

(2010) 09 NCDRC CK 0003

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Mahanagar Telephone Nigam
Ltd

APPELLANT

Vs

Girvar Lal

RESPONDENT

Date of Decision: Sept. 3, 2010

Citation: 2010 4 CPJ 394

Hon'ble Judges: Ashok Bhan , Vineeta Rai J.

Final Decision: Revision Petition allowed.

Judgement

1. PETITIONER, who was the opposite party before the District Forum, has filed the present Revision Petition against the order passed by the State Commission, Delhi in Appeal No. 755/2005 whereby the State Commission, without issuing notice to the petitioner, has reversed the order passed by the District Forum and remanded the case to the District Forum for a fresh decision taking the respondent to be a "Consumer" within the meaning of Section 2(1)(d) of Consumer Protection Act, 1986 (for short "the Act"). Shortly stated, the facts of the case are that:

2. PETITIONER gave a franchisee to the respondent to run a PCO, which was numbered as PCO CCB No. 23647099 under an agreement entered between them. Respondent deposited a sum of Rs. 1,000 as security. Respondent filed a complaint before the District Forum with the allegation that inspite of the fact that the CCB remained defective for two months, petitioner had sent a bill of Rs. 5,950 which the respondent did not deposit; that the petitioner had disconnected the CCB without any justification. He prayed for compensation and relaxation for payment of bills.

3. ON being served, petitioner put in appearance and contested the case. According to the petitioner, the complaint was not maintainable as the respondent was not a "Consumer" as he did not fall within the definition of "Consumer" under Section 2(1)(d) of the Act; that the respondent was running the PCO for commercial purposes and is a franchisee of the petitioner; that he took commission on the amount collected; that whenever a complaint was received that the CCB/PCO No. 23647099 was not running properly, the same was attended to and the CCB was set right. Petitioner prayed that the complaint be dismissed as not maintainable.

4. DISTRICT Forum relying upon two judgments of this Commission in Madras Telephone and Ors. v. R. Kannan, I (1994) CPJ 14 (NC) and Union of India v. Ramesh Kumar, III (1995) CPJ 67 (NC), dismissed the complaint as not maintainable. It was held that the respondent was not a consumer within the definition of "Consumer" under the Act.

5. RESPONDENT being aggrieved filed an appeal before the State Commission. The State Commission without issuing notice to the petitioner and without taking note of the two judgments relied upon by the District Forum, reversed the order and held the respondent to be a "Consumer" within the meaning of Section 2(1)(d) of the Act and remanded the case for a fresh decision taking the respondent to be a "Consumer". Counsel for the parties have been heard.

6. AT the outset, it may be stated here that the State Commission has erred in reversing the order passed by the District Forum without issuing notice to the petitioner. The order has been passed in violation of principles of natural justice. Nobody can be condemned unheard. The order is liable to be set aside on this short

ground. Since the amount involved in the present case is very small and the point in issue stands concluded by two judgments of five members" Bench of this Commission and to avoid unnecessary litigation expense, we propose to dispose of the Revision Petition on merits.

7. IN Madras Telephone and Ors. (supra) , five members" Bench of this Commission has held as under:

"A franchise holder is only a licensee of the grantor of the franchise for operating in this case STD/PCO and collecting the call charges on behalf of the franchiser. It is the franchise holder who is rendering service to the grantor of the franchise in as much as he runs and maintains STD/PCO relieving the telecom department of the responsibility for providing and maintaining public call offices. The franchise holder performs two functions; (a) establishes and runs a public call office, and (b) collects the call charges on behalf of the public department. For rendering these services to the franchiser the franchise holder gets a commission. The mere fact that the franchise holder has been described as the hirer of the PCO does not make him a person who renders service to the Revision Petitioner, telecom department. Consequently, the fact that he has been described as hirer in the agreement would not mean that he is rendering a service to the telecom department for consideration. A franchise holder renders to those who use the Public Call Office which is performed by the Telecom Department directly wherever there is no franchiser to manage a Public Call Office. Consequently, it is erroneous to hold in this case that the franchise holder, who is maintaining and running a STD/PCO office, is a Consumer viz-a-viz the Revision Petitioner, telecom district."

8. TO the same effect is the decision of this Commission in Union of India (supra). In the subsequent judgment of this Commission following the earlier decision in Madras Telecom and Ors. (supra) has held that a franchisee would not be a Consumer.

9. RESPECTFULLY following the view taken by the Commission in the two aforementioned judgments, we accept this Revision Petition, set aside the order passed by the State Commission and restore that of the District Forum. Complaint is ordered to be dismissed.

10. PETITIONER, if so advised, would be at liberty to seek relief in any other Forum along with an application under Section 14 of the Indian Limitation Act for condoning the delay for the time spent before the Consumer Fora, keeping in mind the observations made by the Supreme Court in Laxmi Engineering Works v. PSG Industrial Institute, II (1995) CPJ 1 (SC)=(1995) 3 SCC 583. Revision Petition allowed.