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## How Sections governing Quasi-Contracts and Quantum Meruit come into play in Actual Express Contracts: Mahanagar Telephone Nigam Ltd. v Tata Communications Ltd.

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*The present article takes a deep dive into sections governing quasi-contracts, the concept of quantum meruit as well as sections governing damages along with their application. The article explores the above via a recent judgment of Mahanagar Telephone Nigam Ltd. v Tata Communications Ltd.<sup>1</sup> The question arising in this very case is whether quantum meruit can be awarded in the presence of an express contract. A quantum meruit is awarded in absence of contracts or quasi-contracts and the Hon'ble Supreme Court has taken several precedents into account to come to a judgment. The article also includes a critical analysis wherein the authors express their views on the judgment. The references range from websites to books through which the authors have gained a better understanding of "certain relations resembling those created by contract" alongside "the consequences of a breach of contract" and the provisions of Indian law which govern the same as well as their applicability. It deals with a special kind of compensation in special kinds of contracts (quasi-contracts) and the applicability of the same is also elaborated upon. An evaluation of precedents used by the Hon'ble Supreme Court as well as some other cases have led the authors to form an opinion and come to a conclusion regarding the judgment.*

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<sup>1</sup> Mahanagar Telephone Nigam Ltd. v Tata Communications Ltd. (2019) 5 SCC 341

**Keywords:** *quasi-contract, quantum meruit, damages, compensation.*

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## INTRODUCTION

The case [*Mahanagar Telephone Nigam Ltd. v Tata Communications Ltd. (2019)*<sup>2</sup>] alongside the section [Section 71: Responsibility of finder of goods<sup>3</sup>] that I have been assigned with broadly deals with the concept of compensation with regards to express contracts as well as quasi-contracts, which shall be elaborated under several sections of *Chapter V of the Indian Contract Act, 1872*.<sup>4</sup>

**Section 71**<sup>5</sup> deals with the provisions about the responsibility of the finder of lost goods. It holds the person who finds goods belonging to another & takes them into his custody responsible for acting as a bailee for the same. In this particular case, we shall study this particular section alongside *Sections: 70, 73, and 74*<sup>6</sup>. The idea of quantum meruit is also a factor in this situation. When translated, the term "quantum meruit" means "as much as is earned/deserved." When the cost of the completed work or provided services is not specified in the contract, it is granted for that job or service. When a contract calls for payment of consideration in that regard, it cannot be offered.

## A BRIEF OVERVIEW OF THE SECTIONS COVERING QUASI-CONTRACT AND QUANTUM MERUIT

**Section 70**<sup>7</sup> talks about the obligations of a person enjoying the benefit of the non-gratuitous act wherein a person enjoying the benefit of an act done lawfully or a delivery made to him by another person (non-gratuitously), is bound to compensate the latter for the act so done or the good so delivered. A non-gratuitous act is an act where there is an anticipation of a return. Thus,

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<sup>2</sup> *Ibid*

<sup>3</sup> Indian Contract Act 1872, s 71

<sup>4</sup> Indian Contract Act 1872

<sup>5</sup> Indian Contract Act 1872, s 71

<sup>6</sup> Indian Contract Act 1872, s 70,73,74

<sup>7</sup> Indian Contract Act 1872, s 70

Section 70<sup>8</sup> assures payment to a person who has done something for the other person voluntarily and with the thought of getting paid for the same. An employee can hold an employer liable for payment for the services he has provided<sup>9</sup>. A university was held liable for the reimbursement of a lecturer working under an appointment received by him from the vice-chancellor even though the post on which he was appointed had not been sanctioned by the State.<sup>10</sup>

When being held by this clause, a person is always free to refuse the item. Only in cases of the said person accepting the thing or enjoying the work done is where liability under Section 70 arises.<sup>11</sup> The services provided should have been provided without any request due to a requirement as well. For services provided upon request, however, fair remuneration may also be recovered. In *State of West Bengal v B. K. Mondal & Sons*<sup>12</sup>, it was decided as follows:

The Plaintiff had a kutchra road, guard room, office, kitchen, clerks' room, and storage sheds built for the Civil Supplies Department of the Government at the request of an officer of the State of West Bengal. Despite admitting the works as completed, the State attempted to avoid accountability by arguing that no contract had been made in line with Section 175(3) of the Government of India Act, 1935 (now Article 299 of the Constitution of India<sup>13</sup>). Next, the contractor utilised Section 70<sup>14</sup> to try his luck with the State.

