

(1982) 08 DEL CK 0022
In the Delhi High Court
Case No : Civil Writ Appeal No. 2196 of 1982

Gwbux Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-08-1982

Acts Referred:

Citation : (1983) RLR 222

Hon'ble Judges : Rajinder Sachar, J

Bench : Single Bench

Advocate : P.K. Seth and Rekha Sharma, for the Appellant;

Judgement

Rajindar Sachar, J.

(1) The petitioner has come to this court with the allegation that in June 1981 an order was passed by the Government to give him out of turn priority for shifting his phone No. 267926 to 31, defense Enclave, Delhi, and which was repeated by the respondent as per their letter dt. 24.7.1981 and which order was in pursuance of order passed by the Minister of State for Communication yet respondents were deliberately and mala fide not shifting the phone. Allegation of discrimination was also made by pointing out that some other persons have had their phones shifted in respect of whom orders had been passed subsequently to that of the petitioner.

(2) In the counter-affidavit it is admitted that the orders for shifting the phone on priority basis were passed by the Minister of State in June, 1981. But the stand taken is that this order was rescinded by the General Manager on 30.7.1981. The further Justification sought to be given was that 650 applications are waiting for being shifted and that there is a total freeze in Shahdara exchange. An instance has been given in the petition of one Mr. T.S. Laxmanan, retired Private Secretary to D.G.P. & T. in whose favor the orders were passed on 20.3.1982. The reply justifies it by saying that order was passed on 6.4.1981 i.e. prior to the order in the case of petitioner. With regard to another phone No.

273261 the same was admitted to have been shifted on 5.4.1982 but the stand taken was that this was a special category as this was done in favor of the M.S., Lok Nayak J.P. Hospital. Stand was also taken that there are large number of persons who are still on the waiting list including medical practitioners, but it has not been possible to allot the phone to them because of the paucity.

(3) On the last date of hearing counsel for the petitioner had given a list of 7 phone connections which it was stated had been ordered to be shifted to this very exchange only recently to emphasise the arbitrariness of the respondents in not shifting the petitioner's. The said document has been placed on record and has been marked as "X". We adjourned the matter to enable the respondents to file additional affidavit on this point and also to indicate by what authority the G.M. had rescinded the order earlier passed in favor of the petitioner. An additional affidavit of Mr. A.S. Soni, Deputy Area Manager dt. 28.8.82 has been filed before us. With regard to the grant of private connections to 7 persons all that is stated is that though the priority has been given subsequent to the case of the petitioner facts and circumstances of each individual case are different and their priority is ordered after considering the merits of each case. As to what peculiar facts are and as to what particular priority or justification is there we are left in total ignorance. Out of the list of 7 persons filed by the petitioner we do not find any special priority, at least none of them appears to be a medical practitioner, a category which broadly could be accepted as satisfying the test of priority. There thus appears no justification for refusing to carry out the order of the Minister of State who directed the shifting of the phone of the petitioner as far back as a year. In the latest affidavit however, the action of the department is sought to be justified by pleading that the order of the Minister of State was rescinded on 30.7.1981 by the G.M. on the basis of information received from Minister of Communication's personal cell. The information was that earlier the Minister (C) had refused the request for priority to the petitioner and the order of the Minister of State for Communication was Therefore, wrongly issued in favor of the petitioner. This stand of the department to say the least is amazing. We are not aware as to what precisely is meant by information having been received from the Minister's personal cell. The only reasonable guess is that somebody from the personal staff of the Minister (C) has given this information. The personal cell, we take it, may mean the personal staff of the Minister meaning thereby his personal assistant, stenographer and others. There is no suggestion that the order had been passed by the Minister of Communication or communicated by him to the G.M. We are not even told as to who in the personal staff communicated this information nor the basis on which this information was given. It is astounding that a Senior Officer like the G.M. should have chosen to act on the oral information said to have been given to him by somebody in the personal cell of the Minister. We could understand that if the information and the order was being communicated to the G.M. on behalf of the Minister of Communication and if that was so we would expect a written record of the order because the functioning of the deptt. in our system of administration can only

operate on the basis of written orders as the Govt. work is a permanent record of events. To seek justification for cancellation of an order passed by a superior i.e. the Minister of State at the hands of G.M., his subordinate and to plead support in the oral information from the personal cell of the Minister (C) is the limit of perversion of proper functioning in the administrative set up. This impression is heightened by the fact that there is no affidavit of any officer of the personal cell taking the responsibility of having given this information to the G.M. The information is conveyed to this court through the affidavit of Mr. A.S. Soni, Deputy Area Manager, who can conceivably have no such information in his possession nor can he speak from personal knowledge or from the record.

(4) Respondent 2 is the G.M. (Telephones) and. respondent 3 is the Assistant Private Secretary to the Minister for Communication. None of them have chosen to file an affidavit taking on the responsibility for indicating the reason for rescinding the order passed by the Minister of State for Communication. Miss Sharma appearing for the respondents sought to point out that even the earlier order of Minister of State for Communication was an oral order. That no doubt is so but what is ignored in this argument is that order was acted upon as is clear from the order of priority issued on 15.6.1981. What is more . significant however, is that in this additional affidavit it is not even suggested that the purported oral order was given by the Minister for Communication (though in our view the infirmity of acting on an oral order is the same whether it is given by the Minister or by his personal staff). But in this case it is not even the stand in the additional affidavit of 28.8.1982 that the Minister for Communication had rescinded the order of Minister of State for Communication passed earlier. It is this lack of any valid order of cancellation which makes the action of the respondents in not shifting the telephone as illegal. Whether even the Minister could over ride without any justification an order passed earlier by the Minister of State is a separate matter and need not detain us because in the present case justification for not carrying out the order of Minister of State is not sought to be supported in pursuance of any order passed by the Minister. We must emphasise that for proper administrative functioning and considering that governmental work is very different from that of private individual functioning all records of proceeding must necessarily be kept in a manner as to constitute a permanent record. . That is why in all modern States the government is functioning through the instrument of written record. The days of oral orders which may have been prevalent in the hoary past in some of the princely states are totally antiquated and out of keeping with modern democratic set up to which we are committed by our Constitution.

(5) The result, Therefore, is that in the absence of any valid cancellation of the order of Minister of State the depts. could not refuse to carry out the mandate, more so when it laid already as far back as June, 1981 agreed to shift the telephone. This action is further unjustified in view of no Explanation being given as to how about 7 phones (mark X) have been shifted, even though orders were passed in those cases subsequent to the case of the petitioner. Not even a whiff

of Explanation has been given to show as to how they satisfied the test of priority as against the petitioner, who being a medical practitioner and running his hospital with beds evidently would need to be in constant touch with the Hospital from his residence for the sake of the welfare of patients. The wooly answer that the priority was given to these 7 persons on the facts and circumstances of the cases without in any manner seeking to give even one good reason for it, cannot be a valid ground to be accepted in a court of law. It is apparent, Therefore, that the action of the department in not shifting the telephone was arbitrary. It is now well settled that arbitrariness and personal whim are antithesis to the Rule of Law to which our Constitution is committed. Such arbitrariness amounts to violation of Article 14 of the Constitution. (See Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, .

(6) Petition Allowed.