

(1995) 03 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

DIVISIONAL ENGINEER, TELECOM, KOTA

APPELLANT

Vs

RAJASTHAN TENT HOUSE

RESPONDENT

Date of Decision : 27-03-1995

Acts Referred:

Citation : 1995 3 CPJ 214

Hon'ble Judges : N.C.Sharma , Firoza Bano J.

Final Decision : Appeal partly allowed

Judgement

1. THIS appeal has been filed by Divisional Engineer, Telecom., Kota against the order of the District Forum, Kota dated 15.9.92 allowing Complaint Case No. 167/92 filed by the complainant-respondent and directing the appellant to release telephone connection in favour of the complainant within 15 days and to pay Rs. 3,000/- as compensation.

2. ADMITTEDLY M/s. Rajasthan Tent House at Kota was a registered partnership-firm and Ramesh Chandra Gupta and Sunil Kumar were the admitted partners in the Firm. On 7.5.84 the partnership-firm M/s. Rajasthan Tent House had deposited an amount of Rs. 800/- with the appellant as registration charges for a telephone in general category. M/s. Rajasthan Tent House was registered for a telephone connection by the Divisional Engineer, Telecom., Kota on 28.6.84 and Registration No. 1748 was assigned. According to the complainant Ramesh Chandra Gupta, the partnership-firm M/s. Rajasthan Tent House was dissolved on 31.3.90 by virtue of a Dissolution Deed executed by the two partners of the said Firm on 1.4.90. On 2.2.91 Shri Ramesh Chandra Gupta made an application to the Divisional Engineer, Telecom., Kota stating that a telephone booking was made in the name of his personal establishment i.e., Rajasthan Tent House on 7.5.84 and Registration No. 1748 was assigned. It was mentioned in the application that while registration for a telephone was got made on 7.5.84, the above establishment was a partnership-firm. But as a result of the dissolution by the partners it has become establishment of Ramesh Chandra Gupta. The Divisional Engineer was informed that all correspondence relating to the said

Firm and pertaining to the telephone may be made with Ramesh Chandra Gupta at his address and telephone may be released. On 20.8.91 the District Engineer, Telecom., Kota sent a communication to M/s. Rajasthan Tent House requiring it to deposit an amount of Rs. 1,700/-. It was mentioned in this letter that necessary steps are being taken for release of the new telephone connection and before that, some defects pointed out in the letter were required to be removed. These defects inter alia were the requirement of proprietorship or partnership deed, if there was a change in the situation of the Firm, the prescribed form relating to that should be furnished and lastly, no objection of the partner may be filed. These defects were required to be removed by 31.8.91. Ramesh Chandra Gupta deposited the amount of Rs. 1,700/- and also filed an application for transfer of the name. In that application, Ramesh Chandra Gupta mentioned his own name as Proprietor of Rajasthan Tent House. The reason for transfer mentioned was that the partnership-firm had dissolved and has become a proprietorship concern of Ramesh Chandra Gupta. This application was only signed by Ramesh Chandra Gupta as Proprietor of M/s. Rajasthan Tent House and not by Sunil Kumar who was, at the time of registration, partner alongwith Ramesh Chandra Gupta in the partnership-firm, M/s, Rajasthan Tent House. It may be mentioned that the Telecom. Department had further required Ramesh Chandra Gupta to deposit Rs. 100/- as transfer fee which was deposited on 13.11.91. However on 2.12.91 Sunil Kumar, former partner of M/s. Rajasthan Tent House, made an application to the District Engineer, Telecom., Kota wherein he mentioned that in the year 1984 a telephone was booked in the name of M/s. Rajasthan Tent House. That partnership-firm had dissolved. Sunil Kumar stated in the application that he wanted the transfer of the telephone got booked in his own favour. According to the version of the Opposite Party filed before the District Forum, when the matter regarding transfer of telephone in favour of Ramesh Chandra Gupta had almost been finalised, Sunil Kumar, former partner, made an application to transfer the telephone in his own name. On 2.1.92 the Telecom. Department informed M/s. Rajasthan Tent House to send the application for transfer signed by both the partners. It was pleaded that as dispute had arisen between the two partners, the District Forum had no jurisdiction to decide the dispute. The District Forum held that Sunil Kumar was a former partner of M/s. Rajasthan Tent House and that partnership has dissolved on 31.3.90. Ramesh Chandra Gupta had already sent the copy of the dissolution deed dated 1.4.90 to the appellant and accepting that, the appellant had issued a notice requiring the deposit of Rs. 100/- as transfer fee. It was further stated by the District Forum that after the dissolution of the partnership-firm, Sunil Kumar was left with no connection with M/s. Rajasthan Tent House as the Dissolution Deed provided that w.e.f. 1.4.90 Ramesh Chandra Gupta shall be entitled to carry the business of Tent House in the name and style of M/s. Rajasthan Tent House and further that Sunil Kumar shall not be entitled to carry on the business in the name of the firm. Sunil Kumar has received the outstanding amount and nothing remained due. The District Forum, therefore, held that there was deficiency in service on the part of the appellant and directed the appellant to release telephone connection to

