
(1989) 08 OHC CK 0034

In the Orissa High Court

Case No : O.J.C. No's. 2033 and 2310 of 1989

Orissa Vegetable Oil Complex Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 24-08-1989

Acts Referred:

Telegraph Act, 1885 — Section 7B
Telegraph Rules, 1951 — Rule 421, 443, 511

Citation : AIR 1990 Ori 51 : (1989) 68 CLT 801

Hon'ble Judges : L. Rath, J;A. Pasayat, J

Bench : Division Bench

Advocate : G.S. Rath, for the Appellant; A.B. Misra, Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—These two petitions at the instance of the same petitioner in essence raise the identical question for decision and hence are disposed of by this common judgment. The petitioner was the subscriber of four telephones and one telex, the telephone numbers being 51734, 53865 and 55061 in its office and 55482 at the residence of its Managing Director and the telex having the number 0675-267. The facts of O.J.C. No. 2310/89 which are not disputed and have also been supplemented by the learned counsel appearing for the opposite party, are that the petitioner came before this Court earlier in O.J.C. No. 2140/83 challenging the notice of disconnection issued on 30-6-88 by the Telecom. District Engineer, Department of Telecommunications, Bhubaneswar for outstanding dues as against telephone numbers 53865 and 51734. The telephones were disconnected and protest having been raised by the petitioner to the bills alleging excess metering, the department instituted an enquiry. The petition was disposed of by this Court by order dated 13-7-88 directing that until the enquiry was completed by the Telecom. District Engineer, the petitioner's telephone No.-55061 and telex No. 0675-267 would not be disconnected, subject to the petitioner depositing a sum of Rs. 5,000/- within a week against the

outstanding claims relating to telephone Nos. 53865 and 51734 which had already been disconnected and that the petitioner must also go on paying the current bills relating to telephone No. 55061 and telex No. 0675-267. It is the petitioner's case that it complied with the directions of this Court. After investigation by the department, the petitioner was communicated with two letters, both issued on 22-6-89, one relating to telephone No. 51734 and the other relating to telephone No. 53865. In both the letters annexed to OJC No. 2310/89 as Annexures-2 and 3 respectively, the department maintained that the cases had been examined in detail by the OGHT, Orissa on the basis of the reports received from the Field Units and other informations and that the meters, and the line circuits of the telephones were found to be in order during the period, in question. In the first communication an arrear demand was raised for Rs.33,489/- while, in the second a demand was made for Rs. 11,327/- and the petitioner was called upon to pay the amounts so as to avoid disconnection of its other working connections. After receipt of such communications, the petitioner sent a reply on 26-6-89 stating that it was not in a position to pay the entire amount under demand immediately and offered to pay the total amount of Rs. 44,812/- covering the two bills in ten equal instalments. Subsequently however it disputed its liability to pay the amount and sent a letter in the nature of a notice through its advocate contending that during the period in question its volume of business was the lowest and its factory at Kosinga had closed for more than two years and yet the meter readings showed an abnormal rise of STD calls leading to inflated bills. The petitioner also alleged perfunctoriness in the investigation made by the department and having not investigated into the manipulations of STD lines as alleged by it, In the notice, the petitioner urged the opposite party not to disconnect the telephones and not to take action for a fortnight so as to enable it to approach this Court for appropriate relief. The letter is Annexure-4 to the writ petition. The petitioner has "thereafter" approached this Court seeking the relief of quashing Annexures-2 and 3, the commendations made raising demands in respect of telephone Nos. 51734 and 53865, and restoration of the communication system that has been rendered inactive by the department.

