

(2015) 12 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

Case No : 719 of 2007

SKY VIEW (HOME CABLE)

APPELLANT

Vs

ORISSA CONSUMERS ASSOCIATION & ORS.

RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

[Telegraph Act, 1885](#), [Section 17](#), [Section 7B](#), [Section 7B\(1\)](#) - Removal or alteration of telegraph line or post, on property other than that of a local authority - Arbitration o

Citation : 2016 1 CPR 272

Hon'ble Judges : V.K. Jain

Advocate : Virender Thakur, Saket Singh, Sanib K. Mohanty

Judgement

K.S. CHAUDHARI

1. This appeal has been filed by the Appellant against the order dated 29.10.2007 passed by the Orissa State Consumer Disputes Redressal Commission, Cuttack (in short, "the State Commission") in C.D. Case No. 42 of 2004 - Orissa Consumers' Association Vs. Sky View (Home Cable) Ortel Communication Ltd. by which, while allowing complaint, OP No. 1 was directed to make necessary publication of the subscriber rates in newspapers.

2. Brief facts of the case are that complainants/Respondent Nos. 1 to 5 filed complaint before State Commission and alleged that OP No. 1/petitioner is charging excess price arbitrarily in providing TV cable service to the subscribers in contravention of tariff prescribed by the Telecom Regulatory Authority of India (TRAI). Alleging deficiency on the part of OP, complainants prayed for refund of excess price collected from subscribers with interest. OP No. 1/petitioner filed written statement and denied allegation of arbitrary/excess price for providing cable TV service to the customers. It was further submitted that tariff of Rs.72/- fixed by TRAI is applicable only to the areas where the Conditional Access System (CAS) is in operation and State of Orissa is not covered under CAS area;

hence, tariff of Rs.72/- is not applicable to the complainants and prayed for dismissal of complaint. Learned District Forum after hearing both the parties observed that price ceiling of Rs.72/- per month is not applicable to the State of Orissa but as OP No. 1 is gradually increasing charges per month, learned State Commission directed OP No. 1 to make necessary publication of the subscription rates with brief reasons for increase on periodic basis in one of the daily newspapers against which, this appeal has been filed.

3. None appeared for Respondent Nos. 1 to 5, 7 & 8.

4. Heard learned Counsel for the appellant and Respondent No. 6 and perused record.

5. Learned Counsel for the appellant submitted that as State of Orissa was not declared CAS area, there was no price ceiling and learned State Commission had no jurisdiction to deal with the complaint; even then, learned State Commission committed error in allowing complaint and giving direction to the appellant; hence, appeal be allowed and impugned order be set aside. Learned Counsel for the Respondent No. 6 supported learned Counsel for the appellant.

6. Perusal of complaint reveals that it has been filed by Orissa Consumers' Association, registered Association along with four independent consumers. Hon'ble Apex Court in (2007) 7 SCC 517 - Union of India Vs. Tata Teleservices (Maharashtra) Ltd . has held in paragraph 7 as under: "7. Section 14 of the Act deals with the establishment of the TDSAT. It appears to be appropriate to set down the said Section hereunder:

14. Establishment of Appellate Tribunal - The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to -

(a) adjudicate any dispute -

(i) between a licensor and a licensee;

(ii) between two or more service providers;

(iii) between a service provider and a group of consumers:

Provided that nothing in this clause shall apply in respect of matters relating to -

(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of Section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969);

(B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986 (68 of 1986);

(C) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885 (13 of 1885); (b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.

The Section indicates that the TDSAT has been constituted to adjudicate on any dispute between a licensor and a licensee or between two or more service providers. Though it also includes adjudication on a dispute between a service provider and a group of consumers, it excludes matters coming within the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under the Monopolies and Restrictive Trade Practices Act, 1964, the complaint of an individual consumer that is maintainable before a Consumer Disputes Redressal Forum and a dispute between a telegraph authority and any person referred to in Section 7B of the Indian Telegraph Act, 1885.

