

(1992) 01 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

HEMANT B.SHELAT

APPELLANT

Vs

GENERAL MANAGER, TELECOM

RESPONDENT

Date of Decision : 27-01-1992

Acts Referred:

Citation : 1992 1 CPR 680 : 1992 3 CPJ 465

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

Final Decision : Complaint allowed

Judgement

1. THE complainant is carrying on motor transport business hiring out trucks to customers directly as well as through brokers and he has his business office at his residence. He is owning telephone No. 446289 since long time. According to the complainant during the festival period of Diwali he was in urgent need of telephone for managing his business but all of a sudden his telephone went dead on 16.10.90 i.e. on the auspicious day of "Dhan Teras". He waited for 2 days and made complaint from a neighbouring telephone owner whose number was 400530. According to the complainant an employee of the Telephone Department visited the residence of the complainant but he could not correct the mistake and informed that there was some fuse mistake at the exchange and he will therefore convey the result around 5 p.m.

2. IT appears that some relatives of the complainant tried the complainant's number and it was found that the telephone was received by some stranger and upon enquiry it was found that telephone number 446289 was working somewhere in Rajhans Apartment in Mithakali area. On making enquiry the complainant found that his telephone was working in the flat of one Mr. Babulal staying in Rajhans Apartment In other words, the telephone line was disconnected from his instrument and was annexed with the instrument of Mr. Babulal. This was continued till 22.10.90 and telephone has ultimately started working on 23.10.90. The complainant sent notice on 22.10.90 having realised that his telephone line was given to some other person, by speed post. But no reply was received. Nobody paid any attention and his telephone started working

from the next day i.e. 23.10.90.

The complainant has filed this complaint and has averred that this was unfair trade practice followed by the Telephone Department, there was lack of service with the result that he has suffered mental agony and damages. Mr. Bhatt, learned advocate appearing for the complainant has prayed that exemplary damages should be awarded not only for giving his line to another person but after having learnt that his line has been given to another person, the Telephone Department did not care even to reply, to show any courtesy or give any deduction of telephone calls made by the other party.

3. ACCORDING to Mr. Bhatt the employees of the Telephone Department are so indifferent and arrogant that they have gone to the extent of threatening the complainant at his residence. In these circumstances, Mr. Bhatt has strongly pleaded for awarding exemplary compensation as well as damages and cost of the complaint. That the complainant's father has entered into witness box and has stated that he was the head of joint family and the telephone connection was taken in the name of his son for the sake of convenience. That he had personally visited flat No. 4 in Rajhans Apartment and found that his telephone was working at that place, he had given a copy of the complaint also to the officer who had come to his house. He offered for cross-examination but Mr. V.C. Patel did not ask any question. He has further stated that since he was the head of the family he himself had gone to make enquiry in Rajhans Apartment as his son was not available since he was doing transport business while he was practicing as lawyer.

4. IN pursuance to our notice the Telephone Department has filed its version and has raised some legal contentions like jurisdiction etc. which were ultimately not pressed except Rule 6 of the Telephone Rules. The Department has denied that the phone was dead from 16.10.90. They have also denied that the complaint was registered on 18.10.90 and also denied that the employees of the Department have visited the premises of the complainant. According to the Department the complaint regarding dead telephone was received on 19.10.90 which was immediately attended to and telephone was put through within 23 minutes i.e. at 17.00 hrs. on 19.10.90. According to further version of the opposite party the telephone again went dead on 20.10.90 and complaint was received. The reason for dead telephone was due to underground cable fault. The telephone was put through again on 23.10.90 at 16.00 hrs. by changing cable pair. In para 6 of the written statement the Department has in terms denied the allegations that the complainant's telephone was working in Rajhans Apartment. We, therefore, reproduce the act words used by the Department. "It is denied that the telephone No. 446289 belonging to the applicant was working in Rajhans Apartment." It therefore leaves no doubt that according to the opposite party they received the complaint that the telephone was dead on 19.10.90 and the same was immediately repaired within 23 minutes and started working. On the next day they again received the complaint and the reason for nonworking of the telephone was cable fault and lastly, in no uncertain terms the Department has

denied that the telephone belonging to the complainant was working in Rajhans Apartment. The complainant's father has himself made an enquiry and has in turn stated in his deposition that he himself has made an enquiry and found that his telephone was working in the flat of one Babulal who had shifted from Padshah Pole.

5. THE case was adjourned from time to time and after the evidence of the complainant was offered on 15.11.91 Mr. H.M. Bhagat, learned Counsel appearing on behalf of the opposite party gave an application that he intends to examine one Mr. Parmar and since he proceeded on training he prayed for adjournment. While granting the adjournment the Commission has recorded that the Department having granted adjournment twice and the date was fixed for the deposition of Parmar at the request of the opposite party and Mr. Parmar could have proceeded for training after 12.12.91. However, the date was granted. On 9.1.92 the Department examined Mr. Naranbhai Rathod, Sub Divisional Officer, Navrangpura and produced 9 documents with the list. In the deposition of Mr. Rathod, for the first time the Department revealed that the complainant's working pair was 68-6-19. According to his opinion, in order to instal the telephone at Babulal's place, working pair was demanded and the concerned Assistant Engineer gave the working pair of cable No. 68-6-29. However Jr. Telecom Officer Mr. L.L. Parmar out of mistake read 68-6-19 instead of 68-6-29 with the result that the cable pair of Shelat's telephone was fixed with the telephone of Mr. Babulal. According to this witness Mr. Parmar has committed a mistake in reading the number of cable pair and the telephone of Mr. Shelat was joined with the instrument of Mr. Babulal. He has also stated that on 17.10.90 Assistant Engineer came to know that the cable pair was faulty. In other words, there was a wrong information. THE S.D.O. (Phones) sent this information to Assistant Engineer (cable) and Asst. Engineer (cable) give another pair No. 68-5-33 on 25.10.90 and Babulal's telephone started working w.e.f. 1.11.90. He has produced the documents to support his say. In cross-examination of Mr. Bhatt, the witness stated that no action has been taken against Mr. Parmar for this defect. We had not recorded any statement prior to the complaint but we have recorded the statement of Babulal after the complaint. In reply to the query of the Commission the witness has admitted that the telephone lines have to be connected from the pillars and when the doors of the pillar terminal are opened one can see that the wires of somebody's telephone are already on the terminal. If there are no wires it can be said that telephone is not working. THE person who fixes the cables on the terminal is an experienced person and he can know that the line which was to be joined belongs to other person. He has also admitted that when new telephone is connected the testing is made from the Exchange and new numbers are given. I do not know what telephone number was given to Babulal when his telephone was wrongly connected.

