

(1988) 08 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : C.M.P. (M) No. 96 of 1988
In Re: Nanak Chand, Theog

Date of Decision : 19-08-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A
Contempt of Courts Act, 1971 — Section 10
Penal Code, 1860 (IPC) — Section 228
Telegraph Act, 1885 — Section 7
Telegraph Rules, 1951 — Rule 420

Citation : AIR 1989 HP 46 : (1988) 17 ILR HP 334

Hon'ble Judges : P.D. Desai, C.J

Bench : Single Bench

Advocate : P.A. Sharma, Central Government Standing Counsel for the Junior Engineer, Telecom Office, Theog, the General Manager, Telecommunication, Himachal Pradesh and the Telecom, District Engineer, Shimla, for the Appellant;

Judgement

P.D. Desai, C.J.—These suo motu proceedings have been initiated in view of an order dt. Sept. 26, 1987 passed by the Sub-Divisional Judicial Magistrate, Theog (hereinafter referred to as "the lower Court"), in the course of a proceeding initiated by him suo motu in the purported exercise of contempt jurisdiction against the Junior Engineer, Telephone Exchange, Theog (hereinafter referred to as "the J.E."). The origin of the proceedings culminating into the said order is to be found in an unfortunate controversy which developed between the lower Court and the J.E. in connection with the alleged non-payment of certain trunk call bills and the consequential disconnection of the office telephone of the lower Court.

2. It appears that the following three bills were issued by the telephone authorities for the recovery of charges of trunk calls allegedly booked from the telephone installed in the office of the lower Court.

1. Bill dated 21-1-1987 for Rs. 174/-

2. Bill dated 21-3-1987 for Rs. 157/-

3. Bill dated 21-5-1987 for Rs. 147/-

It further appears that the correctness of the bills was disputed by the lower Court in the course of a prolonged correspondence exchanged between the lower court and the telephone authorities. Since the payment due under the disputed bills was not made, the telephone appears to have been disconnected on Sept. 20/22, 1987.

3. On Sept. 21, 1987, the Naib Nazir of the lower Court submitted a report stating, inter alia, that the office telephone was disconnected on Sept. 20, 1987 on account of the non-payment of the aforesaid bills, although the detailed particulars with respect to those bills were received only on Sept. 17, 1987 and although the disconnection could not have been effected before the expiry of 15 days from the date of the receipt of such information.

4. The lower Court appears to have taken cognizance of the report on the judicial side and the following order was passed thereunder on Sept. 22, 1987 :

"Report put up today by the N. N. of this Court. Steps be taken to connect the Telephone."

5. On the next day, that is, Sept. 23, 1987, the lower Court passed an order in the following terms.

"As per the statement of the Naib Nazir, the telephone authorities, Theog, would not connect the telephone until and unless the pending bills are paid. As per our record the pending bills have been received in this office on 17-9-1987 and that also on the initiation of this office only. The telephone cannot be disconnected within 15 days from the receipt of the bills as per rules. Issue contempt notice to the J.E Telephone, Theog, as to why action should not be taken against him and the Divisional Engineer Telephones for disconnecting the telephone of this office without any notice."

6. Pursuant to the aforesaid order, notice was issued to the J.E. which reads as follows :

"In the Court of Shri S. L. Sharma, Sub-Divisional Judicial Magistrate, Theog (Shimla).

Contempt Notice

To

Shri Nanak Chand, Junior Engineer, Telephone, Theog.

Whereas you have disconnected -the telephone of this Court without notice and it is therefore desirable that action should be taken against you and the Divisional Engineer, Telephone, Shimla.

You are, therefore, directed to appear in this Court today at 4.30 p.m. sharp and file your reply as to why you have disconnected the telephone of this Court

without notice.

Given under my hand and the seal of the Court this 24th day of Sept., 1987.

Sd/- S. L. Sharma, Sub-Divnl. Judicial Magistrate, Theog, Shimla."

Seal.

In the order sheet, the following entry was made on Sept. 24, 1987:

"Contempt notice to J. E. Telephone, Theog issued. It be registered The J. E. be served for today itself for 4.30 p.m."

7. It appears that the notice was attempted to be served on the J. E through the Naib Court on the same day. He submitted a report to the lower court to the effect that the J. E had gone out but an employee of the Theog Telephone Exchange (Surjeet Singh) was orally informed to direct the J. E to attend the Court at 4.30 p.m. on that day. Upon receipt of the report, the lower court passed the following order on the same day :

"The notice for service of the respondent was taken dasti by N. C. of this Court. As per the report on the notice as well as the oral statement of the N.C. the respondent has gone out in field. He be served again through this very notice for 25-9-87 to be present in the Court at 10 a.m."

8. It appears that the said notice was duly served on the J. E on the morning of September 25, 1987 and a report in that regard was submitted to the lower Court. The J. E, however, failed to attend the Court at the appointed hour. The lower Court, therefore, passed the following order on the said day at 10.15 a.m. :

"The respondent is duly served for today as per report on the notice. But despite notice he is not present. It is 10.15 a.m. Be called out again."

