

(1994) 01 KL CK 0042
In the High Court Of Kerala
Case No : O.P. No. 4343 of 1989-P

Mani Varghese

APPELLANT

Vs

Regional Controller (T.T.) and Others

RESPONDENT

Date of Decision : 21-01-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Telegraph Act, 1885 — Section 7
Telegraph Rules, 1951 — Rule 519

Citation : AIR 1994 Ker 274

Hon'ble Judges : K.J. Joseph, J

Bench : Single Bench

Advocate : K. Surendra Mohan, for the Appellant; Thomas John, Addl. Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Joseph, J.—Petitioner is a director of M/s. Synthite Industrial Chemicals Ltd., a company incorporated under the Companies Act, 1956. The company was having its office and manufacturing unit at Kadayirippu, a place about 3 kms, off Kolencherry. They have obtained the telex from the Department of Telecommunications. The said application was submitted in accordance with the provisions contained in part 9 of the Indian Telegraph Rules, 1959. They made the necessary deposits and executed an agreement with the department. The telex facility was installed in the petitioner's office at Kadayirippu on 24-12-1985 after depositing necessary deposit and the rental for the sum calculated under Rule 519 of the Indian Telegraph Rules. It is the case of the petitioner that there were certain complaints regarding the defect in the facility provided and as a result of the defects, he could not make use of the facilities provided by the Department in its full extent. Thereafter, as per Ext. P4 bill dated 21-5-1988, the petitioner was directed to pay an amount of Rs. 32,477/- towards the enhanced rent for the facilities provided to the petitioner. It is the case of the petitioner that after payment of the amount as per Ext. P4, he was served with another bill,

Ext. P5 dated 11-5-1989 wherein the rent of the facility given to the petitioner is shown as Rs. 36,750/-. The petitioner complained about the arbitrary increase in the rent. The increased rent was demanded from 1-8-1988 onwards. Thereafter, as per Ext. P6 bill dated 27-2-1989, the Department demanded arrears of rent payable by the petitioner as per the enhanced rent for the telex facility for the period from 1-8-1988 to 31-5-1989. The said amount was paid as per Ext. P7 receipt by the petitioner under threat of disconnection of the facility. It is the case of the petitioner that exts. P5 and P6 bills are arbitrary and issued in violation of Article 14 of the Constitution of India and the enhancement has been made without any notice to the petitioner or hearing the petitioner. The increase in the rental as per Exts. P5 and P6 had been effected pursuant to an amendment to Rule 519 of the Indian Telegraph Rules, 1951, a copy of which is produced as Ext. P8. The petitioner challenges the validity of Exts. P5, P6 and the provisions contained in Ext. P8. According to the petitioner, the increase in the rent for the telex facility provided to the petitioner is illegal, Without jurisdiction and violative of Articles 14 and 19(1)(g) of the Constitution of India, the petitioner also prays for issuance of a Writ of mandamus or other appropriate direction or order to refund the amount collected from the petitioner evidenced by Ext. P7 receipt and for consequential relief.

2. On notice, on behalf of the 2nd respondent, a counter affidavit has been filed where the Department also agreed that the petitioner had applied for a long distance Telex communication in the year 1985 from the Ernakulam Telex Exchange to the business premises of the petitioner Company at Kolenchery. Ordinarily, telephone or telex communication to the premises falling within the local area of (5 Kms. of radial distance from the particular exchange) of a telephone exchange or telex exchange are given from that particular exchange. Subscribers located outside the local area are treated as long distance subscribers. The rental for the connections provided within the local area of an exchange is charged at the standard rate whereas rental for a long distance connection is charged as rental for a connection within the local area plus additional charge based on the actual distance beyond the local area to the subscriber's premises. The premises to which the petitioner applied for connection is at a distance of 27 Kms. beyond the local area of the Ernakulam Telephone Exchange. The petitioner has agreed to the terms and conditions regarding the rent fixed by the Department and he has executed a hiring contract with the Department and the relationship with the Department and the subscriber is based on this hiring contract and the Indian Telegraph Rules. According to the agreement, he has agreed to pay the rental and other charges as per the Indian Telegraph Rules as amended/revised from the time to time. It is the case of the respondent that the bills Exts. P5 and P6 were issued to the petitioners in accordance with the amended rates prescribed under the Rules and therefore, there is no arbitrariness or illegality in issuing the bills or demanding the enhanced rent. The respondent further states in the counter affidavit that as per Ext. P8 (Ext. R2 (a) produced by the respondents) dated 26-7-1988, the

