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**(1982) 06 BOM CK 0021**  
**In the Bombay High Court**  
**Case No : Misc. Petition No. 313 of 1977**

Indira J. Kaushik

APPELLANT

Vs

R.M. Salunke and Others

RESPONDENT

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**Date of Decision :** 22-06-1982

**Acts Referred:**

Telegraph Rules, 1951 — Rule 429, 430

**Citation :** (1982) 1 BomCR 825

**Hon'ble Judges :** S.C. Pratap, J

**Bench :** Single Bench

**Advocate :** W.S. Devnani, for the Appellant; K.R. Bulchandani and M.I. Sethna, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.C. Pratap, J.—A firm under the name and style of M/s. J. Philips Manufacturing Co. was carrying on for the past several years business in Bombay its office premises situated at Bombay Mutual Annexe, Gunbow Street, Bombay. For the purpose of its business, the firm had acquired and had been allotted two telephone installations with requisite instruments and connections. This was in or about the year 1953. All requisite charges and expenses in that behalf had been paid. The numbers allotted were 263352 and 263353. These telephones throughout stood and continued to stand in the name of M/s. J. Philips Manufacturing Co. On 22nd January, 1971, the proprietress Miss Elveisa Olivia Couth of the aforesaid firm assigned the business of the said firm as a going concern together with goodwill, stock in trade and all assets and also benefit of tenancy rights to one John Francis Lima. This was by a registered deed of assignment. The telephones continued to stand in the name of the said firm itself, but consequent upon the registered assignment in question, the same were used by the proprietor John Francis Lima. At no stage was there any objection whatever raised by the telephone department to either the aforesaid assignment (which obviously the department could not) or to the use of the

telephones consequent upon the assignment of the business etc. by the new proprietor of the said business. The telephones continued to be used by John Lima all throughout uninterruptedly and without any objection. He also continued to pay all the bills regularly in that behalf. The telephones being in the name of M/s. J. Philips Manufacturing Co., bills were throughout in the said name. The very initial allotments of the telephones also were in the said name. Some years thereafter, on 17th October, 1974, John Lima executed a registered deed of assignment in favour of Indira J. Kaushik, the petitioner herein assigning the entire business of the said firm M/s. J. Philips Manufacturing Co., as a going concern along with stock-in-trade, furniture, fixtures, and goodwill including benefit of tenancy rights. In both the aforesaid deeds of assignment viz., one of January 1971 and the other of October, 1974, benefit of the user of the aforesaid two telephones belonging to M/s. J. Philips Manufacturing Co. also was given to the owner at the relevant time of the said firm. After the petitioner became the owner of the said firm, she, as the previous owners before, used the said telephones without any objection or interruption by the telephone department. She also regularly paid all the bills sent in the name of M/s. J. Philips Manufacturing Co. and of which she, Indira J. Kaushik was now the owner.

2. However, in August 1975, a show cause notice was issued to the petitioner for an alleged breach of Rule 429 of the Indian Telegraph Rules, 1921. The said notice annexed at Exhibit B to the petition stated that the above telephones had been unauthorisedly either assigned or sublet or transferred in breach of the Indian Telegraph Rules and thereby rendering the said telephones liable for immediate disconnection and closure of telephone services. On receipt of the above notice, the petitioner sent a representative to meet the 2nd respondent who had issued the aforesaid show cause notice along with all the relevant documents including the registered deed. It was further explained to the 2nd respondent that there was in fact no unauthorised assignment of transfer on subletting. According to the averments in the petition, the 2nd respondent appeared to be satisfied after pursuing the documents and after going through the true facts of the case. The 2nd respondent also appeared to have been satisfied with the explanations given. He, however, advised the petitioner to make a formal application to the Contract Officer for transfer of the said telephones to her name. The petitioner accordingly, by her letter dated 20th August, 1975, applied to the Contract Officer for transfer. She also enclosed a copy of the registered deed in question. She also assured to give further information, if required. Nothing of substance, however, took place thereafter. The petitioner continued to use the said telephones regularly. Bills continued to be issued in the name of the said firm M/s. J. Philips Manufacturing Co. and the said bill were being regularly paid.

3. Almost a year later and all of a sudden, the petitioner received a threatening letter dated 7th August, 1976 from the Bombay Telephones informing her that the service of the above telephones would be withdrawn and closed after seven days. It was further mentioned in the said letter that there had been a breach of

Rule 429 of the Indian Telegraph Rules. A detailed reply to this letter was sent by the petitioner on 30th August, 1976. No cognizance however, appears to have been taken in that behalf by the department. Advocate's notice was subsequently sent on 10th September, 1976. Neither to the letter of 30th August, 1976 nor to the Advocate's notice of 10th September, 1976 did the petitioner receive any reply. The petitioner thereupon filed in the Bombay City Civil Court a suit, being Suit No. 6987 of 1976, for requisite reliefs. A notice of motion was also taken out therein for interim reliefs. Though ad interim relief was granted on the said notice of motion, the said notice of motion had to be subsequently dismissed for want of prior requisite notice of suit u/s 80 of the Code of Civil Procedure. In view of the aforesaid technical difficulty, the suit was withdrawn with liberty to file a fresh suit. Soon thereafter, the petitioner filed the present writ petition in this Court.

