
(1997) 01 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

BHARTI SCIENTIFIC DYERS

APPELLANT

Vs

GENERAL MANAGER, TELECOM

RESPONDENT

Date of Decision : 27-01-1997

Acts Referred:

Citation : 1997 1 CPR 555 : 1998 1 CPJ 537

Hon'ble Judges : A.L.Bahri , R.L.Gupta J.

Final Decision : Appeal allowed

Judgement

1. IT is the rarest of rare cases. The significance of the telephone and its allied services cannot be short sighted in one of the premier Industrial Centres i.e. Ludhiana, of the country. The opposite party after duping the consumer has tried to play hide and seek with this Commission. The District Forum, Ludhiana after taking the affidavit submitted by the Sub Divisional Engineer (Phones) on its face value observing that he is a responsible Government officer and would not sworn against the actual fact disbelieved the complainant and held that P-wire facility in question has been shifted on 15.7.1994. In the grounds of appeal filed before the Commission, the appellant-complainant annexing the affidavit stated that since the date of disconnection of P- wire facility in December, 1993, the same has not been shifted and restored till date and the said fact can be got verified by appointing a Commission. On the appearance of the opposite party/respondent before us, the appellant complainant produced before us some correspondence indicating that P-wire has not been shifted. With no option left, we appointed a Local Commissioner to visit the premises and to report about the existence or otherwise of Pwire facility. The Local Commissioner on visiting the spot on 20.12.1996 in the presence of the opposite party, submitted that P-wire facility does not exist on the spot. To wriggle out of the report of the Local Commissioner, and to hoodwink S.D.E. [Phones] has submitted affidavit before this Commission that P-wire was closed due to non-payment since 9.9.1996. For the reasons hereafter recorded, we observe that the said affidavit of the S.D.E. [Phones] has been filed only to add the salt to the wounds of the consumer. IT is a fit case wherein we feel that the opposite party/Telephone Department should

hold a High Court powered enquiry. Even officers working in different branches are in contradictions and at variance with each other. To buttress the transparency, accountability, responsiveness and responsibility in its working, the department is expected to take strict Departmental action in accordance with law against the erring officials and in its courtesy we hope the action taken will be intimated to this Commission. To lessen the miseries of the tax payers we direct the Department that the compensation hereinafter granted by us be recovered from the erring officials.

2. THE cobweb of the case is small and simple. THE complainant firm M/s. Bharti Scientific Dyers stated to be dealing in dying business is having its factory premises at village Meharban, Rahon Road, Ludhiana wherein he had previously telephone No. 664533 in lieu of which a new number 690151 has been allotted. At its previous office premises situated at B/V, 1136, Mehmood Pura, Ludhiana, the firm had the telephone No. 26085. THE firm shifted its office in September, 1993 from Mehmood Pura Ludhiana to 1284/67, Gali No. 3, Rahon Road, Guru Nanak Dev Nagar, Basti Jodhewal, Ludhiana where he enjoyed three telephones i.e. 664533, 665343 and 667279. THE firm had a P- wire facility connecting telephone No. 664533 of the factory premises on one end and previous telephone No. 26085 of office on the other end. On the shifting of the office, in September, 1993, to Guru Nank Dev Nagar, application [Annexure A/1] dated 17.9.1993 was made to the Commercial Officer, Ludhiana requesting the shifting of P-wire facility from telephone No. 26085 to that of 665363 on the other end. For doing the needful necessary advice note i.e. 14.12.1993 was issued. P-wire facility was disconnected in December, 1993 but it was not shifted. In spite of this bill Annexure A/3 dated December, 1994 of Rs. 1 l,850/- was issued by the opposite party-the Telephone Department i.e. Rs. 7,500/- towards the rent of P-wire facility for 1994/95 and Rs. 4.350/- on account of difference of rent for the period from 1.11.1992 to 30.4.1995. On the notice being served by the District Forum, the opposite party filed its written version dated Nil on 28.4.1995 stating that P-wire facility was in working condition and has already been shifted as desired by the complainant. The required shifting of P-wire was carried out as and when it became feasible. The complainant filed rejoinder mentioning that no action was taken for the required shifting of P-wire by the opposite party and the opposite party has not even stated the date upon which the shifting of P- wire took place.

