

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2593 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

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RAJENDRAKUMAR P SHARMA

Versus

GENERAL MANAGER

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Appearance:

MR DK NAKRANI for Petitioner

MR JAYANT PATEL for Respondent No. 3

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 31/01/97

ORAL JUDGEMENT

Rule.

Heard both the parties at length and therefore, I  
proceed to decide the petition finally on merits.

This petition is filed by the petitioner alleging that telephone no.422253 and 429581 were disconnected illegally and without issuing any show cause notice and as the said action is against the principles of natural justice, the respondents should be directed to reconnect the said telephone connection. The petitioner has also further claimed that his private wire (Hotline no. 138) was also arbitrarily and illegally disconnected and that the same should be also reconnected. He also wants a direction to the respondent to shift the telephone no.1; 677896 from Udhna to Sahara Darwaja, Surat.

2. From the documents produced along with the petition it is very difficult to hold that the petitioner had made any representation for shifting the telephone no. 678696 from Udhna to Sahara Darwaja, Surat. It is not possible from the materials on record to hold that in spite of his making a representation for shifting and showing his readiness to pay up the costs of shifting the respondent authorities had not shifted the telephone. Therefore, that prayer of the petitioner is not properly founded in this petition and therefore, the same must be rejected by observing that the petitioner himself has to make a representation to the respondents to shift the said telephone no. 678696 from Udhna to the place of his desire and to make payment of necessary charges for shifting of the said telephone to the respondent and only on his doing so and the respondents failure to shift the same, there would be a cause of action for him before the court today. But as the case stands today, there is no such case. I therefore reject the prayer by making it clear the petitioner is entitled to make a representation to the respondent-authorities for shifting the said telephone no. 678696 from Udhna.

3. As regards his private hotline no. 138, it is the grievance of the petitioner that said hotline no. 138 was not regularly functioning and that he had made number of complaints regarding the same but in spite of the same he has been billed for the hotline illegally and improperly. From the materials on record it is quite that the petitioner was served with a notice on 6.3.96 informing him various dues from him towards various telephones which he is having in his telephone booth and it was further informed that if he fails to clear the arrears of the bills of the said telephone numbers, said telephone numbers would be disconnected. Therefore, in view of the said notice, it is not possible to hold that disconnection of the telephone numbers was without any notice. As regards hotline no.138 in the letter written

by the petitioner himself i which was received by the respondents on 8.3.96 which is at Annexure.B, the petitioner has admitted that said telephone was disconnected as he had informed them to disconnect the same. Therefore, as regards the hotline no.138, it could not not be said that the same has been disconnected illegally or improperly.

4. It seems that there is a dispute between the petitioner and the respondents regarding the bills no. 2494 and 4494 for Rs. 13,800/- and Rs. 14,890/- for the hotline no.138. Now as regards these disputed bills, in view of the provisions of section 7(B) of the Indian Telegraphs Act 1885, said dispute will have to be referred to an Arbitrator. The Division Bench of this Court in the case of Govindbhai Thovadia vs. Chief General Manager 1996(1) G.L.R. 413 has held that when there is a dispute regarding the correctness of telephone bills, said dispute could not be considered by the court under article 226 of the Constitution of India and that such a dispute is covered under the provisions of section 7(B) of the Indian Telegraphs Act 1885 and consequently such dispute will have to be referred to an Arbitrator. Therefore, the said dispute regarding the bills of hotline no.138 as well as the disputes regarding bills of other telephone numbers, the petitioner will have to make a representation to the respondents specifying in the said representation what are his specific dispute as regards all the telephone numbers as well as as regards which bill and then to request the respondents to refer the said disputes under Section 7(B) of the Indian Telegraphs Act 1885.

5. The letter dated 6.3.96 at Annexure A issued by the respondent makes it clear that his telephone no. 439581 was disconnected on account of non payment of the bill of the said telephone and he was informed that on payment of the bills same would be reconnected. Therefore, it is quite obvious that the claim of the petitioner that said telephone was arbitrarily disconnected by the respondents could not be accepted. Similarly as regards telephone no. 422253 it has been clearly mentioned in the said Annexure A that the bills for Rs. 3005, Rs. 7760/- and Rs. 3739/- dated 7.4.94, 11.6.94 and 7.7.94 against the said telephone were required to be cleared and the petitioner was asked to clear the said arrears failing which he was informed that his telephone would be disconnected. Learned advocate for the petitioner has also got a dispute regarding the bill of telephone no. 422253 but when it is an admitted fact that bills of the said telephone are not paid by the

petitioner , in spite of demands being made for the same by the respondents, it could not be said that his telephone has been arbitrarily and illegally disconnected. As regards the correctness and genuineness of the said bills he can raise that dispute and ask the respondents to make a reference to the Arbitrator in view of the provisions of section 7(B) of the Indian Telegraphs Act 1885. But it is not possible for this court to use any discretionary power under article 226 of the Constitution and direct the respondent to reconnect the said telephone.

6. It was asked to the learned advocate for the petitioner whether the petitioner is ready and willing to pay the outstanding bills by keeping his dispute open so as to direct the respondents to give reconnection to him on payment of the bills, but the learned advocate for the petitioner expressed the inability of his client to pay those bills. Therefore, in the circumstances, it is not possible to pass any order in favour of the petitioner to reconnect the his telephone.

7. Therefore, in view of the above discussion there seems to be only dispute regarding the bills of disconnection of the telephone of the petitioner but as regards the said disputes the petitioner should make a detailed representation to the respondent raising the dispute in the said representation and requesting the respondents to make a reference to an Arbitrator. in view of the provisions of section 7(B) of the Indian Telegraphs Act 1885. If the petitioner happens to make such a representation, the respondents should take a decision on the same and make a reference to an Arbitrator within 6 weeks from the date of receipt of the said representation. In the circumstances the petition deserves to be rejected and the same is accordingly rejected. Rule is discharged. No order as to costs.

(S.D.Pandit.J)