7. Perusal of Section 17 of the TRAI makes it clear that only complaint of an individual consumer is maintainable before Consumer Forum and complaint between a service provider and a group of consumers is to be filed only before Telecom Disputes Settlement and Appellate Tribunal (TDSAT). As complaint has been filed by the Orissa Consumers' Association, registered Association along with other individual consumers, this complaint was not maintainable before learned State Commission and complaint could have been filed only before TDSAT and learned State Commission exceeded authority in entertaining a complaint which was not maintainable before it.

8. In the light of aforesaid discussion, it becomes clear that neither complaint was maintainable before learned State Commission, nor complainants were covered under CAS area. Complaint was liable to be dismissed and learned State Commission has committed error in allowing complaint partly giving direction to the appellant.

9. Consequently, appeal filed by the appellant is allowed and impugned order dated 29.10.2007 passed by the Orissa State Consumer Disputes Redressal Commission, Cuttack in C.D. Case No. 42 of 2004 - Orissa Consumers' Association Vs. Sky View (Home Cable) Ortel Communication Ltd. is set aside and complaint stands dismissed with no order as to costs. DATED : 22.04.2014

DR. B.C. GUPTA

1. This appeal has been filed by the Appellant against the order dated 29.10.2007 passed by the Orissa State Consumer Disputes Redressal Commission, Cuttack (in short, "the State Commission") in C.D. Case No. 42 of 2004 - Orissa Consumers' Association Vs. Sky View (Home Cable) Ortel Communication Ltd. by which, while allowing complaint, OP No. 1 was directed to make necessary publication of the subscriber rates in newspapers.

2. Since I am not in agreement with the draft order recorded by learned brother, Mr. Justice K.S. Chaudhari, Presiding Member, I am writing dissenting order as

below.

3. The consumer complaint in question, CD Case No. 42/2004 has been filed before the State Commission by five complainants - one of which is called the Orissa Consumers' Association and other four complainants are individual consumers. Their grievance is that the petitioner/OP No. 1 who is providing T.V. cable service, is charging excess price from the consumers in an illegal and arbitrary manner from the subscribers in contravention of the tariff prescribed by the Telecom Regulatory Authority of India (TRAI). The OP No. 1 had been able to allure the subscribers through publication of advertisements in newspapers and electronic media by giving all kinds of promises/assurances. The complainants had written letters to the cable operators as well as the TRAI, requesting refund of excess price/amount taken from the subscribers since December 2003, but no action had been taken by them in this regard. Moreover, the OP No. 1 had not been disclosing to the subscribers, on what basis and principles, it was charging or raising the bill from the subscribers. The complainants prayed that the excess price paid by the consumers should be refunded to them alongwith interest and compensation for mental harassment. In their reply to the complaint, OP No. 1 stated that they were not charging any excess price or indulging in unfair trade practice. They submitted that tariff of ` 72 fixed by the TRAI was applicable only to the areas where Conditional Access System (CAS) was in operation. Since the state of Orissa was not covered under CAS system, the tariff fixed by the TRAI was not applicable in that State. OP No. 1 stated that the complaint was based on wrong understanding of the orders of TRAI and it deserved to be dismissed. In their reply filed before the State Commission, OP No. 3, TRAI also stated that the ceiling price prescribed by the TRAI was applicable only in the notified CAS areas. No part of the State of Orissa was notified as CAS so far. The TRAI has further submitted in their reply as follows:- "That in reply to the averments taken out in paragraph 6 and 7 of the above C.D. Case, it is respectfully submitted that under the Telecom Regulatory Authority of India Act, the TRAI does not deal with complaint from individual subscriber/ consumer. On the other hand, their grievance can be redressed by Consumer Disputes Redressal Forums or by this Hon'ble Forum. The provisions authorizing such forum to deal with the grievance of the Subscriber/consumer is available u/s 14 (B) of the Telecom Regulatory Authority of India Act, 1997, which is quoted herein below for ready reference."

4. It is clear from above that TRAI as stated that they do not deal with individual complaints from individual subscribers / consumers and for the purpose, they should knock at the doors of the consumer fora.

