
(1996) 09 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

TELEPHONE DISTRICT ENGINEER

APPELLANT

Vs

SHRI KISHAN GOLKIYA

RESPONDENT

Date of Decision : 16-09-1996

Acts Referred:

Citation : 1996 1 CLT 310 : 1996 3 CPJ 89 : 1996 3 CPR 164 : 1997 1 CLT 375 : 1997 1 CPC 127

Hon'ble Judges : N.C.Sharma , Firoza Bano J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal has been filed by Telecom District Engineer, Barmer and Sub Divisional Officer, Telecom. Department, Jaisalmer against the order of the District Forum, Jaisalmer dated 7.10.92 whereby the District Forum has directed the opposite parties-appellants to refund the amount of Rs. 1,200/- realised from the complainant alongwith interest @ 12% per annum giving liberty to the appellants to adjust the said amount against future telephone bills.

2. COMPLAINANT Shri Kishan Golkiya had made an application on 14.4.87 (Annexure A) for a telephone connection in his house located in Pansari Bazar, Jaisalmer. The opposite parties released a telephone connection to the complainant on 24.3.89. The case of the complainant was that when the staff of the Telephone Department installed the telephone connection, they, of their own accord, left 10 meter long drop wire and did not make permanent fitting. When the complainant asked them to make permanent fitting, they went away saying that they were in hurry and will do the same later on. On 25.9.89/6.12.89 the Sub Divisional Officer, Telcom Department, Jaisalmer sent a letter to the complainant that the latter had shifted his telephone No. 2651 from the room in the first floor of his house to the shop in the ground floor unauthorisedly. The complainant sent his clarification on 11.12.89 denying the alleged shifting and stating that the staff of the Telephone Department had themselves left 10 meter long drop wire and did not make permanent fitting of the telephone connection at the place pointed out by the complainant. Despite that the complainant was

required to deposit an amount of Rs. 1,200/- as shifting charges under threat of disconnection. The complainant was thus compelled wrongly to deposit the amount of Rs. 1,200/- of which he claimed the refund by filing complaint before the District Forum, Jaisalmer on 4.10.91. The version of the opposite party was that the complainant had applied for new telephone connection for his residence vide application (Annexure A) and affidavit Annexure B. Telephone No. 2651 was installed on 24.3.89 at the residence of the complainant in the room situated on the first floor as per his application. On 22.5.89 line staff Shri Dhanraj Sharma, L.M.P. and Shri Achal Singh, L.M.P. noticed that the telephone has been shifted by the complainant of his own accord out of the room to be used in the shop in ground floor. The J.T.O. Phones Shri S.S. Choudhary found on inspection that the telephone had been unauthorisedly shifted by the complainant. Again the complainant shifted the telephone to its original place in the room in first floor as was found by Shri B.L. Gupta, J.T.O. Jaisalmer. As regards the fittings, it was pleaded that permanent fitting would be done on availability of men and material. It was not binding that after permanent fitting only, new telephone is to be installed. The Telecom Department simply charged Rs. 1,200/- to regularise the unauthorised shifting of the telephone from the upper room of the residence to the ground floor in the shop and no harassment was caused to the complainant.

The District Forum found that the opposite parties had not done permanent fitting and left 10 meter long drop wire of their own accord. No socket was provided while installing the telephone. In such a situation, even if it was assumed that the complainant had used the telephone by taking it in the shop, it did not amount to shifting of the telephone. It was, therefore, held that the opposite parties were not entitled to recover Rs. 1,200/- from the complainant. The complaint was accordingly allowed as aforesaid. Aggrieved by this order, the opposite parties have filed this appeal.

3. IT may be stated that this appeal was reported to be barred by limitation by 71 days. On 23.9.93 the appellant filed an application for condonation of delay. In this application, it was mentioned that Counsel for the appellants Mr. Rani Dan Sewak had applied for obtaining certified copy of the order dated 7.10.92 on 12.10.92 and the certified copy was supplied to the appellants by District Forum by its letter dated 18.12.92 which was actually received on 21.12.92. An affidavit of Mr. Rani Dan Sewak was also filed. In later part of this application for condonation of delay, in para 3, it was mentioned that in view of the fact that the certified copy was applied for on 12.12.92, the appeal was within limitation. IT appears to us that this date 12.12.92 was incorrectly mentioned by the appellants in the application in later part of para 3, because in earlier part of the same para the date of applying for certified copy is mentioned as 12.10.92 and not 12.12.92. The affidavit of Rani Dan Sewak is to the effect that application for certified copy was made on 12.10.92. As a matter of fact, what is stated in para 3 of the application for condonation of delay as well as in the affidavit of Mr. Rani Dan Sewak, Advocate is false to the knowledge of the appellant and their said

