

(1996) 07 KL CK 0045

In the High Court Of Kerala

Case No : W.A. No. 851 of 1996-A and O.P. No. 14587 of 1995

Union of India (UOI) and Others

APPELLANT

Vs

S.J. Pandit

RESPONDENT

Date of Decision : 09-07-1996

Acts Referred:

Telegraph Act, 1885 — Section 7, 7B

Citation : AIR 1997 Ker 153 : (1996) 2 CivCC 281

Hon'ble Judges : K. Sreedharan, Acting C.J.; C.S. Rajan, J

Bench : Division Bench

Advocate : George C.P. Tharakan, C.G.S.C, for the Appellant; S. Krishnamoorthy, for the Respondent

Judgement

K. Sreedharan, Actg. C.J.

1. Writ Appeal No. 851 /96 is at the instance of respondents in O.P. No. 8761/96. Petitioner in O.P. No. 8761/96 is the petitioner in O.P. No. 14587/95. Since the issues raised in both matters are same, we consider it advantageous to dispose of these matters by this common judgment.

2. Short facts necessary for disposal of the appeal and Original Petition are as follows: Writ petitioner Shri S.J. Pandit is a subscriber of telephone Nos. 445431 and 445463 of Kayamkulam Telephone Exchange. Subscription and rent in respect of telephone No. 445431 happened to fall in arrears. As on 16-6-1996, the arrears in respect of that phone, according to the Department, is Rs. 1,11,672/-. Disputing the amount claimed by the Department for the period from 26-9-1994 to 25-11-1994, writ petitioner moved O.P. No. 17852/94. This Court directed that dispute to be referred to arbitration. Arbitrator by award dated 14-7-1995 came to the conclusion that the amount of Rupees 27,214/- claimed in respect of the said period by bill dated 11-12-1994 is correct and that the subscriber is not entitled to any reduction. Award passed by the arbitrator is under challenge in O.P. No. 14587/95.

3. As stated earlier, arrears in respect of telephone No. 445431 held by writ petitioner was Rs. 1,11,672/- as on 16-6-1996. Writ petitioner is a subscriber of another telephone bearing No. 445463 of Kayamkulam Telephone Exchange. In relation to that telephone, a claim of Rs. 1,861/- was made towards rental and call charges for the period from 26-2-1996 to 11-4-1996. On account of the non-payment of the said amount as also on account of the arrears in relation to telephone No. 445431, Telephone Authorities disconnected telephone No. 445463. Questioning the said action of the Telephone authorities, writ petitioner moved O.P. No. 8751/96. Learned single Judge disposed of that Original Petition by directing the respondents, viz. Telephone Authorities to reconnect telephone No. 445463 after receiving the amount covered by the bill, viz. Rs. 1,861/-, Aggrieved by the said direction, Telephone Authorities have preferred Writ Appeal No. 851/96.

4. When writ petitioner disputed the correctness of the amount claimed by the Telephone Authorities for the period from 26-9-1994 to 25-11-1994, this Court directed that dispute to be referred to arbitration as per judgment in O.P. No. 17852/94. Pursuant to that direction, the matter was referred to arbitrator in accordance with the provisions contained in Section 7B of the Indian Telegraph Act. Arbitrator passed a reasoned award dated 14-7-1995. The nature of the award passed by an arbitrator u/s 7B has been pronounced upon by the Supreme Court in *M.L. Jaggi Vs. Mahanagar Telephones Nigam Ltd. and others*, . Their Lordships stated that the award passed u/s 7B is conclusive and final. It is not open to challenge in a Court of law. The actual remedy available to the aggrieved person is by way of judicial review under Article 226 of the Constitution. If reasons are not given, it would be difficult for the High Court to adjudge as to under what circumstances, the arbitrator came to his conclusion. If the decision was arrived at by the arbitrator on the basis of evidence in the case, supported by reasons and those reasons fully support his conclusion, the High Court in exercise of the powers under Article 226 of the Constitution cannot interfere with the said award. In the instant case, the arbitrator has passed a reasoned award running to six typed pages. All aspects of the case have been considered by the arbitrator. Points raised by the subscriber before the arbitrator were dealt with in minute detail. The conclusions arrived at by the arbitrator are based on evidence and the readings given by the meters fixed in the Exchange. He, as a matter of fact, came to the conclusion that the writ petitioner was correctly billed for the actual number of calls that originated from his telephone during the disputed period. The said award, under no circumstances, can be said to be passed on surmises and conjectures. We do not find any ground to interfere with the said award. It, therefore, follows that contention raised by the writ petitioner in O.P. No. 14587/95 against the award passed by the arbitrator appointed u/s 7B of the Indian Telephone Act is devoid of any substance and it is only to be dismissed. We do so.

