

of institutions and investors such as Mutual Funds, Insurance Companies, and Foreign Investors are playing a role to judge a company and its relation with its shareholders. It is the essence of the time that every company has to consider the CG as a mandatory requirement in order to be in the market.

Financial Institutions and Investors have a key role in the entire process and procedure.

The investors have to increase their role in not only seeing that their investments in the company have multiplied but also to monitor the company affairs as how the company is considering the CG policies. Only when the Investor and Financial Institutions take such serious note that we can expect the CG to be achieved and see that every investor whose wealth is contributed to a company will be seen competing nationally and internationally.

A BRIEF NOTE ON SECTION 7-B OF THE INDIAN TELEGRAPH ACT

By

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1. The Indian Telegraph Act, 1885 provides “Arbitration of disputes under Section 7-B(1) except as otherwise, expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the Telegraph Authority and the person for whose benefit the line, appliance or apparatus is, or has been provided, the dispute shall be determined by arbitration and shall, for the purpose of such determination, be referred to an Arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of disputes under this section.

2. The award of the Arbitrator appointed under sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court”.

Circular Letter of the Department No.13-324/Arb/88-TR, dated 13.4.1989 “subject appointment of Arbitrators in case of Excess Metering.

1. According to Section 7-B of Indian Telegraph Act, if any dispute concerning any

telegraph line *etc.*, arises between the Telegraph Authorities and subscriber, the dispute shall be referred to Arbitrators appointed by the Central Government. The award of the Arbitrator shall be conclusive, and shall not be questioned in any Court.

2. According to the above Act, if anybody approaches the department to appoint any Arbitrator, we are bound to do so, but we are aware that in every case of dispute by subscribers, an Arbitrator is appointed, the workload will increase tremendously and cases will increase to numbers where it will be difficult to find a sufficient number of officers for appointing as Arbitrators. To control the overflow of such cases, the department has decided, as a matter of policy, the Arbitrators will be appointed only in such case where the subscriber approaches the Court with a request to appoint an Arbitrator, and the Court orders for the same.

3. Many circles have approached this office saying that there is no provision in the Telegraph Act for appointing Arbitrators on the orders of the Court, we should not insist upon the same. In one circle, even the High

Court has observed that there is no provision existing in the Act that the Court should order the appointment of Arbitrators.”

(A) Supreme Court in *Telecom District Manager, Goa and others v. V.S. Demp & Co. and others*, AIR 1996 SC 1545 (DB), has held “The administrative instructions issued by the Union of India that the dispute shall be referred *only when there is a reference by the Court is obviously in defiance of the language used in Section 7-B.*

The power to refer the dispute has been given by the Parliament only with a view to see that the authority acts within reasonable limits and that when subscriber disputes the correctness of the meter reading or operation of the apparatus *etc.*, instead of litigating the dispute in a civil Court, it should be denied by Arbitrator under Section 7-B. Obviously, the Act intends to limit operation, envisages under the Act, recorded to be one of the public revenue, should not be postponed due to the pendency of the proceedings. We are of the view that the High Court is right in directing that the Authority under the Act is enjoined to make reference under Section 7-B without any direction of the Court and if need be it is for the subscriber to approach the Court.”

(B) It has been held in *Fair Air Engineers P Ltd., v. N.K. Modi*, (III) 1996 CPR I (SC DB). “The importance of the Act is to promote the Welfare of the Society by enabling the consumers to participate directly in the market economy. It attempts to remove the helplessness of consumer which he faces against powerful business, described as a “network of rackets” or a society in which “producers have secured power” to rob the rest or as the might of public bodies which are degenerating into store houses of inaction where *papers do not move from one desk to another* as a matter of duty and responsibility but for extraneous consideration *leaving the common man helpless*, bewildered and shocked. The malady is becoming so rampant,

widespread and deep that the society, instead of bothering, complaining and fighting against it, is *accepting* it as a part of life. The Act, therefore, intends to secure *inexpensive and expeditious consumer service.*

(C) It has been held in Para 17 in *Santosh Singh v. Divisional Engineer, Telephones, Shillong*, AIR 1990 Gau. 47 (DB) “if the department could not find out the cause even soon after the complaint was filed, *there is no possibility by any amount of investigation after lapse of long six years to find out anything further at this stage.*

And further held in Para 33, “it has, therefore taken a policy decision to the effect that all requests for reference to Arbitrator shall be rejected and Arbitrators shall be appointed only in such cases *where a subscriber approaches a Court with a request to appoint Arbitrator and Court orders for the same.* We have considered the aforesaid policy decision contrary to the statutory provision contained in Section 7-B of the Act. *The proper course under the circumstances might be to take steps to delete Section 7-B itself.* However, once the department has taken a policy decision to reject all requests for reference of dispute to Arbitrator, its claim that alternative remedy is available to a subscriber under Section 7-B of the Act *is itself-contradictory. In fact as a result of the aforesaid policy decision has become otiose.*” Competent Court of civil jurisdiction nonetheless, the Act provides the additional remedy.

