(2016) 09 NCDRC CK 0140

In the National Consumer Disputes Redressal Commission

Case No : 318 of 2016

BHARTI HEXACOM LIMITED, & ANR. — APPELLANT

Vs

RADHEY SHYAM MAHAWAR & ANR. — RESPONDENT

Date of Decision : 28-09-2016

Acts Referred:

Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : (2016) 09 NCDRC CK 0140

Hon'ble Judges : D.K. Jain, M. Shreesha

Advocate : Pawan Kumar Ray

Final Decision : Petition dismissed

Judgement

1. This Revision Petition, under Section 21(b) of the Consumer Protection Act, 1986 (for short "the Act"), has been filed by a Telecom Service Provider, namely, Bharti Hexacom Limited, Opposite Party No.2 in the Complaint, against the order dated 27.05.2015, passed by the Rajasthan State Consumer Disputes Redressal Commission at Jaipur (for short "the State Commission") in Appeal No. 1725 of 2011. By the impugned order, while affirming the order dated 23.05.2011, passed by the District Consumer Disputes Redressal Forum, Jaipur-I (for short "the District Forum"), in Consumer Complaint No. 1102 of 2007, preferred by Respondent No.1/Complainant, the State Commission has dismissed the Appeal, granting 30 days'' time to the Petitioner to comply with the order passed by the District Forum. By the said order, the District Forum, while holding both the Opposite Parties, i.e. the Petitioner herein and its Dealer, deficient in service to the Complainant, had allowed the Complaint with a direction to them to jointly or severally pay to the Complainant a sum of 10,000/- as compensation for disconnecting the outgoing calls without any reason, together with 5,000/- towards mental agony and 1,500/- as litigation expenses.

2. The Complainant had taken two mobile connections in the name of his friend Puran Mal from Opposite Party No.1, a Dealer of Opposite Party No.2/Petitioner.

For the said purpose, he had deposited relevant documents/fee with the Dealer, where-after both the connections were activated. The said connections had been taken under the Petitioner''s "Muskan Pack Scheme", under which local calls on Airtel mobiles were to be charged at 0.90 per minute and on other mobiles at 1.20 per minute. Besides, the call charges to one local Airtel mobile were fixed at 0.10 per minute. On 01.10.2007, the Petitioner without any prior information disconnected the outgoing calls on the said connections. On enquiry, the Complainant was asked to submit certain documents, which he had already deposited with the Dealer at the time of taking the said connections. Though the Dealer informed the Complainant that the said documents were furnished to the Petitioner, on 03.10.2007, when the Complainant went to the Petitioner, he was informed that the said documents already stood deposited and there was no need to again deposit the same and thereafter on the said date at about 3.00 p.m. the outgoing calls were restored on the mobile connections. During the period of two days, when the mobile connections remained disconnected, the Complainant had to pay 50/- on the local Airtel mobile numbers, on which the calls were to be charged at 0.10 per minute. In this background, alleging deficiency in service on the part of the Petitioner and its Dealer, the Complainant preferred the afore-noted Complaint, praying for compensation.

3. It is pointed out by the Office that this Revision Petition is barred by limitation, inasmuch as there is a delay of 155 days in filing the same. An Application, praying for condonation of the said delay, has been filed along with the Revision Petition. In paragraphs 3 - 9 of the said Application, the Petitioner has furnished the following explanation:

"3. It is most respectfully submitted that the Impugned Order passed on 27.05.2015 and the copy of the Impugned Order of the Petitioner received copy only on 04.06.2015.

4. That the file of the present case was earlier indulge in official procedure of the Company. After completion of required official procedure, the Legal Manager received the file of the present case on dated 11.09.2015.

5. That the unfortunately demise of a relative member of Legal Manager of the Company, the file could not be proceeded further. The file could only be proceeded only after the Legal Manager joined the office i.e. on 02.12.2015.

6. That the immediately Legal Manager of the Company, sent the file to the present counsel after making due approvals only on 12.10.2015 through one of employee of the Company.

7. That Counsel for the Petitioner immediately drafted the petition and sent the draft for due required changes in the petition on 28.10.2015, the counsel received the draft of the petition after changes only on 08.11.2015.

8. That the counsel for the Petitioner finalized the draft of the Petition and called the Petitioner to his office for signing required documents. The Authorized

Representative could only approach to counsel on his office only on 20.11.2015.

9. On 29.01.2016 the counsel for the Petitioner filed the Revision Petition before this Hon''ble Commission. Therefore, in these bonafide circumstances the present Revision Petition is being within the delay ? days.""

4. We have heard learned counsel for the Petitioner on the question of delay.

5. In our view, the explanation furnished by the Petitioner is wholly unsatisfactory. Firstly, it may be noted that the certified copy of the impugned order was received by the Petitioner on 29.05.2015 and not on 04.06.2015, as is sought to be pleaded. Even going by the admitted date of receipt of the same, the present Revision Petition has been filed only on 29.01.2016, i.e. with a delay of 155 days, beyond the prescribed period of 90 days as provided under Regulation 14 of the Consumer Protection Regulations, 2005. The said delay is sought to be condoned on the specious pleas that on 11.09.2015 the file was sent to the Legal Manager, who was stated to be not attending the office at that time and attended the office only on 02.10.2015; the file was sent to the Counsel on 12.10.2015, who drafted the Petition and sent the same to the Petitioner 28.10.2015; after changes, on 08.11.2015 the Petition was received by the Counsel, who, after finalizing/taking signature of the Authorized Representative of the Petitioner, ultimately filed the Revision Petition before this Commission on 29.01.2016. From a perusal of the explanation furnished, it is apparent that the Petitioner took more than three months in sending the copy of the order to its Legal Manager. While the plea of the Petitioner that its Legal Manager was not attending the office for three weeks is not supported by any documentary evidence, the said ''Legal Manager'', supposed to be knowing the implication of the period of limitation provided in the Statutes, took 10 days in assigning the matter to the Counsel, when the period of limitation to file the Revision Petition had already expired, who also took 16 days in drafting/sending the Petition to the Petitioner and after receipt of the same again on 08.11.2015, took further 12 days in asking the Authorized Representative to sign the relevant papers. Even after completing the said formalities on 20.11.2015, the Counsel took more than two months in filing the present Revision Petition. The cumulative effect of all the slack exercise undertaken by the Petitioner/its Counsel is that the Revision Petition got barred by limitation by 155 days. Manifestly, the explanation belies conviction and is merely an afterthought. In that view of the matter and bearing in mind the quantum of the amount involved and the fact that both the Fora below have recorded a concurrent finding of fact that there was deficiency on the part of the Petitioner in rendering service to the Complainant, we are not inclined to condone an inordinate delay of 155 days in filing of the present Revision Petition.

6. Consequently, the Revision Petition is dismissed in limine on the ground of limitation.

