

(1982) 01 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 270 of 1979 and 330 of 1980

Shankar Birmiwala and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-01-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Telegraph Act, 1885 — Section 7

Telegraph Rules, 1951 — Rule 413, 414, 434

Citation : AIR 1982 Raj 187 : (1982) WLN 127

Hon'ble Judges : Dwarka Prasad, C.J.; S.C. Agrawal, J.; M.L. Shrivastava, J

Bench : Full Bench

Advocate : L.L. Sharma, M. Mridul and M.R. Calla, P.C. Jain and B.L. Sharma, for the Appellant; R.K. Anand, for the Respondent

Final Decision : Dismissed

Judgement

Agrawal, J.—The petitioners in both these writ petitions are Advocates who had applied for grant of telephone connections. They wanted their applications to be registered in special category on the ground that they are public workers. The said applications have however, been registered by the District Manager, Telephones, Jaipur under the general category. Being aggrieved by the aforesaid order, the petitioners have filed these writ petitions. The said writ petitions were heard by a learned single Judge of this Court, who by his order dated May 6, 1981, has referred the same to a larger Bench, preferably by three Judges of this Court, for deciding the important Constitutional questions which arise for determination in these writ petitions. In view of the aforesaid order passed by the learned single Judge the writ petitions have been heard by this Bench. Since both the writ petitions raise common questions for determination they are being disposed of by this common order.

2. u/s 4 of the Indian Telegraph Act, 1885 (hereinafter referred to as "The Act"), the exclusive privilege of establishing, maintaining and working telegraphs has

been conferred on the "Central Government and the Central Government empowered to permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working of telegraphs, other than wireless telegraphs within any part of India. The term "telegraph" is defined in Sub-section, (i) of Section 3 of the Act to mean "any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signal, writing, images and sounds or intelligence of any nature by wire, visual or other electromagnetic emissions, radio waves or Hertzian waves, galvanic, electric or magnetic means." The expression "telegraph line" is defined in Sub-section (4) of Section 3 of the Act to mean 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". Section 7 of the Act confers on the Central Government the power to make rules making provision for the matters referred to in Clause (a) to (k) of Sub-section (2). Section 7(2)(c) enables the Central Government to frame rules prescribing the 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. Section 7(2)(f) enables the Central Government to make rules prescribing the charges in respect of the establishment, maintenance, working, repair, transfer or shifting of any telegraph line, appliance or apparatus. Section 7(4)(b) lays down that nothing in Section 7 or in any rules made u/s 7 shall be construed as subjecting the Central Government to any obligation to provide any telegraph line, appliance or apparatus for the purpose of affording means of telegraphic communication. Since a telephone is an instrument used for transmission and reception of sound by wire, it is "telegraph" as defined in Section 3(1) of the Act and a telephone connection is a "telegraph line" as defined in Section 3(4) of the Act. The provision of a telephone connection is, therefore, governed by the provisions of the Act and the rules framed thereunder.

3. In pursuance of the rule making power conferred on it by Section 7 of the Act the Central Government has made the Indian Telegraph Rules, 1951 (hereinafter referred to as "the Rules"). The rules relating to telephones are contained in Part V of the Rules, Le., Rules 411" to 459. Rule 413 lays down that all telephone connections and other similar services provided or authorised by the department shall, unless governed by a separate contract, be subject to the conditions set forth in the Rules. Sub-rule (1) of Rule 414 lays down that applications for 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. Sub-rule (2) of Rule 414 prescribes the charges for the application form for providing a new telephone connection. Sub-rule (1) of Rule 416 empowers the Telegraph Authority (as defined in Section 3(6) of the Act) to reject any application for the connection of a new telephone or for providing any similar service or for the alteration of an existing service. Sub-rule (2) however, lays down that before rejecting any

application under Sub-rule (1) the Telegraph Authority shall have due regard to the factors mentioned in Clause (a), (b), (c) and (d) of Sub-rule (2) and it further lays down that no action rejecting any application shall be taken by the Telegraph Authority 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 matter. Rule 434 prescribes the amounts which have to be deposited along with the applications for telephone connections and prescribes different amounts for applications for connections under the "Own Your Telephone" (O.Y.T.) scheme and applications falling in the general or special categories. Thus according to the Rules the applications for telephone connections fall in three categories, namely (1) "O.Y.T applications, (2) Special Category applications and (3) General category applications. The allotment of telephone connections to the applicants falling in the O.Y.T- Special and General categories is governed by the instructions for allotment of telephones issued by the Post and Telegraph Board, known as Telephone Allotment Rules. Under the said instructions, which were in force on the date of submission of the applications by the petitioners, non O.Y.T. applicants belonging to (1) Medical Profession -- Doctors, qualified Nurses and registered Mid wives; (2) Press ---Newspapers, Journals and Magazines registered with the Registrar of the Newspapers, registered news-agencies, credited press correspondents and press photographers; (3) Public Institutions -- recognised Schools and Colleges, registered Trade Unions, registered Co-operative Societies etc. etc., (4) Agricultural Farms -- Agricultural Farms having area of not less than 3 acres, but excluding gardens, orchards or large cultivations of tea, jute etc.; (5) Registered Small Scale Industries; and (6) Public men i.e. prominent social workers and public men who are actively engaged in such work and are supported by two registered social/ charitable institutions and two terminal public men, were entitled to be registered under the special category. In so far as applications submitted by the persons claiming to be registered in the special category on the ground that they are public men, it was further provided that the registration was subject to ratification by the Telephone Advisory Committee in stations where such Committees are functioning.

4. Shri S. Birmiwai (the petitioner in writ petition No. 270 of 1979) submitted his application for grant of a telephone connection on April 13, 1978. The said application was submitted by the said petitioner for being registered in the special category of public men i.e. public and social workers. In column 10 of the application the said petitioner gave the particulars of his public and social activities and the public and social offices held by him. Along with the application aforesaid the petitioner submitted two certificates obtained from two M- L. As. and certificates obtained from some social public organisations. The application of the said petitioner was placed before the Telephone Advisory Committee at its meeting held on Jan. 29, 1979, but since the Telephone Advisory Committee was of the view that the said petitioner should not be registered in the special category of public men, his application was registered in the general category

and he was informed by the District Manager of Telephones, by letter dated September 27, 1978, that the application of the said petitioner was not found suitable for being registered in the special category and, "therefore, it had been registered in the general category. Being aggrieved by the aforesaid action of the District Manager in not registering the application of the said petitioner in the special category and registering it in the general category, the said petitioner has filed this writ petition, wherein he has prayed that an appropriate writ, order or direction may be issued directing the respondents to release telephone connection to him.

