

laws requires not only proper management techniques but also an active involvement of the inhabitants. Local committees or bodies with members from the industrial units, administration, the pressure groups, citizens and other related fields should be formed with a view to monitor the implementation of the law and pollution control programmes. Such bodies should be given sufficient powers for doing the needful.

This requires sincerity of purpose on the part of the political leadership at the Centre and the State levels and the implementing authorities at local level. Last but not least, the participation of people at every level is of utmost importance.

Legal support should not be a static process. Environmental law is not a codification of do's and don'ts alone, it is law based on science, technology, sociology, economics and ethics. With better understanding of many of these aspects, the legal framework needs to

be updated. Again environmental law is not an end in itself; it can be very meaningful only if it is combined with a mixture of incentives and disincentives.

In the end, one can only say that an organized effort on the part of citizens and the administration is required to keep a check on the environmental pollution.

However all these legislations, policies and guidelines exists in isolation and implemented on piece-meal basis. Hence there is an urgent need to evolve an approach to development is to follow eco-sustainable development model while integrating environment and population policies because poverty, population, natural resources and environment are closely related. It calls for concerted global action, careful environmental planning and major location-specific programmes of development. It will constitute a major step towards saving mankind from man made catastrophe.

EXCESS METERING COMPLAINTS: TELEPHONES

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On 31st March, 1987 there was a roaring debate in the parliament that even the Members of Parliament were subject to excess billing. It was alleged that when they were out of station their phone bills in Delhi went up. The estimates committee of the Parliament (7th Lok Sabha 26th April 1987) where it was observed that complaints of faulty and inflated billing had been received by it from a large number of subscribers of non-official organizations from all parts of the country.

The Government of India, Ministry of Communications Department of

Telecommunications addressed a Circular No.4-59/86-TR dated 9.4.1986 to all Heads of Telecom circles/Districts which exhaustively deals with the problem of excess metering and suggested the manner of disposal of the complaints in that regard which includes in Para V advance action in case of a possibility of an excess billing complaints as below :

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

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

6.7: it is possible that the bill exceed the previous bi-monthly bills by substantial amount. In such cases, temporary relief to the subscriber by way of issuing a split bill may be justified. As already prescribed a split bill may be issued if the bi-monthly bill in local call charges exceeds double the maximum amount of the previous six bi-monthly bills for local call charges. The split bill for local call charges should be limited to the average of local calls billed in the preceding six bi-monthly periods plus 10% thereof and should be issued with a clear statement that this is a purely provisional bill pending further investigation into the excess billing complaints and if after investigation the Department comes to the conclusion that the original bill is justified, the subscriber will have to pay the full bill or as may be determined by the competent authority.

The Department had been boldly counter alleging that there being STD facility the subscriber used it excessively and later lodged the complaint to avoid payment of the bills forgetting that the above circular 4-59/85-TR dated 9.4.1986 has cast a duty on the department to obey and no explanation is put-forth as to why the department has failed to discharge its duty?

It has been held by National Commissions in *MTNL v Ghevar Chand Sonal Somigara*, reported in II (1992) CPJ 476 "The appellants are trying to mislead and confuse this hon'ble commission" and further held "considering however the fact that the Public revenues are involved in this case and it is a matter of public knowledge that there are *mal practices* indulged in by the telephone subscribers in collusion with the telecom staff we though it

prudent to give the appellant an opportunity to satisfy us that it had taken all possible steps to find out and establish if there was collusion and that the department was not being defrauded. Not only the appellant has failed to do so, but is has chosen to describe the direction contained in this commission order of 7th May 1992 as having been made in order to satisfy some curiosity as to some aspect of the matter. This not only betrays lack of seriousness in investigating the complaints from the subscribers but also a total lack of understanding of the importance of the issue involved in this case."

It has been held by *National Commission in Tele-Dist Manager v. Kamaljit Kaur*, reported in 2002 (1) CPR 8, "when there was sudden spurt with telephone meter, Telephone communication Department, did not take any action and check the same and find out cause of such spurt. It was incumbent upon the Tele-Communication Department, to observe the metering instrument and the line to find out if the telephone was in fact being misused with the connivance of its officials or somebody else or it was genuinely being used by the subscriber. This action department was required to take in terms of the instructions issued in that regard. This was not done," and further held, "these instructions are for the benefit of the consumers of the telephone and have to be followed. These cannot be brushed aside telling then as guidelines and acting in contravention thereof, it cannot be disputed that petitioner has not acted in terms of the instructions."

It has been held in *Telecom District Manager v. Patel Shankerlal Kevalram*, 1996 (2) CPR 59NC "if such investigation is made, subscriber will know about the spurt in his telephone calls. In that case he would either minimize the use of the telephone or would ask for barring of the STD calls, or would complain to the department that somebody is misusing the telephone in collusion with the staff of the department. It

is not the case of the department that such investigations at the place of the subscriber were made.”

It has been held in *Accounts Officer v. Tapan Kumar Chowdhary*, 1999 (1) CPR 1, Cal., there is practically no explanation for this sudden spurt. “The meter recording the call is outside the supervision of this petitioner and he has no way to check it. If the same could be proved by the Telephone Authorities by producing the necessary record. The Submission that the *meter correctly recorded the calls and the same must be accepted*, cannot be a legal argument. In the absence of any reasonable proof as to what factor contributed to this abnormal calls in a particular month, we are inclined to accept the reasoning of the District Forum.”

