
(1975) 01 KL CK 0006

In the High Court Of Kerala

Case No : Original Petition No's. 5087 and 5281 of 1972

K.K. Kuruvila

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 31-01-1975

Acts Referred:

Telegraph Rules, 1951 — Rule 2

Citation : AIR 1976 Ker 15

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : K. Sukumaran and K.K. Usha, for the Appellant; Central Govt. Pleader and K. Prabhakaran, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, J.—These are petitions by two different petitioners who were given telephone connections by the telegraph authorities within a "local area originally demarcated as included within a radius of five miles from the Telephone Exchange, and who, by reason of the reduction of the local area to one within a radius of five kilometres from the Telephone Exchange have been prejudicially affected in regard to the charges payable by them for the use of the telephones. This difference arises by reason of the fact that under the provisions of the statute, those within the "local area" are liable to pay charges at more favourable rates than those outside the local area. As a result of this variation of local area the petitioners in these two cases ceased to be within the local area and therefore were liable to pay the telephone charges at the increased rates on the ground of their being persons outside the local area.

2. Section 7 of the Telegraph Act, 1885 in so far as it is relevant reads:--

"7. Power to make rules for the conduct of telegraphs-- (1) The Central Government may, from time to time, by notification in the Official Gazette, make rules consistent with this Act for the conduct of all or any telegraphs established,

maintained or worked by the Government or by persons licensed under this Act.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:--

(a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted;

XX XX XX"

(it is unnecessary to quote the remaining clauses although some of them may not be altogether irrelevant for the purposes of this case),

The rules framed in pursuance of the above Section are the Indian Telegraph Rules, 1951. Rule 2 (w) of the Rules defines "local area" thus:--

"2 (w) local area means the area within 5 kilometres radial distance from a telephone exchange or where the Telegraph Authority has declared any area served by an exchange system to be a local area for the purpose of telephone connection, such area;"

Rule 413 of the Act reads:--

"TELEPHONE CONNECTIONS AND OTHER SERVICES

413. All services subject to rules---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 these rules."

Rule 434 provides for the charges for various services. The rule is a fairly long one and need not be quoted in full, It is plain from the scheme of the provisions of Rule 434 that a more favoured system of charge obtains within the local area and a more onerous system, outside the local area. The petitioners were granted telephone connections in the year 1966; and the local area, for their purpose at that time was within a radius of five miles from the Telephone Exchange. They were therefore entitled to beneficial rates in regard to the payment of charges. But the local area was varied some time in 1971 so as to change the same into an area within a radius of five kilometres from the Telephone Exchange. The result is they were subjected to a more burdensome rate of charges in respect of the telephones installed.

3. The petitioners objection is that the local area cannot be changed by the authorities concerned under the provisions of the statute and the Rules; and even if it can be, the same can be done only after notice to the petitioners and after affording them opportunities for explanation. The petitioners' counsel stressed that there was no provision under the Act or the Rules for variation of a local area. But the very decision on which the petitioners rely, and which the petitioner's counsel very fairly brought to my notice, viz., in A. Sriamareddy and Others Vs. The District Manager, Telephones, Hyderabad, recognizes the requisite power. Therein it was ruled that having regard to the definition of "local area

contained in the Telegraph Rules, the telegraph authority which has power to initially determine and declare a local area within the meaning of Rule 2 (w) of the Rules is also empowered to vary the local area from time to time. Even if there is no express provision in the Act and the Rules for varying the local area, it seems to me that from the power to initially declare a local area there should be a power to cancel, modify or vary the same. This is clear at least on the strength of the provisions of the General Clauses Act. I cannot, therefore, accept the contention of the petitioners that there is no power at all for the telegraph authority to vary the limits of the local area as defined by Rule 2 (w) of the Rules.

