(2006) 03 GAU CK 0096

In the Gauhati High Court

Case No : Civil Rule No''s. 48 and 51 of 1996

Pinaki Nandi APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 13-03-2006

Acts Referred:

Citation : (2006) GLT 829 Supp

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : B. Das and N. Majumder, for the Appellant; P.K. Biswas, S. Talapatra and B. Bannerjee, for the Respondent

Judgement

A.B. Pal, J.—The above two writ petitions in which same disputes in facts and law have been raised are taken together for disposal by this common judgment.

2. In Civil Rule No. 48 of 96, the Petitioner Pinaki Nandi was provided with a Public Call Office (for short, ''PCO'') on 21.3.95 by the Department of Telecommunication. On 16.3.95, 5 days before the Petitioner obtained the connection, Sri Sankar Saha, the Petitioner in Civil Rule No. 51 of 96 was given similar PCO connection. Shri Kamal Kanti Saha, fifth Respondent herein was the only PCO holder at Udaipur before the above two connections given to the two Petitioners in the same area. It is the case of both the Petitioners that after the two new connections the competition in the business was generated which was at the detriment of the fifth Respondent who had the monopoly of the PCO business in the area. The Petitioners experienced from very inception that though the private telephones in the vicinity and the PCO connection of the fifth Respondent were working well, their connections suffered from disturbances and they attributed the reasons therefore to connivance of the fourth and the fifth Respondents herein stating that Fourth Respondent Sri Nirmalya Ratan Saha is a close relative of the fifth Respondent Sri Kamal Kanti Saha and in order to advance and perpetuate monopoly business of the fifth Respondent, the fourth Respondent being Junior Telecom Officer (JTO) of the area was creating the

hindrances to the PCO operations of the Petitioners. Their second allegation is that the bills raised by the Department of Telecommunication were much higher than the meter reading and in that connection, they made several correspondences to the Telecom District Manager (the second Respondent herein), which proved futile. On 8.1.96 at 12-45 pm both the PCOs of the Petitioners were disconnected, but on the following morning i.e. on 9.1.96, the connections were restored. On 10.1.96 both the Petitioners addressed letters to the second Respondent herein with copy to the Chief General Manager, Shillong about the illegality and irregularity committed. On 11.1.96, the PCOs were again disconnected which was again reported by the Petitioners to the second Respondent herein by letter dated 12.1.96. Both the Petitioners received a communication from Sub Divisional Engineer (for short, ''SDE''), the third Respondent herein in the month of January, 1996 that they were allegedly availing of conference facility violating the departmental norms and, therefore, if no favourable reply was received within 30 days from the date of issue of the letter, the PCOs would be disconnected. It is the allegation that though the said letter was dated 21.12.95 giving 30 days time to give a reply the same was sent by registered post only on 16.1.96. It is the common grievance of the Petitioners that the call prints offering details of the calls duration etc. would go to show excess billing in spite of repeated complaints to that effect notwithstanding. The PCOs of both the Petitioners were finally disconnected on 11.1.96 before expiry of 30 days from the date of the notice dated 21.12.95 regarding "conference facility" which was, according to the Respondents, were availed of by the Petitioners in violation of the departmental norms. The prayers of the Petitioners are that there should be a direction to the Respondents to restores their PCO connections and to compensate for the loss and damages sustained by them due to such disconnection.

3. The first three Respondents have put in a common counter affidavit denying the allegations of the Petitioners regarding any connivance or conspiracy for creating disturbances in the PCO operations of the Petitioners. It is stated that the fourth Respondent Sri Nirmalya Ratan Saha was not holding the post of JTO in Radhakishorpur telecom exchange, rather he was only a group-C employee holding the post of Transmission Assistant under the SDE. Though there may be distant relation between the fourth and fifth Respondents it is stated to be a absurd proposition that a Group-C employee had influenced the higher officers like the 2nd and 3rd Respondents to do anything for perpetuating monopoly business of the fifth Respondent and harming the business of the Petitioners. As regards the allegation against the fifth Respondent that he was practicing fraud by realizing higher rate from the customers as alleged by both the Petitioners, the reply in the counter affidavit is that after receiving such complaints '' an inquiry was done and it was found that the complaints to some extent were correct and accordingly, the monitor was adjusted and the fifth Respondent was cautioned duly. As regards the complaints regarding malfunctioning of the PCO connections of the Petitioners, the Respondents caused an inquiry to be made by