The District Forum afforded opportunities to both the parties to lead the evidence. The complainant filed the affidavit dated 6.8.1995 of Shri Tilak Raj inter alia deposing that opposite party had issued advice note No. 244094 dated 14.12.1993 to the Field Authorities to carry out shifting of P-wire of the second end but the field staff had not carried out the shifting at all. The opposite party filed the affidavit of Shri Amarjit Singh, Divisional Engineer, Phones [Legal] to the effect that the respondent office has shifted the P-wire on 15.7.1994 and the applicant had concealed this fact from the Forum. The complainant has used the shifted P-wire facility and the bill sent to him was genuine and according to the

Department Rules as stated above.

3. IT was urged by the complainant with vehemence before the District Forum that actually there had been no shifting and only paper entries have been made. The learned District Forum did not feel convinced with the arguments of the Counsel for the complainant observing "because there is sworn affidavit of Shri Amarjit Singh who is a responsible Government officer and he would not have sworn so against the actual fact". However, for the delay in shifting P-wire facility, the opposite party was directed to pay Rs. 1,000/- as compensation to the complainant within a period of three months. Aggrieved by the order of the District Forum dated 13.4.1996 the complainant filed the appeal before us. On 29.11.1996 Counsel for the appellant in the presence of the Counsel for the opposite party stated that upto today, P-wire facility has not been provided and the Department has conceded this fact in some communications and in support thereof the learned Counsel for the appellant placed on record letter No. P-wire/WL/334/15 dated 26.9.1996 issued by the Commercial Officer to A.E.P. [Tel.] Bharat Nagar, Ludhiana and letter No. P/2/AN/259 dated 9.10.1996 issued by the S.D.E. Phones, Traffic Indoor Ludhiana to Commercial Officer II, Office of G.M. Telecom Ludhiana. Copies of those letters were also handed over to the Counsel for the Telecom Department to verify the fact and report by the next date of hearing i.e. 19.12.1996. On 19.12.1996, as stated above, this Commission appointed a Local Commissioner to the appointment of whom the Telephone Department pleaded no objection. The Local Commissioner Shri Rajesh Kokhar, Advocate, Chandigarh who visited the spot on 20.12.1996 has submitted his report dated 3.1.1997 stating that P wire facility was not available against telephone No. 667279 of M/s. Bharati Scientific Dyers, Ludhiana and none of the officials tried to establish that there was P-wire facility on D.P. No. 3050 from where the telephone connection was given to M/s. Bharati Scientific Dyers against telephone No. 697279 installed at House No. 1284/67, Guru Nanak Dev Nagar, Gali No. 3, Rohan Road, Basti Jodhewal, Ludhiana with the same telephone installed at Rohan Road, village Meharban, Ludhiana. The Local Commissioner also visited the factory at Rohan Road, village Meharban, where independent telephone was working and there also no P-wire facility was found by the Local Commissioner on that phone.

4. SHRI D.C. Mittal, Advocate, learned Counsel for the opposite party/respondent assisted by some officials of the Legal Cell of the Department has not disputed report submitted by the Local Commissioner. However, learned Counsel has filed affidavit dated 6.1.1997 of SHRI H.K. Mehra, S.D.E. [Phones] [Legal Cell] reiterating the stand taken before the District Forum that P-wire of Bharti Scientific Dyers at House No. 1284/67, Guru Nanak Dev Nagar, Gali No. 3, Basti Jadowal, Ludhiana was shifted on 15.7.1994 vide report i.e. A/Note No. 244094 dated 14.12.1993, P-wire No. 334 vide jumper slip No. 41 and register of shifting entries duly attested by the concerned officer and further stating that P-wire was closed due to nonpayment since 9.9.1996, alongwith the affidavit documents were annexed. Shri Sunil Chadha, Advocate, learned Counsel for the appellant

