(1998) 03 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

Union of India APPELLANT

Vs

SRI ADUSUMILLI SRINIVASA RAO RESPONDENT

Date of Decision : 16-03-1998

Acts Referred:

Citation : 1998 3 CPJ 157 : 1999 1 CPR 57

Hon'ble Judges : S.Parvatha Rao , T.Ranga Rao J.

Final Decision : Appeal dismissed

Judgement

1. IN this appeal the opposite parties in CC. No. 151/1990 i.e. Union of INdia and The Telecom District Engineer, Visakhapatnam, have questioned the order of the Visakhapatnam District Forum dated 18.12.1997 in that case. The respondent in the appeal was the complainant before the District Forum.

2. THE complainant was provided with telephone bearing No. 57268 at Visakhapatnam. He was issued bill dated 1.4.1989 for Rs. 4,555/-. He raised a dispute in respect of that bill before the Telephone Department on the ground that it was exorbitant. It is his case that the telephones in and around Visakhapatnam underwent big infrastructural changes due to re- constitution of exchanges including commissioning of new electronic exchanges, and that during that period the telephone numbers were altered and some telephones were kept in abeyance and some others were rendered non- functional for days together. THE complainant suspected excess billing due to tampering of the telephone lines by personnel of the opposite parties. THE complainant addressed letter dated 12.4.1989 to the concerned authorities questioning the bill dated 1.4.1989 and requesting them to issue a revised bill. As there was no response from the Telephone Department, he instituted a civil suit numbered as OS. No. 570/1989 on the file of IV Additional District Munsif, Visakhapatnam. Before temporary injunction could be granted in that suit, the appellants dis- connected the complainant''s telephone. THE complainant then filed IA. No. 304/1989 in that suit and the learned District Munsif gave directions by order dated 18.7.1989 directing re- connection of the telephone subject to the condition of the

complainant depositing Rs. 1,500/-. THE complainant paid the said sum and also Rs. 100/- towards reconnection charges on 20.7.1989 and subsequently in September, 1989 his telephone was given reconnection. It is the case of the complainant that meanwhile he received another bill dated 1.6.1989 for Rs. 1,955/- which he disputed by letter dated 15.6.1989. According to the complainant that bill was also exorbitant as was evident from the subsequent bills dated 1.10.1989,1.12.1989 and 1.2.1990 for Rs. 200/-, Rs. 210/- and Rs. 296/- respectively. THE complainant did not receive any reply to his complaint dated 15.6.1989 in respect of the bill dated 1.6.1989. On the other hand again his telephone was disconnected on 6.2.1990 without any intimation or notice whatsoever. He got issued a registered lawyer''s notice dated 15.4.1990 and even to that he did not receive any reply. He also attended Customers'' Meet on 18.5.1990 and subsequently a Subscribers'' Meet but with no result. Later he got the matter referred to Telephone Adalat. But his case was summarily rejected. Finally he approached the District Forum in August, 1990 stating all these facts and questioning the bills and the disconnection for non-payment of bill dated 1.6.1989 as illegal and arbitrary; he sought reconnection and adjustment of the amounts collected and claimed compensation of not less than Rs. 50/- per day for illegal disconnection of the telephone from February, 1990 till the date of reconnection etc. In the counter filed before the District Forum, the appellants submitted that bill dated 1.4.1989 for Rs. 4,555/- was the subject matter of O.S. No. 570/1989 and that the question relating to that bill was subjudice. They denied the allegations regarding the bill dated 1.6.1989. They stated that the complaint in respect of bill dated 1.4.1989 was duly investigated and that it was found that the bill was properly and correctly issued and, therefore, no split bill was issued for the subsequent periods. They further stated that as bill dated 1.6.1989 was not paid by the complainant "despite reminders by phone in January, 1990" his telephone was disconnected on 6.2.1990 as per rules, the appellant further stated that the complaint in respect of this bill was duly investigated by competent authority i.e., "D.E.E 10 B, DIGITAX Building, Visakhapatnam" and it was found that the complainant made extensive STD calls to distant places in India and that the bills were correctly issued and as such the complaint was rejected. They also pointed out that the Telephone Adalat held on 7.7.1990 rejected the case of the complainant in respect of the very same bill.

