(1983) 11 DEL CK 0018

In the Delhi High Court

Case No : Civil Writ Petition No''s. 939, 940, 941, 942, 1010, 1011, 1012, 1013, 1031, 1032, 1147, 1179, 1169, 1204, 1205 and 1249 of 1983

S.G. Steels (P) Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 21-11-1983

Acts Referred:

Citation : AIR 1984 Delhi 272 : (1984) ILR Delhi 882 : (1984) RLR 390

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Judgement

S.B. Wad, J.

(1) The Indian Telegraph Rules were amended on 14-2-1983 requiring payment of security deposit of Rs. 10,000 by the telex subscribers. ''A new rule was added as 505-A for the new subscribers. Rule 505-B was introduced for imposing security deposit on the existing telex subscribers. In these petitions, filed by the existing telex subscribers, the validity of the said security deposit is challenged.

(2) Originally the writ petitions were filed when the demand notices for payment of security deposit were served on the petitioners. The telex subscribers were further warned through the said notices that if they would not deposit the security amount within one month it would be presumed that they were not interested in the telex connections and the telex connections would be disconnected without any further notice But no provision of law enabling such an imposition was stated in the notice. After the admission of the writ petitions the time for payment of the security deposit was extended till the end of September, 1983. When the counter-affidavit was filed, a copy of the amended rules, was . produced by the respondents. The writ petitions were thereafter amended so as to challenge the validity of the rules. As large number of cases were involved the hearing of the writ petitions was expedited. The counsel for the respondents fairly assured that till the judgment was pronounced, no recovery would be made from the .petitioners.

(3) Telex services are made available to the subscribers under the Indian Telegraph Rules, 1983 framed under the Indian Telegraph Act. Section 7 of the Act empowers the Central Government to frame rules for various purposes. Section 7(2)(h) is relevant for our immediate purpose. It reads : "7. Power to make rules for the conduct of telegraphs. (1) The Central Government may from time to time, by notification in the Official Gazette, make rules consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act. 885 (2) Rules under this section may provide for all or any of the following, among other matters, that is to say :- to (g) the time at which, the manner in which, the conditions under which and the persons by whom the rates, charges and fees "mentioned in this subsection shall be paid and the furnishing of security for the payment of such rates, charges and fees;" The imposition of the security deposit has been challenged on the following grounds : The Government cannot unilaterally change the terms of the original contract between the parties. When the telex connections were given there was no provision turn the security deposit. (ii)The amendment to Rule 505-B is prospective and, Therefore, no security deposit can be imposed on the existing telex subscribers. (iii) Imposition of the security deposit is arbitrary and vocative of Article 14 of the Constitution. . (iv) The imposition of the security is beyond the competence of the rule-making power of the Central Government. The only sanction provided by the Indian Telegraphs Act, in case of the breach of terms by'' the subscribers, is disconnection. (v) Sub-rule (2) of Rule 505-B introduced by the amendment is arbitrary and violates the principles of natural justice as it empowers the Department to withdraw telex service and apparatus without any notice. 886

(4) Rule 505-B, as introduced by 1983 amendment, reads: "505 B. Payment of security deposit by existing telex subscribers. (1) Every subscriber who has a telex connection on the date of commencement of the Indian Telegraph (Second Amendment) Rules, 1983 shall within a period of three months from such commencement deposit a sum of Rs. 10,000 to the Telegraph Authority as security for the said telex connection. (2) If the subscriber fails to deposit the amount specified in sub-rule (1) within the period specified therein, the Telegraph Authority may with- draw the telex service and remove any telex or other apparatus belonging to the Telegraph Authority.".

(5) It may be noted that Rule 505-A was also introduced by the same amendment in regard to the new telex service.

(6) The first ground of challenge raised by the petitioners, namely, that the Government cannot unilaterally change the terms of the agreement is misconceived and untenable. Under the provisions of the Telegraph Act and Rules, Government has the monopoly of communication, including telegraph, telephone, 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 license on satisfaction of certain conditions. It can be terminated at any time where there is breach of conditions. "The license cannot be termed as an agreement between the parties similar to commercial agreements. But even if it is assumed that the services are made available by an agreement between the parties the petitioners would find themselves in a bigger difficulty. If there is a breach of term of a contact 887 or a new term is allegedly added unilaterally, the grievance would be within the framework of the private agreement. Writ petition is not a remedy for enforcement of any contractual obligations. In the application form for license the petitioners have expressly undertaken to abide by the rules as modified from time to time.

