(2000) 09 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

ZUARI AGRO CHEMICALS LTD — APPELLANT

Vs

CHIEF GENERAL MANAGER, MAHANAGAR TELEPHONE NIGAM LTD — RESPONDENT

Date of Decision : 20-09-2000

Acts Referred:

Citation : 2000 3 CPJ 532

Hon'ble Judges : Lokeshwar Prasad , Rumnita Mittal J.

Final Decision : Complaint disposed of

Judgement

1. THE complainant has filed the present complaint under Section 17 of the Consumer Protection Act, 1986 (hereinafter referred to as ''the Act''). THE case of the complainant is that the complainant was the subscriber of 12 telephone lines including telephone connection bearing No. 3324457, installed at the office premises of the complainant situated at 505, Surya Kiran Building, 19, Kasturba Gandhi Marg, New Delhi. THE telephone No. 3324457 was provided with STD facility but not dynamic STD control facility. However, the complainant received a bill dated 1.5.1990 for the period 16.2.1990 to 5.4.1990 for an exorbitant amount of Rs. 51,555/- despite the fact that the bill of the said telephone No. 3324457 had never exceeded Rs. 5,000/- in the preceding period of one year.

2. THE complainant personally approached the Public Relations Officer of the O.P./ MTNL and also submitted his representation regarding the excessive bill. On a further reminder from the complainant, the opposite party issued a provisional bill for Rs. 4,402/- which was promptly paid by the complainant. THEreafter, the complainant received in succession bills dated 1.7.1990 for Rs. 99,485/-; bill dated 1.9.1990 for the amount of Rs. 82,836/-; and bill dated 1.11.1990 for Rs. 21,853/-. Immediately on receipt of each of the abovesaid bills, the complainant approached and represented to the O.P./MTNL for issuance of provisional bills but the said request of the complainant was declined. Even the successive representations of the complainant, for investigating the excess metering or in the alternative the possibility of misuse of the lines from outside the premises,

were turned down by the opposite party on the ground that the matter had been investigated thoroughly and no fault had been found either with the meter, or any possibility of misuse had not been detected and as such the bills being correct were liable to be paid by the complainant. THE request of the complainant for referring the matter to the Telephone Lok Adalat was also turned down by the O.P./MTNL and instead the matter was referred to the Area Manager of the opposite party. During the personal meeting of the Resident Director of the complainant with the Area Manager of the opposite party on 28.1.1992, a copy of observation of calls only for the period from 4.6.1990 to 15.6.1990 and 10.8.1990 to 14.8.1990 was supplied to the representative of the complainant which revealed that a number of National and International calls had been made from the telephone in question, before and after office hours and even on holidays whereas according to the complainant, the office of the complainant maintains strict timings of opening and closing in accordance with the Delhi Shops and Establishment Act and as such the office timings were 9.30 a.m. to 5.00 p.m. which were subsequently changed to 9.30 a.m. to 5.15 p.m. w.e.f. 1.3.1991 and the building in which the office of the complainant is situated is opened daily at 8.30 a.m. and is closed at 8.00 p.m. by the security personnel incharge of the said building. THErefore, there could be no possibility of its office staff misusing the said telephone line beyond office hours. As such it was alleged that the telephone of the complainant was being misused by outside agencies. THE complainant''s representative, therefore, persued the matter with the Area Manager vide letter dated 1.2.1991 but received no response regarding the above grievances of the complainant that the telephone line of the complainant was being misused/diverted by outside agencies. It was further alleged that the Resident Director of the complainant Shri A.V. Karnik personally inspected the sealing and distribution point/cabinet from where the lines had been given to the premises of the complainant and found the same open and unlocked, whereby making it apparent that the lines were being misused. THE O.P./MTNL on the other hand instead of taking suitable action and investigating the matter in terms of Telecom Circular No. 4-59/85 TR dated 9.4.1986, disconnected the telephone of the complainant on 17.9.1990. Under the above circumstances, the complainant was constrained to file the present complaint before this Commission praying for the restoration of the telephone No. 3324457 and for quashing the excessive bills with directions to the opposite party to revise the same @ Rs. 3,811.50 per billing cycle. THE complainant had also prayed for the award of compensation of Rs. 20,000/- as well as cost of proceedings. The opposite party was duly served and after making its appearance, filed a detailed reply/written version wherein the O.P./MTNL took certain preliminary objections that in view of the statutory provisions of Section 7(B) of the Indian Telegraph Act, 1885 the matter in dispute should have been referred by the complainant to an Arbitrator in terms of the abovementioned provision and that in the circumstances, the present complaint was not maintainable. On merits as well as in the other preliminary objections, the defence of the O.P./MTNL was that since the telephone of the complainant was provided with STD facility the same must have been liberally used resulting in the excessive bills. It was further stated that the complaint of the complainant with regard to the excess bills had been looked into and the matter had been investigated thoroughly but no misuse or fault had been found in the metering equipment. The O.P./MTNL further controverted the allegations made by the complainant in its complaint and prayed for the dismissal of the complaint.