the JTO of the area who reported that the telephones were tested but nothing abnormality was found. It is the specific stand of the above 3 Respondents that both the PCOs had to be disconnected because of non-payment of outstanding bills. While the Petitioner in Civil Rule No. 48 of 96 did not pay an outstanding bill of Rs. 62,520/-, the Petitioner in Civil Rule No. 51 of 96 did not pay similar outstanding bills for an amount of Rs. 70,117/- which compelled the said Respondents to disconnect the PCOs after informing the Petitioners that unless the bills were paid the disconnection would follow. It is made clear by them that all the allegations of excess billing due to ill design and conspiracy by the fourth and fifth Respondents are far fetched, imaginary and cannot be a justification for non-payment of bills pending from August, ''95. The bills are issued by the Accounts Officer (TR) of the office of the Telecom District Manager at Agartala on the basis of the meter reading statements received from the concerned SDE who gets the reading from the computer of the concerned exchange. If the bills are not paid in time, the Accounts Officer sends official instructions with disconnection list containing details of outstanding bills to the SDE concerned. The SDE issues duplicate bills as per disconnection list received from the Accounts Officer and informs the subscriber telephonically that if the subscriber has received the bills but fails to make the payment within the time specified the disconnection of the telephone would be done. This being the practice followed by the Department of Telecommunication thrbills were prepared strictly in accordance with the meter reading and as the Petitioners did not honour those outstanding bills for a long period, the Accounts Officer prepared the list of defaulters and after telephonic notice or intimation about the outstanding bills with the specific date for payment, the telephones of the Petitioners were disconnected for failure to make payment. As regards the letter dated 21.12.95 about availing of ''conference facility'' it is made clear in the counter affidavit that such a letter was addressed to every PCO operator after receiving some complaints from Dharmanagar area and the said letter had nothing to do with the disconnection of the PCOs of the Petitioners. The said letter was issued in order to caution all the operators that if the conference facility was availed of in violation of the departmental norms it would itself be a ground for disconnection. The disconnection of the PCOs of the Petitioners were done only for non-payment of a huge outstanding bills, not for availing of conference facility or failure to give a reply to the letter dated 21.12.95.

4. The fifth Respondent has filed a separate counter affidavit in both the writ petitions denying the allegations of fraud and malpractice and conspiracy or connivance between him and the fourth Respondent. It has also been denied that he received any favour from the fourth Respondent or other Respondents for perpetuating his monopoly business.

5. I have heard Mr. B. Das, learned Sr. Counsel assisted by Mr. N. Majumder, learned Counsel for the Petitioners, Mr. P.K. Biswas, learned Assistant SG for the Respondent Union of India and Mr. S. Talapatra, learned Sr. Counsel assisted by Mr. B. Bannerjee, learned Counsel for the private Respondent.

