

(1994) 06 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

AKHIL BHARTIYE GRAHAK PANCHAYAT

APPELLANT

Vs

CHIEF GENERAL MANAGER (TELECOM), BIHAR CIRCLE

RESPONDENT

Date of Decision : 20-06-1994

Acts Referred:

Citation : 1994 3 CPR 519 : 1995 1 CLT 418 : 1995 1 CPC 134 : 1995 1 CPJ 73

Hon'ble Judges : B.N.Sinha , K.P.Sinha , Kalpana Ashok J.

Final Decision : Appeal dismissed

Judgement

1. IN this complaint petition the Akhil Bhartiye Grahak Panchayat, Jehanabad has complained against the Chief General Manager, Telecommunications, Bihar that even after the inauguration of the Jehanabad Electronic Exchange on 16.8.90 and the announcement from the Telephone Department that the pulse rate for telephonic calls made on STD from Jehanabad to Patna and Jehanabad to Gaya was 36/48/48 seconds, the STD calls were being charged at the rate of pulse rate of 12/24/48 for Patna-Jehanabad & Jehanabad-Gaya. The radial distance from Jehanabad to Patna and Jehanabad to Gaya is between 20 to 50 kms. and the STD Tarrif charge should be therefore 36-48-48 but the Jehanabad-Patna rate was being over charged at the pulse rate of 12 seconds for full-time STD calls. IN support of the complaint the complainant filed two receipts which showed pulse rate of 12 seconds. The complainant has also drawn attention to the inquiry which got conducted by the District Forum, Jehanabad on an allegation about the inaccuracy of the pulse rate charged by the Jehanabad Exchange. The inquiry was made by a Committee consisting of the N.D-C. Jehanabad Collectorate, a Journalist, the complainant and the Opposite Party was also represented in the Committee by the local Assistant Engineer. The Chairman of the Committee was the Judge-in-charge, Jehanabad Civil Court. IN the report of this Committee it has been mentioned that the Chairman made test calls to Patna and Gaya in presence of all the members of the Committee and the pulse rate of Jehanabad-Patna calls was found to be 12 seconds for Jehanabad-Patna and Jehanabad-Gaya pulse rate was 9.6 seconds. On receipt of the report the Jehanabad District Forum passed order directing for correction of the pulse rate.

The complainant on the basis of this report has alleged unfair trade practice on behalf of the Telephone Department.

2. THE Opposite Parties have denied the charge and have averred that the pulse rate for Jehanabad-Patna and Jehanabad-Gaya are the same as prescribed by the rules and have also averred that the inquiry made by the Enquiry Committee set up by the District Forum on 20.3.91 may be wrong due to monitoring defects, starting and closing time of the Stop Watch may not be exactly tallying with the starting and closing time of the calls made. THEy have said that various test calls were made on 18.4.91, 29.7.91 and 14.11.91 and the pulse rate was found to be correct and therefore there was no question of any over charging and or any refund on that account. THE Opposite Party also raised the question of maintainability of the complaint on two grounds viz. (i) the existence of Section 7(b) of the Telegraphs Act and (ii) that the complainant was not a registered voluntary organisation. Witnesses have been examined by the complainant and the Opposite Party in support of their contentions and the arguments of the complainant and of the learned Counsel for the Opposite Parties have been heard. They have also submitted written arguments.

In the first place we would like to observe that there is no bar for invoking the provisions of the Consumer Protection Act (hereinafter called the Act) simply because of existence of similar provisions in some other Acts. There has been various decisions of the National Commission that a Forum constituted under the Act can hear the matters brought before it even though there may be provision under others Acts and the complainant could have gone under those provisions for relief. It is totally the choice of the complainant to seek relief under the Consumer Protection Act Secondly, the complainant is a branch of All India body viz. The Akhil Bhartiye Grahak Panchayat duly recognised for taking up the matters on behalf of the consumers. Hence the argument of the Opposite Party before us regarding non-maintainability of the complaint on these two counts can be summarily rejected.

3. THE main point therefore for consideration is as to whether the pulse rate for STD calls from Jehanabad to Patna and Jehanabad to Gaya as was being charged by Jehanabad Exchange was correct. Apart from the receipts filed by the complainant which show inflated rates, the inquiry made by a Committee constituted by District Forum, Jehanabad which conducted the test on 20.3.91 clearly shows that the pulse rate were different from what was admissible and consequently the STD calls were being overcharged. In this test call the Opposite Party's representative Assistant Engineer Shri A.K. Verma was present and he also put his signature to the result of the test calls. If a technical man found that the test calls have not been properly made on account of the stop watch was not being correct he should have mentioned these facts in the report signed by him which he had not done. In the examination before us he has said that he orally protested before the Sub-Judge, Jehanabad who was heading the Committee. What prevented him from making a written report is any body guess. About the

contention made by the Opposite Parties that the pulse rate of Jehanabad-Patna and Jehanabad Gaya was verified on 18.4.91 and it was found to be correct and duly conveyed to the District Forum, Jehanabad on 27.7.91. It is seen from the orders of the District Forum, Jehanabad in Consumer Case No. 10 of 91 that "on 27.7.91 the Assistant Engineer, Telephone Exchange, Jehanabad appeared and informed that on 29.4.91 re-test was made and the result achieved was some what different. In that test the complainant was neither informed nor he was present. No paper has been filed to show that a re-test was made on 29.4.91." It is seen that the date of the re-test call given was 29.4.91 and not 18.4.91. In his deposition the Assistant Engineer Shri Verma has said that there were two verification on 18.4.91 to 14.11.91. He was not referred to any test having been made on 29.4.91. Another witness on behalf of the Opposite Party Shamsul Hameed who is also the Assistant Engineer presently posted at Gaya has stated that the test on 18.4.91 was not conducted on the basis of written order by any authority and that he recorded the valuation of the test after inquiring from Sri A.K Verma about the pulse rate from Jehanabad-Gaya and Jehanabad-Patna. He also does not remember that any test were made on 29.4.91. In the light of these facts it is extremely doubtful that test calls as averred to have been made on 18.4.91 and 29.4.91 were made in a regular manner. THE complainant or his representative was not present on any of those test calls though so desired by the District Forum. No print outs have been submitted about these test calls. As regards the verification on 14.11.91 it is seen the print out were taken out and the result shows that the pulse rate was in conformity with the prescribed rate. After hearing both the parties and perusing the deposition made before us we feel that there were some errors in brining the pulse rate between Jehanabad-Patna and JehanabadGaya in line with prescribed standards after the conversion of the Jehanabad Exchange into Electronic Exchange. This defect was later on corrected as seen from the print out of 14.11.91. The exact date on which the correction was made cannot be ascertained. On account of this error in the beginning there are possibilities of the STD callers being overcharged. As to how much over charge was made and who was the sufferers on account of this error cannot be ascertained with any degree of certainty.

4. IN the light of these facts we would hold that there was a deficiency in service on behalf of the telephone department in not ensuring that the pulse rate from Jehanabad-Patna & Jehanabad-Gaya were correct as per the prescribed rate after the inauguration of the Electronic Exchange. Since, however, the defects have been corrected some time in 1991 we feel that the ends of justice will be met by awarding compensation of Rs. 1000/- in favour of the complainant. We would also award a further sum of Rs. 1000/- as cost of the litigation. Ordered accordingly. Appeal dismissed.