

A

S. NARAYAN IYER

v.

UNION OF INDIA &amp; ANR.

April 30, 1976

B [A. N. RAY, C.J., M. H. BEG, R. S. SARKARIA, P. N. SHINGHAL AND JASWANT SINGH, JJ.]

*Jurisdiction of courts under Art. 226 of the Constitution in matters of fiscal planning—Legislative judgments are outside the scope of judicial determination—Reasonableness of telephone rates is a matter for legislative judgment.—Indian Telegraph Act—Section 7(2) read with Indian Telegraph Amendment Rules, 1966.*

C

The appellant challenged under Art. 226 the reasonableness of the increase in the telephone rental and call charges brought about by the Indian Telegraph Amendment Rules, 1966 on the ground that (1) The telephone system is a public utility service and the charges can be only in the nature of a fee which must be commensurate with the cost of rendering the service; and (2) The loss incurred by the Government in another establishment service is not a legitimate ground for raising the rates.

D

The writ petition was accepted and on appeal the judgment was reversed holding that (1) the High Court could not interfere with the tariff, and (2) the principle upon which the public utility rates regulation as developed in the United States is not applicable in our country.

Dismissing the appeal by certificate, the Court,

E

HELD : (1) The courts have no jurisdiction under Article 226 to go into the reasonableness of rates. These rates are decided as policy matters in fiscal planning. There is legislative prescription of rates. Rates are a matter for legislative judgment and not for judicial determination. [488A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 325 of 1970.

F

From the Judgment and Order dated 28th March 1969 of the Madras High Court in Writ Appeal No. 490/68.

K. S. Ramamurthy, K. Jayaram and R. Chandrashekhar for the Appellant.

L. N. Sinha, Solicitor General of India, S. N. Prasad and Girish Chandra for the Respondents.

G

The Judgment of the Court was delivered by

RAY C. J. This appeal is by certificate from the judgment dated 28 March 1969 of the High Court of Madras. The question in this appeal is whether the appellant in a writ petition can challenge the telephone rates and charges and obtain any relief in that behalf.

H

The appellant is a retired District Manager (Telephones), Madras. He filed a writ petition in the High Court for a writ of prohibition, directing the General Manager (Telephones), Madras to forbear from

enforcing the revised Telephone Tariff as per the Indian Telegraph Amendment Rules, 1966. Under the rules, the rental and call charges were increased by 50 per cent and Trunk call charges by about 30 to 35 per cent. The petitioner alleged that the telephone system is a public utility service and not a Revenue earning establishment and the charges can be only in the nature of a fee which must be commensurate with the cost of rendering the service. The petitioner further alleged that the loss incurred by the Government in another establishment service is not a legitimate ground for raising telephone rates.

The Trial Court held that Telephone Tariff was unjust and unreasonable. The Trial Court allowed the writ petition.

The High Court on appeal held that the High Court could not interfere with the Tariff. The High Court said that the principal upon which public utility rates regulation as has developed in the United States is not applicable here in our country.

It should be said at the outset that there was some discussion in the judgment on Article 19 but counsel for the appellant properly abandoned any reference to Article 19. The appellant's contentions are three. First, the expression, "rates" in section 7(2) of the Indian Telegraph Act means rates which are to be determined should be fair, just and reasonable from the point of view of both the consumer and the producer. Second, the Court has jurisdiction to determine whether the rates fixed by the Government are reasonable. Third, the rates are increased expressly for the purpose of off-setting the losses in the Post and Telegraph Services. If a proper allocation is made according to proper commercial accounting it will be found that there is a wrongful deduction of crores of rupees as revenue expense and unlawful debit. These errors in the accounting have resulted in reducing the profits earned by the Telephones.

There are three principal reasons why the writ petition is incompetent and not maintainable and the appeal should fail. First, when any subscriber to a telephone enters into a contract with the State, the subscriber has the option to enter into a contract or not. If he does so, he has to pay the rates which are charged by the State for installation. A subscriber cannot say that the rates are not fair. No one is compelling one to subscribe. Second, Telephone Tariff is subordinate legislation and a legislative process. Under Indian Telegraph Act, section 7 empowers the Central Government to make rules *inter alia* for rates. These rules are laid before each House of Parliament. The rules take effect when they are passed by the Parliament. Third, the question of rates is first gone into by the Tariff Enquiry Committee. The Committee is headed by non-officials. The Tariff rates are placed before the House in the shape of Budget proposals. The Parliament goes into all the Budget proposals. The rates are sanctioned by the Parliament. The rates, therefore, become a legislative policy as well as a legislative process.

**A**

The Courts have no jurisdiction under Article 226 to go into reasonableness of rates. These rates are decided as policy matter in fiscal planning. There is legislative prescription of rates. Rates are a matter for legislative judgment and not for judicial determination.

The appeal is dismissed. There will be no order as to costs.

**B S.R.***Appeal dismissed.*