

(1999) 08 GAU CK 0024

Gauhati High Court

Case No: Consumer Appeal No. 126 of 1997

General Manager, Kamrup
Telecom District

APPELLANT

Vs

Sankhadhar Barua

RESPONDENT

Date of Decision: Aug. 14, 1999

Acts Referred:

- Consumer Protection Act, 1986 - Section 2(g), 2(g)

Citation: (1999) 3 GLJ 555

Hon'ble Judges: J.N.Sarma, J and D.Dutta, J

Bench: Division Bench

Advocate: D.Sur, C.Mahanta , Advocates appearing for Parties

Judgement

J. N. Sarma, Member

1. This appeal is directed against the judgment dated 23.7.97 of District Consumer Disputes Redressal Forum, Kamrup at Guwahati (for short District Forum) in CP Case No. 169 of 1996.

2. To state briefly the facts of the case are as follows : Complainant Dr. Sankhadhar Barua (respondent herein), the subscriber of Telephone No.560295 with STD facility at Guwahati was served the bill dated 1.7.93 showing the dates of billing cycle from 15.6.93 to 1.5.93 by the opposite party (appellants herein). Another bill dated 1.9.93 for Rs. 10,1897 only was also served followed by a letter dated 12.10.93 from the OP to pay the amount of the bill within 7 days to avoid disconnection. As his telephone was dead from 14.6.93 to 26.6.93 he filed a complaint dated 29.9.93 to the Department with reminders on 27.10.93 and 28.10.93 intimating that he did not make any STD call and used the dynamic lock system. The complainant/ respondent requested the appellant/ OPs to investigate the reasons for the spurt in the bill and serve him a correct bill.

3. When the telephone was disconnected for non payment of the dues against the aforesaid bill the complainant filed a petition in the Hon"ble High Court which directed him to pay Rs.2,000 only for restoration of his telephone. As claimed by him, he has filed the complaint before the Hon"ble District Forum as per direction of the Hon"ble High Court dated 29.11.96. It is alleged by the complainant that the OP/appellants are liable for deficiency in service as they neither investigated his complaint nor corrected the bill. In his complaint he has claimed compensation of Rs.2 lakhs and cancellation of the excessive bill dated 1.9.93 for Rs. 10,189 only. Besides, he has sought relief of not disconnecting his telephone by the OPs.

4. The complainant filed affidavit and necessary documents before the District Forum. But the OPs/appellants did not file written version even after adjournment of the case for the purpose on two occasions. As they remained absent on the date of hearing also the case was decided exparte after hearing the complainant only. The learned District Forum by its exparte judgment awarded a sum of Rs. 2,000 as compensation for suffering harassment and mental agony on account of illegal disconnection of the telephone along with another sum of Rs. 500 only as cost.

5. We have heard Shri D. Sur, learned counsel for the appellants and Dr. AK Thakuria, learned counsel for respondent. We have perused the memorandum of appeal and the written statement filed by the respondent. Besides we have gone through the complaint and the Annexures enclosed therewith as also all the relevant papers in the original file of the District Forum. We have taken into consideration the order of the National Commission reported in (1996) 1 CPJ 49 (NC) referred to by the learned counsel for the appellants and other similar orders of the National Commission as also the decision of the Hon"ble Gauhati High Court reported in (1989) 2 GLR 331 (1989 (2) GLJ 239) referred to by the learned counsel for the respondent. Besides we have read the relevant provisions on excess metering complaints in Swamy's Treatise on Telephone Rules.

6. Upon hearing both the parties and going through the decisions referred to above we find that the repeated decisions of the Hon"ble National Commission in the matter of "excess billing" are the settled law so far the Consumer Forum are connected. This Commission is no doubt, bound by the said decisions. It would be appropriate to quote here from the order of the National Commission in Accounts Officer, Telecom District Manager, Panaji, Goa vs. Mrs Sheela HN Gaunehar reported in (1996) 1 CPJ 49 (NC).

