

(1999) 11 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

G.SEKHAR

APPELLANT

Vs

CHIEF GENERAL MANAGER, MADRAS TELEPHONES

RESPONDENT

Date of Decision : 18-11-1999

Acts Referred:

Citation : 2000 1 CLT 605 : 2000 1 CPJ 152 : 2000 1 CPR 347

Hon'ble Judges : M.S.Janarthanam , Pulavar V.S.Kandasamy J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the order dated 15th day of October, 1997 in O.P. No. 302/96 on the file of the District Consumer Disputes Redressal Forum, Madras-North. The appellant is the complainant while the respondent is the opposite party.

2. ONE Mr. M.K. Govinda Singh, it is said, was the subscriber of telephone No. 455405. He, it is said, died on 9.1.1996 leaving a Will dated 29.11.1995 bequeathing a house as well as the above said telephone connection in the name of his son, the complainant herein viz., G. Sekhar. The telephone was disconnected in the middle of April, 1996 on an objection being raised by means of a letter by one of the sisters of the complainant. Again, the telephone connection, after receiving explanation from the complainant, was stated to have been restored. The restored telephone connection was again stated to have been disconnected on 15.6.1996 on the basis of an objection emerging from another sister of the complainant by means of a written communication. Thereafter, the complainant, it is said, issued a legal notice to the opposite party on 21.6.1996 enclosing a copy of the Will. Even subsequent to the issuance of the said notice, the telephone was not at all restored.

Consequently, the complainant filed a Writ Petition before the High Court of Judicature at Madras and the Writ Petition so filed was stated to have been allowed on 16.8.1996 directing the opposite party to restore the telephone connection. The telephone connection pursuant to the order of the High Court, was stated to have been made on 3.9.1996. Thereafter the complainant resorted

to launch the complaint before the Forum below for compensation and costs.

3. THE opposite party filed objections reflecting as below : THE civil dispute regarding the properties inclusive of the telephone covered by the Will stated to have been executed by the original subscriber M.K. Govinda Singh is pending before the High Court. THE other legal heirs of the subscriber viz., Mrs. Shanthi, Uma, Geetha and Vijaya objected to the telephone being used even subsequent to the death of the original subscriber by the complainant G. Sekhar. THE telephone connection which was originally disconnected, again restored and again disconnected was not again restored as a consequence of the legal advice tendered to the opposite party. THE telephone connection had been restored pursuant to the order of the High Court in the writ proceedings. In such circumstances, there is no deficiency on the part of the opposite party Telephone Department. The Forum below, after taking into consideration the relevant materials placed on record and the projection of hues of view by the respective parties made through their Counsel, ultimately dismissed the complaint without costs giving rise to the present action by the complainant.

4. ARGUMENTS of learned Counsel Mr. K.R. Murali, appearing for the appellant/complainant and learned Counsel Mr. T. Ravikumar representing the respondent/opposite party were heard. Even at the outset we may point out that the order of the Forum below does not appear to suffer from any infirmity whatever calling for interference. There is no pale of controversy that the original subscriber of the telephone was one M.K. Govinda Singh, father of the complainant G. Sekhar. It is also not in dispute that apart from the complainant G. Sekhar, there are other legal heirs viz., Mrs. Shanthi, Uma, Geetha and Vijaya, of the original subscriber M.K. Govinda Singh. It is also not in dispute that the original subscriber M.K. Govinda Singh died on 9.1.1996. He is stated to have left a Will dated 29.11.1995. Under the said Will, it is claimed by the complainant that, a house and the telephone connection had been bequeathed to him. In respect of the said Will, it is not as if it had been probated. The other legal heirs of the subscriber are disputing the Will and the bequeath made under the Will. It is also not in dispute that the civil suit is still pending inclusive of a probate before the High Court of Judicature at Madras. It is represented across the Bar by learned Counsel appearing for the appellant/complainant that the orders are reserved in the application for probate as well as in the suit for partition by the High Court of Judicature at Madras. In such a backdrop of settings, we have to find out as to whether there was any deficiency in service on the part of the opposite party in not ordering restoration of the telephone connection prior to the orders passed by the High Court in the writ jurisdiction. In order to determine as to whether there is any deficiency on the part of the opposite party in service, we have to understand the relevant statutory provisions as adumbrated in the Indian Telegraph Rules. Rule 2(pp) defines a "subscriber". According to the said definition, a "subscriber" means a person to whom the telephone service has been provided by means of an installation under these rules or under an agreement. There is no manner of doubt whatever that the original subscriber

M.K. Govinda Singh had been granted telephone connection under the Rules and he became the subscriber within the meaning of the said definition. It is no longer in dispute that the original subscriber died on 9.1.1996. Rules had been provided for transfer of the telephone either on the death of the hirer or the hirer has left a Will. The relevant rules applicable in the case on hand is A.1.1. The said rule is captioned, "If the deceased has left a will". The said rule prescribes that- "If the property is bequeathed to one person, the telephone may be transferred to that person. If the property is bequeathed to more than one person, the telephone may be transferred to that person whose name is mentioned in the Will for that specific purpose. If there is no such person mentioned in the Will, the telephone may be transferred to any one of the beneficiaries in whose favour consent is given by other beneficiaries."

The Rules also provide certain general conditions governing all transfers. The relevant Rule is E4. The said Rule is couched as below : "All transfers will be carried out after receipt of application duly signed by both transferer and the transferee, except in case of death of hirer when it will be signed by the transferee only. The application should be accompanied with certificates indemnifying the P & T Department against future claims and agreeing to pay all previous dues, etc."

5. THE other relevant Rule is Rule 430 which reads as under. THE rule is captioned, "430. Death or change of title of a subscriber" : "In the event of death of a subscriber, or a change in the constitution of a subscriber, firm or institution, the person claiming to be successor to such subscriber shall immediately give notice thereof to the Telegraph Authority and shall apply for permission to retain the connection or service."

6. ON the face of the salutary provisions in the shape of Rules, the complainant had not taken any steps by production of relevant documents either for the transfer of the telephone in his name or seeking permission for retention of the telephone connection or service till a decision is taken by the Authorities as adverted to earlier. Factually, on the face of the suit and the probate application in respect of the Will under which the complainant claims the telephone connection are pending before the competent Civil Court, the complainant cannot at all be expected to make an application for the transfer of the telephone in his name. Such being the case, to say that there was any deficiency on the part of the opposite party in not ordering restoration of the connection to the telephone which was disconnected previous to the order of the High Court in the writ proceedings, cannot at all be countenanced. For the reasons as above, the appeal deserves to be dismissed.

In fine, the appeal fails and the same is dismissed, but in the circumstances we make no order as to costs. Appeal dismissed.