The complainant filed an affidavit by way of evidence of its Resident Director Shri A.V. Karnik alongwith relevant documents as Annexures. The opposite party on the other hand, did not file any affidavit by way of evidence. Both the parties submitted their written arguments. We have carefully gone through the documents/material and evidence placed on record as well as have heard the arguments on behalf of both the parties.

3. THE first question which arises for our consideration, is whether the present complaint is maintainable in view of the provision of arbitration contained in Section 7(B) of the Indian Telegraph Act, 1885. In this regard, the complainant has relied upon the decision of National Commission in the case of District Manager Telephone, Patna v. Dr. Tarun Bharthaur, reported as I (1992) CPJ 47 (NC), wherein it has been held : "(b) Whether the State Commission has jurisdiction to decide a dispute involving meter reading or excess billing which are covered under Section 7-B of the Indian Telegraph Act, 1885. (6) Section 3 of the Consumer Protection Act lays down that the provisions of the said Act are in addition to and not in derogation of the provisions of any other law for the time being in force. In other words the Consumer Protection Act gives the consumer an additional remedy besides those which may be available under other existing laws. THE fact that disputes involving meter reading or excess billing can be settled under Section 7-B of the Indian Telegraph Act does not, therefore, oust consumers from seeking relief under the Consumer Protection Act. Evidently Parliament has considered it expedient to do so for the better protection of the interests of the consumers and for expeditious settlement of consumer disputes. THE Consumer Disputes Forums, therefore, have jurisdiction to decide disputes involving meter reading or excess billing even when such disputes might be covered under Section 7-B of the Indian Telegraph Act."