So far as O.J.C. No. 2033/89 is concerned, the facts are that a bill was raised for Rs. 19,407/- on 11-3-89 as the outstanding dues in respect of telephone No. 55482. The petitioner protested against the bill on 21-3-89 alleging defective metering and excess billing as also tampering with the telephone line by unauthorised persons since there was abnormal rise in the bill compared to the previous bills in respect of the telephone. On receipt of such protest, a communication was made to the petitioner on 6-5-89 by the opposite party asking it to deposit a sum of Rs. 4,103.00 pending investigation on its protest. Another bill was sent to the petitioner on 11-5-89 for Rs. 38,845/- and on 6-6-89 a communication was made to him regarding his complaint of excess metering that on an analysis of fortnightly meter reading no positive spurt was noticed during the period and hence grant of any rebate was refused. The petitioner was directed to deposit the arrear amount of Rs. 38,845/- on or before 17-6-89 to

avoid disconnection. On receipt of such communication the petitioner wrote back on 2-6-89 that the telephone bearing No. 55482 being a domestic line only it was not accepting the result of the investigation and requested that an expert might be engaged to find out the pilferage points and the genuineness of the meter and offered to arrange an expert jointly agreeable to both if any reply would be sent within fifteen days. In the case an order was passed on 12-7-89 directing the opposite party not to disconnect the telephone unless the same had already been disconnected. It is the agreed case between the parties that the telephone was disconnected on 12-7-89. The petitioner has also filed a petition for amendment on 15-7-89, to add a prayer for appointment of an arbitrator and to refer the dispute to him. The amendment is allowed.

2. The learned Standing Counsel (Central) appearing for the opposite party has justified the disconnection contending that since the petitioner failed to pay the arrears in respect of telephone Nos. 51734 and 53865 amounting to Rs. 44,812/-, the other telephones bearing Nos. 56061 and 55482 as also the telex bearing No. 0675-267 were disconnected in exercise of the powers under Rule 443 of the Telegraph Rules, 1951. It has also been contended by him that the department investigated into the allegations of excess metering and faulty line as regards the two telephones as directed by this Court in O.J.C. No. 2140/88 by its order dated 13-7-88 and after investigation both the meter and the line circuit were found to be in order in respect of both the telephones and the petitioner was intimated of such facts. The petitioner accepted the results of investigation and while agreeing to pay the demand, only requested for instalments by its letter dated 26-6-89 but thereafter recoiled from its stand and protested to pay the amount through the letter of its advocate and as such it could not be said that the petitioner disputed the bills.

3. Mr. G. S. Rath, the learned counsel for the petitioner, has urged, placing reliance on Section 7-B of the Telegraph Act (for brevity hereinafter referred to as "the Act"), that since the petitioner has raised the disputes regarding the quantum of bill amounts alleging false metering and tampering with the line circuit by unauthorised persons, the disputes could only be resolved by arbitration as provided for in the Section and that before decision on such disputes, no disconnection of telephones could be made. Besides, he has also contended that Rule 443 of the Rules does not authorise disconnection of the telex line at all.

4. For an appreciation of the submissions, the provisions of Section 7-B of the Telegraph Act and Rules 421, 443 and 511 of the Rules thereunder referred to at the time of hearing are extracted :

"Indian Telegraph Act

Section 7B -- Arbitration of disputes.

(1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority

and the person for whose benefit the line, appliance or apparatus is, or has been, provided the dispute shall be determined by arbitration and shall, for the purpose of such determination, be referred to an arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of dispute under this section.

(2) The award of the arbitrator appointed under Sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any court."

Indian Telegraph Rules, 1951 "421. Disconnection of telephones :

Where the Divisional Engineer is satisfied for reasons to be recorded in writing that it is necessary to do so, he may, after giving the subscriber a notice in writing for a period which shall not except in emergent cases be less than 7 days, disconnect the telephone, and in such case, the subscriber shall be entitled to refund of rent for the unexpired portion of the period for which the connection or service was given.

XX XX XX XX XX 443. Default of Payment :

If on or before the due date, the rent or other charges in respect of the telephone service provided are not paid by the subscriber in accordance with these rules, or bills for charges in respect of calls (local and trunk) or phonograms or other dues from the subscriber are not duly paid by him, any telephone or telephones rented by him may be disconnected without notice. The telephone or telephones may, if the Telegraph Authority thinks fit, be restored, if the defaulting subscriber pays the outstanding dues and the reconnection fee together with the rental for such portion of the intervening period (during which the Telephone remains disconnected) as may be prescribed by the Telegraph Authority from time to time. The subscribers shall pay all the above charges within such period as may be prescribed by the Telegraph Authority from time to time.