Advocate. As a matter of fact, alongwith appeal, certified copy of the order of the District Forum dated 7.10.92 was not filed but only a true copy had been filed which the District Forum, Jaisalmer had sent to the appellants under its letter dated 18.12.92 wherein the District Forum had written that the opposite parties should make payment of the amount awarded to the complainant by its order dated 7.10.92 within 15 days of the receipt of the order and report compliance to the District Forum. Alongwith this letter the District Forum, Jaisalmer had enclosed the true copy of its order dated 7.10.92 which the appellants filed alongwith the appeal. As has already been stated, it is not a certified copy which has been filed, but it is a true copy which was sent to the Sub Divisional Officer, Telecom Department, Jaisalmer by the District Forum on 18.12.92 under a covering letter and the same was received by the Sub Divisional Officer on 21.12.92. From the record of the District Forum, it appears that Mr. Rani Dan Sewak, Advocate had, as a matter of fact, applied for a certified copy of the order of the District Forum dated 7.10.92 on 25.8.93 much after the filing of present appeal. IT cannot be expected from Advocates that they should file a false affidavit as has been done in the instant case by Mr. Rani Dan Sewak, Advocate wherein he had sworn that he had applied for copy of the order of the District Forum on 12.10.92. No such application was made by Mr. Rani Dan Sewak, Advocate on 12.10.92 before the District Forum. The proceedings of the District Forum dated 7.10.92 goes to show that the Counsels of both the parties were present when the order was pronounced. Thus as a matter of fact the appeal is barred by limitation and the grounds for condonation given in the application filed on 23.9.93 are false to the knowledge of the appellants and their Advocate before the District Forum Mr. Rani Dan Sewak and should be dismissed on this ground.

4. HOWEVER, we have also examined the merits of the case. The application (Annexure A) filed by the complainant on 14.4.87 goes to show that in his application the complainant had mentioned that he needed telephone for his house. It was also mentioned that the house was for business or commercial purposes. When a telephone connection is given, the telephone and other equipment are fitted at a particular place. Rule 425 of the Indian Telegraph Rules provides that a subscriber shall take good care of the telephone apparatus and of all fixtures and accessories connected therewith and shall not damage, alter or remove or cause to be damaged, altered or removed any such apparatus, fixture or accessories. It is thus clear that the staff of the Telecom Department had to instal and fix the telephone apparatus and other fixtures at a particular place where the telephone connection is granted. Admittedly in the instant case the staff of the Telecom Department did not fix the telephone apparatus and other fittings at a particular place. Admittedly, even according to the version of the opposite parties filed before the District Forum, permanent fitting was not made of the telephone. It has been stated in the version that permanent fitting is done on availability of men and material. When a telephone connection is released and telephone is installed, there cannot be a loose fitting and 10 meter long loose

drop wire cannot be left. Thus there was negligence on the part of the opposite parties themselves that they did not make permanent fittings of wires, socket and did not install the telephone apparatus at a particular place. On the other hand, they themselves left 10 meter long loose drop wire. In such a situation, no question of shifting can arise if the consumer avails of that loose wire of 10 meter length which the opposite parties had themselves left. The telegraph rules provide for shifting charges by Rule 434. Shifting charges are charged even when a telephone is shifted from one position to another in the same room. This implies that initial installation of a telephone should be at a fixed place, by the Department itself and not in the manner as had been done by the opposite parties themselves in the instant case where they had left 10 meter long loose drop wire and did not make permanent fitting. The complainant's case appears to be correct that permanent fitting was not made because the members of the staff of Telecom Department who had gone to install the telephone solicited illegal gratification from the complainant for making permanent fittings and installation of the telephone apparatus at a particular place. Since the complainant did not pay illegal gratification, the staff of the Telecom Department left 10 meter long loose drop wire and did not make permanent fitting and installation of the telephone at a particular place. In order to pressurise and to take a revenge from the complainant for non-payment of illegal gratification, its two employees Dhanraj Sharma and Achal Singh made a report that they noticed that the telephone has been shifted by the complainant to the shop premises. As already stated, no question of shifting can arise in such a situation where the opposite parties or their employees were themselves responsible for not installing the telephone at a particular place by making necessary permanent fittings. The Department should have taken action against its own employees instead of harassing the complainant and taking revenge from him because the complainant did not accede the demand of the employees of the Telecom Department for illegal gratification. There is no other reasonable explanation from the side of the opposite parties as to why such type of loose installation of telephone was made by them and not a permanent fitting. It is sad that men and material are not available for making permanent fittings, but men are available to ask for illegal gratification for making permanent fitting. This appeal has no force in it whatsoever and hereby dismissed. Appeal dismissed.