
(2000) 03 KL CK 0010
In the High Court Of Kerala
Case No : W.A. No. 1714 of 1999

N.R. Gopi

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-03-2000

Acts Referred:

Telegraph Act, 1885 — Section 4(2)

Citation : AIR 2000 Ker 243

Hon'ble Judges : D. Sreedevi, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : P.B. Sahasranaman and K. Jagadeesh, for the Appellant; R.A. Mohamed Ashraf, Central Govt. Standing Counsel, for the Respondent

Judgement

Ar. Lakshmanan, J.—Heard Mr. P. B. Sahasranaman for the appellant and Mr. M. A. Mohamed Ashraf for the respondents.

2. The appellant was working as a STD-PCO Franchisee on the basis of the agreement executed by him from December, 1995 onwards. A licence was issued to him. He left for Kuwait for completing a project, which is expected to be completed by March, 2000. The STD-PCO during his absence from India was handled by his son Mr. Anup. He was making the payment of bills regularly and was signing all the documents for and on behalf of his father. While so, the respondents issued a letter under Exhibit P-1 stating that the notice sent by the respondents have returned stating that "the addressee left India" and, therefore, a notice was issued to him to show cause why the licence granted to him should not be withdrawn for the violation of the licence condition.

3. The appellant gave a reply, stating that his son is managing the booth and there is no violation of any agreement. Thereafter the 2nd respondent has passed an order terminating the licence granted to the appellant as per Ext. P-2. Aggrieved by the termination order, the appellant filed the Original Petition to quash Exhibit P-2 contending that when the appellant left for Kuwait, he has entrusted his son-Anup to run the booth and that his son was operating the

booth thereafter and was making payments to the Department regularly and also receiving the commission due from the Department and that the licence granted by the Telegraph Authority u/s 4(2) of the Indian Telegraph Act can be revoked only by the Central Government u/s 8 of the Act since the power to revoke the licence vests in Central Government and not with the Telegraph Authority and that this power vested with the Central Government is not delegatable to the Telegraph Authority and, therefore. Exhibit P-2 order revoking the licence granted to the Franchisee is in excess of the jurisdiction conferred upon him. It is also submitted that there is no condition imposed in the contract of franchisation that only the franchisee can be the operator and the agreement permits the engagement of operators and, therefore, there is no violation of contract as alleged. It is further contended that the appellant can do it through an agent and in this case the appellant has given his son the authority to operate the booth, which is not prohibited by law and hence there is no bar in conducting the booth by any person with authority.

4. A counter-affidavit was filed by the Department denying the submissions made by the appellant. Along with the counter-affidavit, Exhibits R-2(a) to R-2 (d) were filed. Exhibit R-2(a) is the copy of the agreement executed by the appellant with the Department, Exhibit R-2(b) is the copy of the licence granted to the appellant. Exhibit R-2(c) is the copy of the communication sent by the Department to the appellant and Exhibit R-2 (d) is the copy of the certificate issued by the Manalur Grama Panchayat. It is contended by the Department that the PCO booth can be maintained and operated by the franchisee alone and he cannot sublet the PCO to any person, Irrespective of any close relative and that the transfer of P.T. is not permissible except in the event of death.

5. Koshy, J. for the reasons recorded in his judgment, held that there is violation of agreement and therefore, the termination order passed by the Department is legal and since the appellant is still in Kuwait and admittedly not running the booth now, the same can be given to an educated unemployed and handicapped persons according to law. The learned single Judge dismissed the Original Petition. Being aggrieved, the petitioner has filed the above appeal and reiterated the grounds urged in the writ petition.

6. Mr. Sahasranaman reiterated that the appellant was unemployed when the booth was allotted during December 1995 and there is no restrictive clause in the licence granted to him requiring to maintain the same under unemployed status throughout the licence period and there is no clause in the agreement requiring to intimate the Department while taking employment. So, it is immaterial whether he is employed or not. It is also submitted that there is no violation of the agreement as alleged by the respondents and that the licence condition does not prohibit the engagement of another person to operate the telephone. In this context, reliance was placed on Clause 21, which reads as follows :--

"21. All the operations of the licensee or his employees with respect to the provisions, maintenance and operation of pay-phones will be subject to the

provisions of the Indian Telegraph Act and Rules".

