

Anil Kumar Battacharyya Vs. Union of India and ors.

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SooperKanoon Citation : sooperkanoon.com/895610

Court : Guwahati

Decided On : Jun-28-2000

Judge : J.N. Sarma, J.

Acts : Indian Telegraph Rules, 1951 - Rules 412 and 446;; [Constitution of India](#) - Article 226

Appeal No. : Civil Rule No. 4815 of 1998

Appellant : Anil Kumar Battacharyya

Respondent : Union of India and ors.

Advocate for Def. : Mr. G.P. Bhowmik, Adv.

Advocate for Pet/Ap. : Mr. K. Agarwal and ;Mr. A. Bhattacharyya, Adv.

Judgement :

1. This writ application has been filed by a Senior Advocate of this Court for issue of a writ with a declaration that the action of the respondents and their officials are illegal, in not repairing the phone and restoring the Telephone No.568992 and with a further prayer to make enquiry to fix the responsibility on the erring officials of the Department also for a prayer to set aside and quash the two bills dated 1.2.1998 and 1.8.1998.

2. There was an interim order on 21.9.1998 to restore the Telephone and in pursuance of that the Telephone has been restored,

3. The brief facts of the case are as follows:-

Rule 412 and Rule 446 of the Indian Telegraphs Rules (hereinafter called Rules. 1951) are quoted below: -

'412. Supply and maintenance of equipment.

(1) The Divisional Engineer, Telegraphs shall install and subject to the observance of these rules to the subscriber, maintain in good working order the equipment and apparatus provided by the Department and when necessary, substitute a different apparatus with all reasonable despatch.

(2) For the purpose of sub-rule (1), officials and workmen of the Indian Posts and Telegraphs Department shall be entitled after notice to the occupiers of the premises to enter the subscriber's premises at all reasonable times for the inspection of the installation and equipment.

446. Refunds.

(1) If a subscriber surrenders a telephone connection or other service before the expiry of the period for which rental or other charges have been paid, the Divisional Engineer shall refund such portion of the rental or other charges as may be prescribed by the Telegraph Authority.

(2) When the telephone line of a subscriber or junction lines to PABX remain interrupted continuously for a period of seven days or more due to reasons attributable to the Department of Telecommunications, a proportionate rebate of refund in rental, after reducing the free calls available for the said period, shall be allowed to the subscriber.'

4. The petitioner had one telephone bearing No. 560642 at his residence and as there was necessity of another telephone, he applied for another telephone and accordingly another telephone bearing No.568992 was installed. But the telephone frequently went out of order and the petitioner lodged complaints. The telephone

became dead from the month of March, 1998 and for a period of more than six months it was not restored. The petitioner sent a complaint by registered letter on 31.8.1998, that is Annexure-3 to the Writ application. The relevant portion of that complaint is quoted below :

' Annexure-3

The aforesaid Telephone No. was installed at any professional Chamber on 04.11.1997, though I applied for the same on 29.4.1994. On installation, this telephone No. is going immediately out of order. On verbal complaint lodged, it used to be rectified from time to time. However, it became completely dead from the last part of March, 1998. Thereafter, it did not work at all, though the Department continued to realise the rental regularly.

In spite of repeated requests and complaints lodged verbally it did not bear any fruit as the Telephone remained dead till to-day.

I am extremely sorry to inform you that whenever an attempt is made to lodge complaint about non-functioning of the said Telephone, the Dispur Complaint Booth used to reply incivilised behaviour and rudest possible manner that the Telephone is under 'cable fault'. Even the persons in the Dispur Complaint Booth do not have the common courtesy to talk politely to a lady member of the house whenever a complaint is attempted to be lodged by her in respect of the aforesaid Telephone. It has happened number of times with my wife and daughters. You would kindly note that about 1000 verbal complaints were lodged with the Dispur Complaint Booth telephonically and personally till now. However, persons in the Complaint Booth refused to give complaint nos. Now it has crossed the limit of my patient. Therefore, I have decided to put it down in writing.

