
(2003) 09 NCDRC CK 0099

In the National Consumer Disputes Redressal Commission

BHARAT DOOR SANCHAR VIBHAG

APPELLANT

Vs

JANTA MEDICAL STORE

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Citation : 2004 1 CPC 387 : 2004 1 CPJ 410 : 2004 1 CPR 593 : 2004 2 CLT 123

Hon'ble Judges : K.D.Shahi , Surendra Kumar , Luxmi Singh J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal by the Bharat Door Sanchar Vibhag against the judgment and order dated 30.6.2000 passed by District Forum, Haridwar, whereby the claim of the complainant was allowed as given in the order of the judgment by the Forum.

2. THE brief facts of the case are that the complainant M/s. Janta Medical Store was consumer of telephone No. 72312. It was at his shop. It is said that the bill for (1) 26.5.1992 to 25.7.1992 was received for Rs. 2,587/-; (2) 26.7.1992 to 25.9.1992 was received for Rs. 3,282/- and (3) 26.9.1992 to 25.11.1992 was received for Rs. 4,299/- incorrectly typed as Rs. 8,299/- and incorrectly totalled as Rs. 14,168/-. It is said that before this, the bill was at an average of Rs. 700/-, Rs. 500/- and Rs. 450/- only. Several complaints were made, but were not heard. THEN the complainant deposited the entire amount and filed the complaint claiming to cut down the bills and pay Rs. 800/- as expenses of correspondence, Rs. 20,000/- as compensation and Rs. 1,200/- as litigation charges. The opposite party contested the complaint and alleged that the third bill was only for Rs. 4,299/- and the total of all the three bills is only Rs. 10,168/-. It is said that on the complaints of the complainant, the inquiries were made, switch room, machinery, M.D.F. Line, etc., were checked, nothing was found defective and the complaint was rejected and this was informed to the complainant vide letters dated 14.10.1993 and 23.12.1993. He was further informed that if he is not satisfied with the order of rejection, he may file an appeal to the Director, Door Sanchar Vibhag. Western Zone. It is said that the

complainant was satisfied with the order, he did not prefer an appeal and deposited the bills. It was, further, said that the complaint therefore, is not maintainable.

However, the learned Forum heard the learned Counsels for the parties and gone through the records and ordered that the bills for the last 6 months be examined and out of those bills, in the highest bill, 10% may be added and then, on that basis the bills can be issued. The balance may be refunded to the complainant along with interest @ 15%. The Forum also allowed Rs. 500/- as cost of correspondence; Rs. 2,000/- as compensation and Rs. 1,000/- as litigation expenses. Against this order, the appeal has been filed by the appellant, Bharat Door Sanchar.

3. IN a case like this, it is duty of the complainant to prove deficiency in service and for inflated bills, he has to prove that the line has been tampered or misused or there has been any defect in the meter of the telephone. The learned Counsel for the respondent alleged that it is duty of the Telephone Department to prove this, if the complainant is able to prove sudden spurt in the telephone bill, that is sufficient for him. For this, he referred the ruling reported in I (2000) CPJ 186, M.T.N.L. v. Maj. Gen. B.P. Wadhwa and II (1996) CPJ 99 (NC), Telecom District Manager, Mehasana v. Patel Shankerlal Kevalram. IN both the rulings, the guidelines referred by the Department were not complied with by the Department and, therefore, it was held that there was a gross negligence and deficiency in service. But in this case, inquiry has already been made by the Telephone Department. The result has been communicated to the complainant through two letters dated 14.10.1993 and 23.12.1993. It is very easy to say that these letters were not received. To the contrary, in the ruling reported in II (1991) CPJ 388, Chief General Manager, Calcutta Telephones v. P.B. Chowdhary, it has been held that merely because two bills are on the higher side, it cannot be believed that the telephone of the complainant was being utilized by others in collusion with telephone employees. It was, further, held that if the complainant was not satisfied, he could go in arbitration under Section 7-B of the Indian Telegraphs Act. IN the ruling reported in II (1991) CPJ 158, G.M., Mahanagar Telephones Nigam Ltd. v. Shri Gulshan Rai, the District Forum has ordered that the complainant should be directed to pay on the basis of the highest calls made during the last 6 months. The order was not justified. It was further held in this ruling that the telephone was with STD facility being used for commercial purposes. It was emphasized that the calls on the telephone used by professionals are not made on particular pattern, but according to the work. It was for the respondent to show that during the specific period, for which he has made grievance, there was no such load because it was within his knowledge. It has not been said anywhere in the complaint that there was no such load on his telephone during the period of three bills. IN the ruling reported in I (1991) CPJ 48 (NC)=1991 (1) CPR, The District Manager, Telephones v. Niti Saran, it has specifically been held that where the bills are said to be excessive, the Telephone Department rebuts the suggestion to inflated bills. The Forums are not legally

justified in estimating by application of rule of thumb the precise number of calls and, therefore, in a particular period of time unless there was adequate evidence to show that the metering equipment was defective or there has been any misuse of any particular telephone by the employees of the Department. IN the ruling reported in II (1991) CPJ 579 (NC), Divisional Manager, Telephones, Lucknow v. Madhu Enterprises, Lucknow, the National Commission has held that the Consumer Disputes Redressal Forum has no power to fix the number of calls which the Forum considers as reasonable. It is the complainant who has to prove that there was some defect in the metering equipment or the calls were manipulated. IN the ruling reported in I (1996) CPJ 49 (NC), Accounts Officer, Telecom District Manager, Panaji, Goa v. Mrs. Sheela H.N. Gaunekar, the National Commission has again confirmed this view and held that the District Forum has got no jurisdiction to reduce the bills on average basis. The learned Counsel for the complainant wanted to show that the regulations have not been followed and he argued that there was direction by the higher authority on 2.11.1994 to make inquiry and to settle the bills at their level. This letter was not complied with. The complainant should have again approached the officer instead of filing this complaint. Secondly, the matter has already been inquired upon and settled at the level of the officers who were to make inquiry and the said letter cannot be said to be any rule or regulation which is said to have been flouted.

4. TAKING the worst case that the order of the District Forum is correct, then also, in the order there is specific direction that the bill of the highest value within last 6 months be taken up and 10% be added in that and all the three bills be issued on that average. The complainant has very easily told that his earlier bills were of Rs. 700/-, Rs. 500/- and Rs. 450/- only. But he did not tell that one such bill deposited by him without any objection on 11.12.1991 was for Rs. 3,026/- and another bill on 11.4.1992 was of Rs. 1,705/-. The first disputed bill is of 26.5.1992 and if the bill of 11.12.1991 is to be taken, it is hardly 6 or 7 months old and if in this bill 10% is added, this bill becomes for Rs. 3,328/-. The two disputed bills are of Rs. 2,537/- and Rs. 3,282/- only. No fruitful purpose shall be served by giving the complainant such relief. The telephone of the complainant was with STD facility. It was fitted in his shop and for the telephone with STD facility in a shop, the bills like this cannot be said to be excessive. The learned Forum has acted beyond its jurisdiction in ordering by a rule of thumb to issue the bills on average basis and the order, therefore, is to be quashed. The other reliefs also cannot be given on that ground. ORDER The appeal is allowed. The judgment and order dated 30.6.2000 passed by District Forum, Haridwar is, hereby, quashed. The complaint is dismissed. Cost of the complaint as well as this appeal shall be easy. Appeal allowed.