

THE HIGH COURT OF SIKKIM : GANGTOK

WRIT PETITION (C) NO. 11 OF 2003

In the matter of an application under Articles
226/227 of the Constitution of India.

Nandu Thapa
Ex-member of Parliament,
Gangtok,
East Sikkim. **... Petitioner**

VERSUS

1. Department of Telecommunications,
Presently known as Bharat Sanchar Nigam Limited,
New Delhi,
Represented by A.O./TR,
Office of the G.M. Telecom,
Zero Point, Cherry Building,
Gangtok - 737 101.
2. The Chief Managing Director (CMD),
Telephone Nigam Ltd. (MTNL),
Jeewan Bharti Building,
Connought Place,
New Delhi.
3. The General Manager,
Gangtok Telecom District,
Zero Point, Cherry Building,
Gangtok - 737 101.
4. Shri S. C. Bhowal,
Presenting Officer,
A.O./TR,
Office of the G.M. Telecom,
Zero Point, Cherry Building,
Gangtok - 737 101.
5. Shri N. C. Ghosh,
Former Arbitrator/Deputy General Manager (Operation),
West Bengal Telecom Circle,
C.T.O. Building - Top Floor,
8 - Red Cross Road,
Kolkata -1,
West Bengal **... Respondents**

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For petitioner : Shri A. Moulik assisted by Miss Kesang D. Bhutia, Advocates.

For respondents : Shri Karma Thinlay, Advocate.

**PRESENT : THE HON'BLE SHRI JUSTICE R.K. PATRA, CHIEF JUSTICE.
THE HON'BLE SHRI JUSTICE N. SURJAMANI SINGH, JUDGE.**

Date of judgment : 22nd March, 2004.

J U D G M E N T

R.K. PATRA, C.J.

By this petition under Articles 226 and 227 of the Constitution of India the petitioner seeks to assail the validity of the award dated 11.4.2002 (annexure 9) given by the arbitrator determining a sum of Rs.48,129/- as his outstanding dues in respect of New Delhi telephone no. 3792101.

2. The case of the petitioner is that he is a former member of Parliament from Sikkim Parliamentary Constituency for the period from 2.1.1989 to 13.3.1991. As a member of Parliament he was provided with two telephone connections, one for his office-cum-residence at Gangtok bearing no.2348 (re-numbered as 22348) and another telephone no.3792101 installed in his office at New Sikkim House, New Delhi. A public interest litigation (writ petition no. 902 of 1997) came to be filed in the High Court of Judicature at Bombay alleging non-payment of outstanding dues in respect of telephones used by the ex-members of

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Parliament. The said writ petition was disposed of by order dated 2.8.1999 with an observation that the Telecom Department would take appropriate action to recover the amount due from the former members of Parliament. Following the disposal of the said writ petition, the central government in exercise of powers conferred under section 7-B of the Indian Telegraph Act, 1885 appointed N. C. Ghosh, Deputy General Manager (OP), West Bengal Telecom Circle, Kolkata as the arbitrator to decide the dispute between the petitioner and the Telecom Department with regard to the claim of bills relating to the aforesaid two telephones. The petitioner was neither aware of the order of the Bombay High Court nor the provision of law under which the Deputy General Manager came to be appointed as the arbitrator. The Telecom Department thereafter filed its statement before the arbitrator claiming a sum of Rs.62,940/- as outstanding (Rs.48,129/- for Delhi telephone number and Rs.14,811/- for Sikkim telephone number) with interest thereon @18% per annum. The arbitrator thereupon issued notice dated 27.9.2001 requiring the petitioner to submit his reply. On receipt of the above notice the petitioner submitted an application (annexure 5) before the arbitrator saying that in absence of detailed particulars of telephonic calls no effective reply could be given and accordingly requested the arbitrator to direct the presenting officer of the

