

**Pradeep Kumar Tripathi Vs. Telecom District Manager and Others**

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**Court :** Allahabad

**Decided On :** Apr-21-1994

**Reported in :** AIR1994All325

**Judge :** B.M. Lal and ;S.K. Verma, JJ.

**Acts :** [Indian Telegraph Act, 1885](#) - Sections 5, 7 and 7B; [Constitution of India](#) - Articles 14 and 226; Indian Telegraph Rules, 1951 - Rules 421, 422, 427 and 443; [Administrative Tribunals Act, 1985](#) - Sections 28

**Appeal No. :** Civil Misc. Writ Petition No. 9229 of 1994

**Appellant :** Pradeep Kumar Tripathi

**Respondent :** Telecom District Manager and Others

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** P.M.N. Singh, Adv.

**Judgement :**

ORDER

**S.K. Verma, J.**

1. This petition under Art. 226 of the [Constitution of India](#) has been filed for a direction in the nature of certiorari quashing the order dated 28-2-1994 passed by

respondent No. 1 (Annexure-5 to the writ petition) demanding additional security and restoration fee and a writ, order or direction in the nature of mandamus commanding the respondents to restore the telephone facility to the petitioner immediately.

2. Shorn of the irrelevant, the facts in brief are that the petitioner got telephone connection installed on 23rd January, 1992 at the address 31 M.T.G. Preetam Nagar, colony Allahabad with a telephone No. 633231 and enjoyed the facility till 31st December, 1992 without allegedly receiving any bill during that period. He then applied on 31st December, 1992 for keeping the telephone in Safe Custody from 1st January, 1993 to the end of May, 1993, because he was shifting to another address 63/1 Ganga Enclave, Awas Vikas Colony, Jhunsi, Allahabad. In July, 1993 the petitioner shifted to 249 M.T.G. Preetam Nagar Colony, Allahabad and requested for revival of the telephone on the aforesaid new address and for that purpose moved applications dated 12-8-1993, 22-9-1993; 9-10-1993 and 15-12-1993, but to no avail. Then he contacted the Department of the respondents, he was told that a bill of Rs. 5038/- was pending against the petitioner. It may be remarked that on 23-2-1993 the Department had allegedly disconnected the telephone in default of payment of the bills, The petitioner deposited the said amount in two instalments of Rs.3,962/- on 19-1-1994 and Rs. 1076/- on 16-2-1994. The respondent No. 1 is said to have passed orders on 28th January, 1994 demanding Rs.200/- as rent; Rs. 100/- as restoration fee and Rs. 1200/- as additional security.

3. We have heard the learned counsel for petitioner in detail. The learned counsel for the petitioner has argued firstly that there is no alternative remedy available to the petitioner because his case regarding dispute of excess billing and demand of restoration fee and additional security is not covered by S.7B of the Indian Telegraph Act 1885. Secondly because petitioner had demanded facility of Safe Custody the telephone could not have been disconnected during 'that period. Thirdly dis-connection could not have been done without notice and the action of the respondents was against principles of natural justice. It has therefore, been urged that the petition be allowed and the impugned order dated 28th January, 1994 be quashed and the connection be restored.

4. So far as the doctrine of exhaustion of alternative remedies is concerned, several decisions of the Apex Court, have been cited which may now be considered:--

In *Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya Sitapur*, AIR 1987 SC 2186 : (1987 Lab IC 1901) the High Court had dismissed the writ petition on the ground of availability of alternative remedy. The Apex Court held that It is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition, when an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Art. 226 of the Constitution on the ground of existence of an alternative remedy. In the present case the demand of additional security and restoration fee cannot be termed as a demand without jurisdiction.

5. In *Ram and Shyam Company v. State of Haryana*, AIR 1985 SC 1147 it was held by the Apex Court that 'Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Art. 226 of the Constitution where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court'. In the same decision the Apex Court considering the facts of that case remarked 'look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State Administration against the decision of the Chief Minister? The cliché of appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to one self. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy'. We may remark that there is no such factual position in this case before us. In fact the remedy under Section 7B of the Indian Telegraph Act has not yet been availed of by the petitioner.

6. In *Hukum Chand Shyam Lal v. Union of India*, 1976 (2) SCC 128 : (AIR 1976 SC 789) the Apex Court while considering the provisions of Section 5 of the Indian Telegraph Act 1885 and Rules 421,422 and 427 of the Telegraph Rules, 1951 held that 'it is well settled that there a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice'. In that case the Administration of Delhi had directed the Police to take over temporary possession of the petitioner's telephone on the ground of 'Public Emergency'. In the present case disconnection was resorted to because of non-payment of dues and not because of any exercise of a power of drastic nature envisaged by Section 5 of the Indian Telegraph Act 1885.

