order passed by the Forum deserves to be upheld.

5. IT is in the background of the above factual position and the contentions as raised by the learned Counsel that the two questions as noticed at the outset arise for consideration. The first question is - Does Section 7B oust the jurisdiction of the Consumer Forum ? The 1885 Act broadly deals with the establishment, maintenance and working of telegraph lines, appliances and the apparatus for telegraphic communications. IT confers certain powers on the Central Government. Section 7B on which the appellants have placed reliance provides as under :

"Arbitration of disputes.-(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. [Emphasis supplied] (2) The award of the Arbitrator appointed under Sub-section (1) shall be conclusive between the parties to the dispute and shall not be question in any Court."

Broadly, the provision provides that "any dispute" concerning the line, appliance or apparatus shall be referred to an Arbitrator appointed by the Central Government. The award shall be conclusive between the parties. It cannot be questioned in any Court.

6. AT the first flus, the provision appears to be very wide in its scope. It entitles a person to raise "any dispute" concerning any telegraph line, appliance or apparatus. Yet, the fact that deserves mention is that the Act itself makes a provision in Section 9 that "the Government shall not be responsible for any loss or damage which may occur in consequence of any telegraph officer failing in his duty with respect to the receipt, transmission or delivery of any message; and no such officer shall be responsible for any such loss or damage, unless he causes the same negligently, maliciously or fraudulently". Thus, it appears that when a citizen has a complaint, the dispute has to be considered by an Arbitrator appointed by the Government itself. By virtue of the provision in Section 9, the Government is absolved of its responsibility for the loss or damage which may be the consequence of any failure of its officer to perform his duty. Still further, the officer appointed by the Government as an Arbitrator shall not be able to award any damages unless it is established that there was negligence and malice or fraud. Still further, the Act does not provide for any remedy of appeal, etc. There is no consideration of the matter by any impartial and independent agency.

Mr. Mathai submitted that the award given by the Arbitrator can be challenged in proceedings under Article 226. This provides a sufficient safeguard.

The contention is apparently attractive. But it cannot be accepted. The jurisdiction of the High Court under Article 226 of the Constitution is, undoubtedly, wide. Yet, it is circumscribed by certain basic principles. For example : the High Court does not normally go into disputed questions of fact in writ proceedings. It does not examine the petitions as if it is hearing an appeal. It does not reappraise the evidence. The Writ Court normally examines the process of decision making. Not the sustainability of the decision on the basis of the evidence as adduced by the parties. Thus, it cannot be said that the remedy of a petition under Article 226 of the Constitution is a complete and effective substitute.

7. IT is in this background that the question as posed above has to be considered. The question that arises for consideration is-Why did the Parliament enact the 1986 Act ? The answer can be found in the preamble itself. The declared objective of the Parliament was "to provide for better protection of the interests of consumers ...". The Parliament was surely aware of the fact that under various enactments a provision for arbitration or appeal, etc. had been made. IT shall be presumed to have known that under Section 7B of the Act, the remedy of Arbitration exists for the protection of consumers. Yet, it felt the need for providing "better protection". Still further, to put the matter beyond doubt, it was provided in Section 1(4) that the Act

shall "apply to all goods and services". Thus, it is clear that the protection of the Act was available in respect of all services. Nothing was left out of the ambit of the statute. Not only this, in Section 3 it was specifically provided as under :

"Act not in derogation of any other law- The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."

A perusal of the above provision shows that the remedies under the Act are "in addition to and not in derogation of the provisions of any other law " in force. The provision provides an additional avenue. IT gives an option to the aggrieved party. IT does not substitute the new for the old.

It is, thus, clear that the Act was enacted with the object of providing "better protection". It applies to all services. The Act is all embracing. It takes all goods and services within its ambit. The remedy is in addition to and in derogation of the provisions of any other law. The plain language of the statute is indicative of the fact that it is wide in its application. It is clear that the services under the 1885 Act are not excluded from the scope of the Act.