Government of India revised the tariff for telecommunication facilities with effect from 1-8-1988 and the bills in question were Issued based on the amended tariff prescribed under the revised tariff notification evidenced by Ext. P8. It is also the case of the respondent that the petitioner was informed when he complained about the increase in the rent for the telex facility provided to him that in case the petitioner is not interested to continue the present arrangement and to pay the enhanced revised rate as per Ext. P8, he can request to close the facilities from the Ernakulam Exchange and apply for the facility from Kolenchery Exchange. This communication is produced by the respondent as Ext. R2(b) dated 16-11-1988. It is the case of the respondent that the bills Exts. P5 and P6 are issued in accordance with the revised rates as per Ext. P8 and therefore, there is absolutely no justification for the petitioner to complaint about the increase in the rental for the telex facility given to him.

3. I heard the learned counsel for the petitioner as well as the learned counsel for the respondents. The only question that arises for consideration is whether the Departmental authorities have jurisdiction or authority to increase the rental for the facilities provided to the subscriber under the Indian Telegraphs Act and the rules framed and if so, whether the demand made as per Exts. P5 and P6 is in any way arbitrary, illegal or without jurisdiction.

4. It is the case of the Department that the department has the power and authority to revise the existing rates and tariff for the facilities provided by them under the provisions of the Indian Telegraphs Act and Rules framed thereunder. The relevant provision in the Indian Telegraph Act is Section 7 and Rules 480 and 519 of Indian Telegraph Rules. Section 7 of the Act and Rules 480 and 519 are extracted below:

"Section 7(1) The Central Government may, from time to time, by notification in the (Official Gazette) make consistent with this Act the (grant of licences to establish, maintain or work telegraphs and 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 form of application for the grant of a licence to establish, maintain or work telegraphs, the fees that shall be payable on such application and the consideration on payment of which such licence shall be granted;"

"Rule 480: Revision of rentals: (1) The telegraph authority may revise the rentals applicable for telegraph circuits and telephone circuits,

(2)When the rentals referred to in Sub-rule (1) are so revised, the said rates shall be made applicable to all circuits already rented on flat rate basis:

Provision that in the case of circuits for which special rent and guarantee periods have been fixed the revised rates shall apply from the date the guarantee period

expires."

"Rule 519: All charges are payable on presentation of a bill therefor. The periods for which bills shall be prepared and the dates by which they shall be payable shall be fixed by the telegraph authority.

The charges for Telex service shall be as follows:

A. RENTAL --(i)

(xiv)

Provided that in case where the actual length of the connection beyond the local area exceeds five kilometres, the charges specified in item (iii) shall apply only if the connection provided by utilising existing wires or cable conductors with inexpensive changes and in all other cases connection may be provided at such rates as the telegraph authority may fix taking into account the cost of construction and that relevant factors and for such period as that authority may determine.

B. CALL CHARGES"

In the light of the above statutory provisions, it is to be held that the Government have got the power to increase the rent and revise the tariff in respect of the facilities provided by the Department. The tariff revision in respect of certain telecom facilities were considered by the Government and placed before the Parliament by way of amendments to the Rules. Exts.P5 and P6 bills were issued to the petitioner pursuant to Ext. P8 amendment made to the Rules. The tariff revision was notified by the Government as per Government of India Gazette Notification No. 4040 dated 26-7-1988 in exercise of the powers conferred u/s 7 of the Indian Telegraphs Act, 1885. This revision has come into effect from 1-8-1988. Therefore, it cannot be said that the Government or the Department has no power to increase the rent and tariff in respect of the telecom facilities provided by them to the subscribers. In the light of the above statutory provisions, the contention raised by the learned counsel for the petitioner that the increase in rent is unreasonable or arbitrary cannot be accepted. The telephone tariff is a subordinate legislation and a legislative process. Under India Telegraph Act, Section 7 empowers the Central Government to make Rules inter alia for the rates and these rules are laid before houses of the Parliament and the rules take effect when they are passed by the Parliament and it comes into effect from the notified date. According to the legislative process, the question of rates and its increase is first gone into the tariff enquiry committee headed by non-officials and the tariff rates are placed before the house by way of budget proposals. The Parliament goes into all the budget proposals and the rates are sanctioned by the Parliament. The rates, therefore, become a legislative policy and a legislative process. Under such circumstances, it cannot be said that the respondents have no jurisdiction or authority to pass Ext. P8 amendment increasing the rental and the tariff for the telex facilities provided to the

petitioner and other subscribers are therefore, the same is clearly within the jurisdiction of the respondents. The challenge and the validity of Ext. P8 amendment therefore, fails. ;

