

SAJI GEEVARGHESE

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v.

ACCOUNTS OFFICER (TELEPHONE REVENUE) & ORS.
(Civil Appeal No. 5912 of 2008)

SEPTEMBER 30, 2008

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[R.V. RAVEENDRAN AND LOKESHWAR SINGH
PANTA, JJ.]

Telegraph Act, 1978; s.7B:

Excess billing – Telephone subscriber making a complaint alleging excess metering/misuse of his telephone line but made payment Receipt of another bill by subscriber also showing excess – billing – Complaints in writing – Department informing the subscriber to settle the bill pending enquiry – Yet another bill showing excess billing received by subscriber – Department raising demand for payment of bills – Challenged by subscriber – High Court directing Department to refer the dispute to statutory arbitration in terms of provision u/s.7 of the Act – Arbitrator made an award allowing rebate in one of the disputed bills dated 11.9.1995 but upheld other bills – Challenge to – Dismissed by Single Judge of the High Court holding that findings of Arbitrator, a quasi-judicial authority, cannot be disturbed by the High Court in exercise of power of judicial review under Article 226 of the Constitution – Affirmed by Division Bench of the High Court – Correctness of – Held: In terms of s.7B of the Act, award made by the Arbitrator is final and conclusive – Only remedy available to the party aggrieved by the award is to seek judicial review by filing a writ petition – Award suffers from non-application of mind by the Arbitrator leading to apparent error of facts and law – Bill dated 11.9.1995 is a consolidated bill covering earlier bills dated 11.7.1995, 11.5.1995 and 11.3.1995, which stood cancelled – Arbitrator erred in upholding the bill dated 11.7.1995 without noticing that the same was already included in the bill dated 11.9.1995 –

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- A Arbitrator ought to have considered the question as to what relief should have been given to the subscriber when errors in billing due to lack of monitoring and inspection of the department noticed – Had the spurts in calls been detected in time, verification/inspection/monitoring mechanism could
- B have been activated and real reasons for spurts would have been known and the subscriber would not have lost his valuable right to complaining against excessive billing – Though the Arbitrator recorded a finding that there was no monitoring done by the department in spite of noticing spurts
- C which led to defective billing but it gave only a marginal rebate to subscriber – These visible errors on the face of the award have totally been ignored by the High Court by wrongly applying this principle that the Court can not sit over Arbitral award – In such a situation, justice can be done by restricting
- D the billing in regard to the bills against which written complaint was filed promptly, to the average of the bills for one year prior to the disputed period – The department directed to send revised bill accordingly – Constitution of India, 1950 – Article 226 – Arbitrator – Award – Court's power to review.
- E Appellant, a telephone subscriber, received a bill dated 11.1.1995 showing excess billing. He had complained orally to the department but paid the bill. He received another bill dated 11.7.1995 also showing excess billing. He lodged a complaint with respondent
- F No.1 alleging excess metering and/or misuse of the telephone line. Respondent No.1 informed that the matter has been enquired into and called upon him to settle the bill. In the meantime, he was served with yet another excess bill dated 11.9.1995. Appellant did not pay these bills and requested for action on his complaint. However, the respondent issued a notice demanding payment of arrears. Appellant approached the High Court. The High Court directed the respondent to settle the dispute by arbitration. The department appointed an Arbitrator and referred the bills in question for arbitration. The Arbitrator
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found that the appellant was eligible for rebate by giving the benefit of doubt in respect of disputed bill dated 11.9.1995 only, but upheld the other two disputed bills. Aggrieved, the appellant challenged the award. Single Judge of the High Court held that it was not possible to disturb the findings recorded by the Arbitrator who was a quasi-judicial authority, in judicial review under Article 226 of the Constitution of India. On appeal, Division Bench of the High Court upheld the award. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. Section 7B of the Telegraph Act, 1885 makes the awards of Arbitrators final and conclusive between parties. The only remedy available to a subscriber aggrieved by an award is to seek judicial review by way of a writ petition. The High Court will not however sit in appeal over the Award, but will only examine its correctness and legality, within the limited confines of judicial review. The facts disclosed by the telecom department in the affidavits filed by the department before the High Court, show that the award of the Arbitrator suffers from non-application of mind which had led to several apparent, in fact, glaring errors of fact and law. [Para 7] [12-H; 13-A-C]

M.L. Jaggi v. Mahanagar Telephone Nigam Ltd., [1996] 3 SCC 119, relied on.