Ramesh Chandra Gupta as Proprietor of M/s. Rajasthan Tent House, Kota and to pay compensation of Rs. 3,000/- to the complainant for wrongly depriving him from the use of the telephone. Aggrieved by this order, the Opposite Party has filed this appeal. Appearance had been put on behalf of the complainant-respondent on 15.9.94, but no appearance was made on 15.12.94. We, therefore, heard the arguments of the learned Counsel for the appellant in this appeal and perused the record.

Rule 429 of the Indian Telegraph Rules deals with transfer of telephone. Sub-rule (1) of Rule 429 provides that a subscriber shall not transfer the telephone without the permission of the Telegraph Authority. Sub-rule (2) of Rule, 429 inter alia provides that the Telegraph Authority may permit the transfer of a telephone in the personal name of a subscriber, on account of change in the name of the subscriber for any reason. Transfer fee for the transfer of a telephone connection is Rs. 100/- as provided in Rule 434. This was not a case of transfer of telephone connection because so far no telephone connection had been released in favour of any subscriber. Transfer of telephone connection in the name of another person can arise under various circumstances. It can arise during the lifetime of the subscriber or on the death of the subscriber or on account of change of name of the subscriber or change of name of Company or Firm. Application for transfer has to be submitted duly signed by both the transferer and the transferee except in case of death of hirer when it is signed by transferee only. The telephone connection must have worked for at least one year from the date of installation if sanctioned under OYT - General or Non-OYT - General category; if sanctioned under Tatkal Scheme, it should have worked for three years from the date of installation. The present case was a case of transfer of registration and not a case of transfer of a telephone connection. It is mentioned in Swamy's Treatise on Telephone Rules-IIInd edition at page 27 that transfer fee in respect of registration is Rs. 50/- for each transfer and the transfer of registration is processed on the same analogy of the guidelines for transfer of working connections. It is, therefore, clear that an application for transfer of registration must be submitted duly signed by both the transferer and the transferee. In the instant case, admittedly the registration was got made in the name of partnership-firm in which Ramesh Chandra Gupta and Sunil Kumar were the two partners. The transfer application made to the appellant in the instant case was only signed by Shri Ramesh Chandra Gupta and not both by Ramesh Chandra Gupta and Sunil Kumar. The registration being in the name of the partnership-firm, the application should have been signed by both Ramesh Chandra Gupta and Sunil Kumar as transferers and Ramesh Chandra Gupta as transferee. The Telecom. Department in its letter dated 20.8.91 had required the complainant to furnish no objection of the other partner. In the application form for transfer, under the names of transferers, only Ramesh Chandra Gupta signed as Proprietor of firm Rajasthan Tant House. There were no signatures of Sunil Kumar. Thus there was no valid application for transfer of the telephone connection by the partners in favour of Ramesh Chandra Gupta and the appellant

could not release the telephone connection in favour of the complainant without the signatures of Sunil Kumar on the application for transfer. The Deed of Dissolution of partnership also did not contain any reference that Sunil Kumar had relinquished his rights in the registration of telephone. As has already been stated, it was not a case of already running telephone connection. The Telecom. Department was no party to the partnership Dissolution Deed and the said deed also contained no reference to the application for registration for a telephone. The District Forum, therefore, was wrong in holding that there was deficiency in service on the part of the appellant. On the other hand, it is borne out that the appellant had required the complainant to furnish no objection of the partner and to submit the application for registration duly signed by the transferers and the transferee. There should have been a transfer of the registration application for telephone by Sunil Kumar in favour of Ramesh Chandra Gupta before he could claim release of the telephone in his own favour as Proprietor of M/s. Rajasthan Tent House.

3. ALL that can be said is that the Telecom. Department should not have required the complainant to deposit the amount of Rs. 1,700/- without a proper application for transfer of the telephone in favour of Ramesh Chandra Gupta and more so when the appellant knew that Ramesh Chandra Gupta had stated that there had been dissolution of partnership-firm. The complainant was, therefore, entitled to the refund of the amount of Rs. 1,700/- deposited by him on 20.8.91 alongwith interest @15% per annum from the said date till its payment. We, therefore, partly allow this appeal, set aside the order of the District Forum, Kota dated 15.9.92. However we direct the appellant to refund to Shri Ramesh Chandra Gupta the amount of Rs. 1,700/- deposited by him alongwith interest @ 15% per annum w.e.f. 20.8.91 till its payment. Appeal partly allowed.