
(1999) 07 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4606 of 1998

HMT Limited

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-07-1999

Acts Referred:

Telegraph Act, 1885 — Section 7
Telegraph Rules, 1951 — Rule 413, 418

Citation : (1999) 123 PLR 277 : (2000) 1 RCR(Civil) 295

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : R.K. Chhibbar, Anand Chhibbar, Manal Sandhu and Rattan Laxmi, for the Appellant; P.S. Brar, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—In this petition, challenge is to communication dated 22.10.1997 and 29.10.1997 vide which petitioner has been informed by respondents No. 12 and 7 respectively that all telephone connections working in its organisation from Chandigarh/Panchkula exchange shall stand transferred to H.M.T. Pinjore Exchange w.e.f. 1.11.1997 due to area demarcation. In addition to the quashing of communications dated 22.10.1997 and 29.10.1997, petitioner is also seeking a writ in the nature of Mandamus directing the respondents to restore telephone connections from Pinjore Exchange back to Chandigarh/Panchkula Exchanges.

2. Petitioner is a company, registered under the Companies Act, 1956, owned, controlled and run by the Central Government. It has one of its units at Pinjore, Tehsil Kalka, District Panchkula, Petitioner-unit came into existence in 1960-61 and is situated near the Pinjore Garden, i.e. about 21 kms. away from the township of Chandigarh. Petitioner has averred that vide letter dated 13.11.1961, Director General, Posts and Telegraphs sanctioned the provisions of a long distance connection at the factory site of the petitioner on out of turn basis. Petitioner was to give ten years' guarantee to retain the telephone

connection. Petitioner has averred that the telephone cable was specially laid by the Telephone Department, Chandigarh right from Sector 17 Telephone Exchange, Chandigarh to H.M.T. Limited, Pinjore, consisting of 20 pairs (pair means a pair of two wires-conductors for each telephone connection). Out of the 20 pairs, 16 pairs were gradually given to H.M.T Limited, Pinjore. Four pairs were reserved for being made available to the petitioner in the event of emergency of some pairs going out of order. Petitioner has averred that in the year 1970, petitioner was only manufacturing Machine Tools and accessories at Pinjore, but in 1971, with the addition of Tractor Division, petitioner again made a request to the Telephone Department. Chandigarh, for providing additional 20 pairs of telephone lines to meet the increased demand for telephones. The Divisional Engineer (Phones), Chandigarh, vide letter dated 6.12.1977 informed the petitioner about the additional facility of telephone. Petitioner was told that for providing 15 direct telephone at H.M.T., 20/20 Lbs., cable (loaded) has to be laid to meet the transmission standard, for the distance of 21 Kms. It was stated that the provisional rent of the same cable will be Rs. 1,45,689/- per annum and the rent would be charged for the guaranteed period of ten years. After the expiry of guaranteed period of 10 years of underground cable, all the 15 telephone would be considered as Long Distant Connections and the rent would be charged as per details given in letter dated 6.12.1976. Thereafter, there was some more correspondence between the petitioner and respondents. The District Manager (Telephone). Chandigarh, vide letter dated 20.12.1985 (Annexure P-7), informed the petitioner that the case regarding laying of 20 pairs/20 Lbs. cable from the Chandigarh Telephone Exchange to H.M.T. Limited, Pinjore, has been re-examined and the charges already communicated vide letter dated 14.8.1985 (Annexure P-6) have been found correct. It was further mentioned that further action for processing the case would be taken after hearing the petitioner. Petitioner confirmed to District Manager (Telephones), Chandigarh, the acceptance of "rent and guarantee" terms as contained in letter dated 30.5.1983 (Annexure P-5), as also the revised provisional figures conveyed to the petitioner in letter dated 14.8.1985. The Assistant Engineer (M.M.) Office of the District Manager (Telephones), Chandigarh, vide letter dated 2.7.1986, informed the petitioner that as per departmental rules, the rent for the proposed 20/20 lbs. cable will be charged from the date of commissioning and the interest will not be payable on the deposit of rental cable. Ultimately, 20 pairs/290 lbs. cable (R&G) from Telephone Bhawan, Sector 17, Chandigarh, to H.M.T. Limited, Pinjore, was commissioned on 28.2.1989. The case of the petitioner is that provision of 20 pairs/20 lbs U.G. cable between Main Telephone Exchange, Sector 17, Chandigarh and H.M.T. Pinjore, which was commissioned w.e.f. 28.2.1989, was to serve the requirement of petitioner upto the year 2029 because the prevailing effective life of the cable is 40 years. Petitioner has contended that the underground cable has been laid and provided for the exclusive use of the petitioner. It is further the case of the petitioner that against the Rent and Guarantee Cable installed by the Telephone Department for the petitioner, only 8 telephone connections were in addition to the 16 telephone connections which