My Junior, namely, Anjan Kalita, Advocate, personally met the S.D.O., Dispur and the Junior Engineer in-charge for number of times, who assured him to rectify it within the shortest possible time. But unfortunately, assurance remains in assurance only till to-day without bearing any fruitful result. Meanwhile the Accounts department issued a bill to me for payment of rental even for the period during which the Telephone remained dead. I being a responsible citizen paid the

latest bill issued to me. Without utilising the service of the said Telephone even for a moment from last part of March till to-day. Under the law, I am entitled not to pay any rental after fifteen (15) days of non-functioning of the telephone.

I am constrained to bring to your kind notice that on many occasions the Telephone Department, Assam quote a hopeful statement to the local media about its outstanding services rendered to the subscribers. The rude and uncivilized behaviours shown by the Dispur Complaint Booth and inaction of the Authority concerned to rectify the aforesaid Telephone substantially prove that the Telecom Department, Assam is only interested in following its own trump instead of earing for the services to be rendered to the subscribers.

May I request you to inform your Telephone staff to treat their subscribers politely and with courtesy on the principle that, 'Courtesy begets Courtesy' and 'respect begets respect'. At the same time, they should keep in mind that the Telephone Department is not providing the Telephone service free. Subscribers are getting the telephone services on payment of their hard earned money.

In the facts and circumstances as stated above you would kindly take all necessary steps to rectify the Telephone No.568992 and put it in order.'

5. Thereafter the petitioner received the two bills vide Annexures-1 and 2. Annexure-1 bill is for a period for Rental to 4.11.1997 to 30.4.1998 and the bill for calls is from 16.11.97 to 15.1.1998. Annexure-2, the Rental bill is from 1.9.1998 to 31.10.1998 and the Call bill is from 16.5.1998 to 15.8.1998. Two Circulars were issued regarding rebate in Rental. These two Circulars are quoted below: -

' NO.3-6/80-R, dated 13.4.1987

Subject: Rebate in rental for prolonged interruption in local telecom services.

Instructions were issued vide this office letter of even number, dated 31.10.1985 for grant of rebate in rental when the telephone, talex services and leased lines and junction lines in case of PABX/PBX of a subscriber remain interrupted continuously for 30 days or more. The matter has been reviewed.

2. It has been decided that rebate in rental for telephones, talex services, leased lines and junction lines in use of PABX/PBX, may be permitted when these services of the subscriber remains interrupted continuously for 15 days or more due to departmental reasons. Rebate in rental in such cases should be granted on Department's initiative without waiting for a representation from subscribers.

3. in order to prevent any abuse of this concession of difficulties to the subscribers. General Managers/District Managers should ensure that fault cards and fault registers showing the nature of fault, the time of reporting and restoration of the fault, are properly maintained. Attention is particularly invited to instructions contained in Directorate Letters No.7-6/82-PHM dated 16.9.1982 and 23.4.1983 on prompt clearance of faults fixing of responsibility for delay in clearance. These instructions, inter alia, enjoin that the Junior Engineers in charge of an out-door section should enter all faults pending 'for more than six hours in a register and take necessary action to rectify the faults in the shortest possible time. in case the fault persists for more than twenty-four hours, the concerned Assistant Engineer in-charge should be informed, apart from continuing his efforts for fault rectification. The Assistant Engineer should keep a watch on all such cases and should be responsible to get the faults cleared with due promptitude. If the fault is not cleared within 48 hours, the concerned Divisional Engineer should take necessary action for rectifying the fault. All long-pending faults beyond 3 days should be monitored by the General Manager/District Manager through weekly returns from Divisional Engineers. Responsibility has to be fixed by the General Manager in all cases of negligence, in case a fault has continued for 30 days or more, an officer of the rank of Director or above should decide on the basis of available information whether this has been due to negligence or genuine reasons beyond control.

3.1 Similar procedure for fault recording and monitoring of fault clearance would be followed for leased circuits. That schedules for regular testing of long-distance leased circuits would be followed by General Managers, maintenance and for 'local' leased circuits by the General Managers. Telecom/Telephones.

3.2. The fault cards are the primary records for recording/deciding rebates. These must be preserved (like trunk call tickets) for one year after the last entry has been made.

4. The grant of rebate in individual cases should be approved by an officer not below the rank of Divisional Engineer. All such cases or group of cases where such rebate is granted should be brought to the personal notice of the General Manager/District Manager indicating whether there was any avoidable delay in restoring the service. The General Managers will critically analyse such cases and the reasons for the service remaining interrupted for as long as 15 days or more and take such action as may be necessary.

