(2007) 02 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

SDO TELECOMMUNICATION DEPARTMENT OF TELECOMMUNICATION — APPELLANT

Vs

ANUPMA — RESPONDENT

Date of Decision : 21-02-2007

Acts Referred:

Citation : 2008 2 CPJ 191 : 2008 3 CPR 181

Hon'ble Judges : K.C.Gupta , MajGenS.P.Kapoor , Devinderjit Dhatt J.

Final Decision : Appeal dismissed

Judgement

1. -THIS appeal received by transfer from Haryana State Commission has been filed against order dated 20. 7. 2000 in Complaint Case No. 23 of 24. 4. 2000. The contextual facts in brief are as under. That the respondent/complainant a subscriber of telephone bearing No. 88240 provided by the appellants at Fatehabad in District Hisar with sub-exchange Gillankhera. As per averments, the complainant has been depositing the bills regularly. A bill for the amount of Rs. 115 was received for the period 1. 7. 1999-31. 8. 1999 preceding the disputed bills. The complainant is aggrieved against the bill for the period 11. 9. 1999 to 31. 10. 1999 for an amount of Rs. 3,392 and another bill for the period 31. 12. 1999 to 1. 11. 1999 for an amount of Rs. 8,687. It has been averred that these bills are not in accordance with consumption and have been issued wrongly. The respondent/complainant has stated that next bill for the period 1. 1. 2000 to 29. 2. 2000 was for an amount of Rs. 645. The complainant has alleged that the equipment/machinery installed at sub-exchange Gillankhera were replaced during September, 1999 to December, 1999. The disputed bills which are for such highly inflated amounts have also been alleged to be on account of defective machinery/equipment installed by the appellant/ops. The complainant has stated that he approached the officials of OP department personally and also it was conveyed in writing regarding unreasonably inflated bills but the needful was not done. In the prayer clause, the complainant has sought a direction to the appellant/ops to charge the disputed bills on the average basis and not to disconnect the bills on the ground of non-payment and a compensation of Rs.

10,000 for the harassment has been claimed.

2. IT has also come on record that during the period this complaint was pending in the Forum, his representation before the Competent Authority of the appellant department was dismissed. In the reply filed by the SDO, Telecommunications, Fatehabad, the preliminary objection taken is that the complainant is having STD connection and the bill of STD telephone can run into several thousands of rupees even in a single day if excessive calls are made. It has been stated that this complaint is beyond the jurisdiction of the Forum in view of fact that the Forum cannot adjudicate in a dispute relating to excessive metering. It is further averred that since the telephone in question is having dynamic locking facility, the same cannot be misused, the bills since issued in accordance with the usage, the respondent/complainant is liable to pay them under Rule 440 of Indian Telegraphic Act. It has been stated that false and frivolous complaint be dismissed as no cause of action has accrued to the complainant to file the complaint. The allegation of deficiency in service have been denied.

In reply on merits with regard to disputed bills, it is stated that bill dated 11. 11. 1999 and 11. 1. 2000 for Rs. 3,392 and Rs. 8,687 were issued as per calls recorded from his telephone on the computerized system. Further in the case of complainant, it is stated that he is having a connection with C-DOT-256, which is the latest technique. The calls in dispute have actually been recorded in the equipment of the answering OPs. However, his complaint with regard to excessive billing was thoroughly scrutinized but no fault of any kind was noticed, consequent to which his representation after due inquiry was rejected. The result of investigation report (brought on record vide Annexure H/w) dated 26. 6. 2000 was duly communicated to the complainant. The allegations levelled by the complainant regarding defect in the metering equipment at the exchange in question have been denied and it is stated that the exchange performing its function satisfactorily since installation. It has been reiterated that bills were issued as per calls recorded on the computerized equipment, the question of same being excessive does not arise.

3. IN evidence, the complainant Sh. Manoj Kumar has filed his evidence by way of affidavit whereas on behalf of the respondents Sh. Bhal Singh, Sub-Divisional Officer (T), Fatehabad has filed his evidence by way of affidavit along with copy of registered letter dated 26. 6. 2000, copy of performa for excess metering cases and copy of master details. The following judgments were cited in support by the appellants: 1. Judgment of Hon''ble National Commission titled as Divisional Engineer, Telecom Moradabad v. Virender Kumar, II (1997) CPJ 60 (NC). 2. Judgment of Hon''ble National Commission titled as T. D. E. Dharamsala v. Pran Nath Mahajan, I (1993) CPJ 99 (NC). 3. T. D. M. Patna v. M/s. Kalyanpur Cement Limited, II (1991) CPJ 286 (NC). 4. Judgment of Himachal Pradesh Consumer Commission titled as UOI v. Hans Raj, II (1997) CPJ 345. 5. SDO Sadhora v. Pawan Kumar Lehna, 1996 (2) Con. LT 545. 6. Judgment of Bihar State Commission titled as Engineer, Telephones v. Nathu Prasad Aggarwal, 1996

(2) Con. LT 237. 7. Union of India v. Satya Narain Lal, 1995 (2) Con. LT 332. 8. T. D. M. v. Sushil Kumar, 1996 (2) Con. LT 665. 9. T. D. E. v. Prem Kumar, 1996 (2) Con. LT 528. 10. Judgment of Hon''ble National Commission in T. D. M. Panaji v. M/s. Concha Beach Resort Calangute Beach, Goa, I (1996) CPJ 174 (NC)=1996 (1) Con. LT 517. 11. Judgment of Hon''ble National Commission in The District Manager, Telephones and Others v. Niti Saran, I (1991) CPJ 48 (NC).

