(1994) 09 MAD CK 0070

In the Madras High Court

Case No : Writ Petition No''s. 12955 of 1993 and 10200, 13118, 13128, 13214, 13222, 13842 and 13856 of 1994

Tamil Nadu S.T.D., P.P.C.O. Operators Association	APPELLANT
Vs	
Union of India (UOI) and Others	RESPONDENT

Date of Decision : 08-09-1994

Acts Referred:
Constitution of India, 1950 — Article 12, 226, 236
Telegraph Act, 1885 — Section 3, 3(1), 4
Telegraph Rules, 1951 — Rule 445, 6

Citation : (1994) 09 MAD CK 0070

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : K. Chandramouli for S. Viswanathan, R.L. Narayanan, for Rank Associates and V. Anantharaju, for the Appellant; R. Santhanam, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Kanakaraj, J.—All these writ petitions relate to the demand of additional security deposits from the operators of S.T.D., P.P. Call Offices by the Respondents, Madras Telephones. Except for minor variations, the facts as set out in W.P. Nos. 10200 of 1994 and 12955 of 93 may be taken as sufficient for the disposal of the writ petitions. These two writ petitions have been filed by an association formed with the object of protecting the interest of its members, all of whom are owners of STD PP Call Offices. The Government of India is said to have announced a policy of giving employment to unemployed youths, widows, destitutes, handicapped persons by allowing them to operate such Call Offices. At the time of installation of the necessary equipments the operators were directed to give security in a sum of Rs. 12,000. Once in a fort- night the bill for the use of such telephones by consumers are collected from the operators. The operators are entitled to collect and appropriate for themselves 20 paise per call upto 10,000 units, and 10 paise per call above 10,000 units. The security amount of Rs.

12,000/- was calculated on the basis of the minimum guarantee for a month which was fixed at Rs. 2,000/-. Six times of the minimum guarantee was taken as security deposit. They are aggrieved by a circular dated 14.8.92. The circular prescribes that the security deposit could be deposited either by cash or bank guarantee. At the time of the initial commissioning of the pay phone, the security deposit should be equal to six months minimum guarantee. After the expiry of a period of six months, the security deposit is re-worked and should be made equal to one month''s average revenue or six months'' minimum guarantee money, whichever is higher. On the basis of the above circular, demand notices were being issued to each individual operator and these demand notices which are challenged in the writ petitions. In W.P. No. 10200 of 94 the circular dated 14.8.92 itself is challenged by the association. In W.P. No. 12955 of 93 is to forbear the Respondents from collecting additional security deposit as per the said circular dated 14.8.92. In the other writ petitions, the individual demands made on the operators are challenged.

2. In the counter affidavit filed in W.P. No. 12955 of 93 it is stated that a policy was evolved to provide one pay phone for the population of 10,000. In order to achieve this object, it was decided to franchise voluntary organisations as well as private entrepreneurs to instal, and maintain pay-phones subject to certain terms and conditions. The operating agency enters into an agreement with, the department, containing the terms of the commission charges, security deposit, minimum monthly guaranteed amount, etc. It is clearly stated that the licensee is bound by the rules framed under the provisions of the Indian Telegraph Act, 1885. Notifications dated 10.3.88 and 6.7.88 governed the terms and conditions of such pay-phones. In the year 1992 the present impugned circular was issued on 14.8.92. Again, by a notification dated 24.7.93 the policy was further liberalised. It is pointed out that the impugned clause prescribing six months'' minimum guarantee or one month''s average revenue as the security deposit is just and legal and can be proved by the practice which had evolved after the introduction of the policy. It is stated that an operator is collecting the call charges from the public and keeps the same in his custody for a period of time. It has been found that where dis-connection is resorted to, the operator will be holding a minimum of 21 days'' collection from the public. The security deposit is so adjusted to cover this amount and secure payment. Therefore, the policy cannot be attacked as arbitrary or unreasonable. The fact that an operator can either pay cash or furnish bank guarantee is not disputed.

