

(1992) 10 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

GENERAL MANAGER, VADODAR TELEPHONES

APPELLANT

Vs

SUBHASHCHANDRA NARAHARILAL PANDYA

RESPONDENT

Date of Decision : 15-10-1992

Acts Referred:

Citation : 1992 2 CPR 615 : 1993 3 CPJ 1493

Hon'ble Judges : S.A.Shah , Leelaben Trivedi J.

Final Decision : Appeal dismissed with costs

Judgement

1. THE appellant, Vadodara Telephones is the original opponent. THE complainant is a registered voluntary consumer association and has filed the complaint on behalf of one Dr. Dinesh Kumar Narsinhram Srivastav (hereinafter referred to as "Consumer") who is admittedly a telephone subscriber having telephone number 644484. His old number was 64440. THE telephone is STD barred and, therefore, no direct telephone can be made outside Baroda.

2. THE consumer received bi-monthly bills for the months of August, October and December 1988 which were excessive, according to him. THE consumer has a very limited use of the telephone and his average telephone bills prior to these three disputed bills were. THE consumer made a complaint and the third bill of December 1988 has been reduced from Rs. 3219/- to 2004/-. That shows that there was some defect in the system. THE complainant further stated that he was not given spurt check and meter checks as per the Telegraph Act Manual nor any explanation has been given except the printed proforma. According to the complainant, the consumer had to pay Rs. 4,176/- excess and has prayed for the refund of Rs. 4,176/-. The complaint has been opposed by the Telephone Department. According to the Department all the three bills of the consumer were in accordance with the meter reading. With regard to the last disputed bill dated 1-12-1988 the relief has been granted by revising the same and the consumer was required to pay Rs. 2,004/- only. The provisional bills were issued and ultimately the consumer was required to pay the balance amount. The Consumer has given the figures of the previous bills as well as the subsequent

bills which show the billing pattern and his use of telephone.

The District Forum came to the conclusion that this was STD barred telephone and there was no likelihood of any call outside Baroda and there are no reasons as to why the consumer who was having a bill not exceeding Rs. 200-248/- should make such huge number of calls without any reasons. No reasons have been shown by the Telephone Department regarding such high amount of local telephone calls. That the District Forum has come to the conclusion that prima facie there was an evidence on record to prove the fact that the Department's meter was not properly working and the further fact that the meters were running at an excessive speed and showing spurts.

3. THE District Forum has further observed that it was the duty of the Department to provide him the meter checks and spurt checks. Neither they have given the complainant meter readings produced in para 8 of the affidavit-in-reply nor they have informed him about the excess speed of the meter. THE District Forum has further observed that the deponent has stated on oath that he was contacted on telephone by the opposite party and there was a request from them to withdraw the complaint which sufficiently speaks about the malpractice going on at their end. THEse things have not been refuted by the opposite party and, therefore, the District Forum came to the conclusion that there was sufficient evidence that there is a defective meter reading and when subsequent to December the use of the subscriber is normal and earlier to August 1988, the use was also normal. Relying upon the judgment in the case of U.S. Rao v. The Accounts Officer, DET report in AIR Bombay 1986 P. 227 the District Forum came to the conclusion that the petitioner's case was fit wherein the petitioner ought to be given a rebate on the basis of average meter reading. After having arrived at this conclusion the District Forum has passed an order to refund Rs. 4,176/-.

4. WE do not find any error committed by the District Forum. That once it comes to the knowledge that the meter was defective in December and in absence of the direct evidence that somebody has checked the meter and the meter was alright from August 1988 to December 1988 and considering the high figures of calls and in absence of the oral evidence of the officer who had checked the meter, we shall have to presume that the meter must have gone bad not in December but from August 1988. What was the spurt, why the meter was recording more, what was the defect, who removed the said defect, we have no evidence. According to our opinion, once it is shown that the meter was not functioning properly and when it is also shown that the meter has recorded abnormal number of calls especially when the STD was barred, the burden was upon the Department to prove to the satisfaction of the District Forum that the meter was working properly by acceptable oral evidence. We do not find any reasons to interfere in the decision of the District Forum. We further observe that in such a case we are also of the opinion that in a, case in which the meter is found to be defective at any point of time it is the duty of the Department to show that it was working properly, when the excess billing was recorded. This

can be proved by oral evidence because if the meter is recording wrong reading, the computer will show that reading and merely by production of the reading is not sufficient. Some persons connected with the meter equipment must give oral evidence so as to satisfy the Court that the meter was functioning properly at the relevant time. We, therefore, pass the following order : The appeal is dismissed. The judgment and order of the District Forum is confirmed. The appellant will pay the cost to the respondent which is quantified at Rs. 150/-. Appeal dismissed with costs.