

LAWCHAKRA.IN
IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution: 09.10.2014

Date of Hearing: 22.02.2024

Date of Decision: 01.07.2024

FIRST APPEAL NO.-978/2014

IN THE MATTER OF

BHARTI AIRTEL LTD.

NELSON MANDELA ROAD,

VASANT KUNJ,

PHASE-III

THROUGH ITS SENIOR MANAGER-LEGAL

SH. AMIT BHATIA.

(Through: KG Gopalkrishnan & Nisha Mohandas, Advocates)

...Appellant

VERSUS

1. MR. JASMEET SINGH PURI (DECEASED),

LEGAL HEIR:

MS. MALLIKA SINGH PURI

(Through: Legal Knights, Law Firm)

...Respondent no.1

2. BANK OF BARODA

THROUGH ITS CHIEF MANAGER

M-9, CONNAUGHT PLACE BRANCH,

NEW DELHI.

...Respondent no.2

CORAM

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Mr.KG Gopalkrishnan & Ms. Nisha Mohandas, Counsel
for the Appellant.
Mr. Kaushikee Bora, proxy counsel for Mr. Anurag Jain
(email id – support@legalknights.in), counsel for
respondent no.1.
None for respondent no.2.

PER:HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,PRESIDENT
JUDGMENT

1. The facts of the case as per the District Commission record are as under:

“The complainant, who is CEO of a company and a high ranking professional in IT services, is in consumer dispute with Bharti Airtel (OP1) since 4th March 2013, when he purchased the Internet and landline services from OP1, over the extreme harassment, humiliation, insult, torture, mental agony, inconvenience, threatening action and bad attitude of OP1 to him and his family.

It is alleged that he gave a cheque of Rs.4,995/- for the service on 4th March 2013 drawn at bank of Baroda, in favour of OP, which was credited with OP on 09/03/13. It is alleged that after some time of installation of fixed landline and modem for the Internet, he and his family started receiving calls from the executives of OP1 that the cheque in question was dishonoured for insufficient funds. The complainant informed the executive to check the status of cheque with bank (OP2) but OP1 never cared and continued making indiscriminate calls, without any formal written

information to this affect. It is alleged that every kind of communication with OP1, the executive remained callous, uncaring, demanding repeatedly same information, despite emails etc but it all fell on deaf ears.

The complainant was put to such an irritating ordeal without cause that amounts to torture of a senior level professional by continued calls and disturbances including his wife to remind that the cheque was dishonoured. The telephone and Internet services were discontinued on 04/05/13 and till 02/06/13; the OP1 insisted that it had not received the payment of cheque, despite complainant sending the bank information to OP1. Though the services were not in use since 04/05/13, OP1 sent a legal notice demanding Rs.7,549/-. It is these facts and circumstances that complainant has filed this consumer complaint against arbitrary and malafide action of OP1's executives and seeks compensation of the deficiency of OP1 in its services to him.

2. The District Commission after taking into consideration the material available on record passed the order dated 04.09.2014, whereby it held as under:

“.....The above inter se communication between the parties, reveals a lack of sensitivity in OP1's executives to the plight of their customers as well as no supervision in a big company like OP1 for quick redressal of consumer's grievances. In fact, consumer emails are replied to in an insincere manner with no effort being made to reconcile the wrongs/disservice caused to them which clearly

proves that mischief conduct of OP1's representatives, which appears to be deliberate and mala fide, with a purpose and design to harass the responsible professional, to heap insults, humiliation, mental agony by crass and bizarre attitude of OP1. It is not a routine case of issuing redemption for dues to a company, but a motivated misconduct to time out the consumer by irresponsible executives of OP1.

The complainant in Para 27, 28 and 32 respectively as reproduced below stated that:

"I say that it is respective respectfully submitted that the deal amount of Rs.4,995/- was already credited in the account of OP1 on 09/03/2013 through an account payee cheque number dated 04/03/2013 and drawn at the bank of Baroda, Connaught place branch, New Delhi and despite providing the statement again and again complainant has been harassing by the opposite party number 1. It is further stated that OP 1 has already disconnected the connection of the fixed landline numbe

and the Internet connection on the 04/05/13 as installed at the premises of the complainant and as such he is not being able to use the same. It is also submitted that even after disconnecting the fixed landline and the Internet connection, the complainant is being harassed. It would not be out of place to mention here that complainant was also served with a notice dated 13/07/2013 to make payment of RS.7,549/- to OP1,"

"I say that such conduct of OP1 is definitely damaging and humiliating to the complainant who is a great person in the

society and who has been made to suffer in the hands of OPI even after making the due payment as per the demand raised to him. It is also submitted that the complainant has taken all possible efforts to sort out the issues without OP, but on all the occasions, OPI has been refusing to cooperate with the complainant in any manner which is evident from the correspondences between parties. That are such being left with no other effective remedy, the complainant was bound to approach this learned Court to readdress his grievances against the opposite parties."

