
(1996) 05 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4569 of 1996

Rahul Vashist

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-05-1996

Acts Referred:

Telegraph Rules, 1951 — Rule 414, 416, 443

Citation : (1996) 2 CivCC 156 : (1996) 113 PLR 550

Hon'ble Judges : P.K. Jain, J;N.K. Kapoor, J

Bench : Division Bench

Advocate : Ramesh Kumar, for the Appellant; S.K. Sharma, for the Respondent

Judgement

P.K. Jain, J.—Whether a person can be refused a telephone connection on the ground that one of his close relations, living in the same building or premises, having been himself/herself a subscriber to another telephone connection, has been declared to be a defaulter due to non-payment of the bills of such connection? This is the short question, although of vital importance, that arises for consideration in this writ petition. A few facts may be noticed.

2. The petitioner, a resident of Khanna and engaged in the business of export, applied for a telephone connection under "OYT General Category" in his office at Khanna for business premises. A demand note dated March 30, 1995 (Annexure P1) was issued and the same was revalidated on the request of the petitioner upto September 22, 1995 by respondent No. 2. The petitioner deposited a sum of Rs. 10,000/- as per the demand note (Annexure P-I) with the concerned Post Office vide receipt dated September 22, 1995 (Annexure P-2). In February, 1996, the petitioner came to know that the respondents had already released new telephone connections under the OYT General Category to other subscribers by ignoring him. His visits to the office of respondent No. 2 did not yield any result. As a result a legal notice dated 24.2.1996 was sent to respondent No. 2 to release a new telephone connection under the said category within ten days from the receipt of the notice. On the receipt of the notice of the petitioner respondent

No. 2 sought advice from respondent No. 3 vide letter dated March 2, 1996 (Annexure P-4) stating therein that the turn of the petitioner for OYT connection had been matured and that the father of the petitioner, who was the subscriber of telephone No. KHN-21166, had been declared defaulters of the department vide letter dated October 11, 1995 and the said telephone had been disconnected on September 22, 1991 against non-payment of O.S. dues amounting to Rs. 31,966/-.

3. As the respondents have failed to provide a new telephone connection under the said category the petitioner has challenged this inaction on the part of the respondents being infringement of his legal and constitutional rights and also being illegal, unjust, discriminatory and arbitrary. It has been stated that the application of the petitioner to provide a telephone connection under the said category cannot be rejected on the ground that his father had been declared a defaulter of the Telephone Department in respect of another telephone, that the petitioner is doing his independent business and his father has no connection therewith and that the respondents are at liberty to take any legal action against the father of the petitioner for effecting the recovery of the arrears but the petitioner cannot be penalised for any default of his father who is alive.

4. Notice of motion was given to the respondents. In their return, it has been stated that the petitioner was not provided telephone connection because his father was a defaulter in respect of telephone No. 21166 in the same premises and to avoid payment he has chosen to apply for a new connection in the name of his son i.e. the petitioner and that the petitioner was informed accordingly vide letter dated April 26, 1995. It has been stated that action was taken according to law and particularly under Rule 443 of the Indian Telegraph Rules, 1951 (for short the Telegraph Rules).

5. We have heard learned the learned counsel for the parties and have also perused the record.

6. Shri Ramesh Kumar, Advocate learned counsel for the petitioner has argued that the petitioner is a separate entity from his father and is not liable in law for the acts of omission or commission of his father. It has been argued by the learned counsel that the mere fact that the father of the petitioner who was a subscriber to a telephone independently in his own name had defaulted in making the payment of the bill in respect of that telephone connection cannot be made to be a ground for rejecting or refusing the request of the petitioner for a telephone connection independently in his own name and right. The learned counsel has placed reliance upon a judgment of the Bombay High Court in Dr. B.V. Manek Vs. Mahanagar Telephone Nigam Ltd., and that of the Andhra Pradesh in Y. Pridhvi Kumar Vs. The General Manager, Telecom District, Hyderabad, . Reliance has also been placed upon judgment of this Court in C.W.P. No. 16153 of 1994 titled as Akash Chander v. Union of India, decided on 23.1.1995.

