
(2001) 02 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24236 of 1999

K. Jagannadha Rao

APPELLANT

Vs

General Manager, Hyderabad Telecommunications

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Telegraph Rules, 1951 — Rule 443, 445

Citation : (2001) 02 AP CK 0067

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : Mummaneni Srinivasa Rao, for the Appellant; K. Pratap Reddy, for the Respondent

Judgement

D.S.R. Varma, J.—This writ petition is filed seeking a declaration that the action of the respondent in demanding payment of preferential security deposit and Tax Rental Deposit (ARD) and also for payment of rentals from 12.5.1999 in respect of Telephone No.3350469, treating it as a fresh connection as illegal and arbitrary.

2. The brief facts of the case are as follows:

The petitioner is a subscriber of the telephone connection No.3350469 since 1993. Subsequently, he fell in dues for the period from March 1997. Consequently, disconnection was effected on 25.06.1998. The petitioner paid dues on 12.05.1999 and made an application on 13.05.1999 seeking reconnection since he has cleared all the dues. Even though all the dues were collected, re-connection was not effected by the respondents. On the contrary, a demand notice dated 04.06.1999 was issued and served on the petitioner indicating therein that the petitioner shall pay the amounts as follows:

- a) Rental deposit of Rs. 1,280/-
- b) Security deposit of Rs. 2,000/-and
- c) Re-connection charges at Rs. 105/-.

3. The amounts so demanded in the said demand notice are disputed in this writ petition.

4. The learned counsel for the petitioner submits that even though all the dues were paid as long back as on 12.05.1999, the telephone connection was not restored and on the contrary, the demand notice dated 04.06.1999 was served upon the petitioner and the amount mentioned in the said demand notice need not be paid by him since the provisions of the Indian Telegraphic Rules, 1951 (for short the rules) do not apply.

5. The learned counsel for the respondents submits that the respondents are authorized to collect the said amounts from the petitioner as per Rules 443 and 445 of the rules. It is better to extract Rule 445 of the Rules:

SECURITY FOR CHARGES:" The Telegraph Authority may, at any time before or during the period for which a telephone or other like service is provided require a subscriber to deposit as security such amount as it may consider necessary and if the subscriber fails to comply with such demand within such period as it may specify, the Telegraph Authority may withdraw the service and remove any telephone or other apparatus belonging to the Telegraph Authority. Where the security deposit is paid, any amount due from the subscriber by way of fee or other charges under these rules may be adjusted against the amount so deposited".

6. It is very clear from the said rule that the competent authority may, at any time, before or during the period of which a telephone or other like service is provided, require a subscriber to deposit such amount as it may consider necessary. Therefore, the first amount i.e., security deposit of Rs. 2,000/- is a valid demand as per the said provision. The very language incorporated in the said provision "at any time before or during the period" indicates that even during the subsistence of the telephone connection, a demand can be made by the authorities only so far as security deposit is concerned. Hence this provision deals with "security deposit" only.

7. So far as the demand with regard to the rental deposit of Rs. 1,280/- is concerned, the learned counsel for the respondents relies upon Rule 443 of the Rules which is to the following effect:

DEFAULT OF PAYMENT: " If, on or before the due date, the rent or other charges in respect of the telephone service provided are not paid by the subscriber in accordance with these rules, or bills for charges in respect of calls (local and trunk) or phonograms or other dues from the subscriber are not duly paid by him, any telephone or telephones or any telex service rented by him may be disconnected without notice. The telephones or the telex so disconnected may, if the Telegraph Authority thinks fit, be restored, if the defaulting subscriber pays the outstanding dues and the reconnection fee together with the rental for such portion of the intervening period (during the telephone or telex remains disconnected) as may be prescribed by the Telegraph Authority from time to

time. The subscriber shall pay all the above charges within such period as may be prescribed by the Telegraph Authority from time to time". It is clear from the above provision that Telephone can be disconnected without notice in the event if the rent or other charges in respect of the telephone service provided are not paid by the subscriber. It further postulates that such disconnected telephone has to be reconnected if the defaulting subscriber pays the outstanding dues and the reconnection fees together with the rental for such portion of the intervening period of disconnection as may be prescribed by the Telegraph Authority from time to time.

