
(1992) 09 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

RAMNIKLAL KUNWARJIBHAI SHAH

APPELLANT

Vs

District Telecom Manager

RESPONDENT

Date of Decision : 14-09-1992

Acts Referred:

Citation : 1992 2 CPR 617 : 1993 1 CPJ 475

Hon'ble Judges : S.A.Shah , R.K.Shah J.

Final Decision : Ordered accordingly

Judgement

1. THE short question that arises in this appeal for our consideration is as to whether the Telephone Department was right in taking the suit telephone No. 23436 at Bhavnagar into custody which was admittedly shifted to the residence of the appellant. In order to understand this point it is necessary to reproduce the bare facts.

2. THE telephone was originally granted to Bhavnagar Retail Grain and Kirana Merchants" Mandal (for short Kirana Mandal). THE present appellant was the secretary of the Mandal. It appears that thereafter this Kirana Mandal was succeeded by Bhavnagar Retail Merchants and Ration Shop Dealers" Federation (for short Federation). Since one Mr. Vadera was appointed President of the Federation the telephone was shifted to his premises as an office bearer of the Federation. It also appears that this Federation was again succeeded by the Bhavnagar Ration Shop Dealers" and Kirana Retail Merchants Association (for short Kirana Association) and the present appellant Mr. Ramniklal K. Shah was appointed as Secretary. Therefore the President of the new Kirana Association made an application to the Telephone Department marked Exh. 4/1 dated 22.10.91 informing the Department that Shri Vadera Kirtikumar Harilal is not legal office bearer of the Association and Shri Ramniklal Kunwarji Shah, the present appellant has been appointed as Hon. Secretary and the telephone may be shifted to his premises. Alongwith this application copy of the Resolution No. 6 was also enclosed. It appears that the Telephone Department took cognisance of this Resolution and letter and shifted the telephone to the premises of the

present appellant.

Thereafter a letter of Mr. Vadera dated 24.11.91 has been produced at Exh. 4/3 which clearly states that though he has made an application to keep this telephone in safe custody they have arrived at a compromise for the telephone and he has informed that the telephone may be shifted at the place where Mr. Gurumukh Thavrani the President of the Association decides. After receiving this letter the Telephone Department shifted the telephone to the residence of the present appellant relying upon the application of the President and the Resolution of the association. After having shifted the telephone all of a sudden the Department took a somersault and taken the telephone in the safe custody. No notice appears to have been given or any reason shown. When the present appellant who is the original complainant filed the complaint the Department filed a written statement wherein the Department has stated that "this shifting was objected by Shri Kirti Vadhera through his letter and requested to put the phone under safe custody, which was complied on 13.11.91." Now this letter alleged to have been written by Shri Vadhera has not been brought on record. However, there is one letter of Bhavnagar Retail Merchants Rationshops Federation which appears to have been established by Shri Vadhera and in capacity of the President of that Federation he appears to have written a letter to shift this telephone to his place. However this letter appears to have been received by the Department on 31.10.91. Thereafter he had written a letter dated 24.11.91 marked Exh. 4/3 stating that there was a compromise and that the telephone has to be shifted at the place where the President of the Association decides. We, therefore, find no justification in the action taken by the Telephone Department in taking the phone into safe custody. Ms. V.B. Tiwari, the learned Counsel appearing on behalf of the Department states that the telephone has been shifted to the appellant's premises under mistake and that there was no resolution suggesting that the Kirana Federation was converted into Kirana Association. It appears that during the pendency of the complaint such a resolution has been produced to satisfy the Department that the Kirana Federation has been converted into Kirana Association which has been recognised by the Collector also, though that the recognition is subsequent to the shifting of the telephone. In any view of the matter once an Association was recognised by the Telephone Dept. and the bills have been made and payment of charges have been received, the Department cannot shift the telephone without the consent of the Association. Rule 421 reads as under: "Disconnection of telephones Where the Divisional Engineer is satisfied for reasons to be recorded in writing that it is necessary to do so, he may. after giving the subscriber a notice in writing for a period which shall not except in emergent case be less than 7 days, disconnect the telephone, and in such case, the subscriber shall be entitled to refund of rent for the unexpired portion of the period for which the connection or service was given."

There is no other provision under which the Department can shift the telephone without the permission of the subscriber. In the instant case, the shifting has

been done and no other the Divisional Engineer has been produced regarding the reasons. In that view of the matter the shifting of the telephone from the premises of the appellant was not in accordance with law.

3. HAVING realised the position Ms. Tiwari states that the Department has taken the action in good faith and to protect the interest of the revenue though we are unable to understand how the interest of revenue is concerned when the Department is not getting the full rental amount. In any view of the matter, there appears to be some dispute and exchange of letters and since Ms. Tiwari makes an offer that if we pass an order they will immediately shift the telephone to the premises of Mr. Ramniklal K. Shah subject to the final decision that may be passed by the appropriate Court, Mr. Sompura, the learned advocate for the appellant does not press for the damages. We therefore direct that the Association may supply the copy of the Resolution of change of name from Federation to Association to the Telephone Department within 8 days from today and on receipt of such application the Department will shift the telephone without any charge to the premises of Mr. Ramniklal K. Shah subject to the orders of the appropriate Court that may be passed in a dispute amongst the parties. On receipt of this application the Department will shift the telephone within one week thereof. The parties are permitted to approach this Commission in case of difficulty. ORDER The order of the District Forum is set aside. The Respondent Department will shift the telephone to the present premises of the appellant on his furnishing a copy of the resolution of change of name as agreed by Ms. Tiwari on behalf of the Telephone Department. Since the matter has been settled as above, we do not pass any order regarding cost. Ordered accordingly.