1.2. The affidavits of the department clearly shows that the bill dated 11.9.1995 for 403630 calls, is a consolidated bill for the period 25.12.1994 to 25.8.1995 and it includes the amount due for the calls made during the period covered by the bill dated 11.7.1995. Having regard to the bill dated 11.9.1995 for 403630 calls, the earlier bills dated 11.3.1995, 11.5.1995 and 11.7.1995 for 2800, 4100 and 62770 calls got cancelled. As the period

- A covered by the bill dated 11.7.1995 was covered by the subsequent bill dated 11.9.1995, the Arbitrator ought to have held that bill dated 11.7.1995 was not payable. But he has mechanically and without application of mind, upheld the bill dated 11.7.1995 as also the bill dated
- B 11.9.1995 without noticing that the bill dated 11.7.1995 cannot survive in view of the bill dated 11.9.1995.

[Para 8] [13-D-G]

1.3. The bill dated 11.7.1995 was prepared for 62770 units assuming that between the two reading, the meter had completed one revolution, that is it had reached 82886 to 99999 and then started from '0' to 45655. But it is alleged that between the two readings it had completed one more complete revolution, that is the meter ran from 82886 to 99999, then it ran one full round from '0' to '99999', and then again started from '0' to 45655. According to the department the number of calls recorded in the meter was therefore 162, 769 units and not 62, 770 units. But the missing of one revolution cannot offer any explanation on the part of the Department as to why the Bill dated 11.3.1995 was only for 2800 units and the Bill dated 11.5.1995 was only for 4100 units. The Bill dated 11.3.1995 covered the period 25.12.1994 to 25.2.1995. For This period, the opening reading was 75985 and the closing reading was 65508.

F There is no way the completion of revolution could have been ignored and the number of units was $(99999 - 75985) + (65508) = 89523$. There is no way the number of units could be shown as only 2800 for the period 25.12.1994 to 25.2.1995. But the bill was only for 2800 units. This remains unexplained. [Paras 9 and 10] [13-H; 14-A-D; 15-A-C]

1.4. The Bill dated 11.5.1995 covered the period 25.2.1995 to 25.4.1995. The opening reading was 65508 and the closing reading was 82886. It is stated by the

department that during the billing period one revolution A was completed and therefore, the number of units was $(99999-65508) + (82886) = 117378$. Even if the completion of the revolution was missed, the Bill for the period should have been for 17378 units (that is 82886-65509). B But the bill for 11.5.1995 is only for 4100 units. This is also not explained. Therefore, it is clear that missing or overlooking the completions of revolutions could not be the real reason for the alleged underbilling for the periods covered by the bills 11.3.1995 and 11.5.1995. This becomes relevant because the Arbitrator did not find any irregularity in the bills for the periods covered by the Bills dated 11.3.1995 and 11.5.1995. [Para 10] [14-G, H; 15-A, B]

1.5. The Arbitrator having recorded a finding that there was a lack of monitoring by the department in respect of calls originating from Appellant's telephone, has failed to consider its serious consequences on the subscriber, with reference to the facts of the case. He has routinely given a 10% rebate by directing a rebate of 40000 calls in the bill dated 11.9.1995 on account of "benefit of doubt". This is arbitrary. He ought to have considered the question as to what should be the relief when the errors in billing were due to lack of monitoring and inspection of the department and the department claimed there was a huge underbilling for a back-period and sought to rectify such underbilling. [Para 11] [15-D, E]

2.1. The Department's guidelines for disposing of excess billing complaints give an indication as to the consequences of lack of monitoring and inspection whenever there were unexplained spurts. They also lays down the procedure when spurts in calls are noticed. [Para 12] [15-F]

2.2. What becomes apparent from the guidelines, is the obligation on the part of the department to record the meter reading fortnightly and if there is a sudden spurt, H

