

T. Abraham Vs. the Telecom District Manager, Kollam and anr.

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Court : Kerala

Decided On : Jun-20-1996

Reported in : AIR1996Ker359

Judge : K.P. Dandapani, J.

Acts : [Telegraph Act, 1885](#) - Sections 7; Telegraph Rules, 1951 - Rules 2 and 420; [Constitution of India](#) - Article 14

Appeal No. : O.P. No. 7450 of 1990 J

Appellant : T. Abraham

Respondent : The Telecom District Manager, Kollam and anr.

Advocate for Def. : George C.P. Tharakan Sr. Central Govt. Standing Counsel

Advocate for Pet/Ap. : C.P. Sudhakara Prasad, Adv.

Disposition : Petitions allowed

Judgement :

ORDER

K.P. Dandapani, J.

1. The short question which calls for consideration of this court in this original petition is whether the Telecom District Manager has power to disconnect the

telephone of a subscriber on the ground of default on the part of his relative.

2. The facts are not disputed. Petitioner is a subscriber to telephone Nos. 23 and 52 of Valakam Telephone Exchange, coming within the jurisdiction of respondents 1 and 2 herein. The first number is installed at his residence and the second at his business premises. Admittedly petitioner is not a defaulter in respect of either of these telephones. However his daughter-in-law one Annamma Thomas was having a telephone connection as telephone No. 471771 at Madras when she was staying there in the year, 1987. According to the petitioner, that connection itself was disconnected after a period of six months. There seems to be arrears to the tune of Rs. 24,979/- in respect of that telephone. Ext. P. 3 order dated 23-6-1990 passed by the second respondent, the Accounts Officer (TR), Office of the Telecom District Manager, Kollam was issued to the petitioner. The contents of Ext. P. 3 is usefully quoted as follows:

'Indian Telecommunications Department

Regd. A/D.

From

Accounts Officer (TR),

C/o. TDM, Kollam.

To

Sri T. Abraham,

Palakkal House,

Nr. Andoor Church,

Valakom.

NO. TRA.1/GC-11/95/87/-90/173

Dtd. 23-6-1990.

Sir,

Sub: Realisation of outstanding dues in r/o closed phone No. Madras 471771.

You have not so far paid Rs.24,979/-outstanding against the closed Madras No. 471771 despite various notices issued from this office. That the above mentioned phone was in the possession of your son Sri. Thomas Abraham is known to you.

Therefore you are hereby requested to clear the dues by 5-7-1990 failing which phone Nos. Valakom 23 & 52 will be disconnected without any further notice.

Soliciting kind co-operation.

Yours faithfully,

Sd/-

Accounts Officer (TR), Kollam.'

petitioner objected to Ext. P. 3, but in spite of his objection the Telephone Nos. 23 and 52 were disconnected on 3-8-1990.

3. This court, on admitting the original petition, as per its order dated 24-8-1990 in C.M.P. No. 1320/1990 issued a direction to the respondent to reconnect both the telephones. In obedience to the said order, petitioner submitted that, both the telephones have been reconnected.

4. The Accounts Officer has filed a counter affidavit justifying his action. According to him, petitioner's son Thomas Abraham had a temporary connection --telephone No. 471771 at Madras and afore-wards a casual connection was given to his wife Annamma Thomas. An amount of Rs. 24,979/- was outstanding towards the said telephone bills. The defaulters left to Madras without any trace. It is alleged that in spite of their repeated requests, petitioner had not disclosed the present whereabouts of his son and daughter-in-law. It is admitted in paragraph 7 of the counter that 'the telephones are disconnected for the dues of the petitioner's son and daughter in law'. According to the Department, the defaulter is not just a 'different subscriber' from the petitioner, but they are the son and daughter in law of

the petitioner and therefore, the father is liable for the dues of his son. As otherwise, it is quite possible that every individual in a family will get telephone connection in their separate names and try to ward off the legitimate dues to the telephone department, which is a public utility department and cannot be made to suffer by the ingenuity of the subscriber to defraud the public exchequer.

5. The question, therefore, to be considered is whether the Telecom Department is empowered to disconnect the telephone of a subscriber on the ground of default on the part of his relative.

6. I may now refer to the relevant rules contained in the Telegraph Rules. Rule 420 deals with the disconnection when a subscriber is adjudged as an insolvent or, makes or enters into any composition or arrangement with his creditors or suffers execution to be levied upon his premises, or commits any breach or fails to observe and comply with any of these rules, the Telegraph Authority may close the connection by giving to the subscriber notice in writing for a period of seven days. Rule 421 contemplates disconnection of telephone where the Divisional Engineer is satisfied for reasons to be recorded in writing that it is necessary to do so, he may, after giving the subscriber a notice in writing for a period which shall not, except in emergent cases, be less than 7 days, disconnect the telephone, and in such case, the subscriber shall be entitled to refund of rent for the unexpired portion of the period for which the connection or service was given. Rule 424 contemplated the right of disconnection in the event of any emergency recorded without notice. Rule 424 provides for disconnection in the event of a subscriber making outward local calls in excess of a certain number to be laid down by the Telegraph Authority from a telephone or telephones after giving an opportunity to the subscriber in writing to rent another telephone or additional connection. Rules 439 and 440 provide as to when the charges become payable and the responsibility of the subscriber to pay the bills. Rule 442 provides for the mode of service of the bills and Rule 443 provides for the default in the payment of bills.

