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OSA(CAD) No. 148 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.06.2026

Pronounced on; 09.06.2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

OSA(CAD) No. 148 of 2022

The Administrator
Isha Foundation, Isha Yoga Centre, Velliangiri,
Coimbatore 641114.

..Appellant

Vs

1.The Principal General Manager,
BSNL Telecom Building,
Office of the Principal General Manager,
No.2, Bharathi Park Road - 2,
Coimbatore - 641 043
2.The Divisional Engineer,
Network Operations, CMTS,
BSNL , Telephone Exchange, Saibaba Colony,
Coimbatore - 641011.

..Respondents

Prayer : Original Side Appeal filed under Section 13(1A) proviso of the Commercial Courts Act, 2015, read with Section 37 of the Arbitration and Conciliation Act, 1996 as amended, praying to aside the Order and decretal order dated 12-08-2022 passed in Arb.O.P.(Comm. Div.) No.20 of 2022.

For Appellant:

Mr. S. Rajendra Kumar
for M/S. Norton and Grant



For Respondents:

R1 – No appearance

Mr. R.P. Vijaykrishnan for R2

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Judgment

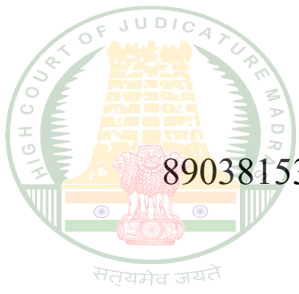
(Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)

This appeal is at the instance of the Administrator, Isha Foundation, Isha Yoga Centre, Velliangiri, Coimbatore, who was the respondent before the Arbitral Tribunal and the Arbitration Original Petition proceedings before the Single Judge of this Court.

2. The respondents / claimants filed claim statement before the Arbitral Tribunal by stating as follows:

2.1. The appellant / M/s ISHA Yoga Foundation filed a writ petition against the bills dated 02-01-2019 for Rs.20,18,198/- for the month of December 2018, and 02-02-2019 for Rs.2,30,29,264/- for the month of January 2019 in respect of their BSNL PRI account No. 505493328.

2.2. The above said account belongs to Global System of Mobile Communications Primary Rate Interface (GSM PRI) connection provided to M/s ISHA Foundation, Vellingiri Foot Hills, Coimbatore-641114 on 08.06.2010 from BSNL with 100 DID (Direct Inward Dialing) ranging from 8903515600 to 8903515699 initially and subsequently 400 numbers were added ranging from

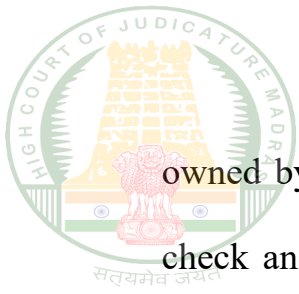


8903815300 to 8903815600 on 22.12.2017.

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2.3. The GSM PRI circuit provides 2Mb stream to the customer premises which can support 30 junctions. The said 2Mb stream is originating from the BSNL GSM switch and it is connected to the customer premises through Optical Fibre cable. Other end of the stream is terminated at the customer premise in the Private Automatic Exchange (herein after referred PBX) installed by them. In ISHA YOGA, the GSM PRI circuit provided by BSNL is further extended to their local extensions by their own arrangement. Outgoing calls dialed from ISHA extensions will land on PBX board and further will be routed to BSNL Switch through the available free PRI junctions and the call will be put through, to the called destination by BSNL Switch. Similarly incoming calls to ISHA will be routed in the available free junctions from BSNL Switch. The same 30 junctions is used both for incoming and outgoing calls.

2.4. According to Isha Yoga Centre, they had made an oral complaint to the Claimants' company on 12-12-2018 and this could not be verified by BSNL since the Isha Yoga Centre has not given details of the complaint such as nature of complaint and to whom the complaint was made. On 21-12-2018, the Claimants received an e-mail from Isha Yoga Centre stating that certain extensions receiving incoming calls. On examination, no fault or technical problem was found with the BSNL connectivity to the PBX. Since the PBX was

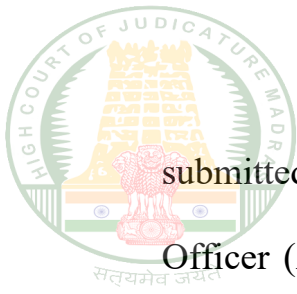


owned by Isha Yoga Centre, they were advised to contact the PBX vendor to check and verify the issue of not receiving the incoming calls in some of the extensions of PBX.

