

(1987) 02 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18530 of 1986

Ram Niwas Singh

APPELLANT

Vs

District Manager, Telephones, Allahabad and Others

RESPONDENT

Date of Decision : 17-02-1987

Acts Referred:

Constitution of India, 1950 — Article 19, 226
Telegraph Act, 1885 — Section 7

Citation : AIR 1987 All 314

Hon'ble Judges : S.K. Mookerji, J; R.M. Sahai, J

Bench : Division Bench

Advocate : Ram Niwas Singh, for the Appellant;

Final Decision : Allowed

Judgement

R.M. Sahai, J.—This petition has been filed by a practising Advocate of this Court for direction to opposite party, the District Manager, Telephones, to grant him a permanent telephone connection. The claim is primarily founded on deemed registration in waiting list of Advance Deposit Scheme in 1981. Registration of applications in various categories, namely, own your telephone, special and ordinary category has been assailed as arbitrary. Clause 4 of special category which excludes lawyers even though it includes nurses, doctors and social workers is challenged as irrational. Violation of Article 19 is also claimed because by denying a telephone connection the opposite parties are interfering with his right to carry on profession.

2. Admittedly petitioner applied for a telephone connection in 1981 after obtaining form from commercial section of office of opposite party No. 1. In March 1981 a demand note of Rs. 800/- was sent to him. It is not clear if it was sent by ordinary post or under certificate of posting or registered post. The counter-affidavit is silent. The method of its despatch could not be substantiated even from the record as it is stated to be untraceable. To explain it the learned counsel urged that every applicant is informed, orally, at the time of presentation

of application to deposit the amount as required by rules for various schemes. According to him since petitioner had made an application under voluntary deposit scheme, he must have been informed orally to deposit Rs. 800/-. But as he failed to do so his name was not registered on waiting list. The argument is not supported by averments in counter-affidavit. It nowhere states about this practice in department. Nor is there any rule to this effect. In fact it could not be, obviously, because registration on waiting list can be done only if the application is in order and payment is made. But the second stage, namely, payment comes after the application is found to be in order. Therefore, the plea of oral intimation has to be rejected. It cannot be accepted also because the department itself sent a demand note of Rs. 800/- in March, 1981. Coming to the principal claim of petitioner the learned standing counsel urged that an applicant is brought on waiting list from the date an applicant makes payment of Rs. 800/- under Advance Deposit Scheme. And as the petitioner failed to do so not only in 1981 but even now he cannot claim that his application should be deemed to have been brought on waiting list. Learned counsel submitted that the responsibility was of petitioner to deposit the amount and not of the department to send him intimation. According to him the letter sent in March, 1981 even if it was served on petitioner it did not create any right in his favour. To examine this submission it is necessary to extract relevant rule relied by learned standing counsel published in telephone directory. It reads as under : --

"Registration on waiting list, is done strictly according to date of payment of advance deposit indicated below."

It is urged that an application is not even liable to registration in absence deposit of Rs. 800/-. The submission appears to be devoid of any substance as the provision deals with registration on waiting list. Whether petitioner was entitled to be brought on the list is another matter which shall be adverted, later, but his application was bound to be registered on the date it was made. It is clear from Sub-Clause (c) of Clause (1) of instructions which provides that the date of registration in ordinary category shall be the date on which the application is received in the office. In fact all applications made for a permanent telephone connection including applications under special category are first registered under ordinary category. Thereafter the applications are scrutinized. And if the claim for special category is allowed then the application is registered in that category. Sub-Clause (e) of Clause (1) of instructions provides that applications made under special category shall be registered only after the department on the basis of papers submitted to it allows the claim. Till then an application continues to be registered in ordinary category. Registration in ordinary or special category is not the same thing as registration on waiting list under rule extracted earlier. The first registration that is in ordinary category is from the date of application and in special category from the date of allowing of claim. The next registration that is registration in waiting list of Advance Deposit Scheme is from the date of actual payment. Thus the application of petitioner was liable to registration. It was done as well. His claim for grant of a connection under Advance Deposit

