

(2016) 09 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

Case No : 348 of 2016

PREM PRAKASH MITTAL

APPELLANT

Vs

THE GENERAL MANAGER, GHAZIABAD
TELECOMMUNICATIONS & ORS.

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

[Telegraph Act, 1885](#), [Section 7](#) - Power to make rules for the conduct of telegraphs

Citation : 2016 3 CPR 804 : 2016 4 CPR 299

Hon'ble Judges : Ajit Bharihoke, S.M. Kantikar

Advocate : Sarika, Mani Chaudhary, Anil Panwar

Judgement

1. The petitioner being aggrieved of the order of the State Commission, Uttar Pradesh dated 04-11-2015 in First Appeal No.793B of 1998 has preferred this revision petition. Brief facts relevant for the disposal of the revision petition are that the petitioner filed a consumer complaint against the respondents-opposite parties alleging deficiency in service on their part that is failure to provide him a telephone connection for which he has applied way back in the year 1993.

2. Consumer complaint was contested.

3. The District Forum, Ghaziabad on consideration of the pleadings and the evidence allowed the complaint and directed the opposite party as under: "Therefore, allowing the complaint of the complainant, opposite party is directed to registered new connection of the complainant w.e.f.27-04-1993 itself within one two months and to give him new connection, simultaneously, to pay Rs.2,000/- (two thousand rupees) as compensation for mental harassment and litigation expenses."

4. Being aggrieved of the order of the District Forum the opposite parties filed a joint appeal. The State Commission, Uttar Pradesh disposed of the appeal in absence of the petitioner mainly on the ground that the complaint was barred by Section 7 of the Indian Telegraph Act.

5. Being aggrieved of the order of the State Commission petitioner filed a revision petition and the National Commission vide its order dated 04-09-2015 allowed the revision petition, set aside the order of the State Commission and remanded the matter back to the State Commission with the direction to dispose of the appeal on merits in accordance with law. At this stage it is pertinent to mention that the appeal filed by the opposite parties was filed after the expiry of period of limitation and an application for condonation of delay was also moved.

6. In the second round of litigation the State Commission after hearing the parties came to the conclusion that the appeal was barred by limitation. Despite of having held the appeal barred by limitation, the State Commission while passing the final order went on to record as under: "Present appeal is dismissed on the ground of "time-barred". Appellants are also directed that in case the bank draft of Rs.1,000/- sent by the respondent/complainant earlier is not available or its amount has not been withdrawn by the department, then appellants may get from the respondent/complainant a new bank draft for Rs.1,000/- on account of registration fees."

7. The petitioner has contended that the order of the State Commission directing respondents/opposite parties, that in case bank draft of Rs.1,000/-, sent by the complainant earlier is not available or its amount has not been withdrawn by the Department, the appellant gets a new bank draft of Rs.1,000/- from the complainant on the ground of registration fee, is without jurisdiction.

8. Counsel for the respondents Nos.3 & 4 on the contrary has argued in support of the impugned order.

9. On consideration of record we find merit in the contention of the petitioner. On reading of impugned order it is clear that the State Commission had declined to condone the delay in filing of the appeal before the State Commission and observed that the appeal was barred by limitation. After having held the appeal as barred by limitation, there was no occasion on the part of the State Commission to issue directions that if the bank draft of Rs.1,000/- is not available with the opposite party or its amount is not withdrawn the appellants may get a new bank draft of Rs.1,000/- from the complainant on the ground of the registration fee. The State Commission, in our opinion, has exceeded its jurisdiction in issuing direction after having dismissed the appeal. The part of the order being without jurisdiction is set aside. We modify the order of the State Commission to the extent that the appeal preferred by the opposite party is barred by limitation.