5. The learned State Commission, after hearing the parties observed that the price ceiling of ` 72 was not applicable to any part of Orissa, as it had not been declared as CAS area. The State Commission also observed that the OP No. 1 had been enhancing and charging its subscribers periodically without showing justification of enhancement . In these days of transparency, the conduct of the opposite party in enhancing the price should be clear, open and transparent . As

a service provider, OP No. 1 was obliged to follow certain principles and undertake guidelines and reasons for periodical enhancement. The learned State Commission, after referring to Section 4A(7) of "The Cable Television Networks (Regulation) Act, 1995" directed that OP No. 1 shall make necessary publication of the subscription rates with brief reasons for increase on periodical basis and the first such publication shall be made on 1 st Jan. 2008. It is against this order that the present appeal has been made.

6. At the time of hearing, the learned counsel for the appellant/OP No. 1 stated that the State Commission had no jurisdiction to deal with the complaint as the State of Orissa was not declared as CAS area and hence, there was no price ceiling. The learned State Commission had no authority to give directions to OP No. 1 to publish their rates in the newspapers on a periodical basis. The order should, therefore, be set aside. The learned counsel for respondent no. 6 also supported the version of the appellant. "14. Establishment of Appellate Tribunal - The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to - (a) adjudicate any dispute -

(i) between a lincesor and a licensee;

(ii) between two or more service providers;

(iii) between a service provider and a group of consumers:

Provided that nothing in this clause shall apply in respect of matters relating to -

(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of Section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969);

(B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986 (68 of 1986);

(C) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885 (13 of 1885); (b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act."

8. It has been stated in the above provision that disputes between a service provider and a group of consumers shall be taken care of by the TDSAT, set-up under the Telecom Regulatory Authority of India Act, 1997. In the present complaint, however, there are five complainants, out of which four are individual consumers. It has been categorically stated in the Section 14 of the TRAI Act, 1997 that the complaints from the individual consumers are to be dealt with by the consumer fora only . In the present case, it is very clear, therefore, that the

State Commission was fully authorised to take cognisance of the complaint filed by four out of five complainants and hence, they have not committed irregularity of any kind in entertaining the said complaint. The fifth complainant is an association of consumers and they are also well within their rights to file consumer complaints under the Consumer Protection Act, 1986. Taking a view that the complaint in question where only one of the five consumers is a consumer association and hence, the State Commission could not take cognisance, shall be a hyper-technical view and shall amount to grave injustice to the consumers. The Consumer Protection Act, 1986 came into operation in December 1986 and it has been stated in the preamble of the Act as follows:- "An Act to provide for the better protection of the interest of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers" disputes and for matters connected therewith."

9. The basic objective of the Act as enunciated in the preamble is the better protection of the interests of consumer. It was also laid down in section 3 of this Act that its provisions shall be in addition to and not in derogation of the provisions of any other Law for the time being in force. It is evident that unless there is a clash with the provisions laid down in the other acts, the Consumer Protection Act, 1986 can be made applicable for looking after the interests of the consumer in a better way.

10. It has also been held by the Hon"ble Apex Court in a catena of judgements that the Consumer Protection Act, 1986 is a socially beneficial legislation. Reference may be made in this regard to the cases decided by the Hon"ble Supreme Court, as for example in " Lucknow Development Authority versus M.K. Gupta " [as reported in (1994) I SCC (243)], " C. Venkatachalam versus Ajitkumar C. Shah " [as reported in III (2011) CPJ 33 (SC)], etc.

11. It may also be stated here that as per section 12(c) of the Consumer Protection Act, 1986, there is a provision for seeking permission of the Consumer Fora on behalf of numerous consumers of cable service. The order passed by the State Commission makes it clear that the complainants sought permission to pursue the complaint on behalf of numerous consumers of cable service. By order dated 3.01.2005, the State Commission permitted the complainants to publish required notice. The complainant accordingly got a notice published in the newspaper and pursuant to the publication, the Orissa Jan Suraksha Manch applied for being impleaded as a party to the complaint and the said prayer was allowed.

