

Mahaveer Electricals Vs. the District Engineer, Telecommunications and Others

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Jul-15-1989

Judge : Lakshmana Rao, President, the Honourable Mr. Pothuri Venkateswara Rao, Member & the Honourable Dr. (Mrs.) Vanaja Iyengar, Member

Appeal No. : C.D. Appeal No. 3 of 1989

Appellant : Mahaveer Electricals

Respondent : The District Engineer, Telecommunications and Others

Judgement :

Lakshmana Rao, President:

1. The complainant in Consumer Dispute No. 1 of 1989 on the file of the District Forum, Srikakulam has filed this appeal, having been aggrieved by the decision of the District Forum dated March 21, 1989.

2. The appellant herein made an application to the 4th respondent herein on October 31, 1988 for shifting of external extension of Telephone No. SK-279 from Quarter No. 4, S.B.I. Staff Colony, Srikakulam to Door No. 16.3.1989, Gujarathipeta, Srikakulam. The 4th respondent informed the appellant through a letter dated November 24, 1988 that the shifting of external extension (plan 10A)

was not feasible as there were no cable pairs at both the sides. On November 26, 1988, the appellant made a representation to the 2nd respondent. Pursuant to that representation, the 3rd respondent informed the appellant through a letter dated December 14, 1988 that the District Engineer, Srikakulam, the 1st respondent herein, had been requested to shift the external extension immediately. Then, the appellant approached the 1st respondent. It was mentioned in the complaint that the 1st respondent refused to shift the external extension meting out discourteous treatment to the appellant. While so, through a letter dated December 27, 1988 the 3rd respondent informed the appellant that the external extension of the telephone could not be shifted due to want of certain stores and that the extension will be shifted soon after the receipt of stores. The case of the appellant was that in the year 1987, when the appellant requested for shifting of the external extension, the Telecommunication Department took about three and half months to shift the external extension. It was alleged in the complaint that the Department shifted the phones of some other subscribers who applied for shifting much later than the appellant had applied. The grievance of the appellant was that he was harassed by the concerned employees of the Department working at Srikakulam, with some ulterior motive and by reason of the failure on their part, to shift the external extension, he was put to loss in business and mental agony to a tune of Rs. 3050/- . He filed the complaint before the District Forum on January 27, 1989 seeking removal of deficiency in the service by shifting the external extension of his telephone No. SK-279 and a direction to the respondents to pay damages.

3. The respondents raised an objection that the provisions of the Consumer Protection Act, 1986 (hereinafter referred to as the Act) were not applicable to the service of providing telephone facilities. So far as the merits of the case are concerned, their version was that the telephone connection SK-279 was provided on April 4, 1975 to M/s. Mahaveer Electricals represented by four partners (1) Sri Syamlal Daga, (2) Sri Bhanwarlal Daga, (3) Smt. Radhadevi Biyani and (4) Sri Daulal Daga, and that the Department did not provide any telephone connection to M/s Mahaveer Electricals represented by Sri Pradeep Kumar Biyani. According to the Department, Sri Pradeep Kumar Biyani was an unauthorised user of the telephone, and therefore, he had no locus-standi to file the complaint. In that context, it was stated that the complainant did not submit any application to the

Department for transfer of telephone from the old firm to the newly constituted firm and that the shift can be given only after the transfer was effected. Their case was that the shifting of external extension was not immediately done for want of underground cable capacity in Gujarathipeta area. The allegations regarding harassment and ulterior motive were denied emphatically and it was mentioned that the telephone was kept under safe custody at the instance of the appellant and the bills were issued for normal rent during safe custody as per the instructions contained in P and T Manual Vol. XIV. Therefore, it was stated that the appellant was not entitled to claim any special or general damages.

4. The District Forum directed the respondents herein to shift the telephone within one week from the date of receipt of the order subject to the condition that they were entitled to disconnect the service in case the appellant failed to apply for transfer of the telephone within 30 days after shifting of the telephone. It is stated that the external extension was shifted on March 29, 1989 pursuant to the order of the District Forum.

5. Aggrieved by that portion of the order which was against him, the appellant has preferred this appeal.

6. In spite of service of notice on the respondents, neither have they appeared in person, nor has any representation been made on their behalf in this appeal. But the 1st respondent has forwarded a copy of the letter written by him to the Legal Cell of the Telecommunication Department at Hyderabad along with copies of some of the documents, to this Commission. It would have been more appropriate and proper had the Telecommunication Department deputed one of its Officers to represent its case, in particular when some of its Officers who figure as respondents in this appeal, are from Hyderabad.

7. It has to be considered at the outset whether the provisions of the Act are applicable to the telephone service provided by the Telecommunication Department. Sub-section (4) of Section 1 of the Act provides that the Act shall apply to all goods and services save as otherwise expressly provided by the Central Government by notification. Nothing has been brought to my notice to show that the Central Government had issued any notification excluding the