(D) It would therefore, be clear that the Legislature intended to provide a remedy in addition to the consentient arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and

National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3 thereof, we are of the considered view that it would be appropriate that *these Forums created under the Act are at liberty to proceed with the matters in accordance* with the provisions of the Act rather than regarding the parties to an arbitration proceedings pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the Forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate Forum for adjudication of the dispute would be otherwise those given in the Act.

Considered from this perspective, *we hold that this dispute need not be referred to arbitration under Clause (12) of the agreement and the matter could be decided on merits by the State Commission itself.*

(E) Section 12(4) CP Act, 1986 reproduced where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act :

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other Court or Tribunal on any authority set up by or under any other law for the time being in force.

(F) It has been held in *Syed Mohammed Ali v. Department of Telecommunication, Government of India*, 1999 (2) CPR 171 Orissa, “it is clear the *investigation required to be done* by the department in terms of the order has not been done as such there is no question of a dispute” arising between the complainant and the opposite parties and consequently there is no question of ouster of jurisdiction of the Forum/Commission to entertain and hear the complaint and appeal filed by the appellant.

Dispute can arise only if the telephone subscriber does not accept the communication of the department as required to be issued under Paragraph 7-1(c) of the order after proper investigation. That situation having not arisen in the case on hand. There is no question of reference under Section 7-B. And further held “it was at the stage of grievance within the scope of the Order and alleging non-performance of duties by the officers of the department assigned under Paragraphs 6 and 7 of the said order. It is obviously deficiency in service. Truly speaking in the facts of this case, *it is non-performance of service and not a dispute within the meaning of Section 7-B and therefore the complaint was maintainable before the District Forum.*”

(G) It has been held in *District Manager, Telephones Patna and another v. Dr. Tarun Bharathuar and another*, 1 (1992) CPJ 47 NC. “At the outset it may be pointed that Section 7-B of the Indian Telegraph Act deals with *resolution of disputes relating to a telegraph line, cable chamber, tower, appliance or apparatus* and does not specifically deal with disputes regarding billing.

(H) In *Union of India and others v. M/s. Jagadamba Rice Mills*, 1992 (1) CPR 293 NC, on the question raised by the Appellant, “the department also took a preliminary objection about the maintainability of the complaint on the ground that according to Section 7-B of the Indian Telegraph Act, *the Mills were duty bound to ask for arbitration of the disputes and therefore they should first initiate proceedings for an appointment of Arbitrator* in this regard “and the finding given “*Section 7-B of the Indian Telegraph Act did not come into play in disputes raised under the Consumer Protection Act, 1986.*”

(I) That on a question of reference by Consumer Forum in a matter of excessive telephone bill for arbitration it was held in *K.A. Rama Iyer v. Telephone Revenue and others*, 1993 (3) CPR 438 (Ker.), arises only if Forum is satisfied on consideration of material placed

before it that *points involved cannot be effectively dealt with by it.*

(J) The District Forum held “where the department had raised bills for the period 21.4.1997 to 21.10.1997 when STD was available and the bills raised after 21.10.1997 when STD facility was not available, were in dispute. The District Forum arrived at the finding that a factual investigation was necessary and therefore, direction was issued for appointment of Arbitrator to sort out the dispute in regard to the actual amount payable against the outstanding dues” and in appeal it was held by Lucknow in *Telecom Divisional Engineer and another v. Bhikari Prasad Varma*, 11 (2001) CPJ 11, “Forum will decide the dispute after receiving the report of ‘Arbitrator’”.

