

(1990) 07 BOM CK 0052

In the Bombay High Court

Case No : Civil Application No. 1840 of 1990 and Civil Revision Application No. 693 of 1990

Union of India (UOI) and Others

APPELLANT

Vs

President, Telecom and Another

RESPONDENT

Date of Decision : 13-07-1990

Acts Referred:

Telegraph Act, 1885 — Section 7B
Telegraph Rules, 1951 — Rule 421, 422

Citation : (1991) 1 BomCR 447

Hon'ble Judges : A.A. Halbe, J

Bench : Single Bench

Advocate : P.G. Godhamgasnkar, for the Appellant; R.C. Karmarkar and V.J. Dixit, for the Respondent

Final Decision : Dismissed

Judgement

A.A. Halbe, J.—Delay condoned. Rule issued forthwith and taken up for consideration with the consent of the parties. Heard the learned Advocates for the parties.

2. The important question, which poses consideration in this revision is whether the matter about disconnection of the telephone on the ground of emergency under Rule 422 of the Indian Telegraph Rules framed under the Indian Telegraph Act, 1885, should be referred to the arbitrator u/s 7-B of the said Act. The question arises as follows.

The respondent No. 2 is the subscriber of Telephone No. 203 under Amalner Exchange. The said telephone had been installed at the residence of respondent No. 2 and he was paying the necessary charges from time to time. It seems, that the respondent No. 1 has been joined in its representative capacity. It is the Telecom Users Association, Amalner, represented through its President, Shri Bhailal Shah, on 17th December, 1989, at about 8.55 a.m. Vinodkumar, son of Respondent No. 2 had booked a call for Parola on the above Telephone No. 203.

Vinodkumar was on line at about 9.00 a.m. and was possibly talking on the telephone to the person to whom the call was booked. However, when his conversation was going on he noticed that his talk was being intercepted by somebody at above Amalner Telephone Exchange. Vinodkumar, therefore, asked the operator about the said obstruction and it is to be noticed that on Hedau was on duty at the said Exchange as Supervisor. The allegations are that the said Supervisor abused Vinodkumar when he made enquiry about the disturbance and interception. Vinodkumar, therefore, approached the Association and then lodged a complaint against the operator. However, the minor Mr. Badgujar, who was incharge at the Exchange refused to accept the complaint. Vinodkumar, therefore, contacted the District Engineer Telecom, Jalgaon, now petitioner No. 2 and made the complaint about the said disturbance. He was assured that the complaint would be looked into, but it was gathered that no cognizance was taken by any of the concerned authorities about the complaint of said Vinodkumar. He therefore, approached the Police Station with the intent to lodge complaint against the petitioner. The Police Officers at Amalner tried to bring about the reconciliation, but did not succeed in the same. The complaint was lodged also to the Director Telecommunications at Nashik on 19-9-1989, but the same went unheeded. On the other hand, on 18th September, 1989 in the mid-night Telephone No. 203 was disconnected for no obvious reason. On the next day, therefore, petitioner No. 3 was contacted in connection with dis-connection and it was asked as to why notice under Rule 422 of the rules was not issued to him. On these allegations, the respondents filed Regular Civil Suit No. 206 of 1989, seeking reconnection of the telephone.

3. The present petitioner who are the defendants, filed the written statement at Ex. 32 and contended that Vinodkumar abused the operator and came down with couple of persons at the Exchange and started abusing the employees present. Those persons entered the switch room, which is prohibited area. They were about to assault the employees at the Exchange. These persons also searched for the concerned operator, but the Junior Engineer, Beed, pacified Vinodkumar and took them out of the switch room. In consequences, the atmosphere at the Exchange had become tense. All the members of the staff felt unsecured in the face of aggressive postures adopted by Vinodkumar and others. The members of the staff threatened to go on strike and here arose emergency, which prompted the Divisional Engineer to disconnect the phone. However, the notice was given to the respondent No. 2 where in it was stated that the respondents and other should behave properly. On these grounds, the petitioners contended that the disconnection was fully justified. However, they also pleaded that this is a dispute, which should be referred to the arbitrator u/s 7-B of the Act and accordingly, the suit should be stayed. The Court was pleased to frame preliminary issue at Ex. 41, but on consideration on the claims on merit of both the parties, the Court found that looking to the circumstances, which arose at the time of the incident, the matter could not be referred to the arbitrator and the Civil Court was competent to decide that matter. Being aggrieved by this

