
(1999) 04 AHC CK 0078
In the Allahabad High Court
Case No : C.M.W.P. No. 38407 of 1998

Praveen Kumar

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 02-04-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Telegraph Rules, 1951 — Rule 443

Citation : AIR 1999 All 248 : (1999) 3 AWC 1803 : (1999) 4 RCR(Civil) 347

Hon'ble Judges : R.R.K. Trivedi, J; Naseemuddin, J

Bench : Division Bench

Advocate : V. Singh and J.P.S. Chauhan, JJ, for the Appellant; S.C., S.N. Srivastava and R.S. Maurya, for the Respondent

Judgement

Naseemuddin, J.—Praveen Kumar has filed this writ petition under Article 226 of the Constitution of India for issuing a writ, order or direction in the nature of mandamus commanding the respondents to restore the S.T.D.-P.C.O. telephone connection No. 782732 and not to disconnect the petitioner's telephone in future, in case no amount is due against the petitioner, and also directing them to supply the copy of the order whereby the aforementioned telephone was disconnected on 26.10.1998 at 12.00 noon.

2. The petitioner applied for allotment of Public Call Office (P.C.O.) connection and the same was given to him in February, 1997 by virtue of agreement, dated 24.9.1996, in between the parties. The petitioner had been depositing the amount due from him with the respondents according to the bills received by him w.e.f. 24.2.1997, as per details in the writ petition. On 26.10.1998, the respondents disconnected the aforementioned telephone connection of the S.T.D.-P.C.O. telephone in spite of the fact that there were no dues outstanding against the petitioner. That it was done illegally, arbitrarily without any reasonable cause, without any notice and in violation of principles of natural justice. That on query it revealed that Ajmat Singh, father of the petitioner, was defaulter in respect of

his telephone No. 782271 ; and so the telephone connection of S.T.D.-P.C.O. belonging to the petitioner was disconnected. That disconnection was done in violation of Rule 443 of the Indian Telegraph Rules without any allegations of the breach of conditions of the agreement.

3. The respondents alleged that this connection No. 782732 is S.T.D.-P.C.O. connection and is merely a licence on the terms and conditions as contained in the agreement of the granting of licence. That Ajmat Singh, father of the petitioner, owns a sweetmeat shop in the name of Adarsh Jalpan Grih situated at Roorkee Road, Chhutmalpur, and had been subscribing to telephone connection No. 782271 since 10.12.1995. That when the petitioner moved for S.T.D.-P.C.O. connection in 1996, to be installed in the same shop of his father, then both the father and the son filed affidavits and the father permitted and authorised his son for opening the S.T.D.-P.C.O. connection in his shop. That the shop is on rent with the father. That licence for running P.C.O. was granted to the petitioner by virtue of agreement dated 24.9.1996, and P.C.O. was allotted and telephone No. 782732 was given. That since the two telephone connections are in the same shop, the petitioner took advantage of it and misused the telephone of his father for the purposes of business of P.C.O., and, therefore, a bill of Rs. 98.353 became due against the father. That the rates of calls for P.C.O. and individual-subscribing are different. The father has not been depositing the outstanding amount due from him. That due to this misuse of the telephone of the father by the petitioner for his own P.C.O. purposes, and due to non-payment of the outstanding bill not being paid, the S.T.D.-P.C.O. connection was cut off. That the rights of licensee-petitioner are derived from contract, and the writ petition is not maintainable for enforcing the contract.

4. By rejoinder-affidavit, it was deposed by the petitioner that wrong bills were received by his father and later on the bill for Rs. 7,38,871 was corrected and instead Rs. 540 were mentioned, and similarly another bill for Rs. 1,92,575 was given to his father but it was corrected to Rs. 1,050 and so on. That the bill given to the father is wrong. That there was no material with the respondents in respect of misuse of the telephone of the father by the petitioner for the purposes of business of the petitioner.

