
(1988) 03 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 3401 of 1987

Chandrasekhara Menon

APPELLANT

Vs

District Manager, Telephones

RESPONDENT

Date of Decision : 23-03-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1988) 03 KL CK 0002

Hon'ble Judges : G. Viswanatha Iyer, J

Bench : Single Bench

Advocate : C.P. Sudhakara Prasad, for the Appellant; P.V. Madhavan Nambiar, for the Respondent

Final Decision : Allowed

Judgement

Viswanatha Iyer, J.—In February, 1982 the petitioner applied for a telephone connection in the area of Ernakulam Telephone Exchange. After considering the application, the second respondent issued demand as per Ext.P1 dated March 5, 1982 for an amount of Rs. 1000/-. The amount was directed to be paid before March 19, 1982 by crossed cheque/demand draft on any recognized local bank drawn in favour of Accounts Officer, Telephone District, Ernakulam. In compliance with the demand, the petitioner sent a cheque dated March 5, 1982 for the amount, drawn on the Mahatma Gandhi Road branch of the Bank of India, Ernakulam. The office of the first respondent issued receipt Ext.P2 of even date acknowledging receipt of the amount. The amount was thus paid in time and well before March 19, 1982. Having thus complied with the requisition, the petitioner was expecting the connection to be granted in the normal course. His name was included in the waiting list, with priority based on the date of his application and the deposit of Rs. 1000/- made by him.

2. Telephone connections in the Ernakulam Exchange take a long time fructification. In fact at the time the writ petition was filed on April 8, 1987, only those in the waiting list upto January 19, 1981 had been provided with

connection. It was while so, the petitioner received the communication Ext.P3 dated March 30, 1987 from the second respondent, namely, the Commercial Officer of Telephones. Ernakulam stating that his application has been deleted from the waiting list "since the deposit paid by cheque has been dishonoured by the bank". The petitioner filed the original petition challenging the proceeding Ext.P3, and seeking directions to the respondents, to give him the telephone connection on the basis of his priority in the waiting list "considering the application submitted (by him) in 1982 and the deposit of Rs. 1000/- received (by the first respondent) on 5.3.1982".

3. Counter affidavit has been filed on behalf of respondents 1 and 2, which does not deny receipt of the petitioner's application for telephone connection or of his cheque for Rs. 1000/- on March 5, 1982 or of his name being included in the waiting list. But it is pointed out that the cheque issued by the petitioner was not honoured by the bank because the correction in the name of the "beneficiary" had not been properly attested. Ext.R1(b) is the bank's memo returning the cheque and states the reason for returning the cheque without payment as that the alteration in the name of the beneficiary required the drawer's full signature. What happened was that the petitioner had in the first instance written the name of the payee as "District Manager Telephones" then corrected it as "Accounts Officer, Telephone District, Ernakulam", and merely initialed the correction, without his full signature. The bank's memo returning the cheque to the State Bank of Travancore, who had presented it for acceptance is dated March 11, 1982. The State Bank of Travancore, in its turn intimated the second respondent about the dishonour by memo dated March 15, 1982. This is seen from Ext.RI(b). The counter affidavit therefore states that the dishonour of the cheque was not due to any lack of vigilance on the part of respondents 1 and 2. The petitioner was at fault for not enquiring about the position of his registration. Non-payment of the deposit renders the petitioner's application invalid, it stands rejected. The entry in the waiting list was made without waiting for clearance of the cheque "to avoid interpolation of entries". This entry stands automatically cancelled for non-payment of the deposit amount. The petitioner can claim priority only from the date on which he makes payment afresh of the amount.

