

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**W.P.(C) 1892/2004**

Date of order: January 7, 2010

MAHANAGAR TELEPHONE NIGAM LIMITED

..... Petitioner

Through Ms. Leena Tuteja, Advocate

versus

M/S CHEM-EXPO (INDIA) LTD

..... Respondent

Through None

**CORAM:**

**HON'BLE DR. JUSTICE S. MURALIDHAR**

1. Whether reporters of local paper may be allowed to see the judgment? No
2. To be referred to the report or not? Yes
3. Whether the judgment should be referred in the digest? Yes

**ORDER**  
**07.01.2010**

1. This writ petition is directed against the Award dated 19<sup>th</sup> October 2002 whereby the learned Arbitrator-cum-Deputy General Manager (IT-2), Mahanagar Telephone Nigam Limited ('MTNL') allowed the claims made by the Respondent M/s. Chem Expo (India) Limited.

2. The background fact to the above Award is that in June 1988 the Respondent was allotted telephone No. 3985035 at its premises at 8-C/2, Rajpur Road, Delhi. According to the Respondent it has been paying the telephone bills regularly. However, the said telephone was disconnected on 15<sup>th</sup> March 2001. The Respondent had been issued a

letter by MTNL on 28<sup>th</sup> February 2001 stating that one Shri V.K. Gupta, a subscriber of telephone No. 3930378, had defaulted in the payment of dues against the said telephone to the tune of Rs.67,140/-. Further, one Shri Rajeshwar Prasad, subscriber of telephone No. 2927390, had defaulted in paying the dues against the said telephone to the tune of Rs.2,00,540/-. The case of the MTNL is that both Shri V.K. Gupta and Shri Rajeshwar Prasad had their respective telephones in the same premises as that of the Respondent and that there was a close nexus between them and the Respondent. It is averred that Shri V.K. Gupta was a brother of the Director of the Respondent.

3. Aggrieved by the disconnection of its telephone, the Respondent filed Suit No. 30 of 2001 in the court of the learned Additional District Judge ('ADJ'), Delhi. The Petitioner MTNL raised a preliminary objection that the suit was not maintainable in terms of Section 7 B of the Indian Telegraph Act. The said preliminary objection was upheld by the learned ADJ and by judgment dated 10<sup>th</sup> September 2001 the dispute between MTNL and the Respondent was referred to the Arbitrator to be appointed by the Central Government.

4. Consequent upon the above order, on 7<sup>th</sup> November 2001 the Government of India appointed Ms. Rajni Taneja, DGM (IT-1), MTNL as Arbitrator "for determination of dispute between M/s. Chem Expo (India) Private Limited and Department of Telecommunication in respect of telephone No. 3985035".

5. In the impugned Award, the learned Arbitrator identified the scope of the disputes as follows:

“1. The scope of arbitration is to establish whether a clear nexus exists between M/s. Chem Expo (India) Ltd. and Shri Rajeshwar Prasad solely in terms of common usage of telephone facility provided by MTNL, Delhi relating to Telephone No. 3895035 which was installed at the claimant’s office namely 8-C/2, Rajpur Road, Delhi – 110054 in June 1998.”

6. The learned Arbitrator observed that as regards the dispute arising out of dues of telephone No. 3930378 in the name of Shri V.K. Gupta, separate proceedings were pending before the Lok Adalat of MTNL and therefore, the said dispute was not within the scope of the proceedings before the Arbitrator. Documents were produced by MTNL before the learned Arbitrator to show the nexus between Shri V.K. Gupta and Shri Rajeshwar Prasad. However, there was nothing to show any nexus and proximity between the Respondent and Shri Rajeshwar Prasad. In the circumstances, the learned Arbitrator *inter alia* came to the following conclusion:

“1. M/s. Chem Expo (India) Ltd is not liable for payment of outstanding dues against the Telephone No. 2927390 in name of Shri Rajeshwar Prasad as the direct nexus between the two has not been established, more so, the telephone No. 3985035 in the name of M/s. Chem Expo (India) Ltd. which is under dispute was installed in June 1998 whereas the Telephone No. 2927390 in name

of Shri Rajeshwar Prasad was disconnected in July 1995 and thus, as a result of this Telephone No. 3985035 shall not be disconnected.”