2.5. The e-mail dated 26-12-2018 was a repetition of the one dated 21-12-2018 stating that 8903815699 number is working and all other numbers mentioned in the earlier mail dated 21.12.2018 is still faulty. Since the status of the calls mentioned in the mail dated 21.12.2018 like “Busy voice”, “Number does not exist”, “Incorrect number” are fed from PBX board only, ISHA was informed to contact PBX Vendor to resolve the issue.

2.6. It is not correct that there was no response from the Claimant's office to the oral as well as e-mail complaints of the Respondent. ISHA being one of the VIP customers of BSNL, they are in constant touch with the Isha Foundation and when any complaint is received from their end, the Claimants' office entrusted Shri. T.Senthil. JTO Complaints, who is a technical expert to deal with them and solve the issue. He was constantly in touch with the respondent and issuing necessary instruction in this case since there was no fault in the BSNL Exchange system.

2.7. The averment of ISHA that BSNL did not send the invoice in time under the intention that the calls will grow again is not correct, since they



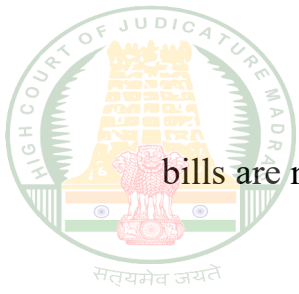
submitted the bills in time by e-mail and also, at their request, the Accounts Officer (AO) (CMTS), Coimbatore, had arranged to deliver the invoice once again.

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2.8. As soon as the complaint was received regarding excess metering, the corresponding system logs were analysed by BSNL office and it was found that there were no technical abnormalities in the system. Also, the system logs for the months of December 2018 and January 2019 were further examined and it was observed that no technical abnormalities had arisen for any of the GSM PRI connections terminated in the same switch, similar to that of the one working in the premises of ISHA. Hence, there is no mal functioning in the GSM switch of BSNL,

2.9. It is worthwhile to mention that ISD facility has been provided to ISHA foundation at the time of PRI creation itself and no excess billing complaint was received right from the date of commissioning. Hence the Claimants are of the opinion that the alleged excess billing cannot be due to any abnormality in the Switch.

2.10. It is significant to note that the respondent has taken up the matter with their PBX vendor, M/s. DIGI TeL Communications to resolve the issues related to the IP PBX. After resolving with the said Vendor, the subsequent



bills are normal.

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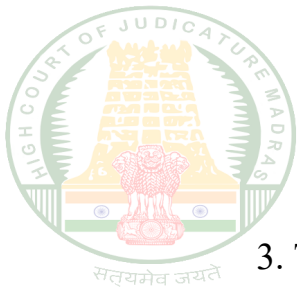
2.11. Large number of ISD calls are made from the premises of ISHA Yoga Centre to various foreign operators resulting in a total sum of Rs.2.5 crore. Out of this BSNL has to pay to the foreign operators, whether ISHA pays the bills amount to BSNL or not. When ISHA denies the onus of these ISD calls and refusing to pay the amount to BSNL, claimants have no option left with other than to pay the foreign operator's user fee from BSNL side by spending public money. This is nothing but double jeopardy to the Claimants' Organisation, Further, BSNL has to pay/ remit the GST charges to the Government for each invoice raised. This also amounts to another liability to the claimants on account of public money. Being so, letter dated 15.04.2019 to the Respondent requesting to pay the outstanding dues is legally justified in the facts and circumstances as stated above.

2.12. ISHA being a CIC customer with GSM PRI handling heavy volume of calls, the credit limit is not applied as per the prevailing instructions in BSNL and also no specific request has been received by BSNL for setting the threshold monitoring/barring. However, all PBX system is having facility for monitoring Call detail records and controlling the calls originated from extensions.



2.13. On the allegation made by the ISHA regarding any hacking, if so, is possible only from the customer premises as it was the sole decision of ISHA herein to extend net connectivity and VOIP to the IP-PBX, without any intimation to BSNL, which action has made the GSM PRI circuit vulnerable. And also usage of such VOIP in private switched network is not a legal form of Communication.

