

M. K. Awtaney vs Mahanagar Telephone Nigam Limited

Court: Monopolies and Restrictive Trade Practices Commission

Date of Decision: April 2, 2002

Hon'ble Judges: C. M. Nayar, J. (Chairman), Moksh Mahajan

Advocate: Anil K. Kher, Anjana Gosain

Final Decision: Appeal dismissed%

Judgement

Moksh Mahajan, Member

1. In a complaint filed under Sections 36A, 36B(a)/ 10(a)(i) of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to

as Act) the complainant stated that he is a Legal Consultant and Advocate by profession. He is a subscriber of telephone connections bearing No.

5460606 installed at the residence and 3559395 installed at his office. At one point of time he was a Director of M/s. East-West & Co. Pvt. Ltd.

Vide letter dated 27/30.8.1996 the complainant was asked to clear the dues of Rs. 6,55,508/-. He immediately took up the matter with the

respondent which is Mahanagar Telephone Nigam Limited, and explained that he had resigned from East-West & Co. Pvt. Ltd. since January,

1995 and as such could not be made responsible for payment of the aforesaid arrears. Despite the protest, the respondent insisted on recovery of

the amount from him and this led to filing of the complaint before the Commission for unfair trade practices adopted by the respondent i.e.

Mahanagar Telephone Nigam Limited (MTNL for short).

2. In pursuance to issuance of Notice of Enquiry under Sections 36-A, 36B(a) and 36D of the Act, the respondent contended that the complainant

was the Director of M/s. East-West Co. Pvt. Ltd. when the default was committed in making the payment of the outstanding amount which is for

billing cycles 1.9.1994, 1.11.1994, 1.1.1995 and 1.3.1995. For nonpayment of arrears, the respondent is entitled to disconnect the telephone as

provided in Rule 443 of the Telephone Rules. The practice of disconnecting the telephone under Rule 443 of the Telephone Rules for non-payment

of arrears can by no means be termed as unfair. A due notice in respect of the same was given to the complainant in view of which the payment

should have been made long time back. The use of the telephone without making the payment by the complainant tantamounts to unfair trade

practice on its part. Strongly relying on the decision of the Hon"ble High Court of Delhi in the case of H.C. Raghbir v. Union of India and Ors.,

reported in 48 (1992) Delhi Law Times 319 (DB) it is contended that the stay operating against disconnection of the telephone, should not bar the

respondent from recovering the dues from the complainant.

3. The complainant also applied for temporary injunction against the disconnection of the telephone lines installed both at the residence and at the

office as well of the complainant. The Commission in its order dated 4th October, 1996 directed the respondent authority not to disconnect the

telephone numbers i.e. 5460606 and 3559395.

After completion of the pleadings, the following issues were framed :

(1) Whether the respondent has been indulging in or has indulged in the unfair and restrictive trade practices listed in the NOE ?

(2) Whether the alleged restrictive trade practices are not prejudicial to public interest ?

(3) Whether the alleged unfair trade practices are prejudicial to public interest, to the complainant and consumers generally ?

(4) Relief ?

4. Affidavit/counter-affidavit by way of evidence along with supporting documents has been filed on both sides.

5. Section 7B of the Indian Telegraph Act, 1885, read with Rule 443 of the Telephone Rules is reproduced as under :

["7-B. Arbitration of Disputes

(1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the

telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been, provided, the dispute shall be determined by

Arbitration and shall, for the purposes of such determination, be referred to an Arbitrator appointed by the Central Government either specially for

the determination of that dispute or generally for the determination of disputes under this section.

(2) The award of the Arbitrator appointed under Sub-section (1) shall be conclusive between the parties to the disputes and shall not be

questioned in any Court.""]

6. The aforesaid section of the Indian Telegraph Act, 1885 provides for an alternative Forum for determination of the disputes relating to telephone

lines, appliances or apparatus between the subscriber and the Telegraph Authority whereby the matter is to be referred to the Arbitrator.

7. Rule 443 of the Telephone Rules reads as under :

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 rented by him may be disconnected without notice. The telephone or telephones 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 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 Telegraphs Authority from time-

to-time.

Rule 443 of Telephone Rules on the other hand entitles the Telephone Authority to disconnect the telephone of the subscriber on account of

nonpayment of the bills or charges in respect of calls.

8. The aforesaid section and the rule came for interpretation before the Delhi High Court in the case of H.C. Ragnbir v. Union of India and Ors.

(supra), wherein Their Lordship after considering the decision in case of Santokh Singh v. Divisional Engineer, Telephones, Shillong and Ors.,

reported in AIR 1990 Gauhati 17 held as under :

Section 7B is very clear and unambiguous. The words ""any dispute concerning any telegraph line"" have to be liberally construed. A telegraph line

is the line which is given to the subscriber..... the dispute may be with regard to the telephone bill or repair of any telephone line or even with

regard to the disconnection thereof. The important word, to our mind, is ""concerning"". The dispute must concern the telegraph line.....

Therefore, even if a restrictive interpretation is to be given to Section 7B, though in our opinion there is no warrant for doing so, nevertheless when

on account of non-payment of bill action is proposed to be taken to disconnect the telephone then any dispute arising in respect thereto would be

covered by Section 7B.

It has also been held that the remedy provided under Section 7B is efficacious. In this connection they have observed that :

When a subscriber receives a bill which, according to him, is inflated and is not justified then apart from making a representation to the

respondent, it is open to the subscriber to seek recourse to the arbitration under Section 7B of the Act. He can do so either by making a request to

the respondent to appoint an Arbitrator or by filing an application under Section 20 of the Arbitrator Act. In either of the two cases, if stay of

disconnection is desired, the subscriber would have a remedy by invoking the provisions of Order 39 Rules 1 and 2, CPC read with Section 41 of

the Arbitration Act.

Making a clear distinction between the Rule 443 vis-a-vis Rules 421 and 439 of the Telephone Rules, it has been observed that :

The said Rule 443 cannot be given a restricted meaning. It not only refers to telephone charges not being paid in accordance with the rules but it

also contemplates a case where there is nonpayment of ""bills for charges in respect of calls (local and trunk)....."". We find it difficult to agree with

the contention of the learned Counsel for the petitioner that this rule deals only with normal bills. It may be that the First Part of Rule 443 may be

dealing with a case of monthly or bimonthly bills which are sent by the respondents at regular intervals but even in cases where there has been an

undercharge, bills have to be sent and Rule 443 would take within its ambit such bills.

9. The above discussion clearly shows that the remedy for disconnection of the telephone is available under the provisions of Section 7B of the

Indian Telegraph Act.

10. Even otherwise on merits, the complainant has no case. Admittedly the arrears of Rs. 6,55,508/- pertains to the following billing cycle :

During the period undeniably the complainant has been a Director of the Company till January, 1995. Thus the amount pertains to the period when

he has been one of the Directors of the Company. As such he was liable for the payment of the amount raised against the company. Having a close

nexus with the company and being involved in running the business, he cannot absolve himself from the liability for the payment of the dues which

arose during the period when he was a Director. It is relevant to point out that the complainant had neither disputed the bills raised by the

respondent nor the period to which they pertain. In absence of articles of association and memorandum as well as the resolution limiting his

responsibility, we are afraid no case has been made out in his favour. One cannot lose sight of the fact that right from the year 1996 the

complainant has been enjoying the facilities of other telephones installed in the premises when the legitimate dues of the respondent remains to be

paid.

In view of the above, both on legal as well on merits, the complaint against the respondent merits dismissal and the Notice of Enquiry deserves and

is directed to be discharged. In the premises, the injunction already granted stands vacated.