
(2002) 04 NCDRC CK 0031

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

MADHAV SADASHIV
CHOUGULE

APPELLANT

Vs

GENERAL MANAGER,
TELECOM DISTRICT

RESPONDENT

Date of Decision: April 18, 2002

Citation: 2002 3 CPJ 221 : 2003 1 CLT 480 : 2003 1 CPR 36

Hon'ble Judges: M.S.Parikh , M.K.Joshi J.

Final Decision: Ordered accordingly

Judgement

1. BOTH these proceedings arise from order dated 25.9.2000 and 27.11.2001 respectively passed in Consumer Protection Case No. 11/1999 and Contempt Application No. 10 of 2002 by the learned Consumer Disputes Redressal Forum, Valsad. At the outset the locus standi of Mr. Vasant S. Chougule who represents the original complainant before this Commission was questioned. Insofar as the legal position is concerned, Mr. Vasant Chougule submitted definition of agent as appearing in Rule 2(b) of the Gujarat Consumer Protection Rules, 1988, which reads as under :

"Agent means a person duly authorised by a party to present any complaint, appeal or reply on its behalf before the State Commission or the District Forum."

Mr. Chougule, therefore, submitted that since there is a Purshi on a simple paper signed by his brother submitted to this Commission authorising him to appear and argue the matter, he can do so. We are unable to accept his argument in view of the fact that even the aforesaid rule uses the words "duly authorised". The proceedings before a Consumer Forum or a Commission under the Consumer Protection Act, 1986 are necessarily quasi judicial proceeding. The parties who can appear and plead their cases are set out in the Act itself. Having gone through the provisions, a brother does not fall into any class of these persons. Then, there is a Central Act styled Power of Attorney Act, 1882. According to definition of Power of Attorney contained in Section 1A, it would include "any

instrument empowering a specified person to act for and in the name of the person executing it". According to Section 2 thereof, a Power of Attorney has to be executed in the prescribed manner. Needless to say that the power of attorney has to be executed on a prescribed stamp paper. Mere Purshi filed before a Court saying that some one is authorised to appear will not come within the definition of the power of attorney.

Therefore, the complainant who is not present before this Commission and who does not want to remain present before this Commission could not have legally authorised his brother Vasant Chougule to appear and plead his cause. Admittedly Vasant Chougule is not an Advocate and, therefore, he cannot appear, plead and argue a matter taking advantage of the provisions of the Advocates Act, 1961. Besides, the above rule speaks of presentation of pleadings. Hence taking any view of the matter, Vasant Chougule is not a person duly authorised by a party to present any complaint, appeal or reply on its behalf and plead and argue the matter before this Commission.

2. IN spite of aforesaid position, since there is urgency of the matter, the learned Counsel for the opponent Telecom District [revision petitioner] was persuaded to give consent to allow Mr. Vasant Chougule to make his submission on behalf of his brother, the original complainant.

The complainant approached the learned Forum initially with a grievance that bill No. 359 dated 1.11.1996 for the period 16.8.1996 to 15.10.1996 for 172 calls and another bill No. 121 dated 1.7.1997 for 607 calls pertaining to his telephone No. 82893 were excessive. The complainant paid up the bills but made a grievance before the learned Forum that the bills were excessive. He, therefore, called upon the opponent Telecom District to furnish particulars of the bills making wild allegations in his complaint. The opponent submitted written objections to the complaint. After considering the facts and circumstances of the case, the learned Forum directed the opponent Telecom District to give details for the disputed bills and also directed it to pay Rs. 1,000/- by way of compensation with running interest @ 18% p.a. and cost of Rs. 500/-. The complainant has preferred appeal against the impugned order inter alia on the ground that there was STD facility attached to the telephone of the complainant, that the bills were excessive, that the letters written by the complainant were without any consequence, that the first part of the order was based on decision of the National Commission which could not be said to be relevant to the facts of the case as per details in the appeal, that the so-called meter report was not given by the opponent, that the allegations with regard to foulplay ought to have been accepted by the learned Forum who, therefore, ought to have granted prayer for refund of Rs. 300/- + Rs. 288/- with interest thereon which is the disputed amount.