6. IT appears that after the written statement having been filed and a particular stand is taken by the Department a somersault has been taken. The Department had to admit that the telephone line of the complainant was disconnected from

the pillar and the same was given to some other person for some days. IT also appears that the information to join the line of Babulal was given on 16.10.90 and report is made on 17.10.90 of compliance that means that the telephone of the complainant must have gone dead from 16.10.90 and there is no reason to dis-believe the complainant when he says that he waited for two days and he made the complaint on 18.10.90. Now the Department has no doubt admitted that out of mistake the telephone cables of the complainant was connected with the telephone of Babulal in Rajhans Apartment itself. The case of the complainant is, therefore, fully proved. The question that remains to be decided is whether disconnecting the telephone line of the complainant and connecting it to somebody else was done to oblige Babulal deliberately or out of mistake. The second question that requires to be considered is that inspite of the allegations clearly made in the complaint the Department has given the definite reply that the telephone was repaired on 19.10.90 when it was repaired on 23.10.90 and that the defect was with cable fault. Till that date the Department was not ready to admit that the telephone cables of the complainant was given to somebody else, till the complainant completed his evidence. That was the case put up. The case was to be heard on that day but the learned advocate asked for the date on the ground that the Department wanted to examine Mr. Parmar and Mr. Par mar had proceeded for training and when the case was adjourned the Department came out with entirely a new case having realised that on account of record they will not be able to support their contention. Unfortunately though the case was adjourned for a specific purpose viz., examination of Mr. Parmar, Mr. Parmar was not examined instead one Mr. Rathod was examined who had no personal knowledge and not a word of regret has been shown by the Department. The telephone services is monopolised by the Central Government to enable them to give better services to the subscribers. But the officers act quite otherwise. It is possible that a mistake may be committed when thousands of telephone subscribers are there. But when they find that a person has suffered at the time of Diwali, it was expected from the Telephone Department to come out with clean hands and express their regrets. In this country people are not behind getting money. But they want to establish the principles and the father of the complainant who has come before us for deposition is a retired Judge.

It is necessary to examine whether disconnecting the complainant's telephone and connecting those cables for Mr. Babulal was a deliberate act or a bonafide mistake. Even assuming that the same was a bonafide mistake the question rises as to why such a wrong statement denying every fact and indirectly paying for taking action against the complainant has been filed.

7. IN any view of the matter it is proved beyond doubt that the telephone cables of the complainant have been given to Mr. Babulal and thereby the complainant remained without phone facilities on the most auspicious days of Diwali. He must have been inconvenienced to a lot and might have suffered mental agony. It is customary in INDia to greet on telephone which the complainant could not do. He could not receive the telephone calls from his relatives and friends. The next

important consideration is that even after the filing of a complaint the Department continued to ascertain its case wrongly till the evidence of the complaint was over. Mr. Parmar has not been examined who was the person personally knowing this mistake.

8. MR. Bhagat has relied upon Rule 6 from the general rules. Rule 6 reads as under: "The Director-General shall not be liable for any loss or damages which may be incurred or sustained by reason of any failure of communication over any exchange system or any trunk line whether the same arises through the act of default of any officer of the Department of Telecom or not, or for any other loss or damage incurred or sustained in connection with the telephone service."

The preamble to the Rule does not mention that they are framed under any statute. MR. Bhagat also could not say they are statutory. These rules are found in the telecommunications manual. The rules give protection to the Director General. The Department is rendering services and recovers charges which are not concessional but commercial. Now if we look to Indian Telegraph Act, 1885 Section 7 thereof gives power to the Central Government to make rules consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act and in exercise of that power the Central Government has framed rules called Indian Telegraph Rules, 1951. These are statutory rules but according to our opinion rule which has been quoted by MR. Bhagat cannot be said to be a statutory rule and can reduce the liability of the Telephone Department for the damages caused to the subscriber on account of negligence of its officers or services, therefore there is no substance in the argument of MR. Bhagat. We are, therefore, of the opinion that the complainant must be awarded not token damage but a substantial damage, because he has spent so many days before this Commission, has undergone mental torture, inconvenience and suffering. We, therefore, award him compensation of Rs. 200/- for each from 16.10.90 to 22.10.90 when phone remain dead, i.e. total Rs. 1,400/-. The Department is also liable for the cost in this case plus Rs. 23/- towards rent for 7 days and deduction of the calls made by Babulal. ORDER The opposite party is directed to pay Rs. 1,400/- plus Rs. 23/- and further directed to give deduction of calls made by Babulal during this period in the next telephone bill. The opposite party shall pay the cost to the complainant which is quantified @ Rs. 500/-. These amounts shall be paid within 4 weeks from today. Complaint allowed.