511. Disconnection of Telex connections.

(1) Where the Divisional Engineer is satisfied for reasons to be recorded in writing, that it is necessary so to do, he may, after giving the subscriber notice in writing for a period of seven days, disconnect the telex connection and in such cases the subscriber shall be entitled for refund of rent for the unexpired portion of the period for which the connection or service was given.

(2) In the event of any emergency the Divisional Engineer, may disconnect the connection of any subscriber with or without notice and in case such disconnection exceeds a period of seven days the subscriber shall be entitled to proportionate rebate of rent.

(3) The telex connection shall be disconnected for default of payment of rent or charges for calls made from the telex or any other dues and in such cases the

connection shall not be restored unless all arrears due to the posts and telegraphs department besides fresh charges for installation are paid.

(4) The reconnection shall be subject to technical feasibility and where the telegraph authority considers it necessary in the public interest so to do, it may refuse to give reconnection even on the payment of the charges referred to in Sub-rule (3).

(5) Save as otherwise provided in this rule, the disconnection shall be without prejudice to any other right or remedy of the telegraph authority against the subscriber for the recovery of arrears or other moneys due from him under these rules."

5. That a dispute regarding false metering and excess billing is one covered u/s 7B of the Act is no longer in controversy and indeed the learned Standing Counsel (Central) has also not disputed such position. Such a dispute was held in *Nityananda Sahu Vs. Postmaster General and Others*, Orissa to be covered by the section as was agreed to by the parties before the Court and because of such reason, the civil court's jurisdiction was held to have been excluded to entertain a suit in respect of the dispute. The view was reiterated in *Smt. Makhani Devi Banka Vs. Union of India (UOI)*, holding that the telephone set provided to subscriber being "apparatus" within the meaning of Section 7B(1) and a claim raised being covered by that section, the necessary corollary is that the civil court's jurisdiction to entertain a suit in respect of the dispute is ousted. A similar view was also taken in AIR 1982 Del 111, *Union of India v. Usha Spinning and Weaving Mills Ltd.*

6. Section 7B makes a compulsory provision that in the event any dispute arises, inter alia regarding the telephone, between the Telegraph Authority and the person for whose benefit the telephone apparatus has been provided, it shall be determined by arbitration and shall be referred to an arbitrator appointed by the Central Government either generally or for that specific dispute. It would follow that once a dispute exists between the subscriber and the department regarding the demand, the dispute cannot be resolved except by way of arbitration in the manner provided for under the Section. The provision is comprehensive of all disputes and does not admit of any exception. An investigation made by the department on the dispute raised by a subscriber and the conclusions reached by it regarding the correctness of the dispute are only unilateral actions and do not have the effect of abating the dispute unless such determination by the department is accepted by the subscriber. From such premises, a further conclusion which necessarily follows is that a demand raised against a subscriber under the bill, if protested, does not achieve a finality and cannot be said to be binding upon the latter until the same has been adjudicated by an arbitrator whose award on the question has been granted a finality under the provisions of the Section.

7. To invoke the provisions of Section 7B for appointment of arbitrator, it also

does not appear that a specific application is necessary to be moved by the subscriber before the Telegraph Authority for the purpose. The arbitrator is to be appointed by the Central Government where the dispute is between a subscriber and the Telegraph Authority. "Telegraph Authority" is defined in Section 3(6) of the Act as the Director General of Posts and Telegraphs and includes any officer empowered by him to perform all or any of the functions of the Telegraph Authority under the Act. The Telegraph Authority is different from the Central Government. If a dispute regarding the amount under the bill can only be resolved by the arbitrator appointed either generally or for the specific dispute, either of the parties to the dispute, i.e. the Telegraph Authority or the subscriber may move the Central Government to appoint an arbitrator unless an arbitrator has been generally appointed for such purpose. There is no sanction for the submission raised by the learned Standing Counsel (Central) that the subscriber must, if he is dissatisfied with the determination of the department, move the department for appointment of an arbitrator. The application, if any, has to be moved only before the Central Government and as both the Department and the subscriber are parties to the dispute, both must have the liberty to move the authority to appoint an arbitrator. It would be more so in the interest of the Department to forthwith take steps for appointment of an arbitrator since unless the demand is determined by the arbitrator, it would not achieve finality and would not become due against the subscriber.

