

(1996) 12 MP CK 0028
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3076 of 1995

Chand Datta (Smt.)

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 09-12-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Telegraph Act, 1885 — Section 7
Telegraph Rules, 1951 — Rule 443

Citation : (1997) 1 J LJ 312 : (1997) 2 MPLJ 523

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : A.S. Jha, for the Appellant; O.P. Namdeo, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

The Petitioner, who runs a Beauty Parlour in the name of "Kaya Kalp" at 41(76) Bhanwartal, Napier Town, Jabalpur, is provided telephone bearing number 27395. Petitioner's husband Lt. Col. S.C. Datta residing in Cantonment Area was also provided a telephone connection bearing number 320244 of which he did not pay the charges of telephone bills amounting to Rs. 53,193.00. For the non-payment of the charges by the subscriber the telephone number 320244 was disconnected by the Telecom Department. Thereafter Telecom Department issued a notice directing the Petitioner to pay the amount of telephone bills of telephone number 320244, or in default action to disconnect the Petitioner's telephone. The Petitioner sent a reply that the Petitioner stays separately from her husband in a different locality having her independent telephone. Therefore, the Petitioner's telephone cannot be disconnected for the non-payment of charges of the telephone provided to her husband residing separately in a different locality. Petitioner also gave the present address of her husband, so that the Department may recover the amount of telephone bills due to him. In spite of the reply, the

Petitioner's telephone was disconnected. Hence this petition under Article 226 of the Constitution of India for issuance of a writ of mandamus or any other suitable writ, direction or order for restoration of Petitioner's telephone and to pay damages.

Learned Counsel for the Petitioner submits that Central Government in exercise of the power u/s 7 of the Indian Telegraph Act, has framed the Indian Telegraph Rules, 1951 (for short "the Rules"). Rule 443 of the Rules deal with default of payment, which gives power to the Department to disconnect the telephone of a subscriber in case of default; but that power cannot be exercised to disconnect the telephone of a relative of such defaulter. Counsel cited decision in Dr. B.V. Manek Vs. Mahanagar Telephone Nigam Ltd., and a Division Bench decision of Gauhati High Court in Santokh Singh Vs. Divisional Engineer, Telephones, Shillong and Others, .

Part V of the Rules dealt with rules for telephone. Rule 443 provides for consequences of default in payment of bills which reads thus-

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 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.

From a bare reading of Rule 443 it is abundantly clear that it empowers the department to disconnect the telephone of a subscriber in case of default in payment of the dues not paid by the subscriber of the telephone service provided to him. However, this power cannot be extended so as to include a relation of a subscriber.

Andhra Pradesh High Court in case of Y. Pridhvi Kumar Vs. The General Manager, Telecom District, Hyderabad, , while considering the case of mother and son having two different telephones as independent subscriber, observed that in default of payment of mother, no liability can be fastened to the son. Disconnection of the telephone of the son who is an independent subscriber, would, therefore, be arbitrary and be a clear infraction of the fundamental rights guaranteed under Article 14 of the Constitution of India.

The Orissa High Court in Kailash Prasad Modi Vs. Chief General Manager, Orissa Telecommunication and Others, , in a case where the telephone was in the name

of the Director of a private company, in default of payment, observed that for the said default, personal telephone of son of Director of erstwhile Company, cannot be disconnected.

In case of Dr. S.V. Manek v. Mahanagar Telephone Nigam Ltd. (supra), Bombay High Court interpreted the term "subscriber" and observed that it does not include the relation of a subscriber and, therefore, the department cannot be permitted to disconnect a telephone of a relation of such defaulter-subscriber.

In view of the plain reading of Rule 443 of the Rules and the view taken in the aforesaid decisions, it is clear that Rule 443 speaks of subscriber, who is a person, who has been provided the telephone service and for the purposes of taking action under Rule 443 the power cannot be exercised to disconnect the telephone of a relation having independent telephone in default of such subscriber. Therefore, for the default in payment of telephone bills of telephone of Petitioner's husband, the disconnection of the telephone service provided to the Petitioner is not permissible; hence the action of disconnection of the Petitioner's telephone is illegal and cannot be sustained.

At this stage, Shri O.P. Namdeo, learned Counsel for the Respondents submitted that it be observed that for the default in payment, the department has got power to disconnect any other telephone rented by the subscriber. It is not necessary to make any observation for this count, as the question considered in this petition is whether a telephone service provided to a relation of a subscriber who has made a default in payment, can be disconnected, or not.

In the result, the petition is allowed; the action of disconnection of the Petitioner's telephone service is quashed. No costs.