(1999) 01 KL CK 0044

In the High Court Of Kerala

Case No : O.P. No''s. 17770, 17882, 18660, 19360, 19759, 21445 and 23891 etc. etc. of 1998

Edavanakkad Telephone Subscribers Association and Another — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 27-01-1999

Acts Referred:

Telegraph Act, 1885 — Section 7
Telegraph Rules, 1951 — Rule 2, 434

Citation : AIR 1999 Ker 306 : (1999) 2 RCR(Civil) 458

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

Bench : Single Bench

Advocate : P.B. Sahasranaman and K. Jagadeesh and etc, for the Appellant; K. Ramakumar, Sr. C.G.S.C. and etc., for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Petitioners are subscribers in various telephone exchanges including rural exchanges coming within the Secondary Switching Area of Ernakulam, Kottayam and Pathanamthitta Districts. They are aggrieved by the enhancement of bi-monthly rental by the Telecommunication department. Petitioners submit there is no rationale in the enhancement of rental, which according to them, is arbitrary and violative of Article 14 of the Constitution of India. Counsel submitted that no reasonable classification has been maintained between subscribers in the urban and rural areas. In any view of the matter, counsel submitted, before enhancement of rental, there was no public notice and the same was effected contrary to the provisions of Rules. Reference was made to Rule 434 of the Indian Telegraph Rules, by which, counsel submitted, telegraph authority is bound to publish a draft of its proposal to revise the local area of an exchange system and after considering objections or suggestions received from the person likely to be affected thereby revise such an area by notification in the official gazette. Almost similar contentions are raised in all the cases.

2. A counter-affidavit has been filed by the Telecommunication department in O.P. No. 16933 of 1998, and also an additional counter-affidavit in O. P. No. 17770/98. Relying on the counter-affidavits counsel submitted that department is competent to modify the telephone rules pertaining to tariff, licence fee, etc. Further, counsel submitted, Central Government is empowered to make rules and amend the rules under the Indian Telegraph Rules, and by the amendment ''local area'' has been redefined. In the additional counter-affidavit filed by the department, it is stated that the benefits already given to rural packages are retained and therefore petitioners are not in any way prejudicially affected.

3. We have to examine the contentions of counsel for the petitioners in the light of the amended definition of ''local area'' under the Indian Telegraph Rules. Consequent on the implementation of the revised definition of "local area" with effect from 15-8-1998, there will be only seven local areas in Ernakulam SSA/ LDCA and all exchanges within the revised local areas will be treated as part of the multi exchange system, and there will be four local areas in Kottayam SSA (Secondary Switching Area)/ LDCA (Long Distance Charging Area), and all exchanges within the revised local area would be treated as part of the multi-exchange system. So also on the implementation of the revised definition of local area, there will be only four local areas in Pathanamthitta SSA/LDCA, and all exchanges within the revised local area would be treated as part of the multi-exchange system.

4. On the basis of the above mentioned revised definition of ''local area'', the bi-monthly rent and registration charges get revised based on the total capacity of the exchanges in the exchange system of SDCA. The pulse rates for inter-exchange calls within SDCA and between adjacent SDCAs also were revised. Consequent on the revised definition of ''local area'' all exchanges within the revised ''local area'' will be treated as a multi-exchange system, and each exchange of the multi-exchange system will have its own service area for the purpose of maintaining waiting list and provision of telephone connection would be decided by the local telecommunication authority depending upon the local conditions. Shifts of telephones within the revised local area will be treated as local shifts and outside the local area/SDCA will be treated as All India Shifts.

5. The above mentioned changes are the natural consequences of the revised definition of ''local area''. The question to be decided is whether the Central Government have got the power to redefine a ''local area''. Earlier, local area was defined in Rule 2(w) as follows :

" ''local area'' means the area within 5 kilometres radial distance from a telephone exchange or where the Telegraph Authority has declared any area served by an exchange system to be a local area for the purpose of telephone connection, such area."

Exchange system is defined in Rule 2(k) as any departmental telephone exchange or exchanges and any lines connected therewith declared by the

Telegraph Authority to be an exchange system. Long Distance Charging Area is defined in Rule 2 (zzb) to mean one of the several areas in which the country is divided by the Telegraph Authority and declared as such for the purpose of charging for trunk calls. Long Distance Charging Centres is defined in Rule 2(zzc) to mean a particular Trunk Exchange in a long distance charging area declared as such by the Telegraph Authority for the purpose of charging for long distance calls. Short Distance Charging Area is defined in Rule 2(zzd) to mean one of the several areas in which a long distance charging area is divided by the telegraph authority and declared as such for the purpose of charging for trunk calls. Short Distance Charging Centres is defined in Rule 2(zze) as a particular exchange in a short distance charging area declared as such by the telegraph authority for the purpose of charging trunk calls. Subscribers of all exchanges in each SDCA can contact each other by dialing the directory numbers directly. Forgetting telephone number of SDCA in Ernakulam, Kottayam and Pathanamthitta SSA, subscribers can dial particular group dialing calls. Rule 2(e)(i) defines ''Electronic Exchange'' to mean an electronically operated and maintained Telephone Exchange of the stored programme controlled type which uses a computer for the establishment of telephone calls.

6. Rule 434 of the Indian Telegraph Rules deals with Schedule of fees and charges. Relevant portion of the same is extracted below :

"434. Schedule of Fees and Charges.--The charges for various services under these rules shall be as hereunder specified :

Section III Scale of charges for Departmental Exchange connections.

