

(1993) 09 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

UNION OF INDIA

APPELLANT

Vs

KLM ABOO BUCKER

RESPONDENT

Date of Decision : 27-09-1993

Acts Referred:

Citation : 1993 0 NCDRC 81 : 1993 3 CPJ 323 : 1993 3 CPR 333 : 1994 1 CLT 57

Hon'ble Judges : V.BALAKRISHNA ERADI , A.S.VIJAYAKAR , Y.KRISHAN ,
B.S.YADAV J.

Advocate : SHASHI KIRAN

Judgement

1. THIS is a Revision Petition against the order dated 29th December, 1992 passed by the State Consumer Disputes Redressal Commission, Tamil Nadu at Madras in A.P. No. 479 of 1992 by which the order passed by the District Forum, Tirunelveli dated 31st July, 1993 was confirmed.

2. THE brief facts are that the Respondent-complainant's wife is subscriber of phone No. 627 of Kayalpatnam Exchange. She had applied for the telephone connection in 1988 when the equipped capacity of the Exchange was 400 lines. The said telephone was installed on 29th October, 1990 and at that time Rs. 300/- were recovered from her as installation charges. Subsequently supplementary demand dated 7th October, 1991 for a sum of Rs, 500/- was made from her in respect of installation charges. After making payment of the said amount on 24th October, 1991, the complainant, who is husband of the hirer of the telephone services filed the complaint before the District Forum contending that Rs. 500/- have been charged from his wife unauthorisedly. The Opp. Party i.e. Telecommunication Department contested the complaint and averred that the Exchange in question was of 500 lines and the installation charges in respect of telephone in such Exchange is Rs. 800/- and by mistake Rs. 300/-only were collected from the Complainant's wife the first instance. When the mistake was detected on internal audit, the balance was recovered from the subscriber. It is not disputed that if the equipped capacity of an Exchange is 500 lines the installation charges are Rs. 800/- and Rs. 200/- are bi-monthly rental charges of

the telephone. If the equipped capacity of the Exchange is less than the above lines then Rs.300/- are charged as installation charges and Rs. 150/- as bi-monthly rental for the telephone. Both the District Forum and the State Commission have held that as the bi-monthly rental of Rs. 150/- was being charged from the subscriber, therefore the Exchange must be of the equipped capacity of less than 500 lines. Both the District Forum and the State Commission held that Rs. 500/- have been charged in excess from the subscriber. The District Forum ordered the refund of Rs. 500/- and also awarded Rs. 500/- as damages for mental agony. Cost of proceedings was also awarded. As noticed earlier, the State Commission in appeal filed by the Telecommunication Department confirmed the order of the District Forum.

3. FEELING aggrieved of that order the Union of India through the Telecom District Engineer, has come before us by way of this Revision Petition.

4. WE are of the opinion that both the District Forum and the State Commission fell in error while holding that the capacity of the Exchange in question was below 500 lines mainly on the ground that the bi-monthly rental was being charged at a rate of Rs. 150/-. If the by month rental is being charged at a lower rate by mistake it cannot be held that the equipped capacity of the Exchange was below 500 lines. It was for the petitioner to prove that what was the equipped capacity of the Exchange. In support of his complaint the petitioner has not filed any affidavit nor led any evidence on the other hand the Accounts Officer, Telecom District Engineer, Tuticorin, had filed an affidavit to the effect that Kayaipatnam Exchange had 500 lines and below 1000. The District Forum and the State Commission have not given any reason for brushing aside the affidavit of the Accounts Officer. In fact no reference has been made by them in respect of it. The Telecom Department has produced inspection report dated 29.1.90 of Officer Engineering, Telecommunications, Tiruchendur. That Office made inspection of inc Kayaipatnam MAX II Ex-change on 23rd January, 1990. This inspection note shows that the exchanging was extended from 400 I to 500 lines on 20th January, 1990. The Telecom District Engineer has his filed extract from the history register of the Exchanges situated in his District and it also shows that from 20th January, 1990 the said exchange has equipped capacity of "500 lines. Prior to that date it was equipped with 500 lines, hence it is clear that long prior to the installation of the telephone of the complainant's wife, the said Exchange was equipped with 500 lines. Therefore, it cannot be said that the supplementary demand of Rs. 500/- made upon her by the Telecom Department was unauthorised or illegal. For the foregoing reasons we hold that the State Commission exercised no jurisdiction vested in it with material irregularity. Accordingly, we accept the present Revision Petition, set aside the orders of the State Commission and District Forum and dismiss the complaint filed by the respondent. In the circumstances of the case we make no order as to costs.