Hence, there is no legal restriction in running the booth by his son, the legally constituted power of attorney, his agent. The said constitution of the agency is in consonance with the normal law of contract, which cannot be taken away by an administrative decision. It is submitted that the finding of the learned single Judge that the appellant is not running the telephone booth at the time when the telephone was disconnected is incorrect and is denied, and the telephone was disconnected only after the pronouncement of the judgment of the learned single Judge.

7. Per contra, Mr. M. A. Mohamed Ashraf reiterated the contentions raised in the counter-affidavit filed in the Writ Appeal and argued that the action of the Department is legal and proper and that since the PCO booth is not being maintained and operated by the franchisee, he is not entitled for any renewal. According to him, sub-letting of Public Telephone will tantamount to breach of agreement and transfer of public telephone is not permissible except in the event of death and, therefore, the Department will have the right to terminate the licence in the event of breach of any of the provisions in the licence by giving three months' notice to the licensee in pursuance of Rule 3 of the Licence. It is further submitted by the learned counsel for the respondents that by letter dated 24-7-1993, the Department of Telecommunications, New Delhi has subsequently amended Exhibit R-2(a) notification, which is now produced and marked as Exhibit R-2(d), and that the appellant has entered into an agreement with the respondents only on 4-12-1995 and all the agreements executed on and after 24-7-1993 need to be considered on the basis of Exhibit R-2 (d) guidelines and as per the revised norms, the policy of the Department is to rehabilitate the educated unemployed persons and that the eligible applicant will only be entitled to one S.T.D. Public Telephone. A Committee consisting of representatives of the members of Parliament has been specially constituted for the purpose of screening the applications for Public Telephones.

8. In our opinion, the question raised and argued by the appellant has become academic. The appellant entered into an agreement with the respondents for operating a STD Public Telephone on 4-12-1995. The period of licence has already expired on 3-12-1998. However, he was allowed to have the facility in view of the pendency of the proceedings before this Court and the telephone was disconnected only after the pronouncement of the judgment of the learned single Judge. Therefore, there is no need for us to decide the question as to whether the decision taken by the Department to terminate the licence was proper or not. It is true that educated unemployed are clamouring for franchisement of STD Public Telephones. It is stated that the Department have kept a waiting list for allotment of Public Telephones and only 5% of the Exchange capacity is reserved for allotment of Public Telephones and if Public Telephones are allowed to operate by persons other than the franchisees, it will seriously affect the chances of allotment to genuine applicants. Against this factual background, it is submitted

that the Department is duty-bound to curb such malpractice by resorting to closure of Public Telephones in order to safeguard the interests of educated unemployed persons.

9. But, in the instant case, it is the specific contention of Mr. Sahasranaman that it is not the case of sub-letting as alleged and that during the appellant's temporary absence, his son was asked to manage the booth and that his son was in fact managing the STD-PCO and making payments to the Department regularly and receiving the commission due from the Department and all correspondences. In any event, authorising the son of the franchisee to manage the business cannot be equated to a case of subletting. The appellant, as the father, has given his son the authority to operate the booth, which is not prohibited by the common law. So, there is no bar in conducting the booth by any person with authority and after proper intimation to the Department.

10. The appellant has stated that he has applied for renewal. The second respondent in its counter-affidavit filed in Writ Appeal at para 10 has stated that the Department has proposed to accept applications from intending applicants for Public Telephones after September 15, 1999 and that the son of the appellant had met the respondents and enquired about the fresh allotment of Public Telephones from Kandassankadavu Exchange and if any application is submitted by the son of the appellant, it will be considered along with the other pending applications in due course, We feel that this approach by the Department in this context is fair and reasonable. We, therefore, while dismissing the Writ Appeal, reserve the right of the appellant's son--Anup -- to approach the Department for allotment of Public Telephone as per the existing rules and also reserve the right of the Department to consider the said application in accordance with law and as per the existing rules. The dismissal of the present Writ Appeal will not in any way prejudice the right of the appellant's son in applying and obtaining a Public Telephone connection.

The Writ Appeal is ordered accordingly.