12. In the instant case, it has been clearly held by the State Commission that the State of Orissa is not a CAS area and hence, the tariffs fixed by the TRAI are not applicable in that area. However, the State Commission observed that the OP No. 1 had been enhancing and charging the subscribers periodically without showing justification of enhancement. Relying on section 4A (7) of The Cable Television Networks (Regulation) Act, 1995, they called upon OP No. 1 to make necessary

publication of the subscription rates with brief reasons for increase on periodic basis. For ready reference, section 4A(7) of The Cable Television Networks (Regulation) Act, 1995, reads as follows:- "4A.(7) Every cable operator shall publicise, in the prescribed manner, to the subscribers the subscription rates and the periodic intervals at which such subscriptions are payable for receiving each pay channel provided by such cable operator."

13. It is clear from above that the order passed by the State Commission has been passed with a view to protect the interests of the consumers and it has not taken away the right of the service provider to fix or increase the tariff being charged by them in any manner. The only direction given is to publish the same in the media so that the consumers could be made aware about such increase. I do not think such an order makes violation of any principle of law or any such legal provision. In this age of right to information for general public, any member of the public has a right to be informed of such practices adopted by the companies/organisations, providing service to the public.

14. From the entire factual matrix of the case, it is made out that out of the five complainants, four complainants are individual consumers and for them, the only remedy available was to proceed under the Consumer Protection Act, 1986. The fifth complainant, i.e., Association of Consumers have also sought permission of the State Commission to file the complaint as laid down in the Consumer Protection Act, 1986. It is true that remedy was available to the Association of consumers to proceed before TDSAT also, but they have not committed any irregularity or illegality in coming to the Consumer Fora for relief. Even if, it is held that they were not competent to move the complaint before the Consumer Fora, still the consumer fora were fully competent to provide relief qua the other four consumers.

15. In view of above discussion, it is held that there is no illegality, irregularity or jurisdictional error in the order passed by the State Commission. Rather, it shall be unjust to take a view that since one of the complainants was a body of consumers, the complaint was not maintainable before the Consumer Fora. This is more so in view of the fact that the only relief given to the complainants by the State Commission says that whenever the rates for providing cable service are revised by the cable operator, the same shall be duly published in the media for the information of the consumers. It is a very simple, innocuous relief ordered by the State Commission and it is not likely to have any adverse effect on the interest of the appellants. It is not understood why the appellants are agitating against such a simple step ordered to be taken by the Consumer Fora. Further, it is an established legal proposition that the Consumer Protection Act, 1986 is a social - benevolent legislation whose aim is to protect the interest of the consumer. The publishing of the rates in the media shall bring transparency to the whole process and also make the consumer aware about the rates prevalent at a given time.

16. It is evident from above that there is no merit in the present appeal, which is

ordered to be dismissed. The order passed by the State Commission is upheld. There shall be no order as to costs. DATED : 22.04.2014

K.S. CHAUDHARI

1. In F.A. No. 719 of 2007 - Sky View (Home Cable) Vs. Orissa Consumer Association and Ors., arguments were heard on 10.12.2013 by our Bench. Judgment was dictated by Hon''ble Mr. Justice K.S. Chaudhari, Presiding Member and sent for approval to Hon''ble Dr. B.C. Gupta Member. Hon''ble Dr. B.C. Gupta sent dissenting judgment. As Members of the Bench differed in their opinion, the matter may be placed before Hon''ble President, NCDRC under Section 20(i)(iii) of the C.P. Act for appropriate directions. The legal issue arises in this revision petition is as under: Whether complaint filed by the complainant Orissa Consumer Association and Ors and individual consumers was maintainable before the State Commission in the light of judgment of Hon''ble Apex Court published in (2007) 7 SCC 517 - Union of India Vs. Tata Teleservices (Maharashtra) Ltd.

Dated: 30.11.2015

V.K. JAIN,

1. The complainant no.1/respondent no.1 is an association of consumers, whereas complainants no.2 to 5/respondents no.2 to 5 are the subscribers to the cable service being provided by the appellant. The case of the complainants is that the appellant is charging excess price from its subscribers for providing TV cable service in the state of Orissa, in contravention of the tariff prescribed by the Telecom Regulatory Authority of India (TRAI). A complaint on behalf of the TV subscribers was filed before the State Commission seeking direction to the appellant, not to raise bill any excess of the tariff fixed by TRAI vide its order dated 15.01.2004 and also award compensation to the complainants.