8. THE protection of the citizen is the duty of the state. In a civilized society, there cannot be a wrong without an effective remedy. With the advent of technology, we notice the advent of newer facilities as well as problems. To protect the people, a beneficent legislation like the 1986 Act has been enacted. Such an Act has to be liberally construed. In this context it deserved notice that the United Nations had passed a resolution in April, 1985. THE Governments were expected to make laws for the better protection of the interests of the consumers. THE need for such laws in developing countries was much greater than that in the already developed areas. THE UN had even laid down guidelines. It was under the gaze of the world organisation that the legislation was enacted. THE proclaimed objective and the clear purpose of enacting the statute was to grant better protection to the consumer of goods and services. Those responsible for providing services for consideration were to be made accountable and held liable for their lapses. Keeping in view the text and the context of the statute, it is clear that the provisions of the Act cover all services provided by the official or the private agencies.

Still further, the protection under the Act is available to a consumer of services. The term "consumer" has been defined in Section 2(d) of the Act. it means any person who "buys any goods.... or hires or avails of any services for a consideration..." It makes the person who sells goods or provides services liable for any deficiency. The

"deficiency" has been given a broad meaning so as to bring "any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance..." within its scope. It protects the consumer against unfair trade practices and provides for an adequate and efficacious remedy. Still further, the Act provides for the constitution of Consumer Protection Councils and Dispute Redressal Agencies. These agencies are required to be manned by judicially trained persons. Remedy of appeal is also available. Thus, the plain language of the statute clearly shows that a complete mechanism for achieving the declared objective of providing better protection to the consumer has been laid down. A definite procedure governs the proceedings. The Forum has all the trappings of a Civil Court and judicial authority. It exercised judicial functions. The orders passed by the "Forum" can be enforced like the decree of a Civil Court. Thus, there is a complete and comprehensive mechanism. This being the factual position, its provisions must be given full effect and cannot be narrowly construed.

There is another aspect of the matter. The principle of "generalia specialibus non derogant" was explained in the Vera Cruz case (1884) Appeal Cases 59. At page 68, it was observed as under :

"Now if anything be certain it is this that where there are general words in a latter Act capable of reasonable and sensible application without extending to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so."

[Emphasis supplied]

9. IN the present case, the Legislature has made its intention manifest. It has clearly provided that the remedy is "in addition", not "in derogation". It is also an accepted norm for interpretation of a statute that "the intention which appears to be most in accord with convenience, reason, justice and legal principles should, in all cases of doubtful significance, be presumed to be true one". (Maxwell on interpretation of Statutes - Chapter 10). The interpretation as given by the Counsel for the respondent fulfils this test.

10. STILL further, the Consumer Protection Act was enacted in the year 1986. It was promulgated more than a century after the Telegraph Act had been brought on the statute book. In this situation, it can be presumed that the Parliament was aware of the availability of the remedy under the Telegraph Act. Yet, it had considered it necessary to enact a new legislation. It was apparently with the object of providing "better protection" that the 1986 Act was promulgated.

Mr. Mathai referred to the decision of their Lordships of the Supreme Court in *Thiruvalluvar Transport Corpn. v. Consumer Protection Council, I* (1995) CPJ 3 (SC)=AIR 1995 SC 1384, to contend that the provisions of 1986 Act embody the general provisions.