- A place the telephone line under observation and depute responsible staff to check whether there was any special reason giving rise to the spurts. The reason is apparent. Only contemporaneous investigation and checking can disclose the real reason for the spurt. Any amount of
- B subsequent monitoring may not be of any use to identify the real cause for the spurt unless the cause is faulty meter/system and that fault had continued. [Para 12A] [18-G, H; 19-A, B]

- C 2.3. In the instant case, the stand of the department is that meter is capable of recording a maximum of 99999 units, and after completing one revolution of 99999 units, the meter will again start from the reading '0' (zero); that the meter had completed one revolution each during the periods 10.1.1995 to 25.1.1995; 10.3.1995 to 25.3.1995; 25.4.1995 to 10.5.1995 and 25.5.1995 to 10.6.1995; that the completion of such revolutions in January, March, April–May and May–June of 1995 was neither noticed nor recorded by the department and consequently they had sent bills showing lesser number of calls than the actual numbers.
- E The department claims that after receiving the complaint dated 28.7.1995 from the appellant, it inspected the installation and also verified the meter readings and discovered that the completion of four revolutions in January, March, April–May and May–June, 1995, had been missed while billing; and that therefore, it prepared a consolidated bill dated 11.9.1995 for the period 25.12.1994 to 25.8.1995 (covering the four bimonthly periods of bills dated 11.3.1995, 11.5.1995, 11.7.1995 and 11.9.1995), setting right the omissions and errors. It is thus clear that during the billing period for the bill dated 11.9.1995 (25.6.1995 to 25.8.1995), the appellant did not make 403630 calls, but had made only 33960 calls. [Para 13] [19-B, C, D, E, F]

- H 2.4. When excess billing was noticed by the Subscriber in the Bill dated 11.1.1995 he complained to

the Junior Engineer concerned, but paid the bill. He did not complain when received the bills dated 11.3.1995 and 11.5.1995, as they were showing normal number of calls. He again complained when there was excess billing in the bill dated 11.7.1995. Only thereafter the department inspected the system and initiated verification of recording. On such verification, it claims to have found no excess billing, but underbilling during the period covered by the bills dated 11.3.1995, 11.5.1995 and 11.7.1995 and consequently sent a revised consolidated bill dated 11.9.1995, by rectifying the alleged underbilling. [Para 13] [20-D, E, F]

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2.5. By reason of the omissions and negligence by the officers of the department, the appellant has been burdened with a bill for 403630 units for 8 months (25.12.1994 to 25.8.1995) as against the normal average bimonthly billing of about 10000 to 15000 calls or 40000 to 60000 calls for the said eight months. [Para 14] [21-D]

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2.6. The difference in consequences where retrospective correction results in regularization or normalisation of the bills, and where retrospective correction leads to excessive billing is significant. [Para 15] [21-F]

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2.7. If the completion of revolutions had been noticed and if the bills for such high number of calls had been sent in time, the appellant would have had an opportunity to complain against the excess billing and consequently the department would have been in a position to monitor the system and ensure that the defects were rectified. In addition it would have also been possible to verify as to whether there was any misuse or deliberate mischief by the staff and/or other subscribers, or whether the excess use was actually by the subscriber himself. This very valuable right was denied to the subscriber on account of the failure of the department to notice the several

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- A **alleged completion of revolutions resulting in steep spurts.** In fact the guidelines clearly state that if there was a spurt even in one fortnight reading, action should be taken. In this case spurts continued for about 16 fortnights, but remained unnoticed by the department.
- B **Consequences of such defaults and negligence by the department cannot be visited upon the subscriber by way of increased claims for back-periods.** [Para 16] [22-D, E, F, G]

2.8. Where the department has clear and acceptable

- C **evidence in support of omissions or underbilling which is capable of verification, it may be possible to revise the back-period bills.** But where the belated correction of the alleged omissions leads to a huge increase in the normal billing and where there is no acceptable evidence
- D **supporting such increased claim, then the subscriber having been denied the opportunity to protest or object to the increased claim and secure monitoring of the installation or inspection of the system, cannot be burdened with a revised increased billing.** [Para 17] [23-A, B, C]

