
(1987) 02 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 260/B of 1982

The Indian Resort Hotels Ltd. and Others

APPELLANT

Vs

Sushil Prakash and Another

RESPONDENT

Date of Decision : 04-02-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Post and Telegraph Manual — Rule 155, 155(3), 155(4), 155(5), 240

Citation : AIR 1988 Bom 13 : (1987) 2 BomCR 529

Hon'ble Judges : Pendse, J;Kamat, J

Bench : Division Bench

Advocate : R.A. Dada, U.B. Surlikar and V.B. Agarwala, instructed by Gagrath and Co, for the Appellant; G.U. Bhobe, for the Respondent

Judgement

Pendse, J.—Petitioner No. 1 is a Company registered under the Companies Act and runs a hotel situated at Sinnerim, Bardez, Goa known as "Fort Aguada Beach Resort". Respondent No. 1 is the Divisional Engineer, Telegraphs and is an authorised officer working for the Department of Telegraphs. In Feb. 1973, petitioner No. 1 applied to the Sub-Divisional Officer, Telegraphs, Goa for telephone facilities, like (a) Switch Board capacity 20/200 -- 1, (b) internal extension -- 166, (c) external extension -- 34 and (d) junction lines -- 20 plus 1. Petitioner No. 1 had also applied for a private branch exchange, A "private Branch exchange" (PBX) means an exchange provided for any one party and connected to a departmental exchange. The PBX facility requires junction lines from the departmental exchange, a switch board and extensions, both internal and external. On Sept. 10, 1973 petitioner No. 1 received letter from the Sub-Divisional Officer, Telegraphs, Panaji quoting the rent in respect of the requirements by the hotel. The rents quoted were Switch Board Rs. 10,000/-, and for junction lines Rs. 1,18,382/- apart from the installation charges. It is not necessary to refer to the rents in respect of internal extensions and external extensions as there is no dispute between the parties on that count. It appears that certain representation was made on behalf of petitioner No. 1 to the

Telephone Authorities for revision of rents, and ultimately a fresh statement of rent was communicated to the hotel by letter dated Jan. 29, 1974. The revised rates were for Switch Board Rs. 10,000/- and for junction lines Rs. 58, 440/-.

2. On receipt of this letter, petitioner No. 1 placed a firm order for the facilities by letter dt. Jan. 30, 1974. Along with the letter, petitioner No. 1 forwarded an undertaking to abide by the terms of provisional and final rent and guaranteed that the final rent to be determined by the Post Master General, Bombay will be paid. There is some dispute as to whether this undertaking was only in respect of the switch board facility or also covered the facility of junction lines, but more about that at the later stage. In pursuance of the firm demand, the facilities of switch board and junction lines were commissioned with effect from Dec. 17, 1974. It is not in dispute that petitioner No. 1 paid the rental charges from the date of commission. On Feb. 9, 1979 the Accounts Officer of the Telephone Exchange forwarded a demand notice to petitioner No. 1 claiming that the rents in respect of the junction lines or cables were revised. The revised rent was Rs. 1,37,732/- for the period commencing from Dec. 17, 1974 to Dec. 16, 1976, Rs. 1,26,858/- for the period commencing from Dec. 17, 1976 to Dec. 16, 1978 and Rs. 1,25,408/- for the period commencing from Dec. 17, 1978 onwards. The rent for the switch board was also enhanced from Rs. 10,000/- per annum to Rs. 35,015/- per annum. Petitioner No. 1 thereupon entered into correspondence with the Telephone authorities complaining that the demand was improper and contrary to the rules and it is not permissible to demand additional rent with retrospective effect in respect of the concluded contract. After certain correspondence, on June 2, 1981 the Telephone authorities addressed another letter informing that the revision of rent stands modified and in respect of the switch board the modified rents are Rs. 17,790/- per annum. In respect of the junction lines or cables not only the rent was modified but the period also and the modified rents were Rs. 1,37,732/- per annum for the period commencing from Dec. 17, 1974 to Dec. 25, 1975, Rs. 1,19,608/- for the period commencing from Dec. 26, 1975 to Nov. 26, 1977 and Rs. 1,15,985/- for the period commencing from Nov. 27, 1977 onwards. Petitioner No. 1 again entered into correspondence complaining that the action of the Telephone authorities in demanding modified rents is totally illegal and it is not permissible for the authorities to demand rent at a rate which is higher than what was agreed under the contract at the time of commission of facilities. The Telephone authority did not give up their claim and ultimately petitioner No. 1 was compelled to pay 50% of the enhanced portion of the rent under protest. Thereafter the Telephone authority gave a threat of disconnecting the facilities and that has given rise to filing of the present petition on Dec. 28, 1982.