7. Rule 443 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.'

Let us now examine whether Rule 443 empowers the Department to disconnect the telephone of a subscriber for the default of a relation or an associate.

8. On a plain reading of Rule 443 it is clear that it contemplates only disconnection of the telephone of a subscriber. The words 'rented by him' means and refers to the subscriber.

9. Rule 2(pp) of the Indian Telegraph Rules reads as follows :

'2(pp) 'subscriber' means a person to whom a telephone service has been provided by means of an installation under these rules or under an agreement'.

10. A division Bench of the Gauhati High Court in a decision reported in Santokh Singh v. Divisional Engineer, Telephones, Shillong, AIR 1990 Gauhati 47 ruled that Rule 443 cannot be interpreted to vest with the authorities the power to disconnect any other telephone working in the name of the same subscriber either at the same premises or elsewhere on the ground of default of payment of bill in respect of one of his telephones. It was pointed out that this power is confined only to the particular telephone in respect of which there is default in payment and not to other telephones.

11. The High Court of Gujarat has however taken a contrary view in its decision reported in Indravadan Pranal Shah v. General Manager, Ahmedabad Telephones, AIR 1990 Gujarat 85. A Division Bench held that if the dues of a

telephone are not paid by the subscriber, any telephone or telephones or any telex service rented by him can be disconnected with notice. The Division Bench relied on Rule 2 (pp) which defines 'subscriber' to mean a person to whom a telephone service has been provided by means of an installation under the Rules or under an agreement. It was held that in case the subscriber consists of a partnership firm, since it is not a legal person, the partners are the subscriber. Therefore, when such partner-subscriber is in default of payment of telephone dues because the partnership firm has failed to pay those bills, Rule 443 is attracted and any telephone rented to such subscriber partner even in his individual capacity is liable to be disconnected.

12. The Bombay High Court, in a recent decision, reported in *B.V. Manek v. Mahanagar Telephone Nigam Ltd.*, AIR 1996 Bom 53 held that the disconnection of the telephone of a relative for the payment of amount by a subscriber would be arbitrary and unreasonable.

13. The Andhra High Court has followed the same line in its decision reported in *Y. Pridhvi Kumar v. General Manager, Telecom District, Hyderabad*, AIR 1993 Andh Pra 131.

14. Learned Central Government Standing Counsel placed reliance on an unreported decision of the Madras High Court in *S. Thankam v. Area Manager, Madras* in writ petition No. 5903/87 dated 4-8-1987 wherein it was held that the failure of a partnership firm in clearing up the arrears and dues to the Telecom Department, the telephone connection of the mother of the minor partner was held liable to be disconnected.

15. On a plain reading of Rule 2(pp), it can be noted that a subscriber is a person who has subscribed for a particular telephone whether it be an individual or a partnership firm or a corporate body. Therefore, the term 'subscriber' means a person or firm, who has subscribed and it would not include the relations who have independent connections and whose phone the defaulter may be using.

16. The Gujarat High Court has held that if the dues of the telephone are not paid by the subscriber, any telephone or telex rented to him can be disconnected

without notice. The High Court of Madras in S.M. Ayua v. Union of India in an unreported judgment in W. A. No. 1151/87 decided on 8-11-1990 has concurred with the view taken by the Gujarat High Court. This view is consistent with the scheme framed under the Rules. However, since the question whether the Department has got power to disconnect any other telephone rented by the subscriber has not come before me in this case and hence I am not called upon to decide that issue.

17. In the present case, the telephone dues are in respect of telephone No. 471771 of Madras, which was admittedly subscribed initially by petitioner's son and thereafter, by his daughter-in-law. Petitioner cannot, by any stretch of imagination, be described to be the 'subscriber' of the Madras telephone. The said telephone alone can be disconnected in the event of subscriber not having paid the dues to the department. In other words, the telephone subscribed by 'A' cannot be disconnected for the dues from the telephone subscribed by 'B'. I, therefore, hold that the disconnection of the telephone of the father would be arbitrary and unreasonable and violative of Article 14 of the Constitution. quash Ext. p 3. It is declared that petitioner's telephone Nos. 23 and 52 of Valakam Telephone Exchange are not liable to be disconnected for the dues in respect of telephone No. 47771, Madras.

Original petition is allowed as above with no order as to costs.

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