

(2012) 02 DEL CK 0478**Delhi High Court****Case No:** Writ Petition (C) 8285 of 2010 and C.M. No. 21319 of 2010

Jk Mittal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: Feb. 6, 2012**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 9
- Constitution of India, 1950 - Article 226
- Consumer Protection Act, 1986 - Section 3, 9
- Contract Act, 1872 - Section 3, 34, 9
- Finance Act, 1994 - Section 65
- Telegraph Act, 1885 - Section 3, 3(6), 4, 4(1), 7B

Citation: (2012) 192 ECR 365 : (2013) 298 ELT 189**Hon'ble Judges:** Vipin Sanghi, J**Bench:** Single Bench**Advocate:** Arun Gulati, for the Appellant; Sachin Datta, CGSC for R-1, Mr. Ravi Sikri and Ayushya Kumar, Advocates for R-2, for the Respondent**Judgement**

Vipin Sanghi, J.

The present petition under Article 226 of the Constitution of India has been preferred to assail the order dated 22.09.2010 passed by the State Commission constituted u/s 9(b) of the Consumer Protection Act, 1986 in Case No. FA-10/313, whereby the State Commission has dismissed the appeal preferred by the petitioner against the order of the District Forum and held that the complaint preferred by the petitioner under the Consumer Protection Act was barred by Section 7B of the Indian Telegraph Act, 1885. The petitioner filed a consumer case against the respondent no. 2, Bharti Airtel Limited and one Mr. Bhupender Kumar, Territory Sales Manager, Bharti Airtel Services Limited before the District Forum, raising grievances with regard to provision of services by them. According to the petitioner,

on 05.08.2009, the petitioner had purchased a broad band plan called Home 649, whereunder respondent no. 2 had agreed to provide usage of broad band connection with a landline connection with free calls worth Rs. 00/- and two email IDs on the said internet connection with configuration of the outlook express software.

2. Since disputes arose in regard to the provision of the said services, the petitioner preferred a complaint before the District Consumer Dispute Redressal Forum (District Forum). On 15.03.2010, the District Forum dismissed the petitioner's complaint on the ground that the Forum does not have jurisdiction in view of Section 7B of the Indian Telegraph Act. The petitioner then preferred an appeal before the State Commission, which has also dismissed the petitioners appeal by placing reliance on Section 7B of the Indian Telegraph Act.

3. The first submission of learned counsel for the petitioner is that Section 3 of the Consumer Protection Act provides that the provision of the said Act shall be in addition to and not in derogation of the provision of any other law for the time being in force. He, therefore, submits that even if it were to be assumed that the remedy u/s 7B by way of a statutory arbitration were available to the petitioner, the same would not bar the jurisdiction of the District Forum under the Consumer Protection Act, as the remedy under the Consumer Protection Act is in addition to and not in derogation of any other remedy.

4. Learned counsel for the petitioner places reliance on The Secretary, Thirumurugan Co-operative Agricultural Credit Society Vs. M. Lalitha (Dead) through Lrs. and Others, , which in turn places reliance on M/s. Fair Air Engineers Pvt. Ltd. and another Vs. N.K. Modi, wherein it had been held:

"14. "It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words "in derogation of the provisions of any other law for the time being in force" would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available u/s 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."

Further, dealing with the jurisdiction of the forums under the 1986 Act in paragraph 16 this Court has stated, thus: -

"16. It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the

Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, 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 an 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."

(emphasis supplied)

In para 20, the Supreme Court, *inter alia*, observed as follows:

"20. Thus, having regard to all aspects we are of the view that the National Commission was right in holding that the view taken by the State Commission that the provisions under the Act relating to reference of disputes to arbitration shall prevail over the provisions of the 1986 Act is incorrect and untenable."

5. He further submits that Section 7B, in any case, could not have been invoked, as it provides that 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, shall be determined by an arbitrator to be appointed by the Central Government.