3.1. In the instant case, the Arbitrator clearly recorded a finding that there was no monitoring by the department inspite of spurts and that had led to defective billing. But he gave only a marginal rebate of 10% without any logical

- F **reason for such a small rebate. He also directed double payments. He also ignored the admissions by the department. He upheld a retrospective revision resulting in a huge claim. These visible errors on the face of the award, which ought to have shocked the judicial conscience have been totally ignored by the Single Judge and by the Division Bench of the High Court, by a wrong application of the principle that courts will not sit in judgment over Arbitral Awards. The award of the Arbitrator is therefore liable to be set aside.** [Para 18] [23-D, E, F]

H 3.2. To put an end to the litigation and to do complete

justice, this Court propose to modify the Bills. The faulty A
billing was on account of the negligence of the department; and as a result of such negligence, the valuable right of the subscriber to object to the increase and secure monitoring/inspection has been taken away. Therefore, justice can be done in such a situation only B
by restricting the billing to the average of the bills for one year prior to the disputed period. There is no proper billing for two months, during the previous year, it is proposed to take the average of last five bimonthly bills C
before the disputed period. This shows the average bimonthly use to 15054, rounded off to 15, 000. Accordingly, the orders of the High Court and the Award D
of the Arbitrator are set aside and directed as follows :

(a) As the bill dated 11.1.1995 for Rs.79, 170/- has D
been paid without any protest in writing, and the written complaint was filed only six months later, the appellant cannot avoid liability, even if there might have been some steep spurts during that period; and

(b) In regard to the period 25.12.1994 to 25.8.1995 E
covered by the consolidated bill dated 11.9.1995, the chargeable units are restricted to 60000 (sixty thousand) in place of the bills dated 11.3.1995, 11.5.1995, 11.7.1995 and 11.9.1995. The department is directed to send a revised bill relating to the said period to the subscriber. [Paras 19 and 20] [23-G, H; 24-A, B, C, D, E, F] F

Case Law Reference :

[1996] 3 SCC 119 relied on Para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. G
5912 of 2008.

From the final Judgment and Order dated 16.6.2005 of the High Court of Kerala at Ernakulam in W.A. No. 767 of 2005.

Dr. M.P. Raju, Abraham M. Pattiyan, Manju A. Pattiyan, H

A Jose Abraham, Suma Jose and Ashwani Bhardwaj for the Appellant.

K.C. Kaushik, Rahul Kaushik, Shilpi Kaushik, Ashok Kumar Singh and P.V. Dinesh for the Respondents.

B The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J. 1. Delay condoned. Leave granted. Heard the learned counsel. This appeal relates to a telephone subscriber's grievance in regard to excess billing.

C 2. Appellant received a bill dated 11.7.1995 for Rs.91,621/- in regard to his telephone (No.239473 of Pattazhi, Kollam). On 28.7.1995 the appellant lodged a complaint with the first respondent alleging excess metering and/or misuse in regard to his telephone. He stated that no action had been taken in

D spite of his meeting the concerned Junior Engineer and complaining about the bill. He requested that the demand for the payment of the Bill may be kept 'pending' till enquiry into his complaint. (According to the appellant, he had earlier received another excess bill (dated 11.1.1995) for Rs.79170/-

E and he had orally complained about it, but paid the amount in view of an assurance of the telecom department to enquire into his complaint). The first respondent sent a reply dated 8.8.1995 informing him that the matter was being enquired into and called upon him to settle the bill, pending such enquiry. When matters

F stood thus, the appellant was served another bill dated 11.9.1995 for Rs.581,717/- for 403630 calls. As the amounts of bills dated 11.7.1995 and 11.9.1995 were not paid, the telephone was disconnected on 27.9.1995. The respondents also issued a notice dated 30.11.1995 demanding payment of

G the arrears of Rs.677,338/- by 13.12.1995. They also threatened to permanently close the telephone and recover the amount as revenue arrears, if the amount was not paid. Though appellant reiterated his request for action on his complaint, the department, by letter dated 15.3.1996 merely reiterated the

H demand for payment. Appellant therefore approached the High

Court for relief. The High Court by order dated 26.4.1996 A
disposed of the petition with a direction to the Telecom
department to refer the dispute to statutory arbitration under
section 7B of the Telegraph Act, 1885.