3. W.P. Nos. 10200 of 94 and 12955 of 93 alone have been admitted and rule nisi issued. The other writ petitions were adjourned by Abdul Hadi, J., apparently at the request of the Additional Central Government Standing Counsel that the issue of the additional security deposit is governed by earlier judgments. Therefore, in all the other writ petitions the counsel for the Respondents had taken notice and he has filed a detailed counter affidavit in all the cases. Therefore, all the writ petitions are taken together and a common order is passed.

4. Mr. K. Chandramouli, learned senior counsel has advanced arguments in W.P. Nos. 10200 of 94 and 12955 of 93 which has practically been adopted by other counsel. The points raised by Mr. K. Chandramouli, learned senior counsel are as follows:

i) The demand of additional security deposit without giving an opportunity to the individual operators is contrary to law and arbitrary.

ii) Whether the rules provide for payment of cash or in the alternative, the furnishing of bank guarantee, and whether the impugned demanding payment of cash is illegal.

iii) If the Respondents desire only cash deposits, they must agree for payment of interest.

iv) The last notification dated 24.7.93 in respect of STD, PCOs prescribes a separate procedure for recovery of security deposit. It provides for the creation of two bank accounts and the deposit of 5 paise per unit in one of the accounts towards security deposit. There is no reason why this provision should not be applied to the Petitioners also.

5. Before dealing with the arguments of the learned senior counsel, I must countenance two judgments of two separate Division Benches of this Court on the validity of the demand for the additional security deposit. The first is dated 9.10.1991 and I was also a party to the said judgment along with the then Chief Justice. It is in Writ Appeal No. 1243 of 1991. This judgment seems to relate to the demand for additional security deposit in respect of a regular-telephone connection. It has been observed by the Division Bench as follows:

That apart, we find that the grievance otherwise spelt out in, the writ petition is against the demand of enhanced security deposit by the department. Reference to Clause 8 of the Agreement executed between the parties unmistakably shows that the parties agreed to the factum that the security deposit could be enhanced if so warranted at the discretion of the Government. Since the parties entered into a contract and the enhanced security deposit has been demanded pursuant to the clause in the contract, no grievance can be made with regard to that, through a writ petition. Should the Appellant have any grievance, he has to settle the remedies elsewhere .and not through a writ petition.

The next judgment is dated 1.2.93 and was rendered in Writ Appeal No. 69 of 1992. This judgment relates to STD Public telephones. The ratio is laid down as follows:

It is only pursuant to the policy decision taken with reference to the furnishing of additional security deposit, the communication has been sent to the Appellant demanding the balance of Rs. 7,600/- after giving credit to the deposit already made in a sum of Rs. 2,000/-. We are unable to find anything unreasonable, unfair or arbitrary in the demand of additional security made on the Appellant by the Respondents in view of the policy Clause 8 effected and referred to in the circular earlier mentioned.

The Learned Counsel for the Respondent has also placed before this Court the specimen copy of the agreement entered into between the operators and the Respondent. These agreements are normally valid only for one year and renewed for further periods on mutual agreements. The operators have agreed to abide by the provisions of the Telegraph Act and the Rules framed thereunder from time to time. Clause 9 provides for the security deposit. There is a specific sentence in this clause which runs as follows:

This amount of security deposit is liable to be increased from time to time based on the average monthly collection of the PCompany The party of the second part shall pay the additional amount of deposit as and when demanded by the Government.

