
(1964) 08 MP CK 0018
In the Madhya Pradesh High Court
Case No : M.P. No. 244 of 1964 (J)

Rasiklal

APPELLANT

Vs

Divisional Engineer, Telephones

RESPONDENT

Date of Decision : 12-08-1964

Acts Referred:

Telegraph Act, 1885 — Section 3(1), 3(4), 7, 7B

Citation : (1964) JLJ 566

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen and R.K. Tankha, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—The three petitioners in this case pray for issue of writs of Certiorari for quashing notices issued to them by the Divisional Engineer, Telegraphs, Ralpur Division, ON 14th April 1964 informing them that the telephones installed at the petitioners' business premises would be disconnected within one week. They also pray that a direction be issued to the Divisional Engineer restraining him from giving effect to those notices.

2. The ground for disconnection stated in the notices was that the telephones had been installed for the benefit of the petitioners, but that they were being used by third parties and this user amounted to "unauthorized use." The petitioners contend that under the terms of the contract under which the telephones were installed and the Rules for Telephones contained in Part V of the Rules made u/s 7 of the Indian Telegraph Act, 1885, they have acquired a vested right to have the installation continued and the telephones could not be disconnected on the ground, stated in the notices issued to them when they have been regularly paying all the telephone bills and charges.

3. In the return filed on behalf of the Divisional Engineer, Telegraphs, it has been

averred that by allowing the use of their telephones by others the petitioners have contravened the telephone rules; and that the petitioners had no vested right in the continuance of the telephone installations and the Divisional Engineer was within his rights in issuing the notices for disconnection. It has further been stated that the dispute between the petitioners and the telegraph authority about the discontinuance of the telephones is a dispute falling u/s 7-B of the Telegraph Act, and the petitioners should have applied for arbitration of that dispute in terms of section 7-B.

4. It is not necessary to examine the contentions of the petitioners that they have acquired a vested right of having the telephones installed at their places continued and that the notices issued to them by the Divisional Engineer, Telegraphs, were illegal and without jurisdiction. The reason is that during the course of the hearing of the petitioner Shri Sen, learned counsel appearing for the petitioners, sought leave for amending the petition so as to seek the relief, in the alternative, of the issue of a writ in the nature of mandamus directing the opponent to make a reference of the dispute to arbitration u/s 7B of the Act. The point, therefore, that requires consideration is whether the dispute between the petitioners and the telegraph authority is one falling u/s 7-B of the Act. If the dispute is covered by section 7-B, then clearly there must be a reference of the dispute to arbitration in terms of section 7-B and in that even it would not be necessary to express any opinion on the other contentions raised by the petitioners.

5. Now, section 7-B of the Act is as follows:

7-B. Arbitration of disputes.

(I) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been, provided, the dispute shall be determined by arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of disputes under this section.

(1) The award of the arbitrator appointed under sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court.

The definition given in section 3 (4) of the Act of "telegraph line" runs as follows:

telegraph line" means 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;

6. The definition of the word "telegraph" given in section 3 (1) is wide enough to include "telephone". A telephone appliance or apparatuses clearly an appliance or instrument or apparatus used for transmission and reception of "sounds or

intelligence". If the definition of "telegraph" embraces "telephone", then it is obvious that a "telegraph line" as defined in section 3 (4) would also include "telephone line". That the definition of "telegraph" is wide enough to include telephone appliance or apparatus becomes clear from the fact that in the Act as it was originally enacted in 1885 "telegraph" was defined as "including appliances and apparatus for transmitting or making telegraphic telephonic or other communications by means of electricity, galvanism or magnetism." This definition further amended by Act VII of 1914 substituting the words "making, transmitting or receiving" for the words "transmitting or making". This definition of "telegraph" was further widened by the new definition inserted by the Telegraph Laws (Amendment) Act, 1961, in place of the old one which existed in the Act after the amendment made in 1914. It cannot be contended that the new definition was intended to curtail the scope of the definition of "telegraph" so as to exclude telephonic communications. In our opinion, the dispute between the petitioners and the telegraph authority, namely, whether the telephones installed at the petitioners' business premises could or could not be disconnected is a dispute falling u/s 7-B of the Act. Section 7-B clearly requires that this dispute has to be determined by arbitration in the manner laid down in that provision.

7. As the telephones installed at the petitioners business premises have already been disconnected, the only relief that the petitioners can get is of a direction to the opponent for referring the dispute to an arbitrator for determination.

8. For these reason, this petition is allowed; and the opponent is directed to refer the dispute between him as the telegraph authority and the petitioners concerning the discontinuance of the telephones at the petitioners business premises to an arbitrator for determination in terms of section 7-B of the Indian Telegraph Act, 1885. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amount of the security deposit shall be refunded to the petitioner