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**(2000) 08 NCDRC CK 0036**

**In the National Consumer Disputes Redressal Commission**

NEENA SHARMA-/

APPELLANT

Vs

MAHANAGAR TELEPHONE NIGAM LIMITED

RESPONDENT

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**Date of Decision :** 28-08-2000

**Acts Referred:**

**Citation :** 2000 3 CPJ 44

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

**Advocate :** C.M.Sharma , Anjana Gosain

**Final Decision :** Dismissed

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**Judgement**

1. -IN two separate applications, the applicant/complainant Dr. Neena Sharma has charged the respondent, i.e. Mahanagar Telephone Nigam Limited for adoption of and indulgence in unfair trade practices within the meaning of Section 36A of the Monopolies and Restrictive Trade Practices Act (MRTP Act in short). For the loss and damage suffered on account of such practices, the applicant has also claimed compensation to the extent of Rs. 10,701 /-. Since both the application as well the complaint pertain to same cause of action arising from the same facts, a common order is passed for the sake of convenience.

2. BRIEFLY stated, the applicant is a doctor employed as a Senior Medical Officer in State Insurance Corporation. She had a telephone number 604527 installed at her residential flat No. 924, Sector XII, R.K. Puram, New Delhi. On her transfer to Mayapuri Dispensary, she requested for a transfer of her telephone to Mayur Vihar. This was somewhere in May, 1993. An O.B. was issued by the Commercial Officer (South II), Nehru Place office on 21.6.1993. Her telephones installed at R.K. Puram residence was disconnected on 27.6.1993 and was shifted to the new address at Mayur Vihar on 19.7.1993. It remained non-functional for quite some time and started functioning regularly only from November, 1993. The telephone could be installed after approaching the various Authorities of the Telephone Department from time-to-time. In the mean time she received a bill for Rs. 435 /- relating to the old subscriber of telephone No. 2253590. This amount was waived when she approached the Telephone Adalat. The telephone installed at

her new premises remained out of order frequently and it was only in November, 1993, when it started functioning properly. In the process, she suffered on account of bills sent at wrong address as also demand raised at Rs. 266/- for the billing cycle of 1.10.1993 and 1.12.1993 - the period when her telephone remained dead. These activities of the respondent being clearly covered under the provisions of Section 36A of the MRTP Act, it is stated that the directions be issued to the respondent to cease such unfair trade practices carried on at present and not to repeat them in future. In addition, for having suffered loss on account of harassment on the part of the respondent, it is claimed that the applicant be paid compensation. On receipt of the complaint/application both Notice of Enquiry as well the Notice were issued requiring the respondent to meet the charges as levelled in these applications. In its reply the respondent denied all the allegations as levelled in the complaint. It is stated that on receipt of the application for shifting of the telephone, the respondent took immediate action. Orders were passed for shifting of the telephone to Mayur Vihar. The Commercial Officer South II issued O.B. letters to SDO at Mayur Vihar. The telephone was installed on 19.7.1993 and became functional immediately thereafter. The applicant/ complainant has wrongly alleged that her old telephone was misused for which no evidence was led. On the other hand the telephone was disconnected on account of non-payment of Rs. 455/-. On discovery of the mistake on the part of the respondent, the amount was waived and intimation to this effect was passed on to the applicant. The various visits to the office of the MTNL is not within the knowledge of the respondent and in the absence of any evidence to show that there was any harassment on the part of the respondent, the charge of unfair trade practices cannot be said to have been established against the respondent for which the applicant/ complainant is entitled to compensation as claimed.

On completion of proceedings the issues were framed in UTPE No. 189/98 as under : (1) Whether the respondent has been indulging in unfair trade practices as alleged in the Notice of Enquiry ? (2) Whether the alleged unfair trade practices are prejudicial to the interest of the consumer/consumers generally ?

3. IN case of C. A. it may be stated that the issues have been framed twice-once on 23.4.1997 and then on 1.4.1999. On 23.4.1997 the issues framed were as under : (1) Does the applicant prove that the shifting of the telephone connection to her new residence was unduly delayed ? (2) Does the complainant prove that even after shifting of the telephone instrument at her new residence, it remained non-functional practically till November, 1993 ? (3) Does the complainant prove that she received wrong bills which were sent to her despite the fact that the telephone connection at her new residence was not shifted and was non-functional ? (4) Is it proved that services rendered by the respondent with respect to delayed shifting of the telephone of the complainant at her new residence and giving to her wrong bills would amount to unfair trade practice ? (5) Has the complainant suffered mental agony on account of unfair trade practice adopted by and on behalf of the respondent for shifting of her telephone

at her new residence ? (6) What relief, if any, is the complainant entitled to in this case ? Both the parties agreed to lead their evidence by way of affidavit and counter affidavit. Mr. S.C. Sharma, Advocate for the applicant advanced arguments on behalf of the applicant/complainant and Ms. Anjana Gosai, Advocate defended the respondent's case.

4. WE have carefully considered the submissions made in the light of the material as brought on record. As per admitted facts, while old telephone was disconnected on 27.6.1993 after the issue of the O.B. on 21.6.1993, the new telephone was installed at Mayur Vihar on 19.7.1993. The time taken for installation of the new telephone at Mayur Vihar after disconnection of the old telephone from Mayapuri cannot be called unreasonable considering the two different locations (Zones) more so when it was not shown that there was a time schedule given by the respondent which was not adhered to as promised. There is no material placed before us to show that the telephone at new place became operational effectively only in November, 1993. On the other hand as per applicant/complainant own admission it became functional on 2.8.1993 though partly. As to issue of the bill belonging to the earlier subscriber, the mistake had been admitted by the respondent and was rectified by waiving the amount. WE find no material on record to hold that the bills were issued deliberately at wrong address. Coming to the charging of the bill for the period the telephone remained disconnected, we find that a copy of the FNMR (Annexure R-I) filed on behalf of the respondent clearly shows user of the telephone from 15.7.1993 till 31.7.1994. This has not been controverted by the applicant/complainant. The other allegations which are general in nature, namely deletion of the name from the list of cases to be fixed before Lok Adalat, generally sending the bills at wrong addresses, not providing new connections in case of others, non-repairing of the roads after installation of new connections are not specific to the issues raised and need not to be addressed at for want of necessary supportive evidence. On the facts as stated above, we are of the considered view that the charge of unfair trade practices levelled against the respondent has not been established. Accordingly no cease and desist order can be passed against the respondent. In view of the former, the applicant /complainant is also not entitled to any compensation as claimed. Accordingly the Notice of Enquiry issued in the case of UTPE deserves to be and is directed to be discharged and the compensation application stands rejected. No order as to the costs on the facts and in the circumstances of the case. C.A. dismissed. \_\_\_\_\_