
(1990) 11 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

NOZAR J.IRANI

APPELLANT

Vs

GENERAL MANAGER, MAHARASHTRA TELEPHONE NIGAM
LTD., BOMBAY

RESPONDENT

Date of Decision : 06-11-1990

Acts Referred:

Citation : 1991 1 CPJ 186

Hon'ble Judges : G.G.Loney , M.G.Gavai , Elipe Dharma Rao J.

Final Decision : Appeal allowed

Judgement

1. BEING aggrieved by the impugned order of the Bombay District Forum, the appellant preferred this appeal. Brief facts of the complaint are that the wife of the present appellant Mrs. A.N. Irani was having the telephone connection bearing No. 4949182. She was alleged to be in arrears of about Rs. 30,601/- and therefore, for non-payment of the arrears her telephone was disconnected on 7.1.1988. On 8.1.1988, appellant obtained a form from the respondent for another telephone connection for his use. On 12.1.1988 he deposited Rs. 1,000/- with the respondent and submitted his application for another telephone. On 18.1.1988 the work order was issued to install the new telephone at the residence of appellant in the same building where Mrs. Irani was having her telephone. Mrs. Irani and appellant are residing together at the same building. On 22.1.1990 the appellant received a notice of disconnection of his phone for the arrears of his wife's telephone No. 4949182. The said notice was sent under the provisions of Rule 443 of the Indian Telegraph Rules, 1951. The respondent disconnected the telephone connection of the appellant on 9.3.1990 for default of payment by his wife. Aggrieved by the disconnection the appellant filed the complaint before the District Forum, Bombay on 12.9.1990 inter alia claiming that the respondent be directed to restore his telephone No. 4949319 with appropriate rebate for wrongful disconnection and also claimed Rs. 75,000/- towards the compensation and Rs. 500/- towards the cost.

2. IN response to the notice under Sec. 13 of the Consumer Protection Act, 1986,

the respondent filed reply. It has been submitted by the respondent that the complaint is baseless, fictitious and made up story to escape liability for payment of outstanding dues in respect of his wife's telephone. It has been further submitted that because of the disconnection of her telephone Mrs. Irani started developing fabricated story. Lastly, it was submitted that the liability of the husband is to pay the dues of his wife. The complaint was heard by the President and one Member of the District Forum, Bombay. The lady member of the District Forum, Mrs. Lalita Kulkarni gave a dissenting order that obtaining a new telephone connection in the same house when the previous telephone in the name of wife was disconnected does not amount to fraud on the part of husband. According to the learned lady member, no fraud was committed by the appellant while giving address for the second installation of telephone. She further found that the ratio of the judgement of the Madras High Court in the case of Y.M. Thangam v. Divn. Manager (South), Madras Telephone is not applicable to the instant case. She has therefore, ordered that the respondent be directed to reconnect the complainant's telephone and grant appropriate rebate in rental to the complainant. She also directed to pay Rs. 500/- towards the costs to the complainant.

However, the learned President Shri Khedkar took the contrary view. According to learned President, the ratio of the Madras High Court case is fully applicable to this case as the appellant has committed the fraud. The first circumstance considered is that at the time of the filing of the form for the new telephone connection, Mr. Irani did not disclose the fact of disconnection of his wife's telephone on account of non-payment of arrears and that different address was stated in the application form.

3. ALTHOUGH there was difference of opinion between the President and Member, on the basis of Sub-Rule 4 of Rule 11 of the Consumer Protection Rules, 1987, the President dismissed the complaint. We heard Shri Shirish Deshpande for the appellant and Shri Talegaonkar for the respondent. Shri Deshpande contended that there was no pleading raised in the reply by the respondent describing the nature of fraud committed by the appellant. The only fraud alleged ; in the reply is about the ingenuity of subscriber for non-payment of his wife's dues. No circumstance of showing different address in the application form by the appellant and suppression of arrears as regards the telephone of Mrs. Irani was stated constituting the fraud in this case. Even the learned President of the District Forum did not give the finding that the aforesaid two circumstances amount the fraud. We find that the learned President nowhere in his judgment came to the conclusion that Mr. Irani committed any fraud. No finding of fact is reached by the learned President regarding the establishment of fraud in obtaining the second telephone connection by Mr. Irani. Yet, according to Shri Deshpande, the learned President of the District Forum heavily relied on the ratio of Madras High Court Judgment thereby suggesting that Mr. Irani has committed a fraud. A fraud has to be proved on the basis of facts beyond reasonable doubt. Without the Mahanagar Telephone Nigam Ltd. establishing the circumstances and