2.14. The Present difficulties has arisen purely because of the technical lapse that took place knowingly or unknowingly in the customer premises and in this matter BSNL has nothing to do. As already explained in detail in previous paragraphs, BSNL is handling public money and is answerable for each expenditure. Had the calls been inland BSNL calls, the operating expenditure for handling calls will lie only with BSNL. But, in this case, the disputed calls are being ISD calls pertaining to different foreign countries, these calls are put through via various ILD (International Log distance) carriers by BSNL, BSNL has to pay for the carrier usage. Hence, BSNL has no option other than requesting the customer to pay the call usage charges made by ISHA from their premises. Hence prayed the Arbitral Tribunal to pass an Award directing the respondent to pay Rs.20,18,198/- for the bill dated 02.01.2019 and Rs.2,30,29,264/- for the bill dated 02.02.2019 in all amounting to Rs.2,50,47,462/- to the claimants / BSNL together with interest @ 24% per annum from the date of respective bills till the date of payment in full.



3. The claim was resisted by Isha Foundation as follows:

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3.1. The excess billing for December 2018 and January 2019 resulted from BSNL's negligence and failure to act on repeated complaints. They have been a premium BSNL customer since 2010, with a GSM-PRI connection whose monthly bills generally ranged between Rs.20,000/- and Rs.22,000/- and carried a credit limit of Rs.66,900/-. For nearly eight years, there had been no abnormal billing or unusual usage.

3.2. Technical complaints regarding the PRI connection were raised on 12.12.2018, 21.12.2018, and 26.12.2018, including complaints that several PRI numbers were not functioning. Despite these complaints, BSNL failed to properly investigate the issue and instead attempted to shift the blame onto the Respondent's PBX system. The Respondent denies BSNL's claim that the issue was resolved and maintains that the connectivity problems continued into January 2019.

3.3. The disputed calls reflected in the December 2018 and January 2019 bills were not made by its personnel. BSNL failed to monitor abnormal call patterns, failed to alert ISHA regarding unusual usage, and failed to block outgoing calls even after the credit limit of ₹66,900 had been exceeded. Had



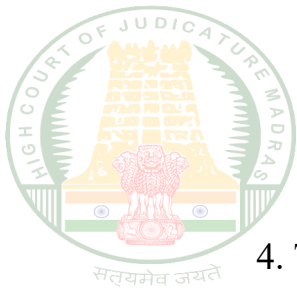
BSNL acted promptly, the excessive billing could have been prevented.

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3.4. BSNL delayed issuing and delivering the December 2018 and January 2019 bills, thereby depriving it of an opportunity to detect the abnormal usage and take corrective measures. BSNL's internal records themselves show that January 2019 bill was withheld and not dispatched in the normal course.

3.5. The excess billing was not caused by vulnerabilities arising from VOIP and internet connectivity attached to the IP-PBX system. Such connectivity had existed for nearly eight years with BSNL's knowledge and without any previous anomaly. The findings of BSNL's committee report is unilateral, self-serving, and lacking legal authority.

3.6. BSNL's own admissions show that no anomaly existed during the previous eight years and that the dispute is confined only to the bills for December 2018 and January 2019. Therefore, BSNL cannot attribute the excess billing solely to ISHA's equipment. BSNL failed to act on complaints, failed to detect abnormal call traffic, failed to enforce the credit limit displayed in its bills, and failed to provide timely bills. Hence, the excess billing arose solely due to BSNL's negligence and omissions and prayed that BSNL's claim be dismissed with exemplary costs.



4. The Arbitral Tribunal framed the following issues upon considering the pleadings:

(A) Whether the claimants are entitled to the claims advanced in the statement of claim? Whether the claimants are entitled claim interest on the claim advanced by them?

(B) Whether the Respondent made complaints to the claimants? If so when? What action taken by the claimants to the complaints?

(C) Whether the claimants had advised the Respondent with respect to the exceeding of the ceiling limit by the respondent?

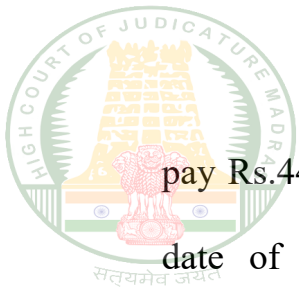
(D) Whether the respondent is liable to pay for all the calls received in its PBX box including international calls? If not, who is liable to pay for those international calls which were routed through internet connection.

(E) Whether the delay in the issue of bills by the claimants exonerates the respondent?

(F) Whether the claimants would raise a demand on the respondent for ISD calls made from BSNL circuits connected to the respondent's PBX box?

(G) Whether the respondent has enabled VOIP in its junction box in contravention of the prescribed rules? If so, to what consequences?

