(2001) 01 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

DISTRICT MANAGER, TELEPHONES — APPELLANT

Vs

ADMINISTRATIVE OFFICER, PUNJAB MANDI BOARD — RESPONDENT

Date of Decision : 24-01-2001

Acts Referred:

Citation : 2001 3 CPJ 69

Hon'ble Judges : K.K.Srivastava , P.K.Vasudeva , Devinderjit Dhatt J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal filed against the order dated 7.3.2000 passed by the District Consumer Disputes Redressal Forum-I, U.T., Chandigarh [for short hereinafter referred to as the District Forum-I] in Complaint Case No. 20/93/M.98. The District Forum-I has directed the appellant/opposite party to issue revised bill of the rounded amount of Rs. 7,000/- for the bill of sudden spurt dated 11.12.1992 for Rs. 36,667/-. A further direction was issued that if any amount had been paid by the complainant with respect to the earlier order during the pendency of this complaint, the same would however stand adjusted. The complainant was further directed to make payment of dues within one month from the receipt of the revised bill. A perusal of the order of the District Forum-I would go to show that the disputed bill dated 11.12.1992 for a sum of Rs. 36,673/- was held to be excessive after working out the average amount of the bill for Telephone No. 535840 [Old Number - 43413] installed at the residence of the Administrative Officer of the respondent - Punjab Mandi Board.

2. THE facts giving rise to this appeal may briefly be narrated as under : THE aforesaid telephone No. 535840 [Old Number - 43413] was installed at the residence of the Administrative Officer of the Punjab Mandi Board, Chandigarh. THE telephone bills normally received for the use of the said telephone were of the range of Rs. 678/-. THE bill for the period from 26.9.1992 to 25.11.1992 was received in respect of the said telephone number for a sum of Rs. 36,673/- and the same was considered by the respondent to be highly excessive and disproportionate to the use of the telephone. THE Administrative Officer of the

respondent - Punjab Mandi Board moved an application seeking stay of the disconnection of the telephone as the said bill was required to be investigated. THE respondent - Punjab Mandi Board was apprehending that the bill for a sum of Rs. 36,673/- for the period of two months commencing from 26.9.1992 to 25.11.1992 might be due to the defect in the metering equipment or faulty lines. Since the grievance of the respondent - Punjab Mandi Board was not redressed by the appellants, the complaint was filed before the District Forum-I, U.T., Chandigarh which came up for decision before the District Forum-I. THE District Forum-I issued notice of the complaint case to the opposite party of the complaint case who is the appellant before us i.e., the District Manager [Telephones], Chandigarh. THE written statement was filed contenting, inter alia, that the complainant was having S.T.D./I.S.D. facility and its extensive use could not be ruled out as the telephone was installed at the headquarter of the Board which is a State Government Undertaking and the complainant as also his staff are free to use the telephone to any extent. It was also contended that the bill dated December, 1992 for a sum of Rs. 36,673/- was issued on the basis of the use of telephone and there was no defect in the metering equipment or telephone line. On behalf of the respondent/complainant, a replication controverting the averments of the written statement was filed. It was mentioned therein that the telephone in question was installed at the residence of the Administrative Officer and as such the question of its use by other staff members did not arise. Apart from it, it was mentioned that the complainant always kept the telephone under lock and key and retained the keys with him. During the course of the pendency of the complaint case, a letter written by the Assistant Engineer, Phones [Legal Cell] dated 21.4.1994 was placed on record to the effect that the print-out of the bill dated 12 of 1992 pertaining to telephone No. 535840 was not available. This letter was placed in pursuance to the order passed by the District Forum-I which directed the Government Pleader to produce the print-out for the period in question. THE Forum passed the order at the instance of the complainant. THEreafter, the complainant moved an application summoning the file of investigation which was done by the Department. However, the Department placed on record a letter to the effect that no vigilance file relating to the aforesaid telephone No. 535840 was available. Subsequently, the complainant placed on record of the complaint file a copy of letter No. P. Complaint/535840/46 dated 9.11.1992 and also a print-out for a part of period of disputed bill. THE complainant also filed on record affidavit of Shri N.S. Bath, S.D.M. Jagraon who deposed, inter alia, that no I.S.D. was available on the said telephone. He also deposed that the telephone was misused by some unscrupulous elements. It was also deposed that the opposite party-Department took no steps on the complaint made to them to redress the grievance of the complainant, as per Guidelines of the Telecommunication Department. It was further averred in the affidavit that since the I.S.D. facility was not available on the telephone, hence the question of making international calls from the said telephone did not arise. On behalf of the opposite party who is the appellant before us, the affidavit of Shri Piara Ram, Accounts Officer was placed on record.

