
(1992) 01 P&H CK 0151
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10836 of 1988

Mrs. Manju Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1992) CivCC 322 : (1992) 101 PLR 394

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : Baldev Kapoor and B.K. Gupta, for the Appellant; Ashutosh Mohunta, for the Respondent

Final Decision : Allowed

Judgement

Harjit Singh Bedi, J.—Respondent No. 5, Hemant K. Lal, who was the authorised subscriber of telephone No. 23309 in Chandigarh gave a citation in the News paper for the transfer of his telephone as per the provisions of Third Party Transfer Rules (hereinafter called the Rules). The petitioner who was in need of a telephone responded to the citation and after ascertaining that the telephone was transferable as per the rules, entered into an agreement with respondent No. 5 for the transfer of the telephone. The general condition governing the transfer of telephone have been enumerated as under :-

E. 1. If the transfer is necessitated by a certain event, the application for transfer must be made within a period of one year from the occurrence of such event. However, the competent authority will have discretionary powers to decide such cases in relaxation of the limits of one year in individual cases on merit.

E. 2. The transferee will undertake to pay all dues against the telephone including any pending dues pertaining to the periods prior to the date of transfer.

E 3. All transfers will be carried out after receipt of application duly signed by both transferer and transferee except in case of death of hirer when it will be

signed by the transferee only. The application should be accompanied with certificates indemnifying the Department of Telecommunications against future claims and agreeing to pay all previous dues etc."

It has been averred in the petition that after the Settlement between the petitioner and respondent No. 5 had been formalised, the necessary application as provided by the rules for transfer of the telephone was made to the department on 27th of May, 1988 alongwith the documents required. Alongwith the application, consent letter of even date Annexure P. 1, attached with the petition, was also filed in which respondent No. 5 stated that he irrevocably and absolutely consented to the transfer of the said telephone to the name of the petitioner and further undertook not to claim the telephone from the telephone department either then or in future. It appears that after the documents had been examined by the department, it was found that the consent letter had not been attested by an Executive Magistrate as per requirements and the department accordingly wrote to respondent No. 5 directing him to get the necessary rectification done. Respondent No. 5, it appears delayed the matter some what and as per the averments in the Writ Petition, this information was received by the petitioner in the second week of October, 1988. The consent letter in the requisite format (Annexure PIII) was thereafter produced before the department vide covering letter dated 21st of October, 1988. The petitioner has averred that respondent No. 4 delayed the sanction of the transfer of the telephone in her favour despite assurances to act expeditiously, and was shocked to receive memo dated 18th of November, 1988 (Annexure P.5) by which she was informed that the telephone had been sanctioned in favour of respondent No. 6 Sh. Baldev K. Sethi. The present Writ Petition has been filed against the refusal of the respondents to transfer the telephone in the name of the petitioner and transferring it in the name of respondent No. 6 Sh. Baldev K. Sethi, instead.

2. Written statements have been filed on behalf of respondent Nos. 1 to 4 and also respondent No. 6. In the reply filed by respondent Nos. 1 to 4, the broad facts stated in the petition have been admitted but by way of justification it has been stated that the transfer documents filed by the petitioner on 27th of May, 1988 were not complete and as such could not be acted upon. It has further been submitted that after an examination of the documents received it was found that the letter of consent for transfer was not in the prescribed form (Annexure III) and was not attested by a First Class Magistrate as required under the Rules. It has been stated that the letter dated 2. 6.1988 was thereafter addressed to "respondent No. 5 in which he was requested to have the necessary formalities completed with and it has been admitted that the documents duly completed were received by the department on 21st of October, 1988. It has also been stated in the reply that before any action could be taken on the transfer application made by the petitioner, respondent No. 5 the original hirer of the telephone made an application on 4th of November, 1988 by which he revoked his consent with respect to the petitioner and gave it in favour of respondent No. 6 instead. Copy of this application has been appended as

Annexure R.3 with the reply. It appears to me from a further reading of the reply that the department which had been moving rather slowly in transferring the telephone to the petitioner, thereafter proceeded with extra ordinary speed and the transfer of the telephone was made in favour of respondent No. 6 on 18th of November, 1988. The speed with which the officials of the respondent department had acted on the application made in favour of respondent No. 6 is borne out from the written statement filed by that respondent. It appears that an affidavit requesting the transfer in favour of respondent No. 6 was executed on 8th of November, 1988. The matter was processed expeditiously and demand note issued on 16th of November, 1988 and the transfer order in favour of respondent No. 6 issued on 18th of that month vide Annexure C.2 with the reply.

3. After hearing the parties, I find that the action of respondent Nos. 1 to 4 in transferring the telephone to respondent No. 6 is fully unjustified and unwarranted. A reading of Rule E-3 which have been quoted above would show that the only requirement for the transfer of a telephone was that an application duly signed by both the transferer and transferee was to be filed and that application was to be accompanied by a certificate indemnifying the department of telecommunications against, future claims and agreeing" to pay all previous dues etc. It will be seen that the Rules quoted above do not require that the consent letter was required to be attested by a First Class Magistrate or to be in any specific form. Even in the written statements filed by the respondents, this particular aspect has not been clarified. It appears to me that the import of the Rules is that after the application had been made on 27.5.1988 respondent No. 5 the original hirer ceased to have any control over the telephone and the matter was thereafter to be sorted out between the transferee i. e, the petitioner and the department. It is also indeed surprising that the documentation was admittedly completed and but in the hands of the department on 21st of October, 1988 but nevertheless the department chose to act more expeditious on the application filed by respondent No. 5 on 4th of November 1988 favouring the transfer of telephone in favour of respondent No. 6. The official respondents have stated in the written statement that the attestation of the Magistrate on the consent letter had been obtained mysteriously and were of the opinion that the said affidavit should not be acted upon and I quote :-

"Also Annexure-III received through petitioner which is appended at Annexure R-2 appears to have been got attested from 1st Class Magistrate in a mysterious way without respondent No. 5 having appeared before the Magistrate since he (respondent No. 5) has not put his signatures again on the document on the date of its attestation i. e. 21.10.1988 by Magistrate to show that he still agreed with the contents of document. Respondent No. 5 had signed the document on 27.5.1988 whereas the same has been got attested from Magistrate on 21.10.1988 by the petitioner mysteriously."

This stand of the respondents is not only untenable but amounts to contempt of the court of the Magistrate as it gives the impression that the Magistrate had

signed the affidavit without applying his mind to its contents. Moreover, this particular aspect is an after thought and obviously cannot form a justification at this stage. It is noteworthy that there is no communication that has been addressed to the petitioner stating the reasons for declining the transfer of telephone to her name. The zeal with which the department proceeded in pursuing the case of respondent No. 6 also casts some suspicion to my way of thinking. While it continued to move tardily and at a snail's pace in the case of the petitioner, it acted with extra ordinary speed in the case of respondent No. 6.

4. It has also been urged by the respondents counsel that the dispute between the parties being of a Civil nature should be sorted out by the Civil Court. This argument also has no force. The technicalities of the law should not come in the way of doing justice between the parties. The Writ Petition having been duly admitted despite these objections in the written statement, now precludes me in the facts of the case, to short circuit the matter by relegating the parties to a Civil Suit. I am of the view that the petitioner has been gravely wronged not only at the hands of the official respondents but also by respondent No. 5.

5. For the reasons recorded above, the present petition is allowed. The order Annexure P-5 is quashed and a direction is issued to the respondents to shift the telephone to the premises of the petitioner and to transfer the same to her name within 2 weeks from to-day. The petitioner is also allowed the costs of the petition which I determine at Rs. 2000/-.