SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Matlapudi Sambaiah Vs. Union of India (Uoi), Rep. by the Asst. General Manager (Osd), O/O. General Manager

Matlapudi Sambaiah Vs. Union of India (Uoi), Rep. by the Asst. General Manager (Osd), O/O. General Manager

SooperKanoon Citation : sooperkanoon.com/439475

Court : Andhra Pradesh

Decided On : Aug-01-1997

Reported in : 1997(5)ALT281

Judge : B.S.A. Swamy, J.

Acts : Indian Telephone Rules, - Rules 2PP and 421

Appeal No. : Writ Petition No. 29409 of 1995

Appellant : Matlapudi Sambaiah

Respondent : Union of India (Uoi), Rep. by the Asst. General Manager (Osd), O/O. General Manager

Advocate for Def. : D. Krishna Murthy, SC for Central Govt.

Advocate for Pet/Ap. : K.V. Satyanarayana and ;M. Radhakrishna, Advs.

Judgement :
ORDER

B.S.A. Swamy, J.

1. Heard the learned Counsel for the petitioner, Mr. M. Radhakrishna.

2. In this writ petition this Court is called upon to decide whether an allottee of a STD booth under a scheme promulgated by the Telecommunication Department can be termed as a subscriber and whether the Indian Telephone Rules (hereinafter called as Rules) are applicable to him or not.

3. The petitioner who is a licencee for STD booth No. 425126 at Vijayawada filed this Writ Petition questioning the action of the respondents in disconnecting the telephone without communicating the orders passed on the explanation submitted by him pursuant to the showcause notice given by them.

4. The relevant facts of this case are that the respondents evolved a scheme of providing employment opportunities to the uneducated youth and physically handicapped etc. Under the scheme the persons selected have to enter into an agreement incorporating the terms and conditions of the licence. On allotment of STD booths commission will be paid to allottees slab-wise for the calls made from that telephone and allottee need not pay any rent as such for the installation and at the same time allottee is not allowed any free calls on the telephone. But the guidelines issued by the department did not provide any period for which licence will be given. The petitioner who seemed to be a physically handicapped person was selected by the Selection Committee for allotment of a STD booth No. 425126 to be installed at Shop No. 11, Sri Brahmachari Matam Complex, Canal Road, Vijayawada. Initially the petitioner was allotted the booth for a period of two years and the licence period came to an end by 31-12-1994. Thereafter his licence period was extended by two more years i.e., from 1-1-1995 to 31-12-1997. During the second term of licence period the respondent, in his proceedings P-26/STD PT 425126 dated 18-9-1995, had issued a show cause notice, to explain within two days from the date of receipt of that letter, as to why the connection should not be disconnected without any further notice alleging that the telephone is being misused and the same is a clear breach of agreement and also in violation of Rule 427 of the Rules. Immediately, the petitioner submitted his explanation. It is not known whether the explanation submitted by the petitioner had been considered or not, and final orders passed, if any, were not communicated to the petitioner and ultimately the telephone connection was disconnected on 26-9-1995. Assailing the said action, the present writ petition was filed.

5. Counsel for the petitioner submits that under Rule 2-PP of the Rules the petitioner should be treated as a subscriber and under Rule 421 of the Rules the authorities are expected to give seven clear days notice before taking any action for disconnection of the telephone. In this case the petitioner was not only given two days time to submit his explanation, but final orders, if any, passed pursuant to the show cause notice dated 18-9-1995 after considering his explanation were not communicated to him. Hence, on both the grounds the order of the respondent is vitiated.

6. Mr. D. Krishna Murthy, learned Counsel appearing for the respondent stated that the petitioner cannot be termed as a subscriber as he is only an agent of the department and he is being paid for managing departmental telephone and the terms and conditions of the licence are reduced into writing. Under Clause (26) of Rule 427 of the Rules the department is empowered to disconnect the telephone without giving any notice if it comes to its notice that the STD hirer has sublet the telephone to any other person. In support of his contention the Counsel for the respondent relied upon the judgments in K.A.S. Senthilnathan v. Union of India, : AIR1997 Mad208 and Union of India v. Binani Consultants (P) Ltd., : (1995)1CALLT66(HC) . But these two cases cannot be an authority on the proposition raised by the respondent that the petitioner is only a licencee, but not a subscriber as contemplated under Rule 2(PP) of the Rules, which reads as under, was not considered in the two judgments Supra.