5. In all cases where rebate is granted. Accounts Officer (TR) of the unit will send monthly statement to the TR Section of his Circle Office indicating the number of telephones and the amount. The Circle Office shall consolidate the information and incorporate it in the monthly statement of work report being submitted to TR Section of Telecommunications Directorate.

6. This decision will come into effect from 1.3.1987. The cases of rebate relating to the period from 31.10.1986 upto 28.2.1987 may be decided in accordance with the earlier instructions.

7. A Gazette Notification incorporating the necessary provisions in the relevant ITRs is being issued and a copy of the same will be sent in due course.

N0.2-29/89-PHA dated 25.06.1990.

Subject: Rebate in rental for prolonged interruption in local telephone service, issued lines and telex services.

Kindly refer to this letter No.3-6/80-Rates, dated 13.04.1987 on the subject mentioned above wherein the period of eligibility for rebate in rental for prolonged interruption in local telephone service leased lines and telex services was prescribed as 15 days or more.

2. The matter has been reviewed and it has been decided that rebate in rental for local telephones, telex services, leased lines and junction lines of PABXs/PBXs may be permitted when these services of the subscriber remain interrupted continuously for seven days or more due to the departmental reasons. Rebate in rental in such cases should be granted on department's initiative without waiting for a representation from subscriber.

3. Regarding leased circuits, it should be our endeavour to ensure that they remain serviceable, they should be regularly, monitored to ensure serviceability.

4. Other conditions stipulated in this office letter No.3-6/80-Rebate dated 13.04.1987 remain unchanged.

5. The above order shall come into effect from 15.06.1990. Gazette Notification incorporating the necessary amendments in the relevant Indian Telegraph Rules, 1951, has been issued, a copy of which is enclosed.'

6. The grievance of the petitioner is that the authority did not adhere to these Circulars in case of the telephone of the petitioner. Though the telephone was dead from March, 1998 rental has been charged by Annexure-1 and 2. The case of the petitioner is that this can not be done in view of the circulars and the Rules quoted above. Though notice of motion was issued on 21.9.1998, no affidavit-in-opposition was filed by the Department and the matter was taken up for disposal at the admission stage itself, and the matter was heard on 18.12.1999 and 4.1.2000 and the Judgment was reserved.

7. I have heard Shri K. Agorwal, learned Advocate for the petitioner and the Central Government Standing Counsel. in Swamy's Treatise on Telephone Rules at page 85 it is noted as follows:-

'Rebate in rentals for prolonged interruption in service

Rebate in rentals for local telephones, telex services, leased lines and junction lines of PABXs/PBXs may be permitted when these services of the subscriber remain interrupted continuously for seven days or more due to departmental reasons. Rebate in rental in such cases should be granted on Department's

initiative without waiting for a representation from subscriber.'

8. The preliminary objection which is taken by the learned counsel for the Union of India is that the Circulars which have been issued can not be enforced by the petitioner. This matter can be looked from the angle that the authority having issued a Circular whether it can give go-bye to it. No doubt a Circular if it is issued with a promise which is contradict of law or ultra virus to its powers that can not be enforced. But otherwise it will be binding on the authority. For this proposition one may look at 1993(4)SCC 25 (Home Secretary U.T. of Chandigarh and another, Appellants v. Darshuit Singh Grewal and others. Respondents), wherein the Supreme Court pointed out that Policy, Guidelines or Executive Instructions are binding till altered. It is exlomatic that a Policy after adoption and after communication to all, the authority is bound by it. It can not of-course change the policy, but until thatis done, it is bound to adhere to it.

9. AIR 1977 SC 2411 (State of Uttar Pradesh, Appellant v. Chandra Mohan Nigam and others, Respondents) wherein in paragraphs 26 and 27, it has been pointed out by the Supreme Court, that if the instructions do not violate any provisions or Act of the Rules and if the instructions issued, furnished an essential guideline to a statutory provision for the purpose of securing certain things they are binding on the authority.

