

2022 LiveLaw (SC) 221

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Dr. Dhananjaya Y. Chandrachud, J; Surya Kant, J; Vikram Nath; J.

February 16, 2022

Civil Appeal No. 923 of 2017 (Arising out of SLP (C) No 28615 of 2016) with Civil Appeal No 1389 of 2022 & Civil Appeal No 4274 of 2016

Vodafone Idea Cellular Ltd. *Versus* Ajay Kumar Agarwal

Consumer Protection Act, 1986 - Section 2(o) - Indian Telegraph Act, 1885 - Section 7B - Existence of an arbitral remedy under the Indian Telegraph Act, 1885, will not oust the jurisdiction of the consumer forum - It would be open to a consumer to opt for the remedy of arbitration, but there is no compulsion in law to do so and it would be open to a consumer to seek recourse to the remedies which are provided under the Act of 1986, now replaced by the Act of 2019. (Para 16, 20)

Consumer Protection Act, 2019 - Section 2(42) - Consumer Protection Act, 1986 - Section 2(o) - The insertion of the expression 'telecom services' in the definition which is contained in Section 2(42) of the Act of 2019 cannot, for the reasons which we have indicated be construed to mean that telecom services were excluded from the jurisdiction of the consumer forum under the Act of 1986 - Section 2(o) of the Act of 1986 wide enough to comprehend services of every description including telecom services. (Para 14, 20)

Consumer Protection Act, 1986 - The Act of 1986 is not a general law but a special law that has been enacted by Parliament specifically to protect the interest of consumers. [Overruled *General Manager, Telecom v. M Krishnan*, (2009) 8 SCC 481] (Para 18)

Consumer Protection Act, 1986 - Section 2(o) - Scope of expression 'service' discussed - a service of every description would fall within the ambit of the statutory provision. (Para 9)

Conflict of laws - If there is any inconsistency between two legislations, the later law, even if general in nature, would override an earlier special law. (Para 18)

Jurisdiction - An ouster of jurisdiction cannot be lightly assumed unless express words are used or such a consequence follows by necessary implication. (Para 16)

(Arising out of impugned final judgment and order dated 26/05/2016 in RP No. 1430/2016 passed by the National Consumers Disputes Redressal Commission, New Delhi)

For Petitioner(s) Mr. Navin Chawla, Adv. Mrs. Sonali Jaitle Bakshi, Adv. Mr. Jayesh bakshi, Adv. Mr. Ravi I., Adv. Ms. Sanya Kapoor, Adv. Mr. P. V. Yogeswaran, AOR

For Respondent(s) Ms. Pinky Anand, ASG Mr. P.K. Mallick, Adv. Mr. Devashish Bharuka, Adv. Mr. G.S. Makker, Adv. Mr. B. Krishna Prasad, AOR

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1. This civil appeal [Civil Appeal No 923 of 2017] arises from a judgment and order dated

26 May 2016 of the National Consumer Disputes Redressal Commission [“**NCDRC**”] which was rendered in the exercise of its revisional jurisdiction. The issue is whether Section 7B of the Indian Telegraph Act 1885 ousts the jurisdiction of the consumer forum in deciding a dispute between a telecom company and a consumer.

2. On 25 May 2014, the respondent instituted a consumer complaint before the District Consumer Disputes Redressal Forum [“**District Forum**”], Ahmedabad alleging a deficiency of service on the part of the appellant. The complaint states that the respondent had a post-paid mobile connection and was paying an amount of Rs 249 as the monthly basic rent. The appellant was providing mobile telecom services to the complainant on the basis of which it was asserted that there exists a relationship of consumer and service provider. The complainant subscribed to an ‘auto pay’ system through a credit card issued by his bankers in terms of which, the appellant would receive the payment before the due date to facilitate the timely payment of bills. According to the complainant, the average monthly bill was in the vicinity of Rs 555. Copies of the previous bills for five months, until 8 November 2013 were annexed. For the period between 8 November 2013 and 7 December 2013, the respondent was billed in the amount of Rs 24,609.51. According to the respondent, this is an over-charge. The credit limit for the post-paid mobile connection was Rs 2,300 until the bill dated 8 November 2013, after which the credit limit was increased to Rs 2,800 for the bill which was generated on 8 December 2013. The respondent has denied undertaking excessive use of the connection, including towards internet facilities. It was alleged that as a prevalent practice, the mobile service provider must intimate the customer when the bill reaches 80 percent of the credit limit. The complaint contains a recital of the steps which were taken by the respondent by contacting the representatives of the appellant following which he registered a complaint on 22 December 2013. The respondent instituted the consumer complaint on 25 May 2014 seeking compensation in the amount of Rs 22,000 together with interest, besides consequential reliefs.

