

(2007) 05 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

MASTER JASKIRAT SINGH KWATRA (MINOR) THROUGH HIS FATHER R.S. KWATRA APPELLANT

Vs

Bharti Cellular Ltd. RESPONDENT

Date of Decision : 14-05-2007

Acts Referred:

Citation : 2007 3 CPJ 178

Hon'ble Judges : J.D.Kapoor , Rumnita Mittal J.

Final Decision : Appeal disposed of

Judgement

1. VIDE impugned order dated 3rd June, 2003 the complaint of the appellant seeking compensation for wrong disconnection of the roaming facilities of the cellular phone was dismissed mainly on the premise that it was not only improperly filed but it was signed by the Advocate and not the complainant. Feeling aggrieved, the appellant has preferred this appeal.

2. IN our view pleadings under Consumer Protection Act are not governed by the order, rules, provisions of Code of Civil Procedure. These are simple complaints filed by persons who are aggrieved of the unfair trade practice and sale of defective goods or deficiency in service and, therefore, the Consumer Forums should endeavour to see whether the allegations are correct or not without going into technical aspect of the matter. Even if complaint was signed by the Advocate after the complainant has given authority to the Advocate to file the same and pursue the same on behalf of the complainant by way of Vakalatnama, it was not an improperly filed complaint. However, on merits we find that appellant alleged that on 1st January, 2003 he deposited Rs. 3,000 as refundable security and the bill of Rs. 1641.12 was paid in time. The next bill of Rs. 3,629.74 was payable on 13th February, 2002 and in spite of having deposited Rs. 3,660 on 7.2.2002, O.P. disconnected the facility on 7.2.2002 itself.

As against this, the version of the respondent was that appellant was through voice mail message asked to deposit Rs. 3,660 as there was heavy unbilled amount in his account but he failed to respond. He was repeatedly called by the

customer-care department to make some part payment, as there was high unbilled amount. In addition there was an already outstanding amount of Rs. 3,629.24 which was also requested to be cleared. Thus he was requested to clear total outstanding of Rs. 7,289.24 but he paid only Rs. 3,660 and, therefore, facility of outgoing calls was withdrawn.

3. EVEN, if we accept the version of the respondent the fact remains that the bill amount was payable by 13th February, 2002. May be that amount of Rs. 7,289.24 was outstanding. It appears that in response to voice mail message the appellant deposited Rs. 3,660 on 7th February, 2002 but before the due date of 13th February, 2002, respondent had withdrawn the facility of outgoing calls. Whenever a service provider of mobile phone issues a bill upon the customer mentioning therein a specific date for payment, it has no right to withdraw the facility prior to the due date. It appears to us voice mail messages are only reminders to the consumer but the facility cannot be withdrawn prior to due date. Such an act amounts to deficiency in service which means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

4. IF there is non-payment of a bill till the due date, the facility can be withdrawn but the very purpose of mentioning the due date in the bill would be rendered meaningless if the service provider withdraws any kind of facility before the due date of payment of bill. Disconnection of such a service before the due date is breach of the contract between the parties and, therefore, the service provider is liable to compensate the consumer for mental agony and harassment suffered by him. In the result, we allow the appeal by awarding compensation of Rs. 5,000. Payment shall be made within 15 days from the date of receipt of this order. Appeal is disposed of in aforesaid terms.

5. F.D.R./Bank Guarantee, if any, furnished by the appellant be returned forthwith after completion of due formalities.

6. A copy of this order as per statutory requirements, be forwarded to the parties free of charge and also to the concerned District Forum and thereafter the file be consigned to the Record Room. Appeal disposed of.