We have examined the decision. Their Lordships were considering the question of grant of compensation arising out of an accident of a motor vehicle. It was noticed that "the accident that occurred had nothing to do with the service provided to the deceased. This becomes obvious when one reads the provision along with the definition of complaint in Section 2(c) and services in Section 2(o) of the 1986 Act". In this context, it was observed that "the complaint in the instant case cannot be said to be in relation to any service hired or availed of by the consumer because the injury sustained by the consumer had nothing to do with the service provided or availed of by him but the fatal injury was the direct result of the accident.." Thus, it was concluded that there was "no manner of doubt that this was squarely fell within the ambit of Section 165 of the 1988 Act and Claims Tribunal constituted thereunder for the area in question has jurisdiction to entertain the same". It is true that Their Lordships had observed that "ordinarily the general law must yield to the special law". It was also observed that the Motor Vehicles Act, 1988 "being a special law would prevail over the relevant general law such as the 1986 Act. But in the instant case, even that question does not arise. It is so far the simple reason that the dispute in question did not attract the jurisdiction of the National Commission, whatsoever, and the National Commission has not shown how it had jurisdiction. In other words, it was only because the complaint and service did not fall within the ambit of the 1986 Act that the claim of the complainant was declined. Another fact, which deserves mention, is that despite the finding that the National Commission had no jurisdiction it was directed that "the appellant will not be entitled to recover the compensation money already paid to the widow and the child under the Court's order". We cannot read this decision to mean that the jurisdiction of the Consumer Disputes Redressal Forum shall be ousted even in a case where there is a complaint within the meaning of Section 2(c) against the provider of a service as contemplated under Section 2(o). Thus, this decision can be of no avail to the Counsel for the appellants.

11. MR. Mathai then placed reliance on the decision in the Life Insurance Corp. of India v. D.J. Bahadur, AIR 1980 SC 2181. In this case, the provisions of the Life Insurance Corporation Act, 1956 and the Industrial Disputes Act, 1947 were examined. Keeping in view the factual position, Their Lordships had observed that the provisions of a general "Act cannot subvert, supplant or substitute the special Legislature..." It is undoubtedly so. But the 1986 Act does not in any way subvert the 1885 Act. The Counsel also relied upon the observations in the West Bengal Electricity Regulatory Commission v. CESC Ltd., VI (2002) SLT 53=(2002) 8 SCC 715. Reference was made to the observations in paragraph 56. A perusal of this judgment shows that two provisions contained in the 1998 Act were held to be a special law in comparison to the general law contained in the Electricity Act, 1948. Thereafter it was observed that "because of the accepted principle in law that a general law yields to special law, the provisions of the 1998 Act must prevail."

There is certainly no quarrel with the proposition as laid down in the two cases. The special always overrides the general. However, the question is - Which is the special law ? In our view, the 1986 Act having been enacted with the object of providing "better protection", the statute would be the special law insofar as the rights and remedies of a "consumer" against the wrongs committed by the provider of a service are concerned. The doubt, if any, was clarified by the Parliament by enacting the provisions contained in Sections 1(4) and 3. Thus, even if the principle of special law overriding the general law is invoked, we have no hesitation in holding that in a matter like the present one, the 1986 Act would operate as the special law.

12. ACCORDINGLY, the first question is answered in favour of the respondent. It is held that Section 7B of the Indian Telegraph Act, 1885 does not oust the jurisdiction of the Forum provides under the 1986 Act.

This brings us to the consideration of the second question. It is - Does the decision in General Manager's case (supra), conform to the provisions of the 1986 Act ?

We have perused the judgment. The issue was identical. It has undoubtedly been considered at great length. Regretfully, but respectfully, we are unable to follow the decision.

13. A perusal of the decision shows that while reversing the order of the learned Single Judge, the Bench had primarily relied upon the observations of Their Lordships of the Supreme Court in three cases. The first was in Thiruvalluvar Transport Corpn's case (supra). We have considered this decision in the preceding part. In our view, the decision is not an authority for proposition that a bus passenger is not a "consumer" or that the operator does not provide a service as contemplated under 1986 Act. The decision does not lay down that even when a passenger who has paid for the ticket complains of a deficiency in service, the Forum shall not consider his complaint.

14. THE Bench had then relied upon the observations in Raag Rang (1997) SCC 345. In this case, the question of the applicability of the 1986 Act did not even fall for the consideration of the Court. THE Court was only examining whether disputed questions of fact could be considered in proceedings under Article 136. THEir Lordships were not considering the issue as arising in the case before the Division Bench.

