

DE ALWIS
v.
SRI LANKA TELECOM AND OTHERS

COURT OF APPEAL.

ISMAIL, J.

C.A. NO. 969/92

JANUARY 30, 1995, FEBRUARY 13, 1995.

Prerogative Writs – Subscription to Telephone – Agreement with Director of Telecommunication – Failure to settle bills – Facility disconnected – Prerogative Writs.

Petitioner is the occupant and owner of premises in suit and the subscriber to the Telephone installed in the premises by the Director of Telecommunications.

The Petitioner was called upon to pay Rs.103,594.80 in respect of foreign and local calls. The Bills showed that the Foreign calls were connected without Operator's assistance, by way of International Direct dialling or by inserting coins which constituted payment and therefore were not collect calls.

As the bills were not settled, the Telephone was disconnected. The petitioner sought a Writ of Certiorari to quash the said decision and a Mandamus on the Director of Telecommunication to restore the facility.

Held:

The petitioner, though he had entered into an Agreement with the Postmaster-General to provide a Telephone facility, it is, not one entered in pursuance of a statutory duty to provide such facility. The decision sought to be quashed is one founded purely on contract, the Telephone being disconnected for failure to settle

the Bills, as provided for in the agreement. It is a decision taken within the context of the contractual relationship and not in the exercise of powers of a Public Authority.

Case referred to:

1. *Jayaweera v. Wijeratne* 1985 – 2 Sri L.R. 413.

APPLICATION for Writs of Certiorari/ Mandamus.

Faisz Mustapha P.C. with *M. S. M. Suhaid* for petitioner.
S. Sri Skandarajah SSC for the respondents.

Cur. adv. vult.

March 27, 1995.

ISMAIL, J.

The petitioner is the lawful occupier and owner of premises No. 131, Gettuwana Road, Kurunegala and is the subscriber to the telephone No. 23285 installed in the premises by the Department of Telecommunications in about 1965.

The petitioner received a telephone bill (X1) on 3.7.87 for a sum of Rs. 20,202/- in respect of collect calls originated from New York. He protested at this bill by his letters dated 27.8.87 (X2) and 8.9.87 (X3) and denied that he accepted the four collect calls referred to therein.

The petitioner has referred to the following information provided in the telephone directory in regard to collect calls. "A collect call is booked with the request by the calling party to collect the charges from the called subscriber in the destination country.

When connecting a call the operator will inquire from the called number who answers whether the party is accepting the responsibility of the charge of the call. It will only be connected if the charge is accepted.

Collect calls should not be made to call boxes and *vice versa* or should not be received on call boxes or coin boxes."

The Regional Engineer, Kurunegala replied by letter dated 5.3.88 (X4) stating that according to the report received by him these collect calls had originated from a call box in New York.

A few years later the petitioner received further bills for collect calls for the period from 1.3.92 to 31.3.92 for a sum of Rs. 43,923/-, for 1.5.92 to 31.5.92 for a sum of Rs. 15,609/- and for 1.6.92 to 30.6.92 for a sum of Rs. 7,744/-. He received a final letter dated 19.10.92 (X8) calling upon him to pay a sum of Rs. 103,594.80 in respect of local and foreign calls and was given notice that the telephone would be disconnected if the bill was not settled within 10 days. The telephone was disconnected on 2.12.92 as the petitioner did not pay the sum of money due on the bills.

It was submitted that the bills show that these calls were connected directly without operator assistance by way of international direct dialling by inserting coins which constituted payment. It was contended therefore that the allegation that collect calls had been received by the petitioner on his telephone and that he assured the operator that he would assume responsibility for payment of the charges cannot be accepted. The further submission was made that the letter dated 17.11.92 produced marked X9 annexed to the petition constituted a clear admission that the Sri Lanka Telecom is unaware of the identity of the caller and cannot trace the origin and is unable to resolve the inexplicable occurrence of these calls. It was alleged that the respondents are forcing the petitioner into accepting liability for the payment of the bills in respect of these calls.

The petitioner has sought a writ of Certiorari to quash the decision to disconnect the telephone of the petitioner and for a writ of Mandamus to restore the telephone facilities to his residence.

Learned State Counsel has taken a preliminary objection to this application on the ground that as there is a contractual relationship between the parties that the remedy by way of either a writ of Certiorari or Mandamus is not available to the petitioner.

The petitioner as the subscriber entered into an agreement with the Postmaster General, acting on behalf of the Government,

on 22.4.69 (2R3) and agreed to hire a telephone line and instruments for the purpose of telephone service subject to the provisions and conditions referred to therein and the Regulations made under the Telecommunications Ordinance, No. 50 of 1944. Clause 7 of the said agreement provides that the Postmaster General may cause the subscriber to be disconnected without notice, if the subscriptions or any of the additional fees and charges payable by the subscriber is due and is not paid.

Learned Counsel for the petitioner submitted that the agreement to provide a telephone line is one entered into in pursuance of a statutory duty to provide telephone facilities and this application does not fall within the province of pure contract but within the realm of the statutory function of a statutory body. I am unable to accept this submission. The decision sought to be quashed is a decision founded purely on contract. The telephone was disconnected for failure to settle the outstanding bills as provided for in the agreement. This was a decision taken wholly within the context of the contractual relationship between the parties and not in the exercise of the powers of a public authority. Neither Certiorari nor Mandamus will lie to remedy the grievances arising from an alleged breach of contract. *Jayaweera v. Wijeratne* ⁽¹⁾, I therefore uphold the preliminary objection to this application.

Application dismissed.