◆The District Forum has directed the petitioner to calculate the telephone bills for the period from 25.1.92 to 25.9.92 on the basis of average of past one year preceding 26.1.92 and this in our view is not legally permissible. This Commission has repeatedly held that the Redressal Forums are not legally justified to do so unless there is adequate evidence which may be either direct or circumstantial to show that the metering equipment was defective or there has been tampering with or misuse of telephone by the employees of the Department. ◆In Telecom District

Engineer, Dharamsala vs. Pran Nath Mahajan (1993) 1 CPJ 99 the National Commission held:

◆It is a matter of public knowledge that STD facility has often been misutilised on large scale by third parties in collusion with P and T Staff. It unless there is atleast circumstantial evidence to probabilities such collusion evolving taken place in a particular case, we can not doubt correctness of bills merely on the basis of suspicion. We have repeatedly held that the Consumer Redressal Forums will not be legally justified in taking over the function of estimating by application of the rule of thumb the precise number of calls made unless there is adequate evidence which may be either direct or circumstantial to show that the metering equipment was defective or there has been any misuse of the particular telephone by some unauthorised person in collusion with the employees of the Department, particularly in cases where a subscriber has the STD facility. See District Manager, Telephones vs. Niti Saran (1991) 1 CPJ 48, Revision Petition No. 67 of 1999. Again in Telecom District Manager vs. Ms. Mukherjee, Revision Petition No. III of 1990 we held that it was not legally permissible to take the average number of calls in previous bills for given period as the basis of ascertaining what should be fixed as the reasonable number of chargeable calls in the billing period. In the present case there is neither direct nor even circumstantial evidence to show that there was probability of such misuse of the telephone.◆

7. In their judgment the learned District Forum directed the OPs to investigate the complaints against the bill and communicate the result thereof. At the time of hearing before us the learned counsel for the appellant has submitted that it is not possible to investigate as the relevant records of the period in 1993 have either been destroyed or not available. The contention of the appellants is that there is no question of wrong billing in the instant case as the telephone was electronic one with modern dynamic locking facility. If the telephone was not locked with dynamic locking facility provided the subscriber can not escape the responsibility of paying the billed amount. Be that as it may, relying on the decisions of the National Commission referred to above we are inclined to hold that the respondent OP is liable to pay the amount of the alleged "excess bill". Considering the facts and circumstances of the case we find that there is no direct or even circumstantial evidence to show that metering equipment was defective or the telephone was misused or tampered by employees of the Department or by anybody else in collusion with them. In absence of such a situation the OPs appellants can not be held responsible for any excess billing, as alleged. The aforesaid decisions of the National Commission are, no doubt, applicable in the present case.

8. On the facts and circumstances of the case we hold that there is no illegality in disconnecting the telephone for the respondent's default in payment of the dues. It is pertinent to state that as per provision of Rule 443 of the Indian Telegraph Rules disconnection of telephone can be done without serving disconnection notice in

case of default in payment of the dues. In a previous case CA No. 40 of 1996 (Telecom District Manager & two others vs. Fakharuddin Bhanat) the appeal of the department was allowed and impugned judgment of District Forum was set aside following the principle laid down by National Commission in several cases of alleged excess billing.

9. While making the respondent liable for payment of the bill dated 1.9.93 for Rs. 10,189 we direct appellants to deduct the charges of the calls during the period from 14.6.93 when the telephone was dead due to cable fault and line fault as certified by the concerned SDO of the Department, if the same are included in the bill. Besides the amount of Rs.2,000 only already paid as per order of the Hon"ble High Court may be adjusted against this bill, if not already done so against any other bill. In order to lessen the burden of the respondent subscriber, who is a retired professor, we direct the appellants to split the bill into three and realise the amount due in three equal installments in three consecutive months from the date of this order.

10. We, therefore, find that there is infirmity and illegality in. the impugned judgment dated 23.7.97 and it is liable to be set aside.

11. In the result the appeal is allowed and impugned judgment is set aside. The respondent complainant is held liable to pay the amount of the bill dated 1.9.93 as indicated in paragraph 9 above. Let the telephone of the complainant/ respondent be not disconnected during the period of payment against the splitted bills of the amount, if otherwise it is not liable for disconnection. If, however, the respondent fails to pay the amounts of the splitted bills in time as indicated above, the appellant will be at liberty to take action as per Rules. The parties shall bear their own costs.