(1) Within the local area :

(a) Measured Rate System-

Table

Telephone Exchange System

Rates of Bio-monthly rental and call fee

Rental No. of call units allowed free of charge during two months Fee per call unit for calls in excesws of those allowed free of charge

from 151-500 from 501-1000 from 1000-2000 in excess of 2000

Rs.

Paise Re Rs. P Rs. P

1. Exchange systems of less than 100 lines

100 150 80 1 1.25 1.40

2. Exchange systems of 100 lines and above but below 1000 lines

150 150 80 1 1.25 1.40

...."

2. Beyond the local area (in respect of both measured rate and flat rate systems) :

(a) For telephone connection not exceeding five kilometres of actual length beyond the local area, the rental shall be levied as for connections within the local area plus Rs. 600/- per annum or Rs. 100/- for every two months for each additional kilometre or fraction thereof of the actual length of the connection beyond the local area.

(b) Revision of local area of an exchange system by telegraph authority :

The Telegraph Authority may at any time publish a draft of its proposal to revise the local area of an exchange system and after considering objections or suggestions received from the person likely to be affected thereby, revise such an area by notification in the official gazette."

It is evident from the above mentioned rule only when the telephone authority revises a local area of an exchange system the procedure for calling for objections from the persons likely to be affected need he followed by carrying out publication in the official gazette.

7. It is pertinent to note that Telegraph Authority has not revised the local area. Central Government in exercise of its rule-making power u/s 7 of the Indian Telegraph Act has amended the definition of ''local area'' vide gazette notification, extraordinarily dated 12-8-1998, which reads as follows :

" ''Local area'' in respect of an exchange system means the area co-terminus with the Short Distance Charging Area (SDCA) or where the Telegraph Authority has declared any area served by an exchange system to be the local area for the purpose of telephone connections then such declared area."

The definition clearly takes in all the areas co-terminus with SDCA within the local area of an exchange system. For example, SDCA of Ernakulam consists of Kanayannur, Kunathunadu, Aluva, Parur, Kochi Taluks. Aluva, Angamaly, Edavaftakadu, Mulanthuruthy, etc., are exchanges co-terminus with SDCA. The word ''coterminus'' means adjacent, meeting along with a common boundary, neighbouring etc. By virtue of the amended definition, Edavanakadn and other exchanges have become co-terminus with Ernakulam SDCA. So also Neendoor Exchange has become co-terminus with Kottayam SDCA. So also Punnavally Exchange is co-terminus with Thiruvalla SDCA, which consists of Thiruvalla, Mallapally Taluks, etc. So also Malayalapuzha, Konni, etc., came within the Pathanamthitta SDCA. All those places have become co-terminus with the respective SDCAs by virtue of amendment effected to the definition of ''local area'' under Rule 2(w) of the Rules by the Central Government. This is the direct consequence of the amendment of statutory definition.

8. Gazette notification issued by the Government of India says that all existing local areas would be deemed to have been revised with effect from 15-8-1998 as per the above mentioned definition. It was also ordered that details of revised local area boundaries of the exchange systems wouid be published by the telecommunication department in newspapers in circulation at the stations concerned. Public notices were accordingly published by the Department of Telecommunication, Government of India, vide Ext., P3 in O. P. No. 17770 of 1998 and other notices giving details of revised local areas boundaries of the exchange systems in the Secondary Switching Areas.

9. Amendment to Rule 2(w) was made by the Government of India in exercise of its legislative function as delegated authority. There is no prescription either in the Rules or in the parent Act that before amending the rule by the Central Government, they should hold consultation with a particular body or interest. In the absence of any statutory stipulation, it cannot be contended that Central Government committed any procedural irregularity in carrying out the amendment. Petitioners'' mainly contended that telegraph authority has not heard the interested parties. As I have already mentioned, it is not the telegraph authority which has effected amendment, or revised the local area of an exchange system but the Central Government in exercise of its statutory powers. No contention has been raised with regard to non-observance of any statutory procedure by the Central Government. I am of the view the revision of bi-monthly rental is the direct consequence of the amendment of definition of ''local area'' by the Central Government, Ministry of Telecommunications. According to the new policy local area demarcation is not based on the exchange capacity or the population of the area. By the amendment, local area was re-defined. In any view, even though local area changed, the rural package continues and rental and registration charges are only changed on the basis of total equipped capacity of all exchanges of the revised local areas taken together. This is evident from the communication dated 10-8-1988 of the Ministry of Communication, Government of India. Under such circumstances, it cannot be contended that telegraph authority has acted arbitrarily, and illegally. They have only given effect to the amendment effected by the Central Government by virtue of its rule-making power.

10. As held by the Supreme Court in S. Narayan Iyer Vs. The Union of India (UOI) and Another, , the telephone tariff is subordinate legislation and a legislative process. Under Telegraph Act, Section 7 empowers the Central Government to make rules inter alia for rates. These rules are laid before each House of Parliament. The rules take effect when they are passed by the Parliament, and that Courts have no jurisdiction under Article 226 of the Constitution of India to go into reasonableness of rates. These rates are decided as policy matter in fiscal planning. There is legislative prescription of rates. Rates are a matter for legislative judgment and not for judicial determination. Going by the dictum laid down by the Supreme Court, and also going by the facts, petitioners have not succeeded in showing that rates fixed by the Central

Government and followed by the telegraph authority are in any way unreasonable and arbitrary. Government of India, Telecommunication department, is discharging a statutory function in determination of rental applicable tot subscribers in different areas of the ex-change system. This Court in this jurisdiction cannot say that the fixation is illegal or arbitrary, especially in the light of the amended definition of local area.

In the said circumstances, I do not find any illegality in the action taken by the telegraph authorities in the various telecom districts. Writ Petitions therefore lack merits and they are accordingly dismissed.