
(2002) 01 AHC CK 0031
In the Allahabad High Court
Case No : C.M.W.P. No. 19907 of 1999

Aseem

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21, 226
Telegraph Rules, 1951 — Rule 2, 416, 416(3), 443

Citation : AIR 2002 All 190 : (2002) 2 AWC 968 : (2003) 3 RCR(Civil) 14

Hon'ble Judges : U.S. Tripathi, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : U.N. Sharma, Suneet Kumar and Pankaj Bhatia, for the Appellant;
Rajiv Joshi and S.N. Srivastava, S.C., for the Respondent

Final Decision : Allowed

Judgement

Binod Kumar Roy and U. S. Tripathi, JJ.—Following questions crop up for adjudication in this writ proceedings under Article 226 of the Constitution of India :

(1) Whether Rule 416 (3) of Telegraph Rules, 1951 (hereinafter referred to as the Rules) bars the maintainability of a writ petition as premature unless the petitioner files a representation before the Telecom Authorities against a notice?

(2) Whether for the non-payment of the bill of that telephone which was got installed by the father, the Telecom Authorities can justifiably refuse to deny new telephone connection to his son for another premises, which he claims to be commercial, by taking aid of Rule 416 (2) (d) of the Rules?

(3) Whether in the facts and circumstances, the petitioner is entitled to the reliefs prayed for?

The Prayers :

2. The petitioner has made three fold prayers in this writ petition :

(i) to quash that portion of the Notice-cum-Demand Note dated 25.5.1998 (as contained In Annexure-2) imposing a condition against him that unless and until his father deposits a sum of Rs. 57,614, due against his telephone No. 55222, new telephone connection shall not be given to him ;

(ii) to direct the respondents to issue a new telephone connection for his commercial premises. 500 metres away from his residence both situated at Main Market, Ganj Dundwara, district Etah ; and

(iii) to award costs. The Pleadings :

3. The petitioner, aged 21 years as per his affidavit dated 13.12.1998, asserts, inter alia, to this effect :

He is resident of Main Market, Ganj Dundwara district Etah. who has set up a commercial establishment (shop) in the main market, which is about 500 metres away from his residence ; in order to facilitate his business, he submitted an application on 19.3.1998 along with a deposit of a sum of Rs. 2,000 (copy of the demand note in this regard appended as Annexure-1) ; even though telephone connections have been given to all those persons who had applied subsequently, but he was not given and thus he met respondent No. 2, who handed over to him the impugned notice-cum-demand note in regard to the telephone No. 55222 installed since 26.12.1994 in the name of his father at his father's residence showing outstanding dues ; though he is resident of the same premises but has nothing to do with the dues ; Rule 443 of the Rules does not authorise the Telecom Authorities to take such a course ; he met Telecom Authorities but no heed was paid towards his request ; and hence this writ petition.

4. In their counter-affidavit, the respondents state, inter alia, to this effect. The commercial establishment is about 500 metres from the residence of the petitioner, on enquiry it has been learnt that he has not set up independently any shop or any commercial establishment ; the connection is sought for the residence in the main market and not for the shop as stated ; the petitioner has failed to state the nature of the commercial establishment, etc., in case he ever held or run the same : there are outstanding bills to the tune of Rs. 57,614 against his father's telephone at Main Market, Gang Dundwara pertaining to the same premises for which he wants a new telephone connection and as such the notice-cum-demand has been rightly issued ; as the petitioner is not a bonafide subscriber, unless the dues are cleared, no new telephone connection could be installed : the fact remains that the petitioner is residing along with his father and in order to avoid payment of the outstanding dues he wants to install a new telephone connection in the same premises ; the quotation of the Rules requires no comments : it cannot be said that the petitioner Is being harassed : and the writ petition is devoid of merit and Is liable to be dismissed with special cost.

5. The petitioner filed rejoinder to the aforementioned counter-affidavit stating, inter alia, therein to the effect that the denials of the respondents are Incorrect and that he reiterates the averments made in the writ petition.

