

(1960) 10 PAT CK 0007
In the Patna High Court
Case No : Civil Revision No. 858 of 1959

Union of India (UOI)

APPELLANT

Vs

Sm. Taiyaba Khatoon

RESPONDENT

Date of Decision : 05-10-1960

Acts Referred:

Wireless Telegraphy (Possession) Rules, 1933 — Rule 18, 2, 3
Wireless Telegraphy Act, 1933 — Section 10, 2(2), 3, 5

Citation : AIR 1961 Patna 268

Hon'ble Judges : K. Ahmad, J

Bench : Single Bench

Advocate : Govt. Pleader, for the Appellant; S.C. Ghosh, for the Respondent

Judgement

K. Ahmad, J.—This application in revision is by the defendant the Union of India. The opposite Party is a licensee of a Murphy radio set, Model No. TU-196. The application arises out of a Small Cause Court suit which was disposed of by the order dated the 9th July 1959, and wherein the relief sought by the plaintiff was for the recovery of Rs. 43.75 nP. which was made up of Rs. 15/-paid as renewal fee for the year 1957, of Rs. 20/-paid as surcharge and of Rs. 8.75 nP. claimed as cost of notice etc. The trial court, on hearing the parties", decreed the suit, as framed and hence this application as already stated by the defendant.

2. It appears that up to the month of May 1956 the plaintiff, along with her father, lived at Bhagalpur. Accordingly, the radio licence for the year 1956 was renewed at Bhagalpur on the 5th January, 1956. Thereafter some time in June, 1956, the father of the plaintiff was transferred from Bhagalpur to Madhipura and she accompanied him along with the radio set and was there up to July, 1958. Unfortunately at Madhipura, there was no electricity in the town and hence the aforesaid radio set could not be used by her from July, 1956 to July 1958.

Accordingly the plaintiff did not get the radio licence renewed in the year 1957. Thereafter some time in November 1957 she received a notice from the Postal Department calling upon her to explain the circumstances under which the

licence for the year 1957 had not been renewed. In answer thereto the plaintiff stated the aforesaid facts, and further sent a certificate from a local radio dealer to the effect that the radio set of the plaintiff was an A/C, D/C set and, as such could not be used without the help of electricity.

Perhaps in the opinion of the Postal Department this could not be a valid ground for exemption from renewal of the radio licence for the year 1957. Accordingly thereafter the Postal Department wrote a letter drawing the attention of the plaintiff to condition No. 7 printed at the back of the licence. This the plaintiff met by saying that the aforesaid condition No. 7 was not applicable to the facts of her case. Subsequently however the plaintiff under protest, paid the renewal fee for the year 1957 as also the surcharge of Rs. 20, and, thereafter, brought the suit giving rise to the present application on the grounds as already stated above.

3. Now so far as the question of licence of a radio set is concerned that seems to be covered by two Acts: (1) by the Indian Telegraph Act 1885 and (2) by the Indian Wireless Telegraphy Act, 1933. Under both the Acts, there is provision given for the framing of rules as provided thereunder. In the case of the former Act, namely, the Indian Telegraph Act 1885, that provision is to be found in Sec, 7 while the latter Act, namely, the Indian Wireless Telegraphy Act it is to be found in Section 10.

The rules under the Indian Telegraph Act were perhaps framed in accordance with the aforesaid provisions sometimes in the year 1940 and were named as "Rules for the Licensing of Wireless Receiving Apparatus, 1940", while the rules under the latter Act namely, the Indian Wireless Telegraphy Act 1933, seem to have been framed in the year 1933 and were named as "The Indian Wireless Telegraphy (Possession) Rules 1933." Section 4 of the Indian Telegraph Act 1885, inter alia provides that,

"Within the provinces the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:" Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of the provinces:

Provided further that the Central Government may by rules made under this Act, and published in the Official Gazette, permit subject to such restrictions and conditions as it thinks fit the establishment, maintenance and working

(a) of wireless telegraphs on ships within Indian Territorial waters and on aircraft within or above the Provinces or Indian Territorial waters and

(b) of telegraphs other than wireless telegraphs within any part of the Provinces."

As against that the preamble to the Indian Wireless Telegraphy Act, 1933, provides that

"Whereas it is expedient to regulate the possession of wireless telegraphy apparatus in India, it is hereby enacted as follows:"

4. It appears that, in the court below, there was certain amount of controversy as to whether the licence which had been issued in the present case to the plaintiff was one under the Indian Telegraph Act, 1885, or one under the Indian Wireless Telegraphy Act, 1933. The trial court, on this point, found that

"The radio set of the plaintiff is not a telegraph as contemplated u/s 3 of the Act of 1885."

This finding in this court, has not been challenged by the learned Government pleader. The learned Government pleader however, has contended that the other finding given by the trial court, namely, to the effect that --

"nor it is a wireless telegraphy apparatus as contemplated by Section 3 of the Act 17 of 1933 or Rule 2 (c) of the aforesaid Act."

is in any view of the matter, wholly erroneous. Now the definition of "wireless telegraphy apparatus" as provided in Section 2(2) of the Indian Wireless Telegraphy Act, 1933, is as follows:

" "Wireless telegraphy apparatus" means any apparatus, appliance, instrument or material used or capable of use in wireless communication, and includes any article determined by rule made u/s 10 to be wireless telegraphy apparatus, but does not include any such apparatus, appliance, instrument or material commonly used for other electrical purposes, unless it has been specially designed or adapted for wireless communication or forms part of some apparatus, appliance, instrument or material specially so designed or adapted, nor any article determined by rule made u/s 10 not to be wireless telegraphy apparatus."