4. It is evident from the above that despite their knowledge about the dishonour as early as on March 15, 1982, or soon thereafter, the respondents never bothered to intimate the petitioner about it, or direct him to rectify the mistake. One would have expected any diligent authority to immediately inform the party concerned (the petitioner herein) about the dishonour, with direction to rectify the defect and make deposit of the amount to validate the application. However nothing like that seems to have entered the minds of the respondents till they issued Ext.P3 letter over five years later, on March 30. 1987. Nor did the respondents remove the petitioner from the waiting list despite the cheque being dishonoured. The only consequence of the non-clearance of the cheque appears to have been that the petitioner was not intimated any registration number. The petitioner all along went under the impression that his application was valid, and

that he "was rightly in the waiting list for telephones with priority early in 1982.

5. To say the least, the attitude of the respondents was wholly unreasonable. The respondents are functioning subject to the provisions of the Indian Telegraph Act, 1885 and the rules framed there under. They are exercising statutory functions in the matter of receiving and processing applications for telephone connection. Any statutory authority is expected to act reasonably that is in a manner which will be consistent with reason and justice. They should not behave in such a way that their actions are liable to be branded as arbitrary. This principle is an aspect of the rule of law embodied in the Constitution. The Supreme Court has enshrined this principle as basic to the rule of equality guaranteed by Article 14 of the Constitution. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, the court observed:

The great purpose of the rule of law is the protection of the individual against arbitrary exercise of power, wherever it is found. It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege.

The principle has been enunciated and affirmed in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , and other decisions.

6. It is a well established rule of administrative law that any public authority should exercise its powers reasonably. Arbitrariness or unreasonableness in its exercise spells invalidity to the action. In *Mayor of Westminister Corporation v. London and North Western Railway Company* 1905 A.C.426 at 430 Lord Macnaughten said:

It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second if not in the first.

The requirement of reasonableness was recently propounded emphatically by Lord Denning M.R. in *Secretary of State v. Tameslides* (1976) 3 All ELR 665. This proposition also pervades the decision in *Associated Provincial Picture House Ltd. v. Wednusbury Corporation* 1947 (2) All E.R.680. The position is summarized by Wade in his *Administrative Law* (5th Edition) at page 355. "What exactly is the standard of reasonableness? Reasonableness has to be judged with reference to the facts of the case as to whether the action is one reached or could be branded as founded on the action of a normal individual as against the arbitrary behaviour". Unreasonable behaviour is a good ground of challenge to the act of a

statutory authority, as arbitrariness is anathema to the very concept of the rule of law in the Constitution.

7. The petitioner had no doubt committed an error in not appending his full signature to the correction in his cheque. That, however had come to the notice of the respondents as early as on March 15, 1982 within ten days of receipt of the cheque. The petitioner has pointed out that right from the date of issue of the cheque upto the date of his filing the original petition, he had always hand over Rs. 1000/- in his account in the bank so that the cheque would have been honoured any time it was presented. When the cheque was returned without being honoured (more so in this case when the return was not for want of funds, but for a defect in the attestation) the respondents were under an obligation to inform the petitioner about it immediately or within a reasonable time so that he could rectify the defect and regularize the application. I am not prepared to hold that the obligations are all one sided, for the petitioner to go on making periodical enquiries about the fate of his application without any obligations on the respondents. Their attempt to throw the entire blame on the petitioner is misconceived and wanting in grace. Their conduct in not applying their mind to the return of the cheque and their failure to intimate the petitioner about it does not be have any reasonable man. The conduct is blameworthy and unreasonable. It is noteworthy in this connection that the respondents themselves had issued receipt for the amount and included the petitioner's name in the waiting list. No doubt the petitioner did not make any enquiry, about the position of his application subsequently, but it is common knowledge that there is considerable delay in granting the connections, with a long waiting list and in fact only applications upto January 16, 1981 had been granted even on the. date of filing of this original petition. The petitioner could not therefore be faulted if he did not make enquiry about the fate of his application or about its progress. The petitioner could not also be faulted for not having checked up about the encashment of his cheque as receipt had already been issued to. him and he had done all that he should normally do in the matter. The technical error on his part was liable to rectification on its being pointed out. Respondents have failed in this duty of theirs. They omitted to keep in mind that as a monopolistic State agency, they owed a duty to the public to be fair in their dealings. A public utility undertaking like the Telephones cannot be allowed to take an attitude of "take it or leave it" with the consumer public. Such unreasonable conduct is liable to be corrected by this Court under Article 226 of the Constitution, and the parties restored to the position which they would otherwise have occupied if the respondents had acted properly and reasonably. Ext.P3 has therefore to be quashed. I do so.