The Arguments :

6. The learned counsel appearing on behalf of the petitioner, contended as follows :

"The stand of the authorities is thoroughly misconceived inasmuch as they have not correctly understood the meaning of the word "subscriber" as defined under Rule 2 (pp) read with Rule 443 of the Rules. If read correctly the petitioner cannot be held to be subscriber of telephone No. 55222 which belonged to the petitioner's father who was admittedly its subscriber whose telephone was disconnected under Rule 443 ; nowhere the aforementioned Rule imposes any restriction on the son of a defaulting subscriber depriving to have his independent telephone connection either in a different premises or even in that part of the premises which is in his possession Independent of his father ; the Rules do not require mentioning of the details of the shop or the commercial complex by the petitioner. Accordingly the prayers made in" this writ petition be allowed."

7. Sri Rajiv Joshi, learned Additional Chief Standing Counsel appearing on behalf of the respondents, on the other hand contended as follows :

(i) This writ petition is premature since in terms of Rule 416 (3), the petitioner was required to submit a representation for consideration by the Telegraph Authorities which the petitioner never made. Accordingly this writ petition is not maintainable.

(ii) Rule 416 of the Rules confers Jurisdiction in the Telecom Authority to reject any application for connection of a new telephone keeping due regard to the antecedent of the applicant and whether there was any telephone dues outstanding in his name or the person duly authorised by him and/or any other relevant factor ; non-payment of the outstanding telephone dues by the father of the petitioner in view of the fact that the petitioner was residing along with his father in the same premises coupled with the additional fact that description of the shop or the commercial complex was not detailed in his application by the petitioner were "other relevant factor" relying on which the authority refused to grant sanction of the new connection.

He referred to pages 783-784 of the book captioned as "Swamy's Treatises on Telephone Rules", 1999 Edition, published by Swamy Publishers (P.) Ltd., Chennai, wherein there is a reference of a learned single Judge judgment of the Madras High Court in Writ Petition No, 13884 of 1986, K. Amanullah v. Madras Telephones, dismissing the writ petition filed by a son whose father had set up him to apply independently when the latter fell into arrears to the tune of Rs. 16,596 with regard to his own telephone.

8. In reply, the learned counsel appearing on behalf of the petitioner, contended as follows :

"The counter-affidavit is completely silent about this writ petition being

premature on the ground that a representation is required to be submitted in terms of Rule 416 (3) besides in view of the misconceived stand taken concerning petitioner in the counter-affidavit filing of any representation now will be futile and unnecessary ; the phraseology "any other relevant factor" mentioned in Rule 416 (2) (d) has been subject-matter of interpretation by a Division Bench of Orissa High Court in Ginni Vitreous Pvt. Ltd. Vs. Union of India (UOI) and Others, , explaining that it would amount "a circumstance which is relevant and affords justification for refusal of a telephone connection" ; the Madras Judgment is not applicable for three reasons : (i) here It is not the case of the respondents that the petitioner has been set up by his father ; (ii) in the Madras case the premises was one whereas here on the assertions made by the petitioner he has applied for grant of telephone connection in altogether a different premises which is 500 metres away from the residence ; (iii) it has been clearly stated by the learned Judge of the Madras High Court that having regard to the facts of the case he thinks that the petitioner is not entitled to any telephone connection."

Discussion and Our Findings :

9. Article 19(1)(a), (e) and (g) of the Constitution of India guarantees to its citizen to have fundamental rights of speech and expression, to reside and settle in any part of the territory of India and to practice and to carry on any trade or business. Article 21 ensures leading of a meaningful life.

We find that in People's Union of Civil Liberties (PUCL) Vs. Union of India (UOI) and Another, the Hon'ble Supreme Court held to the effect that freedom of speech and expression guarantee under Article 19(1)(a) means the right to express one's conviction and opinion freely by word of mouth and when a person is talking on telephone, he is exercising that right ; telephone conversation is a part of modern man's life ; it is an important facet of a man's life ; anything which is arbitrary, freakish or bizarre has to be ruled out ; and a valuable constitutional right can be cancelled only by a civilized process.