(7) It is then submitted by the petitioners that the present amendment is beyond The competence of the Central Government as it is not warranted by the Telegraph Act. It is claimed to be ultra virus the Act because according to the petitioners the highest sanction for default on the part of the subscriber provided by the Act is disconnection. The argument is that because of this reason a security deposit in the nature of a sanction cannot be imposed. I do not find much substance in this argument. As quoted above, Section 7(2)(h) clearly provides for a security deposit. The communication equipment is a specialised equipment not readily available in Indian market. Much of it is produced by Government Departments and Companies. It was, Therefore, natural to provide for a security deposit through a rule-making power. The new Rule 505-B falls within the power given by the said Section and is, Therefore, not ultra virus of the Section. The sanction of disconnection already mentioned in the Act does not mean that that is the only sanction that can be imposed. But what is more important is that the nature of security deposit is not by way of a sanction or penalty. It is only a precautionary or anticipatory measure. The petitioners urge that the imposition of security deposit is arbitrary. Their complaint is that the experience of the Government of some subscribers making default in the payment or some subscribers not returning the machines does not entitle the Government to impose the security deposit on all subscribers. According to the petitioners, Government cannot treat unequals as equals become the law abiding citizens are equated with the breakers of law. This argument may be applicable to every type of security deposit taken under any law. There 888 are no permanent classes of people who are law abiding. There are no permanent classes of people who are law abiding and who are not law abiding. So also there are no permanent divisions between the regularly paying subscribers and non-regular subscribers. The persons who are today paying the subscriptions and charges regularly may become irregular in future and accumulate large arrears. This can be stated vice versa also. Rule 505-B was placed before the Parliament as is required to be done in all cases of the subordinate legislation. The rule is approved by the Parliament. It has a legislative force. The law thus created by the Parliament uniformly applies to all citizens. In fact. if there is some classification made in the application of law, it might be open to a challenge of discrimination or arbitrariness. The contention of the petitioners is, Therefore,

rejected.

(8) The petitioners have challenged the security deposit on yet another ground. It is submitted that the Government may have power to levy security deposit on the new subscribers as is provided by Rule 505-A (simultaneously introduced), but cannot impose a new deposit or a new liability on the existing subscribers. Doing so would amount to giving retrospective effect to the amendment. This challenge is also misdirected. Suppose if a subscriber has secured a license in 1970 and by an amendment made in 1983 a liability is created for him for previous years the case might fall under the mischief of retro-activity. It must be remembered in the present context that the liability is not in the nature of increase in the past charges which are recurring charges. The liability is in the nature of security deposit. This has to be paid only once. Technically speaking under the provisions of the Act and the Rules, a license is a yearly license from 1st of May to 30th of April, each year. In that sense a license renewed on 1-5-1983 can be treated as a new license and the security deposit can be imposed. The position may be akin to Rule 505-A. The difference between a new license and an existing license would only be that once a security deposit is paid it 889 will not be required to be re-paid so long as the license is renewed. The Rule does not suffer from any infirmity of retroactivity.

(9) The next submission of the petitioners is that the demand notices were bad since they were received after 1st of May and the petitioners were called upon to make the payment within one month. They submit that it could not have been possible for them to make the payment before 1st of May when the new license year begins resulting into disconnection. From the record it is seen that the said time for payment was extender by the Department dp to end of September under the orders of this Court. The counsel for the Respondents have further undertaken not to enforce the liability till the decision in the writ petitions is announced. Therefore, it cannot be said that the petitioners have no opportunity to make the payment within the year of license. This submission is rejected.

(10) The last submission of the petitioners, namely, that sub-rule 2 of Rule 505-B is vocative of the principles of the natural justice has some merit in it. It is now well settled that the Court will have to read the provision of natural Justice in a Section or a Rule if the same is silent. Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, will Therefore, read to include that the telex services shall not be withdrawn and telex and other apparatus shall not be removed unless a subscriber is served with a reasonable show cause notice for the said purpose. Sub-rule 505-B is, Therefore, held valid with the said requirement of natural justice imposed on it.

(11) To the extent of the requirement of the show cause notice in sub-rule (2) of Rule 505-B only the writ petition succeeds. Rest of the contentions are rejected. On the facts of the case, however, I pass no orders as to costs.

