(1991) 03 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

C.R.RAMACHANDRAN APPELLANT

Vs

DISTRICT TELECOM ENGINEER, PALAKKAD RESPONDENT

Date of Decision : 01-03-1991

Acts Referred:

Citation : 1991 1 CPJ 379 : 1991 2 CPR 55

Hon'ble Judges : G.Balagangadharan Nair , R.Ramachandran Nair , C.G.Sethu Lakshmi J.

Final Decision : Ordered accordingly

Judgement

1. THE complainant who is a telephone subscriber at Palakkad seeks the following reliefs from the opposite parties. 1 To direct them to charge from the complainant only the minimum bi-monthly rent of Rs. 100/-. 2 To direct them to refund the excess amount collected from him by way of fixed rent, call charges, installation charges and other heads, and 3 To direct them to pay Rs. 1 lakh as compensation for the mental agony and anguish to which he was subjected by the Telecom Department "by its inhuman, illegal and extralegal acts of Commission and omission."

THE relevant averments in the complaint are: THE complainant was allotted a telephone connection No. 58 from Kanjikode Exchange, within the jurisdiction of the first opposite party. After the phone connection was made operational the complainant was served with a demand notice fixing the quarterly rent at Rs. 125/besides the installation charges. THE telephone line was drawn to the house of the complainant and he was the only subscriber served by the line until 1982. After one quarter the fixed rent was increased to Rs. 200/on the plea that the actual distance beyond the local area (ABDL) of Kanjikode was more than 1 kilometre. THE advance deposit was increased to Rs. 800/and a bill for short collection dated 6.2.1979 was issued to the complainant. THE complainant objected to the bill on the following grounds: (1) THE local area of Kanjikode Exchange was not notified in the Gazette as required by law and there was no demarcation line marking the local area. As long as there is no definite local area demarcation, the distance beyond the local area remains, only hypothetical. (2) THE complainant''s application was for a telephone connection from Palaghat Exchange but he was given the connection only from Kanjikode Exchange and again overuling the complainant''s objection the Department started collecting the fixed amount of Rs. 200/-.This went on till 16.11.1979. Meanwhile he applied for a new phone connection from Palghat Exchange and requested the authorities to shift the phone from Kanjikode to Palakkad Exchange as the area was a multi-exchange area. 4 Although the request was refused, the complainant was given a phone connection for Palakkad Exchange on 2.11.1979. He was asked to pay a fixed rent of Rs. 125/installation charges, charges for plug and socket and charges for a coloured phone. 5 THE fixed rent of the phone was increased to Rs. 275/without any notice from 16.2.1980. He again disputed the Department''s claim. THE Department intimated the complainant on 25.2.1980 that ADBL of Palakkad Exchange to his residence is 1.50 KM and that the fixed rent for additional 2 KM would be charged. 6 THE complainant objected to this view on the grounds (a) THE local area of Palghat exchange has not been demarcated and notified in the gazette as on 16.2.1980 as required by law (b) THE complainant''s residence falls within 5 KM radius of Palakkad Exchange and the Department''s view was wrong. Yet acting on this erroneous view the Department was collecting the enhanced rent. 7 THE complainant''s phone bills, quite often exceed the actual calls. He has made complaints about the meter reading but they used only to evoke cyclostyled formal and routine replies in the negative. 8 THE complainant''s persistent demands to reconsider the stand on ADBL produced some result and the junior Telecom Officer reported that the ADBL was within 1 KM and the fixed rent was reduced to Rs. 260/-. THE complainant however continued to maintain his original stand that his liability was only to pay the minimum fixed rent of Rs. 160/-.

2. THE complainant has also alleged that owing to his physical ailment (he has stated that he has a heart problem) the telephone is an absolute necessity for him, that he is being harassed and victimised by the Department and that confrontation with the Department which is impervious to human sentiments and feelings has made him a mental work. The 2nd opposite party has filed a detailed version of the department''s case and countering the complainant''s allegations. We are not setting out the version in full but would refer to the material portions while dealing with the points taken by the complainant.

Neither side has given any oral evidence but both sides have produced several documents. On agreement they were marked and admitted in evidence. They have also produced written arguments without any invitation and we shall refer to the material points from them while discussing the case.

