
(1970) 07 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No. 898 of 1968

A. Srimareddy and Others

APPELLANT

Vs

The District Manager, Telephones, Hyderabad

RESPONDENT

Date of Decision : 23-07-1970

Acts Referred:

Telegraph Act, 1885 — Section 7(2)
Telegraph Rules, 1951 — Rule 2

Citation : AIR 1971 AP 166

Hon'ble Judges : Madhava Reddy, J

Bench : Single Bench

Advocate : B.P. Jeevan Reddy, for the Appellant; Standing Counsel for Govt. of India, for the Respondent

Judgement

Madhava Reddy, J.—Four petitioners who were given telephone connections beyond the local area have assailed in the Writ petition the demand for an increased tariff from them on the basis of the revision of the local area from a date anterior to the date notice of the revision of local area.

2. The Ist petitioner herein was given telephone connection on 31-5-1967. this connection fell one kilo-metre beyond the local area and, therefore, additional tariff of Rs. 18 per quarter was levied, It is on that basis that he accepted the connection. The tariff was revised from Rs. 18/- to Rs. 30/- per kilo-meter on 20-7-1967. For the payment of this tariff also, he has no objection. But the local area was revised with effect from 16-8-1967, according to which, the telephone connection given to the petitioner fell 7,4 kilometers beyond the local area. Then subsequently on 6-2-1968 a notice demanding a sum of Rupees 1,454/- per annum was issued to him on the basis of this revised local area and further calling upon him to execute an agreement guaranteeing that he would take the connection for a minimum period of five years. So far as the case of petitioner 2 and 4 is concerned, it is almost identical except a to the distance between the local area and the connection and the consequent variation in the amount

demand. The 3rd petitioner's telephone connection was originally within the local area, but as per the revised local area, it falls 4.8 kilometers beyond the local area and hence an extra demand at the rate of Rs.30/3- per kilometers per annum was made.

3. The petitioner contend that the local area having been once fixed and an agreement having been entered into between the petitioners and the department the respondents had no jurisdiction to revise the same. Secondly, even if it is held that there is a power of revision vested in the authorities, the same could not be revised without notice to them and lastly, it is contended that, in any even, this revision of the local area could not be given retrospective effect. The respondents admit that no notice was given to the petitioner before the local area was revised. But they contend that they have the power to revise without giving such notice, for nowhere it is laid down by the Indian Telegraph Act, 1885 (Act No. XIII of 1885) and the Rules made thereunder that notice should be given to the subscribers before the local area is revised.

4. In order to appreciate this contention it is necessary to note some of the provisions of the Act and the rules made thereunder. Section 3(1) of the Act defines "telegraph" as follows:-

"3. Definitions: In this Act unless there is something repugnant in the subject or context-

(1) "telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing images and sounds or intelligence of any nature by wire, visual, or other electromagnetic emissions Radio waves or Hertzian Waves galvanic, electric or means:

Explanation; "Radio waves" or "Hertzian waves" means electromagnetic waves of frequencies lower than 3,000 space without artificial guide"

The "telegraph authority" as defined in Section 3(6) is as follows:-

"(6) "telegraph authority" means the Director General of (Posts and Telegraphs), and included any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act."

Section 7 of the Act empowers the Central Government to frame rules from time to time for the conduct of all or any telegraphs established , maintained or worked by the Government or by persons licensed under this Act, section 7(2)(a) licensed under this Act. Section 7(2)(a) in particular authorizes the Central Government to frame rules with respect to-

"(a) the rates at which, and the other condition and restrictions subject to which, messages shall be transmitted;

(b) x x x

(c) x x x

(d) x x x

(e) the conditions and restrictions subject to which any telegraph line, appliance or apparatus for telegraphic communication shall be established, maintained, worked repaired, transferred;

(f) the charges in respect of-

(I) the establishment, maintenance, working repair, transfer of shifting of any telegraph line, appliance or apparatus;

(ii)x x x

(g)x x x

(h)x x x

(I)x x x

(j)x x x

(k) any other matter for which provision is necessary for the proper and efficient conduct of all or any telegraph under this Act."

The rules framed in this behalf define "local area" under Rule 2 (w) as follows:-

"(W) Local area means the area within 5 kilometers rail distance from a telephone exchange or where the Telegraph Authority has declared any area served by an exchange system to be a local area for the purposes of telephone connection, such area.

Persons who have been provided with telephone service are deemed as subscribers under the definition in Rule (2) (pp) which reads as follows:-

"(pp) Subscriber means a person to whom a telephone service has been provided by means of an installation under these rules or under an agreement."