Therefore, it is difficult to get away from the two judgments of the Division Bench of this Court referred to above. But the argument of Mr. Chandramouli is that the contract entered into by the operators are not pure and simple between two private parties and governed by the ordinary contract law. According to him, the contract has a statutory basis and, therefore, one of the parties which is a "State" within the meaning of Article 12 of the Constitution of India, cannot act arbitrarily and unilaterally. The Respondents should have called upon the operators either individually or as an association for talks and then decide about the increase in the additional security deposit. Therefore, the impugned circular is in total violation of the basic principles of natural justice. The Learned Counsel for the Petitioner has also cited a number pf judgments for the above, proposition, that the principles of natural justice should have been followed. He also refers to Section 3(1) and 4 of the Telegraph Act as well as Rule 445 and the notification issued in respect of pay-phones. The Rules refer to the collection of the security deposit. The argument is, therefore, that the agreement is based on the statute and springs from the statutory provisions. This argument of the Learned Counsel for the Petitioner has to be accepted because even according to the very first clause in the agreement the operator confirms that he or she had gone through the Indian Telegraph Rules as well as the provisions of the Indian Telegraph Act as amended from time to time and agrees to abide by the same. Therefore, even if the terms of the agreement are not altered, the Respondents have every right to demand the security deposit, on the basis of the Rules. The impugned circular dated 14.8.92 in memo No. 31-13/91-PHB is in fact the ruling notification under the head "Pay- phones". Therefore, there is no denying the fact that the Respondents are in fact enforcing the statutory provisions as amended from time to time and the policy changes as incorporated in the rules. Even so, I am unable to agree with the arguments of Mr. Chandramouli that the judgments rendered in the above two Writ Appeals are per incuriam. The words per incuriam cannot be used against any binding judgments which is inconvenient to the litigants. Those words mean literally "through want of care". In other words, if a judgment has been rendered without the court''s attention having been drawn to the relevant authorities or statutes, then such a decision is not binding as a precedent. But the judgments of the Division Bench above referred to are well known principles and not rendered without due care. To make this position clear one has to refer to the judgment of the Supreme Court in S. Narayan Iyer Vs. The Union of India (UOI) and Another, . Though the said judgment related to the telephone tariff rates as per the amended Telegraph rules, the Constitution Bench which considered the issue has given valuable principles to be followed. The following passages may be noticed with benefit:

First, when any subscriber to a telephone enters into a contract with the State, the subscriber has the option to enter into a contract or not. If he thinks so, he has to pay the rates which are charged by the State for installation. A subscriber cannot say that the rates are not fair. No one is compelling one to subscribe.

Again the Apex Court observes as follows:

The courts have no jurisdiction under Article 236 to go into reasonableness of rates. These rates are decided as policy matter in fiscal planning. There is legislative prescription of rates. Rates are a matter for legislation judgment and not for judicial determination.

It is, therefore, futile to argue that the Division Bench had rendered the judgments through want of care. Even examining the issue on merits, I am unable to hold that the demand for additional security deposit in the instant case is either arbitrary or unjust. The impugned circular with reference to security deposit is as follows:

(viii) Mode of Security Deposit - The security deposit could be deposited either by cash or Bank Guarantee as under-

(a) At the initial commissioning of the pay-phone, it should be equal to six months minimum guarantee amount.

(b) After expiry of six months period, the security amount be worked out which should be equal to either one month''s average revenue or six months minimum guarantee money, whichever is higher. In all such cases of local and STD PTs in which the security deposit taken is larger of six months minimum guarantee amount or one month''s average revenue, the bills should be issued every 15 days and payment got deposited during the next 7 clear working days, falling which the PTs may be immediately disconnected.

These instructions will supersede the one issued by this Office letter No. 31-10/88-PHB, dated 6.7.1988.

The contention of the Petitioner is that the reference to one month''s average revenue, is erroneous, on the ground that there is no need to provide for such a contingency. According to them, such a demand cripples the business. They complained that the only object is to drive the Petitioners away from the business. The question of demanding additional security deposit, according to the

Petitioners, will arise only when the operators are in huge arrears and are not paying the bills promptly. The Respondents, have not taken any survey of such defaulting operators. On the other hand, the reason given in the counter affidavit appeals to me, as quite acceptable. The following is the main reason seen from the counter affidavit:

At any point of time where disconnections are resorted for non payment of periodical bills, the STD PT hirer is holding the revenue collected from public in advance for a minimum of 21 days to a maximum of one month. The security deposit is demanded to secure this amount which is legal and as per policy of the department. Hence, claiming security deposit based on one month''s average revenue is essential to secure the interest of the Respondent.

