
(2001) 01 NCDRC CK 0100

In the National Consumer Disputes Redressal Commission

HARI GOPAL GARG

APPELLANT

Vs

GENERAL MANAGER, TELEPHONES

RESPONDENT

Date of Decision : 04-01-2001

Acts Referred:

Citation : 2001 3 CPJ 93

Hon'ble Judges : R.K.Anand , Moksh Mahajan J.

Final Decision : C.A. disposed of

Judgement

1. THE applicant has made an application under Section 12B of the MRTP Act, 1969 (the Act for brief), charging the respondent with adoption of and indulgence in unfair trade practices. THE grievance of the applicant is that he booked a telephone for installation at his residence No. 1155, Sector-8, Chandigarh, under general category and also deposited a sum of Rs. 1,000/- as security and his application was registered as "No. CH/Gen/R/11,537-A dated 2.6.1982". It has been further complained by him that subsequently, he changed his address and informed the respondent that the telephone be installed at his new residence 150, Sector 35-A, Chandigarh and accordingly, he was allotted new Registration No. S-34/Gen/R/355. He again shifted his residence to House No. 2853, Sector-37, Chandigarh and informed the respondent accordingly, and on 26.9.1994, he was allotted new Registration No. S-17/Gen/R/1466-A. It has been further mentioned by him that although Advice Note No. A-069448 dated 29.9.1994 for installation of the telephone at his House No. 2823, Sector-37, Chandigarh was issued by the respondent, the telephone was not installed and his security deposit was also not refunded to him, in spite of his repeated requests, both verbal and in writing. THE applicant has asked for not only refund of the security deposit, with interest @ 20% per annum, for 16 years, that the deposit remained with the respondent, but has also asked for compensation of Rs. 1,00,000/- for mental agony and harassment and also litigation costs of Rs. 5,000/-.

2. THE respondent in its reply has raised the question of maintainability of the

present proceeding, on the ground that the respondent is a part and parcel of the Department of Telecommunication of the Government of India and is providing telecommunication services under the Indian Telegraph Act, and the Rules framed thereunder. It has also been stated in the reply that on 23.1.1992, orders were issued for installation of telephone but the applicant shifted his residence to House No. 628, Sector-6, Panchkula and as at that point of time, intercity transfer of booking was not permissible, his request could not be acceded to, and the telephone connection could not be provided to him. However, he was advised to seek refund of the security deposit on furnishing the original paid demand note, original post office receipt and pre-receipt duly stamped but the applicant did not comply with the aforesaid conditions and instead, continued to insist on installation of telephone at Panchkula vide his letter dated 14.9.1993. It has been also mentioned in the reply, that order for installation of telephone at his residence, House No. 2823, Sector-37, Chandigarh was issued but the telephone connection could not be provided, because in the meantime, he had shifted his residence, as per the report of the field staff. It has been further submitted by the respondent in the reply, that the applicant's request for refund of the security deposit with interest, can be considered even now, and processed in accordance with the Rules, as already intimated to him, vide letter dated 26.8.1993. On completion of pleadings, the following issues were framed : (1) Whether the respondents are or have been indulging in unfair trade practices as alleged in the compensation application ? (2) Whether the applicant has suffered any loss or damage on account of the alleged unfair trade practices ? (3) Relief, if any.

No affidavit of evidence was filed by the applicant, and as per his statement made on 5.7.1999, he relied only on documentary evidence which had been annexed with his present application under Section 12B of the Act. Since the respondent neither filed any affidavit of evidence nor produced any witness, despite sufficient opportunities, respondents' evidence was closed and, therefore, there is no evidence to rebut the allegations by the respondent.

3. IT is true that the respondent is not an undertaking and is not covered by the Notification No. GSR 605(E), dated September 27, 1999 issued under Section 3 of the Act and the telephone services are being provided by the respondent as a part and parcel of the Department of Telecommunication of the Government of India. However, the fact remains that the respondent is providing essential telephone services to the subscribers, on payment and accordingly, the respondent was duty bound to refund the security deposit with interest when it failed to provide the telephone connection, applied for by the applicant. In the present case, the applicant happens to be a senior government official and due courtesy and consideration should have been shown to him. IT is not disputed or denied that he applied for a telephone under general category in 1982 and till his retirement, he was not provided the facility of telephone, all these years. Admittedly, the respondent is a Central Government Department and is accordingly required not only to acknowledge the letters of the applicants/

subscribers but also explain the difficulty or delay in providing the telephone connection. Even if courtesy is not a feature of services provided by the respondent, at least refund of the security amount should have been made, suo motu, when the applicant shifted his residence to Faridabad in 1995, after this retirement. Be that as it may, the respondent is grossly deficient in service it is supposed to provide to the subscribers and is directed to refund the amount with interest @ 12% per annum, to be calculated for the entire period i.e. from the date of deposit till the date of actual refund. The rate of interest @ 12% is considered reasonable to meet the ends of justice in the light of the binding ruling of the Hon''ble Supreme Court contained in the order dated May 12, 2000 in II (2000) CPJ 1 (SC)=IV (2000) SLT 654=Civil Appeal No. 5329 of 1996 Ghaziabad Development Authority v. Union of India & Anr., where interest @ 12% on the deposits for allotment of flats/houses has been allowed. Even though the respondent is not a public undertaking, there is no reason why it should not be directed to pay interest @ 12% in this case. However, guided by the same aforesaid order of the Hon''ble Supreme Court, no compensation for mental agony and harassment is being awarded by us to the applicant. For the same reason, we are also not awarding any costs incurred by the applicant in filing the present application and pursuing it on different dates of hearing. The respondent is directed to comply with the order within six weeks and file an affidavit of compliance. C.A. disposed of.