It has been held in *Accounts Officer v. Lakshmi Traders etc.*, in 1993 (3) CPR 634, Gujrat, “whenever there is spurt, the Department is required to keep the telephone under observations. To establish these facts, it is obvious that the *Complaint cannot lead any evidence and it is only the Department which has to satisfy the Court* that the mechanical defects were not found or the line was not misused by any other person from the Department and the moment the sudden spurt was found, telephone was put under observation. The appellants have failed to establish these facts, and further held *The metering and reading instrument is in the possession of the department* and the subscriber could not have access for inspecting the instrument. In such case, therefore, there is very little scope for the subscriber to lead evidence and the subscriber can rarely establish as to whether the meter is running properly or the instrument was defective or was in order or any irregularity was committed by any staff member or any other person.”

It has been held in *Telecom District Manager v. Prannath Mahajan*, 1993 (1) CPR 109 NC. That “Investigation Contemplated does not mean that only meter should be checked.

No enquiry appears to have been made if any *mal practices* are occurring in that particular exchange *etc.* Hence I am of the opinion that in the present case no Investigation worth the name was made” and further observed “poor subscriber has no means to know such collusion nor he has access to the meter to find out if it is faulty” and further observed “Till then we should accept the statement of the subscriber made on oath, that he did not make such large number of calls or there was no special occasion to do so” and held “when we find out a certain pattern in the calling by a person extending over a period of one full year, that evidence is sufficient to show that excessive billing in a particular billing cycle is due to the complicity of the employees of the P&T staff with third parties or there is some fault in the meter.”

It has been held in III (2004) CPJ 689 Punjab in *GM BSNL and another v. Lt. Col. B.S. Mann*, “In case of inflated bill Mandatory Investigations for disposing of Complaints against Excessive bill not followed by the department-sudden spurt in calls found-and inflation proved-quashed.”

In 1996 (1) CPR 304 Jaipur, *Union of India and others v. H.S. Yeshwanti and another*, “M.S. Report mentioning fortnightly reading showing that there was a sudden spurt in number of calls during disputed period. No other investigation to place line on observation or to depute staff to subscribers premises for checking carried out failure to carry necessary investigation as emphasized by the Telecom Department itself by Circulars, is deficiency in service, Rs.5,000/- awarded to complainant.”

It has been held in II (1996) CPJ 172 NC-Kasam Noor Mohd. *v. Union of India*, in case of excessive bill due to calls observed to have been made to foreign countries. “It is not understood what business activities could have had in foreign countries. Of-course, he could have had smuggling activities, but as

noticed above, after making complaints to the Telephone Department about the excessive bill he could not have been *engaged in smuggling activities* due to the fact that his telephone must have been kept under the observation and his *illegal activities*, if any, would have been exposed,” and further held “Another interesting thing to be noticed is that before the disputed bills he did not receive any exaggerated bill, not there is any evidence that after the three disputed bill the complainant has received any bill for such huge amount.”

The allegation of the complainant that the employees of the department had hand in glove cannot be brushed aside, particularly when the department failed to obey the guidelines as per the circular dated 4-59/85-TR dated 4-9-1986.”

It has been held in *Department of Telecommunication v. Patel Dayabhai Bhikubhai*, 1993 (2) CPR 436 Guj., that “in case of student spurt the forum has to consider whether correct number of calls are not recorded either on account of mechanical failure or some defect in line and on noticing sudden spurt whether the *complainant is connected with the numbers* which have been recorded by the Department.”

It has been held in FAIA No.997/2000 and FASR No.2586/2000 in *Accounts Officer v. G. Pratap Reddy*, by the State Commission, AP. At the admission stage itself, that “In this case the Circular dated 9.4.1986, issued by Government of India, Ministry of Communication is violated, Para 5.5 of the Circular reads that “As far as possible all telephone lines showing sudden spurt should be on observation. For this purpose immediate steps must be taken to provide suitable observation equipment in the exchange having STD facilities. There is no evidence whether any action is taken by the Opposite Party under this circular” and further held “No action in the direction of any investigation

is established on behalf of the Opposite Party, Disconnection without any kind of investigation, certainly amounts to deficiency.”

On the flea raised by the petitioner in RP.No.444 of 2003 between the *G.M. BSNL and another v. P.D. Khanduri*, reported in 2005 (1) CPR 37, that the respondents exchange is covered by the Dynamic Locking STD Facility the Hon’ble National Commission held “It is admitted position that the instructions on sudden spurt of bills have not been revoked in view of the Dynamic Locking Facility available/Dynamic Exchanges were enforced in this case. According to us if there are instructions on subject issued by the Department themselves then they need to the followed which admittedly was not followed by the petitioner which is a clear case of deficiency” and further held “in view of the fact that there was a sudden spurt in the calls made and this was not noticed or brought to the notice of the respondent/Complainant, Thus deficiency in service is obvious. We see no merit in this revision petition, hence dismissed.”

In a recent case of Excessive Billing the Hon’ble National Commission viewed in *Telephones (General Manager) Chandigarh v. Director, Regional Computer Centre* reported in 1(2007) CPJ 12 in para 5 “That those instructions have not been rescinded despite the fact that the telephone exchanges have gone electronic and also there is dynamic locking system. It is not in dispute that bill as already enumerated earlier had gone up from Rs.32,000/- to over Rs.1 lakh in a period of two months. It cannot be read otherwise than to state that this indicated a sudden spurt in the use of telephone and there is nothing on record, in whatsoever form, that the respondent/Complainant was informed about the sudden spurt in the use of phone which is a clear case of deficiency in service on the hart of the appellant and held “the non-complying of its own instructions on the subject of sudden spurt is a clear case of deficiency. This appeal has no merit, hence dismissed.