5. Shri Lakhpat B. Mehta (the petitioner in writ petition No. 330 of 1980) submitted his application for allotment of a telephone connection on Sept. 3, 1979. In the said application the said petitioner wanted his application to be registered in the special category of public men and in column 10 of the said application he gave particulars of his public and social activities as well as the particulars of the offices held by him in the public/social organisations. In his application the said petitioner also mentioned the fact that he is an advocate and he should be considered on out of turn basis in the matter of providing telephone connection. Along with the application aforesaid the said petitioner submitted a number of certificates in support of his claim that he was a social worker. The application of the said petitioner was placed before the Telephone Advisory Committee at its meeting held on Nov. 9, 1979, but the Telephone Advisory Committee did not approve the registration of the application of the said petitioner in the special category. Thereupon the District Manager Telephones, by his letter dated November, 17, 1979 informed the said petitioner that his application for being registered in the special category on the ground of his being a public and social worker, had been placed before the Telephone Advisory Committee and the said petitioner was not found suitable for being registered in the special category and, therefore, his application had been registered in the general category. Being aggrieved by the aforesaid non-registration of his application in the special category and it being registered in the general category, the said petitioner has filed this writ petition, wherein he has prayed that an appropriate writ, order or direction may be issued directing the respondents to release a telephone connection to the said petitioner in the special category- In the writ petition the said petitioner has also prayed that the respondents be directed to treat the profession of an Advocate, Vakeel or Lawyer, by whatever name they may be called, similar to that of medical profession and that in the alternative the instructions of the rules making classification of the various applicants be declared ultra vires the Constitution of India.

6. In both these writ petitions the case of the petitioners is that Advocates also serve the public at large and an advocate cannot be treated differently from doctors, public workers, small scale industries and press etc. in the matter of allotment of telephone connections and that denial of preference to Advocates in the matter of registration in the special category for the purpose of allotment of telephone was arbitrary. In the writ petitions the petitioners have also asserted

that the petitioners ought to have been given a reasonable opportunity of being heard before an order refusing to treat their applications as falling within the special category, could be passed and that no such opportunity was given to the petitioners. In the writ petitions it has also been claimed that since the petitioners had fully complied with the requirements prescribed by the telephone department with regard to the applications to be submitted for registration in the special category as public men the authorities were bound to register the said applications in the special category and that in not registering the said applications in special category but in registering them in general category the authorities have acted arbitrarily.

7. The writ petitions have been contested on behalf of the respondents and in the replies to the writ petitions filed on behalf of the respondent it has been stated that although it is always the anxiety of the telephone department to make efforts to provide connections to every applicant as early as possible but still it is never possible to provide telephones as per demand immediately because there is long list of persons on waiting list which varies from locality to locality and the exchange planning is projected on the existence of the waiting list. In the said reply it has also been stated that to safeguard the interest of the public utility service the telegraph authority has framed rules which are being revised and changed from time to time whereby uniform policy has been laid down for whole of the country. According to the said rules certain classes of applicants have been included in special category and that the said classification has been made after looking into the functions of the applicants. According to the said reply a lawyer cannot be compared with a doctor because the services of a doctor are of great utility and in matters of emergency a telephone call has to be made for saving life of a person and, therefore, medical men have been included in the special category. With regard to the rejection of the applications of the petitioners for being registered in special category it has been stated in the said replies that the said rejection was made on the advice of the Telephone Advisory Committee which consists of several prominent citizens representing the various interests viz, trade, commerce and industries, press, medical profession and public workers. In the said reply it has been asserted that the petitioners were not entitled to a personal hearing by the Telephone Advisory Committee at the time when their applications were considered by the said Committee and that the action of the respondents in not registering the applications of the petitioners in special category and registering the same in general category, could not be said to be arbitrary.

8. At the outset it may be observed that even though in both the writ petitions the petitioners have prayed that an appropriate writ, order or direction may be issued directing the respondents to release telephone connections to the petitioners in special category, the learned counsel for the petitioners in both the writ petitions have conceded, during the course of arguments, that the petitioners cannot ask for the said relief and that the petitioner can only ask for their applications being registered in special category and the petitioners being

allotted telephone connection? out of the allocation that is made for the applicants registered in the special category,

9. The submissions of the learned counsel for the petitioners can be broadly divided under two heads. Under the first head fall the contentions with regard to the Constitutional validity of the classification of the applicants who are entitled to be registered in the special category and the right of the members Of the legal profession to be included amongst the applicants who are entitled to be registered in the special category. Under the second head fall the contentions with regard to the right of the petitioners to be registered in the special category on the basis that they are public and social workers and the validity of the orders passed by the respondents re fusing to register the applications of the petitioners in the special category of public men but registering the said applications in the general category. It may be observed that taking note of the importance of the aforesaid question with regard to the validity of the classification of the applicants who are entitled to be registered in the special category to the members of the legal profession this learned single Judge had issued notices to the Bar Council of Rajasthan and the local Bar Associations. In response to the said notices the Bar Council of Rajasthan as well as the Rajasthan High Court Advocates Association have entered appearance and Shri M. Mridul and Shri M..R Calla addressed the Court on behalf of the Bar Council of Rajasthan and Shri L. L. Sharma addressed the Court on behalf of the Rajasthan High Court Advocates Association on the questions with regard to the Constitutional validity of the classification of the applicants who are entitled to be registered in the special category and the right of the members of the legal profession to be included amongst the applicants who are entitled to be registered in the special category. We will first deal with the contentions that have been urged by the learned counsel for the petitioners as well as the learned counsel representing the Bar Council of Rajasthan and the Rajasthan High Court Advocates Association on the aforesaid questions covered by the first head.

