

(1992) 03 NCDRC CK 0001

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

MADRAS TELEPHONES APPELLANT

Vs

M Singhara Velu RESPONDENT

Date of Decision: March 23, 1992

Citation: 1992 1 CPJ 235 : 1992 2 CPR 87 : 1993 1 CLT 286

Hon'ble Judges: S.A.SHAH , R.K.SHAH , LEELABEN TRIVEDI J.

Judgement

1. THE complainant is admittedly the subscriber of Telephone No. 25 0 83 and, according to the averments made in the complaint, he is having this telephone facility since last 15 years. It is the case of the complainant that his house at Shahpur in Ahmedabad had remained closed, since last 4 to 5 years because he has shifted his medical practice and dispensary to Kalol town and he pays visit to his Shahpur house only on Sundays and, that, too, for the purpose of cleaning the same. Further, his children are staying in United States of America and the main purpose of retaining the telephone connection at Shahpur premises is to receive telephone calls in the morning on Sundays from his children, which is the arrangement made with his children since long. Further case of the complainant is that his Bills for this telephone were always within the minimum rate range since he had no occasion to dial either the local parties or to avail of the STD facility since last several years. According to the complainant, he received the Bill dated July 1, 1989 from the Telephone Department, demanding net amount of Rs. 10,943/- containing of the following demands: - Telephone Rent: (2 months) 300.00 Local Calls: (10020) 10,642.50 10,943.50 Meter reading shown in the said Bill reads as under: - Previous reading: 9 24 0. Current reading: 19 26 0: Calls Metered: 10 0 20: Credit Calls: 00 0 10 Free Calls: 2 75: Net chargeable Calls: 9 7 3 5: The complainant was shocked on receipt of the said Bill for such a huge amount and, therefore, he raised a dispute and the telephone department noted that dispute in the Bill and as per the practice and rules, the department has given deduction of the disputed amount of Rs. 10,507/- and directed the complainant to pay ad hoc amount of Rs. 436/- .

2. IT is the practice adopted by the Telephone Department that when a complaint is made in connection with excessive Bill, they take average of last six months in which the rental amount of Rs. 300/- for the instrument is also accounted for. The Telephone Department has not disputed that the complainant was getting telephone bills for petty amounts and it is also not the case of the telephone authorities that at any time in the past, the complainants Bill had exceeded to a sizable amount.

We asked the concerned officer appearing on behalf of the department, Mr. Shah, as to what was the mistake in the Bill in question and he informed us that the current Meter Reading which showed 19 26 0 was not a correct figure; but the correct figure was: 9260: that is to say, there was an error of 10000 calls. In other words, digit (1) was wrongly read or prefixed to the figure: 9260.

3. WE are also told that the department is taking fortnightly reading, and if any unusual figure is noticed, they are supposed and expected to investigate into the matter.

4. IT cannot be disputed that the Bill in the instant case was unusual, considering the long history of the complainant and the fact that he has shifted his residence and dispensary to Kalol since about 15 years, and that he pays visit to Shahpur premises on Sundays only. This fact only ought to have put the Department into inquiry and on such inquiry, the department would have found that the Meter reading was wrong, or the computer feeding was erroneous, and they could have rectified the Bill before issuing the same to the consumer, because the last reading of Bill must be that of June 15,1989 and they had fifteen days! time with them to check up the things and to find out the mistake.

In the ordinary circumstances, the first checking must be whether there is any error apparent in reading of the Telephone Meter or any error in filling in Computer Data; but as is usual, indifference has been shown by the authorities and the consumer

has been issued a Bill demanding more than ten thousand rupees in excess of the actual and normal bill.

5. HOWEVER , when the consumer raised the dispute and made a complaint that his bill is excessive and also explained that he is interested in receiving the Telephone Calls from USA and resides at Kalol, the department ought to have checked the complaint atleast by these two preliminary modes, namely, to check up the Meter Reading again, and to ascertain the computer data. Had this been done, the complaint would have been solved within no time because we are now told that there was error in Meter Reading or in printing the Bill. This fact was detected and we are of the opinion that there can be no difference whether the commercial business is carried on by the Government or by a private sector. On the contrary, the Government authorities ought to act more cautiously and wisely and honestly than the private sector.