The complainant examined himself as PW 1 and got marked Exs. PI to P7. On behalf of the appellants the Assistant Engineer at Digital Trunk Automatic Exchange at Velampeta, Visakhapatnam was examined as RW 1 and Exs. Rl to R3 were marked apart from Exs. Bl and B2 which were meter reading statements issued by the appellants to the complainant for the period 18.1.1989 to 27.2.1989 and 15.3.1989 to 15.5.1989.

3. IN its order dated 18.12.1997 the District Forum elaborately considered all aspects of the matter. The District Forum observed that the complaint of the complainant in respect of the two bills in dispute was that he suspected excess billing due to tampering of the telephone lines by personnel of the appellants and

that he was aggrieved that the matter was not referred to arbitration under Section 7-B of the INdian Telegraph Act, 1885. The District Forum declined to deal with the objections raised by the complainant as regards bill dated 1.4.1989 for Rs. 4,555 /- as that matter was pending before the Civil Court. As regards the bill dated 1.6.1989 for Rs.l,955/-(markedasEx.P2),the District Forum observed that in the registered Lawyer''s notice dated 15.6.1989 issued on behalf of the complainant to Telecom District Engineer, Visakhapatnam (marked as Ex. P3) "it was stated in para 4 that he (complainant) reasonably apprehends that due to fault meter or wanton manipulations by the Telecom staff the bill has come exorbitantly". The District Forum also observed that the contention of the opposite parties (appellants herein) was that the complaint in respect of the said bill dated 1.6.1989 was investigated by the competent authority and that it was found that the complainant made excess STD calls to distant places in INdia and that the bill was correctly issued and that as such the complaint was rejected. The District Forum also noted that in the counter filed on behalf of the appellants there was no specific denial of the allegation of the complainant to the effect that due to faulty meter or wanton manipulations of the Telecom staff the bill had become exorbitant. The District Forum noticed that Ex. B2 showed that several calls were made to the number 0183 42471 on 21.4.1989 and that RW 1 admitted in his cross-examination that no investigation was made and the identity of the owner of the telephone was not ascertained. On the calls shown in Ex. B-3 the District Forum observed as follows: "According to R.W. 1 Exhibit B.2 shows that seven stations within a period of two days STD calls were done and there was one internal call also to the telephone bearing No. 0066- 384426142 recording 1094 local calls equivalent. IN the cross-examination, RW 1 stated that he cannot say whether the Department made enquiries as to whom the 15 calls made to 018342471. (IN Exhibit B-2) on 21.4.1989 were made and to whom the-Telephone No. 018342471 belongs to. R.W. 1 in his cross-examination admitted that he cannot say as to whether the identity of the persons called from the telephone from 22.4.1989 to 26.4.1989 with regards to calls recorded in Exhibit B-2 was ascertained by the department. He further stated that he cannot say whether the department tried to find out the names and addresses of the people to whom calls were made from the complainant''s telephone in the period from 15.3.1989 to 15.5.1989 covered under Exhibit Bl with respect to disputed bill dated l-6.1989.When the complainant disputed the bill dated 1.6.1989 for Rs. 1,955/- we are unable to understand as to why the department did not try to find out the names and addresses of the people to whom calls were made from the complainant''s telephone in the period 15.3.1989 to 15.5.1989 in respect of bill dated 1.6.1989 for Rs. 1.955/-. Particularly when it is the connection of the complainant that there is wanton manipulation by the telecom staff which resulted in excess billing. When it is the specific contention of the complainant that he suspected excess billing due to faulty meter the opposite party did not deny the same in the counter and for the first time stated during the evidence of R.W 1 that they did not observe any fault in the meter. It may be pointed others that as per Exhibit P3 the complainant questioned the correctness of the bill to which the opposite party failed to give any reply. We are of One opinion that the evidence of both sides placed before us is not sufficient or adequate to hold whether the bill dated 1.6.1989 is correct or whether it is an excessive billing".