The complainant filed aforesaid appeal dated 12.10.2000 received by this Commission by post on 17.10.2000. He, however, did not disclose before the learned Forum that he has preferred appeal against the impugned order before this Commissioner while filing Execution Application No. 10/2000 [Contempt Application] on 30.10.2000. In that contempt application the opponent Telecom District presented defence saying that the order which could be complied with was in fact complied with and there was no possibility of complying with the second part of the order as there was no facility of recording of the actual phones made by consumers in the concerned Telephone Exchange. The learned Forum only went to the compliance part of it and held that since detailed bill was not sent by the opponent Telecom District, there was disobedience of the impugned order to that extent and recorded conviction and directed the General Manager of the opponent Telecom District to suffer simple imprisonment for a period of 10 days under Section 27 of the Consumer Protection Act, 1986 [Act for short]. The second order in the contempt application is the subject matter of challenge in the revision application.

3. WE have heard at length the aforesaid representative and the learned Advocate for the opponent Telecom Department. WE have also gone through the affidavits and counter affidavits as also rejoinder/s filed by the parties. It is not in dispute that quite before the filing of the execution application, Assistant General Manager accorded sanction for payment of Rs. 1,500/- on account of compensation and cost to the complainant as per the impugned order passed by the learned Forum and thus there was a process of abiding by the order passed by the learned Forum undertaken by the concerned authority of the Telecom District. Pursuing further the said process the opponent Telecom District issued cheque for the full amount as per the first direction of the impugned order in favour of the complainant. The aforesaid representative fairly conceded that cheque was received by the complainant and, therefore, there was no disobedience of that part of the order on the part of the concerned authority of the opponent Telecom District. Only question is with regard to compliance of the second part of the order. In this connection reference has been made by the aforesaid representative to letter dated 18.9.1997 which inter alia says that regarding the detailed statement of STD calls made on the telephone in question, list would be along with the bi-monthly bills depending upon the technical feasibility. The aforesaid representative, therefore, submitted that although there was a process to comply with the 2nd direction as per the aforesaid letter, it was not complied with. To this, it has been submitted that there was no technical feasibility as the Exchange in question did not have facility at the relevant point of time for recording of the individual STD calls with their respective numbers. Therefore, there was a physical impossibility on the part of the opponent Telecom District as no printout could ever be taken out on account of non-availability of the technical feasibility. It is this part of the defence of the

opponent Telecom Department which clearly appears to have escaped the attention of the learned Forum while deciding the execution application [contempt application]. There was no reason for the opponent Telecom District not to send a printout if it was technically feasible. The concerned officers are present before this Commission and they fairly say that there was no technical feasibility available and, therefore, it was physically impossible for any human being to send such a detailed bill. In our considered opinion, therefore, in the eye of law under Section 27 of the Act, there was no deliberate disobedience of the 2nd part of the impugned order directing the opponent Telecom District to send detailed bills. Reference has been made to a decision of the National Commission in the case of Greater Calcutta Gas Supply Corporation v. Pranab Kumar, reported in I (1996) CPJ 155 (NC). Following observations will assume importance while also considering the impact of Section 27 of the Act :

"Inability to render service due to reasons wholly beyond the control of the opposite party to render service would not constitute deficiency in service. WE approve the following observation of the President of the State Commission. "Deficiency in service connotes wilful non-performance of a service which ought otherwise to be performed or the denial of a service which is not so denied to others placed in similar circumstances. If there is load shedding in any area can a consumer get relief on the ground that there was deficiency in service during the period when the area was in darkness ? Similarly, if a bridge is made available to a passenger on payment of toll fee, can such a passenger complain of deficiency in service during the period when the bridge is not repaired for paucity of fund or for any other reason and left unusable by the passenger ? WE do not think that any complaint of deficiency shall be sustained by any Court in the above case". "

In our considered opinion, having regard to the facts and circumstances of the present case, it is not a case where it can ever be held that the opponent Telecom District or any of the authorities of the opponent Telecom District is guilty of disobedience of the direction issued under the impugned order.

In above view of the matter, the order of conviction and sentence rendered by the learned Forum deserves to be quashed and set aside.

4. WE, therefore, pass following order : ORDER

[1] Appeal No. 261/2000 filed by the complainant against the first part of the impugned order dated 25.9.2000 is hereby dismissed as sufficient redressal was granted while issuing direction awarding compensation with interest and cost. Impugned order dated 27.11.2001 rendered by the learned Consumer Disputes Redressal Form, Valsad in

Contempt Application No. 10/2000 is hereby quashed and set aside while dismissing the contempt application filed by the complainant.

[2] The amount of Rs. 500/- deposited by the opponent Telecom District as directed by order of this Commission dated 5.12.2001 be paid over to the complainant by A/c Payee cheque, as, in our considered opinion, this should settle all his grievances.

[3] Both the matters will accordingly be disposed of, with no order as to costs.

Ordered accordingly.