After the examination of conditions of liability under the section, Justice Gajendragadkar (afterward CJ) and all the facts were found to be satisfactory and thus, the State was held liable. The State had the right to reject even after having requested the works but since the storage sheds were accepted and were used and hence the benefit was enjoyed by the State, different considerations come into play and Section 70<sup>15</sup> was invoked. The Supreme Court has also stated

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<sup>8</sup> *Ibid*

<sup>9</sup> *Bihar Nurses Registration Council v Harendra Prasad Sinha* (1991) 1 PLJR 114

<sup>10</sup> *Shyam Behari Prasad Singh v State of Bihar* (1991) 2 BLJR 1024

<sup>11</sup> *Haji Adam Sait Dharmasthapanam v Hameed* (1985) KLT 169

<sup>12</sup> AIR 1962 SC 779: 1962 Supp (1) SCR 876

<sup>13</sup> Constitution of India 1950, art. 299

<sup>14</sup> Indian Contract Act 1872, s 70

<sup>15</sup> *Ibid*

that the word “lawfully” used in Section 70<sup>16</sup> is an integral part of it and not irrelevant or a surplusage. Payment for extra work done in connection with a contract without any agreement has been allowed to be recovered under this section.<sup>17</sup>

It must also be emphasized that some lawful relationship must exist between the person claiming compensation and the person against whom it is claimed and it should arise because the latter has accepted and enjoyed the act done by the former. The High Court of Orissa, acting on this, allowed a person to recover the amount paid by him to another for purchasing his paddy, unaware at the time of said purchase, his purchase violated a State Control Order.<sup>18</sup>

The person rendering services or performing an act must not intend to render said service or do such an act gratuitously. The decision of the High Court of Madras in *Damodara Mudaliar v Secy of State for India*<sup>19</sup> is the leading authority. Water for irrigation was being drawn by several villagers from a tank. Out of these villages, some were under the direct tenancy of the State and the others were under *Zamindars*. For the sake of preservation, the Government carried out repairs to the tank. The benefits of said repairs were also enjoyed by the *Zamindars*.

The *Zamindars* were accordingly held liable to make a proportional contribution towards the expenses of repair. It can be seen through this case that even when the party has a personal interest in the matter where he is making payment or rendering services, a proportional contribution can be recovered by him from the ones who have enjoyed the benefit of his services. **Section 71**<sup>20</sup> lays down the responsibility of a finder of goods. When someone finds a property that belongs to someone else and takes possession of it, this clause renders that person liable as the bailee. A finder is considered equal to a bailee in terms of obligations and responsibilities. Thus, bailment and the finder's status have both been taken into account.

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<sup>16</sup> *Ibid*

<sup>17</sup> *State of U.P. v Chandra Gupta & Cp* (1977) All 28

<sup>18</sup> *Indu Mehta v State of U.P* (1987) All 309

<sup>19</sup> *Damodara Mudaliar v Secy of State for India* (1895) 18 Mad 88

<sup>20</sup> Indian Contract Act 1872, s 71

In the case of *Union of India v Amar Singh*<sup>21</sup>, The Supreme Court of India has declared that the statutory fiction, which implies a bailment contract between a finder of goods and the genuine owner, should not be expanded by analogy or any other means. As a result, a railroad authority that took into its custody wagons holding the plaintiff's commodities that were abandoned in Pakistan across the border became the contractual bailees of goods, and it was unnecessary to view them as finders in the sense of Section 70.

