

(1984) 12 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 41106 of 1982

Dhariwal Silk House

APPELLANT

Vs

General Manager, Telephones

RESPONDENT

Date of Decision : 13-12-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Telegraph Rules, 1951 — Rule 443

Citation : (1985) ILR (Kar) 1992 : (1985) 1 KarLJ 242

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : Paras Jain, for the Appellant; Shailendra Kumar, Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.A. Swami, J.—This petition was heard for sometime on 7-12-1984 and it was directed to be brought up to-day to enable Sri Shailendra Kumar, learned Counsel for the respondent, to seek further clarification from the respondent, Accordingly, this matter is posted to-day in the orders category, but it is taken up for final disposal itself.

2. In this petition under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the telephone bills (Annexures C, E & G) issued by the respondent in respect of the telephone bearing No. 70550 installed in the premises of the petitioner. The petitioner has also sought for quashing the communications produced as Annexures H, J and K.

3. The bill ending for the quarter 1981 was issued to the petitioner in the month of November 1981. The petitioner failed to pay the same, within the period allowed in the bill. Accordingly, the telephone came to be disconnected in the first week of December 1981. Thereafter, another bill for a sum of Rs.747/- was issued as per Annexure "C" on 1-2-1982. The petitioner paid the earlier bill for the quarter ending February 1982 amounting to Rs. 1,033/- and also a sum of

Rs.50/- towards the reconnection charges. In addition to this, he has also paid the second bill, (Annexure C) for a sum of Rs. 747/- on 17-2-1982. Even then, the telephone was not restored. Nevertheless, a third bill was issued for a sum of Rs.262.50p. which is produced as Annexure E. The petitioner has also paid the said bill. Even thereafter also, the telephone connection was not restored. But the department issued another bill for a sum of Rs.175/- being the rent of the telephone. This bill has not been paid by the petitioner.

4.As the telephone connection was not restored, the petitioner issued a legal notice dated 8-7-1982 produced as Annexure-F pointing out to the respondent that he had paid all the bills and that therefore, the connection of the telephone be restored. Even then, the telephone was not restored; but a reply was sent to the petitioner as per Annexure-H stating that the staff went to restore the telephone connection but it was found that the petitioner was not found in the premises; therefore, the work of the telephone connection could not be carried out. In the meanwhile, the Accounts Department of the Respondent has informed the petitioner by its communication bearing No. PR 3 82-83/ A 16/DF/9 dated 12-8-82 (Annexure K) expressing regret for having disconnected the telephone.

5.It is contended on behalf of the petitioner that when the telephone bills issued as per Annexures A and C were paid along with the reconnection charges, there was no reason whatsoever for the respondent for not restoring the telephone connection. On the contrary, it is submitted on behalf of the respondent that the respondent sent his staff to restore the connection, but it was found that the petitioner was not in occupation of the premises and somebody was in occupation of it, therefore the work of the restoration of the telephone could not be carried out; It is also further submitted that as the petitioner is not occupying the premises. wherein the telephone is installed, he is not entitled to restoration of connection because he is not using it and in such circumstances if the connection is restored, it would amount allowing other persons to use the telephone.

6.It appears to me that it is not possible to accept this : submission. The Accounts Department of the Respondent has sent the communication dated 12-8-1982 expressing its regret for having disconnected the telephone for non-payment of the telephone bills. If only as stated in Annexure-H dated 19-7-1982, the petitioner was not in occupation of the premises and another party was in occupation of it, there was no reason whatsoever for the Accounts Department to express regret. The straight answer would have been that since the petitioner was not in occupation and somebody was in occupation of the premises it was not possible to restore the connection as it would amount to allowing other persons to use the phone. In addition to this Annexure-K has been sent to the very same address viz., No. 7, Ambika Building, Avenue Road Cross, Bangalore. That being so, I do not find any justification for not restoring the telephone connection as soon as the bills issued as per Annexures "A" and "C" were paid on 17-2-1982. Even after the legal notice was issued to the Respondent, the

telephone had not been restored.

7. It is submitted on behalf of the Respondent that the Respondent has no objection to restore the telephone pro-vided the petitioner pays the rent from 1-6-1982 to 31-1-1985 and also pays earlier bills. In support of this submission, Learned Counsel for the Respondent has placed reliance on Rule 443 of the Telegraphic Rules. Said Rule 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 rented by him may be disconnected without notice. The telephone or telephones, 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 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."

Sri Shailendra Kumar, Learned Counsel for Respondent, lays stress on the words contained in the said Rule i.e. the telephone or telephones, 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 remains disconnected) as may be prescribed by the Telegraph Authority from time to time."

It appears to me that if only the petitioner was at fault, then this Rule could have been applied. In the instant case, on 17-2-1982 the petitioner cleared off all the arrears and he even paid the reconnection charges of Rs. 50/-. That being so, there was a legal obligation on the Respondent to immediately restore the telephone connection. He having failed to restore the telephone connection, cannot be permitted to claim the rent for the subsequent period. It is only if the subscriber fails to pay the arrears and the telephone is disconnected due to that until he pays the arrears and also the rent upto the date of payment with reconnection charges, he is not entitled to have reconnection. But, once the subscriber pays all the bills and the rent upto the date of payment of the arrears with reconnection charges, and subsequently the telephone department fails to restore the telephone connection, the period covered subsequent to the payment cannot at all be attributed to the negligence of the subscriber ; and as such, he is not liable to pay the rent for that, period. Therefore, it is not possible to hold that Rule 443 of Telegraphic Rules is attracted in such circumstances; Hence, it is not possible to accept the contention of the Respondent.

8. For the reasons stated above, this Writ Petition is allowed in the following

terms :

If the petitioner pays the two bills produced as Annexure - E and G, for Rs. 262-50 ps. and Rs. 175/- respectively and the rent for two months from 1st December, 1984 to 31st January, 1985 within one week from to-day, the Respondent shall reconnect the telephone within a week from the date of payment.