

(2001) 09 DEL CK 0145

Delhi High Court

Case No: C.M. No"s. 10796 of 1999 and 3339 of 2000 and C.W. No. 5954 of 1999

Surjit Singh

APPELLANT

Vs

Mahanagar Telephone Nigam
Ltd.

RESPONDENT

Date of Decision: Sept. 25, 2001

Citation: (2001) 94 DLT 245 : (2002) 62 DRJ 389

Hon'ble Judges: S.K. Mahajan, J

Bench: Single Bench

Advocate: R.K. Kapur, for the Appellant; Ravi Sikri and Ajay Verma, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Mahajan, J.

Rule. With the consent of the parties matter has been heard and is being disposed of finally.

2. Petitioner is the subscriber of a telephone line bearing No. 3265301 installed at his business premises at 1195, Charhahat building, Jama Masjid, Delhi. Petitioner also had another telephone line bearing No. 5121187 installed at his residence at Rajouri Garden. Still another telephone line bearing No. 5416493 was provided in the name of the petitioner"s wife at his residence. For non-payment of the dues in respect of the telephone lines installed at his residence, in his name and in the name of his wife, both the telephone lines were disconnected. It appears that there were certain arrears in respect of telephone line No. 3265301 installed at the business premises of the petitioner. For non-payment of the dues in respect of this telephone line, the telephone at the business premises of the petitioner was also disconnect. Petitioner applied for restoration of the telephone line at his business premises and offered to pay the amount due from his to the Department in respect of the telephone lines installed in his name at his residence as will as in his business premises. It appears that the respondent did not agree to restore the telephone line at the business premises of the petitioner without payment the amount of more

than Rs. 1,50,000/- due from the subscriber of the telephone line bearing No. 5416493 in the name of his wife. Present petition was, Therefore, filed by the petitioner for a direction to the respondent to restore the telephone line bearing No. 3265301, The petitioner during the course faith hearing has offered to pay the amount which is stated to be due not only in respect of telephone line in question bearing No. 3265301, but also in respect of telephone line bearing No. 5121187 installed in his name at his residence, but he has refused to pay the amount due in respect of the telephone line bearing No. 5416493 in the name of his wife.

3. It is the contention of the petitioner that since under Rule 443 of the Indian Telephone Rules, it is only for non-payment of an amount by the subscriber in respect of the telephone in question or any other telephone line in the name of the subscriber that the telephone could be disconnected, the respondents did not have any right to call upon the petitioner to pay the amount due in respect of telephone provided in the name of his wife. It is submitted that the petitioner cannot be penalised for non-payment of the amount by his wife in respect of telephone provided in her name and that is also not the intention of Rule 443 of the Indian Telephone Rules. Petitioner has relied upon the judgment reported as [Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter, Babu Verghese and Others Vs. Bar Council of Kerala and Others](#), ; [Tolaram Relumal and Another Vs. The State of Bombay](#), to contend that if an act has to be done in a particular manner prescribed under any Statute, the act must be done in that manner or not at all. It is, Therefore, his contention that since Rule 443 does not provide for disconnection of the telephone line of the subscriber for non-payment of the amount due from his wife in respect of the telephone provided in her name, the respondent cannot insist upon the payment of the dues in respect of the telephone lines which are in the name of the relations of the subscriber.

4. I have gone through the judgments referred to by learned Counsel for the petitioner and in my opinion none of the judgments cited at the Bar by the petitioner are applicable to the facts of the present case. I have also not been able to persuade myself to agree with the contentions raised by the petitioner.

5. The case before this Court is fully covered by the judgments of this Court delivered in C.W.P. 1693/96 Sukh Dayal Narula v. Union of India and MTNL, decided on 26th September, 1997; C.W.P. 6343/98 titled Rajiv Gosain v. MTNL, decide on 20th April, 2000, and a Division Bench judgment of this Court delivered on 1st July, 1996 in C.W.P. 5117/96 titled Nirmal Kumar Sharma v. MTNL.

6. Rule 443 of the Indian Telephone Rules, reliance of which has been placed by the parties is as under:

"443. 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 of 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 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."

7. Petitioner is the husband of Mrs. Parimal Singh in whose name telephone No. 5416493 was provided by the respondent. *Sukh Dayal Narula v. Union of India and MTNL* (C.W. No. 1693/96) decided on 26th September, 1997 was also a case relating to husband and wife. Petitioner in that case was the husband of Ms. Urmil Narula against whom the dues in question were outstanding and presumably the husband and wife were living together. It was not denied in that case by the petitioner that the husband and wife were living together in the house. On these allegations, the Court was of the view that if the telephone in the name of the husband which was sought to be disconnected by the Department to realise the dues against the wife remained working, it would work out to be unfair and unjust because the wife would continue to enjoy the telephone facility at the residence provided in the name of the husband without paying of r the legitimate dues of the Department qua her own telephone.

8. In the present case the petitioner and his wife are also living together. It is not denied that the petitioner was also enjoying the facility of the telephone provided in the name of his wife. In case the contention of the petitioner is accepted, the petitioner will continue to enjoy the facility of telephone at his business premises without paying the amount due in respect of the telephone provided in the name of his wife, which telephone the petitioner was admittedly using. Petitioner may even apply for and get a telephone in the name of his son or daughter or any other family member who may simply refuse to pay and despite the disconnection of their telephone for non-payment, the petitioner may continue to enjoy his own telephone as according to him, his telephone cannot be disconnected for non-payment of the dues by his relations in respect of the telephone installed at his own residence. This could never be the object of Rule 443. Rule has to be interpreted in a manner so as to advance this object and not to frustrate the same. In *Nirmal Kumar Sharma v. MTNL* (supra), the Division Bench of this Court has rightly held that "the rule has been enacted in the interest of the public revenue and it knots a net to catch the defaulting sharks. the hunt cannot be allowed to hunt-the-gowk, design by its own act a hole and escape through it. Remedial laws must be given claws and the net given a wider sweep so as to serve this purpose".

9. In view of the foregoing, in my opinion, what the Court has to keep in mind while interpreting the rule is whether there is a nexus between the persons regarding the

use of the telephone and if such a nexus regarding the use of the telephone is established, the Department will be at liberty to disconnect the telephone line of the other subscriber for non-payment of the line by the defaulting subscriber. since the petitioner has refused to pay the amount of Rs. 1,56,899/- due in respect of the telephone in the name of his wife, which was admittedly enjoyed and used by the petitioner, in my view, respondent is justified in not restoring the telephone in the name of the petitioner. There are no merits in this petition and the same is dismissed with costs assessed at Rs. 5,000/-