5. Based on the overall assessment of the materials on record, the learned Arbitrator, passed the Award by directing the appellant/Isha Yoga Centre to

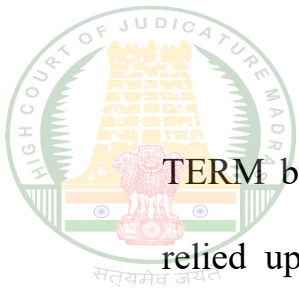


pay Rs.44,000/- in all with interest at 15% per annum from 15.04.2019 till the date of payment and rejected the claim of the claimants in excess of Rs.44,000/-.

6. Aggrieved over the same, the claimants/BSNL have preferred a petition under Section 34 before the learned Single Judge of this Court. The learned Single Judge allowed the said petition, vide his order dated 12.08.2022, by setting aside the Award passed by the learned Arbitrator and granted leave to the claimants to institute *de novo* arbitration proceedings. Further held that, if such proceedings are instituted, the petitioners shall be entitled to the benefit of Section 43(4) of the Arbitration Act.

7. Assailing the said order, the present appeal is preferred by the appellant/Isha Yoga Centre.

8. Mr.S.Murugavani, learned counsel for the appellant would submit that the learned Single Judge failed to follow the principle laid down in the proviso to Section 34 (2A) of the Arbitration and Conciliation Act, 1996, that an award shall not be set aside merely on the ground of an erroneous application of the law or by re appreciation of evidence. He would further submit that the learned Single Judge should have concurred with the Arbitrator in drawing adverse inference when the respondent refused to refer the matter for expert opinion of



TERM but proceeded to argue the matter. To support his contention he has relied upon the judgment of the Honourable Supreme Court in the case of

Reliance Infrastructure Limited vs. State of Goa reported in (2024) 1 SCC 479, in which it was held that non disposal of a prayer for appointment of an expert by the Arbitral Tribunal is not improper. He would further submit that though opportunity was given to the respondents / claimants for appointment of an expert, the same was refused. Whereas the appellant readily agreed to such a course of referring to TERM. Hence, the learned Arbitrator has rightly drawn adverse inference based on the conduct of the respondents / claimants and such a conclusion ought to have been followed by the learned Single Judge. He would further submit that the learned Single Judge ought to have seen whether the approach of the arbitrator is arbitrary or capricious. The learned Single Judge has committed the error of sitting in appeal over the Award by reassessing and re appreciating the evidence. Hence, prayed for setting aside the order of the single Judge.

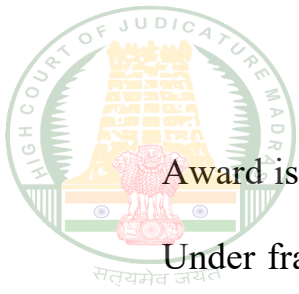
9. On the other hand, the learned counsel appearing for 2nd respondent would contend that the Tribunal has failed to understand that anything that happens from the IP-PBX towards extension side is not under the purview of BSNL and ISHA is solely responsible for the same. The tribunal has failed to recognize the right of BSNL to charge for every ounce of consumption through GSM PRI connected to ISHA's IP-PBX and with no regard to the nature of consumption



and that the high volume of ISD calls are a direct result of ISHA's act of authorizing the SIP client extension users of IP-PBX to make ISD calls through BSNL's GSM PRI and their voluntary Act of disabling safety measures in their IP-PBX fully knowing its implications with an intent to extend the BSNL's GSM PRI connection through internet beyond the permitted geographical area. He would further submit that the learned Arbitrator completely ignored all the evidence on record and admission made by ISHA themselves that the calls had originated from their IP-PBX and was put through via GSM PRI. Despite their admission and matching of both BSNL Exchange and Isha Foundation IP-PBX Call Details Record (CDR), the learned Arbitrator has observed that the calls had not originated from their IP-PBX. It is further submitted that without providing an opportunity to BSNL, the learned Arbitrator simply accepted incorrect contentions of ISHA and rejected the legitimate dues payable to the petitioner. Whereas, the learned Single Judge has rightly set aside the Award of the learned Arbitrator by appreciating the materials on record and granted leave to BSNL to institute *de nova* arbitration proceedings, which warrants any interference by this Court.

10. Heard on both sides. Records perused.

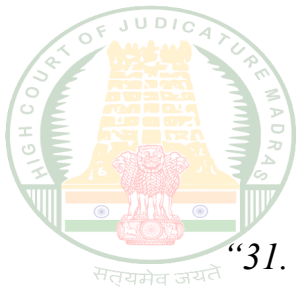
11. The scope of interference with an Arbitral Award under Section 34 of the Arbitration Act should be considered. Judicial interference with an Arbitral



Award is strictly limited and supervisory. Courts do not sit as appellate forums.

