(2001) 05 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

CONCORD INTERNATIONAL (P) LTD. APPELLANT

Vs

MAHANAGAR TELEPHONE NIGAM LIMITED RESPONDENT

Date of Decision : 23-05-2001

Acts Referred:

Citation : 2001 2 CPJ 57

Hon'ble Judges : C.M.Nayar , Moksh Mahajan J.

Final Decision : RTPE disposed of

Judgement

1. XTHIS is an application filed by M/s. Concord International (P) Limited (hereinafter referred to as the complainant) under Section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the MRTP Act) against the respondent-Mahanagar Telephone Nigam Limited contending therein that the disconnection of two telephones of the complainant by the respondent without serving any notice is an arbitrary, restrictive and unfair trade practice.

2. THE complainant is a subscriber of the respondent having two telephone Nos. 4627520 and 4694587 installed at 147, Golf Links, New Delhi for its Directors. THE complainant has paid all the dues for the said phones but received a letter dated 2.12.1997 from the respondent on 15.6.1998 wherein it was communicated that since there were outstanding dues amounts to Rs. 2,11,959/- against Telephone No. 4636473 installed in the premises of one Ms. Nimmi Khanna, at 5, Golf Links, New Delhi, the aforesaid two telephones of the complainant would be disconnected. THE complainant submitted that it has no connection with Ms. Nimmi Khanna and hence its telephones cannot be disconnected but the telephones in question have already been disconnected by the respondent arbitrarily. The respondent has filed its reply to the averments made by the complainant. We may reproduce Para-7 of the reply as follows : "xxxx it is stated that Ms. Nimmi Khanna is the Director of the complainant Company and for the telephone number 4636473 there has been an outstanding of Rs. 2,11,959/- installed at 5, Golf Links, New Delhi. It is stated that a notice

dated 2.12.1997 was issued to the complainant for the payment but no response had been received from the complainant. Hence, the telephone was disconnected. It is stated that while seeking installation of the telephone, the complainant Company gave its memorandum of association and in this it was stated that Smt. Nirmal K. Khanna is the shareholder of the Company and is a permanent Director. Copy of the Memorandum and Articles of Association of the complainant Company was annexed as Annexure R1. The said document was filed with the respondent vide letter dated 21.10.1986 along with specimen signatures. It is stated that the notice for disconnection was sent due to this fact. It is further stated that telephone No. 4636473 was opened in the name of Smt. Nimmi Khanna at 5, Golf Links, New Delhi and was disconnected due to non-payment and the other telephones have been disconnected on account of her being the Director of the complainant Company. It is denied that the complainant does not have any connection with the dues of Smt. Nirmal Khanna as she is the permanent Director on the Board and she is liable to clear that outstanding amount. The petitioner is making false averments by stating that it has no connection with the dues of Smt. Nimmi Khanna."

It is also contended that no unfair trade practice has been carried out by the respondent in view of the provisions contained in Rule 443 of the Indian Telegraph Act, which is reproduced below : "443. Default of payment-If, on or before the due date, the rent or other charges in respect of the telephone service provided are not paid by the subscriber in accordance with these rules, or bills for charges in respect of calls (local and trunk) or phonograms or other dues from the subscriber are not duly paid by him, any telephone or telephones or any telex service rented by him may be disconnected without notice. The telephone or telephones or the telex so disconnected may, if the Telegraph Authority thinks fit, be restored, if the defaulting subscriber pays the outstanding dues and the reconnection fee together with the rental for such portion of the intervening period (during which the telephone or telex remains disconnected as may be prescribed by the Telegraph Authority from time to time. The subscriber shall pay all the above charges within such period as may be prescribed by the Telegraph Authority from time to time."

Without going into the merits of this case, we find that the complainant in the present proceedings is entitled to an adequate remedy under the provisions of Section 7B of the Indian Telegraph Act, 1885, which is reproduced as under : "7B. Arbitration of disputes- (1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the Telegraph Authority and the person for whose benefit the line, appliance or apparatus is, or has been, provided, the dispute shall be determined by arbitration and shall, for the purposes of such determination, be referred to an Arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of disputes under this section. (2) The award of the Arbitrator appointed under Sub-section (1) shall be conclusive between the parties to the disputes and shall not be questioned in any Court."

3. IN view of the settled law that when a specific remedy is provided under a statute, it would not be appropriate to seek remedy in another Forum, we cannot exercise any jurisdiction in the present proceedings. The complainant should, therefore, take recourse to a remedy under Section 7B of the INdian Telegraph Act, 1885 and move an appropriate application in this regard within six weeks from today and the respondents shall appoint an Arbitrator within six weeks thereafter. The present RTPE No. 173/ 98 is accordingly disposed of with no order as to the costs. RTPE disposed of.