order, declining reference to arbitrator u/s 7-B of the Indian Telegraph Act, the petitioners/original defendants have preferred this revision.

4. It is contended on behalf of the petitioner that this is a dispute between the subscriber and the department in relation to the telephone and the same should, therefore, be referred to the arbitrator under the above provisions. The respondent/plaintiffs have resisted this claim and the learned Advocate for the respondents has contended that emergency is a matter of subjective satisfaction of the Officer, that there is no breach of any of the Rules and that the matter should not be referred to the arbitrator.

5. In order to facilitate the understanding of the problem, it would be in the fitness of the things to reproduce section 7-B of the Indian Telegraph Act, 1885:

"Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been, provided, the dispute shall be determined by arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of disputes under this section."

Sub-section (2) of section 7-B provides that :

"The award of the arbitrator appointed under sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court."

6. The learned Advocate for the petitioner has urged that this is a dispute in connection with the disconnection of telephone impliedly on the ground that the subscriber had misused the telephone and had Acted to the annoyance of the department and hence such a dispute should be referred to the arbitration. The learned Advocate for the respondent/plaintiff, on the other hand, has contended that it is the incident that took place at the Telephone Exchange, that gave ground to the department to construe the situation as an emergency situation, that has nothing to do with the maintenance of the telegraph line or the telephone. It cannot be a dispute with regard to any telegraph line or telephone line and hence, such disputes have to be excluded from the provisions relating to compulsory arbitration.

7. In order to appreciate these rival contentions it may be necessary to scrutinize as to what is meant by emergency as envisaged under Rule 422 of the Indian Telegraph Rules. It is not disputed that the telephones are covered by the Indian Telegraph Act, that their operations are subject to the provisions of both the Act and the Rules and it is to be noticed that this disconnection has been effected without notice to the subscriber obviously under Rule 422 of the Telegraph Rules. Rule 421 provides for disconnection of telephones for reasons to be recorded in writing by the Divisional Engineer but the same disconnection has to be effected after giving the subscriber a notice in writing of a period of seven days. There is

only one exception and the same is that in case of emergent situation, the notice may be of a period of less than seven days. However, under Rule 422 there is a drastic provision and it reads as follows.

"The Divisional Engineer may, in the event of any emergency, disconnect any subscriber, with or without notice."

This would show that in the event of emergency the authority is entitled to disconnect the phone even without notice. Emergency ordinarily indicates situation suddenly arising and demanding prompt action and is a stronger word than urgency, and emergency may result from an unforeseen combination of circumstances, this combination may not take place all at once, but gradually, and immediate action may be rendered necessary when the culminating point is reached.

8. In *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, , in the case of *Hukum Chand-Shyam Lal v. Union of India*, the Supreme Court observed.

"A "Public emergency" within the contemplation of this section is one which raises problems concerning the interest of the public safety, the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or the prevention of incitement to the commission of an offence. It is in the context of these matters that the appropriate authority has to form an opinion with regard to the occurrence of a "Public emergency".

There may be economic emergency, but under Rule 422 what is contemplated is "any emergency" which is an expression wider than the expression "public emergency", referred in section 5 of the Act."