7. In *S.P. Sampath Kumar v. Union of India*, AIR 1987 SC 386 : (1987 Lab IC 222) the Apex Court while considering provision of Section 28 of Administrative Tribunals Act (13 of 1985) held that 'exclusion of the jurisdiction of the High Court without settingup an effective alternative institutional mechanism or arrangement for judicial review would be violative of the basic structure doctrine and hence outside the constituent power of Parliament'. In the case before us we are of the opinion that there is an alternative remedy under Section 7B of the Indian Telegraphs Act and therefore, the decision referred does not help the petitioner.

8. In *M/s. Baburam Prakash Chandra-Maheshwari v. Zila Parishad*, AIR 1969 SC 556: (1969 All LJ 596) it was held that 'it was a well established proposition of law that when an alternative and equally efficacious remedy is open to litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue prerogative writ. It is true that the existence of a statutory remedy does not effect the jurisdiction of the High Court to issue a writ. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari notwithstanding the fact that the statutory remedies have not been exhausted. It was also observed 'there are

at least two well recognised exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well-settled that where proceedings are taken before a Tribunal under a provision of law, which is ultra vires it is open to a party aggrieved thereby to move the High Court under Art. 226 of the Constitution for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course. In the second place, the doctrine has no application in a case where the impugned order has been made in violation of the principles of natural justice'. In the present case proceedings under Section 7B, of the Indian Telegraphs Act cannot be termed as ultra vires because those proceedings do not take away any fundamental right of the person who is enjoying telephone facility; The proceedings under Section 7B give him an opportunity of entering into Arbitration regarding his disputes. Moreover, the impugned order cannot be said to be violating principles of natural justice, because the demand of security is provided in the rules, and the consumer cannot complain of the same because he gets the bill for the utilization of facility of telephone after say two months of the actual use of the facility. The petitioner has nowhere alleged that he has deposited security earlier. Hence, demand of additional security cannot be termed as an action against principles of natural justice.

9. It may be remarked that in *M/s. Baburam Prakash Chandra Maheshwari v. Zila Parishad* (supra) the dictum that the doctrine has no application in a case where the impugned order has been made in violation of principles of natural justice is based on a five Judge decision of the Apex Court in *U.P. State v. Mohammad Nooh*, AIR 1958 SC 86 in which case there was a departmental trial against a Police Constable before a Deputy Superintendent of Police, who, to contradict the testimony of a prosecution witnesses, himself gave testimony in the enquiry. It was held under those circumstances that principles of natural justice had been violated.

10. After considering the decisions aforesaid and taking into consideration the facts of this case we do not find this case to be a fit one in which discretion under Art. 226 of the [Constitution of India](#) should be exercised.

11. We may now come to the question of dis-connection. In this respect the learned counsel for the petitioner has urged on the basis of Santokh Singh v. Divisional Engineer, Telephones, Shillong, AIR 1990 Gau-hati 47 that Section 7B of the Indian Telegraphs Act does not cover a dispute regarding dis-connection of telephone for default. We have considered this argument and we find that in this decision while discussing the matter the Division Bench concerned remarked that it may also be observed that even if a dispute regarding excess billing can be subject matter of arbitration under Section 7B, it would not take away the jurisdiction of the High Court to exercise its jurisdiction under Art. 226 of the [Constitution of India](#). Thus this decision does not finally adjudicate upon the question whether Section 7B of the Indian Telegraphs Act is available as an alternative remedy to the petitioner. We are of the opinion that Section 7B of the aforesaid Act covers a dispute regarding dis-connection and excess billing because it is a dispute concerning any telegraph line, appliance or apparatus arising between the telegraph authority and the person for whose benefit the telegraph line, appliance or apparatus is, or stands provided. The word 'concerning' used in Section 7B means 'about', 'regarding' 'pertaining to' according to New Lexicon Webster Dictionary 1987 Edition. Thus dispute regarding safe custody, disconnection, excess billing etc. of the telegraph line, appliance or apparatus is certainly a dispute covered by Section 7B of the Telegraph Act.

12. Learned counsel for the petitioner has also placed reliance on a decision of a Division Bench of Delhi High Court in V.M. Mehtav. Mahanagar Telephone Nigam Ltd., AIR 1990 Delhi 169 wherein it was held that telephone cannot be disconnected without hearing the subscriber. The bench was considering Section 7 of the Telephone Act and Rule 443 of Telephone Rules 1951. This question can be raised before the Arbitrator.

13. Similarly the decision in Raghubar Dayal v. Union of India, AIR 1970 All 143 regarding application of Rule 443 of the Telephone Rules 1951 and requirement of notice before dis-connection raises question of fact and law to be decided by the Arbitrator. Again in Ram Niwas Singh v. District Manager, Telephones, Allahabad, AIR 1987 All 314 a question of default by the subscriber was considered. This question need not be considered by us because it is for the Arbitrator to decide

this matter.

14. Even if, some dispute is not covered under Section 7B of the Telegraph Act, the common law remedy of a suit, before a competent court of law is still available to the subscriber.

15. For the reasons disclosed above, we refuse to exercise our jurisdiction under Art. 226 of the [Constitution of India](#). The petition is, therefore, dismissed at the admission stage.

16. Petition dismissed.

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