

(1994) 07 NCDRC CK 0043

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

SHANMUGAM CHEMICAL
INDUSTRIES

APPELLANT

Vs

TELE COMMUNICATION
DEPARTMENT

RESPONDENT

Date of Decision: July 29, 1994

Citation: 1994 3 CPR 244 : 1995 1 CPC 76 : 1995 1 CPJ 302

Hon'ble Judges: S.A.Kader , Ramani Mathuranayagam J.

Final Decision: Complaint allowed with costs

Judgement

1. THIS is complaint under Sec. 17 read with Sec. 12 of the Consumer Protection Act.

2. THE Complainant is a Partnership firm engaged in the manufacture of Pottasium Chlorate and has been registered as a Small Scale Industry. For the purpose of its business, the Complainant applied for a telephone connection to the 3rd Opposite Party on 17/8/88 and an application was made by the Manager of the Complainant's firm Mr. Subramaniam under NON-OYT-Special Scheme. THE Manager is the holder of a Power of Attorney, dated 6/2/ 87 executed in his favour by the partners of the Complainant's firm. THE application was Registered on 18/8/88 by the 3rd Opposite Party and a demand note was made to deposit a sum of Rs. 800/on 27/8/88 and the same was deposited on 10/9/88. THE Complainant's application was registered on 20/9/88 by the 3rd Opposite Party and given priority number 19 as on that date. In February, 1990 the officers of the Telecom Department inspected the factory of the Complainant and informed the Complainant that sanction has been provided for giving the connection and found that the telephone line has to cross two electric

wires of the Tamil Nadu Electricity Board at two places and after obtaining necessary permission from the Electricity Board, further action could be taken. THERE was no further communication from the 3rd Opposite Party till November, 1991. According to the Complainant, in October, 1991, when the Complainant approached the 3rd Opposite Party to know the stage the Section Clerk and the Phone Inspector demanded monetary consideration. THE Complainant came to know that phone connection had been given to 4 other parties by name: (1) Mr. B.S. Subramaniam; (2) M/s. K.P.S. Marriage Bed Hall; (3) M/s Balajee Textiles; and (4) M/s. Minar Textiles, overlooking the priority of the Complainant. THE Complainant wrote to the 3rd Opposite Party and the 3rd Opposite Party sent a letter, dated 7/11/91 alleging for the first time that the Complainant's application was defective as it was in the name of the Manager and it had to be registered in the name of the Managing Director. THE Complainant sent a suitable reply on 12/11/91 stating that the Complainant was a Partnership Firm and there was no post of Managing Director. On 23/11/ 91, the 3rd Opposite Party sent a letter to correct the application and Managing Partner of the Complainant went to the office of the 3rd Opposite Party, but he was not allowed to correct the application. THE Complainant informed the 2nd Opposite Party in writing on 6/12/91 and 7/12/91. THE 3rd Opposite Party has not taken any steps to get the permission of the Electricity Board, whereas M/s. Minar Textiles and M/s. Balajee Textiles have been provided phone connection after obtaining necessary permission from the Tamil Nadu Electricity Board. To this date, no phone has been given to the Complainant. THE Complainant has, therefore, have to put great loss and hardship. Hence this complaint for directing the Opposite Party to provide phone connection to the Complainant's factory immediately and to pay compensation in the sum of Rs. 5,00,000/-

The Opposite Parties have filed a common counter. It is connected that as the Complainant is not yet a subscriber, the complaint is not maintainable. It has not hired the services of the Opposite Parties at this stage. According to the Opposite Parties, the application for phone connection had been made in the name of one Mr. Subramaniam and the Form is not signed by the Managing Partner. The phone has been applied for the said Mr. Subramaniam in his individual capacity. As per the departmental instructions, in the case of Partnership Firms, all partners must sign the application. Alongwith the application, a copy of the registration of Shanmugam Chemical Industries as a Small Scale Industrial Unit was enclosed. According to the Partnership Deed, it is only the Managing Partner, who is empowered to deal with such matters. But, the Managing Partner has not applied or signed in the application. The application is defective. Even after the Complainant was informed of the defect, it did not come forward to correct, modify or alter the application. The telephone connection to M/s. Minar Textiles and M/s. Balajee Textiles were given underground connections. There was no deficiency in service and the Complainant is not entitled to compensation. The compensation claimed is also excessive.

Exhibits A1 to A32 and B1 to B8 are marked by consent. Proof Affidavit is filed by the Managing Partner of the Complainant.

3. THE points that are for determination are:

(1) Whether the Complainant is a consumer and the complaint is maintainable? (2) Whether there has been any deficiency in service on the part of the Opposite Parties? (3) To what relief, if any, is the Complainant entitled?