Under frameworks like the Indian Arbitration and Conciliation Act, Courts are generally confined to either confirming the Award or entirely setting it aside.

The scope of judicial interference hinges on very specific parameters. Courts cannot reappraise facts or evidence. As long as the Arbitrator's view is a plausible interpretation of the contract and facts, a Court cannot substitute its own view even if it disagrees. However, when there is an illegality appearing on the face of the Award, the Award can be set aside. The Hon'ble Supreme Court in the case of *Oil and Natural Gas Corporation Limited Vs. Saw Pipes Limited* reported in *(2003) 5 SCC 705* has held that an Arbitral Award could be interfered with if it is contrary to public policy or patently illegal. An Award which is contrary to substantive law or the relevant contract or the Arbitration Act was considered to be patently illegal provided the infirmities in the Award went to the root of the matter. This judgment was followed in several judgments, including in *Associates Builders vs. Delhi Development Authority* reported in *(2015) 3 SCC 49*. In the said judgment, the Hon'ble Supreme Court concluded that an Award which is perverse is contrary to public policy, can be set aside. The Hon'ble Supreme Court further held that a finding based on irrelevant evidence or by ignoring vital evidence is perverse and, consequently, contrary to public policy. Paragraphs 31 and 32 of *Associates Builders vs. Delhi Development Authority* are extracted as hereunder:



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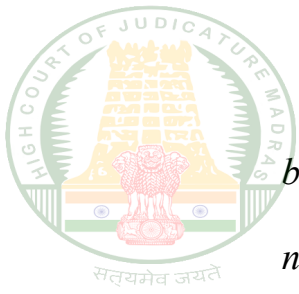
“31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- (i) a finding is based on no evidence, or*
- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
- (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse*

32. A good working test of perversity is contained in two judgments. In Excise and Taxationcum-Assessing Authority v. Gopi Nath & Sons, it was held:(SCC p.317, para 7)

*“7. ...It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in law.” In **Kuldeep Singh v. Commissioner of Police**, it was held: (SCC p.14, para 10)*

“10. A broad distinction has, therefore, to be maintained



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between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be interfered with.”

After amendment by ACT 3 of 2016, in ***Ssangyong Engineering Construction Company Limited vs. National Highways Authority of India reported in (2019) 15 SCC 13***, the Hon'ble Supreme Court re-visited the law laid down in ***Associate Builders (cited supra)*** and concluded in paragraph 41 of the SCC Report that perversity would no longer be a ground under the head 'public policy' but would qualify as a ground to set aside the award under the head 'patent illegality'. This position was reiterated in paragraph 29 of ***Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation Limited*** reported in ***(2022) 1 SCC 131.***

11.1. Now it has to be seen whether the Award passed by the learned Arbitrator is patently illegal and the learned Single Judge is justified in setting aside the Award. The specific contention of the learned counsel for the appellant is that, while the Arbitrator has drawn adverse inference when the respondent refused to refer the matter for the expert opinion of TERM, the



learned Single Judge ought not to have interfered with the Award passed by the learned Arbitrator.

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11.2. On the other hand, the learned counsel appearing for the respondent would contend that the Award is patently illegal because it disregarded the vital evidence and relied on irrelevant evidence. This aspect has to be examined.

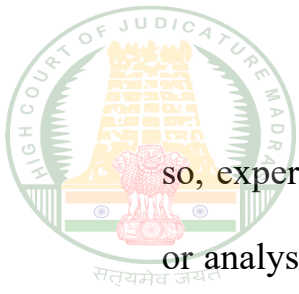
11.3. In the land mark dispute between Reliance Infrastructure and the State of Goa, over a power purchase agreement, the State argued that the Arbitral Tribunal erred by not drawing an inference against Reliance for failing to produce certain documents. The Hon'ble Supreme Court ultimately rejected the State's argument and ruled in favour of Reliance Infrastructure, outlining several key principles regarding adverse inference in Arbitration. The Hon'ble Supreme Court reaffirmed that drawing an adverse inference is a discretionary rule of evidence, not a mandatory obligation. Whether or not to draw such inference, and to what effect, is strictly upto the adjudicative body. The Hon'ble Apex Court determined that the State did not suffer serious prejudice due to the non production of documents as the majority of requested information was provided. Reliance Infrastructure successfully proved that several of the missing documents sought by the State were either not available to them or did not even exist at the relevant time. Therefore, the facts and circumstances of the above referred case is different from the facts and circumstances of the case on hand. It



is a case where the learned Arbitral Tribunal rendered a finding based on no evidence or by ignoring vital evidence, which is perverse and contrary to public policy.

