

(1995) 07 NCDRC CK 0010

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

TELECOM DISTRICT MANAGER

APPELLANT

Vs

Prem Prakash Goyal

RESPONDENT

Date of Decision: July 27, 1995

Citation: 1997 2 CPJ 118

Hon'ble Judges: R.Dayal , Govind Prasad Pradhan , C.K.Cinturys J.

Final Decision: Appeal allowed

Judgement

1. THIS is an appeal under Section 15 of the Consumer Protection Act, 1986 against the order dated 9.6.95 of the District Consumer Disputes Redressal Forum, East District, whereby the Forum accepted the complaint filed by the respondent against the disconnection of his telephone No. 3114 and certain other reliefs.

2. RESPONDENT is a consumer in respect of telephone No. 3114. He made three complaints regarding local calls included in bills dated 1.10.90, 1.12.90 and 1.2.91 for Rs. 387/-, Rs. 326/-and Rs. 256/-respectively. In reply, the Telephone Department sent three letters dated 16.4.91 intimating him that his complaints had been investigated thoroughly on the basis of the facts available with the department and it was revealed that the alleged excess metering was not due to any technical or other faults and as such he was not entitled to any rebate. Duplicate bills were sent alongwith this letter requiring the respondent to make early payment in order "to avoid disconnection." However, disconnection had already been made earlier on 22.2.91. The respondent alleged in his complaint before the District Forum that the bills were incorrect in so far as they included the amount of local calls whereas, in fact he did not make any local calls justifying the bills. He also complained that the

disconnection was unlawful inasmuch as it did not precede any notice. He prayed for a direction to reduce the entire amounts for the local calls in the aforesaid 3 bills, to adjust the amount subsequently paid by him, to restore the telephone connection to him and to award a sum of Rs. 21,000/-as compensation on account of alleged harassment caused by the disconnection, a further sum of Rs. 8,000/-on account of the financial loss suffered by him and also a sum of Rs. 2,100/-incurred by him as other misc. expenses.

In the reply filed by the department, the allegation about the excess billing was controverted and it was alleged that disconnection was made pursuant to the relevant rules on account of the non-payment of the outstanding bills dated 1.10.90 and 1.12.90, after repeated ring reminders had been attempted several times but which could not be fruitful as there was no response at the other end.

The District Forum directed the petitioner to make payment of the above referred disputed bills but at the same time gave the finding that there was no default as three letters dated 16.4.91 were issued subsequent to the disconnection. According to the learned Forum, the issue of the letters showed that there was no default. Further, the Forum Held that the disconnection was unlawful as this had been done without giving the respondent an opportunity of being heard. A copy of the order passed by the National Commission on 13.4.93 in First Appeal No. 250 of 1991 *The Telecom District Manager v. Dr. Bishnu Charan Misra* was cited before the Forum, but the Forum did not rely upon the decision expressing the view that the same had little relevance. It Held that the disconnection of the telephone in that case was based on clear default on the part of the complainant to whom the opposite party had taken pains to send demand notice also, but, in the present case, the disconnection was without default. The Forum directed the restoration of the connection at the cost of the department, payment of Rs. 5,000/-as compensation on account of illegal disconnection and also Rs. 300/-on account of misc. expenses.

3. WE have heard Mr. S.P. Wangdi, learned Counsel, appearing on behalf of the appellant and Mr. Prasant Goel, son of the respondent. In our view, the very fact that the District Forum directed the respondent to pay the amounts of the three bills referred earlier amounted to a clear default on the part of the respondent in making the payments thereof. A perusal of any telephone bill would show that certain instructions to subscribers are printed on its back. Instructions to subscribers are printed on its back. Instruction 2 is that for default in payment by due date, the telephone will be disconnected without any notice. Instruction 5 is that "Payment should be made pending settlement of disputes. This will avoid disconnection.

Complaints, if any, may be made within 15 days". Rule 443 of the Indian Telegraph Rules, 1951 provides, inter alia, that if, on or before the due date the rent or other charges in respect of the telephone service are not paid by the subscriber in accordance with the rules, any telephone may be disconnected without any notice. The National Commission Held in 1st Appeal No. 250 of 1991, referred above, that this rule clearly empowers the Telephone Department to disconnect a telephone connection without notice, if the subscriber is in arrears. This decision is clearly applicable to the facts of the present case. Demand of telephone charges had been made in the present case also. The mere fact that the respondent made complaints with regard to bills, which were found to have no substance subsequently, clearly meant that the respondent was in arrears. The fact that he made complaints did not have the effect of taking him out of the category of defaulter. It is true that mention in the letters dated 16.4.91 that early payment should be made to avoid disconnection was erroneous as disconnection had already been made, but this did not have the effect of nullifying the consequence which ensued the defaults having being committed, viz., the disconnection of the telephone.

In the Memo of Appeal, a ground was also taken that since the complaint was filed by the petitioner after one year of the arising of the cause of action, the petition was barred by limitation. However, since the petition had been filed before the District Forum on 29.4.93 before Section 24-A was inserted in the Consumer Protection Act, 1986 this point was not pressed at the time of arguments.

4. IN the result, the appeal is allowed and the impugned order of the learned District Forum is set aside. However, the respondent shall be entitled to telephone connection on payment of usual charges as per rules. IN the circumstances, there shall be no order as to costs. Appeal allowed.