8. The next question is as to what exactly is to relief to which the petitioner is entitled. The petitioner seeks to be restored to his priority as on the date of the cheque and to his original position in the waiting list. If the respondents had informed him within a reasonable time after March 15, 1982 when the cheque was returned, the petitioner would have rectified the error, and continued in the

same position in the waiting list. The cancellation of Ext.P3 should therefore result in the petitioner being restored to that position, on the principle of *nunc pro tunc*. This principle is one allied to the maxim "*actus curiae neminem gravabit*", that is the act of a court shall prejudice no man. This rule which is applicable to acts of courts has been extended to the realm of Administrative Law by invoking the principle of *nunc pro tunc*. The maxim means "a proceeding taken now for then, that is, the proper time when it should have been taken" (Wharton Law Lexicon 14th Edition page 706). Black in his Law Dictionary 5th Edition page 965 deals with the matter thus:

Nunc pro tunc: Now for then. A phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, i.e. with the same effect as if regularly done. *Nunc pro tunc* entry is an entry made now of something actually previously one to have effect of former date; office being not to supply committed action, but to supply omission in record of action really had but omitted through inadvertence or mistake.

Nunc pro tunc merely describes inherent power of court to make its records speak the truth, i.e. to record that which is actually but is not recorded.

Nunc pro tunc signifies now for then, or in other words, a thing is done now, which shall have same legal force and effect as if done at time when it ought to have been done.

The function or office of the device *nunc pro tunc* is a procedure where by a determination previously made but for some reason improperly entered or expressed, may be corrected and expressed as of the original time when it should have been....(Corpus Juris Secundum Volume 67). The rule is intended to render justice to parties, to prevent an unjust prejudice to a suitor by the delay unavoidably arising from the act of court, and had been uniformly exercised unless the delay is attributable to laches of the party applying *Evans v. Rose* (840) 113 E.R. 774 at page 777). The Lahore High Court dealt with this doctrine as follows in AIR 1930 497 (Lahore) .

The applicability of this rule is confined to those cases only in which some hardship would be visited upon a party without any fault of his, unless he were relieved from it by allowing proceeding to be taken now for then, i.e. for the proper time when it should have been taken.

The principle is one of equity. It is intended to undo an injustice done to a party by reason of a lapse on the part of an authority. Even though applied in the first instance to acts of courts, there is no reason why the same principle should not be applied to the case of administrative authorities like the respondents in order to render justice between parties. In *Chacko Scaria v. Regional Transport Authority* AIR 1967 Ker 153, Mathew. J. considered the applicability of this principle to a decision of the Regional Transport Authority under the Motor Vehicles Act. The doctrine must apply to the facts of this case and the petitioner restored to the position which he would have occupied if he had been informed of

the dishonour of the cheque soon after March 15, 1982.

9. Ext.P3 had been issued without notice to the petitioner and without affording him an opportunity to rectify the mistake in the cheque. The petitioner had therefore had no occasion to make payment of the amount of Rs. 1000/- again. Counsel for the petitioner submitted that he will make payment of the amount immediately if he is permitted to do so, if necessary with interest at any reasonable rate. Accordingly the petitioner is permitted to make payment of the amount of Rs. 1000/-. He will also pay interest on the amount at 15% per annum from March 15, 1982 till date of payment. Such payment shall be within a period of three weeks from today to either of the respondents and on the said payment being made, the petitioners position in the waiting list for telephone connection in the Ernakulam Exchange" will be restored and he will be granted connection as and when his turn is reached.

The original petition is allowed. No costs.

Issue photostat copy of the judgment on usual terms.