3. TAKING the complainant''s grievances relief-wise, the second relief can be taken up first as it is comprehensive in the sense that it involves more items than the other two. The relief seeks the refund of the excess amount alleged to have been collected by way of fixed rent, call charges, installation charges and

other heads for the post. The complainant was provided with telephone connection Palakkad 25088 on 16.11.1979 (and not on 2.11.1979). The records show that local call bills were issued once in 3 months (quarterly) upto 28.2.1982 and subsequently bi-monthly (once in two months) from 1.3.1982 onwards. The opposite parties assert that whenever complaints were received from subscribers about excessive billing they were investigated and replied to. This practice was uniformly followed in the case of the complainant also. The complainant has no material to show that the practice was not followed in his case and that there was any departure on his complaints. He has alleged that when his protests were rejected the Department did so by merely sending uniform cyclostyled replies, indicating nonapplication of mind and absence of investigation. We find it impossible to agree with this general contention. It has been pointed out on behalf of the opposite parties that the complaint never challenged the decision of the subordinate officers before the higher authorities or seek any statutory remedies under the Telegraph Act or any judicial remedies and that on the other hand he paid all the concerned bills. This was not contested by the complaint. Mr. T. Ramachandran, the Departmental representative before us suggested that in spite of the complainant''s inaction in this regard we might direct an arbitration of the disputes about excess billing under Section 7B of the Telegraph Act. Complainant was agreeable to this course. We therefore direct the Department to refer for decision the complainant''s disputes about excess billing covering a period of three years before the date of this complaint to an arbitrator under Section 7B of Indian Telegraph Act. The complainant and the Department will be at liberty to put forward their contentions before the arbitrator. The reference will be made within 4 weeks from today.

4. THE next dispute relates to fixed rent for the telephone. This depends upon the location of the complainant''s residence, (where his telephone is kept) in relation to what is called the local area. Rent for the telephone is charged on a fixed basis where it is within the local area and additional rent is levied where the telephone is beyond that area from the Telephone exchange, depending upon the actual distance beyond the local area. Local area as defined in the Telegraph Rules means the area within 5 KM radial distance from the telephone exchange or where the Telegraph Authority had declared any area served by an exchange system to be a local area for the purpose of telephone connection, such area. Normally therefore the local area means the area within a radial distance of 5 KM from the Telephone Exchange unless there is a contrary declaration by the Telephone Authority. Admittedly there is no such contrary declaration in the present case. THE question and the controversy is what is the radial distance from the Kanjikode Telephone Exchange to the complainant''s premises and if it is more that 5 KM what is the actual distance beyond the 5 KM local area. THE opposite parties have produced an authenticated map which proves that the complainant''s house is 0.1 KM beyond the local area. On this basis the Department seeks to justify the additional rent (for connections beyond the local

area as per kilometer or part thereof) and he was charged for 1 KM additional rent. THE opposite parties have also highlighted the inconsistent stand taken by the complainant on this point. Regarding the contention with regard to the distance from the Palakkad Exchange and the additional rent, the opposite parties hive produced copy of the notification in the Government of India Gazette dated 27.9.1976 as it was disputed that there was no notification. THE opposite parties assert that the complainant''s house is in Puthusseri Panchayat - outside the Palakkad Municipality and it is not within 5 KM RD of Palakkad exchange. Hence they maintain that under the notification the complainant is bound to pay additional rent The opposite parties contend that when the connection was provided to the complainant in 1979 the Department had initially taken the stand that his residence was beyond 5 KM radial distance and the actual distance beyond the local area was 1.5 KM. Subsequently on re-verification this was erroneously decided as 1.0 KM and the complainant was given rebate on that basis. They have further stated that after the present complaint, the matter was fully re-examined when it was found that his residence is beyond 5 KM radial distance of Palakkad and that the additional actual distance beyond the RD of 5 KM is 1.8 KM and not 1 KM and he has accordingly to pay charges for 2.0 KM. Although for the purpose of this proceeding we are inclined prima facie to accept the Department''s version, we do not propose to conclude it either way as the opposite parties have suggested that it could be settled through arbitration. We therefore direct that the Department will refer to arbitration this dispute also i.e. whether the complainant''s residence is within or outside the local area and if it is outside what is the additional distance that should be subjected to charge. In the light of the arbitrator''s verdict the Department will decide the matter afresh. The reference will be made within 4 weeks from today. Both sides will be at liberty to produce all the relevant and supporting materials before the arbitrator.

5. ANOTHER complaint seriously urged is that although the complainant had a Telephone connection in his house-58 of Kanjikode exchange when he was provided with phone 25088 of Palakkad exchange, installation charges were again collected from him and this double levy is unjust and illegal, as no, additional work was involved and even the wiring was already available. The opposite parties contest this stand and point out that installation charge, shifting charge etc. for telephone connections are fixed and not calculated on actual cost of construction of the line etc. It is pointed out by them that at the present rates, the initial installation charge for a connection within the local area of Palakkad exchange is Rs. 800/irrespective of the distance involved. They also point out that Palakkad 25088 is in no way a continuation of Kanjikode 58, it is a totally new phone connection from Palakkad exchange. The complainant was obviously aware of this for as the opposite parties point out, when he applied for the Palakkad connection he made the application in a new form for new connection. There might be some arbitrariness in the tariff rules but that is not liable to be challenged or questioned.