After referring to the various decisions of the National Commission and of this Commission in Accounts Officer Telecom District Engineer, Nizamabad v. N. Rukma Reddy, 1996 (1) CPR page 230, the District Forum held that this was a fit case where the dispute raised by the complainant in respect of the bill dated 1.6.1989 should be referred to arbitration under Section 7- B of the Indian Telegraph Act, 1885. On the question of disconnection, the District Forum held that even though the complainant raised a dispute in respect of the bill dated 1.6.1989, without referring the dispute to arbitration and without replying to the complainant''s complaint dated 15.6.1989 his telephone was disconnected on 6.2.1990 without any notice. The District Forum held that when the complainant questioned the said bill disconnecting the telephone without investigation into the complaint would be deficiency in service. The District Forum relied on the decisions of the West Bengal. State Commission in M/s. Prayash Papers (Pvt.) Ltd. v. Divisional Engineer, Telephones, I (1993) CPJ 320=1993 (2) CPR 297, and D.E.C.F. Calcutta Telephone v. Hari Prakash Gupta, 1992 (2) CPR 574, and held as follows : "When the complainant lodged a complaint dated 15.6.1989 as per Exhibit P3 disputing the correctness of the bill dated 1.6.1989 it was the bounden duty of the opposite party to make investigation and till such time not to disconnect the telephone. In this view of the matter also the disconnection made by the opposite parties amounts to deficiency in service.

"The telephone of the complainant''s house remained disconnected from 6.2.1990 till 19.2.1991 i.e. for a period of one year. It may be pointed out here that as per the interim orders of this forum the telephone was restored on 19.12.1991."

4. THE District Forum awarded compensation of Rs. 1,000/- for disconnection of the telephone for a period of one year. In the result the District Forum directed the appellants to take steps to refer the disputed bill dated 1.6.1989 for Rs. 1,955/- to Arbitrator and not to take further steps for recovery of the disputed bill amount till the arbitration proceedings were finally decided, and also directed the appellants to pay Rs. 1,000/- towards compensation for illegal disconnection of the telephone. The learned Counsel for the appellants strenuously contended that the District Forum erred in holding that there was deficiency in service on the part of the telephone department in disconnecting the telephone without investigating into the complaint made by the complainant in respect of the bill dated 1.6.1989. He submitted that under Rule 443 of the Indian Telegraph Rules the Authorities concerned were authorised to disconnect the telephones for non-payment of the bills without issuing any notice to the customers and that in the present case admittedly the complainant defaulted in paying the bill dated 1.6.1989 and the Authorities concerned waited till 6.2.1990 before disconnecting his telephone. He also submitted that investigation was in fact made after the

complaint was received from the complainant in respect of that bill and it was found that there was no fault in the metering equipment or in the lines and under those circumstances there was no question of referring the dispute to arbitration. He further contended that the complainant already agitated the matter before the Telephone Adalat and by order dated 7.7.1990 the Telephone Adalat rejected his complaint of excess billing under bill dated 1.6.1989 and, therefore, the complainant should not have been allowed to agitate the matter once again. The learned Counsel submitted that at any rate the District Forum ought not to have awarded any compensation of Rs. 1,000/- to the complainant on the facts of the present case. The learned Counsel placed before us the complaint and the counter and also copies of Exs. B-l and B-2 and of Exs. R-l and R-2 and of the order of the Telephone Adalat dated 7.7.1990 (marked as Ex. P7). Certain facts stand out in the present case. In the counter filed by the appellants before the District Forum there was no specific denial of the allegation of the complainant that the excess billing could be due to tampering of the telephone lines by persons of the opposite parties" and that "the above features were observed by the complainant and his family members very frequently during the period for about five months". There was also no denial that the computer print out of the calls recorded during the period relating to the bills in question demonstrated that the complainant''s telephone was "used for a brief period at high pace to distant places within and outside the country" and that the complainant disowned the said calls as those telephones were in no way connected to the complainant or his family members and that a perusal of the print out clearly made out that the user of such a pace was humanly impossible. On the other hand a perusal of Ex. B2 showing the calls recorded during the period 15.3.1989 to 15.5.1989 relevant for the bill dated 1.6.1989 discloses that 19 calls were made on 21.4.1989 out of which 15 calls were to only one number 018342471 between 8.49 p.m. and 10.29 p.m.; 9 calls were made on 22.4.1989 all to the same number between 6.15 a.m. 6.52 and 7.19 a.m. The timings shown were 6.51, 6.52, 6.53, 6.57, 7.01, 7.02,7.03 and 7.19. On 21.4.1989 a call was shown to have been made to 0066384426142 at 8.48 p.m. -it was equivalent to 1094 local calls. Obviously it was an international call. Again at 8.49 p.m. on the same day a call was shown to have been made to 018342471. The District Forum observed that RW 1 in his cross-examination admitted that he could not state as to whether the identity of the subscribers of those telephones were ascertained by the department. No material seems to have been placed before the District Forum about the same by the appellants. This discloses that the investigation made by the authorities concerned was deficient. Another aspect to be noticed is that the other bills received by the complainant were for amounts ranging from Rs. 200/- to Rs. 300/-. It is obvious that there was a sudden spurt in the period covered by the bill dated 1.4.1989 for Rs. 4,555/- and again during the period covered by the bill dated 1.6.1989 for Rs. 1,955/-.

