

(1984) 04 GUJ CK 0016
In the Gujarat High Court
Case No : A.F.O. No. 90 of 1984

Union of India and Another		APPELLANT
	Vs	
Narayanbhai Keshavlal Patel		RESPONDENT

Date of Decision : 26-04-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Telegraph Rules, 1951 — Rule 421

Citation : AIR 1984 Guj 206 : (1984) GLH 710

Hon'ble Judges : S.A. Shah, J

Bench : Single Bench

Advocate : S.D. Shah, for the Appellant; A.J. Patel, for the Respondent

Judgement

1. Appellant I is the Union of India, and appellant 2 is the General Manager (Telephones), Ahmedabad. They are the original defendants in Civil Suit No.608 of 1984 filed by the present respondent in the City Civil Court, Ahmedabad.
2. Present respondent Narayannbhai Keshavlal Patel is the subscriber of two telephone connections, viz. Nos. 67869 at his residence and 68223 at his shop. He received a notice D/- 6-2-1984 under Rule 421 of the Indian Telegraph Rules, 1951 (hereinafter referred to as "the Rules") from the respondents, intimating him that both his telephones would be disconnected on the expiry of seven days. The said notice did not contain any reason for the alleged disconnection.
3. On receipt of the said notice, the respondent-plaintiff filed the aforesaid suit. Along with the said suit, he also took out a Notice of Motion for an injunction to restrain the defendants from disconnecting the said telephones. The notice regarding the hearing of the said Notice of Motion was served on the defendants. Before the notice of motion was heard, both the telephones were disconnected and, therefore, the plaintiff prayed for a mandatory injunction to direct defendant I Telephone Engineer, Phones to reconnect both the telephones" It appears that no affidavit was filed by the defendants. The learned Judge of the City Civil Court after hearing both the parties, by his order D/- 6-4-1984 directed the defendants

to reconnect both the aforesaid telephones within three days of "his order. I am told at the Bar that thereafter the period for reconnection was extended up to 16-4-1984. In the meantime, the defendants filed the present appeal from order in this Court on 13-4-1984, and obtained ad interim relief in terms of para 8-A of Civil Application No. 1697 of 1984.

4. The respondent-plaintiff thereafter made an application to vacate the ad interim stay granted by this Court, and, therefore, this Court passed an order to hear the matter finally on 30-4-1984, and that is how this appeal has come before me.

5. Since action has been taken under the provisions of R. 421 of the Rules, it is necessary to reproduce the said rule. It reads :

"421. Disconnection of telephones:-

Where the Divisional Engineer is satisfied for reasons to be recorded in writing that it is necessary to do so, he may, after giving the subscriber a notice in writing for a period which shall not except in emergent cases be less than 7 days, disconnect the telephone, and in such case the subscriber shall be entitled to refund of rent for the unexpired portion of the period for which the connection or service was given."

A mere reading of the aforesaid rule shows that it is obligatory on the Department to serve notice at least of 7 days, unless there is emergency, before the telephone can be disconnected.

6. Now, when a notice is required to be given to the subscriber under the statutory provision, such notice is to be a notice to show-cause, and unless a subscriber is given the reasons for disconnection, it would not be possible for him to show cause or to understand why his telephone is being disconnected. Unfortunately, in the instant case not only that in the notice served on the plaintiff the Department has shown any reasons for disconnection, but before the learned trial Judge also no affidavit was filed by the Department showing the reasons for such disconnection.

7. Mr. S. D. Shah, learned Advocate for the appellants learned defendants, has contended before me that what is required under the provisions of R. 421 of the Rules is recording of the reasons by the Divisional Engineer, and not communicating the same to the subscriber and, therefore, it was not necessary for the Department either to disclose the reasons in the notice or to disclose the same before the Court by filing an affidavit.

8. Before considering this argument of Mr. Shah, I would like to observe that it should not be forgotten that in this country it is only the Government which has the monopoly to provide such services of telephones. No private party is allowed to install the telephone or cater the needs of the public. Therefore, if a person is deprived of the facility of the telephone, which is very essential for the purpose of his business and other activities, he will be deprived of a very important

privilege of right. Before he is deprived of such a right, he has a right to know as to for what reasons his telephone is being disconnected. Rule 421 of the Rules itself provides for giving of a notice. That would necessarily mean that a subscriber must be informed not only for the action which is proposed to be taken, but also the reasons for taking such a drastic action.