**Section 73**<sup>22</sup> differentiates between the treatment of damages arising from a breach of express contract (*para 1: the party suffering from the breach is entitled to receive compensation from the party who has broken the contract for any loss/damage caused to him; such compensation, however, can be given only in cases for any non-remote and direct losses or damages sustained because of the breach*) and the ones arising from obligations resembling those created by contract, that is, quasi-contracts (*para 3: the person who is injured due to failure of discharge of a said obligation, is entitled to receive same compensation from the defaulting party as if such person had contracted to discharge it and had broken his contract*).

**Section 74**<sup>23</sup> discusses damages for contract violations if a fine is specified. The party alleging breach of a contract is entitled to receive reasonable compensation (not to exceed the amount so named or the penalty so stipulated) from the party who has broken the contract if the contract stipulated a certain amount to be paid in the event of such breach or contains another type of penalty stipulation. **Quasi-contracts** are implied contracts and are legal obligations that the court sets up to prevent either party from benefitting unfairly at the cost of the other. A remedy for damages, when sued by a party under quasi-contracts is usually *restitution* or recovery under the theory of *quantum meruit*.

**Restitution:** The doctrine of restitution is dealt with under **Section 65** of the Indian Contract Act<sup>24</sup>, of 1872 which talks about the obligation of a person who has received some sort of advantage under a void agreement or contract. Restitution normally proposes the idea of

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<sup>21</sup> *Union of India v Amar Singh* (1960) 2 SCR 75

<sup>22</sup> Indian Contract Act 1872, s 73

<sup>23</sup> Indian Contract Act 1872, s 74

<sup>24</sup> Indian Contract Act 1872, s 65

restoring the benefit obtained by a person and the restoration of the position of the victim, that is, the Plaintiff is the main purpose. Under restitution, firstly, the original position of the plaintiff is restored which he enjoyed before entering into the contract, and secondly, any sort of unjust enrichment or wrongful gains by the Defendant are prevented. *Section 65* states that in an absence of a contract, the doctrine of restitution can come into play. Provisions of this section come into play only when said agreement is discovered to be void or becomes void later on by one party or the other at a subsequent stage.

### **FACTS OF THE CASE**

In this particular case, the contract was a purchase order agreement between the parties that is, Mahanagar Telephone Nigam Ltd. (MTNL) and Tata Communications Ltd. (TATA) wherein the petitioner had to provide the last mile connectivity within two months. The petitioner failed to provide the required service even by the time it chose to terminate the contract. A certain clause of the agreement provided for liquidated damages in certain possibilities like *failure to deliver the stores/services or to install and commission the project in whole or part* and the stipulated liquidated damages were limited to an approximate value of 12% of the purchase value, that is, only a maximum of 12% could be levied as liquidated damages under the contract. As a claim for its damages, MTNL deducted certain sums from the bills raised by TATA which included the principal amount as well as an interest amount.

TATA approached TDSAT [Telecom Disputes Settlement and Appellant Tribunal], persuading that the sums MTNL deducted were more excessive than the sums stipulated under the contract. MTNL as a defence stated the amount to be due under quantum meruit. TDSAT decided that the petitioner's claim was allowed partially and ruled against the claim of 18% interest by the petitioner due to the absence of any such stipulation in the agreement between the parties. While allowing the principal amount, MTNL was directed to return the quantum meruit claim retained more than 12% liquidated damages by TDSAT, since MTNL unilaterally charged said sums without presenting any reliable evidence of losses. This resulted in MTNL approaching the Supreme Court for a reconsideration of its claim.

## PETITIONER'S ARGUMENTS

As a defence for not providing the required service of last mile connectivity not only by the date so stipulated (December 2008) but also by the time the contract was chosen to be terminated (11<sup>th</sup> of January, 2011), it was pleaded and argued on behalf of MTNL that:

- Access to the buildings/premises of respondents wasn't given.
- Permission for affecting the last mile connectivity wasn't given.