5. Coming to the Writ Appeal, the only question that arises for consideration is whether on account of default in paying the rental and call charges in respect of

a particular telephone, other telephones held by the subscriber can be disconnected. On account of the default of the writ petitioner in not paying the rental and call charges in respect of telephone No. 445431, the telephone authorities disconnected his other telephone No. 445463. Learned single Judge directed the Telephone Authorities to re-connect telephone No. 445463 on subscriber remitting the amount covered by the bill in relation to that telephone. Learned Judge did not go into the question as to whether the telephone authorities have the power to disconnect telephone No. 445463 on account of huge arrears in respect of his telephone No. 445431.

6. It is common case that Shri S.J. Pandit, petitioner in the O.P. is subscriber of two telephones bearing Nos. 445431 and 445463. It is also admitted that huge amounts by way of rental and call charges are in arrears in respect of telephone No. 445431. As a result of this, the question is whether the telephone authorities are justified in disconnecting telephone No. 445463. Reference in this regard has to be made to the provision contained in Rule 443 of the Indian Telegraph Rules 1951. For a proper understanding of the provisions contained in the Rules, we read the same :

"Rule 443. Default of payment: If, on or before, the due date, the rent or other-charges in respect of the telephone service provided are not paid by the subscriber in accordance with these rules, or bills for charges in respect of calls (Local and Trunk) or phonograms or other dues from the subscriber are not duly paid by him, any telephone or telephones or any telex service rented by him may be disconnected without notice. The telephone or telephones or the telex so disconnect may, if the Telegraph Authority thinks fit, be restored, if the defaulting subscriber pays the outstanding dues and the reconnection fee together with the rental for such portion of the intervening period (during which the telephone or telex remains disconnected) as may be prescribed by the Telegraph Authority from time to time. The subscriber shall pay all the above charges within such period as may be prescribed by the Telegraph Authority from time to time."

A plain reading of that rule clearly shows that if the rent or other charges in respect of one telephone is in arrears, the Telephone Authorities are entitled to disconnect not only that particular telephone, in relation to which the default has occurred, but also other telephones and telex services rented by the subscriber. This is made more clear by the latter part of the Rule which states that the telephone, telephones or telex so disconnected have to be restored if the defaulting subscriber pays the outstanding dues and the reconnection fee. If the arguments advanced by the learned counsel that the Telephone Authorities can disconnect only the telephone the dues of which has fallen in arrears, there was no necessity for the Rule to state that telephone or telex services rented by the subscriber can be disconnected. According to us, the Rule is very clear and is not open to any doubt whatsoever. As per the Rule, on account of the default committed by the subscriber, telephone or telephones and telex services rented by him can be disconnected by the Telephone Authorities without notice. Learned

counsel representing the petitioner brought to our notice the decision rendered by a Division Bench of the Gauhati High Court in Santokh Singh v. Divisional Engineer, Telephones, Shillong AIR 1990 Guj47, in support of the argument that another telephone rented by the subscriber cannot be disconnected on account of the default in respect of the telephone held by him. The Division Bench, referring to Rule 443 of the rules stated- -

".....

We are of the opinion that it cannot be interpreted to vest with the authorities the power to disconnect any other telephone working in the name of the same subscriber either at the same premises or elsewhere on the ground of default of payment of bill in respect of one of his telephones. This power is confined only to the particular telephone in respect of which there is default in payment and not to other telephones. Such a drastic power cannot be granted to the Telephone Department by inference. If at all it is to be given it has to be given in clear and unambiguous terms. Then also the question will arise whether it is reasonable or not. We do not propose to make any comment thereon. Suffice it to say that Rule 443 of the Rules as it presently stands, cannot be interpreted to authorise the Telecom. Department to disconnect any telephone other than the one which is subject-matter of dispute as, in our opinion, such action will be highly atrocious. The Department cannot coerce the subscriber to make the disputed payment by such means. It must act in accordance with law and, if necessary, file a suit for recovery of the arrears."

We find it difficult to agree with the above observation made by Their Lordships. With respect, we say that Rule 443 does not lead to such an interpretation. We express our dissent from the view taken by the learned Judges of the Gauhati High Court. The Rule does not give room for any doubt. The intention of the rule making authority is specific and clear that the Telephone Authorities can disconnect other telephones and telex services rented to the subscriber, if the rental and call charges of any of his telephone is in arrears.

7. As stated earlier, rental and call charges in respect of writ petitioner's telephone No. 445431 is in arrears exceeding Rs.1,11,000/- as on 16-6-1996. In such a situation, Telephone Authorities are well within their power in disconnecting tel phone No. 445463 rented out to the writ petitioner. Consequently, learned single Judge was not right in directing the Telephone Authorities to re-connect telephone No. 445463 on payment of its arrears amounting to Rs. 1,861. Writ Appeal is allowed and O.P. No. 8761/96 is dismissed.

W.A. No. 851/96 is allowed and O.P. No. 14587/95 is dismissed as stated earlier. We make no order as to costs.