3. The appellant raised an objection to the maintainability of the complaint based on a judgment of a two-Judge Bench of this Court in **General Manager, Telecom v. M Krishnan and Another, (2009) 8 SCC 481**. The District Forum dismissed the application and directed that a written statement must be submitted by the appellant on all issues including on the issue of jurisdiction. It was observed that the appellant, a private service provider is not a ‘telegraph authority’ for the purposes of Section 7B of the Indian Telegraphic Act 1885 [“Act of 1885”]; however, the issue of jurisdiction could not be determined without the filing of a written statement. In this context, it was observed:

“17. [...] In these circumstances also instead of taking decision on preliminary issue i.e jurisdiction, it is reasonable and legal that whole complaint is heard on merits and decision regarding jurisdiction is also taken in it.”

The order of the District Forum was questioned before the State Consumer Disputes Redressal Commission [“**SCDRC**” or “State Forum”], Gujarat. The SCDRC held by an order dated 30 November 2015 that the issue of jurisdiction could be raised as a preliminary issue. On merits, the SCDRC relied on the letter of the Department of Telecommunication dated 24 January 2014 where it was stated that the judgment in **M Krishnan** (supra) on Section 7B of the Act of 1885 would not be applicable to a private

service provider since it is not a ‘Telegraph Authority’. For this purpose, reliance was also placed on **Bharthi Hexacom Ltd. v. Komal Prakash** [Misc Application No. 204/2014 in Revision Petition Application No. 12]. The State Forum observed that:

“[...] under the above mentioned circumstances for a dispute under Sect. 7(B) between Private Service Provider and Consumer the authority cannot take decision because, for Private Service provider any arrangement is not made in the above act regarding Telegraphic Authority are not given to the Service Provider, hence, the Learned Consumer Forum has the jurisdiction to hear, decide and dispose of the dispute between the Private service Provider and consumer.”

The matter was thereafter carried in revision to the NCDRC. The NCDRC by its judgment dated 26 May 2016 affirmed the view of the SCDRC.

4. Mr Aditya Narain, learned counsel appearing on behalf of the appellant submits that Section 7B of the Act of 1885 provides a statutory remedy of arbitration. Counsel submitted that in view of the statutory remedy, which is a remedy under a special statute, the jurisdiction of the consumer forum is ousted. In this context, besides relying on the provisions of Section 7B, counsel adverted to the definitions of the expression ‘telecom officer’ in Section 3(2) and of ‘telegraph authority’ in Section 3(6).

5. The principal issue which arises for determination is whether the existence of a remedy under Section 7B of the Act of 1885 ousts the jurisdiction of the consumer forum under the Consumer Protection Act 1986 [**“Act of 1986”**].

6. Section 11 of the Act of 1986 specified the jurisdiction of the District Forum. Section 11(1) provided as follows:

“11. **Jurisdiction of the District Forum.**—(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs.”

7. In terms of Section 11(1), the District Forum was conferred with the jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed did not exceed a stipulated amount. The amount was progressively revised from Rs 1 lakh to Rs 5 lakhs and eventually to Rs 20 lakhs. The expression ‘service’ is defined in Section 2(o) in the following terms:

“2 (o) “service” means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.”

8. The expression ‘deficiency’ is defined in Section 2(g):

“2(g) “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.”

