

claimants, but on the facts admitted, it could not be successfully argued that it prejudiced the appellant in any manner. It is to be borne in mind that the Act is a social legislation and if the workmen are entitled to a particular sum under the Act, they could not be deprived for the same because of a *bona fide* mistake in not claiming the same. Thus, under the circumstances, the Commissioner was within his jurisdiction to modify his earlier order, dated June 30, 1976, and to pass the appropriate order as provided under the Act.

(6) In this view of the matter, this appeal fails and is dismissed with costs.

N.K.S.

Before I. S. Tiwana, J.

HARPHOOL SINGH,— *Petitioner.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1281 of 1984

May 31, 1984

Indian Telegraph Rules, 1951—Rule 429—Telephone installed in premises where subscriber carries on family business—Subscriber later starting business with partners in another premises as well under a different name—Department allowing extension of the telephone in the other premises—Telephone disconnected on the ground that it was being used by somebody 'other than actual subscriber'—Such action of the department—Whether justified under Rule 429.

Held, that a bare reading of Rule 429 of the Indian Telegraph Rules, 1951, indicates that it envisages a situation where the subscriber excluded himself from the use of the telephone by transferring, assigning or subletting it in favour of somebody else. Where the department nowhere identifies as to who is the assignee, sublettee, or transferee of the telephone and by merely finding that the telephone was being used by another firm without stating the capacity in which it was being so used, the action of the department in disconnecting the telephone cannot be justified in terms

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of Rule 429 of the Rules. If the only reason disclosed by the department that the telephone was being used by somebody 'other than actual subscriber' is to be taken as enough of a justification in law, then every telephone would have to be disconnected as in that situation the use of a telephone even by a family member of the subscriber would provide the department with enough of a ground to disconnect the same.

(Para 3).

Petition Under Articles 226/227 of the Constitution of India praying that:—

- (i) *the records of the case may kindly be called for;*
- (ii) *a writ in the nature of Certiorari quashing the orders, dated 23rd February, 1983 and 17th March, 1983 be issued;*
- (iii) *any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case be issued;*
- (iv) *a writ of mandamus be issued directing the respondent to restore the connection of the telephone;*
- (v) *filing of the certified copies of Annexures P-1 to P-3 may also be dispensed with;*
- (vi) *issuance of prior notices to the respondents be also dispensed with; and*
- (vii) *costs of this petition may also be awarded to the petitioner against the respondents.*

Puran Chand, Advocate, for the Petitioner.

Ashok Aggarwal, Advocate, for the Respondents.

JUDGMENT

I. S. Tiwana, J. (Oral):

(1) Telephone No. CH-31675 was installed at the request of the petitioner under "Own Your Telephone" category at his shop No. 31, Kabari Market, Industrial Area, Chandigarh. Business in this shop was being run by the petitioner under the name and

style of M/s. Ashok Brothers which, according to him, is a family concern of his. Later he started business in another shop, i.e., No. 52 in that market, under the name and style of M/s. Mangal Ram & Sons. As per the original partnership deed shown to me, the petitioner is partner in this firm to the extent of 20 per cent. On a request from the petitioner, the telephone was shifted by the respondent-authorities from Shop No. 31 to Shop No. 52 in the year 1981. An extension of this telephone was installed in Shop No. 31 also. Thus, in a nutshell, the stand of the petitioner is that this telephone was being used in these two premises.

(2) On 23rd February, 1983, a registered letter, dated 17th February, 1983 (Annexure P1) was received by the petitioner informing him that his telephone connection was being disconnected as the same was being used by somebody "other than actual subscribers which was in flagrant violation of the Indian Telegraph Rules". The telephone connection admittedly was disconnected on that very day, i.e., 23rd February, 1983 itself. The petitioner impugns this action of the respondent-authorities primarily on the grounds, firstly, that no show-cause notice in terms of rule 421 of the Indian Telegraph Rules was served on him prior to this disconnection and, secondly, even if the stand of the respondent-authorities saying that such a registered notice (Annexure R3) issued to him on 1st February, 1983 was served on him on 3th February, 1983—as per the certificate of the postal authorities—still the impugned action of the respondent-authorities is not covered by the provisions of rule 429 under which these authorities have purported to act. Having heard the learned counsel for the parties at some length I find that the petitioner deserves to succeed.