8. It has been held by the decision of this Court in *Nityananda Sahu Vs. Postmaster General and Others*, because of the provisions of Section 7B(2) that the award of the arbitrator is conclusive between the parties and cannot be questioned in any court, that the provisions of the Arbitration Act do not apply to such arbitrations. There are no provisions either in the Act or in the Rules regarding the procedure to be adopted before the arbitrator. While it is true that because of the provisions of Sub-section (2) to Section 7B, an award of the arbitrator is beyond the scrutiny of courts, as has also been held by the earlier decisions of this Court, yet it must be held that the principles of the Arbitration Act regarding the procedure to be adopted before the arbitrator would be applicable to the proceedings before the arbitrator under the Act in so far as they are not inconsistent with the provisions of Section 7B.

9. Next is the question whether it is permissible for the Department to disconnect the telephone before the dispute raised has been adjudicated upon by the arbitrator. Two rules have been relied upon by the learned Standing Counsel (Central) seeking vesting of such power in the authority, the first being Rule 481 and the other being Rule 443. Rule 421 provides that where the Divisional Engineer is satisfied for reasons to be recorded in writing that it is necessary to do so, he may give a notice in writing for not less than seven days except in cases of emergency and disconnect the telephone and when such disconnection is made, the subscriber shall be entitled to refund of rent for the unexpired portion of the period for which service was given. This rule, as it appears to me, does not deal with disconnection because of non-payment of the dues but relates

to disconnection for any other reason, since had it been a case of disconnection due to non-payment of bills there could not be a provision in-built in the rules for refund of the rent for the unexpired portion of the period for which the connection had been given. If the subscriber is in arrears of dues and the disconnection is made on such account, the question of refund of rent would not arise. The next is Rule 443 which has been seriously pressed by the learned Standing Counsel. It provides that where the rent or other charges including the bills for charges in respect of local calls or trunk calls or phonograms or other dues are not duly paid by the subscriber, the telephone or telephones may be disconnected without notice and that such apparatus may be restored by the Telegraph Authority if the defaulting subscriber pays the outstanding dues and the disconnection fee together with the rental for such portion of the intervening period during which the telephone remains idle, as may be prescribed by the Telegraph Authority. While the rule permits disconnection of the telephone regarding which default in payment of the dues has been made as well as of other telephones of the subscriber, yet what is of essence is that the subscriber must have failed to duly pay the dues in respect of the telephone so as to be within the mischief of the rule. Evidently, the rent or the charges including the bills are dues claimed by the department which is also apparent from the use of the words "or other dues" in the rule. The demand raised under the bills against the subscriber cannot be said to be due from him if he has raised a protest against the same and the dues have not been finally determined by the arbitrator. In such an event the only amount which would be due against the subscriber is the amount which is admitted by him as his dues and the rest of it which is disputed must be determined by the arbitrator and only on failure to pay the dues as determined by the arbitrator on a demand being raised, the powers under the rules can be invoked to effect disconnection. "Due" means, in the context, "owing a debt", which has in itself the underlying concept of the debt having been rightly or properly determined. Hence, "due" would mean what is legally due or properly due and when dispute is raised regarding the amount, it would mean in the context of the Act a sum which has become due after determination legally. Once the provision of the parent statute is taken, to require disputes regarding the dues of the subscriber to be determined by an adjudicatory process, the combined reading of the section and the rule would only mean that the dues must have been determined in the manner devised under the Act to be capable of being demanded on the pain of disconnection. A decision of the Kerala High Court in P.S. Anthappan Vs. The District Manager, Telephones, has also taken the same view, relying on an earlier Division Bench decision of the same Court, that the underlying intention of Section 7B of the Act is that the reference to arbitration must precede disconnection and would not follow it since once a disconnection is effected, very little purpose would be served by arbitration and that the stage of disconnection, even for the period of arbitration is sufficient to cause irreparable injury to a subscriber who may need the telephone for his business or for his profession or for his own personal needs. Being of such view, the Court held that the action taken for disconnection was

violative of the provisions of Section 7B.