2. The complaint was opposed by the appellant primarily on the ground that they were not charging any excess price since the tariff fixed by TRAI was applicable to those areas where Conditional Access System (CAS) was in operation. Since state of Orissa was not covered under CAS system, the tariff fixed by the TRAI was not applicable in that particular State. In its reply TRAI also claimed that the price prescribed by it was applicable only to the notified CAS areas and no part of the state of Orissa was notified as CAS area.

3. The State Commission held that the price ceiling was not applicable to any part of Orissa but the appellant had been enhancing the charges periodically without any justification for such enhancement and directed the appellant to periodical publish the subscription rate with brief reasons for the increase on periodical basis. Being aggrieved, the appellant has approached this Commission by way of this appeal.

4. The appeal was heard by a Bench consisting of Hon''ble Mr. Justice K.S. Chaudhari, Presiding Member and Hon''ble Dr. B.C. Gupta, Member. Hon''ble Mr. Justice K.S. Chaudhari allowed the appeal and set aside the order of the State

Commission whereas Hon''ble Dr. B.C. Gupta upheld the impugned order and dismissed the appeal. In view of the disagreement between the members of the Bench, the matter has been referred to me in terms of the Section 20 (1A) (iii) of the Consumer Protection Act.

5. I have heard the learned counsel for the appellant and respondents no.6 and 7 who represented TRAI and UOI respectively. No one appeared for the complainants/respondents no.1 to 5.

6. Section 14 of the TRAI Act provides for the establishment of Appellate Tribunal to be known as Telecom Disputes Settlement and Appellant Tribunal, to adjudicate any dispute between a services provider and a group of consumers. The aforesaid provision however does not apply in respect of the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission. In terms of Section 14A of the Act, the Central Government or a State Government or a Local authority or any person may make an application to the Appellate Tribunal for adjudication of any dispute referred to in clause (a) of section 14. As per Section 14B (1), the Appellate Tribunal shall consist of a Chairperson and not more than two Members to be appointed, by notification, by the Central Government. As per Section 14C (b), a person shall not be qualified for appointment as a Member of the Appellate Tribunal unless he has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years or a person who is well versed in the field of technology, telecommunication, industry, commerce or administration. Section 15 of the Act provides no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine. Section 18 of the Act provides for an appeal to the Hon''ble Supreme Court against any order, not being an interlocutory order, of the Appellate Tribunal on one or more of the grounds specified in section 100 of CPC. The orders passed by the Tribunal are executable as a decree of civil court and for this purpose, it has all the powers of the civil court. A person who willfully fails to comply with orders of Appellate Tribunal is liable to be punished with prescribed fine.

7. Section 3 of the Consumer Protection Act provides that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. A consumer forum therefore would have jurisdiction over any matter falling within the purview of the Consumer Protection Act unless its jurisdiction is excluded either expressly or by necessary implication. The question which then arises for consideration is as to whether the provision of TRAI Act exclude the jurisdiction of a Consumer Forum in a matter of this nature, either expressly or by necessary implication. The provision of TRAI Act came up before the Hon''ble Supreme Court in Union of India Vs. TATA Teleservices (Maharashtra) Ltd., (2007), SCC 517. Referring to the provision of