9. The definition of the expression ‘service’ is couched in wide terms. The width of statutory language emerges from the manner in which the definition is cast. Parliament has used the expression “service of any description which is made available to potential users”. The definition employs the ‘means and includes formula’. The means part of the

definition incorporates service of “any” description. The inclusive part incorporates services by way of illustration, such as facilities in connection with banking, finance, insurance, transport, processing, supply of electrical and other energy, board or lodging and housing construction. The inclusive part is prefaced by the clarification that the services which are specified are not exhaustive. This is apparent from the expression “but not limited to”. The last part of the definition excludes (i) the rendering of any service free of charge; and (ii) services under a contract of personal service. Parliament has confined the exclusion only to two specified categories. The initial part of the definition however makes it abundantly clear that the expression ‘service’ is defined to mean service of any description. In other words, a service of every description would fall within the ambit of the statutory provision.

10. The Act of 1986 was a milestone in legislative efforts designed to protect the welfare and interest of consumers. The long title to the Act specifies that it is an Act “to provide for better protection of the interest of consumers”. Paragraph 2 of the Statement of Objects and Reasons accompanying the introduction of the Bill in Parliament specifies the objects in the following terms:

“2. It seeks, inter alia, to promote and protect the rights of consumers such as—

- (a) the right to be protected against marketing of goods which are hazardous to life and property;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to variety of goods at competitive prices;
- (d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
- (f) right to consumer education.”

11. Section 4 of the Act of 1885 vests the Central government with the exclusive privilege of establishing, maintaining and working telegraphs. The expression ‘telegraph’ finds its definition in Section 3(1AA). Under the proviso to Section 4(1) the Central Government is empowered to grant a license to any person to establish, maintain or work a telegraph within any part of India. Section 7B contains a provision for the arbitration of disputes and is in the following terms:

“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 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 purposes 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.”

12. Under Section 7B, any dispute concerning a telegraph line, appliance or apparatus, between the telegraph authority and the person for whose benefit the line, appliance or apparatus is or has been provided has to be determined by arbitration. Such a dispute

has to be referred to an arbitrator appointed by the Central Government either especially for the determination of that dispute or generally for the determination of the disputes under the Section. The expression ‘telegraph authority’ is defined in Section 3(6)⁹.

⁹ Section 3(6) of the Act of 1885 defines ‘telegraph authority’ thus:

“telegraph authority” means the Director General of 1 [Posts and Telegraphs], and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act”;

13. The submissions of the appellant proceed on the basis that as a private telecom service provider, any dispute of a subscriber with it is encompassed by the remedy of arbitration in terms of Section 7B of the Act of 1885. Even if that be so, the issue in the present case is whether this would oust the jurisdiction of the consumer forum. The definition of the expression ‘service’, as already noticed, is embodied in wide terms. The District Forum is entrusted with the jurisdiction to entertain all complaints where the value of goods or services and the compensation claimed do not exceed the stipulated threshold. Under Section 14, where the District Forum is satisfied that the allegations in the complaint about the services are proved, it is empowered to pass remedial orders in terms of the provisions of sub-section (1). While the Act of 1885 can be construed to be a special enactment for regulating telegraphs, the Act of 1986 is a special (and later) enactment intended to protect the interest and welfare of consumers. Though the present case relates to the period before the enactment of the Consumer Protection Act 2019 [**Act of 2019**], an important aspect of the matter is that the definition of the expression ‘service’ in Section 2(42) of the later Act specifically incorporates telecom services¹¹.

¹¹ Section 2(42) of the Consumer Protection Act, 2019 is as follows: -

"service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service”;

14. The submission which was urged on behalf of the appellant was that the specific incorporation of telegraph services in the Act of 2019 is an indicator that it was only as a result of the new legislation that telecom services were brought within the jurisdiction of the consumer fora. This submission cannot be accepted for the simple reason that the specification of services in Section 2(s) of the earlier Act of 1986 was illustrative. This is apparent from the use of the expression ‘includes but not limited to’. The specification of services in Section 2(s) of the erstwhile Act was therefore not intended to be an exhaustive enumeration of the services which are comprehended within the definition. On the contrary, by adopting language which provides that the expression ‘service’ would mean service of any description which is made available to potential users, Parliament indicated in unambiguous terms that all services would fall within the ambit of the definition. The only exception was in the case of (i) services rendered free of charge; and (ii) services under a contract of personal service.