This would, therefore, mean that any emergency, which to the mind of the Divisional Engineer enjoins upon him to take drastic action for disconnecting the phone. The Supreme Court has observed that this is subject to the satisfaction of the concerned officer. There may be relevant material and it is necessary that the satisfaction of the Officers should be recorded with reasons and that will be minimal safeguard against arbitrary exercise of this drastic power.

9. In that case, the General Manager, Telephones, Delhi, had taken custody of certain telephones installed in the room of particular hotel on the grounds that forward trading was being done through these phones, which had caused serious fluctuations in the prices of commodities. There was a general jeopardy, which needed an immediate action. The General Manager, therefore, visualized, this situation as an emergency under Rule 422 and as indicated above, took the custody of the telephones. The Supreme Court found that this was not an emergency, which called for drastic action. It was misuse of the telephones, for which the remedy was to give notice and then to take action. The above view of the Supreme Court would indicate that the emergency contemplated under Rule 422 should be of a serious type and should prompt the Division Engineer to take immediate action. It must be a situation, which would suddenly arise and for

which no time is left to communicate the concerned subscriber and obtain his explanation. It is only under that situation, the telephone should be disconnected without notice. Going back to the facts referred in the above ruling, it was rightly held by the Supreme Court that was the case of misuse of telephone and the Department could not resort to the drastic action of disconnecting the phone.

10. The learned Advocate for the petitioners has urged that relying on the above ratio, it can be said that even the dispute in this case deserved to be referred to the arbitration. He has also drawn my attention to Smt. Makhani Devi Banka Vs. Union of India (UOI), , in the case of Smt. Makhani Devi Bank v. Union of India. In that case, the department had filed suit for recovery of telephone bills and the subscriber raised a plea about the maintainability of the suit in the light of the provisions of section 7-B of the above Act. The High Court observed that the said provision relating to arbitration was wide and dispute concerning the apparatus was certainly covered by the arbitration clauses. The question of the amount of bill related to the user of the apparatus and hence, the Court held that such dispute had to be referred to the arbitration. Similarly, in AIR 1982 Delhi 111, in the case of Union of India v. M/s. Usha Spinning and Weaving Mills Ltd., the dispute related to excessive billing and the Court observed that the moment the correctness of the bill is challenged on the ground of mal-functioning or misuser of the line, surely a dispute concerning the telephone line, apparatus or appliance was within the meaning of section 7-B. Similarly, in K.N. Achuthan Pillai Vs. Union of India (UOI) and Others, , in the case of K.N. Achuthan Pillai v. Union of India, the Court observed that the dispute relating to assignment, sub-lease of the telephone was within the scope of section 7-B of the Act.

11. However, in P.S. Anthappan Vs. The District Manager, Telephones, , in the case of P.S. Anthappan v. The District Manager, Telephones, the Court refused to refer the matter to arbitration because the phone was already disconnected and the Court felt that the arbitration must precede disconnection and that must be with previous notice under Rule 421. It was observed that the stage of disconnection even for the period of arbitration is sufficient to cause irreparable injury to a subscriber, who may need the telephone for his business of profession or even for personal needs. Such an action on the part of the department had violated the provisions of section 7-B of the Act and the Court thus refused to refer the matter to arbitration.

12. Similarly, in AIR 1970 in the case of Raghubar Dayal Kanodia v. Union of India, the Court found that the allegation related to the defective reading of meters and this fact was out-side the purview of section 7-B of the Act. From this ruling, it may be manifest that when the matter goes to the root of the problem, namely the defective working of the telephones or the incorrect operation of meters, the matter should not be referred to the arbitration. Similarly, in Om Oil and Oilseeds Exchange Limited, Delhi Vs. Union of India and Others, , in the case of M/s. Om Oil and Oilseeds Exchange Ltd. v. Union of India, the Court was of the

opinion that although arbitration is an alternate remedy, it was not an efficacious remedy in the given set of facts. Referring to the facts Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, , which also related to the same facts, regarding taking custody of the telephones by the General Manager, Telephones, on the allegations of forward trading, the Court observed that the dispute between the parties was not an ordinary dispute that would arise between the subscriber and the authorities, but was the dispute with regard to the competence of the authority to invoke certain Rule for the purposes of effecting disconnection of the telephones.