He deposed, inter alia, that as per the record, S.T.D. was available on the telephone and its extensive use could not be ruled out. After hearing the learned Counsel for the complainant as well as the Government Pleader for the opposite party, the District Forum-I held that the opposite party-Department had not followed the guidelines of the government issued with regard to the complaint of excess metering and the same constituted deficiency in service on their part. The District Forum took into consideration the submissions of the learned Counsel for the complainant/respondent that after the Dynamic Code Facility was provided to the telephone of the complainant, the bi-monthly bills ranged between Rs. 666/- to Rs. 2,581/- except one bi-monthly bill which was for a sum of Rs. 7,670/- which was issued on average basis due to non-working of taxer of the opposite party-department. After taking into consideration the amount of various bills placed on record, the District Forum-I held, inter alia, as under : "...So as such keeping in view the aforesaid trend of calling pattern, particularly when complainant had paid the bill of Rs. 7,670/-, we deem it expedient to direct O.Ps. to issue revised bill of the rounded amount of Rs. 7,000/- for the bill of sudden spurt dated 11.12.1992 for Rs. 36,673/- for about which the proper procedure as laid down in the guidelines and instructions for looking into the aspect of spurt has not been followed by the opposite party - Department, as referred to above. So this complaint stands disposed of with the aforesaid observations/directions to opposite party-Department. Before parting with this order, we deem it expedient to mention here that if any amount had been paid by the complainant with regard to the bill in question earlier or during the pendency of this complaint, the same would however stand adjusted. Complainant is however directed to make payment of the dues within one month from the receipt of revised bill..."

Feeling aggrieved against the order of the District Forum-I, the opposite party of the complaint i.e., District Manager, Telephones, Chandigarh has filed this appeal. Notice of the appeal was served on the respondent i.e., Punjab Mandi Board, Chandigarh. Appearance was put in on behalf of the respondent through Mr. Karam Singh Gill, Advocate. We have perused the order of the District Forum-I and have carefully gone through the material placed on record by way of evidence.

3. IT would appear from the order of the District Forum-I that the bill in question i.e., Bill dated 11.12.1992 for the period from 26.9.1992 to 25.11.1992 for a sum of Rs. 36,667/- was tested and held to be excessive on the basis of an average of Rs. 7,000/- worked out on the basis of a single bill for a sum of Rs. 7,670/- which was received by the complainant for bi-monthly period and was paid. Mr. G.C. Babbar, Advocate learned Counsel for the appellant as vehemently argued that the District Forum-I could not adjudge the disputed bill as excessive on the basis of adopting the mode of working out average of the bills received for the telephone and in this particular case, the average was worked out by rounding of the amount of a single bill for a sum of Rs. 7,670/- for bi-monthly period for the telephone in question. Mr. G.C. Babbar, Advocate cited number of authorities of the Hon''ble National Consumer Disputes Redressal Commission,