With the advancement of the technology, all round facilities and utilities have been provided by the Telecom Department. Just on one dial of three digits one can call Ambulance/ Fire/ Emergency/ Police, etc. It thus really helps to save one's life. The distance now stands narrowed. Its utility need not be detailed at great length here. We are of the view that to have a telephonic connection from the Post and Telegraph Department of the Government now a days is a necessity in order to lead a meaningful life within the meaning of Article 21 of the Constitution of India.

10. Let us first take up the Preliminary Objection to the maintainability of this writ petition. 10.1. Rule 416 of the Rules, relied upon by Mr. Joshi, reads as follows :

"Powers of Telegraph Authority.--(1) The Telegraph Authority may reject any application for the connection of a new telephone or for providing any similar

service or for the alteration of any existing service.

(2) Before rejecting any application under Sub-rule (1), the Telegraph Authority shall have due regard to the following facts, namely :

(a) the antecedents of the applicant and where the application was made by any person duly authorised by the applicant, the antecedents of such person ;

(b) whether there are any telephones dues outstanding in the name of--(i) the applicant : or

(ii) the person duly authorised by the applicant, if the application was made by such authorised person on behalf of the applicant ;

(c) whether by Gazetted Officer of the Central Government or a State Government duly authorised by such Government, has recommended to the Telegraph Authority that in the interests of the maintenance of law and order, any telephone of any service as is referred to in Sub-rule (1), should not be provided to the applicant, or, as the case may be, to the person duly authorised by the applicant ; and

(d) any other relevant factor.

(3) No action shall be taken under Sub-rule (1), unless notice of not less than seven days has been given in writing to the person concerned and the Telegraph Authority has considered the representation, if any, made by such person in the matter."

10.2. Rule 416 (3) bars the Telecom Authorities from rejecting the application filed unless 7 days written notice is given to an applicant and consideration of representation, if any, made and not to the applicant's moving this Court under Article 226 of the Constitution of India for redressal of his grievance. The preliminary objection of Mr. Joshi in regard to maintainability of this writ petition is thus overruled.

11. Now we turn on merits.

11.1. The word "subscriber" has been defined under Rule 2 (pp) of the Rules, which reads as follows :

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

11.2. Apparently it means a person to whom telephone service has been provided. On the pleadings set forth, the subscriber was admittedly the petitioner's father, who had not paid dues.

11.3. The defence taken in the counter-affidavit that as the petitioner is not a bona fide subscriber and hence, no new telephone connection could be installed is thoroughly misconceived inasmuch as an applicant will become subscriber only after the connection of the telephone is given. It is perhaps for this reason that

Mr. Joshi did not press this defence before us.

11.4. In this regard, we find a G.O. referred to at pages 69-70 of the Book "Swamy's Treatise on Telephone Rules, 1999 Edition, which reads as follows :

"2. For New Telephone connections ANNEXURE-A

Statement of bona fide verification for provision of a new telephone if the applicant is an individual.

I, Shri/Smt./Km. staying at have applied for a
telephone under registration
No.....dated.....

I affirm that the telephone is for my bona fide use.

Signature"

Thus, whether a subscriber is bona fide or not can be easily found by the Department at that stage.

12. Rule 443, which deals with default of payment, reads as follows :

"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 with 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."

12.1. On its bare reading, it is clear that it deals with a contingency wherein within due date, the rent or other charges in respect of telephone service provided are not paid by a subscriber. It vests jurisdiction in the Telecom Authority to disconnect the telephone connection in the event of default by a subscriber and of its restoration when a defaulting subscriber pays the outstanding due and reconnection fee together with rental for such portion of the intervening period during which the telephone had remained disconnected.

12.2. It is somewhat surprising that nothing has been pointed out by Mr. Joshi as to except the disconnection of the telephone No. 55222 what other course the Telecom Authorities have resorted to for realisation of the dues. No one had prevented or could prevent the Telecom Authorities to proceed to realise its dues legitimately from the petitioner's father in accordance with law.

13. Reliance was placed by Mr. Joshi on the phraseology "any other relevant factor" as mentioned in Rule 416 (2) (d).

13.1. The said phraseology has been considered by a Division Bench of Orissa High Court in Ginni Vitreous Put. Ltd., (supra) and it was held as follows :

"Neither the authority who passed the order in Annexure-9 nor the counter-affidavit filed on behalf of the opposite parties spells out any other factor which can be taken as a justification for refusal of the telephone."