Later in the course of the day at about 11.30 a.m. the lower Court passed the following order :

"Respondent is not present. A.P.P.Sh.D.S. Parmar has appeared. He has stated that the J. E. Telephone, Theog, has come and was in his office. But the J. E himself is not present. It is 11.30 a.m. I think that the J. E. is reluctant to appear himself and that is why he has first approached to the Id. A.P.P. Be called out again.

At this stage the J. E has entered the Court. I am of the opinion that he wants to influence the Court through Id. APP and that is why he first went to the office of Id. A.P.P. This practice is not desirable. Be now called after the day's cause list is exhausted."

Still later in the day, the following order was passed :

"Respondent in person. The respondent made oral submissions at the Bar that he has been directed by the higher authorities to realise the arrears of the

telephone bills and if the arrears were not realised adverse entries would be made in his ACR. He has produced record to this effect. But it is now 5.10 p. m. and it is not possible to peruse the record. Hence the respondent is directed to be present in the Court on 26-9-87 at 10 a.m." On Sept. 26, 1987, the J. E again attended the lower court whereupon the following order was passed:

"The respondent has tendered unconditional apology at the Bar. On questioning him, he has stated that he was pressurised by the higher authorities to disconnect the telephones so as to realise the arrears of the telephone bills. He has also produced the record. As per the letter issued by the Divisional Office to the J.E Telephone, Theog, he has been directed to disconnect the telephones the dues of which had not been realised. It is also written that the adverse entry will be made in his ACR if the pending bills were not realised. It implies that he has disconnected the telephone of this office under pressure from his superiors under the fear of incorporation of adverse entry in his ACR. But he does not assign any reason of for the late submission of the pending bills to this office. He is also feeling guilty that the telephone has been disconnected wrongly.

I am of the opinion that the J.E. Theog has not disconnected the telephone of this office deliberately but was compelled by his superior officers. So in view of the unconditional apology tendered by the J. E. Theog in the Court orally, I discharge him from this notice with a warning not to repeat this mistake again because such arbitrary and high handed actions do invite legal actions and penalty thereafter. The papers be consigned to the records."

9. The Telecom District Engineer, Shimla, addressed a letter dt. Oct. 7, 1987 to the District and Sessions Judge, Shimla, endorsing a copy thereof to the Registrar of this Court, referring to the non-payment of the telephone bills and to the consequential disconnection of the telephone installed in the office of the lower Court and pointing out that telephone is liable to be disconnected if the bill is not paid within 15 days from the date of the issue thereof. The letter also contained a request in the following terms :

"After disconnection of telephone on 22-9-87 the S.D.J.M., Theog, issued contempt notice to our J.T.O., Theog, (attested photostat copy of the notice enclosed). On receipt of contempt notice J.T.O., Theog,, went to the court on 25-9-87 at 10.30 hrs. and was kept waiting up to 17.15 hrs. The S.D. J.M. threatened the J.T.O. for imprisonment of one year and fine of Rs. 200/- for the disconnection of the telephone. Thus our J.T.O. was harassed by the S.D.J.M. without any fault.

Kindly look into the matter and ascertain as to what extent the action of S.D.J.M., Theog, was justified, so that the case may be taken up with the Ministry of Law, Government of India, New Delhi, for issuing necessary instructions for dealing with such cases of disconnection due to non-payment."

Some correspondence was exchanged thereafter between the High Court Registry and the Telecom District Engineer, Shimla, in connection with the alleged

non-payment of the telephone bills by the lower Court and the consequential disconnection of the telephone. It is not necessary to make a reference to the said correspondence since, in the present proceedings on the judicial side, it is not necessary to express any opinion with respect to the said controversy. However, the judicial proceedings purported to have been taken in the exercise of the contempt jurisdiction by the lower Court came to the notice of the High Court as a result of such correspondence and since, after examination of the record, they were found, *prima facie*, to be without or in excess of jurisdiction, the present *suo motu* proceedings were initiated to deal with the case in accordance with law.

10. Now, there is no manner of doubt that the lower Court has not only exceeded its jurisdiction but has also acted without circumspection and restraint, which is expected of a judicial officer, while dealing with the present case. At the very outset, it may be mentioned that under the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act"), a subordinate Court has no jurisdiction, power and authority to punish for the contempt of itself, even if the contempt is found to have been committed by any person or authority. The power to punish for the contempt of the subordinate courts is vested in the High Court under S. 10 of the Act. The proper procedure to be adopted in such a case by a subordinate Court, therefore, is to make a reference to the High Court. Of course, cases by S. 228 of the I.P.C. or Order 39, Rule 2-A of the Civil P.C. stand on a different footing and they are required to be dealt with in accordance with law without the intervention of the High Court. The lower Court, therefore, clearly erred in not following the said procedure even if it had reasons or grounds to believe, *prima facie*, that the J. E. had committed contempt, and in dealing with the case at its own level, and in purporting to accept the "unconditional apology" tendered at the Bar by the said officer. The elementary basis of the acceptance of apology in the contempt jurisdiction is that there has to be a finding of the committal of contempt. In the absence of a finding that the contemner is guilty of the contempt of court, there would not be any occasion for the acceptance of apology. The question of tendering and accepting the apology of the J.E., therefore, did not arise in the present case, since the lower Court had no jurisdiction, power and authority to record a finding of committal of contempt, as such, against him and has, in fact, not done so.