5. It is also to be remembered that the long distance telecommunication was provided to the petitioner on the basis of a hiring contract executed between the Department and the petitioner. According to the said agreement, the petitioner had agreed to pay the rental and other charges as per the Indian Telegraph Rules as revised from time to time. Therefore, after executing the hiring contract with the Department agreeing to pay the enhanced revised rental and other charges, the petitioner is precluded from challenging the validity of the enhanced rates as well as the bills issued at the enhanced rates. In so long as Ext. P8 amendment is found to be legal valid, and binding on the petitioner and other subscribers, the petitioner cannot have any legitimate challenge against Exts. P5 and P6 bills issued in accordance with the enhanced tariff and rent fixed as per Ext. P8 amendment.

6. Moreover, as per Ext. R2(b) communication dated 16-11-1988, the Department has informed the petitioner that in case he does not want the present arrangement and pay the enhanced rent and tariff, as per Exts. P5 and P6 bills, he was given a chance to close the facility from Ernakulam Exchange and avail of the same from the Kolenchery Exchange in case he decides to have such facility. Even though such an option was given to the petitioner, he did not exercise that option.

7. Therefore, the petitioner cannot have any legitimate complaint over the enhanced rate in rent as well as tariff for the telex facilities availed of by the petitioner. The contention of the petitioner that the enhancement is not reasonable and the same is arbitrary also has to be rejected in the light of the fact that the petitioner has entered into a hiring contract with the Department agreeing " to pay the enhanced levy unilaterally by the Department. After agreeing to such an enhancement, it is not open for the petitioner to challenge the enhanced levy on the ground that the same is unreasonable or arbitrary. The petitioner selected to enjoy the facilities provided by the Department. The petitioner himself selected to enjoy the facilities given by the Department and he decides to continue the facility. Under such circumstances, it cannot be said that the demand is in any way arbitrary or unreasonable. In the light of the above findings, there is no question of any violation of the right guaranteed under Article 19(1)(g) of the Constitution of India. The enhanced levy and increase in rental are being authorised by the Parliament. Therefore, the challenge on the ground of violation of Article 14 of the Constitution of India also has no substance.

8. Learned counsel appearing on behalf of the respondent has submitted that there is no justification for this court to interfere with Ext. P8 amendment to the rules and the enhancement effected evidenced by Exts. P5 and P6 as per Ext. P8 notification in proceedings under Article 226 of the Constitution of India and to

substantiate the above contention, he has placed reliance on the decision of the Supreme Court in *S. Narayan Iyer Vs. The Union of India (UOI)* and Another, wherein the Supreme Court has found that at Page 1987.

"There are three principal reasons why the writ petition is incompetent and not maintainable and the appeal should fail. First, when any subscriber to a telephone enters into a contract with the State, the subscriber has the option to enter into a contract or not. If he does so, he has to pay the rates which are charged by the State for installation. A subscriber cannot say that the rates are not fair. No one is compelling one to subscribe. Second, Telephone Tariff is subordinate legislation and a legislative process. Under Indian Telegraph Act, Section 7 empowers the Central Government to make rules inter alia for rates. These rules are laid before each House of Parliament. The rules take effect when they are passed by the Parliament. Third, the question of rates is first gone into by the Tariff Enquiry Committee. The Committee is headed by non-officials. The Tariff rates are placed before the House in the shape of Budget proposals. The Parliament goes into all the Budget proposals. The rates are sanctioned by the Parliament. The rates, therefore, become a legislative policy as well as a legislative Process.

The courts have no jurisdiction under Article 226 to go into reasonableness of rates. These rates are decided as policy matter in fiscal planning. There is legislative prescription of rates. Rates are a matter for legislative judgment and not for judicial determination."

As found by the Supreme Court, the revised tariff and the rental were subject matter of consideration by the Parliament and therefore, there is no justification to interfere with such fixation of tariff and rental prescribed by the authorities. A similar view was taken by this Court in O.P. No. 9305/88 wherein similar relief asked for by the petitioner was declined.

In the light of the above decision, there is absolutely no justification for this court to interfere with Ext. P8 notification and the revised bills, Exts. P5 and P6 issued by the respondents. Exts. P5, P6 and P8 are perfectly legal and valid. There is no merit in the Original Petition and hence the same is dismissed, but, in the circumstances, there will be no order as to costs.