15. In **Emaar MGF Land Ltd. v. Aftab Singh**, (2019) 12 SCC 751 this Court has held

that an arbitration agreement governed by the Arbitration and Conciliation Act 1996 will not oust the jurisdiction of the consumer forum to entertain a complaint of deficiency of goods or services. The Court relied on Section 3¹³ of the Act of 1986, which provides that the provisions of the Act are in addition to and not in derogation of the provisions of any other enactment.

¹³ Section 3 – Act not in derogation of any other law- “The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”

The following observations of this Court are relevant:

“19. Section 3 of the Consumer Protection Act provided that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Noticing the object and purpose of the Act as well as Section 3, this Court in *Thirumurugan Coop. Agricultural Credit Society v. M. Lalitha* [*Thirumurugan Coop. Agricultural Credit Society v. M. Lalitha*, (2004) 1 SCC 305] , laid down the following in paras 11 and 12 : (SCC p. 312)

“11. From the Statement of Objects and Reasons and the scheme of the 1986 Act, it is apparent that the main objective of the Act is to provide for better protection of the interest of the consumer and for that purpose to provide for better redressal, mechanism through which cheaper, easier, expeditious and effective redressal is made available to consumers. To serve the purpose of the Act, various quasi-judicial forums are set up at the district, State and national level with wide range of powers vested in them. These quasi-judicial forums, observing the principles of natural justice, are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to the consumers and to impose penalties for non-compliance with their orders.

12. As per Section 3 of the Act, as already stated above, the provisions of the Act shall be in addition to and not in derogation of any other provisions of any other law for the time being in force. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumers better, the provisions are to be interpreted broadly, positively and purposefully in the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is a clear bar.”

16. The only distinction in the present case is that where Section 7B of the Act of 1885 applies, a statutory remedy of arbitration is provided. The fact that the remedy of an arbitration under the Act 1885 is of a statutory nature, would not oust the jurisdiction of the consumer forum. The Act of 1986 and its successor, the Act of 2019 are subsequent enactments which have been enacted by Parliament to protect the interest of consumers. Hence, an ouster of jurisdiction cannot be lightly assumed unless express words are used or such a consequence follows by necessary implication.

17. The judgment of a two-Judge Bench of this Court in **M Krishnan** (supra) arose from a decision of the Kerala High Court. The dispute, in that case, arose from the disconnection of a telephone connection for the non-payment of the bill. The District Forum allowed the complaint. The writ petition was dismissed. The proceedings resulted in a reference to a Full Bench of the Kerala High Court, which dismissed the writ appeal against the judgment of the Single Judge. Before this Court, the jurisdiction of the consumer forum was in issue. In that context, a two-Judge Bench of this Court held thus:

“5. In our opinion when there is a special remedy provided in Section 7-B of the Telegraph Act regarding disputes in respect of telephone bills, then the remedy under the Consumer Protection

Act is by implication barred.”

The Court also relied on Rule 413 of the Telegraph Rules in terms of which all services relating to telephones are subject to the Telegraph Rules. The Court held that the special law would override the general law and concluded that the High Court was not correct in upholding the jurisdiction of the consumer forum.

18. We are unable to subscribe to the view which has been adopted in the above decision in **M Krishnan** (supra). The decision is incorrect on two grounds. *First*, it failed to recognize that the Act of 1986 is not a general law but a special law that has been enacted by Parliament specifically to protect the interest of consumers. *Second*, even if it is assumed that the Act of 1986 is a general law, it is a settled position of law that if there is any inconsistency between two legislations, the later law, even if general in nature, would override an earlier special law. In **Ajoy Kumar Banerjee v. Union of India**, (1984) 3 SCC 127 a three-judge Bench of this Court observed:

“38...As mentioned hereinbefore if the Scheme was held to be valid, then the question what is the general law and what is the special law and which law in case of conflict would prevail would have arisen and that would have necessitated the application of the principle *Generalia specialibus non derogant*. The general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied:

“(i) The two are inconsistent with each other.