10. The learned counsel for the petitioners as well as the learned counsel representing the Bar Council of Rajasthan and the Hajasthan High Court Advocates Association have submitted that registration of an applicant in the special category results in allotment of a telephone connection to him on a priority basis and that in the matter of allotment of telephone connection on priority basis no distinction can be made between the members of the legal profession and the various categories of applicants who are entitled to be registered under the special category, viz., members of the Medical profession, press, public institutions, agricultural farms, Small Scale Industries and public men. The learned counsel have laid strong emphasis on the role of the lawyer in a democratic State, specially in the matter of protection of the life, liberty and property of the citizen and have submitted that the considerations which apply to the members of the medical profession and other classes of applicants who are entitled to be registered under the special category apply with much greater force to the members of the legal profession and that there is no rational basis

for excluding the members of the legal profession from the classes of persons who are entitled to be registered in special category. According to the learned counsel the non-inclusion of the members of the legal profession amongst the class of persons who are entitled to be registered in special category is clearly arbitrary and that as a result of the non-inclusion of the members of the legal profession even though they are persons similarly situate with those who have been included amongst the applicants who are entitled to be registered in special category, the classification of the various classes of applicants who are entitled to be registered in the special category must be held to be arbitrary and unreasonable and violative of the right to equality guaranteed under Article 14 of the Constitution. The learned counsel have further submitted that the Court can issue an appropriate direction for inclusion of the members of the legal profession amongst the classes of applicants who are entitled to be registered in the special category. In the alternative the learned counsel have submitted that if the Court is of the view that such a direction for inclusion of the members of the legal profession amongst the classes of applicants who are entitled to be registered in the special category cannot be given, the rules relating to allotment of telephone which provide or classification of certain applicants who are entitled to be registered in special category should be struck down on the ground that the same are violative of the provisions of Article 14 of the Constitution.

11. Shri R.K. Anand, the learned counsel for the respondents, has, on the other hand, submitted that the members of the legal profession cannot be said to be persons similarly situate with the classes of applicants who are entitled to be registered in the special category and that there is no infirmity in the classification made under the Rules for allotment of telephones in that regard. Shri Anand has also submitted that even if it be held that members of the legal profession should have been included amongst the classes of applicants who are entitled to be registered in the special category, the rules cannot be struck down for the reason that the members of the legal profession have not been so included and that the Court cannot also give a direction for including the members of the legal profession amongst the classes of applicants who are entitled to be registered in the special category.

12. With regard to the right to equality guaranteed under Article 14 of the Constitution, the law is well settled that Article 14 enjoins upon the State to make laws that operate alike on all persons under like circumstances. Article 14, however, recognises that the State, in the exercise of its Governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies. In other words the State is not prohibited from classifying persons into groups or classes, but while thus classifying persons into groups or classes it must be ensured that the classification is not arbitrary but ^ rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the

object of the legislation. In order to pass the test of a valid classification the two conditions which are required to be fulfilled are (i) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (ii) that differentia must have rational relation to the object sought to be achieved by the legislation. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation provided such classification is not arbitrary in the sense aforementioned (See : Chandrachud, C. J. In re Special Courts Bill AIR 1971 SC 478 . A reasonable classification is one which includes all persons who were similarly situated with respect to the purpose of the law and the purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good. A classification may suffer from the defect of being under inclusive or being over inclusive. A classification is said to be under inclusive when the State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit on others who are similarly situated. A classification is said to be over inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. While examining the validity of legislation on the touchstone of Article 14 the Courts have drawn a distinction between a classification which is over inclusive and a classification which is under inclusive. In cases where the classification is found to be over inclusive the courts have interfered by striking down the offending part so as to exclude persons or groups who ought not to have been included in it. But the Courts have shown more tolerance towards laws which are challenged on the ground that the classification is under inclusive for the reason that the legislature is free to recognise the degrees of harm and it may confine the benefits or burdens to those classes of cases where the need seems to be clearest. A distinction has to be drawn between the role of Legislature which "has the affirmative responsibility" and the role of the Courts which have only the power to destroy, not to reconstruct." (See : The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another, . It is also well settled that unless the classification is unjust on the face of it the onus lies upon the party attacking the classification to show by placing the necessary material before the Court that the said classification is un-j reasonable and violative of Article 14 of the Constn.

13. In the matter of allotment of telephone connections it cannot be disputed that with the growth of trade and business and rapid increase in the pace of life a telephone connection facilitates the discharge of the normal functions of the citizens and this is more so in the urban areas. But in view of the limited economic resources that are available, it is not possible to provide a telephone connection to every person who applies for it and in spite of all the efforts towards expansion the demand for telephone connections far exceeds the supply.

The result, is that a person has to wait for some period before he secures a telephone connection. It cannot however, be ignored that the need of certain applicants for a telephone connection may be greater than that of others and in the allotment of a telephone connection to a particular applicant in certain cases may be beneficial to the general public and a long waiting period in such cases may not be conducive to the interest of the general public. To deal with such situations it is necessary that the demands of certain categories of applicants should be met on a preferential basis. This has been envisaged by the rule-making authority in framing the rules because from a perusal of the Rules (especially Rule 434) it appears that the applicants for allotment of telephone connections have been divided into three broad categories;

(i) O.Y.T. Scheme. "

(ii) Special category, and

(iii) General category.

Applicants under the O.Y.T. scheme are required to deposit a particular sum of money, which varies according to the capacity of the telephone exchange, and such applicants are entitled to certain preference in the matter of allotment of telephone connection inasmuch as certain percentage of available telephone connections are earmarked for the applicants under the O.Y.T. scheme. The reasons for giving preferential treatment to the applicants under the O.Y.T. scheme appears to be to collect financial resources which are necessary for the expansion of the telephone facilities in the country. The other category of applicants who are entitled to preferential treatment in the matter of allotment of telephone connections are those falling in the special category. Applicants not covered by the O.Y.T. scheme or the special category fall in the general category and their applications for grant of telephone connections are to be dealt with in the normal course.

14. The aforesaid categorisation of the applicants for telephone connections in the three categories mentioned viz., O.Y.T., special and general has not been challenged before us. The learned counsel for the petitioners as well as the learned counsel appearing for the Bar Council of Rajasthan and the Advocates Association do not dispute the need for giving preferential treatment to certain classes of applicants. The arguments of the learned counsel are confined to the validity of the classification of the applicants who are entitled to be registered under the special category.

15. The Rules are, however, silent with regard to the persons who can be treated as falling within the special category. With a view to supplement the Rules the telephone authorities, viz., the Post and Telegraph Board, have been issuing from time to time instructions containing the guidelines with regard to allotment of telephones whereby they have been allocating the percentage of telephone connections which should be made available for the different categories of applicants and have also been prescribing the classes of applicants who are

regarded as falling within the special category so as to be entitled to preferential treatment in the matter of allotment of telephone connections by being allotted the telephone within the quota set apart for the applicants belonging to the special category. It is well settled that if the statutory rules are silent on a particular matter it is open to the executive to issue administrative instructions with a view to supplement the statutory rules provided the said administrative instructions are not inconsistent with the statutory rules already framed. It cannot, therefore, be disputed that it was open to the telephone authorities to issue administrative instructions to supplement the Rules. The administrative instructions whereby the classes of applicants who are entitled to be registered in the special category have been defined, are thus instructions which supplement the Rules and they cannot be said to be inconsistent with the Rules.