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department to furnish necessary documents in order to enable him to give an effective and proper objection. While such correspondence was going on between the petitioner and the arbitrator, the General Manager Telecom, B.S.N.L., Gangtok (respondent no.3) in his letter dated 20.12.2001 (annexure 6) informed the arbitrator that because of technical problem no billing record or any other record was available in respect of telephone no. GTK-2348 and therefore the outstanding dues of Rs.14,811/- in respect of the said telephone stood settled as 'written off'. The arbitrator thereafter in his letter dated 12.2.2002 (annexure 7) desired to know from the petitioner to confirm as to whether the case against him has been settled in terms of the letter dated 20.12.2001 (annexure 6). In view of the fact that the alleged claim in respect of telephone no. GTK-2348 stood 'written off' as intimated in the letter at annexure 6, he informed the arbitrator in the letter dated 10.3.2002 (annexure 8) stating that the matter stood settled. The arbitrator however without applying his mind and without giving any opportunity of hearing to the petitioner passed the impugned award (annexure 9) holding that the amount of Rs.48,129/- is outstanding against him with regard to the New Delhi telephone number. Being aggrieved by the said award the petitioner filed Civil Misc. Application (Arb.) no. 3 of 2003 under section 34 of the Arbitration and Conciliation Act,

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1996 read with sections 30 and 33 of the Indian Arbitration Act, 1940 before the learned District Judge (E & N) Sikkim to set it aside. He took that steps because he was totally in dark as to how the arbitrator came to be appointed to decide the dispute between the petitioner and the department. The learned District Judge by order dated 2.3.2003 rejected the application observing that he has no jurisdiction to entertain it because the award was given by the arbitrator under section 7-B of the Indian Telegraph Act, 1885.

3. Shri Moulik, learned counsel for the petitioner contended that the impugned award was rendered by the arbitrator without giving him an opportunity of hearing. He also submitted that the award is the outcome of non-application of mind *inasmuch* as the petitioner had never admitted the alleged outstanding dues against the Delhi telephone number and his admission that the dispute has been settled was confined only in respect of Gangtok telephone no. 2348.

Shri Karma Thinlay, learned counsel for the respondents rightly and very fairly submitted that the petitioner was not given adequate opportunity of hearing before the liability was fixed on him as per the impugned award.

4. On due consideration of the submissions of counsel for parties, we have no hesitation to hold that the

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impugned award suffers from the vice of non-application of mind. As already noted, the whole claim of the department was in respect of Gangtok telephone no. 2348 and Delhi telephone no. 3792101. The General Manager Telecom, B.S.N.L., Gangtok (respondent no.3) in his letter 20.12.2001 (annexure 6) has 'written-off' the claim of dues of Rs.14,811/- relating to the telephone no. GTK-2348 on the ground that no billing record was available on account of technical problem such as holding up of electro-mechanical switches against excess metering. This means that the department has 'nil' claim with regard to the telephone no. GTK-2348 and the dispute between the petitioner and the department stood settled in respect of that claim only. The reply of the petitioner in his letter dated 10.3.2002 (annexure 8) was mis-construed and mis-read by the arbitrator as his admission of the claim laid in respect of the Delhi telephone number. The petitioner has never admitted the alleged outstanding dues against any of the telephone numbers. What he admitted was that the dispute with regard to the telephone no. GTK-2348 stood settled as the department itself has decided to 'write-off' the claim. In view of the denial of the claim with regard to the Delhi telephone number the arbitrator has clearly erred in fixing the liability against him without giving any opportunity of hearing.

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There has been thus violation of the principle of natural justice. The award therefore is vulnerable.

5. For the reasons mentioned above, the impugned award of the arbitrator dated 11.4.2002 (annexure 9) cannot be sustained in law which is hereby set aside. The arbitrator is free to decide the claim of Rs.48,129/- of the department with regard to the Delhi telephone no. 3792101 after giving adequate opportunity of hearing to the petitioner.

6. In the result, the writ petition is allowed. No costs.


(**R. K. Patra**)
Chief Justice
22.03.2004

I agree.


(**N. Surjamani Singh**)
Judge
22.03.2004