

(2002) 02 MAD CK 0060

In the Madras High Court

Case No : Writ Petition No"s. 658, 659 and 660 of 2002 and W.P.M.P. No"s. 980 to 982 of 2002

B.V.K. Krishnan, Miss. Vinaya and Mrs. Nitthya

APPELLANT

Vs

BSNL-Chennai Telephones

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Telegraph Rules, 1951 — Rule 443

Citation : (2002) 1 LW 668 : (2002) 1 MLJ 512

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : V. Ramajagadeesan, for Rathna Asohan, for the Appellant; S. Muthusamy, Addl. Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—The petitioners have approached this Court to issue writ of declaration that the disconnection of their Telephone Nos.

4868323, 4863499 and 4869499 respectively is arbitrary and illegal.

2. According to the petitioner in W.P.No. 658 of 2002, he is a subscriber since 1-2-1985, having a telephone Connection bearing No. 4868323,

coming under Valasaravakkam Exchange, under the administrative control of the respondents. He has been paying the periodical bi-monthly bills

regularly and promptly, to the respondents within the due dates and thus maintaining the above telephone perfectly. While so, on 6-12-2001, the

said telephone number was disconnected by the respondents. On verification with the respondents, it was known that his telephone was

disconnected because of alleged non-payment of 5 bills, relating to the year 98-99 by other subscriber Miss Ramyah, having telephone No.

4863599, who is none other than the daughter of the petitioner, whose telephone also was once installed in her bed room for her exclusive use. It

is further stated that the petitioner is a social activist and his source of income and his daily activities are independent and are nothing to do with

any other members of his family. After making representation to the respondents and in the absence of proper response, he issued legal notice on

13-12-2001 through his counsel to the second respondent calling upon him to restore the telephone immediately, otherwise he will face legal

proceedings. The petitioner waited till 17-12-2001 and the respondents never cared to restore the connection, in spite of the receipt of the said

legal notice. There is no rule or provision under the Indian Telegraph Act, 1885 and the Rules framed thereunder which gives such arbitrary

authority to the respondents, to disconnect the telephone connection, without any notice, that too for the non-payment of bills of some other

subscriber. In such circumstances, having no other effective remedy, has filed the present writ petition.

3. The other writ petition, viz., W.P.No. 659 of 2002 is filed by the mother and W.P.No. 660 of 2002 is filed by the sister of the defaulter. Since

similar averments have been made in those writ petitions, it is unnecessary to refer the same once again.

4. On direction, Mr. S. Muthusamy appears for the respondents in all these three writ petitions.

5. The only point for consideration in these writ petitions is whether the respondents are empowered to disconnect the telephone for the default of

another subscriber?

6. It is true that the subscriber Miss Ramyah having a telephone bearing No. 4863599 failed to pay the telephone bills. It is also true that the

respective petitioner in W.P.Nos.658, 659 and 660 of 2002 is her father, mother and sister respectively and that they are having separate

telephones in their names in the very same house. Admittedly, there is no statutory provision which enables the respondents to disconnect the

telephone of the other subscribers. No doubt, Rule 443 of the Indian Telegraph Rules, 1951 empowers the authorities to disconnect any telephone

on the ground of non-payment of bill. Since the respondents very much relied on the said Rule, it is useful to refer the same:-

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 re-connection 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.

Though it is stated that any telephone or telephones or any telex service rented by him may be disconnected without notice, the reading and understanding of the Rule, according to me, is to be confined only to the particular telephone in respect of which there is default in payment and not to other telephones owned by others. As rightly contended by the learned counsel for the petitioner, Rule 443 of the Indian Telegraph Rules, 1951 cannot be interpreted to authorise the Telegraphic Department to disconnect any telephone other than one which is the subject matter in dispute. In this regard, the learned Central Government Standing counsel very much relied on an unreported decision of this Court rendered in K.

AMANULLA vs. MADRAS TELEPHONES, - W.P.No. 13884 of 1986 dated 12-2-87. In that case, the father having had the benefit of a

telephone and falling into arrears to the tune of Rs.16,000/- had set up his son to apply independently. The son has come up here as though his

telephone has been disconnected. The learned Judge (Justice S. Mohan) (as he then was) having regard to the facts of the case has held that ""I do

not think the petitioner is entitled to any telephone connection."" In the light of the statutory provision, namely, Rule 443 of the Indian Telegraph

Rules, 1951 and in the light of the factual position in that case, with respect, the said decision is not helpful to the respondents" stand. On the other

hand, learned counsel appearing for the petitioners brought to my notice a decision of the Andhra Pradesh High Court, in Y. Pridhvi Kumar Vs.

The General Manager, Telecom District, Hyderabad, . That writ petition was filed questioning the impugned Notice dated 18-2-92 issued by the

respondent therein seeking to disconnect the petitioner's telephone No. 223627 on the ground that there are arrears outstanding against the

telephone bearing No. 30248 pertaining to his mother. The learned Judge-Subhashan Reddy, J., (now our Hon'ble Chief Justice), after referring

Rule 443 of the Indian Telegraph Rules, 1951 and after rejecting the similar stand taken by the Central Government Additional Standing counsel,

has held thus:-(para 2)

2.....I apprehend that I cannot accede to this contention of the learned standing counsel for the Central Government for the simple reason that the

petitioner and his mother are having two different telephones and as citizens of India, they are entitled to be subscribers of telephones independently

and merely because there is a relationship of mother and son and as the mother has defaulted in payment of amounts to the respondent, no liability

can be fastened to the petitioner and neither the statute nor the rules framed thereunder empower the authorities to disconnect the telephone for the

default committed by the petitioner's mother. Even if any statute makes such an imposition, the same would be arbitrary and unreasonable and be a

clear infraction of the fundamental rights guaranteed under Article 14 of the Constitution of India.

The said decision is directly on the point. I have already held that on the basis of Rule 443, the respondents cannot be permitted to disconnect the

telephone of other subscribers though they are family members. I am satisfied that no liability can be fastened on the petitioners. The action of the

respondents is arbitrary and unreasonable.

7. In the light of what is stated above, all the three writ petitions are allowed. No costs. Consequently, connected W.P.M.Ps., are closed. In view

of the order allowing the writ petitions, the respondents are directed to restore the Telephones of the petitioners forthwith.