16. As noticed earlier, the applicants who are entitled to be registered in special category under the administrative instructions which were in operation at the time when the petitioners had submitted their applications were those belonging to (i) Medical profession, i.e., doctors, qualified nurses and registered mid-wives; (ii) Press-- Newspapers, Journals and Magazines registered with the Registrar, Newspapers, registered newspaper agencies accredited press correspondents and press photographers; (iii) Public Institutions-- recognised schools and Colleges, registered trade unions, registered co-operative societies etc. etc.; (iv) Agricultural Farms having area of not less than 3 acres but excluding gardens, orchards or large cultivations of tea, jute etc.; (v) Registered Small Scale Industries; and (vi) Prominent social workers and public men who are actively engaged in such work. It has been stated at the bar that agricultural farms having an area of not less than 3 acres have not been deleted from the classes of applicants who are entitled to be registered under the special category. While examining the validity of the aforesaid classification of the applicants who are entitled to be registered in the special category it has to be borne in mind that the object of the Rules in giving preference in the matter of allotment of telephone connections to certain applicants can only be to advance the interest of the general public. The applicants who are in greater contact with the members of the public by virtue of their activities can legitimately ask for a preferential treatment in the matter of allotment of telephone connection because this will help the persons who wish to contact them to get in touch with them and the telephone connection would thus advance the interest of general public. Similarly preferential allotment of a telephone connection may be conducive to the interest of the general public in cases where the telephone connection is required for a place which is visited by the members of the public because a telephone connection would enable those persons being contacted from outside and would enable the persons visiting that place to make contact with persons outside- We have carefully considered the classes of applicants referred to above, who are entitled to be registered in the special category in the light of the aforesaid criteria and we are of the opinion that they satisfy the aforesaid criteria. The persons belonging to medical profession, namely, doctors,

qualified nurses and registered midwives are persons who are necessarily to be contacted by the members of the public in cases of emergency and the allotment of telephone connection on preferential basis to such applicants will facilitate such persons being called at a short notice in the event of an emergency and the allotment of telephone connections to such persons will thus subserve the need of the general public. As regards the second class relating to the press, i. e., Newspapers and Press correspondents etc., it may be observed that persons connected with the press serve the general public by publishing news which are of interest to the people and a telephone facility which enables the correspondents and the newspapers and journals to receive information and disseminate it to general public by publishing it cannot be said to be not conducive to the interest of the general public. As regards the third class, viz. public institutions, recognised schools and colleges, registered trade unions and registered co-operative societies etc it may be observed that a telephone connection is necessary for such institutions for the reason that large number of persons have to deal with these institutions and a large number of people visit the premises of these institutions. Same can be said with regard to prominent social workers and public men who are actively engaged in such work inasmuch as during the course of their work they have to contact a number of persons and a number of persons have to contact them. As regards small scale industries an argument had been advanced that telephone connection is required by such applicants for the furtherance of their own business and that giving preferential treatment to them in the matter of allotment of telephone does not subserve the public good. We are unable to agree with the aforesaid contention. It is true that allotment of a telephone connection will help in the furtherance of the business of the owners of the industries but it cannot be ignored that small scale industries are required to compete with larger industries and that it is the Policy of the State to encourage the small scale industries so as to restrict the growth of monopolies and other restrictive trade practices. It can, therefore, be said that public interest is subserved in the growth of such small scale industries. Moreover a number of workmen are employed in such industries and a telephone connection would facilitate persons from outside getting in touch with the persons employed in the industry and would also enable the persons employed in the industry to get in touch with persons outside. It may also be observed that the various classes of applicants who are entitled to be registered in the special category are those for whom it will not be easy to obtain a telephone connection under the O.Y.T. Scheme inasmuch as under the O.Y.T. Scheme an applicant is required to deposit a substantial amount of money, and the applicants who are entitled to be registered in the special category cannot be said to be such who can easily spare the said amount inasmuch as they are either persons engaged in profession, namely, medical profession, journalists and public workers or public institutions. Same can be said with regard to small scale industries set up with the aid of loans advanced by the State or State controlled financial institutions and they cannot be expected to spare the amount which is required to be deposited for obtaining a telephone connection under the O.Y.T. Scheme. In

our opinion, therefore, the classification of the applicants who are entitled to be registered under the special category appears to be based on the following two criteria-- (i) the said applicants have to be in greater contact with the members of the public in connection with their activities, and (ii) the said applicants cannot be expected to, spare the necessary funds which are required for obtaining a telephone connection on priority basis under the O.Y.T. Scheme. It cannot be said that the aforesaid criteria are arbitrary and unreasonable. Nor can it be said that the said criteria have no rational connection with the object sought to be achieved in the matter of allotment of telephone connections on a priority basis to certain category of applicants, namely, to subserve the good of general public. We are, therefore, unable to hold that the classification of the applicants who are entitled to be registered under the special category is arbitrary and irrational so as to be violative of the provisions of Article 14 of the Constitution.

17. It has however, been submitted that even if the classification of the applicants who are entitled to be registered in the special category as contained in the administrative instructions, is held to be reasonable, the said classification cannot be upheld for the reason that it arbitrarily excludes the members of the legal profession, even though they are persons similarly situated inasmuch as there is no distinction between the members of the legal profession and the various classes of applicants who are entitled to be registered in the special category. It is submitted that the criteria which justify the classification of various types of applicants for being registered in the special category are equally applicable to the members of the legal profession because during the course of their profession the members of the legal profession also have to come into contact with members of the public and since they also belong to a profession most of them cannot be expected to arrange the necessary funds which are required to be deposited for obtaining a telephone connection under the O.Y.T. scheme. It has been submitted that the position of the members of the legal profession is, in no way, different from that of the persons belonging to the medical profession, inasmuch as while the persons belonging to medical profession are required to take care of the physical well being of the people, the persons belonging to legal profession also discharge very important function, namely, to safeguard the life, liberty and property of the citizens. In this context it has been pointed out that the legal profession has played a very significant role in upholding the values which are very essential for the growth of a free and democratic society and that the Constitution also recognises the important role that is played by the legal profession. Reference has been made to Clause (1) of Article 22 of the Constitution which ensures that every person who is arrested and detained in custody should be afforded the right to choose and to be defended by a legal practitioner of his choice as well as to Article 39A of the Constitution, which is one of the Directive Principles of State policy and directs that the State shall secure that the operation of the legal system promotes justice on a basis of equal liberty and shall in particular provide free legal aid, by suitable legislation or schemes in any other way, to ensure that opportunities of

securing justice are not denied to any citizens by reason of economic or other disabilities. Reliance has also been placed on the decision of the Supreme Court in *Madhav Hayawadanrao Hoskot Vs. State of Maharashtra*, wherein the Supreme Court has observed (Paras 14 & 17 of AIR):--

"Our judicature, moulded by Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer-power for steering the wheels of equal justice under the law."