11. Apart from the question of lack of jurisdiction, power and authority, on the facts and in the circumstances of the case, there was no warrant for the initiation of such a proceeding against the J.E. on the ground that any contempt was committed by him. The dispute between the lower court and the J.E. pertaining to the alleged non-payment of trunk call charges and the consequential disconnection of the telephone was a matter which could and should have been dealt with on the administrative side. Even assuming that there was a genuine dispute as to the correctness of the telephone bills and a *bona fide* cause of complaint against the consequential disconnection of the telephone, the proper course was to have taken up the matter on the administrative side with the

higher authorities of the Telephone Department at the Divisional or Circle level or to have brought the matter to the notice of the Registry of the High Court. If no reasonable solution could be found as a result of the efforts accordingly made and if the action of the departmental authorities was found to be arbitrary, unreasonable, illegal or in excess of power or jurisdiction, the proper course of action was to have taken the matter for adjudication on the judicial side in the course of a properly constituted proceeding. To take suo motu cognizance of such a matter on the judicial side upon the report of an official of the court and to direct by an ex parte order that steps be taken to connect the telephone and to initiate contempt proceedings on finding that the said direction was not complied with and to conclude them in hot haste by the acceptance of an apology amounts not only to assuming jurisdiction not vested by law but also to act in breach of the judicial restraint, propriety and circumspection which a Presiding Officer of a Court must necessarily possess and exercise.

12. The manner in which the proceedings were conducted also leaves much to be desired. The short period of notice requiring the personal attendance of the J.E., the quick succession in which the orders were passed on Sept. 25, 1987, the inferences drawn in the said order(s) against the J.E. on account of the appearance of the Assistant Public Prosecutor at one stage and the postponement of hearing of the case until after the day's cause list was exhausted, are all indicative of a lack of judicial objectivity, detachment and equanimity, which have to be maintained even in the face of the gravest of contempt, if any. Certain observations made in the course of the order dt. Sept. 26, 1987 concerning the superior officers of the J.E. by probing into the record of his office and the administration of a "warning" to him "not to repeat this mistake again because such arbitrary and high handed actions do invite legal actions and penalty thereafter" disclose a total lack of perception of the factual and legal position and of the judicious approach to the case in hand.

13. For the foregoing reasons, there is no manner of doubt that in the present case the lower court has acted with undue haste, without proper perception, circumspection and judicial restraint, detachment and objectivity, and that this has led to the initiation of proceedings which are wholly without jurisdiction, power and authority.

14. The discussion cannot be concluded without a word being said about the authorities of the Telephone Department. The correspondence exchanged between the lower Court and the telephone authorities as well as between the Registrar of this Court and the telephone authorities discloses that there was a bona fide dispute as to the billing of the trunk call charges. In providing the telecommunication services on a monopoly basis, the State is not discharging a sovereign function. It is running a public utility service in which the consumer's satisfaction must be regarded as a matter of prime importance. When a dispute arises between the different organs or agencies of the State while providing such service, it is all the more necessary to resolve the dispute in an amicable manner

to the satisfaction of all concerned. The telephone authorities should have resolved the points in dispute in the present case by taking up the matter with the High Court Registry, even if they felt that the lower Court's persistent complaints about the wrong billing and the consequential non-payment of the bills were not justified, rather than resorting to the extreme step of disconnecting the telephone. Having seen what has transpired in the present case, an oral direction was given to the telephone authorities to place on record the information as to the procedure, if any, being followed by the Department to deal with the complaints of excess billing of rental and/or local and/or trunk call charges made by a subscriber and the publicity, if any, given to the same. The Telecom District Engineer, Shimla, has filed two affidavits placing on record such information and he has also therein assured the Court that the relevant information will be published in the form of an addendum in the forthcoming Telephone Directory which is under print. The Court expects that this will be done without fail and that such complaints, if any, will be dealt with fairly and justly in a spirit of service and on the basis of commercial expediency.

15. In view of the foregoing discussion, the entire proceedings commencing with the order dt. Sept. 22, 1987, and culminating into the order dt. Sept. 26, 1987, passed by the lower Court are quashed and set aside. The Court, however, clarifies that it should be taken to have expressed no opinion on the merits of the dispute relating to the telephone bills in question and as to the validity of the decision to disconnect the telephone under the circumstances present in the case. Those issues should not be regarded as having been dealt with or decided, one way or the other, as a result of the order passed herein.

16. Let copies of this judgment be sent to the concerned judicial officer and also to the Registrar of this Court for being placed in his service record. Copies be sent also to the Telecom District Engineer, Shimla, and the General Manager, Telecommunication, Himachal Pradesh.