The third case was of M.L. Jaggi, JT 1996 SC 215. In this case, the issue was - "Whether the Arbitrator was enjoined to assign reasons in support of his award ?" This question was answered in the affirmative. There is no quarrel with the decision. However, it cannot be read to mean that the 1885 Act ousts the jurisdiction of the "Forum" under the 1986 Act.

It is true that the Bench had also referred to certain other decisions. However, it does not appear to be necessary to examine each case. It may only be mentioned that the provisions of the 1986 Act have been specifically considered by the Supreme Court. In Fair Air Engineers (P.) Ltd. v. N.K. Modi, III (1996) CPJ 1 (SC)=AIR 1997 SC 533, it was alleged that there was deficiency in service in the installation of the Central Air-conditioning Plant. The respondent had filed a complaint before the State Commission for the recovery of a sum of Rs. 3,75,000/- as compensation. The Commission initiated the proceedings. Ultimately the parties were relegated to the remedy of arbitration. The decision of the State Commission was challenged before the National Commission. It was reversed with the finding that the Commission is not a judicial authority. Section 34 of the Arbitration Act, 1940 was, thus, not applicable. Consequently, it could not be invoked to stay the proceedings. Aggrieved by this order, the complainant (the Contractor) approached the Supreme Court. The issue was examined. While allowing the appeal, it was held by Their Lordships in paragraph 14 that the Parliament was "aware of the provisions of the Arbitration Act and the Contract Act and the consequential remedy available under Section 9 of the

Code of Civil Procedure, i.e., to avail of right of civil action in a Competent Court of Civil jurisdiction. Nonetheless, the Act provides the additional remedy". In paragraph 15, it was further observed :

"... In view of the object of the Act and by operation of Section 3 thereof, we are of the considered view that it would be appropriate that these Forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act rather than relegating the parties to arbitration proceedings pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the Forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate Forum for adjudication of the disputes would be otherwise those given in the Act."

(p. 538)

15. IN *Regional Provident Fund Commissioner v. Shiv Kumar Joshi*, III (1999) CPJ 36 (SC)=X (1999) SLT 395=AIR 2000 SC 331, the maintainability of a petition under the 1986 Act against the Provident Fund Commissioner was considered by Their Lordships. It was contended on behalf of the Commissioner that the provisions of the 1986 Act were not applicable. The contention was negatived. IN *Charan Singh v. Healing Touch Hospital*, III (2000) CPJ 1 (SC)=VI (2000) SLT 867=(2000) 7 SCC 668, it was reiterated that the 1986 Act is a benevolent piece of legislation intended to protect the large body of consumers from exploitation.

As already observed, the 1986 Act being a beneficent legislation, deserves a liberal construction. The objective of better protection shall be defeated if the provisions are narrowly construed or easily excluded. Thus, we find that the objective of the Statute has not been correctly appreciated by Their Lordships of the Division Bench. We are unable to accept the view taken by the Bench. Resultantly, even the second question is answered against the appellant.

16. AS a result of the above, it is held that :

1. The 1986 Act was enacted with the object of providing better protection to the consumer. It provides a complete and comprehensive mechanism. The authorities

constituted under the Act perform judicial functions. Their orders are enforceable like the decree passed by a Civil Court. The provisions of the Act must be liberally construed and given full effect.

2. The Act, as the plain language suggests, applies to all "goods and services". Thus, the services provided under the Indian Telegraph Act, 1885 are not excluded from the ambit of the 1986 Act.

3. In view of the provisions of Section 3 of the 1986 Act, the remedy is in addition to that provided under Section 7B of the 1885 Act. It is not in derogation thereof. The option to invoke one or the other remedy lies with the aggrieved party.

4. The rule as laid down in General Manager's case (supra), it does not contain the correct statement of law. It does not promote the declared objective of better protection. Thus, it cannot be sustained. The decision is consequently overruled. AS a result of the above, we find no merit in the appeal. It is, consequently, dismissed with costs.

Appeal dismissed with costs.