

(1988) 06 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 10099 of 1987

Dr. V. Vijayan

APPELLANT

Vs

General Manager and another

RESPONDENT

Date of Decision : 16-06-1988

Acts Referred:

Telegraph Act, 1885 — Section 7(2)(e)

Citation : (1988) 2 KLJ 290

Hon'ble Judges : Varghese Kalliath, J

Bench : Single Bench

Advocate : Sebastian Paul, for the Appellant; Thomas John, for the Respondent

Final Decision : Allowed

Judgement

Varghese Kalliath, J.—This Original Petition concerns the validity of the action taken by the respondents in having, disconnected a telephone No. 2714 installed, according to the petitioner, at House No. 1/604, Paruthyampallil, Thyckal, Shertallai, the place where he was practising his profession. Petitioner is a medical practitioner. He was the Chief Medical Officer at Kattoor Government Homeo Dispensary, Mararikulam. The petitioner was deputed as Managing Director of the Kerala State Homeopathic Co-operative Pharmacy Limited at Mararikulam in Alleppey District. According to the petitioner, he has got many patients at Shertallai and he is offering free consultation to his patients. To facilitate this, he took a room at House No. 1/604, Paruthyampallil, Thyckal, Shertallai. Though he has now been deputed as the Managing Director of Kerala State Homeopathic Co-operative Pharmacy Limited, he is in need of the telephone in question and there is no reason for the authorities to cause disconnection of the phone on the ground of unauthorised use. The petitioner had two telephones—one at Shertallai and the other at S.L. Puram. He was given a notice dated 21st May, 1987 by the Telecom District Engineer, Alleppey, stating that the telephone numbers Shertallai 2714 and S.L. Puram 183 were provided to the petitioner to the address Paruthyampallil House, 1/604, Thyckal P.O. and

Raj Nivas, Kanichukulangara respectively and that it is reported that the petitioner is not residing at Shertallai or at S.L. Puram and the telephone is being used by somebody else. In the communication it is further stated that as per rules a telephone provided to a particular subscriber cannot be sold to anybody or used by a third party. This communication is Ext. R2 (a). By Ext. R2 (a), the petitioner was informed that "unauthorised use of a telephone violates the provisions of Article 429 of Telegraph Rules and that in exercise of the powers vested in the telegraph authority under Indian Telegraph Rule 420, petitioners' telephones are liable to be disconnected and removed. The petitioner was given a chance to explain his position within seven days from the date of receipt of Ext. R2(a).

2. Nothing happened pursuant to Ext. R2(a). But, another communication was given to the petitioner, which is marked as Ext. R2 (b) in the counter affidavit, wherein it is stated that on enquiry, it was understood that Phone No. SLPM 183 is being used by Smt. Umadevi and her relatives and that the petitioner is not residing at the above address. In Ext. R2 (b), it is further said that in regard to Telephone No. 2714 also, the authorities came to know that it is being used by the petitioner's distant relatives and that the petitioner is not staying at Shertallai. The District Engineer, Telecom, asked the petitioner to explain the position within seven days of receipt of Ext. R2 (b) letter.

3. To Ext. R2 (b), the petitioner replied and the copy of the reply is Ext. P1. In Ext. P1, the petitioner said that the telephones mentioned are in his use and he needs them for his professional purposes. He said that there is no change of his position as regards his profession, since the application for connection of phones. He also pointed out that the question of residence does not arise as it was not one of the conditions on which the telephone connection was provided for the petitioner.

4. According to the petitioner after the notice Ext. R2 (b) and his reply Ext. P1, nothing further happened, except disconnection of the office telephone. The petitioner submitted before me that he is now concerned about the disconnection of Telephone No. 2714 of Shertallai. The petitioner submits that before actual disconnection of the Phone, no order was issued to him; instead he received a note from the Junior Telecom Officer Phone (Outdoor), Shertallai, intimating disconnection. Copy of the same is produced in the O.P. marked as Ext. P2. The petitioner submits that the whole action of the respondents is not in accordance with the relevant rules applicable to the case.

5. The second respondent has filed a counter affidavit wherein he has stated that the disconnection was effected after giving proper notice to the petitioner. The notices issued to the petitioner are produced along with the counter affidavit marked as Exts. R2 (a) and R2 (b). In paragraph 5 of the counter affidavit, it is stated that "on a consideration of Ext. P1 reply given by the petitioner, the Telecom District Engineer, Alleppey, ordered the disconnection of the above said telephones and the same was Conveyed to the second respondent-vide letter No.

P57/TALP/ STL/II dated, 22-9-1987" and that disconnection was effected on the basis of the said order as per Ext. P2.

6. The counsel for the petitioner referred, me to Rules 421 and 429 of the Indian Telegraph Rules, 1951. Rule 421 deals with disconnection of telephones. It provides thus:-

Where the Divisional Engineer is satisfied for reasons to be recorded in writing that it is necessary to do so, he may, after giving the subscriber a notice in writing for a period which shall not except in emergent cases, be less than 7 days, disconnect the telephone, and in such case, the subscriber shall be entitled to refund of rent for the unexpired portion of the period for which the connection or service was given.

Rule 429 deals with transfer of telephones. Rule 429 has no application here since the respondents have no case that the disconnect was effected on account of unauthorised transfer of telephone. If we go by Ext. R2(b), the reason for disconnection has to be fixed on "unauthorised use". The petitioner submits that there cannot be any complaint against him for unauthorised use of the telephone. He has not been told how the telephone is being used by him unauthorisedly.