13.2. We have been denied of having the complete judgment of the Madras High Court referred to by Mr. Joshi. However, this much is clear to us that in the Madras case, the Telecom Authorities had set up a case that It was the defaulting father himself who had set up his son to have a telephone connection. There is no such case here. In this regard, it is relevant to remember that case of benami or farzi has to be pleaded and proved. Even the constitutional aspects were not considered therein. Thus, this judgment is of no help to the respondents.

13.3. We do not even find reference of Rule 416 (2) (d) in the communication made to the petitioner.

14. The respondents have also not brought on record anything to show that it was obligatory on the part of an applicant to give the precise length and breadth, etc. of his shop/commercial complex in the application. At best non-disclosure of such description, if required, would be merely an irregularity which an applicant can cure by supplying number of the holding/house of Flat/shop, if numbered by any competent local authority.

15. Frankly speaking, in our constitutional scheme and the laws, a son cannot be penalized for the acts and/or commissions/omissions of his father nor can he be deprived of his rights or privileges flowing from the Constitution and/or the laws-- Central or State. In many enactments, which have been put in the Ninth Schedule of the Constitution an adult son, like the petitioner, is not even treated as a member of the family, which includes within its meaning "husband, wife and their minor children only".

16. In fact neither the Telegraph Act and the Rules state anything about the legal position that for the acts and omission of a father subscriber, a new telephone cannot be given to his son. There may be many husbands and wives and fathers and sons who may be residing in one house but separately due to strained relations. In that backdrop, whether the Telecom Authorities can justifiably reject the application of such wives, sons, fathers or husbands on the ground that they are residing in the same premises?

17. From the assertions made by the petitioner, it is clear that he is residing independently though in the same premises in which his father is residing. He applied for connection for his shop/commercial complex which is located 500 metres away from his residence. The Department has not brought on the record a copy of the application of the petitioner or any other document to show that

the shop/commercial complex and the residence of the petitioner and his father are one and the same. Their counter-affidavit does refer to an enquiry but the report of the alleged enquiry has surprisingly not been brought on the records so that we could know following facts : (i) Who has made the enquiry? (ii) On whose orders it was made? (iii) Whether the person concerned had in fact visited the place? (iv) Whether during the alleged enquiry, the Enquiry Officer had met the Petitioner? (u) From whom the alleged enquiry was made? (vi) Where is the Enquiry Report? Admittedly there is no mention of conduct of any enquiry in the impugned notice-cum-demand note. For the aforementioned reasons, It is not possible to accept the defence of the respondents concerning the alleged enquiry and coming to know of the facts alleged by them as a result thereof. Even otherwise also, principles of natural justice compelled the Department to apprise of the same to the applicant against whom any enquiry report is sought to be relied upon.

18. In the backdrop aforementioned, it is difficult to accept that the stand taken by the respondents are supported by Rule 416 rather they have erred in not taking any step to recover its dues from the father of the petitioner in accordance with law so far. We accept the correctness of the case of the petitioner. We are rather of the firm view that the Telecom Authorities have completely missed the real legal position emerging out of the Rules visa-vis the Constitutional Safeguards and erred in denying the petitioner of a telephone connection. The Imposition of the term that the petitioner must pay the dues of his father is unreasonable, unwarranted and unauthorised. Their stand being unjustifiable even attracts the vice of being violative of the constitutional mandate enshrined in the equality clause under Article 14 of the Constitution of India.

19. Question Nos. 1 and 2 are answered in favour of the petitioner. We are thus of the view that the petitioner is entitled to the first two reliefs prayed for.

Result:

20. For the reasons aforementioned, we allow this writ petition, quash the impugned part of the notice-cum-demand as contained in Annexure-2 by grant of a writ of certiorari and command the respondents to provide telephone connection to the petitioner within three months period from today by issuing a mandamus.

In the peculiar facts and circumstance we leave the parties to bear their own cost. Relief No. 3 is thus not granted.

21. Let a copy of this judgment be handed over to Shri Joshi within one week for a follow up action of the directions.