

(1977) 11 KL CK 0023

In the High Court Of Kerala

Case No : Writ Appeal No's. 82 and 279 of 1976

K.C.M. Mather

APPELLANT

Vs

Vijaya Movies and Others

RESPONDENT

Date of Decision : 28-11-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Telegraph Act, 1885 — Section 3, 4, 7

Citation : AIR 1978 Ker 159 : (1978) 1 ILR (Ker) 275

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;K.K. Narendran, J

Bench : Division Bench

Advocate : V.K.K. Menon, P. Mohamed and P.S. Mohamed Nasir, in W.A. No. 82 of 1976 and Central Govt. Pleader in W.A. No. 276 of 1976, for the Appellant; V.K.K. Menon, P. Mohamed, P.S. Mohamed Nasir, P.F. Thomas, in W.A. No. 279 of 1976 and Central Govt. Pleader in W.A. No. 82 of 1976, for the Respondent

Final Decision : Allowed

Judgement

Gopalan Nambiyar, C. J.

1. These are two appeals arising out of the same judgment of a learned Judge of this Court in O. P. No. 3900 of 1975. W. A. No. 82 of 1976 is by the supplemental 5th respondent in the Original Petition, and W. A. No. 279 of 1976 is by respondents 1 to 4, namely, the Divisional Engineer, Telephones, the Commercial Officer, Telephones, the Director of Posts & Telegraphs, and the District Manager, Telephones, Ernakulam, The writ petition was filed seeking a writ of mandamus to direct the departmental respondents to give a telephone connection to the writ petitioner. The same was prayed for on the strength of an application for transfer (copy Ext. P-1) dated 30-6-1975 made by one T. J. Joseph stated to be the Managing Partner of M/s. Mas Auto Spares. The relationship between the subscriber and the transferee was stated in the relevant column of the application as "friendship". The address at which the telephone was working was shown as Mas Auto Spares, M. G- Road, Ernakulam. By Ext. P-2 dated 30-6-1975

Shri T.J. Joseph gave the required undertaking not to claim the telephone or to ask for the refund of any amount due from the Telephone Department in future. Exts. P-3, P-4 and P-5 are the documents which show that his application for transfer was being accepted and acted upon by the Department. The learned Judge on these facts proceeded, in para 4 of the judgment under appeal, on the basis that Shri T.J. Joseph was the subscriber of the telephone in question. After the required amount of Rs. 500/- by way of transfer fee was paid (Vide Exts. P-4 and P-5) the petitioner firm by Ext. P-6 letter requested the 2nd respondent to take immediate steps in the matter of transfer of the telephone. This was on 4-8-1975. The 5th respondent had addressed Ext.R-3 letter to the 4th respondent, dated 30-7-1975. The said letter complained that the telephone in question was being used by M/s. Mas Auto Spares, and was in custody of the aforesaid firm in its premises, and that Shri T.J. Joseph was not the subscriber of any telephone in his personal capacity. It has been proved and brought out by the records filed in this case that Shri T.J. Joseph had retired from the firm of M/s. Mas Auto Spares in 1967 -- vide Ext. R-4. The learned Judge after noticing Rule 429 of the Rules for Telephones contained in Part V of the General Statutory Rules and Orders Vol. XVI, according to which, a transfer of telephones shall not be made without the permission of the Telegraph Authority, stated that the Telegraph Authority had permitted by Exts. P-1 to P-5, the assignment or transfer of the telephone, and that for faults, if any, of the former subscriber, the transferee-firm, viz., the writ-petitioner, should not be made to suffer. The learned Judge stated that he was not called upon to decide as to whether there was any unauthorised use after 13-7-1967 when the former subscriber Shri T.J. Joseph retired from M/s. Mas Auto Spares. He was firmly of the view that once the transfer was permitted, and on that basis the transferee had invested amounts, respondents 1 to 4 cannot revoke the transfer, and that the petitioner firm was entitled to have the telephone in question shifted to their premises. The learned Judge accordingly allowed the original petition and granted a writ of mandamus to the petitioner for the installation of the telephone in their premises.

2. While the learned Judge had correctly noticed the facts and the course of events relating to the telephone, we think the learned Judge was wrong in issuing a writ of mandamus directing the installation of the telephone in the petitioner's premises. Sections 4 and 7 of the Indian Telegraph Act, 1885, make it clear that it is the exclusive privilege of the Central Government to establish, maintain and work telegraphs (which expression, by the definition in Section 3 of the Act, would include a telephone also), and that the grant of this exclusive privilege is subject only to such rules and restrictions as may from time to time be laid down by the Government consistent with the provisions of the Act. This Court in P.M. Mohamed Ali Vs. Union of India (UOI) and Others, has noticed the scope and the nature of the Government's privilege in allowing use of telegraphs including telephones. That being the nature of the right of the Government, we do not think it can be posited that there is an unqualified right on the part of any subscriber or of any transferee to have his application for a telephone or for a

transfer of the telephone invariably allowed and granted. The same must essentially depend upon the discretion to be exercised by the Government in dealing with the application. In the instant case, in the counter affidavit filed by the 2nd respondent, paras 5, 10 and 12 have clearly noticed the facts that we have referred to earlier and stated that a case of misuse of the telephone by Shri T.J. Joseph from 1967 when he retired from M/s. Mas Auto Spares (Ext. R-4) till 1975 when Ext. P-I application was filed, was brought to the notice of the Department, and was pending examination and final decision in accordance with the Rules. It was pointed out that the Department cannot allow any trade in telephones and that it was not bound to make transfer of the telephone to the petitioner. Having regard to the facts noticed and the stand taken by the Department in the counter affidavit, we think that the learned Judge was wrong in having issued a mandamus directing connection of the telephone to the writ-petitioner, when the matter was pending examination and final decision.

3. We allow the Department's appeal -- 1976 W.A. 279 -- and set aside the judgment under appeal and the direction for mandamus issued by the learned Judge. The writ-petition will stand dismissed; but we make it clear that the Department will be at liberty -- indeed will be bound -- to consider the matter, and deal with the application for transfer of the telephone in such manner as it deems fit according to the facts and the circumstances of the case disclosed. The appeal is allowed as above. There will be no order as to costs.

4. In W. A. No. 82 of 1976, the appellant agitated mainly her right to get the telephone transferred in his name. In the nature of things, this is a disputed question of fact which cannot be gone into in these proceedings. We were invited to go through a cycle of transformations and evolutions from Electro Diesel Spares to M/s. Mas Auto Spares, the constitution, re-constitution and dissolution of these firms, and the retirement of one of the partners, Shri T. J. Joseph, from the latter firm, and to examine whether the writ-petitioner was not the better claimant for, and had not the better title to, the installation of the phone. We have resolutely refused to examine the matter in these proceedings, especially when the matter is under examination by the Department. As far as the issue of the writ of mandamus directed by the learned Judge is concerned, we have vacated the same and left the authorities to deal with the application for transfer in accordance with law. In view of that, the appellant is not entitled to any further relief in this Writ Appeal, which we dismiss, with no order as to costs, subject to our direction granted in W. A. No. 279 of 1976.

Issue carbon copy of this judgment to all counsel concerned on usual terms.