assisted by Shri Tilak Raj submitted that since December, 1993 till today, no bill of P-wire has been paid. The bill dated December, 1994 issued by the Department has been challenged. Hence the stand in the affidavit of Shri H.K. Mehra, S.D.E. that the P- wire was closed due to non-payment since 9.9.1996 is only to come out of the report of the Local Commissioner dated 3.1.1997. After hearing the teamed Counsel for the parties and purusing the record, we unhesitatingly come to the conclusion that even the averments made in the affidavit dated 6.1.1997 of Shri Mehra, don't seem to be correct. Though the learned Counsel for the respondent has not disputed the contention of the learned Counsel for the appellant that no bill of P-wire till December, 1996 has been paid and he has not been able to justify alleged continuous and thereafter, closure of P-wire for non-payment on 9.9.1996. However, we are not much depending upon this concession. Vide letter dated 2.9.1996 (supra) the Commercial Officer has mentioned that S.D.O. Phones, Traffic Ludhiana has reported vide endorsement dated 23.9.1996 that the P- wire was shifted on 14.12.1994, but on physical verification it was found mat no P-wire exists at Street No. 3, Guru Nanak Dev Nagar, Ludhiana. In pursuance to the said letter S.D.E. [Phones] Traffic Indoor Ludhiana vide his report dated 9.10.1996 to the Commercial Officer has stated "An No. 244094 dated 14.12.1993 for shifting was neither received in this office nor was it ever executed through tills office". The said two letters categorically falsifies the stand that P-wire was actually shifted on 15.7.1994. In the written statement filed by the opposite party, no date has been mentioned on which the P-wire facility was shifted. Only for the first time, in the affidavit of Amarjit Singh, Divisional Engineer Phones [Legal] dated 11.1.1996, it was stated that P-wire was shifted on 15.7.1994. A reading of the letter dated 26.9.1996 of the Commercial Officer makes it clear that letter of S.D.O. [Phones], Ludhiana dated 23.9.1996 states that P-wire was shifted on 14.12.1994. Even the documents attached with the affidavit of Shri H.K, Mehra, reads as under : 15.12.1993 244094 14,12.1993 Shift P-wire 334 16.7.1994 TRA 9.8.1994.

5. IN view of the above discussion, we conclude that no shifting of P-wire was done on 15.7.1994 and in fact not done till date. For the reasons best known to the officers of the Department, a false and vexatious stand was taken. Only on the placement of the report of the Local Commissioner, the picture has become crystal clear.

6. WAITING in the wings to take over the learned Counsel for the appellant after referring to number of previous telephone bills issued after 1993 to the complainants pleaded that on account of non-issuing of P-wire facility, the complainant has suffered loss of thousands of rupees per month. On the basis of the said bills, it is difficult for us to fathom conclusively the exact loss suffered by the complainant. However, the said bills, no doubt, too can provide some indication. For the false affidavit filed and fraud being played by the officers of the Department, forging the records by them and to tighten the noose round their neck, the learned Counsel for the appellant has stated that criminal

proceedings be launched against them. It would be profitable here to quote the observations of the Hon'ble Supreme Court of India in case Indian Bank v. M/s. Satyam Fibres [India] Pvt. Ltd., AIR 1996 (SC) 2597 of the reporter which was decided under the Consumer Protection Act : inherent "powers spring not from legislation but from the nature and the construction of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business". We leave these officers at the majority of the Department which is quite competent enough to deal with the erring ones instead of invoking our powers against them. However, we would be failing in our statutory duty if we don't adequately compensate the complainant for the apparent deficiency of service of the Telephone Department for not restoring P-wire telephone facility since December, 1993. We are conscious of the fact that compensation awarded has to bear some nexus with the loss suffered. At the same time it cannot be disputed that it is difficult to have photographic description of the loss suffered and to prove the loss with mathematical procedure. In the facts and circumstances of the case, we feel the ends of justice would be somewhat met if compensation for sum of Rs. 25,000/- is granted to the complainant/appellant to be paid by the opposite party as observed above for depriving him of the P-wire facility since December, 1993. This would include damages for mental agony, harassment, etc. Before parting with the judgment, we once again reiterate that the Department would recover the amount awarded from me concerned officers and for their gross misbehaviour and misconduct they would be departmentally proceeded and no leniency would be shown to those who have tried to obstruct and hamper the flow of justice, For improving the functioning in the Department, we direct that copy of this judgment be sent to the Secretary to Government of India, Ministry of Communication, New Delhi, The Chief General Manager, Telecom. Punjab Circle, Ambala Can't. In addition to the compensation of Rs. 25,000/-, the complainant would also be entitled to the costs of litigation before the District Forum as well as before this Commission, which we assess at the modest sum of Rs. 2,000/-. Department-opposite party is also not entitled to charge the impugned bill issued in December, 1994. The amount awarded be paid within three months of the date of receipt of the order. It is needless to mention that P-wire facility be provided to the complainant forth with preferably within one week from the receipt of this order.

In the terms indicated above, the present appeal is allowed and concomitantly the impugned order of District Forum dated 13.5.1996 is modified to this extent. Appeal allowed. _____