section 14 of the said Act, the Hon"ble Supreme Court inter-alia observed that though it also includes adjudication of a dispute between a service provider and a group of consumers but excludes a complaint of an individual consumer i.e. maintainable before a Consumer Forum. Analyzing the provisions of the Act, the Apex Court inter alia observed as under:- "The conspectus of the provisions of the Act clearly indicates that disputes between the licensee or licensor, between two or more service providers which takes in the Government and includes a licensee and between a service provider and a group of consumers are within the purview of the TDSAT. A plain reading of the relevant provisions of the Act in the light of the preamble to the Act and the Objects and Reasons for enacting the Act, indicates that disputes between the concerned parties, which would involve significant technical aspects, are to be determined by a specialised tribunal constituted for that purpose. There is also an ouster of jurisdiction of the civil court to entertain any suit or proceeding in respect of any matter which the TDSAT is empowered by or under the Act to determine. The Act is seen to be a self-contained Code intended to deal with all disputes arising out of telecommunication services provided in this country in the light of the National Telecom Policy, 1994. This is emphasised by the Objects and Reasons also. Normally, when a specialised tribunal is constituted for dealing with disputes coming under it of a particular nature taking in serious technical aspects, the attempt must be to construe the jurisdiction conferred on it in a manner as not to frustrate the object sought to be achieved by the Act. In this context, the ousting of the jurisdiction of the Civil Court contained in Section 15 and Section 27 of the Act has also to be kept in mind. The subject to be dealt with under the Act, has considerable technical overtones which normally a civil court, at least as of now, is ill-equipped to handle and this aspect cannot be ignored while defining the jurisdiction of the TDSAT."

8. The TRAI Act having been held to be a self-contained code, the jurisdiction of a consumer forum in respect of the matters which fall within the jurisdiction of TDSAT under section 14 of the Act is excluded by necessary implication. It has also to be kept in mind that TRAI Act was enacted which after Consumer Protection Act had come into force. The Legislature being conscious of the jurisdiction of a consumer forum, expressly excluded, from the purview of Section 14 of TRAI Act, only the individual complaint of an individual consumers which continue to be maintainable before a consumer forum and chose to exclude the complaints filed by a group of consumers. Had the legislative intent been to exclude also the jurisdiction of a consumer forum in respect of complaints made by a group of consumers it would not have excluded only the individual complaints but would have excluded all the complaints maintainable before a Consumer Forum. The exclusion only of individual consumer complaints is a clear indicator of the legislature intent. Even otherwise Consumer Protection Act is a general act dealing with consumer disputes of all nature whereas TRAI Act deals only with Telecom Disputes and therefore is a special Act. It is settled legal proposition that if there is a conflict between the General Act and the

Special Act, the provision of Special Act would prevail over the provision of General Act. This is more so when the Special Act also happens to a later Act.

9. For the reasons stated hereinabove, I have no hesitation in holding that the complaint filed by respondents no.1 to 5 not being the complaint filed by an individual consumer, the jurisdiction of a Consumer Forum including the State Commission is barred and the complainants are required to approach the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) for the redressal of their grievance. I therefore concur with the view taken by Hon''ble Mr. Justice K.S. Chaudhari and consequently allow the appeal and set aside the impugned order. DATED :- 8.12.2015

K.S. CHAUDHARI

1. In F.A. No. 719 of 2007 - Sky View (Home Cable) Vs. Orissa Consumer Association and Ors., arguments were heard on 10.12.2013 by our Bench. Judgment was dictated by Hon''ble Mr. Justice K.S. Chaudhari, Presiding Member and sent for approval to Hon''ble Dr. B.C. Gupta Member. Hon''ble Dr. B.C. Gupta sent dissenting judgment. As Members of the Bench differed in their opinion, the matter was placed before Hon''ble President, NCDRC under Section 20(i)(iii) of the C.P. Act for appropriate directions. Hon''ble President referred the matter to Hon''ble Mr. Justice V.K. Jain, Member. Hon''ble Mr. Justice V.K. Jain, Member (3rd Bench) vide order dated 30.11.2015 opined that the complaint filed by respondents no. 1 to 5 not being the complaint filed by an individual consumer, the jurisdiction of a Consumer Forum including the State Commission is barred and the complainants are required to approach the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) for the redressal of their grievance and agreed with the judgment delivered by Hon''ble Mr. Justice K.S. Chaudhari, Member.

2. In the light of majority judgment, appeal filed by the appellant is allowed and impugned order dated 29.10.2007 passed by the Orissa State Consumer Disputes Redressal Commission, Cuttack in C.D. Case No. 42 of 2004 - Orissa Consumers'' Association Vs. Sky View (Home Cable) Ortel Communication Ltd. is set aside and complaint stands dismissed.