
(1995) 10 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

ACCOUNTS OFFICER, TELECOM DISTRICT MANAGER, PANAJI, APPELLANT
GOA

Vs

SHEELA H.N.GAUNEKAR RESPONDENT

Date of Decision : 26-10-1995

Acts Referred:

Citation : 1995 0 NCDRC 68 : 1995 3 CPR 616 : 1996 1 CPJ 49 : 1996 1 CPJ 491 : 1996 2 CCC 601 : 1996 4 CTJ 504

Hon'ble Judges : B.S.YADAV , R.THAMARAJAKSHI , S.P.BAGLA , S.S.CHADHA J.

Advocate : E.P.BADRINARAYAN

Judgement

1. THIS Revision Petition has arisen out of the Order dated 23.8.1994 of Goa State Commission at Panaji dismissing the appeal of the Petitioner herein as barred by time and upholding the order dated 6.5.1993 of the District Forum, Panaji directing the Petitioner herein to refund the excess amount collected by it towards four disputed bills for the period ending 25.3.1992, 25.5.1992, 25.7.1992 and 25.9.1992 on the basis of average of the past one year preceding 26.1.1992 and to refund the amount if paid more than the said average.

2. WE are of the view that this is a fit case for the exercise of the suo motu revisional powers of this Commission. It is not disputed that the complainant has a telephone with No. 22037 at Margao-Goa with STD and ISD facility during the relevant period. The complainant disputed four bills for the period 26.1.1992 to 25.9.1992 totalling Rs. 37,678/- before the District Forum. Earlier to it he made a complaint to Telecom District Engineer, Goa only with respect to bill dated 11.8.1992 for Rs. 5,764/- for the period ending 25.7.1992 and not earlier two bills which were paid as and when due. That bill was keep pending till investigation report was received and this fact was communicated to the Complainant in the Petitioner's letter dated 28.9.1992. However, in the meantime the Complainant received bill for the period ending 25.9.1992 for Rs. 20,623/-. The Complainant made another complaint dated 28.9.1992 to A.G.M., Bombay alleging excess billing this time for the four bills for the period

25.1.1992 to 25.9.1992. The complaint was later filed praying for rectification of the disputed four bills by taking the average of the bills for the past one year. During the pendency of the complaint before the District Forum, the Telecom District Engineer examined the complaint with reference to the relevant records and the working of the meter and found no mistake either with the technical working of the telephone or with the meter reading statement. No fault was also found which could have contributed to the recording of excess reading. This was communicated to the Complainant in Telecom District Manager's letter dated 8.2.1993 which the District Forum observes that it was merely a cyclostyled letter stating that there is no mistake or fault with the telephone. The complaint addressed to A.G.M., Bombay was investigated and the Complainant was informed vide letter dated 22nd January, 1993 to the effect : "I am directed to inform you that your complaint has been got investigated thoroughly and it is found that the bills issued to you are in order and there appears no room for granting any rebate as there was no technical or clerical defects in the system. The billing amounts as claimed are in consonance with the actual utilisation of the telephone services."

3. THIS material document was not placed by the Complainant before the District Forum after he had received it and the Petitioner herein did not file its version because the Additional Standing Counsel for the Central Government did not co-operate with the Department.

4. THE District Forum came to the conclusion that the Opposite Party has no answer to the charge of the Complainant that her telephone has been tampered with and that she has been over-charged. The relief as noticed above was granted by the impugned order. The Petitioner herein filed an appeal against the order dated 6.5.1993 of the District Forum before the State Commission, Goa delayed by 9 days. The reasons given in the application for condonation of delay are that because the relations between the Advocate of the Department had become strained with the President of the District Forum, the Department wanted to appoint another Advocate and thus there was a delay. The State Commission was not satisfied with the said reason as constituting sufficient cause for condonation of delay in exercise of its discretion which this Commission is not inclined to interfere.

5. SINCE the order of the District Forum suffers from manifest illegality in the exercise of jurisdiction, this Commission finds it a fit case to exercise suo motu revisional powers.

6. THE District Forum has directed the Petitioner to calculate the telephone bills for the period from 25.1.1992 to 25.9.1992 on the basis of average of past one year preceding 26.1.1992 and this in our view is not legally permissible. This Commission has repeatedly held that the Redressal Forums are not legally justified to do so unless there is adequate evidence which may be either direct or circumstantial to show that the metering equipment was defective or there has been tampering with or misuse of telephone by the employees of the

Department. In Telecom District Engineer, Dharamsala v. Pran Nath Mahajan - (1993)1 CTJ 200 (CP) = 1(1993) CPJ 99 this Commission held : "It is a matter of public knowledge that STD facility has often been misutilised on a large scale by third parties in collusion with P&T staff. But unless there is at least circumstantial evidence to probabalise such collusion having taken place in a particular case, we cannot doubt the correctness of bills merely on the basis of suspicion. We have repeatedly held that the Consumer Redressal Forums will not be legally justified in taking over the function of estimating by application of the rule of thumb the precise number of calls made unless there is adequate evidence which may be either direct or circumstantial to show that the metering equipment was defective or there has been any misuse of the particular telephone by some unauthorised person in collusion with employees of the Department, particularly in cases where a subscriber has the STD facility - see District Manager Telephones v. Niti Saran 1(1991) CPJ 48 Revision Petition No. 67 of 1990. Again in Telecom District Manager v. M. S. Mukherjee : Revision Petition No. 111 of 1990 we held that it was not legally permissible to take the average number of calls in the previous bills for a given period as the basis of ascertaining what should be fixed as the reasonable number of chargeable calls in the billing period. In the present case there is neither direct nor even circumstantial evidence to show that there was probability of such misuse of the telephone."

There are no allegations made either in the complaint filed before the District Forum or in the letters addressed to the Telecom District Manager, Goa or Assistant General Manager, Bombay that there has been a misuse of the particular telephone either by the employees of the Department or with their connivance. Merely alleging "tampering of telephone" without further particulars or details or involvement of any officials of the department cannot lead to the inference of misuse of the telephone of the Complainant. Admittedly, in this case the Complainant has both STD and ISD facility and a Complainant is a Chartered Accountant and her husband an Advocate, both practicing at Margao. Thus there is every possibility of large variations in the calling pattern for various conceivable reasons.

7. IN the result this Commission in the exercise of its suo motu revisional powers sets aside the impugned orders of the District Forum dated 6.5.1993 and the State Commission dated 23.8.1994 and dismiss the complaint leaving the parties to bear their own costs throughout.