

Divisional Engineer, Telecom Vs. Vidyasagar

Divisional Engineer, Telecom Vs. Vidyasagar

SooperKanoon Citation : sooperkanoon.com/1114547

Court : Karnataka State Consumer Disputes Redressal Commission SCDRC

Decided On : Jul-28-1990

Judge : R.G. Desai, President, the Honourable Mr. K.R. Ramaswamy Iyengar, Member & the Honourable Mrs. Sudha V. Reddy, Member

Appeal No. : Appeal No. 10 of 1990

Appellant : Divisional Engineer, Telecom

Respondent : Vidyasagar

Advocate for Def. : Mr. J.V. Hulasur

Advocate for Pet/Ap. : Mr. V.P. Kulkarni

Judgement :

R.G. Desai, President:

(1) After hearing the learned Counsel for the appellant and respondent and perusing the records, the Commission delivered the following:

(2) This appeal is directed against the Order dated 23.4.1990 passed by the District Forum, Gulbarga in Complaint No. 14/1990 on its file. It arises in this way :-

(3) Telephone No. 20160 is installed in the residence of the respondent situated in Aiwan-EShahi Road, Gulbarga and it stands in the name of the respondent. Telephone No. 23160 was allotted to the respondent as Proprietor of Bidar

Pharmaceutical Laboratory and that Telephone also is installed in his residence called "Jaideep" situated in Engineering College Road, Gulbarga. It is admitted by the learned Counsel for the respondent that the premises in which both the telephones are installed is the same. The bill for Rs. 5,263/- in respect of Telephone No. 23160 was issued to the respondent. As he failed to pay in time as per rules, both the telephones of the respondent were disconnected. Telephone No. 23160 was disconnected on 7.12.1989 and after issuing another notice to the respondent, Telephone No. 20160 was disconnected on 10.3.1990. Hence the Petitioner filed a complaint before the District Forum, Gulbarga, contending that his personal telephone 20160 could not have been disconnected for non-payment of arrears in respect of Telephone No. 23160 and requesting the Forum to direct the appellant to reconnect both the telephones and to pay damages of Rs. 2,000/-. The appellant resisted the complaint by contending inter-alia that there was no excess billing in respect of Telephone No. 23160 that the disconnection of Telephone No. 20160 was justified in view of Rule 443 of the Indian Telegraphs Rules. The complainant gave evidence as PW 1 and got marked PI to P5 as exhibits. No evidence was adduced on behalf of the appellant. On the said material, the District Forum held that there was no excess billing in respect of Phone No. 23160; that the Telephone Department was not justified in disconnecting Telephone No. 20160 and directed the appellant to reconnect Telephone No. 23160, to refund reconnection charges in respect of Phone No. 20160 and pay damages of Rs. 1,000/- together with interest thereon at the rate of 6% per annum from the date of the order till the date of payment. Hence this appeal by the Divisional Engineer, Telecom Department, Gulbarga against the said Order.

(4) The finding of the District Forum, Gulbarga that there has been no excess billing has not been challenged by the respondent and so it has become final. So the question of referring the dispute regarding the excess billing to arbitration does not arise. Even assuming that the dispute regarding the disconnection of Telephone No. 20160 for nonpayment of dues of another Telephone bearing No. 23160 could be referred to Arbitration under Section 7 (B) of the Indian Telegraphs Act, we are of the view that the jurisdiction of the District Forum to entertain the complaint is not barred.

(5) Mr. V.P. Kulkarni, learned Counsel for the appellant relying upon the decision of the Madras High Court, in or S. Thangam v. Area Manager South (Madras Telephones, Madras) in WP No. 5963/1987 dated 4.8.1987 and the decision of the Gujarat High Court in Indra Vadan Pranal Shah v. General Manager, Ahmedahad Telephone District, Kharpur, AIR 1990, Gujarat 85, urged that the Telephone Department was justified in disconnecting Telephone No. 20160 also for failure on the part of the respondent to pay the dues in respect of Telephone No. 23160 in view of Rule 443 of the Indian Telegraph Rules.

(6) On the other hand, Mr. J.V. Hulasur, learned Counsel for the respondent relying upon the Full Bench decision of the Gauhati High Court in Sardar Santokh Singh v. Divisional Engineer, Telephones - Current Civil Cases III 1990 (1) 514 urged that the disconnection of Telephone No. 20160 is illegal and so the order passed by the District Forum is proper.

