(1992) 07 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 1359 of 1992 with Writ Petition No. 1610 of 1992

Bombay Telephone Users'' Association and others APPELLANT

Vs

Mahanagar Telephone Nigam Ltd. and another RESPONDENT

Date of Decision : 21-07-1992

Acts Referred:

Constitution of India, 1950 — Article 14
Telegraph (Second Amendment) Rules, 1992 — Rule 434
Telegraph Act, 1885 — Section 4, 7
Telegraph Rules, 1951 — Rule 2

Citation : AIR 1993 Bom 194 : (1992) 3 BomCR 139

Hon'ble Judges : Sujata Manohar, J;Saraf, J

Bench : Division Bench

Advocate : S. Radhakrishnan and R.Z. Moray, for the Appellant; B.A. Desai, Miss S.I. Shah and S.R. Rajguru, instructed by Sankararamakrishnan, for the Respondent

Judgement

Mrs. Sujata Manohar, J.—We have already dismissed a similar writ petition filed earlier being Writ Petition No. 1326 of 1992 by our judgment and order dated 15-6-1992. The only additional point urged in these two writ petitions relates to the power of the respondents to make the amendment in question.

2. u/s 4(1) of the Indian Telegraph Act, 1885, within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs. The first proviso says that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India. Sub-section (2) says that the Central Government may, by notification in the Official Gazette, delegate to the telegraph authority all or any of its powers under the first proviso to sub-section (1). We are not concerned with the rest of the provisions of Section 4.

3. u/s 7, the Central Government may from time to time, by notification in the

Official Gazette, make rules consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licenced under this Act. Sub-section (2) provides, inter alia, that the rules may provide (a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted within India.

4. The power, therefore, to frame rules u/s 7 is with the Central Government. In the exercise of this power the Central Government has framed rules which are known as the Indian Telegraph Rules 1951. The Central Government has, in exercise of powers conferred on it u/s 7 amended these rules by the Indian Telegraph (Second Amendment) Rules, 1992 which have been notified on 26th May 1992. As a result of these amendments, in Rule 2 the definition of an ''Electronic Exchange'' and a ''Non-electronic Exchange'' have been added. Rule 434 is also amended. Rule 434 deals with fees and other charges for various services under these rules.

5. Section III of Rule 434 deals with "scale of charges for departmental exchange connection". Category (i) u/s III deals with calls within the local area. Such calls are further divided into two sub-groups (a) where calls are charged on a measured rate system and (b) where calls are charged on a flat rate system. Under the measured rate system, the table which is prescribed provides for "number of call units allowed free of charge during two months" and "fees per call unit for calls in excess of these allowed free of charge within the local area. The rule originally provided that the duration of a call for which one call unit is charged will depend upon the distance between the telephone exchanges to which the calling and the called telephones are connected as specified by the Telegraph authorities from time to time. This part of the rule has now been amended. As a result of the amendment, the duration of a cell for which one call unit is charged will now depend upon one or more of the following parameters, as may be specified by the Telegraph Authority, from time to time, namely:

"i) The distance between the telephone exchanges to which the calling and called telephones are connected.

ii) The size of the telephone exchange or system;

iii) The type of the exchange; and

iv) The time at which the call is established."

6. As a result a call unit can now be fixed taking into account, inter alia, the type of exchange and the time at which the call is established. The fixing of a call unit is left to the telegraph authority as was the case prior to the amendment also.

7. As a result of this amendment in Rule 434 the Telegraph Authority in exercise of its powers conferred under Rule 434 has issued a direction dated 10th June, 1992 under which in respect of specified Electronic Exchanges the calls will be metered and charged at the rate of one call unit for every five minutes or part thereof. Thus in respect of certain telephone exchanges as specified therein one

call unit is to be counted for every five minutes or part thereof of a local call in such an exchange. The direction dated 10th June, 1992 is therefore in accordance with law and it cannot be said that the respondents have no authority to issue this direction. The Telegraph Authority has not altered either the free Call units or the rate prescribed under the table for call units. The advertisement is merely an information to the public in respect of the changes so effected.

8. The other contention relates to sub-rule (3) of Rule 7 which requires that every Rule made u/s 7 shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days and if both Houses agree in making any modification in the Rule or both Houses agree that the Rule should not be made, the Rule shall thereafter have effect only in such modified form, or be of no effect, as the case may be. Therefore this does not prevent the coming into operation of the Rule in question.

9. It was also argued that Section 4 grants an arbitrary power to the Central Government and hence it should be declared as unconstitutional, We do not find any substance in this contention at all. The Act itself and the Rules which are framed thereunder provide detailed guidelines regarding the manner in which the power is to be exercised. The guidelines provided in Rule 434 relate to fixing of a call unit. Therefore such power cannot be considered as arbitrary.

9A. We have already dealt with the question reasonableness or otherwise of the few provisions which have been framed and their constitutional validity in the earlier writ petitions and we need not go into the same again.

10. It was also submitted before us by learned counsel for the respondents that having already dismissed Writ Petition No. 1226 of 1992 we should not entertain two other writ petitions which raise the same issue. He has relied upon a decision of the Supreme Court in the case of Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, , in this" connection. We need not examine this aspect any further in view of the fact that in any event, we do not find any merit in the additional submissions which have been made before us.

The petitions are therefore dismissed.

No order as to costs.

Certified copy expedited.

Order accordingly.

