

Assistant Engineer, Exchange and Others Vs. M/S. Fram and Co.

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Aug-25-1994

Judge : A. Venkatarami Reddy, President & the Honourable Mrs. J. Ananda Lakshmi, Member

Appeal No. : C.D.A. Nos: 4 of 94, 14 of 94 to 18 of 1994

Appellant : Assistant Engineer, Exchange and Others

Respondent : M/S. Fram and Co.

Advocate for Pet/Ap. : Sri. M. Prahlad Reddy

Judgement :

A. Venkatarami. President:

1. These appeals arise out of a common order passed by the District Forum, Hyderabad in CD. Nos. 458/- 91, 602/- 91, 763/- 91, 625/- 92, 658/- 92, 834/92. The parties in all these appeals are common. Hence they are being disposed off by a common order.

2. The allegations in all the complaints and the version of the opposite parties are the same, except that they relate to different periods of Telephone bills.

3. The case of the complainant is that it is a firm having subscriber No. 43369 situated at Tilak road, Hyderabad. The bills issued to the complainant till 1.9.1989 never exceeded Rs. 300/-. The bills issued on 1.9.1989 are excessive for which the complainant lodged a protest, but paid the amount. While so the complainant received bills dated 1.5.91 for the period 16.2.91 to 15.4.91 in a sum of Rs. 770/-; bill dated 1.7.91 for the period 16.4.91 to 15.6.91 in a sum of Rs. 458/-; bill dated 1.9.91 for the period 16.6.91 to 15.8.91 in a sum of Rs. 963/-, bill dated 1.11.91 for the period from 16.8.91 to 15.10.91 in a sum of Rs. 490/-, bill dated 1.1.92 for the period from 15.12.91 in a sum of Rs. 542/- and a bill dated 1.8.1992 for the period from 16.12.1991 to 15.2.1992 in a sum of Rs. 761/- which are the subject matter of the disputes.

4. According to the complainant one of the partners of the firm Sri F.R. Mistry was a heart patient and he was admitted in NIMS for bypass surgery and the shop was continuously closed since 24.1.1991 till the date of issuance of the last bill. As and when each bill was issued, the complainant sent a representation to the telephone department stating that the shop was closed and that nobody was using the telephone. But yet the bills were being issued as if the telephone was in use. He, therefore, complained that there must have been misused of the telephone from outside the complainant's premises and the said bills need be rectified and bills may be issued for minimum amounts as the telephone was not under use.

5. The opposite parties sent replies to some of the complaints stating that investigation did not reveal any defect in the metering equipment and it revealed usage of the subject telephone and that there is no basis for the complaint of misuse of the telephone line from outside.

6. In support of the complainants case an affidavit by one of the partners was filed and Exs. A-1 to A-48 were marked. On behalf of the opposite parties Exs. B-1 to B-13 were marked.

7. On a consideration of the material on record, the District Forum found that when the complainant alleged that the shop in question was continuously closed and the telephone was no longer in use and the telephone line must have been tapped from elsewhere, the opposite parties did not investigate atleast by surprise check

whether the shop has been under closure, and also did not check such as cable pillar, distribution point etc., associated with the subject telephone which are susceptible to misuse. It therefore held that the shop was under continuous closure from 24.1.1991 and that the calls registered since that date which are the subject matter of these appeals are as a result of mis-use of the line by some third parties and the complainant is therefore entitled to the relief. It accordingly directed the opposite parties to reframe the bills for minimum amount.

8. Aggrieved by the said order of the District Forum, these appeals are preferred by the opposite parties.

9. It is firstly, submitted by Sri M. Prahlad Reddy the learned Counsel for the appellants that on receiving the complaints, the department checked the internal equipment associated with the telephone and also external plant and they found no defect and in any event if the shop was closed the complainant should have entrusted the instrument to the department for safe custody when he found that there was some tempering. In order to appreciate the aforesaid contentions, it is to be seen that the complainant filed, apart from the oral evidence of one of its partners and 48 documents. It is to be seen from the aforesaid documents that the complainant made a representation as and when impugned bills are issued stating that the shop was closed and the telephone was not in use and that the line of the telephone must have been tapped from elsewhere. But the opposite party went on replying that they have checked the internal and external equipment and found no defect. Starting from Ex. A-25 the complaint dated 18.7.91, Ex. A-27 dated 20.9.91. Ex. A-30 dated 25.11.91 and Ex. A-46 dated 17.4.92 the complainant went on informing the opposite parties that the shop was closed since 24.1.1991. But the opposite parties did not investigate the vulnerable point for tapping of the telephone line such as a cable pillar, distribution point etc., and that such shop was under closure from 24.1.1991. It is also evident from Ex. A-9 which is a letter date. 26.12.1991 addressed to the Post Master, General Post Office, Abids, Hyderabad, wherein the complainant complained that his branch office Tilak road is closed since 24.1.1991 and that} the post was not being received properly and that the same might be redirected to its head office at 123, M.G. Road, Secunderabad. The complainant also filed certificates of neighbouring

shopkeepers to prove that the shop was under closure.

10. Aforesaid evidence leads to only conclusion that the shop was closed right from 14.1.1991. That inspite of the investigation made by the department, it did not go to extent of making a surprise check to find out that the shop was closed or not and also to check at the vulnerable points where illegal tapping was possible. It is also not their case of the opposite party that the complainant did not close the shop during the relevant period. In these circumstances, we are satisfied that the shop of the complainant was closed and the bills issued can leads only to one conclusion that the telephone line must have tampered from outside by third parties, and the bills issued do not represent the calls made by the complainant. We are therefore satisfied with the findings of the District Forum in this regard. No doubt that a provisions made in the telephone rules for entrusting the telephone to the safe custody whenever it is not likely to be used for a long time. But it is to be seen, as contended by the learned Counsel for the respondent Sri P. Ramesh, that they did not entrust the telephone to the safe custody as the complainants were under impression that the partner who was admitted in the hospital is likely to take over the business and sit in the shop once again at any point of time on improving his health after discharge from the hospital. This explanation is plausible and we are inclined to believe the same. By mere failure to entrust the telephone to safe custody, it cannot be inferred that the complainant used the telephone. We are satisfied that the circumstances in these cases lead to only one conclusion that the telephone must have been tampered from outside of the shop. We therefore, agree with the finding of the District Forum. Accordingly the appeals are dismissed. No order as to costs.

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