"Lawyer participation is ordinarily an assurance that deprivation of liberty will not be in violation of procedure established by law."

Reliance has also been placed on the following observations of the Supreme Court in Special Reference No. 1 of 1964 under Article 143 of the In the matter of: Under Article 143 of the Constitution of India,

"If a citizen has the right to move the High Court or the Supreme Court against the invasion of his fundamental rights, the statutory right of the advocate to assist the citizen steps in and helps the enforcement of the fundamental rights of the citizen. It is hardly necessary to emphasise that in the enforcement of fundamental rights guaranteed to the-citizens the legal profession plays a very important and vital role, and so, just as the right of the judicature to deal with matters brought before them under Article 226 or Article 32 cannot be subjected to the powers and privileges of the House under Article 194(3), so the rights of the citizens to move the judicature and the rights of the Advocates to assist that process must remain uncontrolled by Article 194(3)."

On the basis of the aforesaid submissions all that can be said is that the classification which has been made for the purpose of registration of applicants in the special category suffers from the defect of under-inclusion.

18. What is the effect of such defect in the classification? We are of the opinion that the aforesaid defect of under-inclusion of the members of the legal profession would not justify our striking down the classification altogether. We may in this context refer to the decision of the Supreme Court in *Sakhawat Ali Vs. The State of Orissa*, . In the said case the validity of Clause (ix) of Sub-section (1) of Section 16 of the Orissa Municipal Act, 1950, which provided that a person who was employed as a paid legal practitioner on behalf of the Municipality or as a legal practitioner against the Municipality was not qualified for election to a seat in the Municipality had been challenged on the ground that it was violative of the provisions of Article 14 of the Constitution. The aforesaid disqualification was justified on the ground that there was possibility of a conflict between interest and duty if a Municipal Councilor was employed as a paid legal practitioner on behalf of the Municipality or against the Municipality. An argument was advanced on behalf of the appellant before the Supreme Court that besides the category of legal practitioners there were other categories also where there would be possibility of a conflict between interest and duty and that in so far as they were not covered by the qualifications prescribed by Section 16 (1) of the

Orissa Municipal Act, the provisions disqualifying the category to which the appellant before the Supreme Court belonged was discriminatory. It was particularly pointed out that a client who had litigation against the Municipality was not prevented from standing as a candidate for election; whereas the legal practitioner who held a brief against the Municipality was disqualified though the ban against both these categories should be justified on account of avoidance of conflict between interest and duty- The aforesaid contention was rejected by the Supreme Court with the following observations (at page 170 of AIR):

"The simple answer to this contention is that legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution."

19. We are, therefore, unable to accept the contention urged on behalf of the petitioners that the classification of the various applicants who are entitled to be registered in the special category should be struck down as being violative of the provisions of Article 14 of the Constitution for the reason that it does not include the members of the legal profession.

20. The learned counsel for the petitioners as well as the learned counsel representing the Advocates Association and Bar Council of Rajasthan have next submitted that the defect of under-inclusion in the classification can be rectified by the Court by giving a direction to the respondent to include the members of legal profession amongst the classes of applicants who are entitled to be registered in the special category. In support of the aforesaid submission, the learned counsel have placed reliance on the decisions of the Supreme Court in *Purshottam Lal and Others Vs. Union of India (UOI) and Another*, : *Purshottam Lal and Others Vs. Union of India (UOI) and Another*, ; *Laljee Dubey and Others Vs. Union of India (UOI) and Others*, and *Vishundas Hundumal and Others Vs. State of Madhya Pradesh and Others*, where the executive action was held to be violative of the provisions of Article 14 of the Constitution and appropriate directions were given by the Court to give relief to the petitioners or appellants before the Supreme Court. The learned counsel have also placed reliance on the recent decisions of the Supreme Court in *State of Kerala Vs. Kumari T.P. Roshana and Another*, and *Municipal Council, Ratlam Vs. Vardichan and Others*, : *Municipal Council, Ratlam Vs. Vardichan and Others*, wherein the Supreme Court has laid emphasis on the affirmative role of the Courts while giving the relief.

21. We have carefully considered the decisions of the Supreme Court referred to above, but we are of the opinion that we would not be justified in giving a positive direction to the respondents to include the members of the legal profession amongst the classes of applicants who are entitled to be registered in the special category. It is true (as observed by Mathew J. in *His Holiness*

Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, that judicial function involves both creation and application of law and to a certain extent the judicial function partakes the legislative function also and that Judges not only find the law but also make the law. But still there is a well defined distinction between the Judicial and the legislative functions which cannot be ignored and as pointed out by the Supreme Court in Rajender Singh and Others Vs. Santa Singh and Others, "Courts of justice cannot legislate or reconstruct law contained in statute or introduce exceptions when statutory law debars them from doing so". In Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another, the Supreme Court had observed that "We cannot, rewrite the law for the purpose of saving a portion of it"

22. Even though the Telephone Altot-ment Rules made by the Telephone Authorities whereby certain classes of applicants have been given preference in the matter of altotment of telephones, are administrative instructions only, but they are legislative in character inasmuch as by the said Rules certain principles of general application have been enunciated for the guidance of the telephone authorities in the matter of altotment of telephones. To give a direction to include the members of legal profession amongst the classes of applicants who are entitled to be registered in special category, would involve re-writing of the said rules by this Court which, in our opinion, would be impermissible,

23. In Purshottam Lal and Others Vs. Union of India (UOI) and Another, the Supreme Court was dealing with a case where in the matter of implementation of the recommendations of the Second Pay Commission, a particular category of Gov-ernment employees, viz., Research Assistants employed with the Forest Research Institute and Colleges at Dehradun, were denied that revised pay scales introduced on the basis of recommendation of Second Pay Commission for a particular period i.e. from July 1, 1959 to July 21, 1962, and the Supreme Court observed that since the recommendation of the Second Pay Commission had been accepted by the Government of India, it was bound to implement the said recommendations in respect of all its employees and if it did not implement the said report regarding some employees only it committed a breach of Arts. 14 and 16 of the Constitution in so far as these employees were concerned. In these circumstances the , Supreme Court, issued a direction that the revised pay scales of the petitioners before the Supreme Court would have effect from July 1, 1959, in accordance With the recommendations of the Pay Commission i.e. from the date the other employees of the Government of India had been given the said revised pay scales.