Point No. 1: The Complainant has applied for a phone connection to its factory in S.F. No. 306/1, Thiruvelangudi Group, Kalanivasal, Soorakkudi Road, Karaikudi on 17.8.88. The Complainant's application has registered by the 3rd Opposite Party and a deposit of Rs. 800/- has been made on demand by the Complainant. Priority No. 19 has been given to the Complainant on 20/9/88, but the Complainant Firm has not so far been provided with phone connection and hence this complaint. It is contended on behalf of the Opposite Parties that as the phone connection has not yet been given to the Complainant, it is not a subscriber as such till now and cannot, therefore, claimed to be a consumer. The petition has, therefore, to fail. This connection has no substance. The term "service" has been defined in Sec. 2(1)(o) of the Consumer Protection Act, "as service made available to potential users." It includes not only actual users, but also potential users. This question has been decided in the recent decision of the Supreme Court in "Lucknow Development Authority v. M.J.K. Gupta III (1993) CPJ 7 (SC)=(1994) Law Weekly Page 10. After referring to the definition of service under Sec. 2(1)(o) of the Consumer Protection Act, the Learned Judge of the Supreme Court has observed as follows:

"It is in three parts. The main part is followed by inclusive Clause and ends by exclusionary clause. The main clause itself is very wide. It applies to any service made available to potential users. The words "any" and "potential" are significant. Both are of wide amplitude. The word "any" dictionaryally means one or same or also. In Black's Law Dictionary it is explained thus, word any has a diversity of meaning and may be employed to indicate "all" or "every" as well as "same" or "one" and its meaning in a given statute depends upon the context and subject matter of the statute. The use of the word "any" in the context it has been used in C1.(o) indicates that it has been used wider sense extending from one to all. The other word "potential" is again very wide. In Oxford Dictionary it is defined as "capable of coming into being, possibility. In Black's Law Dictionary it is defined as "extending in possibility but not in act. Naturally and probably expected to come into existence at some further time, though not now existing, for example, and further product or grain or trees already planted, or the successive further instalments or payments on

a contract or engagement, already made." In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition. The Clause is thus very wide and extends to any or all actual or potential users."

There is, therefore, no doubt that the Complainant, which has applied for phone connection is a consumer within the meaning of the Act and this complaint is maintainable for alleging deficiency in service.

4. POINT No. 2 : Ex. B1 is the xerox copy of the application filed by the Complainant for a phone connection on 17/8/80. On the top of the application it is mentioned clearly "Shanmugam Chemical Industries, 306/1, Thiruvelangudi Group, Kalanivasal, Soorakkudi Road, Karaikudi". The name of the applicant has mentioned therein as "S. Subramaniam". The suggested entry for Telephone Directory is mentioned as "Shanmugam Chemical Industries, S.F. No. 306/1, Thiruvallengudi Group, Kalanivasal, Soorakkudi, Karaikudi". This is also the address for sending the telephone bills. This application has been signed by the said S. Subramanian as Manager for Shanmugam Chemical Industries. Ex. A2 is the Power of Attorney Deed, dated 5/8 /87 executed in favour of the said Subramanian by the two partners of the Complainant firm conferring upon him full power of management. The application has been made under the NON-OYT-Special Scheme, which is available to industries. Ex.B2 is the xerox copy of the Certificate issue by the Director of Industries and Commerce, Madras to the Complainant firm registering it as a Small Scale Industrial Unit and this Certificate has been annexed to the application for phone. Ex. B3 is a Certificate of Registration issued by the Commercial Tax Authority in favour of Shanmugam Chemical Industries. This Certificate has also been forwarded along with application to the third Opposite Party. Ex. B4 is the demand note is sued by the 3rd Opposite Party for payment of an initial deposit of Rs. 800/- and it dated 27/8/88. This amount has been paid under Ex. A8, dated 27/8/88. Ex. A10 is the communication to the Complainant from the 3rd Opposite Party, dated 20/9/88 informing the Complainant of the Registration of the Fees demand for phone in NON-OYT-Special Category, with priority No. 19

There has been no further communication from the 3rd Opposite Party till February, '90. When the officials of the Telecom Department had visited the factory of the Complainant presumable on the maturity. It was found that the phone line had to cross the electricity wires of Tamil Nadu Electricity Board at two places and the Complainant was informed that after obtaining the necessary permission from the Electricity Board, further action would be taken. There was no further

