
(2000) 09 NCDRC CK 0060

In the National Consumer Disputes Redressal Commission

GENERAL MANAGER, TELECOMMUNICATIONS

APPELLANT

Vs

N.Mohan

RESPONDENT

Date of Decision : 12-09-2000

Acts Referred:

Citation : 2001 1 CPC 442 : 2001 1 CPJ 78 : 2001 1 CPR 648

Hon'ble Judges : M.S.Janarthanam , Banumathi J.

Final Decision : Appeal disposed of

Judgement

1. THE appeal is directed against the order dated 3.4.1998 in O.P. No. 97/1997 on the file of the District Consumer Disputes Redressal Forum, Thanjavur.

2. THE appellant is the opposite party while the respondent is the complainant. The complainant, it is said, is the subscriber of a telephone. He was originally given the Telephone No. 60317. Subsequently, his telephone number had been changed as 60377. He was served with a bill dated 21.3.1997 for the period between 6.1.1997 to 5.3.1997. The said bill is in respect of both the telephone numbers. The amount to be paid by the subscriber is noted in the bill is nil. The complainant was served with a reminder by Registered Post in T.R. No. TNJ/AC 8/9 dated 19.5.1997 requesting him to make the payment due under the bill dated 21.3.1997 on or before 28.4.1997.

The complainant, it appears, kept quiet, since he was not called upon to pay any amount under the bill dated 21.3.1997. His telephone, it appears, however was disconnected on 28.5.1997 for non-payment of the dues.

3. IT is the contention of the opposite party that a mistake had been committed in sending a bill dated 21.3.1997 stating that there was nil dues from the complainant. Realising the mistake, the opposite party would state that a revised bill has been sent requesting the complainant to remit the amount due under the bill within a specified date or otherwise his telephone would be disconnected. The opposite party would further contend that in view of the fact that the complainant did not pay the amount under the revised bill within the time

prescribed therefor, the telephone was disconnected and in that view of the matter, it cannot be stated that there was any deficiency in service on their part. The Forum below, after taking into consideration the relevant materials placed on record, quashed the amount due under the so-called revised bill namely, the amount due under Ex. A2 and directed the opposite party to restore the complainant's telephone connection forthwith without charging any amount. This apart, the Forum below directed the opposite party to refer the matter to arbitration under Section 7B of the Indian Telegraph Act, 1885 within two months from the date of its order. The Forum below did not make any order as to costs on the facts and in the circumstances of the case.

4. AGGRIEVED by the order as above, the opposite party resorted to the present action by engaging a Counsel of their choice namely, learned Counsel Mr. T. Ravikumar. On service of process, the respondent/complainant was served and despite service, he did not choose to engage a Counsel of his choice. When the matter came up for hearing, the respondent/complainant is called absent and no representation is made on his behalf. There is no other go for us to dispose of the matter after hearing the arguments of learned Counsel Mr. T. Ravikumar, appearing for the appellant/opposite party, of course on perusal of the materials placed on record. That is exactly what we have done in this case.

5. LEARNED Counsel Mr. T. Ravikumar, appearing for the appellant/opposite party would submit that the order of the Forum below in quashing the bill and also remitting the same to arbitration under Section 7B of the Indian Telegraph Act, 1885 [for short, "the Act, 1885"] cannot at all be stated to be sustainable in law. In other words, what he would say is the Forum below ought to have referred the matter to arbitration under Section 7B of the Act, 1885, without quashing the bill. The said learned Counsel would further submit that in such circumstances, no purpose will be served by referring the matter to arbitration.

6. WE have given anxious consideration to the projection of such argument made by learned Counsel Mr. T. Ravikumar, appearing for the appellant/opposite party. The Forum below, while referring the matter to arbitration was obviously under the erroneous impression that it has no power at all to decide the question of the extent of the amount due and payable in respect of an alleged excess bill said to have been emanated from the opposite party. Even in the extreme case of the Forum below feeling that it has no power at all to decide such question of excess billing and the matter has to be referred only to arbitration under Section 7B of the Act, 1885, it ought not to have quashed the bill and then refer the matter to arbitration. In such an eventuality, it goes without saying that there remains nothing for the Arbitrator to decide. We have already taken a view in A.P. No. 535/98 dated 28.6.2000 that the District Forum has the necessary and requisite power to determine and decide the extent of the amount due by the subscriber of the telephone in case a dispute arises relatable to the actual amount due and payable by the subscriber in respect of the bill issued by the Department. We also took the view that in such dispute the burden of proving that the excess bill

is not due to any defect in the apparatus or other equipment within their exclusive possession and control and in case no such proof forthcome from the Department, the subscriber of the telephone can be mulcted with the liability for the payment of dues for the use of the telephone calculated on the average of the previous six monthly bills + 10% and no further amount can be levied from him.

In the view that we have taken, it goes without saying that the order of the Forum below cannot at all be allowed to stand. The order of the Forum below is, therefore, set aside.

7. THE best course to be adopted, in such circumstances is to remit the matter to the Forum below for consideration afresh, of course, after affording opportunity to both the parties to place all necessary and requisite documents for arriving at a just decision in the case. The appeal is thus disposed of. We however make no order as to costs on the facts and in the circumstances of the case. Appeal disposed of.