(ii) There is some express reference in the later to the earlier enactment.”

If either of these two conditions is fulfilled, the later law, even though general, would prevail.

39. From the text and the decisions, four tests are deducible and these are: (i) The legislature has the undoubted right to alter a law already promulgated through subsequent legislation, (ii) A special law may be altered, abrogated or repealed by a later general law by an express provisions, (iii) A later general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist even though no express provision in that behalf is found in the general law, and (iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law. See in this connection, Maxwell on the Interpretation of Statutes, Twelfth Edn., pp. 196-198.”

19. In any event, the decision in **M Krishnan** (supra) also fails to note that the Act of 1986 is a special law providing protection to consumers. Crucially, **M Krishnan** (supra) fails to notice that Section 3 of the Act of 1986 clearly provides that the remedies available under the Act are in addition to the remedies available in other statutes and the availability of additional remedies would not bar a consumer from filing a complaint under the Act of 1986. Section 100 of the Act of 2019 corresponds to Section 3 of the Act of 1986. In **Emaar MGF Land Ltd.** (supra), this Court held that the complaint under the Act of 1986 is a special remedy provided to a consumer in addition to the remedies that can be availed of by them, including arbitration. In **Imperia Structures Ltd. v Anil Patni**, (2020) 10 SCC 783 this Court held that the remedies available under the Act of 1986 are in addition to the remedies available under other statutes, including special statutes like the Real Estate (Regulation and Development) Act 2016 [“**RERA**”]. This Court reiterated the settled position of law in the following terms:

“23. It has consistently been held by this Court that the remedies available under the provisions of

the CP Act are additional remedies over and above the other remedies including those made available under any special statutes; and that the availability of an alternate remedy is no bar in entertaining a complaint under the CP Act.”

20. The above position was reiterated in [IREO Grace Realtech \(P\) Ltd. v. Abhishek Khanna](#), 2021 SCC OnLine SC 277 by a three-judge Bench of this Court, of which one of us (Justice DY Chandrachud) was a part. Justice Indu Malhotra, speaking for the Bench invoked the doctrine of election, which provides that when two remedies are available for the same relief, the party at whose disposal such remedies are available, can make the choice to elect either of the remedies as long as the ambit and scope of the two remedies is not essentially different. These observations were made in the context of an allottee of an apartment having the choice of initiating proceedings under the Act of 1986 or the RERA. In the present case, the existence of an arbitral remedy will not, therefore, oust the jurisdiction of the consumer forum. It would be open to a consumer to opt for the remedy of arbitration, but there is no compulsion in law to do so and it would be open to a consumer to seek recourse to the remedies which are provided under the Act of 1986, now replaced by the Act of 2019. The insertion of the expression ‘telecom services’ in the definition which is contained in Section 2(42) of the Act of 2019 cannot, for the reasons which we have indicated be construed to mean that telecom services were excluded from the jurisdiction of the consumer forum under the Act of 1986. On the contrary, the definition of the expression ‘service’ in Section 2(o) of the Act of 1986 was wide enough to comprehend services of every description including telecom services.

21. For the above reasons, we affirm the judgment of the NCDRC which came to the conclusion that the District Forum has the jurisdiction to entertain and try the complaint.

22. The appeal shall accordingly stand dismissed.

23. Pending applications, if any, stand disposed of.

Civil Appeal No 1389 of 2022 [Arising out of SLP(C) No 9071/2016] & Civil Appeal No 4274 of 2016

1. Leave granted.

2. In view of the judgment delivered today in **Idea Cellular Ltd vs Ajay Kumar Agarwal** [Civil Appeal No 923 of 2017], the appeals shall stand allowed and the impugned judgments and orders of the NCDRC dated 30 April 2014 in Revision Petition No 531 of 2013 and 11 April 2013 in Revision Petition No 95 of 2013 shall stand set aside. Consumer Complaint No 238 of 2010 and Complaint No 1457 of 2007 shall stand restored to the Consumer Disputes Redressal Forum, Kasargod and Consumer Disputes Redressal Forum, Delhi respectively.

3. Pending applications, if any, stand disposed of.