7. On the other hand Shri S.K. Sharma, Advocate the learned counsel for the

respondent has argued that the petitioner is not entitled to a new telephone connection in the same premises because his father has been declared to be a defaulter of the department in respect of the telephone No. 21166 and that the petitioner has been put forward by his father to avoid the payment of the said arrears. In support of this argument, the learned counsel has placed reliance upon two judgments of the Madras High Court as in Writ Petition No. 13884 of 1996 titled as K. Amanullah v. Madras Telephones and Anr., and Writ Petition No. 8008 of 1986, Zarina Begum v. The General Manager Telephone Madras. Both these judgments of the Madras High Court are short in nature and have been reproduced by the respondents in para 1 of their preliminary objection in their return.

8. We have given careful thought to the respective arguments advanced at the Bar as well as various precedents cited before us.

9. Section 7 of the Telegraph Act, 1985 enables the Central Government to make rules for the conduct of all or any telegraphs established, maintained or worked by the Government. Sub-section 2 of Section 7 enacts further that rules may also provide for other 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. In pursuance of the rule making power granted u/s 7 of the Act, the Central Government has framed the Indian Telegraphic Rules, 1951. Part (V) thereof contains the rules for telephones. Rules 414 and 416 which are relevant for our purposes, read as under :-

"414. Applications for connections :- (1) Applications for the provision of telephone and other similar service or for alteration to any existing service shall be made in writing and in such form and manner as may from time to time be prescribed by the Telegraph Authority, (2) The charge for the application form for providing a new telephone connection shall be ten rupees.

416. Powers of Telegraph Authority.-(1) The Telegraph Authority may reject any application for the connection of a new telephone or for providing any similar service or for the alteration of any existing service.

(2) Before rejecting any application under sub-rule (1). The Telegraph Authority shall have due regard to the following factors, namely :-

a) the antecedents of the applicant and where the application was made by any person duly authorised by the applicant, the antecedents of such person;

b) Whether there are any telephone dues outstanding in the name of

i) the applicant, or

ii) the person duly authorised by the applicants if the application was made by such authorised person on behalf of the applicant;

c) Whether any Gazetted Officer of the Central Government or a State

Government duly authorised by such Government, has recommended to the Telegraph Authority that in the interests of the maintenance of law and order any telephone of any service as if referred to in sub-rule (1) should not be provided to the applicant, or as the case may be to the person duly authorised by the applicant and

d) any other relevant factor.

3) No action shall be taken under sub-rule (1) unless notice of not less than seven days has been given in writing to the person concerned and the Telegraph Authority has considered the representation if any, made by such person in the manner."

From a conjoint reading of these rules, it is evident that an application for the provision of a telephone connection can be rejected inter-alia on the ground that there are any telephone dues outstanding in the name of the applicant (emphasis laid). There is nothing in Rule 416 or any other rule of the said rules that an application for telephone connection can be rejected on the ground that there were telephone dues outstanding in the name of a relation or a close relation of the applicant. In view of the specific ground for rejection contained in clause (b) of sub-rule (2) of Rule 416, the residuary clause (d) would not confer any power upon the respondents to refuse a telephone connection on account of default in the payment of the bills of another telephone held by a close relation of the applicant.

10. The respondents cannot derive any help from Rule 443 which provides for disconnection of a telephone for default of payment. It reads as under :-

"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 or any telex service rented by him may be disconnected without notice....."

The term "subscriber" has been defined by Rule 2(pp) as under :-

"Subscriber means a person to whom a telephone service has been provided by means of an installation under these rules or under an agreement.

Thus it becomes clear that if the rent or other charges in respect of the telephone service provided are not paid by the subscriber, any telephone or telephones rented by him may be disconnected without notice. This rule does not empower the respondents to reject an application for a new telephone connection made by a person other than the subscriber irrespective of his relations with the defaulter.

