

(1980) 02 KL CK 0014

In the High Court Of Kerala

Case No : W.A. No's. 245 to 247 and 249 of 1978

Government of India and Another

APPELLANT

Vs

I.T.H. and Co. and Others

RESPONDENT

Date of Decision : 01-02-1980

Acts Referred:

Telegraph Act, 1885 — Section 7

Citation : AIR 1980 Ker 211

Hon'ble Judges : V. Balakrishna Eradi, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : T.R. Govinda Warriar, Central Govt. Pleader, for the Appellant; M.V. Joseph, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Eradi, C.J.—These writ appeals arise out of four writ petitions, O. P. Nos. 400 of 1976, 2193 of 1976, 2806 of 1976 and 401 of 1976, which were jointly heard and disposed of by a learned single Judge as per the judgment under appeal. The appellants before us are the Government of India represented by the Director General of Posts and Telegraphs Department, New Delhi and the District Manager, Telephones, Erna-kulam. The respondents in these appeals are the owners of four hotels in Ernakulam, in whose premises Private Manual Battery Exchanges had been installed by the Telephone Department in or about the year 1967. A stand-by battery had also been provided along with the P. B. X. Board in the case of the petitioners so that even in the event of failure of supply of electrical energy the telephone system should work uninterrupted. It is common ground that no separate charge was agreed upon or demanded in respect of the provision of such batteries during the period 1967 till January 1976. On 6-1-1976 the District Manager, Telephones, Erna-kulam (2nd appellant) sent identically worded communications to the four writ petitioners (respondents herein) stating that the rent hitherto charged for the P. B. X. did not include the rent for stand-by battery and that the petitioners were liable to pay extra rent for

the battery for the period commencing from the year 1970-71 at the rate of Rs. 694 per annum. A demand was made on the petitioners for the payment of the rent for 1970-71 under the said communication evidenced by Ext. P-1, wherein it was also added that the balance amount due for the subsequent years will be billed afterwards the petitioners came up to this Court challenging the legality of the said demand made under Ext. P-1 which was followed by the issuance of a bill evidenced by Ext. P-2. The learned single Judge has quashed the impugned demand holding that no such demand could be legally made by the appellants with retrospective effect from 1970-71 without any previous fixation of a separate rent for the provision of the battery. The correctness of the said view taken by the learned single Judge is challenged by the appellants in these appeals,

2. The learned Central Government Pleader appearing on behalf of the appellants contended before us that under the provisions of the Indian Telegraphs Act and the Rules framed thereunder it was fully competent for the Central Government to fix the rental for the equipments supplied to the telephone subscribers and that it was in pursuance of a decision taken by the "Government of India on 23rd October, 1970 to charge separate rent in all cases where a stand-by battery was provided for a P. M. B. X. installation that the impugned notices were issued to the writ petitioners. On this basis it is submitted by the learned Central Government Pleader that no illegality was involved in the action taken by the 2nd appellant as per the impugned notices to demand payment by the writ petitioners of the additional rental that was due in respect of the standby batteries. We do not find it possible to accede to this contention. While it may be fully within the competence of the Government of India to lay down the tariffs and fix the rates of rental etc. payable in respect of the installations including stand-by equipments supplied to the subscribers of telephones, such fixation will not be effective until it is duly made known to the public by some recognised mode especially when it involves an increase in rates that were till then in vogue. There is no case for the Department that the decision that is said to have been taken in October 1970 was made known to the subscribers by any mode of communication or publication. If it had been so made known, it would have enabled the subscriber to exercise the option either to retain the stand-by battery and incur the liability for the payment of the additional rental or to give up the said facility and surrender the battery to the Department. What actually happened however was that it was only for the first time when the impugned notices were issued in January 1976 that the petitioners were informed about the Department's decision to charge separate rental for the stand-by battery. We have no hesitation to agree with the learned single Judge that under such circumstances the petitioners could not be retrospectively made liable for payment of separate rental for the battery from the year 1970-71 and that the demands made under the impugned notices are hence illegal and without jurisdiction.

3. It follows from the foregoing discussion that these writ appeals are devoid of

merits and have only to be dismissed. We do so, but, in the circumstances, without any order as to costs.