24. In Laljee Dubey and Others Vs. Union of India (UOI) and Others, the Supreme Court was dealing with the appeal arising out of a civil suit. The appellants before the Supreme Court had been denied the benefits of the recommendations of a Committee called "Kalyan-wala Committee" constituted by the Central Government which had recommended that persons doing clerical work should be designated as Lower Division Clerks. Although the said

recommendations of Kalyanwala Committee had been accepted by the Government of India, the appellants before the Supreme Court were not classified as Lower Division Clerks, even though they satisfied the tests held down by the said Committee. The Supreme Court held that the appellants had been arbitrarily discriminated in the matter of implementation of the recommendations of the Kalyan-wala Committee inasmuch as they were also entitled to be designated as Lower Division Clerks,

25. In *Vishundas Hundumal and Others Vs. State of Madhya Pradesh and Others*, the Supreme Court found that in the matter of implementation of a scheme for nationalisation of motor transport, the petitioners before the Supreme Court had been discriminated inasmuch as their permits were curtailed so as to prohibit them from operating their stage carriages on that portion of the route for which they had permit which was overlapping with the notified route whereas other operators, who though similarly situated, were favourably treated by neither curtailing nor canceling their permits and were permitted to ply their stage carriage on the routes for which they had permits passing over the portion of the notified route without any let or hinderance. The Supreme Court found that the aforesaid discrimination had been caused on account of inadvertence or oversight on the part of a governmental agency and instead of rejecting the whole scheme, the Supreme Court sought to rectify the same by directing that the order/conditions in permits curtailing the permits of the petitioners before the Supreme Court prohibiting them from passing over the overlapping parts of their route with the notified route be quashed and declared to be of no consequence till all the operators including those excluded and similarly situated were similarly treated.

26. In *State of Kerala Vs. Kumari T.P. Roshana and Another*, the Supreme Court was dealing with a case relating to admissions in the various Medical Colleges in the State of Kerala. The Supreme Court found that students belonging to Calicut University were entitled to 166 seats in accordance with the formula that was prescribed by the State Government. But in fact only 136 seats had been allotted to students of Calicut University and that students of Calicut University were entitled to 30 extra seats- But instead of quashing the admissions of the students of the other Universities who had been wrongly admitted to 30 seats which should have been allotted to the students of Calicut University, the Supreme Court, taking into consideration the special facts and circumstances of the case, gave a direction that 30 more seats should be added and that those 30 seats should be made available for students from the colleges affiliated to the Calicut University and that for the purpose of making selections for admission to those 30 additional seats the selection should be made on the basis of academic excellence strictly according to merit measured by marks secured. In the said case the learned Judges have laid stress on "the dynamics of the writ jurisdiction and the potential for affirmative Court action as part of remedial jurisprudence."

27. In *Municipal Council, Ratlam Vs. Vardichan and Others*, the Supreme Court

was dealing with a case arising u/s 133 Cr. P. C- which empowers a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in that behalf by the State Government to make conditional order requiring the person causing any unlawful obstruction or nuisance on any public place or from any way, river or channel which is or may be wrongly used by the public to remove such obstruction or nuisance within a time to be fixed in the order. In that case the Sub-divisional Magistrate, Ratlam had passed an order against the Municipal Council, Ratlam, which had been upheld by the High Court. The Supreme Court, while affirming the said order, gave certain supplementary directions to the Municipal Council as well as the State Government. The aforesaid case does not involve any question as to the breach of provision of Articles 14 and 16 of the Constitution or the jurisdiction of the High Court under Article 226 of the Constitution and is, therefore, of not much relevance to the present case.

28. It is to be noted that in the cases, referred to above, viz. Purshottam Lal and Others Vs. Union of India (UOI) and Another, , Laljee Dubey and Others Vs. Union of India (UOI) and Others, Vishundas Hundumal and Others Vs. State of Madhya Pradesh and Others, and State of Kerala Vs. Kumari T.P. Roshana and Another, the Supreme Court was dealing with the validity of executive action which was found to be violative of the provisions of Articles 14 and 16 of the Constitution of India inasmuch as the executive authorities had failed to apply the standard laid down by them to a particular person or classes of persons who were similarly situate and who were entitled to the said benefits under the orders issued by the Executive authorities and the Supreme Court gave directions extending the said benefits to the persons who had been denied the same. The present cases however, stand on a different footing. Here the petitioners are not seeking the benefits to which they are entitled under the Executive instructions issued by the Telephone Authorities because the said instructions, namely, the Telephone Altotment Rules, as they stand today, do not extend the said benefits to them. The petitioners are actually seeking a modification of those instructions so that the said benefits which are at present not available to them may be extended to them. In our view that is not permissible and the decisions of the Supreme Court in Purshottam Lal v. Union of India (supra), Lalji Dubey v. Union of India (supra), Vishnu Das Hindumal v State of M. P. (supra) and State of Kerala v. T. P. Roshana (supra) cannot lend support to the submissions of the learned counsel for the petitioners that such a direction can be issued by this Court so as to modify and amend the Telephone Altotment Rules framed by the Telephone Authorities. We are, therefore, unable to accept the contention of the learned counsel for the petitioners as well as the! learned counsel for the Advocates Association and the Bar Council of Rajasthan that this Court should give direction to the Telephone Authorities to include the members of the legal profession amongst the classes of applicants who are entitled to be registered in the special category.

29. Having dealt with the contentions urged by the learned counsel for the

petitioners as well as the learned counsel appearing for Advocates Association and Bar Council of Rajasthan with regard to the validity of the classification in the matter of applicants who are entitled to be registered in the special category and the inclusion of members of legal profession in the special category, we may now deal with the other contentions of the learned counsel for the petitioners made on the assumption that classification is valid viz. that even under existing classification the petitioners are entitled to be registered in the special category and the orders passed by the District Manager of Telephones registering their applications in the general category are liable to be quashed.