(K) “In view of the fact that a subscriber is a consumer within the Consumer Protection Act the Consumer Forum has got full jurisdiction to entertain a complaint in the matter of services rendered by the Telecommunication Department. The Consumer Protection Act is a latter Act and it received the assent of the President subsequently and the dispute raised by the Consumers Protection Act and the Arbitration clause under Section 7B of the Indian Telegraph Act will not oust the jurisdiction of the Consumer Forum and the plea that the dispute of the nature is to be raised under Section 7B of the Indian Telegraph Act is not sustainable and the nature of dispute raised in this petition can be said to be outside the preview of Section 7B of the Indian Telegraph Act and even it would be said that such disputes are covered by Section 7B of the Act, it cannot be an alternative remedy for rederessal of the grievances raised in this petition. The ultimate relief which a person can get under Section 7B of the Indian Telegraph Act *obviously cannot stand in the way of speedy and effective relief which can be granted by the Consumer Forum.*”

(L) In *General Manager v. Argha Mitra*, 1997 (1) CPR 88 NC. It was held “If the

orders are consensual in nature, then they are not open to challenge in appeal or revision” and further held “The award, dated 11th July, 1994 made by Shri S.K. Bhaduri, Arbitrator under Section 7-B of the Telegraph Act *cannot be challenged by way of an appeal to the State Commission as it has no jurisdiction.* The orders were passed by the District Forum on 1.12.1993 for the settlement of the dispute between the parties by adjudication under Section 7B of the Indian Telegraph Act. The Central Government in compliance with the direction of the District Forum appointed an Arbitrator and referred the disputes for settlement. Under Section 15 any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of 30 days from the date of order, in such a manner as may be prescribed. The State Commission has jurisdiction to entertain an appeal against the order dated 1.12.1993 of the District Forum *but it has no power to entertain an appeal against the award rendered under Section 7-B of the Indian Telegraph Act, sub-section (2) of Section 7B of the Indian Telegraph Act provides that the Award of the Arbitrator appointed under sub-section (1) shall be conclusive to the parties to the dispute and shall not be questioned in any Court.* Even if no finality is attached to the Award made under Section 7-B, it may be open to challenge in appropriate proceeding but the *Consumer Forum have no jurisdiction to sit in appeal or review the awards made by the Arbitrator under Section 7-B of the Indian Telegraph Act.*”

(M) It has been held in *MTNL v. Ghevar Chand Samal Sonigara*, 1997 (1) CPR 88 NC, “we hold that the State Commission was competent to go into the validity of the bill, dated 1.12.1990 for Rs.62,775/- keeping in view that bill for such a large amount was not justified on the basis of the subscriber having STD facility, that the respondent was fully entitled to have his grievance adjudicated upon by a Consumer Forum and it was not mandatory for him to invoke the provisions of Section 7B of the Indian

Telegraph Act. We have repeatedly held that Section 7-B of the Indian Telegraph Act does not oust the jurisdiction of the Consumer Forum” and further observed “considering however, the fact that 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* and this not only betrays lack of seriousness in investigation the complaints from the subscribers but also a total lack of understanding of the importance of the issue involved in this case.”

(N) It has been held in *Bhojraj Dalmia and Sons v. General Manager, Calcutta Telephones*, 11 (1994) CPJ 559 at Para 26 “in our view, the proceeding before the Consumer Forum is some sort of arbitrary proceeding where taking all factors into consideration, the dispute of excess billing should be settled, otherwise,

by referring the dispute under Section 7-B of Indian Telegraph Act. It would divert the consumer into the hands of the protesting party who will be the *judge of its own wrong action*. It is also our opinion that even if such reference made to arbitration proceeding the *impartial Arbitrator* must be appointed by the Consumer Redressal Forum other than the persons of Telephone Department in order to render fair justice to the Consumer and such fair justice cannot be expected from a judge who would sit for judging his own actions.”

Para 30 “we award compensation for a sum of Rs.10,000/- to the petitioner/appellant for harassment, torture and mental agony suffered by it for about 2 years.”

Para 31 “we further award to the appellant the costs of Rs.2,000/-”.

JUDICIAL OVERREACH

By

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The DEBATE on judicial activism has been raging with varying intensity over the past few years, and has acquired a new life as it were, by the observations in a recent judgment of the Supreme Court. Calling for judicial restraint, the Court has asked Courts not to take over the functions of the Legislature of the Executive, stating that there is a broad separation of powers under the Constitution and each organ of the State must have respect for others and should not encroach on their domain. Blaming the

Supreme Court itself for passing certain orders that resulted in upsetting the balance, a Bench consisting of Justices *A.K. Mathur* and *Markandey Katju* said in a judgment : “*Jagadambika Pal's* case of 1998, involving the Uttar Pradesh Legislative Assembly and the Jharkhand Assembly case of 2005 are two glaring examples of deviation from the clearly provided constitutional scheme of separation of powers.” The Supreme Court has also made observations on overreach of judicial activism, with references to several recent