10. 1990 (Supplementary) SCC 440 (Narendra Kumar Maheswari, Petitioner v. Union of India and Others, Respondents) wherein the Supreme Court has pointed out, inter alia as follows :

'Non-statutory guidelines are generally not enforceable. A policy is not law: A statement of policy is not a prescription of binding criterion. The competent authority might depart from these guidelines where the proper exercise of discretion so warrants.'

The guidelines by their very nature do not fall into the category of legislation direct subordinate or ancillary. They have only adversary role to play and a non-adherence to or deviation from them is necessarily and implicitly permissible in the circumstances of a particular fact or law if situation warrants the same. Judicial

control takes over only where deviation or ignoring the same plea involves arbitrariness or is so fundamental as to undermine a basis public purpose which the guidelines and the statute under which they are issued are intended to achieve.

11 1983(4) SCC 582 (B.S. Minhas. Petitioner v. Indian Statistical Institute and Others, Respondents) where the Supreme Court pointed out that the instructions issued by the authority for procedural fairness even if does not have statutory force are binding.

12. 1985 Gauhati High Court Cases page 17 (The Capital Construction Company v. Union of India & Ors.) wherein a Single Judge pointed out that if a public authority refuses to review its own arbitrary action, the aggrieved party can approach the Court for remedial measure. That was a case in connection with telephone disconnection.

13. 1975(3) SCC 503 (Dr. Amarjit Singh Ahluwalia, Appellant v. The State of Punjab and Others, Respondents) wherein the Supreme Court pointed out that an administrative instruction does not have the force of law, but the authority can not at its sweet will depart from it without rational justification.

14. In view of the decisions cited above I hold that the authority is bound by their own executive instruction/Circulars and they can not ignore it in one case and adhere in another case. They must adopt uniform policy, that is, what was not done in the instant case.

15. The next argument advanced by the learned Central Government Standing Counsel is that the petitioner has the alternative remedy and as he can approach the Consumer Court for redressal of his grievance and as such this Writ Court should not exercise this power. On the other hand, the learned Advocate for the petitioner submits that existence of alternative remedy is no bar to exercise the power under Article 226 of the [Constitution of India](#), as the same is only self-imposed restriction. The law on this point has been settled by a catena of decision. 1998(8) SCC 1 (Whirlpool Corporation, Appellant v. Registrar of Trade Marks Mumbai and Others, Respondents), wherein in paragraphs 14 and 15 it has been

stated as follows:-

'The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. The High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Supreme Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been, filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (Paras 14 and 15).'

16. In paragraphs 18 and 19 the Supreme Court considered two Constitution Bench decisions and in paragraph 20, the law has been laid down as follows:-

Therefore, the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation. (Para 20).'

17. Accordingly both the preliminary objections raised by the learned counsel for the Union of India shall stand repelled. This writ application is disposed of with a direction that the authority shall consider the question of refund remission of the two bills in accordance with own Rules and Executive instructions.

18. Before I part with the record I express my annoyance and displeasure in the way the telephone authority conducts itself with regard to the telephone and the repair of the faults in the telephones. The telephone authority does not give free service to the consumers. It receives considerations for it and it is their boundant duty to adhere to certain norms and do the needful to remove the faults at its earliest. There may be constrains and difficulties, but in such a situation it is necessary that the department should at least make the consumers aware of

these difficulties in order to remove the bitterness and the pains which the consumers undergo in such a situation. It is high time that the Telecommunication Department which is Government enterprise should conduct itself in a manner adhering to its status. Earliest it is done. It will be better for the department as well as for the society in general.

19. I pass no order as to cost.

20. The stick being used against the authority (which almost can be taken judicial notice) is that there is complete erosion of work culture. They remain in deep slumber and wake up on their own wish and pleasure. They pay scant attention to the complaints of the consumers. They have the deep seated idea that they have monopoly in the field and the consumers are at their mercy. But the authority should remember that they are thriving on the mercy of the consumers, they are bound to render service for the payment received by them. Lamé and pet excuses do not satisfy the consumers and it does not serve their purpose. The authority should bear in mind that in this process in course they will kill the hen laying golden eggs. A sapling grows into a big tree in course of time, but if it is not properly nourished and care for it not taken it may face untimely extinction. Ailments/short-comings if not removed in time it shall corrode the institution. I am simply trying to ring the warning bell in the facts and circumstances of the presentcase. I hope and trust that things will improve.

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