8. In the instant case, disconnection was effected on 25.06.1998. Therefore, it is clear that the above rule only entitles the respondent to collect all the dues along with rentals for the disconnected period also. Surprisingly the respondents instead of restoring the service to the petitioner, issued demand notice on 04.06.1999 directing the petitioner to pay the amounts towards a) rental deposit b) security deposit and c) reconnection charges, even after the petitioner making an application on 13.5.1999 seeking re-connection .

9. As already pointed out, as per rule 445 of the rules, the respondents are entitled to collect only the security deposit and in so far as the other dues are concerned, they are entitled to collect the rental deposit of Rs. 1,280/-. The learned counsel for the respondent is unable to invite the attention of this Court regarding the provision which enable the respondents to make a demand in this regard. He simply relies on Rule 443 only. But as noticed, rule 443 only prescribes payment of dues along with the rentals for the disconnected period i.e., with effect from 25.6.1998 till 12.05.1999 which was admittedly paid by the petitioner.

10. Now, the only question arises for consideration is whether the respondents can demand the amounts for rental deposits, security deposit and reconnection charges as mentioned in the demand notice dated 4.6.1999.

11. I am of the considered view that the argument of the learned counsel for the respondents cannot be countenanced in the face of a plain language of Rules 445 and 443. It is further noted that the respondent did not resort to reconnect the telephone connection even though all the dues are paid by the petitioner on 12.5.1999 and on the contrary they are demanding rental deposit of Rs. 1,280/- to reconnect the telephone service.

12. From the above two rules it is seen that the authorities are entitled to demand only the security deposit and reconnection charges but not rental deposit of 1,280/- and the demand of other amounts of rental deposit in my view, is quiet arbitrary.

13. Now the other question that falls for consideration is whether the petitioner is liable for the payment of rentals from 12.5.1999 till date.

14. The contention of the learned counsel for the petitioner is that he has cleared

all the dues as on 12.5.1999 and made an application on 13.9.99 for reconnection. But instead of giving reconnection, the respondents issued demand notice on 4.6.1999. When all the dues were paid as on 12.5.1999, the petitioner is entitled for reconnection forthwith. From the record it is seen that as on 12.5.1999, there is no demand by the respondents with regard to the rental deposit, security deposit and reconnection charges. But the respondents having received all the dues, issued the demand notice on 4.6.1999. In my view, this conduct on the part of the respondents would certainly amount to subjecting the petitioner-subscriber to unnecessary discomfort and inconvenience. When an application dated 13.05.1999 was made by the petitioner to the respondents for reconnection of the telephone after paying all the dues, the respondents should have issued the demand notice immediately, claiming whatever the amounts they are entitled to, but they did not choose to do so. In other words, the respondents are treating the connection as a fresh connection and on the one hand they are asking the petitioner to pay the security deposit of Rs. 2,000/- and also as a default claiming rental deposits for the period with effect from 12.5.1999 till date. This in my view, amounts to double punishment. If really the respondents want to exercise the jurisdiction under Rule 445 or 443 of the rules, they could have done it even after the restoration of service. When all the dues are paid by the petitioner on 12.5.1999 itself, it is not permissible for the respondents to make a new demand for rental charges and compel the petitioner to pay the said amounts at this stage. Except the security deposit and reconnection charges, no other demands shall be made by the respondents.

15. For the foregoing reasons, the writ petition is disposed of with a direction to the respondents to give reconnection to the petitioner telephone No.3350469 on condition that the petitioner deposits reconnection charges and security deposit as demanded by them without insisting upon the demand of either rental deposit or rentals from 12.5.1999 till service is restored. Interim directions granted earlier shall stand vacated. No costs.