10. The further submission made by the learned Standing Counsel relying on the very authority of the Kerala High Court is that the disconnections having already been made, a direction for reconnection cannot be made as arbitration can only precede disconnection and not be subsequent to it. The submission is wholly unacceptable since what was decided in P.S. Anthappan Vs. The District Manager, Telephones, was that disconnection without recourse to arbitration is violative of the provisions of Section 7B and hence the very same illegality cannot form the plank of an argument to sustain the illegality.

11. The other submission made by the learned Standing Counsel is that since the petitioner did not protest against the demands raised in Annexures-2 and 3 to O.J.C. No. 2310/89 and instead accepted the demand and only asked for relief of payment by instalments, it cannot be said that there was any dispute in existence so as to require the matter to be referred to arbitration and hence as the Department decided to disconnect the other telephones 55061 and 55482 as also the telex in exercise of the power under Rule 443 its action cannot be faulted. The submission would have been correct if in fact no dispute was in existence relating to the bills. It is true that the petitioner in Annexure-5 to O.J.C. No. 2310/89 sought for payment of the dues by instalments, but thereafter in Annexure-4 raised protest against the demand urging the amounts as not due from him and the investigation of the Department being not proper. What Section 7B requires is that if a dispute is raised prior to the payment, such dispute is to be adjudicated by an arbitrator. Thus even if the petitioner might have, at a point of time, stated to make the payment, yet when it protested against the bills, a dispute came into existence. Once a dispute is there, it can be solved only in the manner as provided for in Section 7B and not otherwise. It is not disputed that the disconnections had been made subsequent to receipt of Annexure-4 in O.J.C. No. 2310/89 and therefore by the time the disconnections were made, a disputes had already been raised by the petitioner and hence the opposite party had no authority to disconnect the telephones or the telex before determination of the dispute.

12. A further argument of Shri Rath is also to be noticed. Rule 443 in terms only authorises a disconnection of telephone or telephones on account of non-payment of the dues in respect of a telephone service. So far as telex service is concerned, it is dealt with in a different part of the Rules, i.e. Part IX wherein Rule 511 provides, dealing with disconnection of telex connections, that the Divisional Engineer if satisfied for reasons to be recorded in writing that it is necessary to do so, he may after giving the subscriber notice in writing for a period of seven days, disconnect the telex connection and the subscriber shall be entitled to refund of rent for the unexpired portion of the period for which the connection or service was given. The disconnection of the telex has apparently been not done under such provision, but has been done, as has been contended by the learned Standing Counsel, in exercise of the powers under Rule 443. Since

the disconnection of telex service comes under a separate part, the provisions of Rule 443 cannot be made applicable to such service since Rule 443 does not refer to a telex at all.

13. In the result of the foregoing analysis, I reach the conclusion that the disconnection of the petitioner's telephones 51734, 53865, 55061 and 55482 without settling the disputes raised by the petitioner through arbitration was violative of Section 7B of the Act and hence illegal. It has to be further held that the disconnection of the telex line of the petitioner was also unauthorised. On the conclusions reached, a writ must be issued directing restoration of the connections, but the Department while may take steps to refer the disputes to arbitration, may also call upon the petitioner to pay the admitted amounts.

14. In the result, the writ petitions are allowed with costs. Let a writ of mandamus be issued directing the opposite parties to restore the telephone connections bearing Nos. BBS 51734, 53865, 55061 and 55482 and the telex No. 0675-267 within one week of the receipt of the writ from this Court. Hearing fee is assessed at Rs. 400/-.

A. Pasayat, J.

15. I agree.