communication. It is alleged in the complaint that the Section Clerk and the Phone Inspector demanded illegal gratification, but it is not substantiated. The Complainant after coming to know that its priority has been skipped over and phone connections have been given to 4 other persons, who were lower down in the order of priority, the Complainant has written Ex. A3 letter, dated 4/11/91 to the 3rd Opposite Party bringing to the notice of the third Opposite Party the grant of phone connections to others lower down in the priority list. To this communication, the Opposite Party has sent Ex. A14 reply, dated 7/11 /91 for the first time, it is alleged that the application of the Complainant was in a defective format and has been registered in the name of Shri S. Subramanian, who is reported to be the Manager and that the application has to be corrected in the name of the company and the Managing Director should sign in the application and in the specimen signature form It may at once be pointed out that this alleged defected format of the application has been brought to the notice of the Complainant more than 3 years and 3 months after the registration of the application and the receipt of the deposit of Rs. 800/- and more than one and a half years after visiting the factory of the Complainant for preparing the estimate. The Complainant has sent a reply in detail Ex. A15 dated 12/11/91 informing the 3rd Opposite Party that the Complainant is a Partnership Firm and there is no post as Managing Director and no such objection has been taken at any time before. The 3rd Opposite Party has sent a further reply under Ex. A16, dated 23/11/91 again calling upon the Managing Director to call at their office and make these corrections. According to the Complainant, the Managing Partner went, but he was not allowed to correct the application on the ground that the papers could not been found. Exs. A17 and A18 are two letters sent by the Complainant to the General Manager, Telecommunications, Madurai and to the 3rd Opposite Party setting out these facts. The matter has stood there and till now the Telecom Department has not provided phone connection to the Complainant.

The main contention put forward in the counter filed on behalf of the Opposite Parties is that as per the departmental instructions the application for phone connection given in the name of a Partnership Firm must be signed by all the partners and as this application has been signed by the Manager, it is not in proper format and cannot acted upon. Ex. B6 contains the departmental instructions and Rule 2(b) lays down in the case of Partnership Firm all the partners must sign. This rule is relied upon by the Opposite Parties, to defeat the claim of the Complainant. Departmental instructions do not have the force of Law and no citizen can have access to these departmental instructions. The principle Ignorantia Juris Non Excusat applies only to Acts of Legislatures and rules framed therein, which are published in the Official Gazettes. Departmental instructions are issued for the guidance of the departmental officials and the ordinary citizen cannot be imputed with the knowledge of contents of such instructions. It is for the departmental Officials to bring to the notice of the citizens these instructions and directed them to

comply with these instructions whenever necessary. The Complainant in this case has filed its application for phone connection on 17/8/88 under the original of Ex. 131 and it has been signed by Mr. S. Subramanian, Manager or behalf of the Complainant, M/s. Shanmugam Chemical Industries, S.F. No 306/1, Thiruvelangudi Group, Kalanivasal, Soorakkudi Road, Karaikudi and the name of this firm is properly mentioned at the top of this application. Along with this application, the Certificate of Registration as a Small Scale Industrial Unit issued by the Director of Industries and Commerce and the Certificate of Registration issued by the Commercial Tax Authorities in the name of the Complainant's firm have also been forwarded to the 3rd Opposite Party. The 3rd Opposite Party has not objected to the format of this application or the signing of the application of the Manager in whose favour the Power of Attorney had been executed by the Partners of the firm under Ex. A3, dated 6/2/87. Having accepted the application filed by the Complainant on 17/8/89 signed by the Manager for the Complainant Firm, having demanded and collected the initial deposit of Rs. 800/- after registering the application and giving priority No. 19 under Ex. A10, dated 20/9/88 and after inspecting the premises in February, 1990 for preparation of the estimate and after receiving the Complainant's communication under Ex. A13, dated 4/11/91, taking exception to overlooking its priority and giving connection to (sic), the 3rd Opposite Party has come forward with this allegation of deficiency in the format of the application, by its letter dated 7/11/91 under Ex. A14. The conclusion is irresistible with this defect has been pointed out belatedly, in order to covered up the default committed in skipping over the priority of the Complainant. The application filed by the Complainant signed by the Manager, who has the Power of Attorney on behalf of the Complainant is perfectly valid and the Opposite Party cannot at this stage to pick up the hole in the format of the application and denied the priority of the Complainant to get the phone connection. The 3rd Opposite Party has violated the priority list and given connections to those below and has now come forward with the spurious plea base on departmental instructions, of which the Complainant had no knowledge whatsoever and could have had no knowledge, we find that there has been gross deficiency in service on the part of the Opposite Parties.

5. THE Complainant is entitled to an order directing the Opposite Parties to give phone connection to the Complainant without further loss of time. THE Complainant has also claimed compensation in the sum of Rs. 5,00,000/- towards loss of business, mental agony, etc. THE claim is exorbitant and has no rational basis. We are, however, inclined to award compensation in the sum of Rs. 50,000/-.

6. IN the result, we order as follows:

(1) The Opposite Parties shall provide phone connection to the Complainant's factory within 3 months from now. (2) The Opposite Parties shall pay compensation to the Complainant in the sum of Rs. 50,000/-. (3) The Opposite Parties shall also pay costs of Rs. 3,000/- to the Complainant.

Complaint allowed with costs.