

(1973) 06 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No. 4780 of 1971

P.M. Mohamed Ali

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-06-1973

Acts Referred:

Constitution of India, 1950 — Article 14
Telegraph Act, 1885 — Section 7
Telegraph Rules, 1951 — Rule 116, 414

Citation : AIR 1974 Ker 157

Hon'ble Judges : V.P. Gopalan Nambiyar, J;G. Viswanatha Iyer, J

Bench : Division Bench

Advocate : T.P. Mathai, for the Appellant; K. Prabhakaran, for the Respondent

Final Decision : Dismissed

Judgement

Viswanatha Iyer, J.—The petitioner, an Advocate residing at Al-waye, applied in 1968 for telephone connection for his use. His application was registered in the waiting list of the Al-waye Telephone Exchange and an endorsement evidenced by Exhibit P-1, dated 29-1-1968 was issued to him. He continued to be in the waiting list even in 1971. It is alleged that some applications received after that date have been considered and telephone connection given to the applicants under cover of certain general executive instructions issued by the Telegraph Authority. As per these instructions the applicants have been classified into different categories and certain categories have been given priority. The copy of the instruction is produced in this case as Exhibit P-2. The main attack of the petitioner is that these executive instructions for categorisation of the applications are unauthorised and illegal. The continuance of this categorisation is a hindrance to the persons like the petitioner for getting telephone connection on the basis of priority of applications. Therefore, the petitioner has sought for the issue of a writ of certiorari or other appropriate order quashing Exhibit P-2 instructions and for the issue of a writ of mandamus or order to forbear the respondents from enforcing Ext. P-2 so far as the petitioner is concerned and to

consider his application on the basis of priority alone. The petitioner further seeks to declare that Ext. P-2 instruction is ultra vires of the powers of the Telegraph Act.

2. On behalf of the respondents, the Divisional Engineer, Telegraphs, Tri-chur Division has filed a counter-affidavit in which it is stated that the petitioner could not be given telephone connection because there are 21 applicants above the petitioner in the waiting list in the Alwaye -- Parur route beyond Besom junction. Some of them are waiting for connection from 1965. Technically also these connections are not feasible for want of underground cable pairs on the route. A few connections have been provided in the Alwaye town area where cable pairs are available skipping over the claim of the petitioner as well as other non-feasible connections. It is further contended that of the total number of telephone connections usually provided for, >a certain percentage is set apart for applicants who have agreed to pay for the telephone on an ownership basis. A certain percentage is set apart for persons included under special category and the rest among whom the applicant comes are given the balance. The applicants under each category are arranged in the order of priority and they are provided telephone connection on the basis of the availability of cable pairs on the route where they reside or carry on business. This procedure is followed on the basis of the instructions issued by the Central Government in the Ministry of Communications. These instructions form part of the prescribed application form in which those who want to get telephone connection have to apply. The petitioner made an application in this form. The instructions to categorise the applicants in various categories referred to above are not in violation of any of the sections or rules of the Telegraph Act and they are not in any way discriminatory or violative of Article 14 of the Constitution. On these grounds the respondents oppose the original petition.

3. Before noticing the contentions raised by the petitioner, it is necessary to refer to the relevant provisions of the Telegraph Act and the rules under which telephone connection is provided for to various applicants. "Telegraph" is defined in Section 3(1) to mean-

"any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves of Hertzian waves, galvanic, electric or magnetic means."

and "telegraph line" is defined in Section 3(4) to mean-

"a wire or wires used for the" purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same."

