A GENERAL MANAGER, TELECOM

v.

M. KRISHNAN & ANR.

(Civil Appeal No.7687 of 2004)

SEPTEMBER 1, 2009

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[MARKANDEY KATJU AND ASOK KUMAR GANGULY, JJ.]

TELEGRAPH ACT, 1885:

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s.7-B r/w rr.412 and 443 of Telegraph Rules – Non-payment of telephone bill – Telephone disconnected – Complaint before District Consumer Forum – Forum directing reconnection and payment of compensation with interest – Single Judge of High Court dismissing writ petition of D *Telephone Department and Full Bench thereof dismissing Department's appeal – Held: There is the special remedy provided u/s. 7-B of the Act regarding telephone disputes and, therefore, the remedy under the Consumer Protection Act by implication is barred – Services relating to telephone are* E *subject to Telegraph Rules – A telephone can be disconnected for default in payment under r. 443 – Special law overrides the general law – High Court was not correct in its approach – Judgment of High Court and order of District Forum set-aside – Consumer Protection Act, 1986 –* F *Telegraph Rules 1951 -rr.413 and 443*

Thiruvalluvar Transport Corporation vs. Consumer Protection Council **(1995) 2 SCC 479, relied on**

Case Law Reference:

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1995(2) SCC 479 relied on para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7687 of 2004.

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From the Judgment & Order dated 14.2.2003 of the High Court of Kerala at Ernakulam in Writ Appeal No. 535 of 2002(D).

Haris Beeran (for Lawyer's Knit & Co.) for the Appellant.

The following Order of the Court was delivered

ORDER

1. Heard learned counsel for the appellant.

2. No one appears for the respondents although they had been served.

3. This appeal is directed against the Full Bench judgment and order dated 14.02.2003 of the High Court of Kerala at Ernakulam whereby the Writ Appeal filed by the appellant herein has been dismissed.

4. The dispute in this case was regarding non-payment of telephone bill for the telephone connection provided to the respondent No. 1 and for the said non-payment of the bill the telephone connection was disconnected. Aggrievedagainst the said disconnection, the respondent No. 1 filed a complaint before the District Consumer Disputes Redressal Forum, Kozhikode. By order dated 26.11.2001, the Consumer Forum allowed the complaint and directed the appellant herein to re-connect the telephone connection to the respondent No. 1 and pay compensation of Rs. 5,000/- with interest @ 12% per annum from the date of filing of the complaint.

5. Aggrieved against the order of the Consumer Forum, the appellant filed a writ petition before the High Court of Kerala challenging the jurisdiction of the consumer forum. A learned Single Judge of the High Court dismissed the writ petition. Thereafter, the appellant filed a Writ Appeal before the Division Bench of the High Court. The Division Bench felt that the matter required consideration by a larger Bench and hence the matter

A was placed before the Full Bench. By the impugned order the Full Bench of the High Court has dismissed the writ appeal. Hence, the appellant is before us by way of present appeal by special leave.

B 6. In our opinion when there is a special remedy provided in Section 7-B of the Indian Telegraph Act regarding disputes in respect of telephone bills, then the remedy under the Consumer Protection Act is by implication barred. Section 7-B of the Telegraph Act reads as under:-

C "S. 7B Arbitration of Disputes :-

(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
D person or 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 specifically for the
E determination of that dispute or generally for the determination of disputes under this Section.

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

F Rule 413 of the Telegraph Rules provides that all services relating to telephone are subject to Telegraph Rules. A telephone connection can be disconnected by the Telegraph Authority for default of payment under Rule 443 of the Rules.

G 7. It is well settled that the special law overrides the general law. Hence, in our opinion the High Court was not correct in its approach.

8. In *Chairman, Thiruvalluvar Transport Corporation vs.*
H *Consumer Protection Council* (1995) 2 SCC 479 it was held

that the National Commission has no jurisdiction to adjudicate upon claims for compensation arising out of motor vehicles accidents. We agree with the view taken in the aforesaid judgment. A

9. In view of the above, we allow this appeal, set aside the impugned judgment and order of the High Court as well as the order of the District Consumer Forum dated 26.11s.2001. B

10. Appeal allowed. No order as to the costs.

R.P. Appeal allowed. C