were already working on the old cable before 28.2.1989. In April, 1997, the Telephone Department transferred out of 24 telephone connections, 18 telephone connections from the Main Telephone Exchange Sector 17, Chandigarh to Telephone Exchange, Panchkula. In the second week of October, 1997, petitioner was in-formed that telephone connections working from Chandigarh/Panchkula Telephone Exchange will be disconnected and connected to Pinjore Telephone Exchange. In this connection, notice dated 22.10.1997 was sent to the petitioner. Subsequently on 29.10.1997, petitioner was informed that telephone connections working in its organisation from Chandigarh/Panchkula Telephone Exchange are to be transferred to H.M.T. Pinjore exchange due to area demarcation, and that staff had been deputed for carrying out necessary installation work. Vide communication dated 10.11.1997, petitioner was informed that old telephone numbers working from Chandigarh/Panchkula have been transferred to H.M.T. Pinjore exchange. Petitioner was also informed about the new numbers which were laid in lieu of old telephone numbers. Petitioner has contended that on receipt of letters dated 22.10.1997 (Annexure P-16) and 29.10.1997 (Annexure P-17) to the effect that telephone connections working from Chandigarh/Panchkula exchanges will be disconnected and connected to Pinjore Exchange, petitioner made six representations to the various authorities to maintain status-quo and also to commission the remaining lines. Petitioners has contended that as a result of representations, the Chief General Manager, Telecom Punjab Circle, Punjab, Chandigarh, vide letter dated 12.11.1997 (Annexure P-26) conveyed sanction for provision of two long distance Telephone connections from Panchkula Telephone Exchange for H.M.T. Limited, Pinjore, and the said two telephone connections were out of the telephone numbers working from Panchkula to work at Pinjore. The grievance of the petitioner is that by the unilateral and arbitrary action of the respondents in disconnecting the telephone connections working with the petitioner from Chandigarh/Panchkula Exchange to H.M.T. Pinjore Exchange, the functioning of the petitioner has been adversely affected with no corresponding gain to the petitioner. Challenge to letters, Annexure P-16 and P-17 is also on the ground that vide letter dated 30.5.1983, Annexure P-5, respondents had given a firm commitment that on expiry of guarantee period of 10 years, the provisional rent of the cable will be 1 per cent of the capital cost viz. Rs.2,22,268/- per annum (subject to variation) and all the 20 telephones will be charged as long distance connections. It is contended that the respondents are estopped from unilaterally acting to the detriment of the petitioner. It is also contended that if two long distance telephone connections can function from Panchkula exchange, then there is no technical reason as to why the remaining telephone connections cannot continue to be provided to the petitioner from Chandigarh/Panchkula Exchange.

3. Upon notice of the petition, respondents in their written statement have stated that petitioner-company is owned, controlled and run by the Central Government and similarly, the respondents are also owned, controlled and run by the Central Government and therefore, the matters between the Public Sector Undertakings

