
(1991) 07 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

KISHAN LAL DATTAK

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-07-1991

Acts Referred:

Citation : 1992 1 CPR 17 : 1992 3 CPJ 635

Hon'ble Judges : S.K.Mal Lodha , Damodar Thanvi , Saria Khan J.

Final Decision : Appeal dismissed

Judgement

1. THE complainant-appellant filed a complaint which was registered as Complaint Case No. 446/89 before the District Forum, Jaipur praying that telephone No. 842200 which was disconnected may be restored and from 17-8-1989 until restoration compensation @ 100/- per day may be awarded to him. A prayer was made that if the opposite parties have realised any amount in excess that may also be ordered to be refunded. Telephone No. 842200 was installed at the residence of the complainant. It is said that the telephone was disconnected on 17-8-1989. THE complaint dated 228-1989 was filed. THE opposite parties submitted a reply to the complaint dated 26-9-1989 opposing the complaint. It is stated that there was another telephone installed at the residence of the son of the complainant whose No. was 69115. THERE were dues against that telephone. THE amount was not deposited. Ultimately a notice dated 7-7-1989 was sent by registered post in which it is specifically mentioned that if the outstanding amounts are not deposited within 15 days telephone No. 842200 will be disconnected. As the amount was not deposited, telephone was disconnected on 16-8- 1989. Claim for compensation was denied. It appears from the order of the District Forum dated 10-10-1990 that the widow of the son of the complainant stated before the District Forum that she is ready to deposit the dues of the telephone which are outstanding against her husband (son of the complainant). THE District Forum ordered that Smt. Savitri Devi daughter-in-law of the complainant shall deposit the amount within 7 days. THE complainant was asked to deposit the dues, if any outstanding against him of his telephone, within 7 days. THE District Forum ordered that if the dues are deposited by the

complainant as well as Smt. Savitri Devi within one month from the date of the order both the telephones may be restored. It did not pass any order with respect to the amount of compensation claimed by the complainant. THE opposite parties who aft respondents in the appeal remained satisfied with the order. THE complainant has filed the appeal. It is not-now in dispute that all the dues in respect of both the telephones have been deposited and the telephones have been restored. THE direction for the restoration of the telephone which was granted by the District Forum in the impugned order dated 10-10- 1990 has been complied with. THE complainant appellant contended before us in this appeal that he has claimed compensation @ Rs. 100/- per day from 17-8-1989 until the telephone was restored. It may be recalled that the telephone of the complainant was disconnected on 16-8-1989.

2. COMPENSATION can only be awarded under Sec. 14(1)(d) of the Act to the complainant for the injury or loss suffered by him on account of the negligence of the opposite party. The opposite parties resorted to Rule 443 of the Indian Telegraph Rules, 1951 as the amount was due against the telephone of the complainant and so the telephone of the complainant was disconnected. Whether the Department can exercise its power in disconnecting the telephone when the dues of the other telephone are outstanding, different High Courts have taken different views. AIR 1990 Gauhati 47 lays down that the Department cannot disconnect the telephone on the basis of the dues outstanding on the other telephone whereas Gujarat and Madras High Courts have taken a view that it is permissible for the department to disconnect the telephone under Rule 443 of the Rules. In these circumstances it cannot be said that the opposite parties were justified in disconnecting the telephone by resorting to Rule 443 of the Indian Telegraph Rules, 1951. The State Commission has adopted and followed decision of the Gauhati High Court. In this case the complainant has not laid down any foundation in the complaint in regard to the claim for compensation, barring aside this that in the relief para it has been prayed that the complainant should be awarded compensation @ Rs. 100/- per day from 17-8-1989 until the restoration of the telephone. The complainant has not led any evidence to substantiate his claim for the award of compensation. Even he has not filed any affidavit in regard to it. The complainant in order to succeed in a claim for compensation has to substantiate the claim which the complainant has miserably failed to do. It appears from the order under appeal that before the District Forum at the time of passing of the order no prayer for the award of compensation was made by the learned Counsel appearing for the complainant. Parties remained satisfied with the direction made by the District Forum that in case the dues of the telephone are deposited within 7 days the telephone should be restored within a period of one month. In view of the sharp cleavage of judicial opinion in regard to the interpretation of Rule 443 of the Indian Telephone Rules, 1951, in the facts and circumstances of this case it is difficult to hold that the opposite parties disconnected the telephone improperly, whereby rendering deficient service to the complainant. Besides this, as stated above no

amount of compensation can be awarded to the complainant, for, the complaint has miserably failed to substantiate it. For the aforesaid reasons the arguments of the appellant that the District Forum should have awarded compensation is repelled.

No other point survives for our consideration in this appeal.

3. THE appeal fails and it is hereby dismissed without any order as to costs. Appeal dismissed.