Telephone connection will come under the telegraph line as defined in these provisions. Section 4 of the Telegraph Act confers to the Central Government the exclusive privilege of establishing, maintaining and working telegraphs. Section 7

enables the Central Government to make rules consistent with the Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under the Act. Section 7(2)(e) enables the Government to frame rules provided for the conditions and restrictions subject to which any telegraph line, appliance or apparatus for telegraphic communication shall be established, maintained, worked, repaired, transferred, shifted, withdrawn or disconnected. Section 7(4)(b) provides that the rules and the rule making section shall not be construed as subjecting the Central Government to any obligation to provide any telegraph line, appliance or apparatus for the purpose of affording means of telegraphic communication. In the year 1951 the Central Government have framed "the Indian Telegraph Rules, 1951". Part V, Rules 411 to 459 relate to telephones. Rule 412 relates to the supply and maintenance of equipment and the Divisional Engineer. Telegraphs is prescribed as the authority who shall instal and maintain in good working order the equipment and apparatus provided by the Department. Rule 413 provides that all telephone connections and other services provided by the Department shall be subject to the conditions set forth in the rules. Rule 414 relates to the applications to be made for telephone connection. The applications are required to be in writing and in such form and manner as may from time to time be prescribed by the Telegraph Authority. Rule 416 empowers the Telegraph Authority, if it considers necessary to do so, to refuse to comply with any application for telephone connection. Rule 434 relates to the schedule of fees and charges for the various services under the rules. Under heading IV, charges for connection under O. Y. telephone scheme are fixed. The other rules in the Part relating to telephones are not relevant to be noticed here and so are not stated. On the basis of Rule 414 application forms have been prescribed for a telephone connection. As part of that application form, certain instructions have been appended which prescribe the fees to be paid, the particulars to be mentioned in the application form, the categorisation of the applicants into three, namely. O. Y. T., Special category and general category. Under the Special category are included Doctors, Press Correspondents, Public Institutions. Small Scale Industries, Public men (Public and Social Workers), Agricultural Farms, etc. All those who do not come under the categories of O. Y. T. and Special category are included under a general category. The petitioner's application has been registered under the general category.

4. The first contention raised on behalf of the petitioner is that the Act and the Rules do not empower the Tele-Wash Authority to make any categorisation of the applicants and, therefore, the instructions provided for categorisation are beyond the powers of the Telegraph Authority. It is further contended that the categorisation of the applicants will be a contravention of the rules framed under the Act and therefore are invalid. These contentions have to be examined. Section 4 of the Act confers exclusive privilege of establishing, maintaining and working telegraphs in the Central Government. The relevant rules framed u/s 7 have been noticed above. Section 7 provides for framing rules for the conduct of

the services. Rule 413 states that the telephone and other services shall be subject to the rules framed. Rule 41"4 only states that applications shall be in the form prescribed by the Telegraph authority from time to time. These rules framed, no doubt, do not specifically provide for any categorisation of the applicants. Since the exclusive privilege is vested with the Central Government, if the rules framed do not provide for certain matters, executive instructions can be issued by the Central Government in respect of them and the only prohibition is that such instructions should not conflict with or defeat any provisions of the Act or the Rules. The question whether the executive instructions can be issued in respect of matters not covered by the Section or the rules has been subject-matter of more than one decision by the Supreme Court. In *Sant Ram Sharma Vs. State of Rajasthan and Another*, it has been observed as follows :--

"It is true that Government cannot amend or supersede statutory Rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

Again, in *State of Haryana, Vs. Shamsheer Jang Bahadur, etc. etc.*, their Lordships followed this earlier decision and further stated thus :--

"Undoubtedly the instructions issued by the Government add to those Qualifications. By adding to the qualifications already prescribed by the rules, the Government has really altered the existing conditions of service. The instructions issued by the Government undoubtedly affect the promotion of concerned officials and therefore they relate to their conditions of service. The Government is not competent to alter the rules framed under Article 309 by means of administrative instructions. We are unable to agree with the contention of the State that by issuing the instructions in question, the Government had merely filled up a gap in the rules."

This being the legal position if there are no rules the Government or the Telegraph Authority can issue administrative instructions to carry out the functions entrusted to them under the Act. The only inhibition is that such instructions should not alter or violate any provision of or any rule under the Act. In this case Rule 414 of the Telegraph Rules only provides that the applications for fresh telephone connection shall be in" such form as may be prescribed from time to time by the Telegraph Authority. There is no rule regarding the categorisation of the applicants and if any , instructions are issued by the Telegraph Authority to categorise the applicants into various categories, that will not in any way violate any rule, much less any Section of the Act. Therefore, the instructions issued by the Telegraph Authority to be followed by the applicants for telephone connection are not in any way against any section of the Act or the rules issued under the Act. On this ground it cannot be said that these instructions are beyond the powers of the Authority or invalid or inoperative.