30. The first contention that was urged by the learned counsel for the petitioners in this regard was that the petitioners having fulfilled the requirements that were laid down by the Telephone Authorities with regard to applications for allotment of telephone connections to be made under the public men category, the petitioners were entitled to be registered in the special category and it was not open to the telephone authorities to go behind the said applications for the purpose of determining as to whether the petitioners were entitled to be registered in the public men category or not. We are unable to accept the aforesaid contention. In the instructions that have been issued for the allotment of telephones it has been prescribed that applications for prominent social workers and public men who are actively engaged in such work and are supported by two registered special public charitable institutions and two eminent public men can be registered in the public men category at the discretion of Head of Circle/District and such registration will be subject to ratification by Telephone Advisory Committee in stations where such committees are functioning. This shows that in order that an application may be registered under the public men category the head of Circle or District Administration of the telephones has to be satisfied that the applicant is a prominent social worker or public men and is actively engaged in such work and for that purpose he can scrutinise the certificates issued by the social or charitable institutions or public men that are filed by the applicant along with his application in support of his claim that he is a prominent social worker or public man who is actively engaged in such work- The mere filing of the certificate by registered social/charitable institutions and two eminent public men would not by itself entitle the applicant to be registered under the public men category, inasmuch as on the basis of the aforesaid certificates the head of Circle or District of the telephone administration has to be satisfied with regard to genuineness of the claim of the applicant for being registered in the public men category.

31. Another contention that was urged by the learned counsel for the petitioners in this connection was that although under the instructions for the allotment of telephones the head of Circle or District of telephone administration is required to register the applications under the public men category on his discretion and the said registration is only to be ratified by the Telephone Advisory Committee, in the present cases the District Manager Telephones, instead of applying his own mind and exercising his own discretion in the matter of registration of the

applications of the applicants placed the said applications before the Telephone Advisory Committee and the District Manager of Telephones merely acted on the basis of; recommendations of the Telephone Advisory Committee without applying his independent mind to the documents that were submitted by the petitioners along with their applications in support of their claim that they are prominent social workers actively engaged in such work. It is true that under the instructions for allotment of telephone connections the applications in the public men category are to be registered at the discretion of head of Circle or District of the telephone administration and the said registration is subject to ratification by the Telephone Advisory Committee and there has been a departure from the aforesaid procedure in the present cases inasmuch as before exercising his discretion in the matter of registering the applications of the petitioners the District Manager of Telephones placed the said application before the Telephone Advisory Committee and passed the necessary orders on the basis of the recommendations of the Telephone Advisory Committee. The aforesaid departure from the procedure with regard to allotment of telephones cannot, however, be said to have resulted in any prejudice to the petitioners because if that procedure had been followed the applications would not have been placed before the Telephone Advisory Committee if the District Manager of Telephones had taken the view that the petitioners were not entitled to be registered in the special category and even if he had registered the said applications in the special category the said decision could have been reversed by the Telephone Advisory Committee. By the procedure that has been followed in the present cases the possibility of the applications not being placed before the Telephone Advisory Committee has been excluded and the petitioners have had the benefit of their applications being considered by the Telephone Advisory Committee, which is a representative body. This may not have been possible if the District Manager of Telephones had himself arrived at the conclusion that the petitioners were not entitled to be registered in the public men category.

32. A further contention that was urged by the learned counsel for the petitioners in this regard was that the requirement about notification by the Telephone Advisory Committee has been prescribed only with regard to applications which are to be registered in the public men category and no such requirement of ratification by the Telephone Advisory Committee has been, prescribed with regard to other applications which can be registered in the special category, It does appear anomalous that the requirement with regard to ratification by Telephone Advisory Committee has been confined to application to be registered under the public men category. The object of ratification by the Telephone Advisory Committee is to ensure proper scrutiny of the applicants by a Committee on which the various sections of public are represented and who are in a better position to assess the merits of the claim of the applicants for being registered in the special category. The aforesaid considerations justifying scrutiny of the applicants cannot be confined to registration of applications in the public men category and they are equally applicable to other applicants falling in other

classes who wish to have their applications registered in the special category. We are, therefore, unable to appreciate why similar provision for ratification of the applications by the Telephone Advisory Committee has not been made with regard to applications other than those falling in the public men category. But the absence, of such a provision with regard to scrutiny of the applications for registration in other classes of the special category would not, however, invalidate the requirement contained in the instructions for allotment of telephones with regard to ratification of the registration of applications in public men category by the Telephone Advisory Committee. We do hope that the telephone administration would reconsider the instructions that have been issued and make appropriate provision providing for consideration of all applications by the Telephone Advisory Committee before they can be registered in the special category.

33. The second contention that was urged by the learned counsel for the petitioners was that the non-registration of the applications of the petitioners in the special category amounts to rejection of the applications of the petitioners and that in view of the provisions contained in Sub-rule (3) of Rule 416 of the Rules it was incumbent upon the Authorities to have given notice to the petitioners and to have afforded them an opportunity to make their representations against the proposed action and that the impugned orders passed by the District Manager of Telephones holding that the applications of the petitioners could not be registered in the special category were passed in violation of mandatory provisions of Sub-rule (3) of Rule 416 of the Rules. In our opinion there is no force in the aforesaid contention. Sub-rule (3) of Rule 416 of the Rules which provides for issuing of notice to the applicant is applicable only in those cases where the telegraph authority rejects an application for the connection of a new telephone or for providing any similar service or for the alteration of an existing service under Sub-rule (1). In the present cases the applications that were submitted by the petitioners have not been rejected under the impugned orders. All that the District Manager of Telephones has done under the impugned orders is to inform the petitioners that instead of being registered in the special category, their applications had been registered in the general category. It is not possible to accept the contention urged by the learned counsel for the petitioners that the applications that were submitted by the petitioners were only for being registered in the special category and since the said applications were not registered in the special category the same should be deemed to have been rejected. The applications that were submitted by the petitioners were in the nature of composite applications for grant of telephone connections and in the said applications the petitioners wanted allotment of telephone connections on preferential basis under the special category on the ground that they were social workers. The non-registration of the said applications in the special category only means that the petitioners will not be able to get a telephone connection on a preferential basis under the special category. This does not, however, mean that the applications of the petitioners

for grant of a telephone connection should be deemed to have been rejected.