"I say that present complaint is valued at Rs.4,995/-being the cheque amount drawn at the bank of Baroda, Connaught place branch, New Delhi being the cheque number dated the 04/03/2013. The complainant further seeks compensation of Rs. 10 lakhs towards harassment, mental agony and unnecessary humiliation suffered by him as well as by his wife owing to the annoying mails and telephonic calls by OPI and for the disconnection of fixed landline and the Internet services at the premises of the complainant. It is respectfully submitted that the complainant is a man of high repute who is holding responsible post for which he needs a steady internet connection. It is also submitted that owing to the disconnection of fixed landline and the internet connection, the complainant has suffered immense loss in his professional careers which can never be compensated in terms of money, still for the valuation of present complaint; the Complainant seeks a compensation of Rs. 10 lakhs from this learned court."

After considering the material, submissions particularly the Act of discontinuing the services, despite payments and raising bills again, shows a lack of coordination between different department of OP1 whereby the complainant is made to suffer; all due to internal mismanagement as well as lacksidal attitude of OP1 executives towards the very people who provides a market for their services. We hold that it is a fit case for punitive damages to teach OP1 a lesson, so that its executives are disciplined and deterred from such behaviour to innocent consumers.

We impose punitive compensation of Rs.5 lakhs on OP1. It is directed that out of this OP1 will deposit Rs.3 lakhs to State Consumer Welfare Fund and pay balance Rs.2 lakhs to the complainant for the extreme and deliberate insult, humiliation, mental agony, harassment, loss of benefit of services due to wrongful disconnection, and litigation expenses.

2. Aggrieved by the aforesaid judgment of the District Commission, the Appellant has preferred the present on the ground that this commission does not have jurisdiction to adjudicate the present appeal in view of the recent judgment of the apex court titled as *General Manager, Telecom Vs. M. Krishnan & anr. bearing civil appeal no.7687/2004* decided on 01.09.2009, where is there is special remedy provided in section 7B of the Telegraph Act regarding disputes in respect to telecommunication. He further contended that the notice was served upon the appellant was on 22.10.2013 calling appellant to appear on 13.11.2013, therefore mandatory period of 30 days was not given to the appellant under section 13(2)(a) of the consumer protection act 1986. Moreover, the procedure

followed by the District Commission was against the principle of the natural justice as no opportunity was given to the appellant being heard.

3. The Respondent no.1, on the other hand, denied all the submissions of the appellant and submitted that the District Commission had perused all the material on record before pronouncing the said judgment. The counsel for the Respondent no.1 further prayed for dismissal of the instant appeal with costs.
4. The right of Respondent no.2 to file the reply was closed vide order dated 07.09.2016.
5. We have perused the material available before us and heard the counsel for the parties.
6. **The first question for consideration before us is whether the subject matter of the present case bars the jurisdiction of Consumer Commission?**
7. To resolve this issue, we primarily deem it appropriate to refer to Section 7B of Indian Telegraph Act, 1885, which states as follows:

7B. Arbitration of disputes:

1. *Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been provided, the dispute shall be determined by arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of disputes under this section.*

2. *The award of the arbitrator appointed under sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any court.*
8. Bare perusal of the aforementioned section of Indian Telegraph Act, 1885, reflects that the dispute relating to telegraph line, appliance or apparatus shall be determined by an arbitrator.
9. However, on perusal of record, we find that the present case is in regard to the dispute relating to deficiency of service on the part of Appellant by not resolving the issue faced by the Respondent no.1 by not taking the proper action to the request of Respondent as he and his was receiving calls repeatedly on his Mobile Phone number from the executives of the Appellant and he was told that the cheque he gave for the services of internet and landline services to the Appellant was dishonoured due to insufficient fund. On the other hand, respondent no.1 alleged that the said cheque for Rs. 4,995/- was credited with the Appellant on 09.03.2013. Therefore, it is clear that the dispute in the present case is in regard to the deficiency of service on the part of Appellant, which Consumer Commission is authorised to adjudicate.
10. From the aforesaid discussion and the facts of the present case, we are of the view that Consumer Commission is well within its jurisdiction to adjudicate the present matter. Therefore, the contention of the Appellant that the present subject matter bars the jurisdiction of Consumer Commission, holds no merit.
11. **The second question for consideration before us is whether the District Commission violated the 13(2)(a) of the Consumer Protection Act, 1986**