6. The submission is that respondent no. 2 is not a telegraph authority within the meaning of the Indian Telegraph Act, 1885. The expression "telegraph authority" has been defined u/s 3(6) to mean "the Director General of Posts and Telegraphs and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act". He submits that respondent no. 2 does not come within the definition of the expression "telegraph authority". Therefore, the statutory arbitration u/s 7B cannot be invoked. Consequently, the said remedy is not a bar to the maintainability of a consumer claim under the Consumer Protection Act.

7. Learned counsel for the petitioner submits that the Parliament, while enacting the Finance Act, 1994, - whereby service tax was introduced, defined the expression "telegraph authority" as meaning the telegraph authority under clause (6) of section 3 of the Indian Telegraph Act, 1885, and including a person who has been granted a license under the first proviso to sub section (1) of section 4 of that Act.

8. It is, therefore, argued that if a licensee who is granted a license u/s 4 of the Indian Telegraph Act where ipso facto covered by the expression "telegraph authority", there was no need to introduce a new definition for the term "telegraph authority" in clause (111) of Section 65 of the Finance Act, 1994.

9. Learned standing counsel, Mr. Sachin Datta submits, on instructions, that respondent no. 2 does not fall within the definition of "telegraph authority" under the Indian Telegraph Act, 1885. He, therefore, supports the stand of the petitioner.

10. Mr. Sikri, who appears on behalf of respondent no. 2 Bharti Airtel Ltd., does not dispute the position that respondent no. 2 does not fall within the definition of expression "telegraph authority". However, his submission is that respondent no. 2 is a licensee u/s 4 of the Indian Telegraph Act, and it is rendering the telegraph services just as the Director General of Posts and Telegraphs. He further submits that there is an arbitration agreement contained in the agreement between the petitioner and respondent no. 2 whereunder the services are being provided.

11. Having heard learned counsels for the parties, I am of the view that the impugned order dated 22.09.2010 passed by the State Commission cannot be sustained, as it erroneously holds that the consumer complaint of the petitioner was barred by Section 7B of the Indian Telegraph Act. It is clear that the respondent no. 2 is not a telegraph authority. The bar u/s 7B, if at all, could have applied, had the dispute arisen between the petitioner and a telegraph authority, which the respondent no. 2 is not. Merely because respondent No. 2 is a licensee u/s 4 of the Indian Telegraph Act, it does not confer on it the status of a telegraph authority. If the intendment of Director General of Posts & Telegraph were to confer the status of the Telegraph Authority upon the licensees u/s 4, the Director General of Posts & Telegraph, which comes under the Central Government could have issued the requisite notification u/s 3(6) of the Indian Telegraph Act, which has not been done. The Parliament was conscious of the fact that there could exist a licensee(s) by virtue of Section 4 of the Indian Telegraph Act. However, it has not chosen to fasten the statutory arbitration on the licensee or its consumer u/s 7B. Else, while mentioning the Telegraph Authority, the legislature could easily have included the "licensee" as one of the parties to an arbitration dispute u/s 7B of the Indian Telegraph Act.

12. I also find force in the submission of the petitioner founded upon the Amendment to the Income Tax Act whereby the Service Tax provisions were introduced. It clearly shows that even the Parliament did not consider the definition of "Telegraph Authority" contained in Section 3(6) of the Telegraph Authority to include a licensee per se.

13. The Supreme Court has given a broad interpretation to Section 3 of the Consumer Protection Act, in the light of the clear expression used by the Parliament, which states that the Consumer Protection Act shall be in addition to and not in derogation of the provision of any other law for the time being in force. Mere

existence of an arbitration agreement, assuming there is one between the petitioner and respondent no. 2, would not bar the maintainability of a consumer claim, as held by the Supreme Court in *Secretary, Thirumurugan Cooperative Agricultural Credit Society (supra)*.

14. Accordingly, the impugned order is set aside. It is held that the petitioner's consumer claim is maintainable before the District Forum. The District Forum is, therefore, directed to entertain and consider the said claim on its merits. Let the parties appear before the District Forum on 13.03.2012. Petition stands disposed of.