34. The learned counsel for the petitioners have next contended that even if the provisions of Sub-rule (3) of Rule 416 of the Rules are held to be not applicable the petitioners were entitled to be afforded an opportunity of being heard before an order rejecting their claims for being registered in the special category, could be passed. In support of their aforesaid contention the learned counsel for the petitioners have placed reliance on the decisions of the Supreme Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, S.L. Kapoor Vs. Jagmohan and Others, and Swadeshi Cotton Mills Vs. Union of India (UOI), We find ourselves unable to accept the said connection. It cannot be disputed that during the last two decades the concept of natural justice has made great strides in the realm of administrative, law. The reason is that in a modern social welfare State like ours the jurisdiction of the administrative bodies is increasing at a rapid rate and since the orders passed by the administrative authorities affect the rights of the citizens, the law has taken note of this increasing interference by the administrative authorities with the rights of citizens and the traditional distinction between administrative power and exercise of judicial or quasi-judicial power is no longer enforced with that strictness and even in the matter of exercise of administrative powers, the Courts insist that the power must be exercised justly and fairly and not arbitrarily and capriciously. The principle that is now followed by the Courts is as laid down by the Supreme Court in Maneka Gandhi v. Union of India (supra), that "even in an administration proceeding which involves civil consequences, the doctrine of natural justice must be held to be applicable." In Mohinder Singh Gill v. Union of India (supra) the Supreme Court has reiterated that "a civil right being adversely affected is a sine qua non for the invocation of the audi alteram partem rule". In the said case the Supreme Court has also observed that "civil consequences undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages" and that "in its comprehensive connotation everything that affects a citizen in his civil life inflicts a civil consequence." In the said case however, the Supreme Court have expressed their agreement with their earlier decision in Union of India (UOI) Vs. Col. J.N. Sinha and Another, wherein the Supreme Court had rejected the contention that the compulsory requirement of a government servant involves civil consequences. The Supreme Court held that such a retirement does not "take away any of the rights that have accrued to the government servant because of his past service. In Mohinder Singh Gill's case (supra) the Supreme Court have also reaffirmed the law laid down in Ram Gopal Chaturvedi Vs. State of Madhya Pradesh, wherein it was held that a temporary government servant was not entitled to challenge an order of termination on the ground that was passed without affording to him an opportunity of being heard. In view of the aforesaid decisions in Union of India v. J. N. Sinha (supra) and Ram Gopal Chaturvedi v. State of M P. (supra) which have been reaffirmed in

Mohinder Singh v. Chief Election Commissioner (supra), it is not possible to hold that the rejection of the claim of the petitioners to be registered in the special category involves civil consequences and that before such an order could be passed the petitioners were entitled to be given an opportunity of being heard.

35. The next contention that was urged by the learned counsel for the petitioners was that a telephone connection is essential for the growth of human personality inasmuch as it enables a person to keep in touch with various sections of the people and it constitutes a part of the right to personal liberty guaranteed under Article 21 of the Constitution and that the right of the petitioners to obtain telephone connection can be restricted only by procedure established by law and that procedure must be reasonable and not arbitrary. The submission of the learned counsel for the petitioners was that the Rules in so far as they do not make provision for an opportunity being given to an applicant before a decision is taken on the question as to whether his application should be registered in the special category or in the general category, cannot be said to be laying down a procedure which is reasonable and not arbitrary. In support of the aforesaid submission the learned counsel have placed reliance on the decision of the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and *Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others*, For the purpose of the present cases we do not propose to go into the question as to whether the allotment of a telephone connection is so necessary for the development of human personality as to form part of the right to personal liberty guaranteed under Article 21 of the Constitution because even if it is assumed that a telephone facility is necessary for the development of the human personality and provision of the facility of a telephone is a part of right to personal liberty, we are unable to agree with the contention of the learned counsel for the petitioners that the Rules are violative of the provisions of Article 21 of the Constitution, because in Rule 416 of the Rules a provision has been made for notice being given to the applicant before his application for a telephone connection is rejected. In other words the Rules provide for an opportunity being given to the applicant before his application for allotment of a telephone connection is rejected. It is true that the Rules do not make provision for an opportunity being given to the applicant before his claim for being allotted a telephone connection on a preferential basis in the special category is rejected. But allotment of a telephone connection on preferential basis cannot, in our opinion, be regarded as an integral part of the right to personal liberty. The omission of any provision in the Rules providing for an opportunity being given to the applicant before his claim for being registered in the special category is rejected, cannot, therefore, be held to be an infirmity which would render the procedure laid down in the Rules as unreasonable or arbitrary. We are, therefore, unable to accept the contention urged by the learned counsel for the petitioners that the procedure laid down in the Rules is violative of the provisions of Article 21 of the Constitution.

36. Lastly it was urged by the learned counsel for the petitioners that it was

incumbent upon the Telephone Advisory "Committee to have recorded its reasons for not accepting the certificates that were submitted by the petitioners along with their applications and for arriving at the conclusion that the petitioners were not entitled to be registered in the category of public men. It has been submitted that in the absence of such reasons having been recorded by the Telephone Advisory Committee, the decision, of the Telephone Advisory Committee must be held to be arbitrary. In our opinion there is no merit in the aforesaid contention. As laid down by the Supreme Court in Travancore Rayon Ltd. Vs. Union of India (UOI), the rationale behind the requirement to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which a conclusion is reached in cases where non-judicial authority exercises judicial functions is that "when judicial power is exercised by an authority normally performing executive or administrative functions the Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute uninfluenced by extraneous considerations of policy or expediency-" In the present cases the Telephone Advisory Committee, while considering the suitability of the petitioners for being registered in the special category of the public men in the matter of allotment of telephone connections on preferential basis, was not exercising any judicial or quasi-judicial function but was purely taking an executive or administrative action, viz., registering the application"; of the petitioners for allotment of a telephone connection. In our opinion it was not necessary for the Telephone Advisory Committee to have recorded their reasons for arriving at the conclusion that the petitioners were not suitable for being registered in the special category of public men. The record relating to the proceedings of the Telephone Advisory Committee in which the applications of the petitioners were considered, have been placed by the respondents before us and on a perusal of the same we find that the various certificates that had been appended along with the applications which had been submitted by the various applicants, including the petitioners for being registered in the special category of public men, were brought to the notice of the Telephone Advisory Committee and out of the said applicants the Telephone Advisory Committee preferred certain applicants but did not consider the petitioners suitable for such registration. On the basis of the material on record it is" not possible to hold that the aforesaid conclusion that was arrived at by the Telephone Advisory Committee was arbitrary or is based on extraneous considerations.

37. Thus none of the contentions urged by the learned counsel for the petitioners can be accepted. The writ petitions are, therefore, dismissed. But in the circumstances of the case the parties are left to bear their own costs in these writ petitions.