by not giving opportunity to be heard?

12. On perusal of record, it is noted that the on 22.01.2014 both the parties were present before the District Commission and the Appellant sought time to file its reply to the complaint, the same was allowed by the District Commission subject to the cost of Rs. 1000/- and the matter was adjourned to the 20.02.2014. However, when the matter taken upon on 20.02.2014 the Appellant failed to file the reply to the Complainant. Further, it is well settled position that if the written statement filed beyond the period of 30 days, which can be extended for 15 more days, it is upon the discretion of the adjudicating Court to condone the delay if sufficient cause has been provided by the Appellant. However, in the present case, it is clear from the record that the Appellant failed to file the written statement within stipulated period despite opportunity given on 22.01.2014.
13. Moreover, it is to be noted that the Hon'ble Apex Court has left no room for confusion and has already settled the legal position in this regard in *New India Assurance Company Ltd vs Hili Multipurpose Cold Storage Pvt.Ltd. (2020) SCC 75*. The Hon'ble Apex Court has categorically held that the Consumer Commission cannot condone the delay beyond the statutory limit of 45 days from the date of service. Thus, we opine that District Commission has only exercised the jurisdiction vested in it.
14. **The main question for consideration is whether the Appellant is deficient in providing its services to the Respondent No.1?**
15. The expression deficiency of services is defined in Section 2 (1) (g) of the Consumer Protection Act, 1986 as:

(g) "deficiency" means any fault, imperfection, shortcoming or

inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

16. The expression 'service' in Section 2(1)(o) of the Consumer Protection Act, 1986 is defined as:

(o)"service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service"

17. On perusal of record, it is noted that on 04.03.2014, the Respondent No.1 purchased internet and landline services from the Appellant. Accordingly, Respondent No. 1 issued a cheque for Rs. 4,995/- for the said services, drawn at Bank of Baroda in favor of the Appellant. Soon after the installation of the fixed landline and modem, the Respondent No. 1 started receiving calls from the Appellant, informing that the cheque in question was dishonoured due to insufficient funds. However, it is clear from the record as admitted by Respondent No. 2 that the cheque in question was credited to the account of Respondent No. 1. Moreover, no evidence has been provided by the Appellant to demonstrate any inquiry they made into the matter, nor have they shown that they registered any complaint regarding the issue.

18. Additionally, the Appellant failed to take concrete steps to stop the calls even after receiving complaints about from him. Furthermore, it is also evident from *Annexure C/9* that Respondent No. 1 vide emails dated 03.05.2013, 12.05.2013, and 14.05.2013, showed their bank statement and provided proper details received from the Bank of Baroda that the said cheque was credited to the account of the Appellant on 09.03.2013 from Respondent No. 1. However, instead of resolving the matter, the Appellant first disconnected the telephone and internet service and then threatened Respondent No. 1 vide email dated 13.07.2013 to pay an amount of Rs. 7,549/- to clear outstanding dues or face legal action. Consequently, it cannot be denied that the Appellant was not only negligent in providing its services but was also using its position to harass Respondent No. 1.
19. It is, therefore, clear that the Appellant failed to provide adequate service to the Respondent no.1, which resulted in the Respondent suffering consequences. As a result, the deficiency on the part of the Appellant stands proved.
20. Accordingly, we do not find any infirmity in the judgment of the District Commission and agree with the reasons given by the District Commission. Consequently, we uphold the judgment dated 04.09.2014 passed by the District Consumer Disputes Redressal Forum -VI, 'M' Block, 1st Floor, Vikas Bhawan, I.P. Estate, New Delhi 110002.
21. Consequently, the present appeal stands dismissed with no order as to costs.
22. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.

23. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
24. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:
01.07.2024

LR-ZA