

(1997) 04 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No. 15268 of 1996

Laxmanrao B. Jahagirdar

APPELLANT

Vs

The Telecom District Manager, Gulbarga and Another

RESPONDENT

Date of Decision : 01-04-1997

Acts Referred:

Telegraph Act, 1885 — Section 4 (1)

Citation : AIR 1998 Kar 67 : (1998) 3 KarLJ 674

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Sri K. appa rao, for the Appellant; Smt. Kamala Subramanyam, Additional Central Government Standing Counsel, for the Respondent

Judgement

1. The present petitioner had entered into an agreement dated 28-1-1991 with the Government of India through Department of Telecommunication to maintain at his costs STD public telephone at the premises known as "Kranthi Complex", MSK Mill Road, Gulbarga. This agreement has been placed on record as Annexure-III(A) to the statement of objections filed on behalf of the respondents. Pursuant to the said agreement the petitioner was favoured with telephone connection bearing No. 21357. It appears that for non-payment of the call charges collected by the petitioner within stipulated time the said telephone was disconnected in November, 1994. It also appears that even for the period of disconnection the petitioner has been served with the notice making him liable to pay the alleged minimum guarantee charges for the period November 1994 to May 1996 amounting to Rs. 30,400/- (see Annexure-K). The petitioner further wants that, he should be permitted to shift the installation of the STD public telephone to a new place.

2. In the said backdrop of facts, the petitioner had sought for three reliefs, namely:-

(i) restoration of telephone service;

(ii) permission to install telephone at new premises;

(iii) quashing of the alleged minimum charges claimed by the department.

3. For weighing rival contention in the context of the statutory provisions and the agreement entered into between the parties, I would first refer to Section 4(1) of the Indian Telegraph Act, 1885 (in short "the Act"), which reads as under:-

"4. Exclusive privilege in respect of telegraphs and power to grant licences.-

(1) Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:

Provided that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India:

Provided.

(2).".

4. In the context of the said statutory provisions the Supreme Court in the case of Delhi Science Forum v Union of India and Another , has held that.-

"There is no dispute that the expression "telegraph" is defined in the Act shall include telephones and telecommunications services. Sub-section (1) of Section 4 on plain reading vests the right of exclusive privilege of establishing, maintaining and working telegraphs in the Central Government, but the proviso thereof enables the Central Government to grant licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain and work telegraph within any part of India".

5. Keeping in view the above noticed statutory powers, the Central Government had entered into an agreement with the petitioner (Annexure-III(A) of the statement of objections as noticed above) on 28-1-1991. The material covenants in the agreement may be noticed hereunder:-

"Agreement for the STD public call office

An agreement made this 28-1-1991 between the President of India (hereinafter called the Government which expression shall where the context so admits include his successors as assigns) of the first part and Sri L.B. Jahagirdar, S/o Balkishan Rao Jahagirdar, aged 40 years, residing at Gulbarga (hereinafter called the party of the second part) whereas the party of second part is the attendant of the STD call office at Kranthi Complex, MSK Mill Road, Gulbarga 585103 (hereinafter called the said premises") a part of which is proposed to be used or has been used for the purpose of a STD public telephone and whereas the Government in consideration of the proposal made by the party of the second part has asked the party of the second part to undertake and perform the duties and obligations hereafter mentioned:--

1. The party of the second part hereby confirms that he/she has gone through the Indian Telegraph Rules and India Telephone Rules and agree(s) to abide by the rules in respect of public telephone.

2. The party of the second part hereby covenants with the Government to maintain or continue to maintain at its cost a STD public telephone (hereinafter called the STD call office) in the said premises.

3.

4.

8.....

In the event of the party of the second part committing any breach of any of the terms and conditions herein contained or as contained in the Indian Telegraph and Telephone Rules and on their to be observed and performed, the Government shall without prejudice to the rights and remedies be entitled to withdraw the STD public telephone facility after giving a notice in writing and forfeit the security deposit or any part thereof and the contract will be terminated forthwith.....

9. The party of the second part guarantees STD call revenue of Rs. 2,000/- (Rupees two thousand only) per calender month to the Government. If the STD call office does not yield the minimum guarantee revenue on the basis of number of STD calls recorded in the meter provided in the telephone exchange, the number of call units shall be calculated on the basis of call units recorded in the telephone meter installed in the Telephone exchange and record shall be final. The party of the second part will not be entitled to raise any dispute regarding the number of STD calls metered.

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22. The party on the second part shall deposit the collections with the Telephone Revenue Accounts unit or with cash counter of the Division/District Office once a week or more often as may be specified by the Telegraphs authority in this behalf and such a decision shall be final.

23.".

6. From the above covenants, it is clear that the petitioner had acquired the licence for maintaining the STD public telephone at the premises disclosed in the agreement, which means that the licence had been granted to the petitioner for maintaining STD public telephone only at a given premise. No right has been reserved in his favour to ask for maintaining the STD public telephone at any other place of his desire. Therefore, irrespective of the willingness on the part of the petitioner or for that sake, because of any unavoidable circumstances, if he finds himself unable to maintain the STD public telephone at the stipulated premises, then the only option left with him is to get the agreement terminated. Beyond this he has no enforceable right either to insist upon the respondent to

permit him to shift his STD public telephone to any other premises or to seek the mandamus against the respondents to the said effect. As such the relief claimed to this effect has to be denied for want of any supportive legal right.

7. So far as the remaining two reliefs are concerned, the petitioner admits that the collection by way of telephone calls made by him from the callers of public telephone entrusted to the petitioner was not paid by him within the time stipulated in condition No. 22 noticed above. As such, prima facie, he has made himself liable for "withdraw of STD public telephone facility" and also for termination of the contract as a whole.

8. In the present case, it is a matter of record that notice was given to the petitioner, attracting his attention to the defaults committed by him and it was only thereafter that the STD public telephone facility accorded to him had been withdrawn, pursuant to condition No. 8 of the agreement (Annexure-III(A)).

9. To my mind the very fact of withdrawal of the STD public telephone facility accorded to the petitioner under the agreement entered into between the parties clearly evidences the intention of termination of the contract itself, because during the subsistence of the contract the STD public telephone facility could not have been withdrawn. Both had to go together. The agreement does not postulate survival of one and termination of another. Therefore, I find no escape from holding that the agreement between the parties itself stood terminated on and from the date the STD public telephone facility granted to the petitioner were withdrawn.

10. Now coming to the right of the respondents to claim Rs. 30,400/- as minimum guarantee charges payable by the petitioner against the STD call revenue even after withdrawal of the telephone facility. So far as this aspect is concerned, since the said claim has been made on the basis of condition No. 9 of the contract which as discussed above itself stood terminated from the point of time the telephone facilities were withdrawn, no such demand could have been raised. Therefore, the demand made on this count being unauthorised is quashed.

11. For the reasons and discussions as above, the writ petition is partly allowed. To repeat, it is clarified that the petitioner is not entitled to restoration of STD public telephone facility, but he will be liable to pay to the department the dues which remains outstanding till the said facilities were availed by him and respondent will be entitled to take legal proceedings for recovery thereof. Parties to bear their own costs.