(7) So the short point that arises for determination in this appeal is whether Telephone No. 20160 of the respondent could be disconnected for nonpayment of dues in respect of his another Telephone No. 23/60 by the Telecom Department. Rule 443 of the Indian Telegraph Rules reads thus:

"Default of Payment:- If, on or before the due date, the rent or other charges in respect of the telephone service provided are not paid by the subscriber in accordance with these rules, or bills for charges in respect of calls or phonograms or other dues from the subscriber are not duly paid by him, any telephone or telephones or any telex service rented by him may be disconnected without notice. The telephone or telephones, or the telex so disconnected may, if the Telegraph Authority thinks fit, be restored, if the defaulting subscriber pays the outstanding dues and the reconnection fee together with the rental for such portion of the intervening period as may be prescribed by the Telegraph Authority from time to time. The subscriber shall pay all the above charges within such period as may be prescribed by the Telegraph Authority from time to time."

The said rule came to be interpreted in the following decisions:-

1. Sardar Santokh Singh v. Divisional Engineer Current Civil Case III - 1990 514.
2. S. Thangam v. The Area Manager (South), Madras Telephones, Madras, in WP No. 5963/1987 decided on 4.8.1987.
3. Indravadan Pranalal Shah v. General Manager, Ahmedabad Telephones, AIR 1990, Gujarat 85.

(8) The decision of the Gauhati High Court is a Full Bench decision (Sl. No. 1 above). It has been held by the Full Bench in the said decision that the Telecom authorities are not empowered to disconnect any other telephone working in the name of same subscriber either at the same premises or elsewhere on the ground of default of payment of a bill in respect of one of his telephones. In arriving at the said conclusion, their Lordships observed:

"Another important point for consideration is whether in the event of any dispute regarding payment of bill in connection with a particular telephone, any other telephone rented to the same subscriber may be disconnected in regard to which there is no dispute or default in payment. The department claims such a right under Rule 443 of the rules which has been extracted above. We have carefully read the said rule. We are of the opinion that it cannot be interpreted to vest with the authorities the power to disconnect any other telephone working in the name of the same subscriber either at the same premises or elsewhere on the ground of default of payment of bill in respect of one of his telephones. This power is confined only to the particular telephone in respect of which there is default in payment and not to other telephones. Such a drastic power cannot be granted to the Telephone Department by inference. If at all it is to be given it has to be given in clear and unambiguous terms. Then also the question will arise whether it is reasonable and; not. We do not propose to make any comment thereon. Suffice it to say that Rule 443 of the Rules as it presently stands, cannot be interpreted to authorise the Telecom Department to disconnect any telephone other than the one which is subject-matter of dispute as, in our opinion, such action will be highly atrocious. The Department cannot coerce the subscribed to make the disputed payment by such means. It must act in accordance with law and, if necessary, file a suit for recovery of the arrears".

(9) The second case referred to above is a decision of the Single Judge of the Madras High Court and the Third one is a decision of the Division Bench of Gujarat High Court. In both those cases, it has been held that the Department has such a power. On going through the Rules, we find that no such power is given to the Department in clear and unambiguous terms, it is possible to interpret that the disconnection is authorised in respect of the Telephone, bills of which are not paid. Under the circumstances, we are of the view that the decision taken by the Full Bench of Gauhati High Court is reasonable and proper. Therefore, with respect, we agree with the said decision and differ from the view taken in the cases No. 2 and 3. Therefore, we agree with the view taken by the District Forum, Gulbarga, that the disconnection of Telephone No. 20160 of the Respondent was not justified.

(10) This brings us to the next question as to whether the damages awarded to the Respondent can be said to be shockingly high and whether it calls for interference. Mr. V.P. Kulakarni urged that it is high and that there is no evidence to justify the same. PW 1 has stated in his evidence that he is a handicapped person; that he was carrying on business by remaining at home by contacting persons over the phone and that due to the disconnection of the two phones, he was put to lot of difficulties in carrying on his business. The Telephone No. 20160 was disconnected on 10.3.1990. The District Forum has observed in its Order in Para 19 that it was reconnected after 11.4.1990. Hence the respondent must have been deprived of the use of telephone for about a month. His evidence that he is a handicapped person, that he is carrying on business over the phone and that he was put to lot of difficulties in carrying on his business when his telephone was disconnected, has remained unchallenged. The factory was situated in Humnabad away from the residence of the respondent in Gulbarga. Under the circumstances, he must have been put to some difficulties as stated by him. In view of the same, the amount of Rs. 1,000/- awarded by the District Forum cannot be said to be shockingly high and it does not call for interference by us. As the disconnection was illegal, the Order of the District Forum for refunding the reconnection charges is also proper in respect of Telephone No. SS20160. In the result, the Appeal fails and the same is hereby dismissed. No costs. Appeal dismissed.