
(1990) 01 DEL CK 0029

In the Delhi High Court

Case No : Civil Writ Petition No. 2393 of 1988

V.P. Mehta

APPELLANT

Vs

Mahanagar Telephone Nigam Ltd. and Another

RESPONDENT

Date of Decision : 30-01-1990

Acts Referred:

Citation : AIR 1990 Delhi 169 : (1990) 1 ILR Delhi 13 : (1990) RLR 195

Hon'ble Judges : C.L. Choudhary, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : Dinesh Agnani, for the Appellant; Sukumar Patjoshi, for the Respondent

Judgement

B. N. Kirpal, J.—Rule D. B.

2. The challenge in this writ petition is to the notice dated 6th October, 1988 whereby the Telephone No. 532799 is threatened to be disconnected.

3. The said telephone is in the name of the petitioner who is the subscriber. Previously this telephone was installed at Ramesh Nagar, New Delhi since about 1970. In the year 1986 it has been shifted to the present premises being A-43/2, Naraina Industrial Area, Phase 1, New Delhi. According to the petitioner he has a small cabin in the said premises and he has allowed M/s. Khanna Brothers to use the said telephone and an extension has also been provided by the petitioner to M/ s. Khanna Brothers.

4. By the impugned notice which was issued to M/s. Khanna Brothers it is stated that there is an outstanding amount of Rs. 51,339 in respect of Telephone No. 5415110 which was in the name of M/ s. Khanna Brothers and as this outstanding amount has not been paid, the Telephone No. 532799 will be disconnected.

5. We have heard the counsel for the parties. It is contended by the learned counsel for the petitioner that no notice to show cause has been given to the

petitioner and. Therefore, his telephone cannot be disconnected. He has further relied upon the case of Smt. Krishna Kumar and another v. Delhi Mahanagar Telephone Nigam Ltd. (1989) 3 DL 211 and contended that on account of use of telephone by M/s. Khanna Brothers the petitioner's telephone cannot be disconnected. In the said case the Court was considering the interpretation of Rule 443. There it was held that a telephone subscriber meant the person to whom the telephone had been allotted and, Therefore, unless there was a default of payment by the telephone subscriber that telephone could not be disconnected.

6. In the present case the facts as alleged by the respondents are that M / s. Khanna. Brothers have been using the telephone in question. This fact is admitted before us in Court by the learned counsel for the petitioner as well as by the petitioner, who is present in Court. The petitioner has further stated that the large bills which are being received in respect of Telephone No. 532799 is because of the STD and ISD calls which are made by M/s. Khanna Brothers. Bills for some of the months are, in fact, over Rs. 20,000. It may be that if action is taken under Rule 429 or Rule 429-A, the respondents may be able to justifiably contend that there has been a misuse of the telephone especially when bills of over Rs. 20,000 can under no circumstances be regarded as casual calls made by the outsiders. In view of huge calls made by M/s. Khanna Brothers, as has been admitted before us in the present case, the petitioner is not entitled to contend that his case would fall under the exemption contained in Rule 429-A. The said rule enables a subscriber to permit an outsider to make casual telephone calls, provided the subscriber does not charge more than the charge leviable. The rule would not permit an outsider to use the telephone regularly, even if no additional charges are received by the subscriber. In the present case, it is admitted by the petitioner that not only are M/s. Khanna Brothers using the said telephone, but an extension has been provided by the petitioner to M/s. Khanna Brothers by installing an additional instrument. It is also admitted that this additional instrument has been installed without any prior permission of the telephone department. Be that as it may, the present notice which has been issued is under Rule 443 and not under Rule 429 or Rule 429-A. The telephone is an important facility and the same cannot be disconnected without the principle of natural justice being followed. If such notice had been given to the petitioner, the Court would have to consider whether it should be exercised of its discretionary Jurisdiction interfere where, admittedly, lie petitioner is allowing violation of the law by permitting unauthorized user of the telephone. But such conclusion should not be arrived at without giving the subscriber, in this case the petitioner, an opportunity of being heard.

7. The petitioner has contended that he has ail office at the premises in question and pays Rs. 300 / -p.m. as rent to M/s. Khanna Brothers. We would not like to go into the question as to whether the story put forth by the Petitioner is correct or not. But we have little doubt in our minds that M/s. Khanna Brothers are the persons who are using this telephone extensively and regularly. In fact, the

respondents have placed on record a photostat copy of the visiting card of a representative of M/s. Khanna Brothers where this telephone number in question is indicated as being one of the telephones, which is available to M/s. Khanna Brothers.

8. In view of the fact that no telephone as yet has been disconnected, we direct the respondents not to disconnect the telephone without giving a show cause notice to the petitioner.

9. Writ petition stands disposed of.

10. Order accordingly.