The petitioners are, therefore, subscribers within the meaning of that rule. From a reading of the above provisions it is clear reading of the above provisions it is clear that the petitioners, who are subscribers, bound themselves to pay the charges which are prevalent and which are not only agreed upon by them at the time when the telephone connection was given but also such charges as may be revised by Government from time to time from the date of their introduction.

The petitioners, however, do not contend that they are not liable to pay the revised charges. In order word, the Ist petitioner who was hitherto bound to pay Rs. 18/- per quarter for one kilometer distance beyond the local area, agrees to pay Rs. 30/-. But what is contended is that the distance between the telephone connection and the local area cannot be varied to his disadvantage by revising this local area so as to increase this local area so as to increase the distance between the connection and the local area and thereby imposing an additional burden on him. In other words the local area cannot be so revised as to impose

an additional burden that what is warranted by the mere upward revision of the charges. On a reading of the Act and the Rules it is clear that there is not specific provision authorising the revision of the local area. But the definition clause as contained in Section 2(w) clothes them with the jurisdiction to revise to local area which the Telegraph Authority has declared as an area served by an exchange system of the purpose of telephone connection. It is contended that if the local area can be determined by a declaration made by the authority then such an area may also be revised from time to time. Having regard to the definition of the "local area" contained in those rules. I hold that the Telegraph Authority which has the power to initially determine and declare a "local area" within the meaning of Rule 2 (w) of the Rules, is also empowered to vary the "local area" from time to time, But that itself does not solve the issue now under consideration for, while the Telegraph Authority may have jurisdiction to determine the local area, any such determination will have the effect of imposing an additional burden on third parties. What all was agreed by the subscribers under the agreement was that they would pay the revised charges, and they do not have to pay or refuse to pay. Neither under the agreement deed they have expressly agreed to the unilateral revision of the local area nor have the rules anywhere specially authorised the Telegraph Authority to declare the area unilaterally and thereby impose an additional burden on the subscribers. A declaration of the local area which it may be empowered, to make in view of the definition of "local area" in Rule 2 (w) cannot be valid, if it results in imposing any additional monetary burden on third parties and varies the terms of the agreement that are specifically entered into by these third parties namely the subscribers, with the department. Merely because the Telegraph Authority is deemed authorised to vary the local area, it cannot be further assumed that it is authorised to revise the local area so as to impose additional burden or liability on third parties and thereby alter the specific conditions and terms of the agreement, unless such a power is clearly vested in it either under the deed made thereunder, and more especially under the Rules governing the telephone rent, fees and other charges which the Authority may collect for such telephone connections. The definition of the "local area" cannot be so read as to vest them with such authority.

It is, however, argued by the learned Standing Counsel for the Central Government that since there is no provision for giving any notice to the subscribers before the local area is revised, the revision of the local area is valid without such notice. But it is an elementary principle of natural justice that the rights and liabilities of the parties cannot be unilaterally altered by one of the parties thereto without specific authorisation of the statute. Such a power cannot be implied for it is not necessary for a valid discharge of the duties imposed upon the statutory authority. Though there is no duty cast by the statute to give notice by necessary implication, such duty must be deemed to exist on the authority concerned. The learned standing counsel pointed out that the revision of the local area was intimated to the petitioners on 29-1-1968. Though the said

notice intimates them that the local area was revised with effect from 16-8-1967, the Government is willing to accept the enhanced rate only from the date of the notice i.e., from 29-1-1968. But that is not the present demand. That apart, when the revision of the local area itself cannot be effected without a notice to the petitioners, the mere fact that the department is agreeable to collect enhanced rate from the date of the intimation of the revision of the local area cannot be sustained.

In my opinion the local area maybe revised, it can be done only after giving all the subscribers that are likely to be affected by such revision, notice if not individual notices., at least a public notice of the Department's intention to revise the local area, and after hearing their representations or objecting. If any. That has not been done in the present case. The subsequent notice dated 29-1-1968 cannot therefore, have the effect from 16-8-1967. Notice does not necessarily mean an individual notice. There could be a public notice calling upon all persons likely to be affected by such revision to make the representation. If only such an opportunity was given, the petitioners would have very well represented and having regard to the representations the Authority concerned would have either acceded to or varied or fixed not possible to visualise what its ultimate decision would have been. But so long as the revision of the local area" has been effected without giving an opportunity to the subscribers concerned to make their representations, it violates the principle of natural justice. Though the act is administrative it affects the rights and liabilities of the parties. The statute not having specifically vested the authority with the jurisdiction to unilaterally revise the local area. Even the administrative authority acting under the statute, cannot revise the local area without following the principles of natural justice. In this view of the matter. the present demand cannot be sustained. For the foregoing reason this writ petition succeeds and is accordingly allowed with costs. Advocate's fee Rs. 100/-.

5. Petition allowed.