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3. In pursuance of the above, the department appointed
the fourth respondent as Arbitrator on 1.8.1996 and referred
the excess billing dispute in regard to the following three bills
for arbitration:

<u>Date of Bill</u>	<u>Number of Calls</u>	<u>Bill Amount</u>
(i) 11.01.1995	54300	Rs. 79,170/-
(ii) 11.07.1995	62270	Rs. 91,621/-
(iii) 11.09.1995	403630	Rs. 5,81,717/-

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The appellant contended before the Arbitrator that the bills for
1994 would show that the number of calls made (bimonthly)
were only 1580, 2860, 3310 and 13220, as per bills dated
11.5.1994, 11.7.1994, 11.9.1994 and 11.11.1994. Even in
1995, that is, for the periods 25.12.1994 to 24.2.1995 and
25.2.1995 to 24.4.1995, the number of calls were only 2800
and 4100 as per bills dated 11.3.1995 and 11.5.1995. He
pointed out that the Bill dated 11.1.1995 for the period
25.10.1994 to 25.12.1994, bill dated 11.7.1995 for the period
25.4.1995 to 25.6.1995 and bill dated 11.9.1995 covering the
period upto 25.8.1995 showed an unbelievably large number
of calls as having been made (54300, 62270 and 403630
respectively). He attributed the unexplained spurts to some fault
in the system (metering circuit) or some collusive mischief by
the telephone staff in collusion with other users.

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4. The telecom department contended before the
Arbitrator that there were no faults or defects in the system and
as the telephone was connected to an electronic exchange
there was no chance of misuse or excess metering. They
alleged that the appellant was a heavy caller and was probably

A using the telephone for international calls and unauthorized FAX facility. They submitted that there was no error in the bills.

5. The Arbitrator made an award dated 9.1.1997. After referring to the facts he concluded : "On deep analysis of the case, I found that there was no proper monitoring of the calls originated from the petitioner's telephone by Telegraph Authority and I found that the appellant was eligible for rebate and by extending the benefit of doubt, I allow 40000 calls in favour of the petitioner, in the disputed bill dated 11.9.1995 issued for Rs.5,81,717/-... I do not find any justification to allow any rebate in favour of the petitioner for the disputed bills dated 11.1.1995 and 11.7.1995." Accordingly, he upheld the three bills for Rs.79,170/-, Rs.91,621/- and Rs.5,81,717/-, and granted limited relief to an extent of 40,000 calls in regard to the bill dated 11.9.1995.

D 6. The appellant challenged the said award before the Kerala High Court. A learned Single Judge of the Kerala High Court by order dated 24.7.2002 dismissed the appellant's writ petition, being of the view that it was not possible to disturb the findings recorded by the Arbitrator who was a quasi judicial authority, in judicial review under Article 226 of the Constitution of India. The appellant filed a writ appeal which was also dismissed on 16.6.2005. The Division Bench upheld the award on the following reasoning:

F "The petitioner's telephone was having STD/ISD facility. There is no evidence of misuse of the instrument either by the department staff or by any outsider. Enquiry was also conducted on the basis of the complaint of the petitioner. If the petitioner had got any doubt regarding the system, he could have availed of the dynamic locking facility which he has not availed....."

The said judgment is under challenge in this appeal.

H 7. Section 7B of the Telegraph Act, 1885 makes the

awards of Arbitrators final and conclusive between parties. The only remedy available to a subscriber aggrieved by an award is to seek judicial review by way of a writ petition. The High Court will not however sit in appeal over the Award, but will only examine its correctness and legality, within the limited confines of judicial review. (*Vide M.L. Jaggi v. Mahanagar Telephone Nigam Ltd*, [1996] 3 SCC 119). We have examined the award keeping in view the aforesaid principles. The facts disclosed by the telecom department in the affidavits filed by the department before the High Court, show that the award of the Arbitrator suffers from non-application of mind which had led to several apparent, in fact, glaring errors of fact and law. We may refer to some of them briefly.

