
(1991) 10 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

Telecom District Engineer

APPELLANT

Vs

BHAGWATI PRASAD SINGHAL

RESPONDENT

Date of Decision : 29-10-1991

Acts Referred:

Citation : 1991 2 CPR 658 : 1992 2 CPJ 539

Hon'ble Judges : Y.B.Suryavanshi , M.L.Tiwari J.

Final Decision : Appeal partly allowed

Judgement

1. THE Telecom Department is aggrieved against the impugned orders whereby the learned Forum for delayed refund of Rs. 986/- has awarded interest @ Rs. 12 p.c .p.a. w.e.f. 19.11.1988 till the date of payment i.e. 1.11.90, besides Rs. 150/- and Rs. 50/- as advocate-fees and sundry expenses respectively.

2. IT is not in dispute that the complainant Shri B.P. Singhai, Advocate is subscriber of telephone connection No. 20862. He protested against excess Billing for local calls for the period 16.8.88 to 15.10.88. The telephone department granted rebate and accordingly Rs. 986/- was either to be refunded or adjusted against subsequeunt Bill. Admittedly, that was not done because of some lapses by the concerned clerk. The complainant sent reminders and ultimately on 1.10.90 filed a complaint under Consumer Protection Act, for short called the Act. The complainant claimed interest @ Rs. 2 p.c. Per Month. After the complaint was filed (on 1.10.90), the Department vide letter 31.10.90 paid Rs. 986/- by cheque dated 30.10.90. Therefore, the claims survives only in respect of interest and other expenses. The first point raised is about limitation. The orders were passed on 12.12.90. This appeal was received by post on 21.01.91, obviously beyond 30 days. The learned Counsel Shri Jain urged that Rule 4 Sub-rule 10 of M.P. Consumer Protection Rules, 1987 provides that the orders passed by Forum are to be communicated to the parties free of cost, and record shows that these were despatched vide D.No. 384 on 20.12.90. The appellant received the orders on 24.12.90. Section 15 of the Act provides that the person aggrieved may prefer an appeal to the State Commission within a

period of thirty days from the date of order in such form and manner as may be prescribed, (emphasis added) That being the legal position, time will run from the date of order i.e. 12.12.90, and not from the date of communication (24.12.90). However, in the aforesaid circumstances, there is "sufficient cause" to condone the delay. Therefore, the contention that the appeal be rejected on the ground of being barred by time cannot be accepted.

Secondly, it was urged, that the Subscriber of a telephone is not a Consumer and therefore the impugned orders are without jurisdiction. Suffice to state that whether a subscriber is a "consumer" and that the Telephone facility is a "Service" within the definitions of Section 2(1)(e) and 2(1)(d), respectively, have been interpreted by the Apex Forum [Ref-I (1991) CPJ 203 (NC) Union of India v. Nilesh Agarwal and therefore no further discussion is called for.

3. THIRDLY, it is urged that in view of Section 7-B of Telegraph Act the dispute may be referred to the arbitrator. This has been the general practice followed in the High Court of M.P. in writ petitions. But then, it is because disputed facts cannot be decided ordinarily in writ petitions. But then existence of a remedy by way of arbitration does not preclude on aggrieved consumer to seek remedy under the COPRA. (Refer:- Commercial Officer, Office of the Telecom Distt. Manager Patna v. Bihar State Warehousing Corporation=I (1991) CPJ 42 (NC). The forum has to see whether in given circumstances it could grant relief or the matter could be referred for arbitration. Refer-C.R. Ramchandran v. Distt. Telecom, I (1991) CPJ 379. Fourthly, it is urged that interest should not have been allowed. The department admits that due to clerical error the sum of Rs. 986/- was not adjusted in future Bills. Regrets have also been expressed in written reply filed before Forum. But this complaint is not frivolous. The matter related to excess billing for the period 16.08.88 to 15.10.88 and refund/adjustment of Rs. 986/- was ordered when the consumer had deposited Rs. 1638/- on 19.11.88. The consumer ultimately gave a Notice on 6.3.90 (24.4.90). The learned Form has reasoned that the interest be paid from 19.11.88 when excess amount was recovered. Compensation is nothing but a process to make good the loss or injury suffered due to negligence. In cases relating to deposits against booking of scooters with Lohiya Machines, interest @ Rs. 18/- p.c. p.a. has been awarded. But Telecom cannot be placed at par with such commercial business concerns. Moreover, the complainant, though a lawyer has claimed a usurious rate of interest Rs. 24 p.c. p.a. The rates of interest have gone up recently. Even for TDR for relevant period the loss of interest could be assessed @ 9 or 12 p.c. p.a. only.

4. APROPOS lawyers' fees it was urged that the complainant himself is an advocate. Even otherwise looking to the simplest nature of the claims we fail to understand why engaging the services of a brother lawyer was considered essential. Moreover, as per professional eligibilities a lawyer/doc for is not so meticulous about his professional fees for services rendered to a brother lawyer/doctor. "Kewat" says to Ramchandraj (in Ramayana) "NAUSE NA NAU LET,

DHOBİ SE NA DHOBİ LATE TAİSE HOON NATH NA LAHOON UTRAI"

But then, even a receipt for Rs. 200/- is on record. Therefore, we do not want to disallow Rs. 100/- as allowed by the learned Forum. In the result, this appeal is partly allowed. The orders passed by the learned Forum dated 12.12.90 are affirmed except to the modification that the rate of interest shall be Rs. 9/- p.c. p.a., in place of Rs. 12/- p.c. p.a. The appellant shall bear its own costs and pay Rs. 200/- to be o.p./respt. There is discrepancy in the two orders (handwritten and typewritten) though both bear the signatures of the members and President. Even in the copy served on parties, Rs. 50/- have been awarded as sundry expenses though in typewritten copy, the words "Rupees fifty" have been scored out, we take it for granted that Rs. 50/- were allowed as sundry expenses which we hereby maintain. Both the parties be communicated of the results by sending copies, free of costs, under Regd. post A.D. Appeal partly allowed.