5. Learned counsel for both the parties were heard.

6. Learned counsel for Union of India argued that the present case is quite different from the cases where the connection of telephone is given to a subscriber; because in the instant case the S.T.D.-P.C.O. connection was given for the purposes of business, after the parties had entered into a contract. The respondents have filed the photocopy of the terms and conditions for the installation, maintenance and operation of pay phone which was executed by the licensee. The respondents have also filed photocopy of Circular No. 31.11/76-PHB, dated 13.4.1997, which lays down the policy regarding opening of Public Call Office (P.C.O.) by departmental P.C.Os. and by private P.C.O. with C.C.B. instruments and by private P.C.Os. -attended type. The respondent's case is that

the writ petition under Article 226 of the Constitution of India is not maintainable and does not lie because the agreement, under which the petitioner had been authorised to work, and licenced to run the P.C.O., is a non-statutory contract. It is argued that the rights of the parties are governed by the terms of the contract, and not by statutory provisions ; and that no writ or order can be issued under Article 226 of the Constitution of India by this Court for enforcing such a contract. For this, reliance was placed on the Full Bench case of this Court in Shiv Mohan Lal v. State of U. P. and others 1993 ALJ 242. In that case, the agents were selected by the Collector of U. P. State in a letter by Government in exercise of powers given in clause (4) of Order of 1990, issuing instructions to them, laying down procedure for such selection, and a contract was entered into by such agents with Collectors in pursuance of the said letter of Government to run the fair price shops to sell the scheduled commodities. Such contracts were held to be non-statutory contracts and were found to be not enforceable under Article 226 of the Constitution of India. It was held that the authorised agents could not challenge the breach of such contracts under Article 226 of the Constitution of India. It was also found that merely because directions had been issued under "statutory power", they cannot be treated as "law". In that case, the letter was addressed to the Collectors and not to any other person. It was also found that statutory Orders/Laws are normally not issued in the form of letters addressed to be officials of the State only. The directions were held to be under law, and not itself law because, law has to be published before any action can be taken under it. It was held further as follows :

"Whether the contract, which has been entered into between the State and the person aggrieved is non-statutory, the rights of the parties thereto are governed by the terms of the contract and not by constitutional provisions and no writ or order can be issued under Article 226 of the Constitution of India by High Court for enforcing such a contract. In such cases the question of violation of Article 14 or other provisions of the Constitution by the State or its officials does not arise. And any action taken or any order passed under such a contract by the State or its officials howsoever wrong or arbitrary, it may be, cannot be challenged under Article 226 of the Constitution of India. It is not open to High Court to enforce such a contract or to remedy the breach thereof by the State in exercise of its extraordinary jurisdiction under Article 226."

7. Applying the above law, it may be found whether the present case of the petitioner is also hit by this law laid down by the Full Bench. In the instant case, a circular dated 13.4.1977 aforementioned was issued laying down the policy regarding opening of Public Call Offices. The petitioner was also given the licence in this connection and a P.C.O. was opened. The petitioner bound himself by the terms of the contract as contained in deed dated 24.9.1996. Both the licensee and the telecommunication department had the right to terminate the arrangement by giving the notice of three months on either side. The licensee had to collect the prescribed charges for the calls from the persons at the rate prescribed from time to time by the Government. The circular letter dated

13.4.1977 aforementioned lays down further that the P.C.O. could be withdrawn at the discretion of sanctioning authority at any time by giving one week's notice in writing to the hirer. Condition No. 5 (v) of the circular letter runs as follows :

"Any violation of the conditions indicated in sub-paras (ii) to (iv) above will be adequate ground for withdrawing the facility, as per sub-para (i) above. This is besides any other reasons which may cause the withdrawal of the facility on technical or other considerations at the discretion of the sanctioning authority."