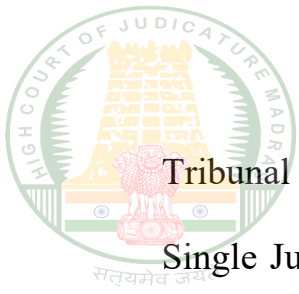
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11.4. The claim of BSNL before the Arbitrator is that , ISHA owes a sum of Rs.2,50,47,462/- towards the value of two invoices to be paid to BSNL. BSNL has relied on the CDRs for the purpose of establishing the fact that ISHA was charged on the basis of calls recorded in the CDRs. BSNL also asserted that ISHA admitted that all the calls were registered in the CDRs, including in the PBX system of ISHA. Nowhere in the Writ Petition and in the defence statement, ISHA had taken the stand that the calls did not pass through its PBX or that the calls were not registered in the CDRs. Moreover, ISHA did not adduce evidence to establish that the GSM PRI connection provided by BSNL was defective or that the equipment was defective and that such defects were attributable to BSNL and not ISHA. With regard to the CDRs, the contention of the learned counsel for ISHA is that, the Arbitrator has considered the CDRs and the same has to be accepted. On perusal of the Award it is seen that the learned Arbitral Tribunal has recorded the finding that the call volumes were abnormal especially between particular pairs of source and destination numbers. It is not in dispute that the bills were raised on the basis of calls registered in the CDRs. The learned Tribunal also concluded that the call volume was abnormal and that it requires further investigation and detailed analysis. While



so, expert opinion was clearly required for the purpose of further investigation or analysis. Since because BSNL refused to refer the matter for expert opinion

of TERM, the learned Arbitrator ought not to have drawn adverse inference, for the reason that the expert opinion is a significant piece of evidence to ascertain whether the disputed calls were made by ISHA. Further, BSNL also exhibited a police complaint as Ex.C13 in which ISHA draws reference to the findings of its IP-PBX vendor DIGI-TeL with regard to the complaint made by ISHA on the problems encountered with the IP PBX which found to be relevant in disposing the matter. In the said complaint, ISHA categorically admitted that the abnormal calls were on account of its system being hacked. However, the said vital document was not considered by the learned Arbitrator. As rightly pointed out by the learned Single Judge, the said document reinforces the conclusion that bills were raised on the basis of calls being registered on the IP-PBX. While so, the cause for abnormal call volume was necessarily to be investigated and analysed, and it is not possible without an expert opinion. But, the Arbitral Tribunal proceeded to record its findings and held that it is too hard to suggest that all the disputed calls originated from ISHA's GSM PRI. The learned Arbitrator ought to have sought for expert opinion before arriving at such a conclusion. Moreover, the burden of proof was on ISHA to rebut the CDRs, for which expert opinion is required. Under procedural frameworks like Section 26 of the Arbitration and Conciliation Act, 1996, the Tribunal can itself appoint an independent expert. Without such expert opinion, the Arbitral



Tribunal proceeded to record that the CDRs are incorrect. Hence, the learned Single Judge rightly held that such conclusions are patently erroneous, qualify as perverse and the Award was rightly set aside, granting leave to institute *De nova* Arbitration proceedings, warrants any interference in this appeal.

12. In view of the foregoing discussions, O.S.A(CAD) No.148 of 2022 is dismissed. No costs.

(P.V.,J.) (K.G.T.,J.)

09.06.2026

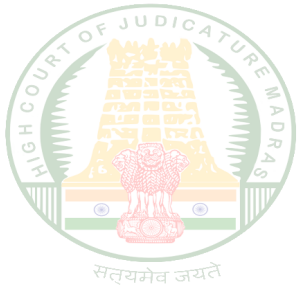
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

BGA

To

1.The Principal General Manager
BSNL Telecom Building, Office of the Principal
General Manager, No.2, Bharathi Park Road - 2,
Coimbatore - 641 043

2The Divisional Engineer
Network Operations, CMTS, BSNL , Telephone
Exchange, Saibaba Colony, Coimbatore - 641011.



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OSA(CAD) No. 148 of 2



**P.VELMURUGAN J.
AND
K.GOVINDARAJAN THILAKAVADI J.**

BGA

**Pre delivery judgment in
OSA(CAD) No. 148 of 2022**

09-06-2026