New Delhi [for short hereinafter referred to as the National Commission] in support of his contention that the District Forum or the State Commission cannot adopt such a course of working out average for testing the disputed bills and hold the same to be excessive due to either defect in the metering equipment or in the telephone lines and the proper course would be to refer the matter of the disputed bill for arbitration to the Competent Authority under Section 7B of the Indian Telegraphs Act, 1885. The authority relied on by the learned Counsel for the appellant is reported in the case of Divisional Engineer, Telecom, Moradabad v. Virender Kumar, reported in II (1997) CPJ 60 (NC)=1997 (1) CPR 165, of the Hon''ble National Commission. In para 4 of the judgment, the Hon''ble National Commission observed, inter alia, as under : "...The Telecommunication Department had also taken plea in its written version that when there is a defect in meter of the telephone or in the telephone line, then the subscriber instead of moving the District Forum should have taken action under Section 7B of the Indian Telephone Act but no was taken by him. This Commission has taken the view that the Consumer Fora under the Consumer Protection Act, 1986 have jurisdiction to entertain and decide a dispute which the Indian Telegraph Act, 1885. IT was not necessary that the disputes relating to meter readings can only be handled by an Arbitrator having technical knowledge of mechanism of meter reading and the Indian Telegraph Act does not oust the operation of the Consumer Protection Act in such cases. The Consumer Fora, therefore, have jurisdiction to decide disputes involving meter reading or excess billing even when such disputes might be covered under Section 7B of the Indian Telegraph Act. The finding of fact recorded in this case is that the excessive bills are issued to the complainant due to the defective meter of the telephone or due to the defect in the telephone line. Neither the District Forum nor the State Commission went into the question as to the effect of these defects in the billing pattern. The State Commission has quashed the impugned bills without giving any further directions as to how the disputes relating to the billing have to be settled. If any dispute concerning any telegraph lines, 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 disputes shall be determined by arbitration. This Commission has frowned upon the practice of some of the District Fora in quashing the telephone bills and directing the Telecommunication Department to issue revised bill on the basis of averages. When there is a defect in the meter or telephone line, the proper course is to grant the relief and direct the dispute being settled within the scope and ambit of Section 7B of the Telegraph Act."

While disposing of the review petition, the Hon''ble National Commission issued directions in para 5 of the judgment, in these words : "5. For the above reasons the revision petition is allowed and the impugned orders of the District Forum as well as the State Commission are set aside to the extent of the grant of reliefs to the complainant. The Competent Authority shall refer the entire dispute under Section 7B of the Indian Telegraph Act and the dispute shall be determined within a period of six months. In the meantime, the telephone connection which was admittedly been restored, will not be disconnected for non-payment of the disputed bills. The complainant shall pay the amount of the disputed bills as determined by the Arbitrator within a period of three months of the date of the Award failing which it will be open to the Telecommunication Department to proceed in accordance with the Rules. The parties shall bear their costs throughout."

Apart from this, Mr. G.C. Babbar, Advocate cited number of other authorities in support of his contention that the Forum or the State Commission cannot adopt the mode of working out average for testing the disputed bill and holding it to be excessive on working out of the average of the amount of the bills received for the telephone in question. The first authority relied on by Mr. G.C. Babbar, Advocate is reported in II (1991) CPJ 286 (NC), Telecom District Manager, Patna v. M/s. Kalyanpur Cement Ltd. Mr. G.C. Babbar, Advocate referred to paras 3 and 4 of this authority reported in Telecom District Manager, Patna (supra), which reads as under : "3. However, before we part with this case we must observe that we feel disturbed by the fact that the orders of the District Forum and the State Commission in this case are based on the conclusion that the bill in question was highly inflated and this finding was based on an examination of the previous bills in respect of the particular telephone concerned. As the State Commission observed in its order ''an analysis of all the bills filed in this case would give an impression that the bill in question could not be correct as it was against the calling pattern of the complainant-respondent. The previous bills show that the respondent was in the habit of making restrained calls and this is why the bill rarely exceeded Rs. 1,000/-''. So the State Commission concluded that the District Forum seemed to be correct in holding that the bill in question was not drawn up correctly, that either it was inflated or there was something wrong in the mechanism."

