(1995) 10 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

MAHANAGAR TELEPHONE NIGAM LTD. APPELLANT

Vs

VIJAY G.PRADHAN RESPONDENT

Date of Decision : 11-10-1995

Acts Referred:

Citation : 1995 0 NCDRC 62 : 1996 1 CPJ 32

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA , R.THAMARAJAKSHI J.

Advocate : S.PATTJOSHI , YATENDRA SHARMA , A.M.KHANWILKAR

Judgement

1. THIS is an appeal against the order dated 5th Februray, 1993 passed by the Maharashtra State Consumer Disputes Redressal Commission at Bombay in Complaint No. 64/92 on its file by which Mahanagar Telephone Nigam Ltd. (for short M.T.N.L.) was directed to pay to the Complainant Rs. 850/: in addition to the amount of Rs. 5,000/- as compensation.

2. THE facts leading to this appeal are that the present Respondentï¿½ Shri Vijay G.Pradhan had filed the complaint before the State Commission against M.T.N.L. The General Manager (West II) and Accounts Officer of M.T.N.L, Bombay were also arrayed as Opposite Parties Nos. 2 and 3, respectively. It appears from the record that the Complainant is a practicing Advocate with 29 years of standing. Telephone No. 6345566 stood in the name of his wife Smt. Usha Vijay Pradhan. A bill dated 15thjune,1991 forRs.''481/ - was issued to the subscriber in respect of said telephone. The bill was to be paid on or before 1st July, 1991. The Complainant tendered a cheque bearing No. 068459 dated 28.6.91 drawn on the Bank of India. The M.T.N.L. sent the cheque to its banker, Indian Overseas Bank for its collection. However, Bank of India, Andheri (E) Branch, returned the same with the remarks "not drawn on us" alongwith a memo dated 2nd July, 1991. Due to the dishonour of the cheque, the bill dated 15.6.91 remained unpaid. The telephone was disconnected on 31st October, 1993. After learning about the cause of disconnection, the Complainant went to the office of the Telephone Establishment situated at Andheri (E) where he was informed that the cheque

dated 29th June, 1991 could not be realised by the MTNL and therefore, the telephone was disconnected. The Complainant was also shown the cheque as well as the Banker''s advice stating "not drawn on us". Thereafter the Complainant was given prescribed form for reconnection of the telephone requiring him to fill up the same and tender it to Kandivali Exchange. The Complainant had to pay Rs. 481 /- (which was the amount of the bill) plus Rs. 100/- as re-installation charges in cash. Thereafter the Complainant went to the Bank of India at Andheri and discovered that he had sufficient funds in his account and the said cheque was never presented to the drawee Bank for being credited to the account of the M.T.N.L The cheque bore the rubber stamp of the Indian Overseas Bank which is the Banker of M.T.N.L. According to the Complainant in the circumstances mentioned above the disconnection of the telephone was without any cause and was wrongful. He claimed Rs. 1,10,000/- as compensation. The complaint was contested by the Opposite Parties who pleaded that the telephone was disconnected for non-payment of telephone bill and the department was authorised to do so under Rule 443 of the Indian Telegraph Rules. The telephone was disconnected on 31st October, 1991 after giving a telephonic reminder to the subscriber on 19th October, 1991 calling upon his to make the payment of the telephone bill to avoid disconnection. The said telephone call was received by one Mrs. Ragitha Pradhan. It was further pleaded that the telephone bill was paid in cash on 19th November, 1991 and the telephone was reconnected on the same day. If was denied that the said cheque was nevei presented to the drawee Bank for being credited in the account of M.T.N.L.

3. ON some of the hearings Counsel for M.T.N.L. appeared before the State Commission but nobody appeared on 12th November, 1992 on its behalf when the case was finally heard. After hearing the arguments of the Counsel for the Complainant the case was closed for orders. The State Commission in its order has written that no written statement was filed by M.T.N.L and only written arguments were filed on 12th November, 1992. The State Commission disbelieved the contention of the M.T.N.L. that the cheque was dishonoured by the drawee Bank. This conclusion was drawn on the ground that the memo of the drawee Bank dated 12th July, 1991 was not filed alongwith the written statement/ submissions. It, therefore, held that despite the payment made by the complainant by Account payee cheque no efforts were made by the M.T.N.L., to properly present the cheque to the Banker of the complainant and secondly disconnection was made on the wrong assumption that no payment was made by the complainant regarding bill dated 15th June, 1991 and thus there was clearly deficiency in the service by the Opposite Party while disconnecting the telephone. It was also held that the M.T.N.L. was negligent in service inasmuch as the fact of nonpayment of the aforesaid bill was not brought to the notice of the complainant''s wife. Accordingly, the complainant was allowed a refund Rs. 850/- on account of re-installation charges and the expenses incurred by him in going to the office of the M.T.N.L. and Rs. 5,000/- were further awarded as damages

for inconvenience suffered by him. Feeling aggrieved against that order, the Opposite Party have come before this Commission in appeal.

4. AFTER hearing the learned Counsel appearing on both sides we are of the opinion that the order of the State Commission cannot be sustained. The existence of the memo issued by the drawee Bank is not disputed. The complainant in para No. 5 of his complaint has admitted that he was shown by the telephone authorities the cheque and the Banker''s advice stating "not drawn on us". The Appellants have filed copy of cheque returning memo dated 12th July, 1991 issued by the Bank of India which is at page 19 of the paper book. The Bank of India has clearly written against Clause No. 9 "not drawn on us". Therefore, the contention of the complainant that he had enquired from his Bank at>out the return of the cheque and he was told that the cheque had not been presented cannot be believed. When the complainant had been shown the memo before he went to the Bank it was his duty to ascertain from the Bank that why the cheque was returned with the above remarks. He merely believed the Bank''s contention, if any, that the cheque was not presented for payment. The contention of the complainant that the cheque bore the rubber stamp of the Indian Overseas Bank which is the Bank of M.T.N.L. is of no value. The Appellant has filed photo copy of the cheque and it clearly shows that the cheque was drawn on Bank of India, Andheri Branch. As collection was to be made through the Indian Overseas Bank that Bank might have placed its stamp on the cheque. The rubber stamp does not denote that the cheque has been drawn on Indian Overseas Bank.

5. WE have gone through the records carefully and as well as the submissions made on behalf of the parties. We are of the opinion that in the circumstances of the present case the M.T.N.L. cannot be said to have been negligent in rendering service. When the cheque was dishonoured and when inspite of telephonic information about the non-payment of the bill dated 15th June, 1991 the bill was not paid, the department who entitled to disconnect the telephone on account of non-payment of the bill under Rule 443 of the Indian Telegraph Rules. Consequently, we accept the present appeal set aside impugned order of the State Commission and dismiss the complaint. The Appellant will be entitled to the costs of the present proceedings which we assessed at Rs. 1,000/-.