4. THE District Forum, Hisar directed the appellant/ops to charge the disputed bills on the average consumption of six months immediately prior to the disputed bills. The direction to restore the connection was also issued, subject to complainant depositing Rs. 5,000 and this amount was to be adjusted against the disputed bills. Rs. 500 each were awarded as costs of litigation and compensation. Aggrieved by the said order, the present appeal has been filed pleading inter alia that the learned District Forum, Fatehabad had committed grave illegality and material irregularity while allowing the complaint. The order of the District Forum has been stated to be against law and facts on the ground that the Forum has failed to appreciate that STD facility (which is not disputed) was installed on the telephone of the complainant and excessive use of phone on STD, the bills can run into thousands of rupees in a single day but the Forum erroneously accepted the complaint. The appellant has further submitted that the metering equipment was thoroughly checked by the concerned technical staff of the department and no defect in the same was observed and the complainant was informed accordingly. The order of the District Forum has been assailed on the ground that though no fault in the equipment was noticed still the Forum went ahead and directed the appellant department to charge the disputed bills on average basis, though the Forum failed to give any categoric finding regarding any defect in the machinery/equipment. It has been submitted that the Forum failed to appreciate the facts and has given a relief to the complainant which cannot be sustained at all as no such evidence was brought on record by the respondent that any fault or defect in the machinery/equipment was pointed out. The District Forum on the basis of suspicion based the impugned order and failed to notice the important fact brought on record by the appellant department that the complainant is having telephone, which is connected with C-DOT-256 exchange which is a latest technique and is fully computerized. The Forum also failed to take in to account that dynamic lock facility has been installed in the telephone in question, the misuse of the instrument is totally ruled out. The instant complaint deserves dismissal. However, without giving any plausible reason for directing the appellants to charge the bills on average basis in accordance with bills issued six months prior to the disputed bills cannot be sustained. The case of G. M. Telecommunication Trichy and Others v. P. L. Unamalai Achi, wherein the State Commission quashed the order of the District Forum on the ground that the complainant failed to lead any evidence regarding the excessive billing, as the burden of proof lies on the complainant to demonstrate that the bill is inflated.

5. IT has been further urged that the District Forum failed to take into account

that burden of proof was on the complainant to prove the excessive billing. However, the Forum erroneously held that the department could not establish the bills to be genuine. The order of the District Forum has also been challenged on the ground that the Forum failed to take into account the settled law that in the absence of any specific allegation pertaining to metering equipment or tampering of the line by the staff of the department, the impugned order for quashing the bills issued on actual consumption and its direction for issuance of bill on average cannot be sustained. The case of Divisional Engineer Telecom v. S. Laxmaiah, have been quoted in support wherein Andhra Pradesh State Commission dismissed the order of the District Forum wherein no defect in the equipment nor any tampering of any telephone line was alleged. The appellant has further relied upon law laid down by Hon''ble National Commission in the case of Divisional Engineer, Telecom Moradabad v. Virender Kumar (supra) and T. D. E. Dharamsala v. Parmanand Mahajan (supra), wherein the Hon''ble National Consumer Disputes Redressal Commission has held that the average billing of earlier period should not be taken into consideration in arriving at correctness of the impugned bills in the absence of evidence regarding malpractice/misuse by the staff of telephone department. The Forum also failed to appreciate the law laid down in TDM Patna v. M/s. Kalyanpur Cements Limited (supra). The appellant has contended that the crux of above judgment is that it is incumbent on the Forum to state the precise reason for quashing the disputed bills and record a categorical finding regarding defect. The bills cannot be ordered to be quashed on the basis of suspicion.

6. ADVERTING to the merit of appeal: after perusal of pleadings of the parties, record of the case, impugned order and the grounds of appeal and the case law cited in support, we are of the considered opinion that the District Forum has rightly appreciated the facts of the case and contention of appellant that the direction given by the District Forum for issuance of bills on average basis immediately prior to six months disputed period is correct and sustainable taking into account the peculiar facts and circumstances of this case. There is no doubt that the average should not be the basis for calculating the consumption in para No. 4 in joint written statement filed by OPs on merits, it has been admitted by the appellant/ops that the exchange at Gillankhera was MILT 64 which was of old version and was replaced by C-DOT-256 on 30. 9. 1999. However, no document by way of evidence has been placed on record precisely as to on what date the exchange in question was replaced. The complainant''s call data has been placed on record which proves that he has not ever used the facility to such an extent as to invite the bill of 3592 and 8687 as has been done during the disputed period. Taking into account these two highly inflated bills and linking them to the period when the exchange in question has admittedly been replaced by the appellant/ops, we concur with the finding recorded by the District Forum that this amount has been on account of some defect in the equipment or machinery which the appellant department has admitted to have replaced with a more advanced version C-DOT-256 and the version of respondent/complainant is

proved worthy of credence as per facts pleaded by him. We are unable to accept the contention of appellants that the bills were based on actual consumption specifically so when the defect in the metering equipment/machinery has been admitted. In the peculiar facts and circumstances of this case (and not as a general rule) we uphold the impugned order whereby the District Forum had directed the OPs to prepare the bill in accordance with the average consumption. In view of this discussion, the impugned order is upheld and the appeal being devoid of merit is dismissed. Before parting with the final order we deem it pertinent to mention that if any amount was deposited by the complainant during the pendency of the case the same be adjusted in the amount payable by the complainant. The appellant department is directed to issue the bills for the disputed period within one month from the date of receipt of this order. The respondent/complainant shall pay the bill by the due date given by the department.

The appeal is dismissed. The impugned order of the District Forum is upheld.

7. COPIES of this order be sent to the parties, free of charge. Appeal dismissed.