Para 4 reads as under : "4. There is no evidence to show that the metering equipment was defective or that it had been tampered with or manipulated so as to inflate the bills. It is also not correct to assume that there has to be a pattern of making telephone calls from a telephone; the number of telephone calls made by a subscriber can fluctuate considerably for many reasons. The subscriber in this particular case, the consumer is a commercial concern and there is every likelihood that the telephone calls in a period of time may fluctuate widely. It may become necessary to make a fair and just determination of the calls made on the basis of the calling patern over a period of time, only if it is established that the metering equipment is defective, or has been tampered with or manipulated, resulting in the bill being inflated. It is true that one cannot altogether rule out the possibility of such tampering or manipulation of metering equipment and the consumer must be protected against such malpractices. It is however, not open to the Consumer Forums to base a finding of the bills having been inflated merely on the basis of suspicion and it will be not right to assume that there was something wrong with the mechanism without evidence and without identifying the precise defect in that mechanism. We cannot go by our subjective impressions about the reasonableness or otherwise of a bill which is based on reading from a mechanical equipment. With these observations, the revision petition is dismissed."

4. THE next authority relied on is reported in I (1996) CPJ 49 (NC), Accounts Officer, Telecom District Manager v. Mrs. Sheela H.N. Gaunekar. It is the case in which the Hon''ble National Commission decided the revision petition filed against the order of the State Commission. THE Hon''ble National Commission held in para 8, inter alia, as under : "8. THE District Forum as directed the petitioner to calculate the telephone bills for the period from 25.1.1992 to 25.9.1992 on the basis of average of past one year preceding 26.1.1992 and this in our view is not legally permissible. This Commission has repeatedly held that the Redressal Forums are not legally justified to do so unless there is adequate evidence which may be either direct or circumstantial to show that the metering equipment was defective or there has been tampering with or misuse of telephone by the employees of the Department..."

In para 9 of the judgment, the Hon''ble National Commission held, inter alia, as under : "...Merely alleging ''tampering of telephone'' without further particulars or details or involvement of any officials of the Department cannot lead to the inference of misuse of the telephone of the complainant..."

In the case of Telecom District Manager, Panaji v. Mrs. Liberata Fernandes, reported in III (1995) CPJ 35 (NC), the Hon''ble National Commissioner held, inter alia, as under : "The District Forum as well as the State Commission have acted contrary to the dictum laid down by this Commission reported in I (1991) CPJ 48, The District Manager, Telephones & Ors. v. Niti Saran, and several subsequent cases, wherein that decision has been uniformly followed that it is illegal on the part of an Adjudicating Authority under the Consumer Protection Act to adopt the average of the number of calls made by a consumer during any particular period prior to the billing period in dispute for determining whether a disputed bill was excessive or not. ...It has been pointed out by this Commission that when it is alleged by a consumer that a bill served on him is excessive and that it is the outcome of some defect in the metering system or the consequence of unauthorized tampering with his telephone line by some one, either in the employ of the Department or some outsider, an investigation into the said matter has to be conducted by the Forum concerned and a finding on the question has to be recorded on the basis of evidence adduced by the parties during such investigation. This principle has been completely ignored by the State Commission and the District Forum while passing the impugned orders with the result that the orders passed by them cannot be sustained in law..."

The Hon''ble National Commission later on in the case of District Manager, Telephones, Patna v. Harishankar Sharan Singh, reported in II (1998) CPJ 6 (NC), held in para 3, inter alia, as under : "...The question of computation of calls in such a situation has to be based on some basis, but certainly not on the average basis. As has been held by this Commission in Union of India v. Satya Narain Lal, III (1993) CPJ 335 (NC), that ''unless there is evidence to show that the metering equipment is defective or there has been tampering with the telephone connection by their parties, it would not be legally correct for the Consumer Forums to determine the bills on the basis of average of the calls made during the earlier periods, nor is the Consumer Forum justified in disregarding the fact that the bills will be heavy if the consumer avails of the STD facility and that STD calls made are not recorded separately from the local calls when the Exchange are not electronic''."