4. In support of the petition, I have heard Mr. W.S. Devnani, learned Counsel for the petitioner. The respondents are represented by their learned Counsels Mr. K.R. Bulchandani and Mr. M.I. Sethna.

5. Before proceeding further, it requires to be stated that though this petition was more than once adjourned in order to enable the respondents' Counsels to take appropriate instructions from the department and its officers, the respondents' Counsels ultimately confessed before this Court that they were unable to do so for want of requisite co-operation and assistance from the department and its officials. Indeed, even today, to which date again the matter was adjourned after hearing arguments, none of the officers of the department has taken care to even bring the papers to the Court for the perusal of their Counsels. This attitude has persisted inspite of request after request made by the learned Counsels of the respondents to the department. This, indeed, is most unfortunate and, perhaps, is in keeping with the style of functioning of the Bombay Telephones which it needs to be stated, appears to have the least regard not only for the convenience of their numerous subscriber in this city but, as this case shows, also for cases pertaining to the department in courts of law. The attitude of the concerned official or officials in this behalf has to be deprecated. It shows utter disrespect for courts of law and administration of justice. If such be the approach of the officials vis-a-vis even their own learned Counsels and the High Court, their approach, attitude and treatment vis-a-vis the subscribers can well be realised. Though the department is situated hardly a few kilometres away from this Court, the concerned official or officials have not found either the requisite time or the requisite intention to assist their Counsels and this Court in this matter. One can only hope... and hope is the only thing one can speak of so far as Bombay Telephones are concerned ...that the top officials of this department will seriously take up this matter with the concerned official or officials connected with this matter and seriously see to it that such occasions are no longer repeated. In the absence of proper instructions and papers, one could understand and appreciate the difficulty of the respondents' Counsels in meeting the substantial arguments advanced in support of this petition by the

petitioner's learned Counsel Mr. Devnani. But that cannot be helped either by the Counsels or by this Court. Neither Counsel can go on taking adjournment nor can the Court go on granting the same merely to suit the whims and conveniences of some or the other concerned official in the department and to await his majestic arrival in the chambers of his Counsel or in the Court as and when he deems it just, fit and convenient.

6. Coming to the merits, I find the petitioner's case unanswerable. I do not see how Rule 429 could be successfully invoked in this case against the petitioner. Undisputed position is that the firm in question M/s. J. Philips Manufacturing Co. which was allotted these two telephones has been in existence and subsistence throughout all these years right from its inception in 1953 till now. The telephones also continue to stand all throughout and at all relevant times in the name of M/s. Philips Manufacturing Co. Allotment of these telephones also has been from the inception in favour of M/s. J. Philips Manufacturing Co. The original allotment, as indicated, was sometime in the year 1953. In 1971, the firm's business was transferred not by any doubtful or surreptitious document but by a document duly registered. The business of the firm as a going concern with all the requisite stock-in-trade, furniture, fixtures and good will as also the tenancy rights in question stood assigned in the name of the new proprietor John Lima of M/s. J. Philips Manufacturing Co. Right from the time he became the proprietor of the said firm, John Lima has been using these telephones without any objection at all relevant times. As before, bills continued to be sent in the name of M/s. J. Philips Manufacturing Co. and were paid accordingly regularly. In 1974, John Lima in turn transferred his entire business along with good will, stock-in-trade and tenancy rights in favour of the petitioner herein and since then the petitioner has been carrying on the very same business of the M/s. J. Philips Manufacturing Co. Sum and substance is that the business continued to be in the name and style of M/s. J. Philips Manufacturing Co. at all relevant times in 1953 as also in 1971 as also in 1974. In the light of these facts and circumstances, it is not possible to come to the conclusion that there was any subletting or assignment or transfer of the telephones as such within the meaning of Rule 429 of the Indian Telegraph Rules. The business undoubtedly was transferred from its former sole proprietor to its subsequent sole proprietor and from the subsequent sole proprietor to the present sole proprietor, the petitioner herein. The business continued as before. The firm also continued as before. The telephones were allotted to the firm and not to any individual. The firm continued to use the said telephones at all relevant times. Prior change of proprietor of the firm was also never a point in dispute at any stage with the department. The department also never took any objection. Plea of the department that it could not have known of the 1971 assignment can in law have no substance because it was an assignment duly registered with the Registrar of Assurances. The second assignment of the business in the year 1974 was also by a registered document and, as indicated, it contained all the requisites of a valid assignment. It was, in my view, not right, therefore, to invoke Rule 429. Threat of disconnection on the

basis of Rule 429 was uncalled for and unjustified.