7. Ms. Leena Tuteja, learned counsel for the Petitioner submits that once it is established that Shri V.K. Gupta was the brother of the Director of the Respondent company nothing more requires to be established for demonstrating the nexus. According to her, in terms of Rule 443 of the Indian Telegraph Rules (‘Rules’) once a default has been shown to be committed by a close relative or persons having close nexus with the subscriber, then the telephone connection of the subscriber can be disconnected. Reliance has been placed on a number of orders passed by either the learned Single Judge or the Division Bench of this Court in other proceedings.

8. In the first place it must be noted that the question whether there is a close nexus between Shri V.K. Gupta and Shri Rajeshwar Prasad on the one hand and the Petitioner on the other hand is a question of fact. As far as Shri Rajeshwar Prasad is concerned, admittedly, he has expired. His telephone connection was disconnected in 1995 itself, at least three years prior to the installation of the telephone of the Respondent. This Court therefore fails to appreciate how the MTNL can possibly disconnect the Respondent’s telephone on account of the default committed by Shri Rajeshwar Prasad long prior to the installation of the telephone of the Respondent. There is absolutely no perversity in the impugned Award on this aspect.

9. As regards the interpretation sought to be placed on Rule 443 of the Rules, this Court notes that there is nothing in the said Rule which either expressly or impliedly permits the disconnection of the telephone of a subscriber on account of the default committed by either a close relative of such subscriber or a person having close nexus with such a subscriber. The said rule reads as under:

“443. **Default of payment** – If on or before the due date, the rent or other charges in respect of the telephone service provided are not paid by the subscriber in accordance with these rules, or bills for charges in respect of calls (local and trunk) or phonograms or other dues from the subscriber are not only paid by him, any telephone or telephones or any telex service rented by him may be disconnected without notice. The telephone or telephones or the telex so disconnected may, if the Telegraph Authority thinks fit, be restored, if the defaulting subscriber pays the outstanding dues and the reconnection fee together with the rental for such portion of the intervening period (during which the telephone or telex remains disconnected) as may be prescribed by the Telegraph Authority from time to time. The subscriber shall pay all the above charges within such period as may be prescribed by the Telegraph Authority from time to time.”

10. A plain reading of the above Rule does not support the contention of the Petitioner. This Court has carefully perused the order dated 20<sup>th</sup> February 2000 passed by the learned Single Judge in Civil Writ

Petition No. 6343 of 1998 (*Rajiv Gosain v. Mahanagar Telephone Nigam Limited*), order dated 15<sup>th</sup> March 2001 in Civil Writ Petition No. 531 of 1999 (*Jaskaran Singh v. MTNL*), order dated 26<sup>th</sup> September 1997 in Civil Writ Petition No. 1693 of 1996 (*Sukh Dayal Narula v. Union of India & MTNL*) and order dated 1<sup>st</sup> July 1996 in Civil Writ Petition No. 5117 of 1996 (*Nirmal Kumar Sharma v. MTNL*). None of the orders discuss the precise wording of Rule 443. None of the orders actually interpret Rule 443 as permitting MTNL to disconnect the telephone connection of a subscriber on account of default committed by the close relative of such a subscriber. The facts of each case show that while there was undoubtedly a close relationship between the subscriber and the defaulter (like husband and wife, father and son), the Court views the disconnection as being justified and necessary for the “ends of justice”.

11. This court does not find any of the above orders helping the case of the Petitioner MTNL. As far as the facts and circumstances of the present dispute are concerned, there is nothing to show that the MTNL was in any way precluded from proceeding against Shri V.K. Gupta for outstanding dues owed by him in respect of telephone No. 3930378. In fact, the impugned Award notes that the dispute between Shri V.K. Gupta and MTNL was pending before the Lok Adalat. Unless some factual foundation is laid to show that the Respondent in fact used the said telephone which stood in the name of Shri V.K. Gupta for its purposes, attributing to it the liability for the default committed by Shri V.K. Gupta vis-à-vis his telephone, is not justified. In the considered

view of this Court the wording of Rule 443 does not permit such a wide interpretation as sought to be advanced by MTNL.

12. For all the aforementioned reasons, this Court finds no infirmity in the impugned Award.

13. The writ petition is dismissed.

**S. MURALIDHAR, J.**

**JANUARY 07, 2010**

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