
(1995) 05 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

GENERAL MANAGER, MAHANAGAR TELEPHONE NIGAM LTD. APPELLANT
Vs
MAULI CHAND SHARMA RESPONDENT

Date of Decision : 18-05-1995

Acts Referred:

Citation : 1995 0 NCDRC 96 : 1995 2 CLT 630 : 1995 2 CPJ 183 : 1995 2 CPR 229 : 1997 1 CPC 93

Hon'ble Judges : V.BALAKRISHNA ERADI , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Advocate : SUKUMAR PATTJOSHI , B.R.SONI

Judgement

1. THIS Revision Petition has arisen out of the order dated 25.5.1994 of the State Commission, Delhi modifying the order dated 13.7.1993 of the District Forum, Delhi and granting Rs. 7,000/- as damages to the Complainant.

2. TELEPHONE No. 5714529 has been provided by the Petitioner herein (General Manager, Mahanagar Telephone Nigam Ltd.-for short called M.T.N.L.) to the Complainant w.e.f. 13.2.1986 at his premises at 17A-44, W.E.A., Karol Bagh, New Delhi. The Complainant alleged in his complaint before the District Forum-I, Delhi that he got inflated bills for the billing cycles 1.12.1990, 1.2.1991, 1.4.1991, 1.6.1991, 1.8.1991 and 1.10.1991 and sent several letters of protests to M.T.N.L. but without any response. The Complainant further alleged that he requested on 3.8.1991 to the Area Manager to disconnect the S.T.D. facility but the STD was not disconnected till the date of the filing of the complaint (15.10.1991). The Complainant prayed that the dispute of inflated bills may be adjudicated and in the meantime the payment of bill of I Rs. 13,375/- for the billing cycle of 1.10.1991 be suspended. M.T.N.L. has denied in its version the allegation of excessive billing. It is stated that on 6.11.1991 the Complainant filed an excess metering complaint addressed to the Area Manager, Rajouri Garden Telephone Exchange on the basis of which a thorough investigation was conducted and the telephone was kept under observation. At the request of the Complainant STD facility was disconnected w.e.f. 26.11.1991. During the extensive investigation

the telephone was kept under observation, the indoor plant was checked, the meter was tested, the fortnightly meter reading for a period from 23.5.1990 to 15.1.1992 was considered. The subscriber's fault card was also perused which suggested that no faults were booked during the period in question. During the investigation it was noticed that the fortnightly meter reading during the disputed quarter remained almost uniform. The telephone though was kept under multi line observation equipment for a period from 3.12.1991 to 9.12.1991 it proved to be no use because at that time admittedly the STD facility was already disconnected. That no fault was booked during the disputed period which goes to show that the telephone line was not diverted for misuse from outside as for misusing a line from outside it is essential to put the particular telephone out of order. With this version the submission of M.T.N.L. is that there is no excessive billing during the disputed period.

3. THE District Forum, Delhi-I in its order 13th July, 1993 observed that since the earlier bills prior to the billing cycles 1.8.1991 were much less as compared to those of billing 1.8.1991 and 1.10.1991 granted relief for the number of calls in excess of 1000 calls for the billing cycles 1.8.1991 and 1.10.1991.

4. M .T.N.L. being aggrieved of the order dated 13th July, 1993 of District Forum-I, New Delhi preferred an appeal before the State Commission, Delhi. The Counsel for M.T.N.L. referred to their version before District Forum and submitted that onus of showing that S.T.D. facility was misused by the officials of the Department was on the Complainant which he Failed to do so and relied on the view of this Commission in the case of "District Manager telephones and Ors. v. Niti Saran, I (1991) CPJ 48, wherein it was held: ".....Whenever the consumers (telephone subscriber) raise questions about excessive billing which, according to them, are not commensurate with the calls actually made, the Telephone Department rebuts the suggestion of inflated billing on the ground that the metering equipment was not faulty and that there is no misuse of the Telephones by the Officials of the Department. To resolve such disputes the Redressal Forums have been taking recourse to ascertaining the average number of calls made from the particular telephone over a period of time to see whether the bills complained against show any abnormal or marked deviation from the pattern of calling derived from the average number of call in a particular period.....Consumer Redressal Forums, however, will not be legally justified in doing 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 any misuse of the particular telephone by the employees of the Department. Particularly in cases where a subscriber has the STD facility there is every possibility of large variations in the calling pattern for various conceivable reasons. In this connection this Commission wishes to reiterate the observations made in its order dated 8.11.1990 passed in Telecom District Manager Patna v. Kalyanpur Cement Limited, (R.P. No. 44 of 1990)."