7. There is also substance in the contention of the petitioner that immediately after receipt of the notice, the person issuing the same heard the petitioner's representative in the matter, perused the registered documents in question and was satisfied that this was indeed not a case where Rule 429 could be applied against the petitioner. The promptness of the petitioner could be seen also from the correspondence on record. This submission on behalf of the petitioner gets support and corroboration from the fact of which again there is no dispute that thereafter for almost a year the telephone department did not take any action whatever and permitted the petitioner to use the telephones as before uninterruptedly and without any objection and went on sending the bills as before as also went on accepting payments thereof as before. What happened subsequently is a mystery. But another officer, almost a year later, thought fit to issue the presently impugned show cause notice. And what is surprising is that even though this notice was replied to and though the same was followed up by an Advocate's notice, the department has not chosen to show the courtesy of any reply but has, instead, thought fit to go ahead and act high handedly by disconnecting the telephone connections-this again in spite of the fact that the suit was filed and an interim order was obtained. The haste with which the department has so acted in the aforesaid behalf may as well be contrasted with the most leisurely and almost negligent manner in which it has subsequently concerned itself with this petition in this Court.

8. In pursuance of the aforesaid notice dated 7th August, 1976, the department did not give any hearing to the petitioner. In fact, the notice, was only to intimate the petitioner that the telephones would be withdrawn and closed after seven days. There was no opportunity provided to the petitioner in this behalf. The earlier opportunity provided a year back altogether different officer of the department had been utilised by the petitioner and as the petitioner submits on affidavit in this Court, the said officer who has not filed any affidavit of denial was satisfied with the representations and explanations given by the petitioner and hence no action was taken in that behalf. It was only a year later that the present notice of a connection was suddenly issued.

9. Mr. Devnani, learned Counsel for the petitioner, also invited my attention to Rule 430 of the Indian Telegraph Rules submitting that the facts of the case here may, at the highest, indicate a change of title qua the firm M/s. J. Philips Manufacturing Co. John Lima was the first successor and the present petitioner Indira J. Kaushik would be the second successor with in the meaning of the said Rule 430. There is considerable substance also in this submission of the learned Counsel. The relevant facts and circumstances and the undisputed registered documents show that the petitioner herein can at the highest, be a successor to the former proprietor of the firm. As indicated, the firm was the same throughout. The original owner was succeeded by another owner and the subsequent owner was succeeded by the petitioner herein. If that is so, then

Rule 430 contemplates that the successor should apply for permission to retain the connection. As facts here indicate, the petitioner had in fact applied for permission. The department has not chosen to apply its mind even to this request of the petitioner. It is, however, not necessary to pursue this aspect any further because the department has not taken any steps in pursuance of Rule 430. The disconnection notice clearly invokes Rule 429 which, as indicated, does not, according to me, apply to a situation as emerging from the record in the present case.

10. In this view of the matter, the disconnection threat and the disconnection in pursuance thereof was bad in law and liable to be struck down and appropriate consequential reliefs deserve to be granted to the petitioner herein.

11. Mr. Bulchandani, learned Counsel for the respondents, invited my attention to an unreported ruling of the Madhya Pradesh High Court in Miscellaneous Petition No. 244 of 1964 decided on 12th August, 1964, Rasiklal Jethu Bhai Parakh and others v. Divisional Engineer, Telegraphs, Rajpur Division). Ratio of the said ruling is to the effect that whether telephone is liable to be discontinued because of alleged unauthorised use is a dispute which must be referred to the arbitrator. The said ruling concerns itself with unauthorised use. In this case, I have come to the conclusion that there was no unauthorised use at all. The user was at all times legal and authorised. But even if one were to assume the same to be unauthorised, the very ruling supra of the Madhya Pradesh High Court shows that then in that event the dispute must be referred to the arbitrator which, again, the department here failed to do. Therefore, even if one were to invoke the ruling of the Madhya Pradesh High Court the action of the department in straightway disconnecting the telephone would still be bad and unsustainable.

12. In the result, this petition succeeds and is allowed. The impugned show cause notice dated 8th August, 1975 Exhibit B in the petition impugned disconnection letter dated 7th August, 1976 (Exhibit F to the petition) are quashed. The respondents are directed to forthwith restore the connections of the two telephones in question bearing Nos. 263352 and 263353 at their entire costs, charges and expenses. On such restoration, the petitioner will be liable to abide by all the rules and regulations relating to the said two telephones as also will be liable to pay all the usual charges of the said two telephones in accordance with law. Rule earlier issued on this petition is made absolute in terms aforesaid. The petitioner will get costs of this petition from the respondents.