6. LET us now consider the second Bill. The second Bill appears to have been issued after two months, that is to say, on September 1,1989 and that Bill still continued to show the arrears of Rs. 10,946/ - . The complainant had already paid Rs. 436/ - on ad hoc basis in his previous Bill in which an amount of Rs. 136/ - was shown in excess because during the bill period, he had made only 20 Calls and he was entitled to 275 Free Calls. Therefore, he was required to pay only the rental charges. However for the reasons best known to the Department, the Department has not mentioned in the written statement as to who found out the mistake and on which date the same was detected. They have merely made a reference to the letter dated 27th October, 1989 sent to we complainant. The Department has also not stated as to what investigation was carried out by them.

The telephone bill of 1.9.1989 clearly shows that the current Meter Reading was 973; metered calls were 47; credit calls were 12 and free calls were 275. However, it is not understandable as to how in the column of "chargeable calls", the department has shown 183 calls chargeable. Again in this bill department was bound to give credit of Rs. 136/ - which was paid by the complainant in Bill dated 1.7.89. This bill also shows that at that time the mistake was detected and, therefore, the correct meter reading excluding 1000 calls has been noted. Even then, the bill shows arrears of Rs.

10,943. In our opinion, this bill was not a true and legal bill and the Department ought not to have disconnected the telephone on the ground of nonpayment of this illegal bill. The power granted to the department to disconnect the telephone without issuing notice is the Drastic and extreme power. It can only be exercised in the case where a subscriber is a persistent defaulter or the amount being too big to recover in future. The action of disconnecting telephone without issuing notice, in our opinion, was not a just or a proper action. Action taken on such errorious bill is not a legal exercise of power. We are, therefore, of the opinion that the department had exhibited indifferent attitude and has made undue haste. We may even forgive the indifferent attitude exhibited by the department in this respect by the department, in order to show their exercise of powers without issuing a notice, disconnected the telephone connection on November 15,1990 only on the ground that the complainant had not paid Rs. 446/- (the amount of bill dated 1.9.89) which according to us, was an excess amount because the telephone department was bound to give credit of Rs. 136/- which was paid by the complainant in his Bill dated 1-7-1989. Not only this, but the bill dated 1.9.89 also continued to show the arrears as stated earlier.

7. NOW , Mr. J.V. Shah, the departmental officer appearing on behalf of the opposite party states that after investigation, the letter dated 27.10.89 was sent to the complainant. Even that letter which, in our opinion, does not help the Telephone Department because, again, in that letter, the department has claimed Rs. 446/- which was not the correct amount since the complainant was also entitled to a rebate of Rs. 136/- paid under the ad -hoc bill. Therefore, the demand made by the department after having known that there was mistake on their part and after investigation, making a demand of excess amount of Rs. 136/- clearly shows that the department was interested in disconnecting the telephone rather than doing any "service" to the consumer. This is the approach, which we are constrained to say, not Government like. The telephone is considered to be "service" by the Legislature and in number of decisions of the National Commission, the Honble Commission has emphasized that the Telephone is a "SERVICE" monopolized by the Government and, therefore, every effort must be made to solve the problem of the consumer and not to show power. When the question arises of exercising the power to the detriment of the consumer or client, the same must be exercised sparingly and with minimum damage because this is not a case in which the department suspected that the consumer was a big defaulter or that they would not be able to recover the money due unless they disconnected the Telephone.

8. IT may not be out of place to mention here that the department was having the deposit amount collected earlier from the complainant and, therefore, if the department had waited for a little more time, or had applied the mind to the fact that the demand for Rs. 436/- was in excess, they could have restrained themselves only for a month more.

The Complainant has averred that the department was supposed to serve him a Notice before the disconnection was effected. Mr. J.V. Shah, appearing for the Department states that according to the practice they serve oral notice by dialing to the subscriber at his telephone number; but then, in the present case, we have no written evidence or any endorsement made by the concerned telephone operator who had made such a call to the complainant; nor any affidavit of the concerned operator has been filed before us. We, therefore, cannot accept the bare statement of Mr. Shah that such a telephone call must have been made, especially when he himself has no personal knowledge.