5. The further contention is that these instructions are discriminatory and

violative of Article 14 of the Constitution. It is the exclusive privilege of the Central Government to establish, maintain and work telegraph or telephone lines. The Government is not carrying out any sovereign function in administering that Act. Really the Government is only engaged in a commercial activity which, it is true, is also one of public utility, in granting telephone service connection to the various applicants. They have got the monopoly. It may not be possible to the Telegraph Authority to consider and allow every application that may be made for telephone connection. The connection can be granted only on the basis of availability of materials and other necessary equipments. The demand is generally more than the capacity which they have in materials and equipments. Again, some connections may have to be urgently given, some other connection may have to be given priority. These are all inevitable in any commercial activity that may be carried on by the Government or any other body if they want to be of service to the public. What has been done by these instructions is only this. Out of the total connections that may be given a percentage is set apart to those who apply paying the entire value of the appliances under the scheme of "Own Your Telephone". Another percentage is set apart under a Special category and the rest are included in the general category. In the Special category we find that Doctors, Press Correspondents, Newspapers, Public Institutions, Small Scale Industries, Public men and the Agricultural Farms are all included. It cannot be said that those included in this Special Category do not differ from those under the general category. Considering the functions which these applicants are supposed to discharge to the public the authorities thought that they must be classified separately from others and a percentage reserved for them. Only a percentage is reserved for applicants coming under the Special category or under the O. Y. T. scheme. Those who do not come under one of the above two categories are classified in the third general category. The service that the members of the bar do to the public is different from the service that the others included in the Special category are supposed to do. It may be that the authorities thought that those in the legal profession do not require any special treatment and so they are not included in that special category. What can the Court say in that treatment? Giving telephone service is the privilege of the Government and the Telegraph Authority. If in their opinion or wisdom they thought that Public men (Public & Social Workers) -- an elusive category -- have a special function to discharge to the Public and deserve a special treatment from advocates who are only a necessary part of the Rule of law in a democratic set up, the Court cannot venture into an assessment of that opinion or embark on an enquiry of comparative merit of the claimants for getting included in the special category. If equals are treated unequally or unequals are treated equally there may be a discrimination. There is none in this case. Further the case of the petitioner is not that he should have also been included among the special category or among those who applied under O. Y. T. His case is that nobody should be given any special treatment and applications must be considered only on the basis of the priority of applications. That may not be the satisfactory way of discharging the functions entrusted to the Telegraph Authorities under the Act.

They have been given the exclusive privilege and even the rules which have been laid down u/s 7 are not to be understood as obliging the Central Government to give telephone connection to anybody if they think it not proper to do so. Such being the nature of the privilege that is given to the Central Government in the administration of the Telegraph Act, if to control or to meet the demand for telephone connection any categorisation is thought essential and made by the authorities, that cannot be attacked as discriminatory. Therefore, the petitioner has not been successful in showing that there has been any discrimination which violates Article 14 of the Constitution.

The petitioner has also attacked the vires of Rule 41"6 of the Telegraph Rules. That rule gives power to the Telegraph Authority to refuse to comply with any application made for telephone connection. This rule is attacked as capable of arbitrary exercise. We understand the Rule as not giving any arbitrary or unfettered right of refusal, but only one subject to the policy of the Act and the Rules, and the instructions by which the authorities have chosen to be bound. And in any case the petitioner here cannot complain of an arbitrary refusal. His application was not taken UP for consideration only on the ground that his turn was not reached in accordance with ithe instructions.

In the counter-affidavit filed on behalf of the respondents it has been clearly stated that the delay in granting telephone connection to the petitioner is only due to want of cable pairs In that area where he resides and as soon as sufficient stock of materials and other equipments are ready his application will be considered. This being so, there as no basis in the allegation of mala fides.

In the result, there is no merit in the original petition and it is dismissed. But, in the circumstances, we make no order as to costs.