should be referred to the Committee as per directions of the Hon'ble Supreme Court. Respondents have further stated that for enforcement of rent and guarantee agreement, remedy does not lie under Article 226/227 of the Constitution of India. The case of the respondents is that although the rent and guarantee Cable of 20/20 Lbs was sanctioned in February, 1989, but still some telephone numbers were working on Departmental Cables of lower gauge. With the commissioning of Panchkula Telephone Exchange, some of the telephone numbers were transferred from Chandigarh Telephone Exchange to Panchkula Telephone Exchange. Still the respondents experienced difficulties in maintaining the underground cables laid between Chandigarh and H.M.T. Pinjore and to maintain proper services. Respondents have further stated that there had been a mani-fold developments in the area of route of the underground cable. As a result of these changes and widening of roads, the underground cable has been damaged at various places, as also it has come right under the middle of Panchkula-Kalka highway. It has thus, become both practically and technically impossible for the respondents to maintain the underground cable. On the commissioning of Telephone Exchange at Pinjore, within the premises of H.M.T., the respondents are within their rights to provide service to the petitioner from that exchange. It is also stated that providing of more telephone connections from Chandigarh/Panchkula Exchanges is not feasible due to administrative exigencies and the telephone connections from Pinjore Exchange have been provided only for smooth running of the department and to overcome difficulties arising to the department. In the two additional affidavits dated 16.3.1999 and 19.3.1999, respondents have stated that a latest technology telephone exchange having a capacity of 920 lines has been provided in the premises of H.M.T. for its exclusive use and no other connection has been provided to any other subscriber. It is stated that when the connections to the petitioner were released, the Chandigarh Telephone Exchange was electro mechanical exchange, whereas now the Chandigarh as well as the Pinjore Exchanges both are electronic exchanges having the same services. In additional affidavit dated 19.3.1999. respondents have stated that due to widening of road and introduction of light crossing, this underground cable has come under the metalled portion of road at different places, and as such the department is unable to maintain this cable properly.

4. Mr. R.K. Chhibbar, Senior Advocate, appearing on behalf of petitioner has contended that the Telecommunication Department had laid under-ground cable and provided telephone connections under the rent and guarantee Scheme/ Agreement and therefore, respondents cannot unilaterally change the terms of the agreement. It is contended that the only reason given by the respondents in their written statement to transfer the telephone connection from Chandigarh/ Panchkuia Exchange to Pinjore Telephone Exchange is that it has become practically and technically impossible for the respondents to maintain the underground cable. Counsel contended that the doctrine of frustration of contract as contained in Section 56 of the Contract Act can come into operation only when the performance of a contract becomes impossible. Counsel contended that

according to respondents" own showing, two telephone connections are still working from Chandigarh Telephone Exchange and as such, the contention of the respondents that it has become practically and technically impossible for the respondents to maintain the underground cable is not correct. In reference to Section 56 of the Contract Act, learned counsel has cited judgments in *Satyabrata Ghose Vs. Mugneeram Bangur and Co. and Another*, *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, *Raja Dhruv Dev Chand Vs. Harmohinder Singh and Another*, and *Govindbhai Gordhanbhai Patel and Others Vs. Gulam Abbas Mulla Allibhai and Others*, .

5. In answer to these submissions, learned counsel appearing on behalf of respondents has contended that the telephone connections provided to the petitioner were not under any agreement but under the provisions of the Indian Telegraph Act and the rules framed thereunder. It is contended that under the Rules, respondents have an absolute right, at any time, to shift the telephone connection from one Exchange to another. It is also contended that before shifting the telephone connections, petitioner was duly informed and no prejudice or loss, as alleged, has been caused to it.

6. In order to appreciate the respective contentions of learned counsel for the parties, it is necessary to notice the relevant provisions of the Indian Telegraph At, 1885 (hereinafter referred to as the 1885 Act) and the rules framed thereunder.

7. The expression "telegraph" in Section 3(1) means any appliance, instrument, material or apparatus sign, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means. Sub-Section (1) of Section 4 of the 1885 Act vests in the Central Government the exclusive privilege of establishing, maintaining and working of telegraph and enables the Central Government to grant licence on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India. Section 7 of the 1885 Act empowers the Central Government to make rules consistent with the provisions of the Act for the conduct of all or any telegraphs, established, maintained or worked by the Government or by persons licensed under the said Act. Clause(e) of Sub-section (2) of Section 7 provides that rules framed in exercise of powers under the said Section may provide for the conditions, restrictions, subject to which any telegraph line, appliance or apparatus for telegraph communication shall be established, maintained, worked, repaired, transferred, shifted, withdrawn or disconnected. In exercise of the powers conferred by Section 7 of the 1885 Act, the Central Government has framed rules known as the Indian Telegraph Rules, 1951 (hereinafter referred to the 1951 Rules). Rule 413 of the 1951 Rules provides that all telephone connections and other similar services provided or authorised by the Department shall, unless governed by a separate contract, be subject to the conditions set forth in the Rules. Rule 418 which provides for

change of telephone number and exchange reads as under:-

"418. Change of telephone number and exchange.- The Telegraph Authority shall have the right at any time to disconnect any exchange line from the exchange to which it is connected and connect it to any other Departmental Exchange and also to alter the telephone number allotted to the subscriber or the name of the exchange to which it is connected. The Telegraph Authority shall have the right to revise the rental and other charges payable in consequence of the alteration."