8. The award of the Arbitrator upholds the bill dated 11.7.1995 for Rs.91,671/- relating to the period 26.4.1995 to 25.6.1995 and directs the subscriber to pay the said amount. The affidavits the department clearly shows that the bill dated 11.9.1995 for 403630 calls, is a consolidated bill for the period 25.12.1994 to 25.8.1995 and it includes the amount due for the calls made during the period covered by the bill dated 11.7.1995 (as also the period covered by two other bills dated 11.3.1995 and 11.5.1995). In other words, having regard to the bill dated 11.9.1995 for 403630 calls, the earlier bills dated 11.3.1995, 11.5.1995 and 11.7.1995 for 2800, 4100 and 62770 calls got cancelled. As the period covered by the bill dated 11.7.1995 was covered by the subsequent bill dated 11.9.1995, the Arbitrator ought to have held that bill dated 11.7.1995 was not payable. But he has mechanically and without application of mind, upheld the bill dated 11.7.1995 as also the bill dated 11.9.1995 without noticing that the bill dated 11.7.1995 cannot survive in view of the bill dated 11.9.1995.

9. The Arbitrator upheld the bills dated 11.7.1995 and 11.9.1995 by accepting the explanation of the telecom department that completion of several revolutions of the meter had been missed and that had lead to underbilling in the bills

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- A dated 11.3.1995, 11.5.1995 and 11.7.1995 and that was rectified in the consolidated bill dated 11.9.1995. According to the department, the meter was a five digit meter and could record the numbers running from '0' to '99999'. After reaching '99999', the meter would again start recording from '0'. By way
- B of illustration, it was stated that for the period 25.4.1995 to 25.6.1995 covered by the bill dated 11.7.1995, the opening reading was 82886 and closing reading was 45655. The bill dated 11.7.1995 was prepared for 62770 units assuming that between the two reading, the meter had completed an
- C revolution, that is it had reached 82886 to 99999 and then started from '0' to 45655. But it is alleged that between the two readings it had completed one more complete revolution, that is the meter ran from 82886 to 99999, then it ran one full round from '0' to '99999', and then again started from '0' to 45655.
- D According to the department the number of called meter was therefore 162,769 units and not 62,770 units. For this purpose, the department has relied on the fortnightly meter reading record.

- E 10. But the missing of one revolution cannot offer any explanation as to why the Bill dated 11.3.1995 was only for 2800 units and the Bill dated 11.5.1995 was only for 4100 units. The Bill dated 11.3.1995 covered the period 25.12.1994 to 25.2.1995. For this period, the opening reading was 75985 and the closing reading was 65508. There is no way the
- F completion of revolution could have been ignored and the number of units was $(99999 - 75985) + (65508) = 89523$. There is no way the number of units could be shown as only 2800 for the period 25.12.1994 to 25.2.1995. But the bill was only for 2800 units. This remains unexplained. The Bill dated 11.5.1995
- G covered the period 25.2.1995 to 25.4.1995. The opening reading was 65508 and the closing reading was 82886. It is stated by the department that during the billing period one revolution was completed and therefore, the number of units was $(99999 - 65508) + (82886) = 117378$. Even if the completion of the revolution was missed, the Bill for the period should have
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been for 17378 units (that is 82886-65509). But the bill for 11.5.1995 is only for 4100 units. This is also not explained. Therefore, it is clear that missing or overlooking the completions of revolutions could not be the real reason for the alleged underbilling for the periods covered by the bills 11.3.1995 and 11.5.1995. This becomes relevant because the Arbitrator did not find any irregularity in the bills for the periods covered by the Bills dated 11.3.1995 and 11.5.1995 which were for 2800 units and 4100 units. But the department ultimately charged the subscriber for 89523 calls (as against 2800 calls shown in the Bill dated 11.3.1995) and for 117378 calls (as against 4100 calls shown in the Bill dated 11.5.1995) for the said periods under the Bill dated 11.9.1995.

11. The Arbitrator having recorded a finding that there was a lack of monitoring by the department in respect of calls originating from Appellant's telephone, has failed to consider its serious consequences on the subscriber, with reference to the facts of the case. He has routinely given a 10% rebate by directing a rebate of 40000 calls in the bill dated 11.9.1995 on account of "benefit of doubt". This is arbitrary. He ought to have considered the question as to what should be the relief when the errors in billing were due to lack of monitoring and inspection of the department and the department claimed there was a huge underbilling for a back-period and sought to rectify such underbilling.