7. The counsel for the petitioner referred me to two decisions of this Court-1974 KLT 41 and 1980 KLT 47. In 1974 KLT 41 (Ayyappan Pillai v. Divisional Engineer. Telephones) Gopalan Nambiar, J., as he then was, dealing with rule 421 of the Indian Telegraph Rules said that there is nothing in the Telegraph Rules which enables the authorities to disconnect the telephone sanctioned for the use of one person on the ground that he was neither residing nor having a place of business in the premises where the telephone is installed. Further in the decision it is said:

There is the added difficulty that that it has not been shown that reasons had been recorded in writing for the satisfaction of the concerned officer that it was necessary to disconnect the telephone. It is not possible therefore to sustain the impugned action under R.421 of the Telegraph Rules.

8. The question was again considered by this Court in Anthappan v. Dist. Manager, Telephones (1980 KLT 417). The same rule 421 was considered in the above decision and the court said:

The right of any subscriber to continue to enjoy the benefit of the telephone of which he is a subscriber, is quite valuable. Despite the fact that it is the exclusive privilege of the Central Government to establish, maintain and work telegraphs there is no power in the authorities functioning under the Indian Telegraph Act to act arbitrarily either in the matter of sanctioning fresh telephone connections or in the matter of suspending or cancelling such connections. Any person aggrieved by the arbitrary conduct of the authorities functioning under the said Act should be able to seek redress against the violation of their rights. In the absence of reasons recorded in writing showing the satisfaction of the concerned

officer that it is necessary to disconnect the telephone, any such disconnection is liable to be impugned successfully.

9. In this connection, I may also refer to section 7(2) (e) of the Indian Telegraph Act, which gives the Central Government power to make rules in regard to the conditions and restrictions subject to which any telegraph line, (cable chamber tower) appliance or apparatus for telegraphic communication shall be established, maintained, worked, repaired, transferred, shifted, withdrawn or disconnected. No rule was brought to my notice u/s 7(2) (e) relating to conditions and restrictions subject to which any telegraph line shall be established or disconnected. Of course, rule 429 interdicts transfer of telephones, but that cannot be said to be a rule laying down the restrictions subject to which any telephone can be disconnected. Rule 421, no doubt, gives power to the authorities to cause disconnection of telephones, but under what circumstances, the disconnection can be effected is not stated at all. What are the conditions, the violation of which would entail disconnection of telephones also, have not been prescribed by the Rules. It is possible to say that under Rule 421, the discretion to exercise the power of disconnection is left with the authority, who has to pass an order as regards his satisfaction of the need to cause disconnection of telephones for reasons to be recorded in writing. So it is imperative that the authority concerned should pass an order in writing recording, the reasons for disconnection, before the disconnection is made. Again it has to be noted that what are the reasons relevant to cause a disconnection is a matter that has to be provided for by prescribing rules thereto. So long as the rules are silent about the reasons, different standards and approaches can be made in the matter of disconnection and it may cause discriminatory conduct on the part of the authorities concerned. As far as the petitioner is concerned, he got only a notice wherein it is stated that "the telephone is also being used by your distant relatives and you are not staying at Shertallai".

10. In 1974 KLT 41, this Court has said that there is no power to the authorities to disconnect the telephone sanctioned to one person on the ground that he was neither residing, nor having a place of business in the premises where the telephone was installed, So, the first ground stated that the petitioner is not staying at Shertallai is not relevant at all.

11. The second ground alleged that the telephone is "also being used by the petitioner"s, distant relatives" is also not a sustainable ground. This has to be tested in the light of rule 429 which prohibits assignment, sub-letting or otherwise transferring the telephone, without the permission of the telegraph authority. A mere permission to another for the use of telephone will not be an assignment; It will not be a sub-letting also. What is required under rule 429 is a transfer of the right of the subscriber either absolute or qualified. As regards the petitioner is concerned, the authorities have no case that the telephone has been transferred to any person without their permission. The respondents have not produced the order contemplated under rule 421 showing the reason for

disconnection and how the authority concerned has satisfied himself as to the need for disconnection of the telephone.

12. The counsel for the respondents submitted before me that the petitioner obtained two telephone connections on a special category under rule 2.4 of the Telephone Allotment Rules, 1980. Rule 2.4. (a) reads thus :-

Rule 2.4 Non-OYT-Special Category

(a) Medical Profession :

Entitlement of telephones - 2; one at the clinic and the other at the residence,

The counsel for the respondents submitted that the Phone is not being used by the petitioner since he has been deputed as the Managing Director of the Kerala State Homeopathic Co-operative Pharmacy Limited. The petitioner has got a definite case that he requires the phone for enabling him to continue his medical profession, which he can do by attending the place where the Phone is installed for the purpose of enabling the patients to have their consultation with him. On Ext. R2 (b) alone, it is difficult for this Court to justify the action taken by the respondents. So, the disconnection of the telephone No. 2714 by the authorities under Rule 421 cannot be sustained. So, there will be a direction to the respondents to restore petitioner's telephone No. 2714 at House No. 1/604, Paruthyampallil, Thyckal, Shertallai, immediately:

O.P. is allowed as above. There will be no order as to costs.