Then, in rule 2(c) of the Indian Wireless Telegraphy (Possession) Rules 1933, it is provided that

" "Complete wireless set" means any apparatus which is capable of being used for transmitting or receiving wireless communications, either by itself or with the addition of electric power, aerials, valves, telephones, loudspeakers and similar devices, and includes any apparatus which is temporarily incapable of being so used by reason of a defect in its component parts or in the electric wiring."

The trial court, relying on the definition of "complete wireless set" as provided in the aforesaid rule 2(c) of the Indian Wireless Telegraphy (Possession) Rules 1933 has held that

"a main radio set is an incomplete radio wireless set and becomes complete only when electric power is added to it because by addition of power, it is made capable of being used for receiving communications."

Accordingly, in the opinion of the trial court as there was no electricity available

at Madhipura the radio set though held in possession there by the plaintiff was not a complete wireless set, and, as such no licence was necessary to be obtained for it by the plaintiff for the year 1957 as required by the provision of Section 3 of the Indian Wireless Telegraphy Act, 1933, and rule 3 framed under that Act. In my opinion, the learned Government Pleader has rightly contended that the aforesaid view taken by the trial court on the ground of absence of electricity at Madhipura is not sustainable in law.

It is true as implied by the definition given of "complete wireless set" in the aforesaid Rule 2(c) that if any defect in radio set is of such a character that it makes it permanently incapable and not only temporarily incapable of being used, then that apparatus does not remain a complete wireless set, and as such is not necessary to be covered by any licence. The question, however, that, on the facts of the present case arises for consideration is whether the absence of electricity in the town is such as to make any radio possessed by any licensee there permanently incapable of being used by him by reason of that fact.

In my opinion, the defect, as contemplated in the aforesaid Rule 2 (c) refers to the defect in the radio set itself may it be either in the component parts of the set or may it be in the electric wiring therein; but certainly it does not include at all the absence of electricity in the town wherein the radio set is possessed by any licensee. The absence of the electricity in the town is a factor not at all connected with the internal completeness of the set; rather, it is a factor which is supplementary and additional to the completeness of the set.

That being so I hold that so long as the set in controversy did not suffer from any permanent internal defect within it, it could not cease to be called a "complete wireless set", much less for the reason that though it was complete but the town wherein it was possessed by die licensee did not have electricity. Accordingly in my view simply for the absence of electricity in the town of I Madhipura in the year 1957 the radio set as posses-jsed there by the plaintiff could not be exonerated from the rules regulating the issue of licence. In other words though there was no electricity provided in the town of Madhipura in the year 1957 the radio set as possessed by the plaintiff was a complete wireless set and as such could not be possessed and held by the plaintiff as she did in that without the licence as provided u/s 3 of the Indian Wireless Telegraphy Act 1933 and rule 3(b) framed under that Act.

5. In the alternative Mr. Ghosh, appearing in support of the order passed by the trial court has argued that there is no provision made under the Indian Wireless Telegraphy Act 1933; for the realisation of any surcharge. In my opinion, this part of the argument on behalf of the opposite party is equally without substance. Section 5 of the Indian Wireless Telegraphy Act, 1933, provides that,

"The telegraph authority constituted under the Indian Telegraph Act, 1885 (XIII of 1885) shall be the authority competent to issue licenses to possess wireless telegraphy apparatus under this Act, and may issue licenses in such manner on

such conditions and subject to such payments as may be prescribed."

Then, there is a rule framed under the Act on this point which is rule 18. That provides that,

"Notwithstanding anything contained in these rules, if a person possesses any wireless receiving apparatus without the requisite license or continues to possess any such apparatus without obtaining a fresh license on renewal within the period and subject to the conditions specified in rule 19 he shall be liable to pay on the demand of any Inspector duly appointed by the licensing Authority in this behalf, a surcharge of Rs. 15/- in addition to the fee for the necessary license required, provided that such surcharge shall be Rs. 50/- in the case of a commercial Broadcast Receiver, Rs. 10/- in the case of a community Receiver and Rs. 3/- in the case of Crystal set Or a Broadcast Receiver for Schools or for the institutions of the blind."

These two provisions therefore, read together clearly show that there is a provision made under the aforesaid Act of 1933 for the realisation of surcharge. That being so, the Postal Department was fully justified in law to demand and realise as they did not only the renewal fee for the year 1957 but also the surcharge as provided in rule 18 referred to above.

6. Lastly it has been contended by Mr. Ghosh, that under the Indian Wireless Telegraphy Act, 1933, as also under the earlier Act of 1885 all that is provided as a penal measure for the contravention of any of the provisions made thereunder is a proceeding or trial for the same and nothing beyond that. In my opinion, there also Mr. Ghosh is not correct. In both the Acts there is a clear provision made firstly, under the heading "offence and penalty" and, secondly under the heading "licensee". Therefore the contention made by Mr Ghosh that because there is a provision made for offence and penalty the Postal Department had no authority to realise the renewal fee and the surcharge, as they did by a simple notice cannot be accepted.

7. For the reasons stated above I think that the order passed by the trial court is not at all sustainable in law. Accordingly, the order under revision is set aside, the application is allowed and the suit is dismissed; but, in the circumstances, there will be no Order for costs.