
(1987) 04 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Appeal No. 1513 of 1986

Amreek Singh

APPELLANT

Vs

District Manager, Indore Telephones and Others

RESPONDENT

Date of Decision : 27-04-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Telegraph Act, 1885 — Section 7
Telegraph Rules, 1951 — Rule 443

Citation : AIR 1987 MP 278 : (1987) 32 MPLJ 701

Hon'ble Judges : V.D. Gyani, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : M.G. Upadhyaya, for the Appellant; B.G. Neema, for the Respondent

Final Decision : Allowed

Judgement

Gyani, J.

Undisputed facts of this petition are :

That the petitioner is a subscriber of telephone No. 7598, for over last 12 years. It was installed on his place of business at 1, Kazi Ki Chal, Malwa Mills, Indore. As a result of riots, which broke out in the wake of assassination of Late Prime Minister, Indira Gandhi, petitioner's place of business was also looted, his telephone instrument damaged and the same was taken away by the miscreants, which was ultimately restored by the police in broken condition. On 20-11-84, he applied for replacement of instrument, (Annexure "B") but replacement was not done by the respondents, as he had asked for shifting the same to his new place of business, 11 Usha Ganj, near GPO, Indore. A special power of attorney, Annexure "A" duly executed by the petitioner in favour of his son Raghuveer Singh, appointing him as his attorney, was submitted to the authorities in compliance of their demand. The petitioner again requested the authorities on 5-1-1985, praying for replacement and transfer of his telephone, but his request was not attended to. On 29-8-85, he appealed to the Commercial Officer,

respondent No. 2, to consider his case (Annexure "D"). A reminder was also sent by the petitioner vide Annexure "E" on 9-1-1986, but none of these request petitions or reminders were replied to. Although, Amreeksingh was repeatedly contacting the authorities, it was somewhere in the month of Jan. 1986 that he was told that certain bills were yet to be paid and the same were sent to him by the respondents. It was for this reason that his telephone was not restored.

Petitioner's case is that he had not received bills as such, since Oct. 1984 and ever since, the riots, there was no question of non-payment of bills. Yet on 20-2-1986, he requested Commercial Officer, to send him bills so as to enable him to make necessary payment. The petitioner was finally informed on 25-3-86 (Annexure "F") that his telephone could not be restored and his prayers in that behalf were rejected. After receipt of this intimation (Annexure "F") the petitioner served a notice dt. 7th April, 1986 (Annexure "G") for demand of justice through his counsel but it was not replied to.

In order to justify disconnection of telephone the respondents have come out with allegations of fraud and non-payment of bills against the petitioner. According to them, two bills (i) dt. 1-11-1984 for Rs. 276A and (ii) bill dt. 1-1-1985 for Rs. 150/- are still lying unpaid. It is further alleged that the petitioner does not know either English or Hindi, whereas his original application for telephone connection, (Annexure R-1) bears signatures in English and the application dt. 20-1-1986 for re-connection (Annexure R-4) bears his signatures in Hindi. They have also sought shelter behind Rule 443 of the Telegraph Rules, to justify their actions.

Petitioner's counsel was right in his submissions that after the riots, on 1st and 2nd Nov., 1984, the question of any pending bills would not arise as the telephone instrument itself was damaged and taken away by the miscreants, which was ultimately restored to him by the police, on being recovered. So far as the question of fraud is concerned, a mere glance at Annexure R-1, would go to show that R. Muchhal had signed for Amreeksingh. This application was made on 31-7-1972, and for over 12 years, the petitioner had been making use of the telephone, other application for re-connection (Annexure R-4) bears signatures in Hindi, much prior to it, the respondents had obtained from the petitioner a special power of attorney dt. 31-10-1984, (Annexure "A") executed by him in favour of his son Raghuweersingh. Thus, the allegation of fraud appears to have been made for the sake of making an allegation. There is no substance in it, even assuming for a while that there was some fraud as alleged by the respondents, they ought to have apprised the petitioner of these allegations and obtained his explanation in that behalf. It is not that grounds, justifying disconnection should be found out. Disconnection itself is to be based on justifiable grounds. In the instant case, grounds of disconnection were not made known to the petitioner. The discretion which vests in the authorities under Rule 443 cannot be invoked for such an act, as there can be no discretion to, abuse one's discretionary powers. It is by now, well settled that even administrative

actions, must be informed with reason and fairness, which unfortunately in the instant case are totally lacking. The manner in which, the actions and omissions to restore connection is sought to be justified by the respondents, cannot be approved of.