The State Commission thus set aside the order of District Forum and upheld the

validity of the bills.

5. THE State Commission, however, considered the submission of the Complainant that he would not have received the excessive bills in question if the STD facility on his telephone was disconnected immediately after 3.8.1991 instead of 26.11.1991. The State Commission held that it is the duty of M.T.N.L. to disconnect the STD facility at the earliest as the telephone can be misused by the officials of the Department and thus the Complainant is entitled to damages and granted a compensation of Rs. 7,000/-.

6. THE submission of Shri Sukumar Pattjoshi, the learned Counsel for the Petitioner is that the State Commission has no jurisdiction to award compensation to the Complainant on an issue of late disconnection of STD facility which was not claimed in the complaint and had already been set at rest by the District Forum and was not under challenge by the Complainant in any appeal by him. It is urged that the awarding of compensation is arbitrary without there being any evidence of alleged loss suffered due to the delay in disconnection of S.T.D. facility. There is merit in these submissions. This Commission has consistently been taking the view that Consumer Redressal Forums are not legally justified in estimating by application of a rule of thumb the precise number of calls made and the charges payable in a particular billing cycle unless there is adequate evidence which may be either direct or circumstantial to show that the metering equipment was defective or there has been any misuse of the particular telephone by the employees of the Department. There is no evidence on record to establish that either the metering equipment was defective or it has been tampered with or manipulated so as to inflate the bills. The State Commission found that the Complainant has failed to discharge the onus placed on him that his telephone was misused, but in the second breath it opined that the telephone can be misused and therefore, it is the duty of the Department to forthwith disconnect the STD facility. The misuse is only a suspicion and not proof.

7. M .T.N.L. has placed on record material that there is another telephone No. 5752513 working in the same premises in the name of the Complainant's wife which is provided with dynamic STD control facility. It was noticed that after the STD facility was disconnected from telephone No. 5714529 in the name of the Complainant, the quantum of calls started showing increasing trend in the meter associated with telephone No. 5752513 in the name of his wife. The fortnightly meter reading of both these telephones for the relevant period has been provided and it is annexed and is on the record. It is evident that after the disconnection of STD facility from the Complainant's telephone on 26.11.1991, the number of calls in each fortnight has increased in the telephone in the name of the wife of the Complainant.

8. THE State Commission has erred in law in holding that the Complainant is entitled to damages because M.T.N.L. failed to disconnect the STD facility at the earliest and in awarding a sum of Rs. 7,000/- as compensation. The term compensation signifies that which is given in re-compense, an equivalent

rendered. The compensation is only for the loss actually suffered and such compensation is not to be given for any equitable indulgence or for any remote or indirect loss. The amount of damages that can be awarded by the Redressal Forums can never exceed the loss actually suffered by the Complainant. The quantum of damages have to be ascertained by Redressal Forums according to well laid down principles of law upon proof of the extent of the loss suffered by the negligence or breach of the duty of the Opposite Party. The amount of damages must be established by the material with some reasonable certainty. In this case the figure of Rs. 7,000/- has been "taken out of hat" and is clearly arbitrary thus without jurisdiction. There is no claim made by the Complainant in complaint in the complaint for any deficiency in service for disconnection of the S.T.D. facility and none was allowed by the District Forum. There was no appeal by the Complainant before the State Commission. The grant of Rs. 7000/- as damages/ compensation by the State Commission in appeal by M.T.N.L. is without jurisdiction and is hereby set aside. In the result the Revision Petition is allowed, the order of the State Commission and the District Forum are set aside and the complaint dismissed leaving the parties to bear their own costs.