
(1994) 12 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

Telecom District Engineer

APPELLANT

Vs

K.V. And CO.

RESPONDENT

Date of Decision : 28-12-1994

Acts Referred:

Citation : 1995 2 CPR 455 : 1995 3 CPJ 471

Hon'ble Judges : R.C.Mankad , R.K.Shah J.

Final Decision : Appeal dismissed with costs

Judgement

1. THE respondent, a partnership-firm is the original Complainant. It had telephone number 252 at the place of its business. It had also other telephones and their numbers were 33183, 34919. Partners of the respondent-firm had also telephones at their residences. Telephone number 252 referred to above was given new telephone number 30148. At the request of the respondent, the appellant provided facility of PBX box on the said telephone number 30148. On November 28, 1987 the respondent by letter requested to take away or remove the PBX box as according to it, it was not functioning properly and to return the deposit paid for such facility. According to the respondent, PBX box was removed and direct telephone connection was given to old number 252 and new number 30148. However, on March 7, 1992, the appellant demanded licence fee of Rs. 11,200/- for PBX box and informed the respondents that in case the said amount was not paid all its telephones would be disconnected. In view of the threat for disconnection of the telephones by the appellant, respondent approached the District Consumer Disputes Redressal Forum, Bharuch (District Forum for short) praying inter alia that the above action of the appellant be declared illegal. THE respondent appeared before the District Forum in response to the summons and denied the allegations made by the respondent Besides contending that District Forum had no jurisdiction to entertain the complaint, it was contended by the appellant that the respondent had not made any request for removal of PBX box or to refund the deposit. THE allegation that the PBX box was removed was denied. THE appellant contended that the respondent was liable to pay rent/licence fee of Rs. 11,200/- for the PBX box as demanded by him. Respondent

had, however, not paid the said bill and approached the District Forum. THE appellant further contended that on enquiry it was found that PBX box was not in the premises of the respondent and that there was no satisfactory explanation given by the respondent in that regard. According to the appellant, he had right and authority to disconnect the respondent's telephone for failure to pay the aforesaid bill of Rs. 11,200/-.

2. THE District Forum, on appreciation of evidence on record, came to the conclusion that the facility of PBX box was discontinued as requested by the respondent in his letter dated November 28, 1987 and, therefore, the respondent was not liable to pay bill of Rs. 11,200/- for rent of licence fee of the PBX box. THE District Forum held that by demanding Rs. 11,200/- inspite of the fact that the PBX box was removed, the appellant has caused mental agony to the respondent. In this view of the matter, the District Forum directed the appellant not to take action on the basis of the aforesaid bill for Rs. 11,200/- and to pay to the respondent compensation of Rs. 2,500/- for mental agony. Being aggrieved by the order passed by the District Forum the appellant has preferred this appeal. It is not disputed that the respondent had by its letter dated November 28, 1987 requested the appellant to remove PBX facility and give direct connection from his telephone. It is also not disputed that there is no PBX box in the premises of the respondent and that there is direct connection given to telephone number 30148. It is, however, submitted on behalf of the appellant that he does not know as to how PBX box came to be removed. According to him, the Telephone Department had not removed the PBX box or given direct connection to telephone number 30148. Now, it is an admitted position that from November 28, 1987 to the date the disputed bill of Rs. 11,200/- was given on March, 7, 1992, no rent for PBX facility was recovered from the respondents. Prior to November 28, 1987 rent for PBX box was regularly recovered from the date this facility was given. There is no explanation as to why rent was not recovered for PBX during the period mentioned above. Telephone Department recovers telephone rent and PBX rent in advance and if PBX facility was continued as contended by the appellant, the telephone Department would not fail to recover rent for such facility in advance. The appellant has produced copy of the subscriber's record card before us and in this card rent and other miscellaneous charges recovered from the respondent are recorded. This card shows that after recovering PBX rent of Rs. 2,800/- for the period beginning from September 1, 1987 no rent for PBX was recovered till the disputed bill was issued. The telephone department would not sit silent for more than 4 years so far as recovery of PBX rent is concerned. We are, therefore, inclined to believe the statement made by the respondent that PBX facility was discontinued and PBX box was removed by the telephone department after it made request to discontinue such facility by its letter dated November 28, 1987. In any case, it was the duty of the appellant/telephone Department to discontinue the PBX facilities once such request was made by the respondent. PBX facility could not have been continued or forced upon the respondent inspite of his request to

discontinue the same. Therefore, even if such facility was not discontinued as contended by the appellant, they are not entitled to recover rent for such facility once the respondent requested to discontinue such facility. However, as observed above, we are inclined to believe the statement of the respondent that PBX facility was discontinued and PBX box was removed at his request, as stated above. Even the appellant had to admit that PBX box was not found in the premises of the respondent when enquiry or investigation was made. Absence of PBX box supports the statement of the respondent. Under the circumstances, the appellant had no right or authority to issue disputed bill for Rs. 11,200/- for rent of PBX box and to threaten to discontinue the respondent's telephones if the said bill was not paid. There is, therefore, deficiency of service on the part of the appellant in demanding the said amount and the threaten to discontinue the respondent's telephone on failure to pay the said bill. Therefore, considering all the facts and circumstances of the case, we are not inclined to interfere with the order passed by the District Forum.

The result, therefore, is that this appeal fails and is dismissed. The appellant to pay Rs. 500/- by way of cost to the respondent. Appeal dismissed with costs.