

Sunil Kumar Agrawal Vs. Chief General Manager Telecom, Patna and Others

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Court : Bihar State Consumer Disputes Redressal Commission SCDRC Patna

Decided On : Nov-15-1994

Judge : B.N. Sinha, President, K.P. Sinha , Member & the Honourable Mrs. Justice Mrs. Kalpana Ashok, Member

Appeal No. : Appeal No. 24 of 1993

Appellant : Sunil Kumar Agrawal

Respondent : Chief General Manager Telecom, Patna and Others

Judgement :

B.N. Sinha, President:

1. The solitary question in this appeal is if the complainant-appellant who has installed phone-PCO/STD is a consumer under the Consumer Protection Act, 1986 (hereinafter called the Act).
2. The facts leading to this appeal may be noticed with utmost brevity. The appellant here, complainant before the District Forum, was granted licence by the respondent here the Opposite Party before the District Forum, to instal a pay phone booth at Jhumritilaiya and to operate pay phone-PCOand STD calls. The complainant accordingly installed the pay phone booth and started to operate pay phone - PCO and STD, under the terms and conditions of the licence. It appears that under the terms of the licence the complainant was permitted to charge Re. 1/- per unit besides the usual fixed charges from the callers for the calls made

from the pay phone and make payment to the respondent after collecting the charges for calls made by the public as per metered calls recorded in the exchange after retaining certain amount detailed in the licence as his commission. But the complainant did not pay certain bills sent to him by the opposite party alleging that they were excessive and incorrect. Consequently his pay phone was disconnected. It appears that those bills being paid, the telephone connection has been restored. The complainant alleges that the payment of those bills were made under protest and he filed case before the District Forum complaining against those bills and claiming refund of the excess amount paid by him with interest.

3. The District Forum dismissed the case of the complainant on the ground that the complainant is not a consumer under the Act and the case is not maintainable under the Act.

4. Mr. Jagdish Prasad authorised agent of the complainant-appellant has assailed the impugned order stating that the case is maintainable under the Act as the complainant is hirer of the PCO/STD Booth.

5. It is evident from the facts stated above that complainant is only a licensee of the opposite party for operating the PCO/STD and collecting the call charges on behalf of the opposite party. Thus it is the complainant who is rendering services to the opposite party by operating the PCO/STD booth and collecting charges from the callers for which he gets commission. Merely because he has been described as hirer in the agreement, he cannot be defined a consumer within the Act as defined under Section 2(1)(d)(ii) of the Act. He has not hired the services of the opposite party. Rather the opposite party has hired his services for consideration in the form of commission. We are supported in our view by the decision of the National Commission in *General Manager, Madras Telephones and Ors. v. R. Khanna*, (1994) 2 CTJ 602 (CP) (NCDRC).

6. Hence we find no merit in the appeal. The appeal is accordingly being dismissed and the order passed by the District Forum is hereby confirmed.

7. The appellant will pay Rs. 250/- as cost to the respondent.

Appeal dismissed.

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