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Court : Karnataka

Decided On : Jan-06-2004

Reported in : AIR2004Kant203; ILR2004KAR1043; 2004(4)KarLJ70

Judge : H. Rangavittalachar, J.

Acts : [Telegraph Act, 1885](#) - Sections 7; Telegraph Rules, 1951 - Rules 2 (PP) and 443

Appeal No. : W.P. Nos. 3495-3497 and 3580 of 2001

Appellant : Ajith Singh and ors.

Respondent : General Manager, Mysore Telecom District and anr.

Advocate for Def. : Aravind Kumar, ACGSC

Advocate for Pet/Ap. : G.B. Manjunath, Adv.

Disposition : Petition allowed

Judgement :

ORDER

H. Rangavittalachar, J.

1. Writ petitioners are the sons of one Bindar Singh who was a subscriber to the telephone No. 497877. The said telephone was disconnected from service on 16-

2-1999 for non-payment of telephone charges. The respondents have issued notice to the petitioners dated 12-1-2001-annexure A demanding payment of a sum of Rs. 31,467/- due by Bindar Singh in respect of the disconnected telephone No. 497877 failing which they have threatened to take action. This notice is questioned in these petitions mainly on the ground that having regard to Rule 443 of the Indian Telegraph Rules, 1951, no such power is available to the respondents.

2. The defence of the Department before this Court is, though petitioners were not the subscribers of the disconnected telephone, since they happen to be the sons of the subscriber - Bindar Singh and are also residing in the same house, they should be made liable to pay.

3. Sri Aravind Kumar, learned Standing Counsel for the respondents contended that, having regard to the close relationship of the defaulting subscriber with the petitioners, petitioners also should be held as subscribers of the disconnected telephone. He relied on the decision of the Delhi High Court In Rajiv Gosain v. Mahanagar Telephone Nigam Ltd. : AIR2000 Delhi431 wherein the Delhi High Court has held that if close relative like the sister and brother are residing in the same premises and if there is a community of usage of two different telephones, then for the default of one subscriber the Department is authorised to disconnect the telephone of the other subscriber.

4. With great respect, it is difficult to agree with the said view of the Delhi High Court for the following reasons :

5. The Central Government in exercise of its powers under Sec. 7 of the Indian [Telegraph Act, 1885](#) has framed Rules known as Indian Telegraph Rules, 1951. Rule 443 of the said Rules gives power to the Central Government to take coercive steps to recover its dues towards rent and telephone charges from a defaulting subscriber. Rule 443 reads:

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 disconnected 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.

6. A subscriber has been defined under Rule 2 (pp) as 'subscriber means a person to whom telephone service has been provided by means of an installation under the Rules or under an agreement.' The exclusive definition clause refers only to two categories of persons as subscribers. They are-

(i) 'The person' who is a party to the agreement

(ii) A person to whom under the rules Telephone service is provided.

To include to these two categories any other person however close he or they may be, would be widening the scope of the definition of 'subscriber' where the intent of the Rule is otherwise. Merely because a close relative of a subscriber resides with him and uses his telephone, it cannot mean that such a relative by the said fact also becomes a 'subscriber' within the meaning of Rule 443.

7. The Andhra Pradesh High Court also has taken the same view as I have taken, in the case of Pridhvi Kumar v. General Manager, : AIR 1993 AP131 . The Court has held that though the mother and the son may be closely related, they being the independent citizens of India, are entitled to their own right to subscribe for their benefit or use, separate telephones and for the default in payment by mother, no liability can be fastened on the son and his telephone cannot be disconnected.'

8. The Division Bench of this Court in Kanoria Fleurs & Naturales Ltd. v. General Manager, Dept. of Telecommunications, Bangalore Telecom District, Bangalore, (2003) 5 Kant LJ 1, while interpreting Rule 443 of the Rules, has held that the power available to the Department under Rule 443 is only against the named subscriber to the telephone and such a power cannot be extended against any other person other than the subscriber.

9. So also the learned Single Judge of this Court has held interpreting Rule 443 in the case of Hotel Bheema v. Telecom District Engineer, ILR 1996 Kant 3072 that 'Rule 443 does not authorise the Telephones Department to disconnect any telephone connection of any other person other than the defaulting subscriber'.

10. It is not the case of respondents that the petitioners are also stated in the agreement as subscribers nor have they brought to the notice of this Court any rule to that effect. Hence the respondents are not right in calling upon the petitioner to pay the telephone charges of Bindra Singh.

11. Therefore, the notice issued by the Department - annexure A is clearly unsustainable and is accordingly quashed. Petitions are allowed.

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