

(1984) 07 GUJ CK 0004

In the Gujarat High Court

Case No : Letters Patent Appeal No. 248 of 1984 with Civil Application No. 2246 of 1984

Union of India and Another

APPELLANT

Vs

Narayanbhai Keshavlal Patel

RESPONDENT

Date of Decision : 05-07-1984

Acts Referred:

Telegraph Act, 1885 — Section 7
Telegraph Rules, 1951 — Rule 421

Citation : AIR 1985 Guj 31

Hon'ble Judges : P.S. Poti, C.J;S.L. Talati, J

Bench : Division Bench

Advocate : S.D. Shah, Addl. Standing, for the Appellant; Party in person, for the Respondent

Judgement

1. This is a letters Patent Appeal against a decision in appeal from Order No. 90 of 1984. (reported in Union of India and Another Vs. Narayanbhai Keshavlal Patel, . That appeal was an appeal against an interim order passed in Civil Suit No. of 1984 before the City Civil Court , Ahmadabad. The appellants before us, who were appellants in Appeal From Order No. 90 of 1984 are the Union of India and the General Manager, Telephones, Ahmedabad. They are the defendants in the suit. The respondent here, who is the plaintiff in the suit, is a subscriber of two telephones at Ahmedabad, one bearing telephone No."67869 at his residence and the other bearing No. 68233 at his shop.

2. A notice under R. 421 of the Indian Telegraph Rules, 1951 was served on the respondent intimating that both the telephones would be disconnected on the expiry of seven days and pursuant to this notice dated February 6, 1984, the telephones were disconnected, though in the meanwhile the respondent had approached the City Civil Court with the suit and had taken out a notice of motion for injunction. By the time the notice of motion for injunction came up for hearing, the telephones had been -disconnected. He, therefore, moved for a mandatory injunction directing the Telephone Engineer, Telephones to reconnect

both the telephones. After hearing, by an order dated April 6, 1984, the defendants were directed to reconnect both the telephones within three days of the order. This was subsequently extended up to April 16, 1984. By that time the defendants in the suit filed Appeal From Order to this Court on April 13, 1984 and obtained ad-interim relief enabling them not to implement the order of the City Civil Court. The matter was finally heard by this Court and by an order dated April 26, 1984 this Court found that the plaintiff in the Suit had made out a prima facie case and that on deposit by him of a sum of Rs. 5,000/- with the department, one of the telephones will be allowed to operate pending disposal of the suit. Liberty was granted to cancel the show cause notice already issued (evidently referring to the one under R. 421) and to issue a fresh notice. Defendants were further directed by that order to restore telephone No. 68223 within a week. It is thereupon that this Appeal is filed by the defendants and interim relief obtained on May 22, 1984.

3. By the order of the teamed single Judge, the appellants have been permitted to cancel the notice issued by them under R. 421 and issue fresh notice. The only controversy between the parties appears to be about the sufficiency of the notice issued to the plaintiff in the suit the plaintiff, a subscriber is entitled to be told why his telephone connection is sought to be disconnected and he should be given a reasonable opportunity of showing cause. Disconnection can only be after proper assessment of that objection and for appropriate reasons. In other words, irrespective of the language of R. 421, it must be understood having a reasonable opportunity content within itself which requires observance of certain norms considered necessary for reflecting fair play and justice. The department has a case, as seen from the affidavit filed by the divisional Engineer, Telephones, that the 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 another subscriber. We are not going into the question of the charge against the subscriber, for, if Rule 421 of the Indian Telegraph Rules, 1951, requires that charge should be communicated to the subscriber that must be for a purpose, namely, for enabling him to satisfy the telephones authorities concerned that the charge cannot stand. That has not been done in this case. Merely by mentioning about the charge in the proceedings in Court, no purpose would be served except perhaps, to bias the mind of the Court.

4. The one and only question argued by the Counsel for the appellants before us was that there was to justification for the direction by the City Civil Judge to reconnect both the telephones when notice had been issued under R. 421 and that is the only requirement for disconnection and that though the learned single Judge modified it to reconnection of only one telephone there was no justification for that order too and, therefore, in appeal we should, hold that there is valid compliance with R. 421 and that the Courts should not have interfered by any interim order. Normally we would be reluctant to go into this question because this question may be the main if not, the sole question that may arise for

decision in the suit. But in spite of suggesting that the course mentioned by the learned single Judge would be quite appropriate, Counsel for the appellants seeks decision from us as according to him the only question we are called upon to decide is whether R. 421 has been complied with in this case. We, therefore, think it necessary to refer to R. 421 which reads as under "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."

The Rule simply refers to disconnection on giving a notice to the subscriber in writing and the prerequisite is satisfaction of the Divisional Engineer that it is necessary to disconnect the telephone and that satisfaction should be recorded in writing. We have to remember that the State has a monopoly in the operation of the telephone system and there is no option left to any person to have the facility of telephone except through the Telephone Department of the Government. We have also to remember that in modern times possession of a telephone is a necessary requisite for any one engaged in any business or profession. It is not a luxury. Denial of telephone or disconnection of telephone to a man in business is necessarily bound to cause very evil consequences. In granting the telephone connection it is not as if the Government is extending a "patronage. It is only performing its duty to extend facility which every one who complies with the rules is entitled to. We are making these observations only to underline the fact that telephone connection cannot be taken away at the sweet will and pleasure of the Department. It is not even sufficient if the party is informed that it would be taken away. The authority may come to a satisfaction on reports which may be by people who are misinformed, on material not relevant or on an approach which may be irrelevant. Whatever tentative decision the authority in the Department may reach, there must be an occasion for the subscriber to know what he has to answer, to know what is against him and to submit what he has by way of answer. There is equally a duty on the Telephone Department to consider such objection and take a decision in accordance with material available to it either by way of report or by way of information gathered by it.. That decision has to be an objective decision. What are the tests of an objective decision need not be stated here for the Courts have time and again indicated the requisites of an objective approach assessment and determination, All that would be required to take away a telephone which is a facility, as indicated above, which a person is entitled to enjoy and denial whereof is bound to affect materially his business Otherwise it would be an arbitrary and discriminatory act. If the Telephone Department is permitted to apply its own standard in effecting disconnection or to make a subjective approach to the question the consequence may be disastrous That cannot be permitted due

regard being had to the constitutional rights of citizens. Rule 421 no doubt speaks only of a notice. Every rule must be read and interpreted to the extent possible to render it reasonable and within constitutional limits. Therefore, when Rule 421 speaks of notice, it is not to be understood as an empty formality of a notice of disconnection but a notice indicating as to why and for what reason disconnection is intended. That will enable the subscriber on whom the notice is served to place facts before the concerned authority so that the decision to actually disconnect may be taken after due regard is paid to the materials available. The subscriber on being intimated of the reason may find that such reason is true as for instance the reason of arrears, and he may have nothing to present by way of objection. On the other hand it may be a case where patently there is an error in the approach and the subscriber may be able to convince the authority of it, given a chance. We read R 421 as needing such an approach and calling for such a construction. If that be so inasmuch as whatever has been found against the subscriber was never put to him before the telephone was disconnected, we find no reason to interfere with the interim order made by this Court. After all we see no such prejudice in the interim order so as to compel the Telephone Department to make a complaint and file an appeal to this Court. At any rate, the learned Single Judge has directed reconnection of only one telephone and there is no reason why despite this the matter should have been taken in appeal by the Telephone Department.

5. We find no merit in this Letters Patent Appeal. Dismissed. Notice discharged. No order on Civil Application.

6. Appeal dismissed.