5. IN Ajay Dubey v. General Manager, Telegraphs and Telecommunication, I (1995) CPJ 223 (NC)=1986-96 Consumer 2660 (NS), the National Commission

held as follows : "As is clear from the Telegraphs Act, 1885 and INdian Telegraphs Rules, 1951 and the Circular No. 4/59/85 TR dated 9th April, 1986 issued by the Government of INdia, Ministry of Communications, Department of Telecommunications exhaustively deal with how the bills are to be prepared and in what manner the complaints filed by the subscriber about the excessive bills have to be dealt with. IN the present case no action was taken on the complaint made by the complainant on his complaint made on 26th February, 1990....."

The above rules and the circular also lay down that if there is abnormal use of the Telephone the Department is to serve a fortnight notice to the subscriber cautioning him about the abnormal use of the telephone. IN the present case there was no evidence that such notice was served upon the complainant. This is a mandatory duty of the Department concerned."

6. IN General Manager, Telecom, Telephones, District Jalandhar v. Ajaib Singh, II (1997) CPJ 425=1997 (3) CPR 29, the Punjab State Commission held as follows: "Putting the telephone under observation much after receipt of the complaint is nothing but disobedience of the instructions issued by the Department. Vide letter dated No. 4-59/85-TR dated April 9, 1986, complete instructions to be followed by the Telephone Department in case of finding sudden spurt on fortnightly meter readings were prescribed. These instructions have been thoroughly considered in Kamaljit Kaur v. Telecom District Engineer & Anr., Appeal No. 1040/1996, decided on 5.6.1997, by this Commission. It may briefly be mentioned that as per these instructions, the Telephone Department of its. own, on observing a sudden spurt in the meter readings which are taken fortnightly is supposed to keep the telephone under observation by deputing a responsible officer to visit the premises of installation of the telephone to find out if there was any special occasion resulting in sudden spurt or the line was misused by someone and to fix responsibility thereof."

Thus non-observance of those instructions would also amount to deficiency in service. IN the present case even though the complainant raised a dispute about the bill dated 1.4.1989 and took the matter to Civil Court by OS. No. 570/1989, no action seems to have been taken by the authorities concerned in investigating into the matter. Even after the complainant gave lawyer''s notice dated 15.6.1989 in respect of the subsequent bill dated 1.6.1989 for Rs. 1,955/- there was no prompt response from the authorities concerned and no reply was given to him. Under the circumstances the District Forum cannot be faulted for directing the appellants to take steps to refer the disputed bill dated 1.6.1989 to Arbitrator under Section 7- B of the INdian Telegraph Act, 1885 following the decision of this Commission in Accounts Officer, Telecom District Engineer, Nizamabad v. N. Rukma Ready, (supra). We may refer to the decision of the National Commission in D.E. (C.F.) Calcutta Telephones v. Bharat Biscuit Co. Pvt. Ltd., I (1998) CPJ 81 (NC)=1996 (3) CPR 37, wherein also the telephone connection was restored pursuant to interim direction of Alipore District Forum. The National Commission, while upholding the direction of the District Forum, observed as follows: "The telephone connection has since been restored under the interim order of the District Forum. The connection will continue subject to condition that the complainant deposits the due amount, if any, with the opposite party for bills subsequent to the above said disputed bills within a fortnight on the receipt of this order and will continue paying the future bills. It is also made clear that if the amount due (except the amount of the disputed bills) to the opposite party is paid, the opposite party will not disconnect the telephone of the complainant till the matter is adjudicated by the Arbitrator."