(3) Without going into the factual contentions submission of the parties as to whether the notice as envisaged by rule 421 of the said Rules was issued and actually served on the petitioner, I find that the action of these authorities is not covered by rule 429 under which the respondent-authorities have admittedly acted. This is how it reads :—

"A subscriber shall not, without the permission of the Telegraph Authority assign, sublet or otherwise transfer the telephone."

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A bare reading of this rule indicates that it envisages a situation where the subscriber excludes himself from the use of the telephone by transferring, assigning or subletting it in favour of somebody else. The respondent-authorities have nowhere identified either in their written statement or in the relevant records which have been produced by their learned counsel as to who is the assignee, sublettee or transferee of this telephone. All that has been mentioned in these records right from the first report, dated 14th October, 1982 to the last noting, dated 14th February, 1983 is that this telephone was being used by M/s. Mangal Ram & Sons. As already pointed out, M/s. Mangal Ram & Sons is a family concern of the petitioner in which besides himself, his mother Nathia Devi and his brother Subhash Chander are partners to the extent of 20 per cent, 40 per cent and 40 per cent, respectively. Even in the original application filed by the petitioner with the respondent authorities on 18th March, 1981 (which forms part of the record produced before me) for the shifting of this telephone from Shop No. 31 to Shop No. 52, it was stated by him that this telephone was installed "in the name of Ashok Brothers" in Shop No. 31 and that "since we have shifted to Shop No. 52, Kabari Market, Industrial Area, Chandigarh, it is requested that telephone No. 31675 may kindly be shifted to Shop No. 52." It was on the basis of this application that the case was processed by the respondent-authorities and after finding that "the case is genuine and feasible" the telephone was actually shifted to Shop No. 52 on 28th March, 1981. It is, thus, abundantly clear from this factual narration that neither M/s. Mangal Ram & Sons is a transferee, assignee or sublettee of the abovenoted telephone nor was it actually so found by the respondent-authorities. As already pointed out, all that has been recorded by the respondent-authorities in their various notings starting with the report of the S.D.O. concerned, dated 14th October, 1982 is that the telephone was being used by M/s. Mangal Ram & Sons. In what capacity this telephone was being used by M/s. Mangal Ram & Sons has nowhere been found by these authorities. Thus, in the absence of any conclusive finding by these authorities that M/s. Mangal Ram & Sons was an assignee, sublettee or transferee of this telephone, the said authorities could not possibly take the impugned action of disconnecting the telephone. Besides all this, only reason disclosed by the respondent-authorities as per their letter, Annexure P.1 for disconnecting this telephone is that the same was being used by

somebody "other than actual subscribers". If this reason is to be taken as enough of a justification in law for disconnecting a telephone connection and is to be taken to its logical end then in all probability, every telephone would have to be disconnected as in that situation the use of a telephone even by a family member of the subscriber would provide the respondent-authorities with enough of a ground to disconnect the same.

(4) For the reasons recorded above, I allow this petition and direct the respondent-authorities to reconnect or reinstall the telephone at Shop No. 52, Kabari Market, Industrial Area, Chandigarh, within a week from today. The petitioner is also held entitled to the costs of this litigation which I determine at Rs. 500.

N. K. S.

Before I. S. Tiwana, J.

BHAGAT RAM SHARMA,—*Petitioner.*

—
versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 5440 of 1982

May 31, 1984

Constitution of India 1950—Article 226—Himachal Legislative Assembly (Allowance and Pension of Members) Act, 1971—Section 6-B—Punjab State Public Service Commission (Conditions of Service) Regulations, 1958—Regulation 8(3)(i)—Claim for pensionary benefits under section 6-B—Claimant a former member of the State Legislature of then Punjab before its reorganisation in 1966—Constitutency of the claimant after reorganisation falling in the State of Himachal Pradesh—Writ petition seeking benefits from the State of Himachal Pradesh filed in the Punjab and Haryana High Court—Such High Court—Whether has territorial jurisdiction to entertain the petition—Member of Punjab Public Service Commission not in the employment of Central or State Government before his appointment as such—Such member—Whether entitled to pension under Regulation 8(3)(i) as substituted in 1972—Substituted Regulation 8—Whether retrospective.