4. The next question is whether the power of variation can be exercised without notice to persons like the petitioners in these writ petitions who are affected by such variation. The Andhra Pradesh decision noticed supra holds that there cannot be a unilateral variation of local area without notice to the persons who are prejudicially affected. It is unnecessary in this case to consider the correctness or otherwise of this, as, on the facts placed, it is clear that there has been a proper notice and sufficient opportunity afforded to the petitioners, Paragraph 2 of the counter affidavit states;--

"The local area of Kottayam Exchange was fixed as the area within a radial distance of 5 Kms. from the Kottayam Telephone Exchange with effect from 1-8-1971 as per Government of India, Department of Communications (P and T Board) Notification dated 18-6-71, published in the Gazette of India Part II Section 3, sub-section (2). A true copy of the said notification is produced herein and marked as Ext. RI. Rental of subscribers falling outside the local area as fixed by the above notification had to be refixed in accordance with the tariffs in force vide Rule 434 of the Indian Telegraph Rules. The petitioners telephone No. Kottayam-4030 is installed at an actual distance of 1.8 Kms beyond 5 Km Radial Distance from the Kottayam Telephone Exchange. Therefore, the petitioner is to pay an additional Annual Rental of Rs. 240/- with effect from 1-8-1971 (@ Rs. 120/- for each additional Km or part thereof of actual distance beyond the local area). Prior to 1-8-1971, the local area of the flat rate Exchanges, was fixed as the area within a radial distance of 5 Km from the Exchange and that of measured rate exchanges was fixed as the area within a radial distance of 6 Km from the exchange. Kottayam telephone exchange is a measured rate exchange and the petitioner's telephone No. KTM-4030 is within 6 KM radial distance of Kottayam exchange and hence prior to 1-8-1971, no additional rental for the Actual Distance beyond the local area had to be paid by the petitioner. Ext. PI bill is issued by the Accounts Officer for this short claim of rental for the period from 1-8-1971 to 31-1-1973".

Paragraph 12 of the Counter Affidavit proceeds--

"12. With reference to the averments in paragraph 15 of the petitioner's affidavit, it is submitted that in addition to the Gazette notification (i. e, Ext. RI) regarding the change of local area, publicity was given by public notice from 1-3-71 to 1-4-71 on the notice boards of Posts and Telegraphs Offices at

Kottayam and also by giving a public notice in the newspapers published from Kottayam. A true copy of the public notice exhibited on the notice board is produced herewith and marked as Ext. R2. The petitioner's contention that his telephone connection is within the radial distance of 5 KM of Kottayam Exchange is not based on facts. The boundaries of local area were fixed with reference to Survey of India Maps. The petitioner did not make any representation pursuant to Ext. R2 notice and therefore there is no merit in the petitioner's contention that he was not given any opportunity to put forward his contention before the boundaries of the radial distance was changed."

Ext. R1 is only a notice published in the Gazette that the reduction of the local area which had already been effected will be implemented with effect from 1-8-1971. Ext. R2 is a public notice issued before Ext. R1, which invited objections and suggestions to the proposal for varying the local area. This had given sufficient indication of the proposed action, and its effects; and, as stated in paragraph 12 of the counter affidavit the petitioners did not file any objections, I am of the opinion that Ext. R2 met the requirements of notice and opportunity for explanation, and the petitioners cannot have any grievance on the ground that these had not been afforded, IP a case and in a situation where a large number of persons may be involved such as where a local area is reduced from its original dimensions to a lesser area, it is inconceivable and cannot be expected as the petitioners would contend, that individual notices should be served on all the persons concerned. I am of the opinion that a public notice such as the one given in this case would suffice and would meet the requirements of justice.

5. Counsel for the respondents also invited my attention to the agreement executed by the petitioner (copy Ext. R3) which shows that the petitioners had agreed to abide by the Telegraph Rules, 1951, the amendments dated 1st April, 1960 and the amendments made or to be made from time to time in the Indian Telegraph Rules in exercise of the powers, u/s 7 of the Telegraph Act, 1885. In the face of a contract in these terms and of this amplitude, the petitioners cannot be heard to complain about the reduction of the local area resulting in a consequential enhancement of the telephone charges payable by them which resulted in the demand being raised against them as having been made by Ext. R1 notice which they seek to quash in these writ petitions.

6. I dismiss these writ petitions, but in the circumstances, without costs.