In my opinion, the Government is perfectly justified in safeguarding the revenue collected from the public and to see the same reaches the Government officers. In my opinion, the demand for additional security deposit is perfectly legal, just and reasonable.

6. The other argument against the impugned demand is that the principles of natural justice have been violated. This argument fails because the demand is based on statutory proceedings and rules. In turn, the rules are being altered according to the policy of the Government. In such circumstances, there is certainly no question of giving notice to each and every operators and ascertaining their views. This is a matter relating to revenue and the Respondents are entitled to change their policies according to their own assessment. This proposition is unacceptable because of the following judgments of the Supreme Court. Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, . The following passage is apposite:

Equally, the rule issued by the High Court to hear the parties is untenable. The Government in the exercise of its powers u/s 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the Government to hear the parties who are not entitled to be heard under law.

Very recently in Madras City Wine Merchants'' Association and Another Vs. State of T.N. and Another, the Apex Court followed the said ratio and observed:

It is a settled principle that legislative action, plenary or subordinate, is not subject to natural justice.

7. I am not referring to another judgments cited by Mr. Chandramouli because, the principles of natural justice have now been crystallised and the Court exercising jurisdiction under Article 226 of the Constitution of India is fairly thorough with the same. The courts have gone to the extent of saying that even

if the principles of audi alteram partem are not attracted fair play and reasonableness and even a duty to record reasons and a certain amount of information to parties are all part of the principles of natural justice. Even giving the widest meaning in a matter like the present one which is in the nature of legislative action and legislative policy, the principles of natural justice are not attracted.

8. The main and cardinal submission of the Petitioners having failed, all that remains is only minor procedural aspects relating to the application of the rules. For instance, the Learned Counsel for the Respondents has made it clear that wherever the operators opt for bank guarantee instead of payment of cash, the Respondents will not have any objection. In fact, this is not provided in the rules and forms part of the statutory directions. For the same reason, the Learned Counsel rightly says that the question of payment of interest on cash deposit will not arise. This is because nobody is compelled to make a cash deposit and it is open to the operators to furnish bank guarantee. If the operators voluntary to make cash deposits, then they have no right to demand interest on the same. Learned Counsel for the Respondent also makes a distinction from pay-phones and other types of facilities. For instance, in respect of telex connections, the rules itself provides for payment of interest. I accept the argument of the Learned Counsel for the Respondent and hold that in respect of security deposits made by pay-phone operators there is no question of payment of interest because the operators have been given an option to furnish bank guarantee. In feet in W.P. No. 31118 of 94 and two other connected cases it is stated that the telephone facility has been restored after accepting bank guarantee. Secondly the pay-phone operators hold the revenue of the public for some time in their own hands before depositing the same with the telephone authority. The last contention refers to the applicability of clause V of Rule 6 of the circular dated 24.7.93 issued in 31-13/91-FAB. This clause is the one which provides for the deposit of 5 paise per unit in a separate bank account towards the security deposit. But the argument ignores a subsequent notification dated 18.1.1994 issued in No. 31-13/. This last notification says that the facility will be applicable only to new allottees or to franchisees who have been allotted STD, PCOs after the issue of the circular dated 24.7.93. In my opinion, this last notification dated 18.1.94 does not make any invideous discrimination between existing operators and operators who were allotted STD PCOs after 24.7.93. This is because the existing operators have already made deposits and it will not be proper to give them the benefit of the circular dated 24.7.93 which introduces a new mechanism for the collection of the security deposit.

9. For all the above reasons all the above writ petitions are dismissed. There will, however, be no order as to costs.