6. Mr. Das, learned Counsel for the Petitioners advanced a submission that the manner in which the PCOs of the Petitioners were disconnected is not in terms with the relevant provisions in the Telephones Act and the rules framed thereunder dealing with the inflated bills and non-payment thereof. In this connection, he has referred to the decisions of this Court in Santokh Singh Vs. Divisional Engineer, Telephones, Shillong and Others, . In that case, the Division Bench of this Court held that for the outstanding bills for a given telephone of a subscriber another telephone of even the same subscriber cannot be disconnected, for the power of disconnection is available under Rule 443 only in respect of the telephone, the bills of which have not been paid or have been lying outstanding. But in another decision rendered in Bhagwanji Debraj v. Union of India reported in (1975) 16 Guj LR 357, a contrary view has been laid down by that High Court as regards the scope and ambit of Rule 443. After noticing the contradictions between the two decisions of the two High Courts, a learned Single Judge of this Court in Rajkumar Bajaj v. Union of India directed the matter to be laid before the Hon''ble Chief justice for constitution of a larger Bench. Consequently, a Full Bench of this Court examined the issues decided in Santok Singh (supra) and overruled the decisions rendered therein. It was held by the full Bench that when a person has more than one telephone as a subscriber and if such a subscriber fails to make payment in respect of one of such telephones, his other telephone or telephones can be disconnected by the service provider for nonpayment of the bills/dues of one of the telephones of such a subscriber. The decision, therefore, laying down the law to the contrary in Santok Singh (supra) shall accordingly stand dismissed (2005) 3 GLR 646.

7. But such an issue as addressed by this Court in the above 2 decisions has not fallen for consideration in the instant case. Disconnection of the telephones in the instant case is due to non-payment of huge outstanding bills of Rs. 70,117/- by the Petitioner Shankar Saha and Rs. 62,520/- by the Petitioner Pinaki Nandi of the above two cases. Both the Petitioners have pleaded nothing about the outstanding bills or the precise reasons for nonpayment of the same except a vague and unacceptable plea taken by them that the bills were inflated. Without elaborating on the particular bills which were inflated and why those should be considered so, a print out of the calls placed at Annexure-J has been pressed into service in order to show irrationality in the bills. The print out placed at Annexure-J, according to Mr. Das, Shows two arrears. The print out bills relate to phone No. 522689. At Sl. No. 4, the called telephone No. 0332648190 for which duration was 57 on 1.4.95 and the calculated unit was shown as 10. But at Sl. No. 29 against called No. 0332606920, the duration was 28 and the calculated unit was also shown as 10. Similarly, at Sl. No. 30 for duration of 25, the unit was 2, at Sl. No. 31 for duration of 11, the unit was 2 and at Sl. No. 32, for duration of 43, the unit was shown as 7. But, it is not understood why this print out of a telephone number has been placed on records as the same related to a telephone, which did not belong to the Petitioners. The Telephone numbers of the Petitioner Shankar Saha is 23847 and that of Pinaki Nandi is 23849. No record

has been placed in support of the contention that the bills raised were inflated.

8. The issues, thus, traversed in the pleadings relating to fraud, conspiracy by the fourth and fifth Respondent to create hindrances in the operation of the PCO business of the Petitioners are purely of facts, which have been denied by the Respondents. From their denial it came to light that the statement of the Petitioners that the fourth Respondent was a Junior Telecom Officer (JTO) and so could use his office for such illegal activity is a factually wrong statement. The other issue regarding disconnection of the telephones of the Petitioners is also in factual conflicts as is evident from the rival pleadings. While the Petitioners precisely alleged that the disconnection was due to the alleged conference facility availed of by the Petitioners, which terminate unsubstantiated, the Respondents, stand is totally different which is that the disconnection was purely for non-payment of huge arrear bills. It has been alleged by them that after the sanction of PCOs, the Petitioners paid only one bill in the month of August, ''95 and thereafter all the bills remained unpaid. The Petitioners have not taken any plea that the bills were not received in time or sufficient time was not given to them for payment or the disconnection was without giving any notice about non-payment of the arrear bills. The entire pleadings of the Petitioners remained concentrated on issues like conspiracy, connivance, fraud and allegation of availing of conference facilities for which the period of 30 days for giving reply was not given to them The contention of the Respondents is that the letter regarding availing of conference facility is only in the form of warning and it had nothing to do with the disconnection of the telephone of the Petitioners which was done purely for non-payment of the arrear outstanding bills. As I have already noted above, this issue regarding non-payment of the outstanding bills has been carefully avoided in both the writ petitions.

9. The discussions made above need no further extension to show that both the writ petitions have no merit and, therefore, they are liable to be dismissed which I hereby do leaving the parties to bear their own cost.