8. A proforma has also been prescribed for the contract with the circular letter.

9. Petitioner was, thus, a person authorised by the telecommunication department to run the Public Call Office (P.C.O.) in accordance with the terms of the contract. This contract made with the telecommunication department in the proforma prescribed by circular letter dated 13.4.1977 does not lay down the procedure for selecting a licensee. This circular letter lays down the manner in which the Public Call Office (P.C.O.) shall be run. It is the sweet discretion of the department to select the licensee under the provisions of the Telegraph Act and Rules, Government has the monopoly on communication, including telegraph, telephone and telex, etc. Both in the matters of installation of the instrument of communication and the service rendered, private citizens do not have any right. The Government, in exercise of its prerogative powers, makes the service available to citizens by a licence on satisfaction of certain conditions. If there is a breach of term of a contract, the grievance would be within the framework of the private agreement. In the instant case, the licence was given by the departmental authorities on the basis of the circular letter and this circular letter cannot be treated as "law". The directions issued under statutory power cannot be treated as "law". In the case of Raman and Raman Ltd. Vs. The State of Madras and Others, , referred in the case of Shiv Mohal Lal (supra), it was laid down as follows :

"Nor is there any basis for the argument that as the directions are issued under a statutory power, they are "law". The source of the powers does not affect the character of the things done in exercise of that power. Whether it is a law or an administrative direction depends upon the character or nature of the orders or the directions authorised to be issued in exercise of the power conferred. The letter dated 30.4.1977 addressed to the departmental authorities cannot be treated as "law" and is not "law" at all."

10. Therefore, the contracts entered into between the petitioner and the departmental authorities are not statutory contracts. We accordingly hold that the contract made by the petitioner with the department is a non-statutory contract. In the case of Shiv Mohan Lal (supra), it was observed as follows :

"..... it may be stated that Hon"ble Supreme Court has consistently taken the view that where the contract, which has been entered into between the State and the person aggrieved, is non-statutory, the rights of the parties thereto are governed by the terms of the contract and not by constitutional provisions and

no writ or order can be issued under Article 226 of the Constitution of India."

11. In the present case, the contract entered into between the petitioner and the department is non-statutory, and purely contractual, and the rights and liabilities of the parties are governed by the terms of the contract. There is no question of violation of Article 14 or of any other constitutional provision when there is any alleged breach of contract. The limitation imposed by the rules of "natural justice" also cannot operate upon power which are governed by terms of any agreement.

12. The petitioner alleges that there is breach of contract committed by the department-respondents in respect of condition No. 5 (v) of the aforementioned circular dated 13.4.1977. He says that his telephone was disconnected for the alleged default, in payment of the bill, committed by his father. This allegation pertains to the committing of the breach of the contract. The petitioner says that he was given no notice and no opportunity to explain as envisaged in the terms and conditions of licence in accordance with the circular letter dated 13.4.1977. This also pertains to the domain of breach of contract for which remedy lies elsewhere and not by writ petition under Article 226 of the Constitution of India.

13. In the case of Y. Pridhvi Kumar Vs. The General Manager, Telecom District, Hyderabad, ; and in the case of M/s. Ajay Iron and Steel Works and another v. Union of India and others AIR 1999 91, the matter was regarding default in payment of bill by the subscribers. The dispute in those cases did not relate to breach of any contract in between the licensee, to run the S.T.D.-P.C.O. on the one hand, and the telegraph department on the other. The controversy in the case in hand is, therefore, quite different from the controversy decided in those cases. It is not necessary for us to deliberate, while deciding the present controversy, over the non-statutory contracts relating to the breach of contract in between the subscriber and the telegraph department or the breach of Rule 443 of the Indian Telegraph Rules or other rules, or to give an opinion in a case in between the ordinary subscriber and the department.

14. The petitioner, in this case, therefore, cannot challenge the breach of the present non-statutory contract before this Court under Article 226 of the Constitution of India on the ground of violation of any of the constitutional provisions. The petitioner, however, does not appear to be remediless, and if so advised, he may seek his remedy elsewhere.

15. No writ, order or direction in the nature of mandamus as prayed can be issued in view of above. The petition, therefore, deserves to be dismissed.

16. The writ petition is dismissed accordingly. No order as to costs.