
(2003) 06 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

GYARSI DEVI

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-06-2003

Acts Referred:

Citation : 2004 1 CPC 245 : 2004 1 CPJ 241

Hon'ble Judges : Vikramaditya Prasad J.

Final Decision : Application dismissed

Judgement

1. 1. ADMITTEDLY, the petitioner is the mother of one Sanjay Kedia, in whose name the telephone number 60031 stood. There were certain demands standing against that telephone number. Therefore, it appears that the telephone of Sanjay Kedia was disconnected. The mother of Sanjay Kedia, the petitioner Gyarsi Devi, applied for a fresh telephone connection on 19.10.1992. When the connection was not provided, she made a representation, Annexure - 2. Thereafter, the Sub-Divisional Officer, Jharia, informed her by Annexure - 3 that on receipt of her application regarding fresh connection, she has been requested to make payment of outstanding dues against telephone No. 60031 and to produce No Due Certificate as early as possible for taking action on her application. It appears that the petitioner did not clear off the dues, nor obtained No Due Certificate and filed this writ petition.

2. THE respondents appeared and contested this writ by filing counter-affidavit, stating inter alia, that in the name of different members of the family of the petitioner, the telephone connections are there. THE head of the family who is also the husband of Gyarsi Devi, is Sri Purushottam Lal Kedia, Lal Bazar, Jharia, near Children Park, Jharia, and others are having telephone connection. THE details of such telephones standing in the names of the different family members of the petitioner are given in Annexure-B. Altogether 8 home connections are there as per Annexure-B in the name of the different family members. Out of those 8 connections, the connection No. 60022, 61133, 864001 are the STD. Pay Home Connections standing at different places, one near Children Park, the other

at Katras More and the third at Lal Bazar and the rest are in Children Park, Jharia, one of which is closed now. The sum and substance of the contentions of the learned Counsel appearing for the respondents is that as the said telephone standing in the name of Sanjay Kedia, who is the son of this petitioner, had some outstanding dues against it, so unless that dues are cleared, the new connection could not be given to the mother, the petitioner.

The learned Counsel appearing for the petitioner argued that the new connection applied for by the petitioner was for a place at Children Park More, Lal Bazar, Jharia, whereas the phones standing in the name of Sanjay Kedia was at Children Park, Jharia. Thus, he wanted to impress that these were two different places and, therefore, the contention of the respondents had no bearing. In support of his argument, he further relied on a decision of a Division Bench of this Court in the matter of Rajesh Kedia v. Union of India, CWJC No. 2900/93R. In that case, one of the brothers of Sanjay Kedia had filed an application for a new connection. When that was denied, then he had come to this Court and outstanding dues were against telephone No. 60031 standing in the name of Sanjay Kedia and 864330 standing in the name of Laxmi Kumar Mahto. The Court came to a finding that the liabilities were not on the petitioner to clear the outstanding dues standing against the telephones in the name of one of the occupants. Therefore, the Court allowed the prayer.

3. THE learned Counsel appearing for the respondents relied on an unreported decision of Madras High Court, Annexure-A to the counter-affidavit. In that case, the telephone stood in the name of the father, when some outstanding dues were there, the telephone was disconnected. Soon thereafter, the son had applied for a fresh connection and the Court came to a finding that this was a set up case by the father and, therefore, the prayer of that petitioner for a direction on the respondents to give a new connection in his name was rejected. The learned Counsel appearing for the petitioner also relying upon a decision rendered in the case of Ginni Vitreous (P) Ltd. v. Union of India, AIR 1994 Ori. 151 submitted that if any person is merely user of a particular telephone, then his prayer for a fresh connection cannot be disallowed on the ground that there was outstanding bills against the telephone, which was used by that person. In this case, there is no argument on the case of either side that Gyarsi Devi was the user of the telephone held in the name of her son, Sanjay Kedia. Therefore, in substance, the ratio of this case does not apply.

4. THE question for my consideration is what is the scope. THE Rule 416 of the Indian Telegraph Rules, 1951, profusely quoted in the aforesaid Orissa judgment (supra). Rules 416(2)(a) and 416(2)(b) are of importance, which are quoted below : "416(2)(a). THE antecedents of the applicant and where the application was made by any person duly authorised by the applicant, the antecedents of such person; 416(2)(b). Whether there are any telephones due outstanding in the name of- (i) the applicant; or (ii) the person duly authorized by the applicant if the application was made by such authorised person on behalf of the

applicant;" 416(2)(d). Any other relevant factor. Whereas Rule 416(2)(a) provides for considering the antecedent of the applicants, the Rule 416(2)(d) empowers the authority to consider "any other relevant factor". In my view, Rule 416(2)(a) comes into play only in those cases, in which the conduct of the applicant pure and simple for a connection becomes relevant, which is elaborated more in Rule 416(4). In the Orissa case, the question of user was being examined; therefore, Rule 416(2)(a) was more relevant and in the case in hand, there is nothing to show that the petitioner was in anyway trying to take undue advantage and, therefore, this clause will not be applicable. The scope-"any other relevant factor"- as used in Rule 416(2)(d) is very wide. What these factors could be is a question. If in any premises, there are large number of telephone connections standing in the names of the members of the same family, then it is a relevant fact to suggest that the family members are having advantage of phone connections and may take advantage of a fresh connection, even if a phone has been found to be defaulter. The case of Rajesh Kedia (supra), on which the learned Counsel appearing for the petitioner relied upon (supra), also indicates that Rajesh Kedia had also filed an application for a fresh connection, though there was a telephone in the same premises in the name of his brother, which was found to have outstanding dues and had been disconnected. Rajesh Kedia got a fresh connection under the orders of the Court, though that order was passed in the year 1994 itself, yet the mother again applied for a fresh connection, despite there remaining uncleared dues against that telephone number in the name of her son Sanjay Kedia. These are the relevant circumstances, which, in my opinion, can be taken note of and weigh with the respondent authorities, while refusing a fresh connection in the same premises. The learned Counsel appearing for the petitioner has tried to show that different premises are there. Thus, the petitioner's residence is at Children Park More, Jharia, and the telephone stood in the name of Sanjay Kedia, who has got the address at Children Park. I think there is no substantial difference between the two addresses, though it is a matter of verification. The petitioner has also not said that she lives separately from her son, Sanjay Kedia. Thus, it is clear that the premises are the same.

5. THE total discussion made above bring the case under the mischief of Rule 416(2)(d) and if the outstanding dues are standing against a telephone in the same premises, then this relevant fact can be taken note of for denial of a fresh connection to a petitioner residing in the same premises. Thus, I find myself in disagreement with the argument of the learned Counsel appearing for the petitioner and find no merit in this application, which is accordingly dismissed. Application dismissed.