



W.P (C) .27890/18

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947WP(C) NO. 27890 OF 2018PETITIONER/S:

PRAKASH SANKAR
AGED 55 YEARS, S/O.SANKARAN NAIR, CHENNOTH RAYAMANGALAM
HOUSE, KEEZHILLAM PO, ERNAKULAM, KOCHI 683541

BY ADVS.
SETHUNATH V.
MANORANJAN (MUVATTUPUZHA) V.R.

RESPONDENT/S:

- 1 BHARAT SANCHAR NIGAM LIMITED, REPRESENTED BY ITS
PRINCIPAL GENERAL MANAGER, KOCHI, PIN 682016
- 2 ADDL.R2. DISTRICT COLLECTOR,
ERNAKULAM, COLLECTORATE, CIVIL STATION, KAKKANAD, KOCHI-
682 030
- 3 ADDL.R3. DEPUTY TAHSILDAR,
KANAYANNUR TALUK, TALUK OFFICE, KOCHI-682 011

ADDL.R2 & ADDL.R3 ARE IMPEADED AS PER ORDER DATED 6-2-
19 IN I.A.NO.3/19.

BY ADVS.
SRI.MATHEWS K.PHILIP, SC, BSNL
SRI.SUDHISH R., SC, BSNL
GOVT. PLEADER SRI. DHEERAJ A.S.-ADDL.R2 AND R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02.04.2025, THE COURT ON 10.04.2025 DELIVERED THE FOLLOWING:



“C.R.”

MOHAMMED NIAS C.P., J.

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W.P(C) No. 27890 of 2018

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Dated this the 10th day of April, 2025**JUDGMENT**

The petitioner, a BSNL consumer, challenged the post-paid mobile bills issued to him by approaching the Permanent Lok Adalat under Section 22 (c) (1) r/w 22 A (b) (ii) of the Legal Services Authorities Act, 1987, by filing O.P.No.40/2016, Ext.P1. He contended that he had travelled to Dubai on 30.11.2015 after activating international roaming on his postpaid number 9447703014 and obtaining a separate BSNL SIM for roaming.

2. The respondent-BSNL contended that the petitioner was under Data Plan 501, which allowed 5 GB of free data on international roaming with effect from 23.11.2015, and as his usage exceeded 500% of his credit limit, an automated pre-barring message was triggered on 3.12.2015, leading to the suspension of services. The detailed billing records showed that he used Rs.20,209.84 on 30.11.2015, Rs. 55,613.05 on 1.12.2015, Rs. 24,494.88 on 2.12.2015, and Rs. 9,664.48 on 3.12.2015. BSNL clarified that smartphones and



high-end GPRS-capable devices continuously consume data due to background applications, which are likely to lead to high charges. The consumer has the option to keep these applications enabled/disabled while on international roaming. International roaming usage is received after two days, triggering a pre-barring message, with an interim bill issued on 31.01.2016 and the final invoice amounting to ₹1,27,462/-. All charges were correctly billed as per the tariff, and the contention of the petitioner that he has not used the BSNL connection while on roaming is baseless.

3. The Permanent Lok Adalat found, after examining the oral and documentary evidence and that of the expert, that the petitioner could not prove that the usage claimed by the BSNL was not correct. The detailed breakdown of Call Data Records provided by the Sub Divisional Engineer of BSNL showed continuous internet usage and calls made by the petitioner during the relevant period justified the billing. Accordingly, finding that the petitioner failed to prove any billing error or overcharge, passed an award under Section 22C(8) of the Act dismissing the petition.

4. After the dismissal, the petitioner filed a review under Section 22D of the Act, contending that there is an error apparent on the face of the record, as the forum wrongly held that the petitioner failed to prove the case. It was urged that the deposition of RW1 reveals that BSNL did not



produce key documents, including the intimation document from the international roaming operator. The petitioner states that BSNL, being the sole custodian of billing and data usage records, had a fundamental duty to produce those documents and explain the bill generation process. Withholding such vital documents amounts to fraud on the court.

5. The Lok Adalat found that the Code of Civil Procedure does not apply, and as per Section 22D of the Legal Services Authorities Act, it has no power to reassess the evidence already discussed and concluded. The Tribunal found that the review petition was an abuse of process and dismissed it without issuing a notice to the respondent on 04.08.2018. Ext.P4 award rejecting the review is under challenge in this writ petition.

6. Heard both sides.

7. The issue involved in the case is whether any power to review is conferred under Section 22D of the Legal Services Authorities Act, 1987. Section 22D reads as follows:

“Section 22 D: Procedure of Permanent Lok Adalat: The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1892.”



8. The petitioner also relies on the judgment of the Punjab and Haryana High Court in **Estate Officer v. Charan Kaur and Others [2015 (4) CivCC 225]**, which held that the review is maintainable as a more liberal procedure than what is provided under the Code of Civil Procedure is enacted under the Legal Services Authorities Act.

9. The Permanent Lok Adalat, established under the Act of 1987, is not a court with plenary powers and cannot operate outside the Act or exercise powers not expressly granted by law. The right to seek review is not a natural or fundamental right, as such power must be explicitly conferred by legislation. There is no inherent power of review unless provided by law, and a clear distinction exists between rectification and review, with review needing statutory authorisation. The Tribunal's power of recall does not equate to rehearing for errors in judgment or a relitigation of merits but allows for correction of procedural errors, such as failure to serve necessary parties or instances of fraud. It is trite that a review on merits requires specific statutory permission, while procedural review, addressing fairness issues, is inherent in all adjudicatory bodies. A review on merits, which involves re-examining the correctness of a decision, can only be exercised if specifically permitted by law.

10. It is profitable to refer to the judgment of the Apex Court



in **Kapra Mazdoor Ekta Union v. Birla Cotton Spinning & Weaving Mills Ltd. & Anr [(2005) 13 SCC 777]**, relying on the judgment in **Grindlays Bank Ltd. v. Central Government Industrial Tribunal and others [AIR 1981 SC 606]** which held as follows:

“19. Applying these principles it is apparent that where a Court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case, the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the



opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others (supra), it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again.

The recall of the Award of the Tribunal was sought not on the ground that in passing the Award the Tribunal had committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the Award, but on the ground that some matters which ought to have been considered by the Tribunal were not duly considered. Apparently the recall or review sought was not a procedural review, but a review on merits. Such a review was not permissible in the absence of a provision in the Act conferring the power of review on the Tribunal either expressly or by necessary implication.”

11. In the instant case, as the grounds for seeking the review suggest, a merit review, or rather a rehearing on merits, was sought, which is impermissible for the reasons stated above. The view taken by the Punjab and

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Haryana High Court in the decision referred to above is clearly against all the relevant principles and cannot be treated as good law.

There is no merit whatsoever in the writ petition, and the same is hereby dismissed.

Sd/- MOHAMMED NIAS C.P.

JUDGE

okb/



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APPENDIX OF WP(C) 27890/2018

PETITIONER EXHIBITS

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| EXHIBIT P1 | TRUE COPY OF THE O.P NO.40/2016 ON THE FILE OF THE PERMANENT LOK ADALATH. |
| EXHIBIT P2 | TRUE COPY OF THE AWARD DATED 21.7.2018 PASSED BY THE PERMANENT LOK ADALATH |
| EXHIBIT P3 | TRUE COPY OF THE REVIEW PETITION FILED BY THE PETITIONER BEFORE THE PERMANENT LOK ADALATH 2016 |
| EXHIBIT P4 | THE TRUE COPY OF THE AWARD DATED 4.8.2018 PASSED BY THE PERMANENT LOK ADALATH IN I.A NO.160/2018 |