

(1992) 02 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

DISTRICT ENGINEER TELEPHONES

APPELLANT

Vs

PRAKASH KUMAR MAFATLAL PATEL

RESPONDENT

Date of Decision : 13-02-1992

Acts Referred:

Citation : 1992 1 CPR 745 : 1992 3 CPJ 491

Hon'ble Judges : S.A.Shah , R.K.Shah J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal by the Telephone, Department of Mehsana against the subscriber who is the original complainant before the District Forum, Mehsana.

2. THE short question that arises for our consideration and we propose, to decide, is as to whether before disconnecting the telephone of the respondent on the ground that the same was misused by the, subscriber, a heavy duty is cast upon the telephone authorities to give a notice of the proposed action under Rule 421 of the statutory Rules and this power can only be exercised by the Divisional Engineer if satisfied by recording the reason in writing. THE Rule being important is reproduced as under: "421. Disconnection of telephones. - Where, the Divisional Engineer is satisfied for reasons to the recorded in writing that it is necessary to do so, he may, after giving the subscriber a notice in writing for a period which shall not except in emergent cases be less than 7 days, disconnect the telephone, and in such case, the subscriber shall be entitled to refund of rent for the unexpired portion of the period for which the connection or service was given."

THErefore, before the Divisional Engineer exercises his power he is enjoined to serve a notice in writing and after being satisfied that it is necessary to disconnect the telephone, he has to pass an order recording the reasons for the same. In the instant case, though the notice appears to have been issued by registered post, the same has not been served to the subscriber. The original - notice with the envelope has not been produced before the District Forum. However, there is a xerox copy of the same on page 65 which shows the

endorsement "not known". The Department has also filed written statement in which the Department has admitted that the show-cause notice has not been served upon the subscriber. They have not stated that the same has not been served on account of refusal of the subscriber. According to the written statement itself though the notice having been issued on 18.8.91 the same could not be served to the subscriber. Assuming that the Department has proceeded on the mistaken belief that the notice has been served, the Department has not produced any recent order passed by the Divisional Engineer as to whether the subscriber was misusing the telephone in violation of the Act and provisions of the Rule. It is not out of place to draw the attention of concerned parties to Rule 429A which reads as under: "429A. Casual use of a telephone by an outsider - Casual use of a telephone may be allowed by a subscriber to an outsider, subject to the condition that for such casual use, the subscriber shall not charge more than the charges leviable for such use as if it is from a public call office."

Considering the facts and circumstances stated above, it is very clear to us that before disconnecting the telephone of the subscriber the Department has not served a valid notice as required under Rule 421. In these circumstances the disconnection of the telephone is obviously illegal. We, therefore, find no substance in any of the arguments vehemently advanced by Mr. Patel, learned advocate appearing on behalf of the appellants. We do not find any error committed by the District Forum. The appeal is, therefore, liable to be dismissed with cost. ORDER The appeal is dismissed. The order of the District Forum is affirmed. The appellant shall pay cost of Rs. 250/- to the respondent. Appeal dismissed.