

(1997) 09 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

TELECOMMUNICATION DISTRICT MANAGER

APPELLANT

Vs

SASHIBALA PRUSTY

RESPONDENT

Date of Decision : 02-09-1997

Acts Referred:

Citation : 1997 1 CPR 76 : 1997 3 CPJ 135

Hon'ble Judges : P.C.Misra , Biswanath Rath , Mrinalini Padhi J.

Final Decision : Appeal disposed of

Judgement

1. THE opposite parties in C.D. Case No. 156 of 1992 of Balasore District Forum have filed this appeal against the order of the District Forum directing reconnection of the telephone of the respondent without charging reconnection fees within two months of the date of receipt of the order, failing which the complainant should be entitled to get compensation of Rs. 50/ per day till the date of reconnection. THE brief facts leading to the appeal are the respondent, Sashibala Prusty, widow of late Parsuram Prusty of Balasore had filed a complaint against the present appellants for arbitrary disconnection of telephone No. 2764 which stood in the name of her husband. According to her she was using the telephone till 26.4.1992 and was paying usual rent to opposite parties regularly. On 27.4.1992 she noticed some mechanical defects on the telephone and accordingly informed the opposite parties for rectification. On 12.5.1992 she came to know that her telephone had been disconnected from 27.4.1992 for which she had no prior notice and further that the said telephone had been allotted infavour of somebody else.

2. ON being noticed the opposite parties filed their counter on 29.8.1992. In their counter the opposite parties took the plea that telephone No. 2764 which stood in the name of Parsuram Prusty, late husband of the complainant, was disconnected on 9.9.1991 on account of non payment of telephone bill dated 1.8.1991 for Rs. 349/ and as such no question could arise about the mechanical defects being noticed on the telephone on 27.4.1992. The opposite parties further averred that the telephone after its disconnection was allowed to stand in

the name of the subscriber Parsuram Prusty for six months and thereafter it was permanently closed vide No. A. 3666 dated 16.3.1992. The opposite parties alleged that after the death of Parsuram Prusty the complainant was using the telephone unauthorisedly. Apparently their contention was that she had not applied to the opposite parties for transfer of the telephone from her late husband's name to her name. The complainant in support of her claim that she was not a defaulter and she was using the telephone till April, 1992 filed the original bill of the Telecommunication Department for telephone No. 2674 dated 1.4.1992. The bill is on record. The bill has been paid by the complainant on 5.5.1992. The complainant has also filed an affidavit on 13.11.1992 saying that she had applied for transfer of ownership of telephone from Parsuram Prusty to her name and that she again applied for the transfer on 13.11.1992. The Forum after hearing the parties directed the opposite parties to restore the telephone to the complainant without charging reconnection fees within two months of the date of receipt of the order, failing which the complainant would be entitled to get daily compensation of Rs. 50/ till telephone was reconnected. The Forum also awarded Rs. 100/ towards cost. Hence this appeal.

The appellants have stated in their appeal memorandum that the use of the telephone by the complainant after her husband's death was unauthorised. She had not paid the bill-dated 1.8.1991 for Rs. 349/ and as such the telephone was disconnected on 9.9.1991 for non-payment of dues. Further the complainant did not pay the subsequent bills dated 1.10.1991, 1.12.1991, and 1.2.1992, but she had only deposited the rent bill of dated 1.4.1992 and has thus suppressed the truth before the Forum. The appellants have challenged the order of the District Forum on the ground that the Forum believed the Counsel of the complainant that the complainant had not received any bill dated 1.8.1991.

3. WE have carefully examined all the documents on record. The opposite parties in their counter filed before the Forum did not say that the complainant had not paid the bills subsequent to dated 1.8.1991 or in other words bills dated 1.10.1991, 1.12.1991 and 1.2.1992. The averment of the appellants that the complainant had not paid bills for dated 1.10.1991, 1.12.1991 and 1.2.1992 is clearly an after thought. The opposite parties had stated in their counter before the Forum that the bill dated 1.8.1991 which had not been cleared by the complainant was for Rs. 349/ . Now in the appeal memorandum the appellants have stated that the telephone bill dated 1.8.1991 was for Rs. 349/. Assuming for the sake of argument that there was arrears against the complainant on account of bills dated 1.8.1991, 1.10.1991, 1.12.1991 and 1.2.1992, the same fact could have been noted under the column arrears appearing in the bill dated 1.4.1992 which the complainant had paid on 5.5.1992. Assuming that the complainant was in arrears and has not paid the bill dated 1.8.1991 for which the telephone was disconnected on 9.9.1991, and the connection was permanently closed on 16.3.1992 as stated by the opposite parties in paragraphs 7 and 8 of their counter before the Forum, there was no occasion to issue a bill in the telephone No. 2764 on 1.4.1992 and collecting the bill amount from Parsuram

Prusty. On the reverse of the said bill which has been filed by the complainant before the Forum it has been stated by the Telecommunication Department that the bill includes rent for the period from 1.5.1992 to 30.6.1992. Not only that, but also the bill records 10 calls during two months period. It is noted that the previous meter reading was 09080 and the closing meter reading till preparation of the bill was 09090. This means the complainant was using the telephone as stated by her till 27.4.1992. The theory of the opposite parties, therefore, that her telephone was disconnected in September 1991 is hard to belief. Consequently it is not believable that her telephone was disconnected for non-payment of telephone bills. The Forum has observed that the opposite parties had not filed any documents to show that the bill dated 1.8.1991 or disconnection notice had been received by the complainant. The opposite parties filed their counter on 29.8.1992. In that counter they had stated that the complainant was unauthorisedly using her husband's telephone without applying for transfer of the same in her name. But when the complainant filed an affidavit on 13.11.1992 stating that she had applied for transfer of ownership of telephone from Parsuram Prusty name to her name and that once again she submitted a second application on the date of affidavit, the opposite parties did not counter the facts stated by complainant in her affidavit. From the order sheet of the Forum it is seen that on 13.11.1992 when the complainant filed her affidavit, both parties were present. On that date the Forum also heard arguments of both parties. Since the opposite parties have not challenged the version of the complainant in her affidavit that she had applied for transfer of the telephone after the death of her husband, it must be held that the opposite parties accepted the claim of the complainant regarding her submission of application for transfer and as such it cannot be said that she was using the telephone unauthorisedly. On the other hand, the opposite parties were guilty of not sanctioning the transfer of telephone in the name of the complainant.

4. WE thus notice that the opposite parties failed to establish their claim that there were arrears against the complainant for which the telephone was disconnected in September 1991; that the telephone was permanently closed in March 1992; and that three more bills subsequent to 1.8.1991 were outstanding against the complainant. Consequently we hold that the disconnection of telephone of the complainant was arbitrary and illegal. There is, therefore, no reason why we should interfere with the substantive order of the Forum directing reconnection without charging any fees. Assuming that the complainant was really in arrears before the telephone was disconnected or continues to be in arrears even now, opposite parties are free to satisfy her with production of bills and records. They should not have disconnected the telephone without giving her opportunity to place her case. Now that the particular telephone number has been assigned to somebody else we would modify the order of the District Forum saying that the opposite parties must give a telephone connection to the complainant within a month from the receipt of this order pending recovery of arrear bills if any and for such telephone connection no connection fees shall be

chargeable. WE further modify the order of the District Forum so far as it relates to imposition of daily fine of Rs. 50/ and instead we award a compensation of Rs. 1,000/ for the deficiency, i.e. for arbitrary disconnection of the telephone of the complainant. There shall be no change in the order of the District Forum as to costs. Appeal disposed of.