

Bhupender Singh Vs. Idea Cellular Ltd., Rep. by Its Manager and Others

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Oct-05-2009

Judge : Smt M. Shreesha, Presiding Member & Sri K. Satyanand, Member

Appeal No. : F.A.No.1030 OF 2007 AGAINST C.C.NO.01 OF 2006 DISTRICT
CONSUMER FORUM, RANGA REDDY DISTRICT

Appellant : Bhupender Singh

Respondent : idea Cellular Ltd., Rep. by Its Manager and Others

Advocate for Pet/Ap. : Counsel for the Appellant: M/s.J.C. Francis. Counsel for
the Respondents: Mr. Srinivasa Rao Pachwa

Judgement :

(Typed to the dictation of Sri K. Satyanand, Honble Member)

The unsuccessful complainant before the District Forum filed the appeal

The facts of the case are briefly as follows:

The complainant subscribed for mobile cell phone bearing No.9948095239 offered by the opposite parties. While availing the said connection, he opted for payment of bills through electronic clearance services. Accordingly he paid an initial amount of Rs.550/-. Subsequently he had taken an add on connection with number

9848046773. For both the connections, he took the option of electronic clearance. He claimed to have issued a cheque and also signed certain documents paving the way for clearing the bills through ECS. Satisfying themselves of the proper documentation, the phones were activated. In the month of August, 2005, he received bills for payment as also a message on his mobile phone from the opposite parties for payment of bills immediately. The complainant contacted the customer care services of the opposite parties. On enquiry the opposite parties requested him to pay the bill for the month of August, 2005 assuring him that the further bills will be cleared through ECS. So he obliged them and paid the August through a cheque bearing No.540839 dated 12-9-2005 but to his utter dismay, again he received a bill for the month of September, 2005. So he claimed to have again contacted the customer care but it evoked no response. He claimed to have lodged a complaint before them for which a number was assigned. Ultimately the complainant's connection was disconnected without any intimation. When contacted they activated the connection for a while saying it was done by mistake. But soon it was disconnected two days later. He tried to contact the Manager of the opposite parties but in vain. Finally, he got issued a legal notice dated 8-11-2005 to the opposite parties. Though the notice was received by opposite parties 1 and 3, opposite party No.4 refused to receive the same. Opposite party No.1 issued a letter to the complainant assuring an appointment with the Manager. However, he failed to successfully meet the manager as he did not turn up. The service was again disconnected. Thus, though an arrangement of ECS was made the service became erratic, hence he filed the complaint for damages in a sum of Rs.25,000/- for suffering and loss of clientele.

The opposite parties 1 to 3 filed a counter generally denying the averments in the complaint. It is contended that the complainant never opted for ECS and on the other hand paid Rs.550/- towards the deposit. It is only after taking add on that he opted for ECS. The contention that he gave a cancelled cheque was false. He did not give any cheque as alleged. It is also contended that the documents were not sufficient to activate the service on ECS basis. It is in these circumstances that he was asked to make payments as the ECS process was not activated. They denied other facts. In substance the complainant turned away Mr.Chandrasekhar who tried to guide him along the correct procedure. The allegation of carelessness was

denied. Ultimately it was alleged that it was because of his negligence in providing the required documents for activation of ECS facility, even though specifically requested by G.Chandrasekhar that led to disconnection though intermittently several times the phones were reconnected. It was finally submitted that the complainant fell in arrears of Rs.1300-90 ps. So the opposite parties therefore had no option except to disconnect the cellular connection of the complainant. It is finally urged that the complaint was vexatious.

In support of his case the complainant filed his affidavit and relied upon Exs.A1 to A10. On the other hand the opposite parties got filed an affidavit and they too relied upon documents marked as Exs.B1 to B10.

On a consideration of the evidence adduced on either side, the District Forum came to the conclusion that the complainant failed to produce any documentary evidence that he had complied with the requirements requisite for getting ECS facility and therefore held that there was no deficiency and accordingly dismissed the complaint.

Aggrieved by the said order, the complainant filed the present appeal contending that the District Forum erred in thinking that he did not comply with the requirements to claim ECS facility. It ought to have seen that in fact ECS facility was for a while extended to him which in itself proved that he complied with the requirements.

Heard both sides. The points that arise for consideration are:

- 1) Whether the complainant had fulfilled the conditions and requirements precedent to extending the ECS facility.
- 2) Whether the complainant could establish any deficiency of service on the part of the opposite parties.
- 3) Whether there are any good grounds to interfere with the order of the District forum?

Apart from his assertions on oath by way of affidavit to the effect that he had been granted of the ECS facility from September, 2005 onwards, he tried to rely upon Exs.A1 to A10 to substantiate his case against the opposite parties. Exs.A1 and A2 are the bills, they do not refer to any ECS facility. Even according to the complainant he made an initial payment of Rs.500/- and odd which was not compatible with the ECS facility. It is only from September onwards that he claimed to have obtained ECS facility and as a matter of fact for such conversion, there is no document except his reliance upon an assurance by phone. Ex.A3 is merely a receipt for monthly bill. Ex.A4 is his notice. Ex.A5 to A8 are the postal receipts or unserved envelope as the case may be. Ex.A9 is the letter from the service provider, it clearly indicates that the ECS feature activation was not effected as yet as on that date. It was merely in the contemplation and it was only in that context that a meeting between the complainant and Mr.G.Chandrasekhar, the Manager of Customer Service was thought of by the said letter. It however, embodied a gesture by the service provider manifest in the reactivation of the connection. The reactivation of the connection was independent of ECS connection as is evident from Ex.A9 itself. On the other hand, the opposite parties also relied upon documents. Ex.B1 clearly showed that the tariff plan selected was CUG which contemplated monthly rental of Rs.249/-. Ex.B1 also shows that the initial payment being Rs.550/-. It is a document what is called customer service agreement signed by the complainant as well. No doubt Ex.B3 shows that ECS was submitted but the fields meant for ECS plan remained unfilled at page 2 and 3 of Ex.B3. Exs.B4, B5, B6, B7, B8 clearly show that the ECS facility was not eventualized and the matter was merely under negotiation. Thus there is no concrete proof to show that the change to ECS facility sought by the complainant was ever processed by proper documentation. No doubt he relied upon only oral promises or oral assertions as overtacts suggestive of grant of such a facility but such circumstances hardly go into making a judicial verdict. Thus we are firmly of the opinion that the complainant could not prove that the ECS facility activation was duly achieved by him by submitting proper documents. This takes us to the question whether he is entitled to make out any grievance of deficiency in service on the part of the service provider. We have absolutely no doubt in our minds that deficiency in service can be proved only after fully showing that the complainant

who claims to be a party to the contract had fulfilled all the obligations resting upon him. So in this case with want of such proof, we are constrained to hold that no finding of deficiency against the opposite parties/respondents can be turned out.

Thus we do not see any grounds to interfere with the order of the District Forum. Accordingly the appeal is dismissed but without costs in the circumstances of the case.

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