The relief sought by the petitioner in this petition under Article 226 of the Constitution is for quashing the demand notice dt. Feb. 9, 1979, June 2, 1981, Nov. 4, 1981, Nov. 11, 1982 and Dec. 2, 1982. The petitioners have also requested to grant an injunction restraining the authorities from demanding amount in addition to what was agreed in accordance with the statement

furnished by the Telephone authorities on Jan. 29, 1974. The petitioners have also sought refund of 50% of the additional amount which was paid under coercion.

3. Shri Dada, learned counsel appearing on behalf of the petitioners, submitted that the action of the Telephone authorities in revising the rents after commission of the facilities is contrary to the rules and is not permissible in law. The learned counsel urged that the rules prescribe that the rent for the facilities should be finalised before commission of the facilities and it is not permissible to make any additional claim after that date. The learned counsel also urged that the reliance by the Telephone authorities on the undertaking given by petitioner No. 1 on Jan. 30, 1974 that petitioner No. 1 would pay the final rent which would be determined before the date of commissioning of facilities is improper and it is not permissible for the authorities to rely on that undertaking to claim that rent would be modified and enhanced after a period of five years and that too with retrospective effect. Shri Dada also urged that the undertaking even if construed in the manner in which the authorities desire, still the undertaking was restricted only in respect of the facility of switch board exchange and would not apply in respect of junction lines or cables.

Shri Bhobe, learned counsel appearing on behalf of the Telephone authorities, on the other hand urged that it is permissible for the authorities to revise the rent even after commissioning of the facilities demanded by petitioner No. 1 and the authorities were required to revise the rent because there was some error on the part of the officer in properly fixing the rents while addressing letter dt. Jan. 29, 1974. Shri Bhobe further submitted that in any event, petitioner No. 1 had given undertaking to abide by the revised rents and therefore the petitioners are not entitled to any relief in the present proceedings. We are not impressed by the submissions of Shri Bhobe, because in our judgment the rules do not enable the authorities to revise the rents.

4. We will immediately refer to the relevant rules on which reliance is placed in support to the claim that it is not permissible to revise the rents after commission of the facilities. The Post and Telegraphs authorities have published Posts and Telegraphs Manual prescribing for the rules which regulates commissioning of various facilities to the customers and the manner in which the rents are to be determined. Rule 155 in Volume XII, inter alia, prescribes that in cases in which it has not been specifically laid down that standard flat rates should be charged, the rent for new telephone lines of all kinds including trunk telephone lines should be calculated both at flat rates as well as on the basis of capital cost and higher of these should be charged. Sub-rule (3) of Rule 155 provides that when a demand for any service is received, for which rental has to be quoted on capital cost basis and it is considered feasible to provide the service within a reasonable time, then an estimate for the work should be prepared taking into account all feasible expenses based on current prices. The capital cost is worked out on the basis of this estimate and rental is quoted based on such

capital cost increased by 15% thereof. In accordance with this provision, the capital cost was worked out by the Telephone authorities and rental was quoted to petitioner No. 1 by letter dated Jan. 29, 1974. The rental quoted for switch board was Rs. 10,000/- and for junction lines Rs. 58,440/- per annum, Sub-rule (4) of Rule 155 provides that once the rental quoted has been duly accepted by the customer, then such rental should be treated as final unless the preparation of revised estimate is found necessary in accordance with Paras 217 and 218 of Manual Volume X before providing the service to the party. In case the rental is revised, then the same is required to be communicated to the customer and a fresh contract is required to be entered into. It is not in dispute that in the present case there was no occasion to revise the rent in accordance with paras 217 and 218 of the Manual Volume X. These paras inter alia refer to increase of rent in cases where any extension of the project was found necessary while the work is in progress and which does not form an essential part of the project as originally sanctioned. It is not necessary to make detailed reference to these paras as it is not the case of the respondents that the rents were revised under paras 217 and 218. Then comes Sub-rule (5) of Rule 155, which is required to be quoted in detail.

"(5). Before rental is quoted to the applicant, the calculations should be got checked from the Divisional Accounts Officer, Telecom Accounts. On completion of the work and the facility is made over to the subscriber, the Accounts Officer, Telecom of the Division will compare the estimate with the actual cost of work. However, no readjustment of rental by the way of refund or supplementary claim will be called for."

A bare perusal of this sub-rule makes it clear that it is not permissible for the Telephone authorities to make any readjustment of revise rent or make any claim against the customer once the facilities are made over to the subscriber. The principle seems to be that it is the function of the Telephone authorities to ascertain the actual capital cost incurred in supplying the facilities before actually commissioning the facilities and in case it is noticed that the actual capital cost incurred is more than what was the estimated cost communicated to the subscriber on an earlier occasion, then the fresh rent should be communicated before commencement of facilities and the fresh contract should be entered into. It also clearly indicates that the contract, which was entered into between the Telephone authorities and the subscriber in respect of hiring of all the facilities would remain unaltered, if the rents are not revised before commissioning of the facilities. Identical are the provisions of Rule 240 and 241 of Chapter VIII of Volume XIV of the Manual.