12. The Department's guidelines give an indication as to the consequences of lack of monitoring and inspection whenever there were unexplained spurts. They also lay down the procedure when spurts in calls are noticed. On 10.4.2008, this Court directed the department to produce the departmental guidelines for disposing of excess billing complaints. Initially the respondent produced the current guidelines dated 19.10.2005 along with an affidavit. By subsequent order dated 3.9.2008, this Court directed the respondents to produce the guidelines in force during the disputed billing period (1994-95). In

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A response to it, the department has produced the circular dated 9.4.1986 as the relevant guidelines applicable, along with its affidavit dated 23.9.2008. We extract the relevant provisions from the said circular:

B *"4. Avoiding excess billing complaints"*

(4.1) In general, excess billing complaints arise from telephones having STD facility. They arise because of:

C (a) the subscriber, his family, friends and employees having used STD and not being conscious of the extent to which they have used it, or

(b) a fault in the metering circuit, or some transient fault in the system; and

D (c) possible deliberate mischief by other subscribers in league with our staff.

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E (4.3) We have to be vigilant about 4.1(b) and ensure that as far as possible, metering circuits are tested and kept in proper order.

F (4.4) In regard to 4.1(c) we must ensure that all possible points at which such mischief can take place are suitably guarded. D.Ps must be looked, access to unauthorised persons to sensitive areas in the Exchange should be avoided and in case of any suspicion about a particular member of the staff, suitable action must be taken.

G *5. Advance action in case of a possibility of an excess billing complaint.*

(5.1) Detailed instructions have been issued separately in regard to watching the meter readings of various subscribers and action to be taken on them.

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(5.2) These broadly consist of

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- (a) Meter readings being taken every fortnight;
- (b) Identifying all subscribers whose current fortnightly readings show a sudden spurt; and

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(c) In case of such sudden spurts being noticed, placing the telephone line on observation and deputing responsible staff to the subscriber's premises to check up that there has been no special occasion which might have given rise to such spurts.

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(5.3) In order to establish the Department's credibility and to satisfactorily investigate complaints about excess billing it is necessary that these steps are taken conscientiously. It appears that in many stations, *while meter readings are being taken regularly every fortnight, the difference is not being struck and all cases of spurts are not being brought out.*

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(5.4) In all cases, the meter readings registers must provide for the difference being noted. Somebody should be held personally responsible to identify and report all cases of spurts to the officer-in-charge. Failure in this regard must be taken notice of. *If an excess billing complaint reveals a spurt, which had not been reported, suitable educational and disciplinary notice should be taken of the concerned staff.*

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(5.5) As far as possible all telephone lines showing a sudden spurt should be put on observation. For this purpose immediate steps must be taken to provide suitable observation equipment in all exchanges having STD facilities, so that once a spurt is noted, the line is actually put on observation.

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A 6. *Investigation of an excess billing complaint*

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6.5 In this connection, it has been decided that no field investigation is called for to determine whether there was any occasion for a special spurt after a complaint has been received. *This should have been made, if justified, immediately after the spurt was noticed in the fortnightly readings. It has been noticed that no useful purpose is served by undertaking such investigations after an excess billing complaint has been received.*

Guidelines for decisions and conveying the same

7.1 In all cases in which the investigations reveal that

D (a) there has been significant spurt in a particular period;

(b) in case of a spurt, there had been some special occasion which might have given rise to a genuine spurt; and

E (c) the observations indicate genuine STD calls having been made from the subscriber's number no rebate may be granted and the complaint may be suitably informed with due courtesy explaining briefly the investigations carried out and the results thereof.

F 7.2. On the other hand, if it is found that there had been, in fact, a spurt for reasons unknown or there is a reasonable doubt as to the possible faults on the metering circuit or the subscribers' equipment or a reasonable doubt exists about the possibility of some mischief, the competent officer may grant suitable rebate."

G 12. What becomes apparent from the guidelines, is the obligation on the part of the department to record the meter reading fortnightly and if there is a sudden spurt, place the

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