

(1996) 12 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 23929/96

A. Christian

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Electricity Act, 1910 — Section 24
Telegraph Rules, 1951 — Rule 443

Citation : (1997) 2 CivCC 598 : (1997) ILR (Kar) 549

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Diwakar, for the Appellant; D.V. Shailendra Kumar, Senior CGSC, for the Respondent

Judgement

G.C. Bharuka, J

1. The most question involved in the present Writ Petition is as to whether the Telegraphs Authorities are competent to charge rental of telephone connection for the period during which the same had remained disconnected.

2. The power of Telegraph Authority in the above connection is traceable to Rule 443 of the Indian Telegraph Rules. 1951 (in short "the Rules"). These Rules have been made under the Indian Telegraph Act, 1885 (in short "the Act"). The rule reads as under;

"Rule 443. DEFAULT OF PAYMENT - If, on or before the due date, the rent or other charges in respect of the telephone service provided are not paid by the subscriber in accordance with these rules, or bills for charges in respect of calls (Local and Trunk) or phonograms or other dues from the subscriber are not duly paid by him, any telephone or telephones or any telex service rented by him may be disconnected without notice. The telephone or telephones or the telex so disconnected may, if the Telegraph Authority thinks fit, be restored, if the defaulting subscriber pays the outstanding dues and the reconnection fee

together with the rental for such portion of the intervening period (during which the telephone or telex remains disconnected) as may be prescribed by the Telegraph Authority from time to time. The subscriber shall pay all the above charges within such period as may be prescribed by the Telegraph Authority from time to time.

3. Above rule has two facets, namely, (i) empowering the telegraph authority to disconnect the telephone service in case the subscriber fails to pay the bills and charges pertaining to the said telephone services; and (ii) reconnection of the said services if the outstanding dues along with rental for the disconnected period is paid by the subscriber. From the scheme envisages under the rule 443 of the Rules, it seems quite clear to me that if the disconnection of telephone services is found to be justified, then, for seeking reconnection thereto the subscriber has to pay, apart from the other outstanding dues, even the rental for the disconnected period. But, it cannot be disputed that if the disconnection is found to be unsustainable being arbitrary or impermissible, then in such situation the subscriber cannot be held liable for paying the rental for the disconnected period.

4. Under Rule 443 of the Rules, which is under consideration, the disconnection is permissible only if the subscriber fails to pay the bill for charges in respect of calls (Local and Trunk) in accordance with the provisions contained under Rules. But the question is, if the subscriber bonafide disputes such a bill then still, can the Telegraph Authorities without getting the dispute resolved by referring the same to Arbitrator, constituted or to be constituted u/s 7B of the Act, resort to disconnection.

5. The question similar to one which has fallen for consideration in this Writ Petition has been dealt with by various High Courts in relation to Section 24 of the Indian Electricity Act, 1910. This Section provides for continuance of supply to consumer neglecting to pay charges. In the context of this provision, it has been consistently held by various Courts that the action cannot be taken by the electrical undertaking against the consumer under this provision where there is bonafide dispute between the parties as to what is payable by the consumer. The failure of the consumer to pay in such a case does not amount to a "neglect to pay" within the meaning of the said Section 24 (see *The Premier Ice Factory, Kanpur Vs. The Commercial Manager, Kanpur Electricity Supply Administration and Another*, ; *Hindustan Aluminium Corporation Ltd. Vs. The U.P. State Electricity Board*, ; *Orissa Fibre Vs. The Orissa State Electricity Board and Another*, ; *Corporation of the City of Nagpur Vs. The Nagpur Electric Light and Power Company Ltd.*, ; *Maharashtra State Electricity Board Vs. Madhusudandass and Brothers*, .

6. Adopting the same line of reasoning, it has to be held that if a subscriber of telephone services raises bonafide dispute regarding the bills for charges in respect of calls, local or trunk or any other dues, then it, is incumbent on the part of the Telegraph Authority to refer the matter for adjudication to a Arbitrator

appointed either specially or generally for determination of disputes u/s 7B and till such determination is made, the telephone authority cannot resort to disconnection of telephone services by purporting to act under Rule 443 of the Rules.

7. Now coming to the facts of the present case, the petitioner is a subscriber of telephone No. 226818, which is installed at his residence, The said telephone was disconnected on 21.2.1994 on account of petitioners failure to pay the demands raised against him in respect of the said telephone services. According to the petitioner, the bills so raised were high, exorbitant and uncalled for, since according to him, he had not availed the STD services at any point of time and the bills served upon him primarily related to out side calls to numbers unknown to the petitioner. He also lodged several complaints before the Telegraph Authority in the said connection. But having failed to get appropriate response from their end in respect thereto, he ultimately filed a Writ Petition in W.P. No. 4764/95, which was disposed of on 26.3.1996 with a direction that the respondents should refer the dispute raised by the petitioner regarding correctness of the bill to an Arbitrator u/s 7B of the Act. It was further directed that on petitioners depositing 25% of the disputed demand the telephone services will be resumed to him.

8. Subsequently, according to the petitioner, his telephone was reconnected in the month of March 1966. Thereafter, he was served with a bill dated 1.5.1996, which included the rental charges even for the disconnected period. It seems that the petitioner had not made any payment against the said bill. Subsequently, he has been served with bill dated 1.7.1996, showing the said amount as in arrears (ann. "A"). In the entire Writ Petition there is no averment that when the telephone services of the petitioner have been disconnected, though the petitioner in the prayer portion seeks for reconnection. Even in the statement of objections the respondents have not clearly said whether the telephone services of the petitioner are under disconnection.

9. Keeping in view the pleadings of the parties, it is difficult to come to a conclusion as to whether dispute raised by the petitioner regarding the bills is bonafide or not. That has to be decided only by the Arbitrator as per the directions issued in the earlier Writ Petition filed by the petitioner. The findings of the Arbitrator in the said dispute will have a direct bearing on the competence of the Telegraph Authority to claim the rental for the disconnected period.

10. Accordingly, it is directed that the question as to whether the petitioner is liable to pay the rental for the disconnected period may also referred to the Arbitrator within a month from today and till the Arbitrator gives his Ward in these matters, the respondents are restrained from resorting to disconnection of telephone services of the petitioner on account of non-payment of the rental charges for the disconnected period. But is clarified that if ultimately the petitioner is found liable to pay the rental, then, he has also to pay the sur charge as provided under Rule 436 of the Rules.

11. Subject to the said observations and directions of the Writ Petition is disposed of. No costs.