Shri Dada relying on these provisions submitted, and in our judgment with considerable merit, that as the facilities were commissioned with effect from Dec. 17, 1974 and the rents were not revised between Jan. 29, 1974 when the rents were communicated by the Telephone authorities and the date of commissioning, it is not open for the authorities to modify and enhance the rent after a period of

five years from the date of commissioning of facility. The submission, in our judgment, is correct and deserves acceptance. Shri Bhobe controverted the claim by urging that the letter dt. Jan. 29, 1974 addressed by Shri Venkatram, an officer of the respondents, to petitioner No. 1 clearly recites that the rents are calculated as per the department standard and the rents would be provisional and subject to final confirmation of the order. Shri Bhobe also invited our attention to the undertaking given by petitioner No. 1 on Jan. 30, 1974 when accepting the provisional rent quoted in the letter dt. Jan. 29, 1974. The subject referred to in this letter of undertaking, copy of which is annexed as Exhibit "D" to the petition, is "20/200 PBX switch board for Fort Aguada Beach Resort", The undertaking recites that , petitioner No. 1 had placed a firm demand for the provision of PBX switch board and requested the Department to arrange immediately for the commissioning of the facility. It further recites "This office undertaking to abide by the terms of provisional and final rent and guarantee that may be quoted by the Post Master General, Bombay Circle, Bombay with effect from the date of provision of the telephone facility". Shri Dada submitted that this undertaking is restricted only to the switch board facility and does not cover the facility of junction lines. We are not impressed by the submission, because it is not in dispute that the junction lines by itself can be of no assistance to petitioner No. 1 unless accompanied with the switch board facility and vice versa. It would, therefore, be inaccurate to read this undertaking as merely restricting to the facility of switch board and excluding the junction lines. The undertaking must be read in the light of the letter written by the Telephone authorities on Jan. 29, 1974 and then it becomes clear that the undertaking must cover both the facilities. But the submission of Shri Dada that this undertaking was to abide by final rent which is required to be fixed in accordance with Rule 155 of Manual Volume XII deserves acceptance. The undertaking cannot be construed as suggested by Shri Bhobe to enable the Department to fix the final rent at any stage and according to the convenience of the Department. The final rent, which was referred to in the undertaking, has also bearing to the expression "final rent" referred to in the letter dt. Jan. 29, 1974 and what was contemplated by the Telephone authorities by reference to the expression "final rent", means the rent which would be determined before commissioning of the facilities. The officer of the Telephone authorities cannot take into consideration any other meaning of the expression "final rent" than as one understood under Rule 155. It is, therefore, obvious that the undertaking given by petitioner No. 1 was to the revision of the rents quoted in letter dt. Jan. 29, 1974 provided such revision was undertaken and communicated to the subscriber before actual commission of the facilities. In our judgment, the undertaking, on which reference is placed by Shri Bhobe, will not entitle the Department to fix the final rent after a period of five years from the date of commission of the facility and demand an enhanced rent with retrospective effect.

Shri Bhobe invited our attention to para. 6 of the return filed by Shri V.G. Godbole, Divisional Engineer, Telegraphs, Panaji and sown on Jan. 30, 1984. The

deponent has claimed that the initial rents communicated to the petitioner on Sept. 10, 1973 in respect of junction lines were reduced by communication dt. Jan. 29, 1974, because the petitioners approached the Director of Telegraphs, Maharashtra Circle and demanded reduction and the said officer telephonically informed the Divisional Engineer, Telegraphs, Panaji to reduce the rents. It is further claimed that as respondent No. 1 is subordinate to the Director of Telegraphs the direction was accepted subject to the undertaking of the petitioners. In our judgment whatever may be the reason which prompted respondent No. 1 to reduce the rent for junction lines and communicate the same to the petitioners by letter dt. Jan. 29, 1974 it is not permissible to revise and enhance that rent after a period of five years. Respondent No. 1 had no authority to do so and therefore the action of revising and enhancing the rent and demanding additional amount from the petitioners was clearly unsustainable. In our judgment, the petitioners are entitled to the relief sought in the petition.

5. Accordingly, petition succeeds and the rule is made absolute in terms of prayer (b) (i) and (iv). The respondents are directed to refund the amount of Rs. 2,00,000/- to the petitioners within a period of four weeks from today. In the circumstances of the case there will be no order as to costs.

It is made clear that the judgment will not prevent the telephone authorities from revising the rents if permissible after completion of initial period of guarantee.