the facts constituting a fraud the Court has given a finding of fact. Hence Shri Deshpande submitted that the ratio of the Madras High Court Judgment cannot be made applicable. We have gone through the judgement of the Madras High Court in the case of Y.M. Thangam v. The Area Manager (South), Madras Telephone, Madras (Writ Petition No. 5963/87). The facts in that case were different. The telephone connection was in the name of the partnership M/s. Juloglobal Express. Her husband and minor children were the partners. Later on a new telephone was obtained in the name of petitioner, the wife of the partner S. Natarajan. It was her contention that her personal telephone cannot be disconnected for the non-payment of dues of the telephone of the partnership firm. In that case, the petitioner by virtue of being the mother and natural guardian of her minor children mentioned in the deed of partnership had every interest in the partnership business and therefore, the said telephone was disconnected. In that case, the whole judgment was based on the fact that forged document was placed before the Court. In the partnership deed the word "mother" was scored out, likewise the word "Mrs. Y. Thangam" was scored out, and the word "father" was substituted. On the basis of those facts, the finding of fraud was reached by the Madras High Court. Similarly the other case relied on by the learned President was arising in the Writ Petition No. 13884/86. K. Amanullah v. Madras Telephone. In that case also, the father and son were involved and the fraud was established on the basis of the documents on record. In both the aforesaid decisions of the Madras High Court, the finding of fraud was established on the basis of facts. No such finding has been reached by the learned President of District Forum in this case. Therefore, in our view, the learned President was wrong in his approach while deciding the instant case. The learned President wrongly presumed that appellant has obtained telephone connection as a result of fraud.

4. ACCORDING to Shri Deshpande, the instances of frauds as argued by the learned Counsel Mr. Talegaonkar for the respondent are coming for the first time at appellate stage and were not pleaded in the written statement. Shri Deshpande further stated that Mr. Irani did not give a different address of his residence when he submitted the application form. The old telephone connection in the name of his wife was showing the address "Kashinath Street, Tardev" and in his subsequent application he mentioned his address as "9/2, Kashinath Street, Tardev". We see no difference in the address given by the appellant in his application form and, therefore, there is no question of misleading the Telephone Department on this count much less can it be said to be an instance of fraud. The second contention of Shri Talegaonkar that appellant suppressed the information about the disconnection of his wife's telephone while submitting the form of new telephone connection amounts to fraud cannot be accepted for a moment since it is not a legal obligation for a subscriber to disclose such information. Moreover when the M.T.N.L. is aware of a previous disconnection for non-payment of arrears, why such scrutiny is not made before granting new telephone at the same house. In the instant case we perused the M.T.N.L. papers

of grant of work order to install telephone for appellant. There is a column 7A under which the M.T.N.L. is under obligation to verify the bona fides of an applicant and after its subjective satisfaction the work order is issued. We, therefore, presume that when work order was issued on 18.1.1988 to install telephone at the residence of complainant the bona fides of appellant were verified and having so satisfied the work order was issued. If according to M.T.N.L. no such verification was made, then it can be inferred that the work order was issued fraudulently by M.T.N.L., and it is a party to the fraud in this case. Thus we find that the theory of fraud was not pleaded with material instances by M.T.N.L. and now it cannot lie in its mouth to allege fraud. Fraud is being alleged by M.T.N.L. only to invoke the ratio of Madras High Court decisions. In our view looking to the facts and circumstances of this case learned President of the District Forum, Bombay is not correct in relying on Madras High Court decisions. We have the latest Division Bench decision from Gauhati High Court in the case of Santokh Singh v. Divisional Engineer, Telephone, Shilong (AIR 1990 GAU. 47). In this case, the Divisional Bench while interpreting the provisions of disconnection of phone for default of subscriber. Post and Telegraphs Rules, Vol. XIV, Chapter XV, Paras 434, 435, 442 and 443 Their Lordship have observed as under: "Rule 443 cannot be interpreted to vest with the authorities, the power to disconnect any other telephone working in the name of the same subscriber either at the same premises or elsewhere on the ground of default of payment of bill in respect of one of his telephones. This power is confined only to the particular telephone in respect of which there is default in payment and not the other telephones. Such drastic power cannot be granted to the Telephone Department by inference; if at all it is to be given, it has to be given in clear and unambiguous terms".

"Rule 443 of the Rules as it presently stands cannot be interpreted to authorise the Telephone Department to disconnect any telephone other than the one which is subject-matter of dispute as such the action will be highly atrocious. The Department cannot force the subscriber to make the disputed payment by such means. It must act in accordance with the law and if necessary, file a suit for recovery of the arrears". We are completely in agreement with the view taken by the Gauhati High Court. If such an amount is allowed it will leave the subscriber of the telephone to hazardous situation. We also find that Rule 443 is applicable to subscriber in default of payment. In the instant case, the appellant Mr. Irani cannot be said to be the subscriber of the telephone No. 4949182 appearing in the name of his wife and which was disconnected. We, therefore, find that the order passed by Shri Khedkar, President of the District Forum is not correct and requires to be set aside. At the same time we find that the learned lady Member of the District Forum, Bombay has taken correct view, taking into consideration the facts and circumstances of this case; and therefore, we uphold her view and maintain that order. However, we would not go into the controversy about Sub-rule 4 of Rule II of the Consumer Protection Rules, 1987. In the result we allow this appeal and set aside the order of Shri Khedkar dismissing the complaint of

complainant and maintain the order passed by lady member Smt. Dalitai Kulkarni. We also hold that the appellant has proved the allegations of his complaint and direct that the appellant's telephone be reconnected within one month from the date of this order. We further direct that the M.T.N.L. should pay the appropriate rebate in rental for the period of disconnection. We also award the cost to the appellant throughout and direct the (M.T.N.L.) Mahanagar Telephone Nigam Ltd., Bombay to pay total cost of Rs. 1,000/- to be paid to the complainant towards the expenses of his complaint and the appeal. Appeal allowed.