'Subscriber means a person to whom telephone service has been provided by means of an installation under these rules or under an agreement'.

7. From the above definition it is clear that a person to whom a telephone service is provided not only under these Rules, but also under an agreement, is treated as subscriber. In the Rules no where it was stated the meaning and effect of the words 'under an agreement'. But, at the same time, the public call office and a local public call office were defined in Rule 2(NN) and (I) of the Rules and those rules are applicable to STD booths and PCOs as well. Under Clause (2) of the guidelines given by the Director of Telephones, New Delhi it is clearly stated that the Committee will allot the available number of PCOs giving preference to the

following categories of persons:

(a) Handicapped including blind persons.

(b) SC/ST applicants.

(c) Ex-servicemen/War widows.

(d) Retired DOT employees or their dependants.

(e) Dependants of Freedom Fighters.

(f) Charitable Institutions/Hospitals.

It is also stated that the Committee will be fully authorised to allot STD PCOs and also decide the location of the new PCOs. Under Clause (9) of the guidelines when once an applicant is allotted STD or PCO booth he should sign the agreement in the prescribed form with the Telecom Authorities. Under Clause (10) of the guidelines incoming call facility is also allowed on STD and PCO booths. The licencees have to pay a sum of Rs. 5,000/- in urban areas and a sum of Rs. 600/- in rural areas, towards security deposit. In case of STD PCOs the billing will be fortnightly in urban areas and weekly in rural areas. As public call offices and local public call office are governed by the rules, I am of the opinion that the department cannot contend that the rules are not applicable to STD booths and are different from these booths. Moreso, when the allottees of PCO and local PCOs are also treated as agents and are being paid commission, apart from allotting the booths under an agreement. That is the reason why the department as defined Under Section 2(PP) of the Rules has taken care of not only the persons to whom telephone service is provided on rental basis, but also telephones provided to them under an agreement. Hence, it is difficult to hold that a licencee of STD booth is not a subscriber. Further the show cause notice issued by the department also fortifies the view taken by it. In the said show cause notice the department has categorically mentioned that the action of the petitioner violates not only the terms and conditions of the agreement, but also the Rule 427 of the Rules which is extracted hereunder:

'Illegal or improper use of telephone:-

A subscriber shall be personally responsible for the use of his telephone. No telephone shall be used to disturb or irritate any persons or for the transmission of any message or communication which is of an indecent or obscene nature or is calculated to annoy any person or to disrupt the maintenance of public order or in any other manner contrary to any provision of law'.

8. The word used in Rule 427 is only a subscriber. Hence, on the admission of the respondents itself it has to be held that the petitioner falls under the definition of subscriber. Now at this stage the respondents cannot be allowed to take a round about turn and contend that the petitioner is only an agent of the department and he was allotted STD booth under an agreement.

9. For the above reasons I hold that the allottees of STD booths also have to be treated as a subscriber. Even assuming that for the sake of arguments that the case of the petitioner cannot be treated as a subscriber, the well settled principle in administrative law is that when a person's right is going to be affected even by executive action of the authorities concerned, the principles of natural justice have to be followed and the authorities cannot take shelter under an agreement which is mostly unilateral one. At any rate, in this case the department itself has chosen to give a show cause notice, but the petitioner was given only 48 hours to submit his explanation, while 7 clear days notice is mandatory under Rule 421 of the Rules. Even though the petitioner submitted his explanation within the time specified in the show cause notice, the respondents without passing a final order and without giving the petitioner an opportunity to assail the correctness or otherwise, the order of disconnection of telephone was passed. Mr. Krishna Murthy, submits that the department passed final orders, but at the same time he is fair enough to concede that the order was not communicated to the petitioner. This Court as well as the Supreme Court repeatedly held that mere passing of the order is not sufficient and the order passed cannot come into force unless and until the same was served on the affected party. Admittedly in this case, no order was served on the petitioner. On this ground also the order passed by the respondents is liable to be set aside.

10. In the light of the view taken by me, the action of the respondents in disconnecting telephone No. 425126 at Shop No. 11, Sri Brahmachari Matam Complex, Canal Road, Vijayawada is declared as not in accordance with law. Hence, a writ of mandamus shall issue to the respondents to restore the connection forthwith, on payment of arrears, if any, by the petitioner. If the department still wants to pursue this matter, it may do so, after giving fair opportunity to the petitioner to prove his case and any action taken by the department should be in accordance with law and in consonance with the principles of natural justice.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com