The defence justified the stance by relying on the emails that the petitioner wrote on the 1<sup>st</sup> of June, 2010. However, it was found that the petitioner's plea stating that they weren't allowed entry into the respondents' premises was raised belatedly and hence appeared to be incorrect and unconvincing. In conclusion, the petitioner's case was found to be weak and unacceptable due to it putting the entire blame upon the respondent for not being able to provide the required service. Even though the respondent initially was responsible for the delay that does not absolve the petitioner's total failure.

## ISSUE OF THE CASE

Whether when parties are governed by a contract (express in nature), a claim in quantum meruit would be permissible under Section 70 of the Indian Contract Act.<sup>25</sup>

## JUDGEMENT

The rise of the appeal was due to a dispute under the Telecom Regulatory Authority of India Act, of 1997<sup>26</sup>. Tata Communication Ltd., the Respondent filed a petition to seek relief under TDSAT against Mahanagar Telephone Nigam Ltd., the Appellant, for a recovery of a sum plus an interest. The question arising was whether the Appellant was justified in adjusting said amount from the payable dues to the Respondent by deducting it from the bills raised by the Respondent. The Supreme Court relied on several precedents for deciding this case.

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<sup>25</sup> Indian Contract Act 1872, s 70

<sup>26</sup> Telecom Regulatory Authority of India Act 1997

The Supreme Court, in the present case, while considering the import of Section 70 in a contractual claim, took reference to the split verdict of *Moselle Solomon v Martin & Co.*<sup>27</sup>, on the specific question of whether Section 70<sup>28</sup> would apply in the case of an express contract, the two judges disagreed and split the ruling. When there is an express contract, the abovementioned clause does not apply, according to Lord Jack J. and Lord Williams J., who both ruled that Section 70<sup>29</sup> is an independent remedy based on a distinct cause of action and can thus be considered to be an extra remedy. A later observation shows that Jack J.'s principle was approved in successive judicial decisions of *Kanhayalal Bisandayal Bhiwapurkar (Dr.) v Indarchanji Hamirmalji Sisodia*<sup>30</sup> and *Alopi Parshad & Sons Ltd. v Union of India*, where both the High Court and the Supreme Court had held that a person relying on an express contract cannot avail Section 70.

To strengthen this particular position, they also relied on the case of *Mulamchand v State of M.P.*, where the court held while dealing with a claim made under Section 70 of the Indian Contract Act<sup>13</sup> that “a claim for compensation when made by one person against another under Section 70<sup>31</sup>, is a different kind of an obligation and not any subsisting contract between the parties, and the juristic basis of such a case is founded upon quasi-contract or restitution”. In *Kailash Nath Associates v DDA*<sup>32</sup>, after taking Section 74<sup>33</sup> into consideration, it was held that a party complaining of a breach can receive as reasonable compensation such a liquidated amount, which is a sum named in a contract payable by way of damages, only if the damages fixed by both parties is a genuine pre-estimate and is found to be such by the court.

In consonance with the above position, it was held by the Supreme Court that the amount MTNL deducted was a claim of quantum meruit, which due to the existence of the contract cannot be raised. It was also stipulated in the contract that the damages must not exceed 12% the compensation for breach of contract was to be governed by Section 74 of the Indian Contract Act<sup>14</sup> which mentions that any compensation or penalty must not exceed the amount mentioned

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<sup>27</sup> *Moselle Solomon v Martin & Co.* (1935) 62 Cal 612

<sup>28</sup> Indian Contract Act 1872, s 70

<sup>29</sup> *Ibid*

<sup>30</sup> *Kanhayalal Bisandayal Bhiwapurkar (Dr.) v Indarchanji Hamirmalji Sisodia* (1947) Nag 84

<sup>31</sup> *Ibid*

<sup>32</sup> *Kailash Nath Associates v DDA* (2015) 4 SCC 136

<sup>33</sup> Indian Contract Act 1872, s 74



or the penalty so stipulated in the contract. It was held that only the stipulated sum in the contract can be claimed by MTNL and claims above-said sum shall be refunded. Thus, the judgment of TDSAT was upheld and the appeal was dismissed.