6. THE complainant has a grievance about the charges for plug and socket

collected from him when Palakkad 25088 was provided, even though he had paid the charges for the same facility for Kanjikode 58. He paid these charges without any protest and is raising the complainant only now, a decade later. We find no basis to allow this state and belated claim. In addition to what we have observed on the merits of the complainant''s grievances about the tariff, we might refer to a basic objection on which they must fail. In S. Narayana Iyer v. The Union of India and others, AIR 1976 SC 1986 the appellant applied for a writ of prohibition to direct the General Manager, Telephones Madras to forbear from enforcing the revised Telephone Tariff as per the Telegraph Amendment Rules 1966 on the ground that it could only be in the nature of a fee which must be commensurate with the cost of rendering the service. A learned judge of the High Court allowed the writ holding that the tariff was unjust but he was reversed by a Division Bench. On further appeal the Supreme Court confirmed the Division Bench holding: "There are three principal reasons why the writ petition is incompetent and not maintainable and the appeal should fail. First, when any subscriber to a telephone enters into a contract with the State, the subscriber has the option to enter into a contract or not. If he does so, he has to pay the rates which are charged by the State for installation. A subscriber cannot say that the rates are not fair. No one is compelling one to subscribe. Second, Telephone Tariff is subordinate legislation and a legislative process. Under the Telegraph Act, Section 7 empowers the Central Government to make rules, inter alia, for rates. These rules are laid before each House of Parliament. The rules take effect when they are passed by the Parliament. Third, the question of rates is gone into by the Tariff Enquiry Committee. The Committee is headed by nonofficials. The Tariff rates are placed before the House in the shape of Budget proposals. The parliament goes into all the budget proposals. The rates are sanctioned by Parliament. The rates, therefore, become a legislative policy as well as a legislative process."

The Courts have no jurisdiction under Article 226 of the Constitution to go into the reasonableness of rates. Rates are a matter for legislative judgment and not for judicial determination.

7. WE might also refer to a recent decision dated 10.10.1990 by the National Consumer Disputes Redressal Commission in Madras Provincial Consumer Association v. Department of Telecommunications. That case arose out of a complaint against certain terms on which an application for OYT could be granted. Holding that it was not open to the applicant to challenge the terms the National Commission said: "A person deliberately entering into a contract for the allotment of a telephone under the OYT Scheme on those conditions with open eyes cannot thereafter be heard to complain that any of these terms or conditions are not just or fair".

The National Commission also referred to the observations in S. Narayana Iyer''s case as opposite and proceeded to state: "The legal position that emerges from the aforesaid ruling of the Supreme Court is that the tariff rates fixed under

Section 7 to the Indian Telegraph Act read with Rule 434 of the Indian Telegraph Rules are statutory in character and their reasonableness cannot be gone into even by a Court exercising jurisdiction under Act 226 of the Constitution since those rates are decided as policy matters in the process of fiscal planning".

8. THESE decisions are fatal to the complainant''s challenge against the tariffs. A similar complaint has been raised in respect of a red telephone (colour) for which charges were levied in both Kanjikode and Palakkad telephone connections. Formerly a subscriber had to pay certain charge if he wanted telephone of a particular colour. As we pointed out above the Palakkad exchange was not a continuation of the Kanjikode exchange and the complainant who wanted a red phone for the new connection had to pay for it. He paid for it without complaint and the present challenge itself comes 10 years after the event. We were told by the opposite parties that this practice has since been abolished and at present there is no charge for providing telephone of any colour. The claim under the head has to be rejected. We now come to the third relief claimed by the complainant compensation of Rs. one lakh for mental agony and anguish caused by the Telecommunication Department. We are not satisfied that the complainant is entitled to any relief under this head. Even if any actions of the Department has not fully satisfied the complainant it is impossible to characterise them as "inhuman, illegal and extralegal acts" as the complainant has done. We are afraid that the complainant has used extravagant language without any justifiable reason. There is no basis for the allegation that the Department has caused him mental agony and anguish entitling him to compensation.

9. SAVE for the direction about arbitration in respect of excessive calls and extra radial distance which we have directed the Department to refer to arbitration, the complainant is not entitled to any relief. Ordered accordingly. ______________