Scheme was allowed as it must have been after allowing his application for registration in special category that the department must have sent a demand of Rs. 800/-. Although no rule or guideline has been pointed out in this regard but as explained it is apparent from reading of instructions that every application is registered first in ordinary category then it is brought under special category and then the amount for special category is to be deposited. The deposit has to follow allowing of application under special category and not precede it in absence of any rule, obviously, because the department may not allow the application for being brought in special category. After the payment demanded by department is made it entitles an applicant under rules to be brought on waiting list. It is the date of actual payment which results in registration on waiting list. Since the right of a person to be brought on waiting list flows from the date of payment the rule or clause has to be interpreted in a manner in which it may act fairly without prejudice to either. It can better be explained by an illustration. Two persons apply for telephone connection on same day. One attaches a bank draft or cheque of the advance deposit as well. The other files an application only. The department after scrutinising finds both the applicants in order. Since one has attached cheque or bank draft the amount is credited to department. And from that date he is put on waiting list. The other applicant who has only filed application has to be informed by department to deposit the advance amount. From the date he makes deposit he is entitled to be brought on list. The second applicant is entitled first to an intimation from the department that his claim has been accepted and then to deposit the amount within the time provided. More so because Clause (f) preserves the right of department to refuse or to allow an application for grant of telephone connection. Intimation is necessary not only for payment but for information that the application has been allowed. In this process the second applicant may be placed below the first applicant in the waiting list but the department cannot claim that an applicant who does not deposit the amount along with application or on oral intimation by the assistant in the office for which there is no rule cannot be brought on waiting list.

3. Therefore the department was required to intimate the petitioner to deposit the amount as was done by demand note sent in March 1981. Two things could happen, one that intimation was received by applicant but for some reason he could not deposit the amount. Other that intimation did not reach to him at all. In the former, namely, service of demand note and failure to deposit the petitioner could not claim to be brought on waiting list. But if the intimation was not served then what happens is the question, as non payment due to non service results in depriving an applicant from being brought on waiting list. Before answering it, it may be ascertained how the demand note has to be served. No rule or circular has been placed in this regard. Nor it has been stated what practice is followed by department, that is, are such intimations sent by ordinary post or under certificate of posting or under registered cover. In absence of it, it has to be assumed that intimations are sent by normal method in which letters are despatched under Postal Act. It was stated by learned standing counsel that

intimation to petitioner was sent by ordinary post. Then no presumption of service arises under law. A heavy responsibility is cast on the department to establish it affirmatively that the intimation was not only sent but it was received or served on the person concerned. If it fails to do so or discharge the burden placed on it then it has to be presumed, as in this case, that the decision of the department to give a permanent connection could not be made known to consumer because of the failure on the part of office to do what it should have done, that is, informed the petitioner. The result was that due to this omission the petitioner could not deposit the amount in 1981 and his registration on waiting list could not be done even though the department had accepted his application for grant of permanent connection. The petitioner was thus deprived of right of coming on waiting list due to failure on the part of department to serve the intimation on him. In service oriented departments grievance may arise not only because functioning was clearly illegal but even when it acts unfairly, prejudicially or belatedly. If the department failed to discharge its obligation then it cannot be permitted to cover up its defaults by raising on unjust plea that petitioner should have kept on enquiring. Why should a consumer run to the office every day when he had done all that was required to be done by him. Consequently, the office may not have acted illegally in sending the intimation by ordinary post, but letter having not been served it acted prejudicially to petitioner. The failure of the petitioner to deposit Rs. 800/-, therefore, could not recoil on him. In law a thing is deemed to have been done if it would have been done but for failure of defaulting party. Since petitioner was willing to deposit Rs. 800/- in 1981 but he could do so only after intimation which though sent was not served, it shall be deemed that the deposit would have been made within time. Therefore, it should be deemed that petitioner had made deposit in 1981 and his name shall be deemed to be on waiting list on same serial number on which it would have been if he would have made deposit on the last date mentioned in the intimation. In other words petitioner is deemed to be on the waiting list on 1981. Since from counter-affidavit it does not appear that any applicant of voluntary deposit scheme of 1981 is on waiting list, the petitioner is entitled to a telephone connection without any further delay on payment of charges including Rs. 800/-.

4. A feeble attempt has been made by the learned standing counsel to argue that petitioner having filed an application in 1986 for enquiry which has not been disposed off till now no direction can be issued for giving of permanent connection as the matter has not been finally disposed off. The argument has to be rejected because when the petition came up for hearing the learned standing counsel was granted time to ascertain if on fact stated the department was willing to grant petitioner a permanent connection. And the reply was in negative by the learned standing counsel on instruction received from District Manager, Telephone Further from the stand in the counter affidavit it is clear that the deposit of Rs. 800/- having not been made the name of petitioner stood deleted from Advance Deposit Scheme and no telephone connection can be given to him.

Therefore, the application stands disposed off, 5. In the result, this petition succeeds and is allowed, A direction is issued to opposite parties to give a permanent telephone connection to petitioner on his present address within a period of two months from the date of a copy of this order is served on opposite party No. 1.