### WHEN CAN SECTION 70 BE CLAIMED?

Section 70<sup>34</sup> discusses the responsibility of a person who benefits from a non-gratuitous act; this obligation arises when someone provides something to another person who then legally and without the intention of doing so gratuitously benefits from that act. In regards to or for the restoration of the act that was performed or the service that was provided, the latter is required to make up for the former. A *non-gratuitous* act is an act that is performed with anticipation of a return. If the requirements set by this specific section are met, the aggrieved party to the invalid contract may apply the provisions of **Section 70**<sup>35</sup>. The conditions are as follows:

- There should be a lawful act done by one person for another person or a lawful delivery made to the other person.
- The act of doing the said thing or delivering said thing must not have a gratuitous intention.
- The other person for whom something is done or to whom something is delivered must have enjoyed the benefit thereof.

**NOTE:** When a case is covered by Section 70<sup>36</sup>, the party who provided a service to another party or made a delivery to another party is ineligible to bring a claim for the *specific performance* of the agreement. Said person can also not ask for damages for the breach of the contract because there is no contract between him and the other person for whom the action has been done or the delivery has been made. It is neither a contract nor a tort, but rather a third category of law – quasi-contract or restitution – that provides the legal foundation for an obligation to compensate established by one person against another under **Section 70**.<sup>37</sup>

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<sup>34</sup> Indian Contract Act 1872, s 70

<sup>35</sup> *Ibid*

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*

## CRITICAL ANALYSIS

The following judgment of MTNL has certain flaws:

In the case of *Mulamchand v State of M.P.*<sup>38</sup>, the grant of *quantum meruit* was denied. The primary reason for such denial was the lack of proper evidence that supported the claim of unjust enrichment and not because of the existence of a contract. TDSAT as well as the Supreme Court improperly evaluated this in their judgments. In this case, the view that the Court took was improperly applied in subsequent cases. Herein, the Court placed reliance on the principle adopted by *Nelson v Larholt*<sup>39</sup> where it was observed by Lord Denning that:

*"...The right here is not peculiar to equity or contract or tort but falls naturally within the important category of cases where the court orders restitution if the justice of the case so requires<sup>40</sup>."*

Secondly, Tata was not permitted to contest the number of liquidated damages in the current instance, which was determined and imposed by MTNL. This had the result of making the judge a party to the contract for purposes of determining breach and calculating contract damages. In the case of *State of Karnataka v Shree Rameshwara Rice Mills*<sup>41</sup>, An agreement in a contract was found to be unenforceable because justice and equality demand that the decision-making process is carried out by a third party who is not a party to the contract. As a result, the TDSAT should have instructed to determine the amount of unjust enrichment or the Court should have determined it after ignoring MTNL's deduction of the excess amount.

Finally, other than liquidated damages, the Supreme Court did not offer any appropriate compensation. This finding is supported by the argument that there were insufficient trustworthy documents available to assess the real harm done to MTNL. There was proof of the size of the loss. Therefore, the Court itself ought to have awarded MTNL appropriate sums over the stated damages.

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<sup>38</sup> *Mulamchand v State of M.P.* (1973) MP 293

<sup>39</sup> *Nelson v Larholt* (1948) 1 KB 339

<sup>40</sup> *Ibid*

<sup>41</sup> *State of Karnataka v Shree Rameshwara Rice Mills* (1987) (2) SCC 160

## CONCLUSION

The Supreme Court, in the present case, disentitled MTNL to reasonable compensation since there was a lack of reliable material to determine the losses. The Court also disregarded the demands of MTNL for the prevention of unjust enrichment of TATA in making additional claims of *quantum meruit*. The stance reached by the Supreme Court, in this case, was based on an incorrect legal analysis, contrary to Williams J.'s assertion in the *Moselle Solomon* case, which appears to be the true legal position. The current case thus serves as an illustration of the Supreme Court's wasted chance to bring about claims in *quantum meruit* when there is a contract providing for liquidated damages.