

(4)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

W.P.No.

826 of 1999. *2000*

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION
OF INDIA.

PETITIONER: Ramesh Kumar Dubey S/o Shri Hiralal
Dubey, Sardar Patel ward, Mungeli,
District - Bilaspur.

VERSUS

RESPONDENTS: 1. Telegraph Authority through
R Telecom District Manager,
Bilaspur, M.P.

2. Arbitrator and Deputy General
R Manager, Telecom District
Durg, M.P.

[Signature]

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HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition No.826 of 2000****Petitioner**

Ramesh Kumar Dubey

*Versus***Respondents**

1. Telegraph Authority through
Telecom District Manager
2. Arbitrator and Deputy General
Manager

(Writ Petition under Article 226/227 of the Constitution of India)

Mr.Malay Shrivastava, counsel for the petitioner.Mr.R.M.Solapurkar, counsel for the respondents.

(SB: Hon'ble Mr. T.P. Sharma, J.)

ORDER

(12-3-2013)

1. By this petition under Article 226/227 of the Constitution of India the petitioner has prayed for following substantial reliefs:-

"(i) That, this Hon'ble Court be pleased to quash the award so far as it relates to the payment of Rs.1,03726 by the petitioner to the respondent Annexure P/11).

(ii) This Hon'ble Court be pleased to issue a writ of mandamus to the respondents that the respondent will not disconnect the petitioner's telephone for non-payment of exorbitant and excessive telephone bill."

2. As per pleadings and documents, the petitioner was running STD-PCO. Some dispute relating to reading of meter, especially on holidays and concessional days arose. It was intimated by the petitioner to respondent No.1. On 30.4.97 (Annexure P/6) respondent No.1 has issued demand notice through the lawyer directing the petitioner to deposit Rs.1,03,726/- within seven days from the receipt of such notice. Thereafter in terms of Section 7B of the Indian Telegraph Act, 1885 (for short 'the Act') Arbitrator was appointed. After providing opportunity of hearing to the parties, Arbitrator has passed the award in question



dated 31.5.99 and has given concession/rebate of 15% upon the demand notice.

3. I have heard learned counsel for the parties and perused the award impugned.
4. Learned counsel for the petitioner submits that para 5 of the impugned award clearly reveals that the respondents were at fault, they have not intimated well within the time about faulty operation by operates and they have not corrected the same. On one day i.e. on Sunday (concessional day) different of meter reading was about 44%, therefore, the Arbitrator ought to have reduced the demand notice to the extent of 44%.
5. On the other hand, learned counsel for the respondents opposes the petition and submits that the petitioner has failed to comply with the provisions of the Act. The Arbitrator has already granted relief of 15% upon the total amount including non-concessional day, which shows that more than sufficient relief has been granted to the petitioner.
6. As per Section 7B of the Act, Arbitrator was appointed. Paras 5 and 6 of the award read thus:-

"5. Applicant has produced evidence, call register authenticity of which was checked with PCO Monitor call slips on sample basis, of date 5-2-95 (Sunday) about PCO monitor units and exchange meter reading increase with difference of almost 44% thus some technical deficiency can not be ruled out. Prompt joint verification could have avoided such a situation.

6. Confirmation of SDO's meeting with complainant by witness Shri Sanjay Sharma, JTO makes it clear that problem existed and was in knowledge of Non-applicant but no action condition makes the case in favour of applicant."

Considering all evidences, statements and agreements, it can not be denied that there were anomalies and both parties were responsible but responsibility of Non-applicant is more as he had every

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thing under his control. Some relief, therefore, is justified as a benefit of doubt in favour of applicant to some extent. Considering number of Sundays and other concessional tariff periods, relief upto 15% rebate in all bill dates mentioned on page-2 for total Rs. 103726/- will be appropriate.

The following order of award is hereby issued:

1. Demand raised for Rs.107715/- is accepted to be duplicate by Non-applicant hence stands quashed.
2. Demand of Rs.103726/- is correct as per latest notice dated 30-4-97 from Non-applicant and needs consideration. Rebate of 15% on this amount is to be given by Non-applicant. Revised bill is to be collected by applicant and payment is to be made within 10 days after receipt.
3. STD PCO is to be restored within 7 days form date of payment of revised bill.
4. No charges for the period of disconnection from date 28-4-96 till date of restoration, is to be levied.
5. Both parties are to bear their own cost and no other relief is allowed as both the parties have suffered for loss of business and interest.
6. The case is declared closed."
7. Undisputedly, on the basis of random checking, the Arbitrator has noted the difference of 44% on Sunday and not for all days, but the Arbitrator has given relief for all days of 15% of the demand notice. Finding of the Arbitrator reveals that not only sufficient opportunity has been provided to the petitioner but more than sufficient relief has been granted to him.
8. I do not find any ground for interference or exercise of extraordinary jurisdiction. Consequently, the writ petition is liable to be dismissed and is hereby dismissed. No order as to costs.

Certified copy as per rules.

Sd/-
T.P. Sharma
Judge