A reference has been made to Rule 443 of Telegraph Rules, by the learned counsel for the respondents who contended that it was discretionary for the Distt. Manager, Telephones to agree to restoration of telephone connection. In order to appreciate this point, the contention as incorporated in the return filed by the respondents is reproduced hereunder : --

"(e) Under Rule 443 of the Telegraph Rules the restoration of the telephone is left to the discretion of the Telegraph Authority, The Distt. Manager, Telephones, Indore, in his capacity as Telegraph Authority did not agree for restoration for two reasons.

i) Paying habits of the subscriber were not satisfactory and

ii) Reasons for non-payment of bills dt. 1-11-84 and 1-1-1985, were not furnished in the application, (Ex.R-4)"

Annexure "F", the intimation dt. 25-3-1986, sent to the petitioner does not reflect any of these reasons. It merely says that the petitioner's prayer for re-connection has been rejected.

Rules can be promulgated by the administration so as to channelise broad stream of statutory discretion; it must provide the norms, according to which, the ground on which, and procedures according to which, the administrative discretion conferred, is to be exercised in individual cases. Exercise of discretionary powers involves two elements : (i) an objective element and (ii) subjective element. The existence of an objective element is a condition precedent for exercise of the subjective element. Although, it is true that as a general rule Courts do not go into the merits of the exercise of discretion, but it is also equally true that broader the discretion greater the chance of its abuse.

The petitioner, despite his repeated requests and reminders and notice for demand of justice, at no stage, was informed of the reasons for not restoring telephone connection. Elementary rules of natural justice cannot be overlooked or ignored in exercise of discretionary powers. In the instant case, no reasons were assigned for, nor the petitioner informed, of such reasons, as to why telephone connection could not be restored. Annexure "F" does not reflect any such existence of reasons much less their consideration by the Distt. Manager, Telephones.

Courts do not countenance arbitrary power and unfettered discretion. Discretionary powers are required to be exercised reasonably and in good faith for proper purpose only and in accordance with the spirit as well as letter of the empowering Act. In this connection, the return filed by the respondents, is silent as to when the so-called fraud in signature was detected, it does not stand to

reason that having accepted application for telephone connection, allowed the petitioner to avail the same for almost more than 12 years, the respondents should justify disconnection on the ground of "fraud" without apprising the petitioner of the facts constituting the alleged fraud and affording him an opportunity to explain the same.

The least which should have been done, in such a case was to inform the subscriber of the fraud detected and call upon him to show cause against the proposed action of disconnection of telephone, before it was actually disconnected. The petitioner for over two years, had been repeatedly writing to the authorities for reconnection of his telephone, but the respondents do not think it fit to apprise him of the ground which they now plead and project in the return, for justifying their action. What the law requires is the existence of justifiable grounds before dis-connection, and not advancing justifiable grounds after disconnection. Natural justice demands and dictates that in such a case the subscriber must be informed of the grounds of disconnection of telephone before it is actually disconnected.

In such circumstances, the order as communicated by Annexure "F" cannot be allowed to stand. It is liable to be quashed and is accordingly quashed, as wholly arbitrary and unreasonable. The petition deserves to be allowed and is accordingly allowed.

As the petitioner had expressed his willingness to pay bills if sent and has also expressed his readiness before this Court to pay these bills, he also agreed to give his signatures before the concerned authority so as to have his telephone connection restored, we direct that the respondents, on petitioner's paying the bills, dt. 1-11-1984, for Rs. 276/- and bill dt. 1-1-85 for Rs. 150/- as stated in the return and necessary re-connection charges, (for which he has agreed) and on furnishing his signature before either respondent No. 1 or 5; on the original application form or a fresh one, shall restore his telephone-connection. Telephone No. 7598, within a week from the date of this order, at the petitioner's place of business at No. 1, Kazi Ki Chal Malwa Mills, Indore or at 110, Usha Ganj, near GPO, Indore (if transfer is not granted the same be granted as prayed by the petitioner) we only hope that the petitioner, who is an old man, will not be put to any hardship or inconvenience by doing repeated errands to the office for furnishing his signatures, if there is any difficulty in making payment of the bills, referred to above, respondents shall supply him copies of the bills. In no case, restoration of telephone connection should be delayed. Although, the respondents' action cannot be approved of, as the petitioner has not insisted for costs, we do not make any order as to costs.