11. In Y. Pridhvi Kumar's case (supra) while interpreting the scope of Rule 443, the following observations were made :-

"Mr. V. Srirang Rai the learned Additional Standing Counsel submits that inasmuch as there are arrears outstanding against the telephone of petitioners mother, the petitioner is vicariously liable for the said arrears and as such, for non-payment of the arrears outstanding against the petitioners mother, the telephone of the petitioner can be disconnected. I apprehend that I cannot accede to this contention of the learned standing counsel for the Central Government for the simple reason that the petitioner and his mother are having two different telephone and as citizens of India, they are entitled to be subscribers of telephones independently and merely because there is a relationship of mother and son and as the mother has defaulted in payment of amounts to the respondent, no liability can be fastened to the petitioner and neither the statute nor the rules framed thereunder empower the authorities to disconnect the telephone for the default committed by the petitioner mother. Even, if any statute makes such an imposition, the same would be arbitrary and unreasonable and be a clear infraction of the fundamental rights guaranteed under Article 14 of the Constitution of India."

The aforesaid view of the Andhra Pradesh High Court has been followed with approval by the Bombay High Court in the case of Dr. B.V. Manek (supra). A similar view has been expressed by the Delhi High Court in Smt. Krishan Kumari v. Delhi Mahanagar Telephone Nigam Ltd. 1989 RLR 393.

12. Thus it becomes clear that neither the statute nor the rules framed thereunder empowers the authorities to fasten the liability of subscriber upon his relation, however close he or she may be. It has been specifically held in the above decisions that disconnection of a telephone on such a ground would be arbitrary, unreasonable and violative of Article 14 of the Constitution of India. The same analogy would apply to the grant or refusal of a new telephone connection as envisaged by Rule 414 read with Rule 416 discussed above.

13. The respondents have mainly relied upon two judgments of the Madras High Court as reproduced in para 1 of the preliminary objection of their return, to justify their action in refusing the new telephone connection to the petitioner. Both the judgments may be noticed as under :-

"W.P. No. 13884 of 1995 K. Amanullah v. Madras Telephones and Anr..

ORDER

This case is unlike the usual ones. The father, having had the benefit of a telephone and falling into arrears to the tune of Rs. 16,000/- had set up his son to apply independently. The son has come up here as though his telephone has been disconnected. Certainly, having regard to the facts of the case, which are set out in detail in the counter affidavit. I do not think the petitioner is entitled to any telephone connection. The writ petition is dismissed without prejudice to the right of the father to pay the arrears and get back the telephone connection. No costs.

W.P.No. 8008 of 1986 Zarina Begum v. The General Manager Telephones.

Admittedly the husband of the petitioner owes arrears to the Telephone Department. As to what exactly is the quantum is pending in W.A. No. 320 of 1981. Therefore, till that is settled there is no question of providing telephone connection in the name of the petitioner (wife).

Hence dismissed."

Respectfully we are unable to subscribe to the views expressed by a Single Bench of the Madras High Court in the above cases. The obvious reason is that no reference has been made to any of the statutory provisions whereunder a son can be denied a telephone connection for a default of his father or the wife can be refused a telephone connection for default of her husband. We reiterate that a son has an independent and separate legal entity from his father. The express provisions contained in the rules discussed above put the matter beyond doubt that a new telephone connection can be denied to an applicant on account of his own default and not on account of a default of his father or wife or any other close relation.

14. The learned counsel for the respondent has painted a horrifying picture of what will happen as a result of the decision which we are in the process of making. He submits that if the petitioner is permitted a new telephone connection without enforcing the liability standing against his father, that would cause a loss to the exchequer and that every subscriber would escape his liability and at the same time would be having the facility of a telephone at his residence or office in the name of his other relation living in the same premises. We do not accept the gloomy prognosis. The rules as being interpreted by us may produce some difficulty, is no reason for us to come to the conclusion other than that which appears to us to be right on the wording of the rules as they stand. Respondent No. 1 in exercise of its rules making powers can very well amend or modify the rules so as to lay down effective measures for the recovery of the rental and other charges of the telephone connection.

15. As a result of the above discussion, we hold that the refusal on the part of the respondents to release the telephone connection under the OYT General Scheme for which the petitioner has already deposited the requisite amount in pursuance of the demand note (Annexure P-1) is arbitrary unreasonable and a clear infraction of Article 14 of the Constitution of India. Consequently, the rejection letter dated April 26, 1995 stated to have been issued by the respondents is quashed. The respondents are hereby directed to release a telephone connection to the petitioner under OYT General Scheme in pursuance of the demand note (Annexure P-1) within a period of one month from today. However, in the circumstances there will be no order as to costs.