(Emphasis supplied) THEre are other catena of decisions of the Apex Commission reiterating the same view point and as such, it is well-settled law that proceedings under the Act are not barred in view of provision of Section 7(B) of the Indian Telegraph Act, 1885 and this Commission is competent to adjudicate upon the present complaint. On merits, the main contention of the complainant is that the bills for the period 1.5.1990 onwards with respect to its telephone No. 3324457 had been exorbitant in view of the fact that in the preceding year, the said bills had never exceeded Rs. 5,000/-. The complainant has placed on record the correspondence with the opposite party with regard to his complaints and requests for investigation into the said excessive bills but the opposite party failed to respond except for a formal reply expressing regret on the ground that the matter has been investigated thoroughly and neither any defect had been found in the metering equipment nor the possibility of misuse had been detected. It is contended by the complainant that the premises in question being situated in Surya Kiran building are opened and closed at fixed timings. Further, the security personnel of the building in question open the building at 8.30 a.m. and close the same by 8.00 p.m. whereas the office of the complainant in pursuance of the provisions/directions of Delhi Shops and Establishment Act observes the timings 9.30 a.m. to 5.30 p.m. which was later on changed from 9.30 a.m. to 5.15 p.m. w.e.f. 1.3.1991. It is further the case of the complainant that on receiving a copy of the details from the opposite party, of the calls, made from the aforesaid telephone, for the period 4.6.1990 to 15.6.1990 and 10.8.1990 to 14.8.1990, it was observed that most of the said calls, were national and international calls, made before and after office hours of the complainant. Not only that, in fact a number of calls were also made on holidays when the office of the complainant remained closed and in its written arguments/submissions even the specific dates and days of holidays and timings of the calls are mentioned. The complainant had in the affidavit of its Resident Director Shri A.V. Karnik also stated that the said Shri Karnik had himself visited the distribution point/cabinet from where the telephone lines had been given to the premises of the complainant and found the same open, in an unlocked condition, making it evident that the telephone line of the complainant was being tapped/misused. The photographs of the unlocked cabinet have also been exhibited in evidence. As such, the case of the complainant is supported by the relevant documents and evidence. On the other hand, the defence of the opposite party is only to the extent that the matter was investigated thoroughly, regarding excess metering, and no defect in the metering equipment or possibility of any misuse or diversion of telephone line of the complainant had been found. However, the said stand of the opposite party is not supported by either any document or by any affidavit of any of its staff. Further, the opposite party has not even given any details in its reply/written version with regard to the alleged investigation carried out by its staff with regard to the complaints of the complainant in respect of excess metering. The complainant on the other hand has placed on record a copy of the Circular dated 9.4.1986 whereby specific instructions have been issued to the staff of the opposite party for taking action in cases where a sudden spurt in calls is noticed. The opposite party has also miserably failed to point out the steps/ measures taken by it to ensure that the telephone line of the complainant is not misused despite the repeated representation of the complainant as well as the personal visits of its representative to opposite party''s Area Manager. It is also significant that the request of the complainant for referring the matter to the Telephone Lok Adalat was also rejected in the most supercilious manner. Further, in spite of the specific averment on the part of the complainant, it its complaint as well as in its affidavit by way of evidence, that the calls had been made beyond the office hours and also on holidays when the office of the complainant remained closed, there is no specific denial of the said fact by the opposite party in its reply/written version. On the contrary, there is an admission of the opposite party in its written version, that the distribution point/cabinet referred to by the complainant is within the premises of the opposite party and remains open on account of repairs etc., which further reinforces the possibility of misuse of the telephone line of the complainant by the employees/staff of the opposite party. Not only, that the opposite party had been negligent in conducting investigation, if any, and had also failed in ensuring that there is no misuse/tampering of the telephone lines of the complainant, but to further add insult to injury the opposite party had disconnected the telephone of the complainant on 17.9.1990 without any notice. Thus, it is apparent that the opposite party has been deficient in service rendered to the complainant. However, as to the nature of relief to be granted in the circumstances, the National Commission, in cases of excess billing has consistently held the view that the practice of the FORA in quashing the excessive bills and directing the MTNL to revise the bills on average basis is incorrect. In the case - entitled Divisional Engineer, Telecom, Moradabad v. Virender Kumar, reported as II (1997) CPJ 60 (NC)=1986-99 Consumer 4069 (NS), The National Commission has held : "The State Commission has quashed the impugned bills without giving any further directions as to how the disputes relating to the billing have to be settled. If any dispute concerning any telegraph lines, appliance or apparatus arises between the Telegraph Authority and the person for whose benefit the line, appliance or apparatus is or has been provided, the disputes shall be determined by arbitration. This Commission has frowned upon the practice of some of the District Fora in quashing the telephone bills and directing the Telecommunication Department to issue revised bill on the basis of averages. When there is a defect in the meter or telephone line, the proper course is to grant the relief and direct the dispute being settled within the scope and ambit of Section 7B of the Telegraph Act."

(Emphasis supplied)

4. AS such, the following directions are issued to the O.P./MTNL and complainant for compliance within a period of 60 days from the date of receipt of this order :
(a) to restore the telephone connection of the complainant in respect of telephone No. 3324457 immediately without charging any rent for the intervening period, i.e. from the date of disconnection till the date of reconnection;

(b) to quash the bills dated 1.5.1990, 1.7.1990, 1.9.1990 and 1.11.1990 and to refer the matter to arbitration in terms of Section 7(B) of the Indian Telegraph Act, 1885 to determine the amount to be paid in lieu of the excess bills so quashed, within a period of 6 months and thereafter the O.P./MTNL should issue revised bills to the complainant as per the directions contained in that award;

(c) that complainant shall pay the amount of the said revised bills within a period of one month from the date of receipt of the bills, failing which, it would be open to the O.P./MTNL to proceed in accordance with law; and

(d) that the opposite party shall also pay to the complainant a sum of Rs.

5,000/- towards compensation for mental agony as well as cost of the present proceedings. The present complaint is disposed of in above terms.

Complaint disposed of.