The only question that remains is whether the District Forum was right in awarding compensation of Rs. 1,000/- for illegal disconnection of the telephone. The District Forum held that when the complainant questioned the bill dated 1.6.1989, disconnecting the telephone without investigating into the complaint would be deficiency in service. The District Forum also held that disconnection without notice under those circumstances was also bad and on that basis awarded compensation for illegal disconnection of the complainant''s telephone.

7. IN General Manager, Telephones, Faridabad v. D.K. Singh, II (1995) CPJ 211 (NC)=1986-96 Consumer 2768 (NS), the National Commission held that Rule 443, of the INdian Telegraph Rules specifically entitled the department to disconnect the telephone without any notice once the bill has been served and there has been a default in payment of such bill, and that there would be no deficiency in service on the part of the department in disconnecting the telephone on the ground of non-payment of the bill issued to the subscriber. But the question that arises on the facts of the present case is whether the disconnection could be effected under that rule even when the subscriber raised a dispute regarding a bill and pending investigation into the said dispute and pending reference to arbitration under Section 7-B of the INdian Telegraph Rules, 1885. In D.E.C.F., Calcutta Telephone v. Hari Prakash Gupta, (supra), the West Bengal State Commission held that disconnection under those circumstances would be illegal and awarded Rs. 1,000/- by way of ad-hoc compensation for the harassment caused to the subscriber. In Telecom District Manager v. K. Rajaram, I (1998) CPJ 359=1997 (3) CPR 556, the Pondicherry State Commission held as follows : "No doubt the Telephone Department issues the bill on the basis of the indication of the meters. But when a complaint is lodged regarding the amount of the bill and especially when the impugned bill is disproportionate to the average amount which has been paid, it is the duty of the Department to collect the admitted amount, to keep in abeyance the balance and to investigate into the matter. If after investigation there is agreement on the amount to be paid, the matter ends there. Otherwise the matter has necessarily to be referred to the Arbitrator as per the provisions of the Act. That is the only remedy provided in the Act for those aggrieved by inflated bills, and it is for the Department to take initiative for reference to the arbitration. Disconnection of telephone connection by resorted to in case of wilful delay of payment of dues, but when there is aggressive dispute regarding the amount due the fact of disconnecting the telephone is a high-handed act which amounts to clear deficiency in service. The

District Forum in directing the opposite party to pay compensation of only Rs. 500/- has taken a very lenient view."

8. IN The Divisional Engineer v. M.C. Jaffer Maraicar, I (1997) CPJ 86=1997 (2) CPR 13, the Pondicherry State Commission further clarified the position as follows : "If a dispute like the present one regarding the a mount of bill arises between the parties/ the normal course the Department should adopt is to explore ways and means to settle it and convince the subscriber about the reasonableness of the stand of the Department. If such a course does not yield result, the Department should perform its statutory duty and refer the matter for arbitration as per Section 7-B of the INdian Telegraph Act. Till such amicable settlement or arbitration award only a partial payment based on previous bills can be enforced in respect of disputed amount. The right to enforce the payment of full amount does not arise till the amicable settlement of the matter or the arbitration award. If payment as per the settlement or the award is not made within the stipulated time, only then the department is entitled to disconnect the telephone without prejudice to its rights to recover its dues as per law. Telephone is a service essential to the subscriber. Disconnection is a serious act, which should not take place till the subscriber surrenders his telephone or becomes disentitled to it. It is not so in this case. The Department has acted with precipitation in disconnecting the telephone before the resolution of the dispute".

We are in agreement with the view expressed by the Pondicherry State Commission. On the facts of the present case not replying to the Lawyer''s notice dated 15.6.1989 and not referring the dispute concerning the bill dated 1.6.1989 for arbitration itself would amount to deficiency in service. In Telecom District Manager, Goa v. V.S. Dempo & Co., 1996 SC 1545=(1996) 8 SCC 753, the Supreme Court held that no direction of Court was necessary for referring the dispute relating to the correctness of the bill under Section 7-B of the Indian Telegraph Act, 1885. The disconnection for non-payment of disputed bill without referring the matter to arbitration also would amount to deficiency in service. Under the circumstances we are not inclined to interfere with the order of the District Forum awarding compensation of Rs. 1,000/-. In the result, the appeal is dismissed. No costs. Appeal dismissed.

