

(1995) 11 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

TELECOM DISTRICT MANAGER, PANAJI

APPELLANT

Vs

CONCHA BEACH RESORT CALANGUTE BEACH, GOA

RESPONDENT

Date of Decision : 06-11-1995

Acts Referred:

Citation : 1995 0 NCDRC 53

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA ,
R.THAMARAJAKSHI , S.P.BAGLA J.

Advocate : E.P.BADRINARAYAN

Judgement

1. MR . Justice S.S. Chadha, Member This Revision Petition has arisen out of, the order dated 10.8.1994 of the Goa State Commission at Panaji upholding the order dated 21.4.1993 passed by the District Forum, Panaji directing the petitioner herein to bill the complainant with regard to disputed telephone bills on the basis of averages billed for the past one year immediately preceding the disputed bills and to refund the excess if any, paid to the Complainant.

2. THE matter came up for hearing before this Commission on 1st of May, 1995. It was seen from the proceedings of the State Commission and the District Forum that the representative of the Telecom Department who was in charge of the conduct of the case before the District Forum, Panaji, filed an application before the District Forum stating that the Department was "boycotting" the proceedings before the District Forum on the ground that it had no confidence that it would get justice from the District Forum. This conduct on the part of the Department was most highly objectionable and has to be deprecated in the strongest terms. Having regard to what transpired before the District Forum, the Department could not be permitted to agitate the case on the merits before this Commission except after its tendering an unconditional apology for the gross misconduct committed by its representative before the District Forum and except after giving an assurance to this Commission that appropriate and effective action was being taken by the Department against the officer or employee responsible for such misconduct before the District Forum, so that such instances

will not recur in future. Hence, this case was adjourned to 16th May, 1995 to enable the Counsel appearing for the Department to furnish the written apology from the Department and also a written assurance that appropriate action would be taken against the officer or employee responsible for such misbehaviour. Before the next date of hearing, an affidavit dated 5th of May, 1995 of Shri Faruq Ameen, Deputy General Manager, Telecom was filed wherein it is inter alia deposed: "3. That I tender my unconditional apology to this Hon'ble Commission for the conduct of the Representative of the Department before the District Forum, Panaji in the above complaint. 4. I say that appropriate action has been taken against the employees who have committed the misconduct before the District Forum, Panaji".

3. ON the date of hearing an affidavit dated 13.5.1995 of Shri V. Valsaraju who had submitted an application in the complaint case before the District Forum has also been filed in which that deponent has tendered unconditional apology for the above mistake. It is also on record that action has been taken against the officials who have been responsible for the misconduct. On the above facts and circumstances this Commission accepts the unconditional apology tendered by the said officers and record their undertaking that the Department will not repeat the same mistake in future and will participate in the proceedings before the District Forums without fail.

4. COMING to the merits of the case, the Complainant had alleged in his complaint of excessive billing of the telephone bills for the period ending 21.2.1992 for Rs. 1,16,080/- and for the period ending 21.4.1992 for Rs. 43,760/-and its protests to the Department without any positive response. The Opposite Party did not file any written version in time and though it later filed an affidavit, it boycotted the proceedings. The District Forum on the material on record observed that the Complainant has been seriously disputing the bills in question and had written number of letters and all that he got a belated reply by a cyclostyled letter which says that no mistake or fault was seen or found. In the absence of any records or affidavit that any thorough examination as claimed by them was made, the District Forum accepted the complaint and granted relief noticed above. The appeal of the petitioner herein was dismissed by the State Commission in the order dated 10.8.1994. The District Forum has directed the Opposite Party to bill the Complainant with regard to disputed bills on the basis of average billed for the past one year immediately preceding the disputed bills and to refund the excess, if any, paid by the Complainant and this direction has been upheld by the State Commission. This is not legally permissible. This Commission has repeatedly held that the Redressal Forums are not legally justified to do so unless there is adequate evidence which may be either direct or circumstantial to show that the metering equipment was defective or there has been tampering with or misuse of telephone by the employees of the Department.

5. IN Telecom District Engineer, Dharamsala v. Pran Nath Mahajan, I (1993) CPJ 99 this Commission held : "It is a matter of public knowledge that STD facility

has often been misutilised on a large scale by third parties in collusion with P and T staff. But unless there is at least circumstantial evidence to probablise such collusion having taken place in a particular case, we cannot doubt the correctness of bills merely on the basis of suspicion. We have repeatedly held that the Consumer Redressal Forums will not be legally justified in taking over the function of estimating by application of the rule of thumb the precise number of calls made unless there is adequate evidence which may be either direct or circumstantial to show that the metering equipment was defective or there has been any misuse of the particular telephone by some unauthorised person in collusion with the employees of the Department, particularly in cases where a subscriber has the STD facility – see District Manager Telephone v. Niti Saran, I (1991) CPJ 48 Revision Petition No. 67 of 1990. Again in Telecom District Manager v. M.S. Mukherjee, Revision Petition No. III of 1990 we held that it was not legally permissible to take the average number of calls in the previous bills for a given period as the basis of ascertaining what should be fixed as the reasonable number of chargeable calls in the billing period. In the present case there is neither direct nor even circumstantial evidence to show that there was probability of such misuse of the telephone".

6. A detailed affidavit was filed before the State Commission alongwith and in support of the appeal. It was pointed out that STD facility was not available in Calangute till 10.11.1991 and it was introduced for the first time on 11.11.1991. The Complainant being M/s. Concha Beach Resort (a hotel) was granted STD/ISD facility at its request. The Complainant admitted in its letter dated 10.3.1992 enclosed with the complaint that: "The facility for STD/ISD started in the month of mid November, 1991. Our instrument is installed in Concha Beach Resort at Calangute Beach. In order to offer in house facility to our guests we did allow guests to call ISD in fact we also maintained record to collect the charges."

I am quite shocked to receive a bill now which is highly inflated and way above the actual calls made. Our total units comes to 40% less as recorded by us. Admittedly, the Complainant is running a hotel business in the name and style of Concha Beach Resort, situated at Internationally renowned beach called Calangute Beach catering to international tourists with facility to call STD/ ISD. There is every possibility of large variation in the calling pattern depending upon the use of STD/ISD by international tourists. The Department had denied any misuse of the telephone of the subscriber by the employees of the Department it took the stand that the Complainant and its guests have been making extensive use of the telephone. Both the District Forum as well as the State Commission had no jurisdiction to compare the impugned bills with the previous bill to come to the conclusion that the bills in question were undoubtedly excessive. Such a comparison is legally not permissible besides being absurd as STD/ISD facility was granted only on 11.11.1991.

7. IN the result the Revision Petition is allowed, the impugned orders of the State Commission dated 10.8.1994 as well as of the District Forum, Panaji dated

21.4.1993 are hereby set aside and the complaint is dismissed leaving the parties to bear their own costs throughout.