8. From a reading of the aforesaid provisions of the Act and the Rules, it is manifest that under the provisions of the 1885 Act and the 1951 Rules, the Department of Telecommunication is the exclusive Authority for establishing and maintaining the telephone connection service to the public within India. The telephone connections are provided to the public in accordance with the Telephone Allotment Rules and the other guidelines and instructions issued by the Department of Telecommunication from time to time. In the present case, no material whatsoever has been placed on record to prove that the Department had laid under-ground cable and provided telephone connections to the petitioner as a result of a contract between the petitioner and the Department. Neither any separate contract has been placed on record nor it has been alleged that such a contract was entered into between the petitioner and the respondents. Thus, the telephone connections provided to the petitioner are not governed by a separate contract, but governed by the provisions of the Act and the Rules and instructions issued in this regard. There being no contract between the parties, the judgments cited by the counsel for the petitioner have no application to the facts of the present case.

9. Instructions (referred to as Rule-23 in the petition) issued by the Telecommunication Department in regard to the providing of telephone service on Hire, Rent and Guarantee basis are also of no help to the petitioner. Instructions only provide that in case where cables are laid on Rent and Guarantee basis for the exclusive use of a private party or government department other than a Railway or Canal Administration, the rent and guarantee will be fixed on the following basis:-

"(i) Rental will be fixed either at 20% of the capital cost per annum or at the standard rates applicable to private wires, whichever is higher.

(ii) The initial period of guarantee will be 10 years.

After the expiry of the initial period of guarantee of 10 years, if the cables continue to be rented by the same guarantor, rent will be levied at 10% of the estimated capital cost per annum."

10. It is not in dispute that the telephone connections provided to the petitioner under the Rent and Guarantee Scheme were commissioned with effect from 28.2.1989 and the guarantee period has come to an end on 27.2.1999. After the expiry of 10 years, petitioner has no legal right to ask the respondents to provide

telephone connections from the cable which was laid from the Chandigarh Telephone Exchange to petitioner's premises at Pinjore. Moreover, Rule 418 gives an absolute authority to the Telecommunication Department to disconnect any telephone connection from the exchange it is connected and to connect it to any other Departmental Exchange and also to alter the telephone number allotted to the subscriber or the name of the exchange to which it is connected.

11. The contention of counsel for the petitioner that the procedure adopted by the respondents in shifting the telephone connections from one exchange to another does not satisfy the test of Article 14 of the Constitution of India, is devoid of any merit. Petitioner has not placed any material on record to establish that the decision taken by the Department to shift the telephone connections from one exchange to another was taken in bad faith or was based on irrelevant or irrational considerations or taken without following the prescribed procedure. The Department has given very valid reasons for shifting the petitioner's telephone connections from Chandigarh/Panchkula telephone exchange to Pinjore Telephone Exchange. It has been stated that because of manifold development in the area of the route of underground cable and widening of road, the underground cable has been damaged at various places and it has come right under the middle of Panchkula/Kalka highway. According to the Department, it has become both practically and technically impossible to maintain the underground cable. It is thus, erroneous to contend that neither there was any justification nor any rational basis for shifting the telephone connections from Chandigarh/Panchkula Exchange to HMT/Pinjore Exchange.

12. There is also no merit in the allegation of the petitioner that it had not been informed before shifting the telephone connection from one Exchange to another. In fact, the Department has installed the telephone exchange within the premises of petitioner's unit and it was well within the knowledge of the petitioner that the said exchange was being installed for providing telephone connections to the petitioner.

13. Lastly, learned counsel for the petitioner contended that the HMT/Pinjore Telephone Exchange is not equipped for providing the facility of Internet and E-Mail. In answer to this, counsel appearing on behalf of Department has stated that the HMT/Pinjore Exchange is provided with latest technology and the demand of the petitioner is being properly served. Counsel contended that the FAX facility is available on telephone line, irrespective of the type or the size of the Exchange and the E-Mail facility is in built in the Internet connection provided by the Department of Telecommunication, and the petitioner would be provided the said facility at its turn, as and when it is applied for. Accordingly, this contention of the petitioner is also devoid of any merit.

14. For the reasons recorded above, the writ petition fails. It is accordingly dismissed No costs.