

(2001) 07 NCDRC CK 0013

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Indian Express Newspapers
(Bombay) Ltd.

APPELLANT

Vs

District Manager, Telephones

RESPONDENT

Date of Decision: July 18, 2001

Citation: 2002 0 CTJ 916 : 2002 1 CPC 31 : 2002 2 CPJ 314

Hon'ble Judges: K.K.Srivastava , P.K.Vasudeva , Devinderjit Dhatt J.

Final Decision: Appeal dismissed

Judgement

1. THIS is an appeal filed against order dated 2.2.2001 passed by the District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (for short hereinafter to be referred as the District Forum-II) in Complaint Case No. 394 of 1997, vide which the complaint filed by the Indian Express Newspaper (Bombay) Ltd., Express Tower, Nariman Point, Bombay-I, Branch Office : 186-B, Industrial Area, Chandigarh was dismissed.

2. THE brief facts leading to the filing of this appeal may be mentioned as under : THE appellant had a telephone connection which was installed in the office situated in Sector 35-B, Chandigarh. THE telephone number was 600674. This telephone had STD/ISD facility and also the facility of dynamic locking code system. THE complainant received a bill dated 1.6.1996 for a sum of Rs. 2,32,616/- for the use of the said telephone for a period of two months. THE appellant challenged the said bill as being highly excessive, and on the apprehension about its misuse by the staff of the telephone department. THE representation made by the complainant was not considered to the satisfaction of the complainant and no relief was granted to him

in respect of the disputed bill. Consequently, the complainant filed the complaint under Section 12 of the Consumer Protection Act, 1986 (for short hereinafter to be referred as the C.P. Act) before the District Forum-II. Notice of the complaint was sent to the District Manager, Telephones, Chandigarh, who put in appearance and filed reply to the complaint case alleging, inter alia, that the bill in question was correctly issued as per the metered calls registered in the concerned telephone exchange. It was also mentioned in the reply that though the said telephone had the facility of dynamic locking system but it appeared that the same was not applied which led to the extensive use of the telephone by none else but the own staff of the complainant. THE averment regarding misuse by O.P.'s staff was specifically denied.

The complainant filed affidavit of Sh. Vikram Kapoor, Manager (Accounts) while the opposite party filed affidavit of Sh. Vinod Kumar, S.D.E. Legal Cell. The photocopy of the disputed bill detailing the calls made from the said telephone was placed on record along with letter dated 20.3.1998.

The District Forum-II held that the complainant itself was to be blamed for the alleged misuse of the said telephone as the complainant was negligent in not locking the telephone despite having the facility of dynamic locking code. Resultantly, the complaint was dismissed.

3. THE complainant felt aggrieved by the order passed by the District Forum-II dated 2.2.2001 and filed the present appeal under Section 15 of the C.P. Act. Notice of the appeal was sent to the respondent, District Manager, Telephones, who put in appearance through his Counsel, Mr. K.K. Thakur, Advocate. THE record of the complaint case was summoned from the District Forum-II, U.T., Chandigarh.

We have heard Mr. R.K. Goyal, Advocate appearing for the appellant and Mr. K.K. Thakur, Advocate for the respondent. We have also carefully perused the record of the case and the impugned order passed by the District Forum-II. The learned Counsel for the appellant, Mr. R.K. Goyal, Advocate vehemently argued that the District Forum-II did not properly peruse the record of the case and has for no valid reasons criticized the complainant for not utilizing the dynamic locking code, a facility provided to the appellant by the respondent to prevent misuse of telephone for STD/ISD calls. He made reference from replication, a copy of which was on his own file to support his said contention. On a careful perusal of the file of the said complaint case, we found that no replication was placed on record by the complainant. We have also perused the zimini orders of the complaint case and find that the aforesaid submission of the learned Counsel for the appellant has no merit. There is no reference of any replication having been filed by the appellant before

the District Forum-II. Not only this, the learned Counsel for the respondent has also affirmed the fact that his file also does not have any copy of the said replication. Moreover, such an important averment was expected to be made in the complaint itself and at any rate it was expected to have found mention in the affidavit filed in evidence by Sh. Vikram Kapoor, Manager (Accounts) of the appellant. But no such averment has been made in the affidavit of Mr. Vikram Kapoor, Manager (Accounts) of the appellant. Faced with this situation, the learned Counsel for the appellant withdrew his criticism of the District Forum-II in this regard. As a matter of fact, the District Forum-II appears to have referred to the averment made in the written statement in this regard by the respondent. The respondent, District Manager (Telephones) alleged in Paras 7 and 8, inter alia, as under :

"... As print out shows the calls have been made from this telephone. The complainant has STD/ISD and dynamic locking code. The complainant is himself responsible for safeguard of his STD by putting dynamic locking code. The telephone is installed at the business place of the complainant for commercial use. Its extensive use is possible by the complainant to any extent as per his exigencies..."

The District Forum-II dealt with this matter in Para 5, inter alia, as under :

"5. ... No doubt numerous calls were made leading to the heavy bill, but it has to be taken note of that the complainant was having STD/ISD facility with dynamic locking code. This fact is accepted by the learned Counsel for the complainant. This code is provided to the consumers to prevent the misuse of the phone. This is particularly so because the phone is installed in the office, where after the departure of controlling officer, other members of the staff can use it or misuse it. It appears that the dynamic locking code was not put into operation by the complainant to lock the STD/ISD facility. The complainant itself being negligent cannot raise a justifiable grouse against the O.P. It is nowhere pleaded that dynamic locking code was used by the complainant to prevent the exercise of STD/ISD facility. The blame for misuse, if any, lies squarely on the doors of the complainant and it cannot shift that on to the O.Ps."

From the material placed on record of the complaint filed, we do not find any fault or error in the reasoning given by the District Forum-II. Resultantly, the District Forum-II was right in dismissing the complaint as being meritless. This appeal lacks merit and is dismissed with no order as to costs. Copies of the order be supplied to the parties free of charges. Appeal dismissed.