

(1998) 04 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

COMMERCIAL OFFICER (TELEPHONES)

APPELLANT

Vs

GULSHAN RAI

RESPONDENT

Date of Decision : 21-04-1998

Acts Referred:

Citation : 1998 2 CLT 72 : 1998 2 CPJ 311

Hon'ble Judges : A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Appeal dismissed with costs

Judgement

1. THIS appeal is by the Telephone Department challenging order of District Forum, Ropar dated November 19, 1996 whereby a direction was given to the Telephone Department to pay a sum of Rs. 10,000/- to the complainant Dr. Gulshan Rai and the aforesaid amount should be deducted from the salary of the errant official of the Telephone Department by fixing responsibility and to submit the report to the District Forum by February 22,1997 and that non compliance of the directions was likely to attract the penal provisions of Section 27 of the Consumer Protection Act, 1986.

2. SINCE no version was submitted by the Telephone Department before the District Forum, only brief facts as stated in the complaint are being noticed. Dr. Gulshan Rai, complainant applied for new telephone connection in February, 1995 on deposit of Rs. 2,000/-. The orders for installation of the telephone were passed by the authority on September 26,1995. SINCE the telephone was not installed, on September 3,1996 the complainant approached the District Forum. It is thereafter that the telephone was installed on October 10,1996. The delay in installation of the telephone, after the authorities had passed the order, was a deficiency in rendering service as alleged. The complainant produced his own affidavit in support of the complaint and produced documents indicating the representations made to the authorities in this respect (Annexures A-5 to A-7). The matter was also taken up in the Tribunal Lok Adalat (Annexure A-3) in March, 1996. The District Forum accepted the version of the complainant which was supported by his affidavit and the documents and held that there was

deficiency in rendering service and thus directed payment of compensation. Learned Counsel for the Telephone Department is not available today. We have gone through the grounds of the appeal as well as the written version to the appeal submitted by Dr. Gulshan Rai.

A preliminary object has been raised by the respondent that the appeal is barred by time and there is no assertion either in the grounds of the appeal or otherwise in the application about the facts which prevented the Telephone Department in presenting the appeal within the period of limitation. Thus, according to him the question of casual delay in filing appeal cannot be considered and the appeal should be dismissed as barred by time. There is force in this contention. Certified copy of the Impugned Order filed alongwith the appeal shows that the order was passed on November 19,1996 and the copy was handed over to the representative of the Telephone Department on March 21,1997. The present appeal was filed on April 25,1997. The period of limitation for filing appeal is 30 days and it has been ruled by the National Commission that the period of limitation would commence from the date of receipt of copy of the order by the aggrieved party. There is some endorsement on the front page of the copy of the Impugned Order indicating receipt of the same signed by the S.D.O. (Telephones) but no significance can be attached to the same as the date put has been interpolated. It may be observed that 20th of April, 1997 was Sunday and thereafter from 21 st to 25th April, 1997 were working days. As already stated above, there was no mention in the grounds of the appeal as to how the appeal was within time. The appeal in the circumstances stated above is clearly barred by time and deserves to be dismissed on that ground.

3. WE have gone through the Impugned Order as well as the grounds of appeal and even on merits we find no ground for interference. The representative of the Telephone Department, Sh. Karnail Singh-Supervisor put in appearance before the District Forum on October 22, 1996. The order passed on that date shows that the telephone connection had become functional and that the complainant persisted with its remaining grounds that there was delay of about one year in installation of the phone, hence the case was adjourned to October 13,1996 for filing replies and for producing evidence on affidavit and documents, the case was fixed for November 19, 1996. On October 30,1996, the case was taken up. The complainant concluded his evidence but no reply on behalf of the opposite party was produced as directed. For final disposal of the case, it was adjourned to November 19,1996. It was on that date that final arguments were heard and the order was passed. When sufficient opportunity was afforded to the opposite party to produce its version and the same was not availed, in appeal, fresh points depending upon facts cannot be permitted to be raised. The deficiency in rendering service i.e. for not installing the telephone connection after the order for the same has been passed by the authorities for a period of one year is writ large and such a finding is to be accepted in this appeal. A legal point has been raised in the grounds of appeal that the complainant could not be treated as a consumer as defined under the Consumer Protection Act as he was merely an

applicant and he would become a consumer only when telephone connection is installed. Reference to two judgments has been made i.e. 1995(3) COH-Del. 328 and II (1993) CPJ 922 (Guj.). The ratio of these decisions cannot be applied to the case in hand. The present is a case where complainant after deposit of the initial amount was entitled for consideration of his case for allotment of the telephone connection. Apart from that a specific order has been passed by the authorities on September 26, 1995 for installation of the telephone. Thus, thereafter he could not be treated as a mere applicant. When order in his favour had been passed by the authorities for installation of the telephone, he would be a consumer as defined under the act.

4. ANOTHER ground taken up in the grounds of the appeal is the excessiveness of amount of Rs. 10,000/- as compensation fixed in this case. The ground taken up is that the complainant had failed to establish any specific loss suffered on account of non-availability of the telephone as required under Section 14(1)(d) of the Consumer Protection Act. The respondent Dr. Gulshan Rai who argued the case in person contends that not only actual loss but he also suffered mental agony and harassment for the acts of the officials of the Telephone Department who did not pay any heed to his requests made in writing. He has referred to his complaints (copies Anxs. A-5, A-6) as well as the matter having been taken up before the Tribunal Lok Adalat vide Annexure A-3. As already observed above, it was after a year of the order of installation passed by the authorities that actually the telephone was installed and that too after the complaint has been filed. The harassment caused to the complainant is severe. Telephone is no more a luxury; it has become a necessity in the present era. Even if there is no specific evidence of loss suffered, on rough estimation, compensation for mental agony and harassment suffered has to be determined. A sum of Rs. 10,000/- for such harassment for a period of more than one year cannot be considered highly excessive to call for interference in appeal. For the reasons recorded above, this appeal is dismissed with costs of Rs. 200/-. Appeal dismissed with costs.