9. Now, it has been the settled position of law that when a power is given under the statutory rules, which affects the right of a person, such power can be exercised only with due regard to the principles of natural justice. In the instant case, not only the authority is supposed to exercise this power in conformity with the principles of natural justice, but also to give notice as provided under the Rules, and that notice must necessarily be a notice to show cause for the proposed action, and unless reasons are given for taking such action, nobody can show any cause. In this view of the matter, it is not possible to accept the contention of Mr. Shah that a mere notice is enough under the provisions of R. 421 of the Rules.

10. Having realised this position, Mr. Shah has sought my permission to permission to produce an affidavit of the responsible officer of defendant 2, giving reasons for the disconnection. That permission is granted to him in the interest of justice. The appellant-defendant has filed the affidavit of one Shri Virendra Nath, Divisional Engineer, External (Central), in the office of General Manager, Ahmedabad Telephones, Ahmedabad. In the said affidavit the deponent has alleged as under :

"... .. It was also found that Pillar No. 14 from where the above two telephones are working was locked by built-in-lock and it was found that the present subscriber in suspected collusion with the member of the staff was successful in committing theft of telephone revenue by passing over the liability for overseas calls to other subscriber. It is stated that the subscriber was thus guilty of not only getting connected overseas calls free of charge but he was also guilty of being instrumental in passing over the said telephone revenue liability to other subscriber who, but for their complaints and vigilance, would have been unnecessarily financially made liable to pay the bills."

In short, the say of the appellants defendants is that in collusion with some member of the staff of the Telephone Department, telephone calls which were made by the son of the subscriber have been transferred to some other subscriber and thereby the respondent-plaintiff has illegally used the telephones, and therefore, the telephone Department has a right to disconnect the said telephones.

11. No doubt, the allegations made in the affidavit by the Department are serious enough. Still, however, these allegations are required to be proved. Mr. A. J. Patel for the respondent-plaintiff states that the said action has been taken by the Department without giving any opportunity to the subscriber (plaintiff) of being heard nor any show-cause notice, as required under the principles of

natural justice, has been served on him. Therefore, even if the Department is right in its contention, the purported action of the defendants is not in conformity with the principles of natural justice. In this view the matter, the subscriber should not be condemned.

12. In my opinion, there, is some merit in this submission of Mr. Patel. The suit is still to be heard and decided, and all these contentions can be taken at the time of the trial. In the instant case I am only concerned with the question whether the interim order granted by the City Civil Court should continue or not. In my opinion, the respondent-plaintiff is able, to make out a prima facie case. However, on account of a very serious allegation in respect of illegal use of the telephones, probably from the residence, and considering the hardship that is being suffered by the plaintiff, who is a businessman, and the telephone connection at his shop being very essential for the purpose his business, interest of justice will be served if it is ordered that at least one telephone is allowed to be operated. Mr. Patel for the respondent-plaintiff states. That his client is also prepared to deposit an amount of Rs. 5,000/- with the Department, so that if ultimately he is found responsible for the trunk-calls that have been made from his residence or office, the amount whatever found due may be recovered by the Department there from.

13. At the request of Mr. S. D. Shah for the appellants-defendants, the defendants are granted liberty to cancel the impugned show-cause notice and to issue a fresh show-cause notice on the respondent-plaintiff, if they so desire, so that such technical ground may not be available to the plaintiff.

14. In the result, therefore, the appeal is partly allowed. The order of the lower Court is modified, and the appellants defendants are directed to reconnect telephone No. 68223 at the shop of the respondent-plaintiff within a week from today. There shall be no order as to costs in this appeal.

15. Mr. A. J. Patel for the respondent-plaintiff undertakes to deposit an amount of Rs. 5,000/- for a period of six months with the appellant defendant 2, within one week from today.

16. Appeal partly allowed.