13. Now, coming to the facts of this case, it would be seen that the allegations were that Vinodkumar used to talk with the lady operators in indecent language while using Telephone No. 203. He was warned to that effect on a prior occasion with a notice that his phone would be disconnected in case he persisted with the misbehaviour. Even the respondent No. 2 was also communicated to that effect. Regarding the incident, it is stated that Vinodkumar had started continuously talking on the telephone and when the operator came on line to enquire about the problem or disturbance, Vinodkumar abused the operator in filthy language. He thereafter came along with certain other persons at the Telephone Exchange, entered the switch room, which is a prohibited area. There was inclination towards violence writ large on the face of those persons, who had collected there, they searched for the operator on the Board as well as behind the Board, the Junior Engineer-Badgujar was on duty, who tried to pacify Vinodkumar and he took all those persons outside the room, but on account of this incident, there was panic amongst the members of the staff. These members approached the Union and the members of the staff threatened to go on strike. The Divisional Engineer, Jalgaon was communicated. He rushed down to Amalner and recorded the statements. He was given letters by the members of the staff calling upon him to take immediate action and remove the fear that had crept in the minds of the staff. They also wanted the said Officer to complain against the subscriber and his son Vinodkumar. For that purpose, the copies of the letters have been produced by the Department. The petitioners, therefore, sent notice dated 21-9-1989 to the respondent No. 2 informing him that his line was disconnected because of the misbehaviour on the part of Vinodkumar and the incident that followed the disconnection.

14. It is necessary to observe that an affidavit has been filed in that behalf by the advocate on behalf of the Department. The averments therein are supported by the copies of the letters. The learned advocate for the respondents/plaintiffs has contended that in the notice dated 21-9-1989, there is no reference to there at of strike, but if the same notice is read, it would show that it contains allegations of misbehaviour on the part of subscriber and his son Vinodkumar. It also refers to the incidents that followed the disconnection. It is contended in the affidavit on behalf of the Department that because of the tense situation, no alternative was left for the Department except to take prompt action of disconnection. It is not disputed that the matter had gone to the Police and

hence, it has been rightly suggested that an emergency did exist.

15. If the situation is visualized, it would be seen that if the strike have materialized, the operation of the Exchange would have come to a stand-still causing serious prejudice to the other telephone subscribers. This was, therefore, not a situation where the District Engineer, Telephone would have an option to give notice under Rule 421 of the Rule and then refer the matter to the arbitration.

16. The learned advocate for the respondents/plaintiffs has contended that they had challenged the very concept of emergency as is sought to be canvassed on behalf of the petitioners. It was, therefore, not a dispute relating to the maintenance or use of any telephone line. This cannot be a dispute concerning any telegraph or telephone line between the Department and the telephone users.

17. The above facts would clearly reveal that the emergency arose on account of the aggressive approach of the subscriber and others at the Telephone Exchange, which brought about tension at the Exchange, the Officer had to run down from Jalgaon to Amalner. He was also notified about the proposed strike in case no urgent action was taken. The momentous action had to be taken, and for that purpose the Officer had to take decision on his subjective satisfaction. To refer such satisfaction for arbitration would virtually amount to abrogation of such important powers of the Department. To hold such a sword of arbitration on the head of the Department would fetter the appropriate action for larger public good. Again this had nothing to do with the maintenance of Telephones. This was, therefore, a dispute which would not fall within the scope of section 7-B of the Indian Telegraph Act.

18. Hence, for the above reasons, it would be appropriate to hold that this is not a dispute, which falls within the scope of section 7-B, of the Indian Telegraph Act. The revision is, therefore, devoid of merit and is hereby dismissed. There shall be no order as to costs.