5. THE last authority relied upon by the learned Counsel for the appellant is Mahanagar Telephone Nigam Ltd. v. Prem Prakash, reported in II (1998) CPJ 44 (NC). THE Hon''ble National Commission while disposing of the revision petition directed against the judgment of the State Commission, New Delhi held in para 3, as under : "...We are of the view that the State Commission erred in quashing the disputed bill and directing the Department to issue a revised bill within two months without even indicating the basis on which this revised bill could be issued. Further, the State Commission has opined that this is a fit case to be dealt with according to the instructions of the Department contained in their Memorandum No. 4-59/85-TR dated 9.4.1986. Having done that, the revised bill can only be on the basis of investigation conducted by the Department in terms of the guidelines contained in this letter and, therefore, it does not stand to reason as to why the disputed bill should be quashed straightaway without investigation. We are, therefore, of the view that pending investigations in accordance with the guidelines of the Department, the disputed bill need not be quashed. If after investigations, and also taking into account the particular circumstances and nature of the business of the complainant-respondent, and the factors of a fax machine and parallel line, the Department finds any excessive billing, the same should be adjusted in future bills. THErefore, we modify the order of the State Commission to the extent that the disputed bill need not be quashed at present and adjustment, if any in this regard, should be made only after the investigation had been made by the Department. THE revision petition is disposed of accordingly without any order as to costs."

6. MR. Babbar, Advocate stated that an application had been moved before the District Forum in Complaint Case No. 20 of 1993 under Section 34 of the Arbitration Act, which was shown to us. The appellant referred to the case of excessive billing of Telephone No. 535840 of the complainant and contended that such like dispute should be referable under Section 7B of the Indian Telegraph Act. It was also mentioned in para 4 of the application as under : "That the applicant i.e., the Telephone Department was at the time when the proceedings were commenced, and still remains ready and willing to do all things necessary to proper conduct of the Arbitration."

In our considered view, the District Forum-I could not legally and validly adopt such procedure of working out average and then to test the disputed bills on that basis and record a categorical finding of the disputed bills being excessive and liable to be quashed.

Though the Consumer Disputes Redressal Agencies can examine the disputed bills despite the provision contained in Section 7B of the Indian Telegraphs Act but the Hon''ble National Commission has clearly and categorically in the case of Divisional Engineer, Telecom, Moradabad (supra), held that when there is a defect in the meter or telephone line, the proper course is to grant the relief and direct the dispute being settled within the scope and ambit of Section 7B of the Telegraph Act. We have already referred to the application of the appellant made in the complaint cases for referring the dispute under Section 34 of the Arbitration Act for determining in accordance with the provisions of Section 7B of the Indian Telegraph Act by the Competent Authority appointed thereunder to decide the dispute within a specific time frame. In the instant case, the complainant has made averments regarding the metering equipment/instrument being defective or a defect in the telephone line and the same being one of the causes of excessive billing for the disputed periods. Keeping in the view the law laid down in the case of Divisional Engineer, Telecom, Moradabad (supra), we deem it appropriate that in the instant case also the disputed bills itself to be referred for arbitration within the scope and ambit of Section 7B of the Indian Telegraph Act. We are also of the considered view that the District Forum-I was not legally justified in quashing the disputed bills on the basis of average worked out on a single bill for the same telephone. In the case of Divisional Engineer, Telecom, Moradabad (supra), which has been referred to above, the Hon''ble National Commission has specifically expressed annoyance upon the practice of the District Fora in quashing the telephone bills and directing the Telecommunication Department to issue revised bill on the basis of the average. We have quoted the observations of the Hon''ble National Commission in para 4 of the judgment in the earlier part of the our order.

7. IN view of the foregoing discussion, we allow the appeal to the extent that the order of the District Forum insofar as it related to the direction to the appellant to issue revised bill on the basis of the average of Rs. 7,000/- to the respondent/ complainant is quashed. We direct that the Competent Authority shall refer the entire dispute to the Arbitrator (i.e., the disputed bills for Rs. 36,673/- for the period from 26.9.1992 to 25.11.1992 in respect of Telephone No. 535840 [Old Telephone No. 43413] and the dispute shall be determined within a period of six months. We further direct that the aforesaid telephone bearing No. 535840 [Old Telephone No. 43413] will not be disconnected for non-payment of the disputed bills. The complainant/respondent shall pay the amount of the disputed bills as determined by the Arbitrator within a period of three months of the date of award failing which it will be open to the Telecommunication Department to proceed in accordance with the rules. Under the circumstances of the case, the parties shall bear their own costs throughout. Copies of this judgment be supplied to the parties free of charges. Appeal allowed.