9. MR . J.V. Shah then relied upon Rule 443 of the Indian Telegraph Rules 1951. These Rules are framed under Section 7 of the Indian Telegraphs Act, (The Act for short) which empowers the Telephone Department to frame Rules for the items mentioned therein. We have examined the Rule Making Power of the Government, and except Clause (k) of Sub -rule (2) of Rule7, there is not direct provision. Clause (k) refers to only to the Telegraph Department under this Act. However, Rule 443 sought to be relied upon by Mr. Shah, no -doubt provides that this power of disconnection on or before due date the rent or other charges in respect of telephone services provided, are not paid by the subscriber in accordance with the rules or bills for such charges in respect of calls local or phonogram or trunk calls or other dues from the subscribers are not duly paid by him, without issuing Notice. The relevant part thereof reads as under: - : 443 : If, on or before the due date, the rent or other charges in respect of the telephone service provided are not paid by the subscriber in accordance with these Rules, or Bills for charges in respect of calls (local or trunk) or phonograms or other dues from the subscriber are not paid by him, any telephone or telephones or any telex service rented by him may be disconnected without notice, xxxxx This Rule no doubt gives power to the Department to disconnect the telephone service; but that power of disconnection without giving any notice is harsh, even if we consider that such a provision is legal

and not opposed to the principles of natural justice. In our opinion, this power conferred on the Telephone Department should be: - (1) exercised by the highest authority; and (2) should be exercised in appropriate cases only; because, in our view, it may happen that some time a consumer may not pay the bills of lacs of rupees, or, it may be necessary to safeguard the interest of the Government by exercise of this power. Normally, the principles of justice require that before any action is taken against a person who is prejudiced, he should be heard or a notice must be given. If the occasion arises that the dues of the department cannot be recovered without recourse to this power, it may be justified; but even in such cases, in our opinion, this power of disconnection should be exercised by the high ranked officer, or with the consent of the responsible officer of the Department. In the instant case, it appears that the Accounts Officer of the Department has passed the impugned order of disconnection. A list of other Telephones be disconnected has been annexed to the said order and on going through the said list, we find that disconnection has been ordered against the persons who have not paid the telephone bill for paltry amounts of Rs. 200 to 300 or 400 and there is only one case of Rs. 2057/- . Now -a -days, the facility of telephone is a great necessity: and if such a power is conferred and is exercised in this casual manner by the Accounts Officer, and, that, to, only for non -payment of telephone bill for one month, requires serious consideration. In some cases, it may be said that exercise of such drastic power for an amount of Rs. 200 indicates not a proper or a bonafide exercise of such a statutory harsh power.

10. IN this case, we are not required to decide whether a notice is necessary before exercising of such power. We are convinced that the demand made by the Department of Rs. 436/- was in excess by Rs. 136/- which amount was not due to the department and, therefore, in our opinion, the department ought to have first given credit of that amount before the harsh step of disconnection was resorted to for non -payment of one Bill.

We, therefore, hold that the impugned disconnection of the complainants Telephone by the Department was not justified for the reasons stated above. We, therefore, direct that the Department shall restore and re -connect the Telephone service to the complainant within two weeks from today.

11. THAT leaves us with the case regarding the compensation claimed by the complainant. Now, the complainant has demanded Rs. 1,11,000/- by way of compensation mainly on the ground of pain and suffering. We are not convinced about this claim of compensation. The complainant himself has stated in clear terms in the complaint itself that he is not making any use of the telephone except for receiving the Calls from USA where his children reside. He has also not led any evidence except the averments made in the complaint. We are, therefore, not inclined to award him any compensation as such, except awarding Re. 1/- one only by way of token damages.

12. IN the result, we pass the following final order: - ORDER The Opposite Party is directed to reconnect the telephone service (Telephone No. 25 0 83) to the complainant without charging any amount for the intervening period for which the services are not rendered to the complainant. The complainant will pay up the pending bills, if any, within two weeks after the telephone service is restored. The Opposite Party shall pay to the complainant an amount of Re. 1/- one only by way of token damages. Parties to bear their own costs. Appeal partly allowed.