

Hotel Bheema Vs. the Telecom District Engineer and anr.

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Court : Karnataka

Decided On : Apr-09-1996

Reported in : ILR1996KAR3072; 1996(7)KarLJ273

Judge : P. Vishwanatha Shetty, J.

Acts : Indian Telegraph Rules, 1951 - Rule 443

Appeal No. : WP. 6296/1992

Appellant : Hotel Bheema

Respondent : The Telecom District Engineer and anr.

Advocate for Def. : Ashok Harnahalli, Additional CGSC for R-1 and 2

Advocate for Pet/Ap. : M. Ram Bhat, Adv.

Disposition : Petition allowed

Judgement :

ORDER

P. Vishwanatha Shetty, J.

1. In this petition, the petitioner who is running a lodging house has prayed for quashing the order dated 20th February, 1992, the copy of which has been produced as Annexure-H, calling upon the petitioner to pay a sum of Rs. 12,114/-

towards the arrears of telephone bill in respect of STD PT 27198 and also the demand note dated 21st February 1992 issued to the petitioner calling upon the petitioner to pay the amount referred to in bill, Annexure-H.

2. Sri Ram Bhat, Learned Counsel appearing for the petitioner submitted that admittedly the petitioner is not a subscriber in respect of telephone STD PT 27198 and one Sri Aslam is admittedly the subscriber to the said telephone. Therefore, he submitted that it is not permissible for the respondents to call upon the petitioner to pay the amount referred to in bill/order Annexures G and H, and in the event of failing to pay the amount demanded in the said bill to disconnect the telephone of the petitioner. He submitted Rule 443 of the Indian Telegraph Rules, 1951 (hereinafter the 'Rules') which provides for disconnection of telephone for the default of a subscriber to pay arrears of the telephone bill, does not empower the respondents to disconnect telephone of the petitioner for the liability or the arrears of amount due by the said Aslam in respect of telephone bearing No. STD PT 27198. In support of his contentions, Sri Ram Bhat brought to my notice the decision of the Bombay High Court in the case of Dr B.V. MANEK v. MAHANAGAR TELEPHONE NIGAM LTD., : AIR1996 Bom53 , and also the decision of the Gauhati High Court in the case of SANTOKH SINGH v. DIVISIONAL ENGINEER, TELEPHONES, SHILLONG, AIR 1990 Gau. 47. However, Sri Ashok Harnahalli, Learned Additional Central Government Standing Counsel, appearing for the respondents submitted that the telephone No. 27198 was connected to the PBX Telephone No. 28078 in respect of which the petitioner is a subscriber and therefore, it is a clear case of misuse of telephone No. STD PT 27198, and therefore the authorities were fully justified in calling upon the petitioner to make the payment as claimed in bill/demand note Annexures G and H and notifying the petitioner that in the event of failure to pay the amount demanded, the respondents would disconnect the telephone of the petitioner.

3. In view of the rival contentions advanced by the Learned Counsel for the parties, the short question which would fall for my consideration is as to whether the respondents are entitled to call upon the petitioner to pay the arrears of amount due in respect of the telephone No. STD PT 27198 in respect of which admittedly one Aslam is the subscriber; and in the event of refusing to make the

said payment, whether the respondents are entitled to disconnect the telephone of the petitioner.

4. Before I consider the question which would arise for my consideration, it is relevant to extract Rule 443 of the Rules which reads as follows:

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.

5. On a plain reading of Rule 443 of the Rules, it is clear that the said rule authorises or empowers the Department to disconnect the telephone of the subscriber only, and not of any other person for the arrears of amount, if the said subscriber fails to pay the rent or other charges in respect of the services provided within the time prescribed in accordance with the Rules. Therefore, under Rule 443 of the Rules, if the amount due by the subscriber in respect of rent or other charges towards the telephone services provided are not paid by the subscriber in accordance with the Rules, any telephone or telephones or any telex service rented by him could be disconnected by the Department. Rule 443 of the Rules in my opinion, does not empower the respondents to disconnect the telephones of the petitioner in respect of the arrears of telephones rent due in respect of telephone bearing No. STD PT 27198 in respect of which one Aslam was the subscriber. Therefore, I am of the view that even for the misuse of the telephone bearing No. 27198 in respect of which one Aslam is the subscriber, does not permit the respondents to call upon the petitioner to pay the amount claimed in the

order Annexure-H and Demand Note Annexure-G.

6. The view I have taken above is also supported by the decision of the Bombay High Court in the case of Dr. B.V. MANEK v. MAHANAGAR TELEPHONE NIGAM LTD., referred to above relied upon by Sri Ram Bhat, the Learned Counsel for the petitioner.

7. In the said decision at para 5, the Bombay High Court has taken the view that it is not permissible for the Department to disconnect the telephone of a relation or an associate of a subscriber for the default committed by such subscriber.

8. I am unable to accept the submissions of the learned Central Government Standing Counsel Sri Ashok Hamahalli that since the telephone No. STD PT 27198 has been misused by the petitioner, the authorities are entitled to disconnect the telephone of the petitioner. It is only Rule 443 of the Rules which authorises the respondents to disconnect the telephone for the amount due by the subscriber. No other Rules have been placed or brought to my notice by the learned Senior Central Government Standing Counsel, which empowers the respondents to disconnect the telephone of the petitioner for the arrears of the amount due in respect of the telephone belonging to some other subscriber. If the telephone bearing No. STD PT 27198 was being misused, it is for the authorities to take steps on that behalf, in accordance with law.

9. In view of my above conclusion, this Writ Petition is allowed, and consequently the Bill - Annexure-H and Demand Note Annexure-G are hereby quashed.

10. In terms stated above, this petition is disposed of. Rule issued is made absolute.