telephone service from the operation of the Act. The word Service has been defined in Clause (o) of Sub-section (1) of Section 2. It means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information. The only services that have been excluded from the definition are those rendered either free of charge or under contract of personal service. It is no doubt true that the telephone service has not been specifically included within the definition of Service unlike in the case of banking, financing, insurance, transport etc. When a word has been defined in an Act, by the use of the word means, then the word is restricted to the scope indicated in the definition section. However, when a word is defined by using the word include, then, the words or phrases following the word include shall be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. In other words, the word in defining which includes is used bears both its extended statutory meaning and its ordinary, popular and natural sense whenever that would be properly applicable. The word service as defined in the Act means, service of any description which is made available to potential users. It cannot be gainsaid that the telephone service is a service made available by the Telecommunication Department to all the potential users in this country. Broadly speaking, providing telephone service is similar to the facilities provided in connection with transport, supply of energy, purveying of news and other information, banking, financing, insurance etc., in the sense that they all fall under the broad description of service as ordinarily and popularly understood. Generally, people avail the services referred to above in the day to day life and the Act is intended to provide for better protection of the interests of the people by ensuring that the services generally availed by them by hiring do not suffer from any fault, imperfection, shortcoming or inadequacy. Telephone service is one of the important services availed by people not only in the day to day life, but in other spheres as well such as, running of administration, carrying on the business etc. For the smooth and efficient functioning of either a person or an organisation, the service has a vital role to play. With the technological advancement, and the socio-

economic charges taking place in the society, telephone service has come to be recognised as a necessity, at a certain level. The person who avails the service pays for it. It is but proper if the person who hires a service desires to be ensured that the service does not suffer from any deficiency. Therefore, I do not have any hesitation to hold that the telephone service squarely falls within the definition of the word service. Hence, the provisions of the Act are applicable to the telephone service. Thus, the complaint made by the appellant comes within the purview of the Act.

8. The appellant is a partnership Firm doing business in electrical goods at Srikakulam. Originally, the firm was constituted in the year 1974 with 4 partners (1) Sri Syamlal Daga, (2) Sri Bhanwarlal Daga, (3) Smt. Radhadevi Biyani and (4) Sri Daulal Daga. According to the deed of partnership, Smt. Radhadevi Biyani had half share whereas the other three partners held the other half share. In the year 1975, telephone connection was provided to the firm and ever since then, the firm had been utilising the service. While so, it is stated that the firm was reconstituted under the deed of partnership executed in the year 1984 with Smt. Radhadevi Biyani and Sri Pradeep Kumar Biyani as the partners under same name and style Mahaveer Electricals. The other three erstwhile partners Sri Syamlal Daga, Sri Bhanwarlal Daga and Sri Daulal Daga retired and in their place Sri Pradeep Kumar Biyani was inducted. It is stated that the Registrar of Firms acknowledged the receipt of notice of change in the constituted firm on April 7, 1986. As I have already mentioned, the name of the firm continued to be the same after reconstitution. It is stated that after the reconstitution of the firm, Sri Pradeep Kumar Biyani applied for shifting of telephone in the year 1986 and 1987 and the shifting was made at his instance by the Telecommunication Department knowing fully well that the firm M/s Mahaveer Electricals was reconstituted. The respondents have not denied that the telephone of the appellant was shifted in the years 1986 and 1987. If the Department had permitted the appellant firm after its reconstitution, to use the telephone SK-279 and in fact the appellant firm had been using the telephone ever since its reconstitution, can the Department be permitted to raise an objection for the first time, that too, after a complaint was filed under the Act, that the user of the phone by the appellant firm is unauthorised because the service was not transferred in its favour. In my view, the Department cannot be

permitted to raise such an objection at this stage. It appears as if the objection has been raised because the appellant has complained against the Department. Or else the Department would not have bothered about it. The facts clearly reveal that the Department had permitted the appellant firm, after its reconstitution to avail the telephone service provided to the erstwhile firm. The telephone was shifted twice, after the reconstitution of the firm, at the instance of the appellant. Therefore, the Telecommunication Department cannot be permitted to say at this stage that it was not aware of the reconstitution of the firm and the appellant firm represented by Sri Pradeep Kumar Biyani is an unauthorised user of the telephone.

9. Even otherwise, let me examine whether the transfer of the telephone by M/s. Mahaveer Electricals represented by (1) Shri Syamlal Daga, (2) Smt. Radhadevi Biyani (3) Sri Bhanwarlal Daga and (4) Sri Daulal Daga in favour of M/s Mahaveer Electricals represented by (1) Smt. Radhadevi Biyani and (2) Sri Pradeep Kumar Biyani was genuine or not. As per the deed of partnership entered into between the erstwhile four partners, shares of the partnership firm were divided among those partners as follows :

(1) Sri Syamlal Daga : 20 ps.

(2) Smt. Radhadevi : 50 ps.

(3) Sri Bhanwarlal Daga : 20 ps.

(4) Sri Daulal Daga : 10 ps.

10. After reconstitution, there are only two partners and the shares of the firm are divided among them as follows :

(1) Smt. Radhadevi Biyani : 60 ps. and

(2) Sri Pradeep Kumar
Biyani : 40 ps.

as is evident from the deed of partnership. Thus, Smt. Radhadevi Biyani happens to be a partner both before and after reconstitution of the firm and she is the major

partner in both the firms. Before reconstitution, she held 50% of the shares and after reconstitution, she is having 60% of the shares. The deed of partnership of the reconstituted firm provides that the assets and liabilities of M/s. Mahaveer Electricals have been taken over by the reconstituted firm. In such circumstances, the use of the telephone by the reconstituted firm cannot be said to be either improper or unjustified. After the reconstitution of the firm, the telephone was shifted on a request made by the reconstituted firm once in the year 1986 and again in the year 1987. On those two occasions, the Telecommunication Department did not raise any objection. Only after the filing of the complaint by the appellant herein under the Act, the Department has come forward with a plea that it has come to know that there was an unauthorised transfer of the telephone in favour of the appellant firm without the approval of the Department, and therefore, the appellant is an unauthorised user. The three partners who retired from the firm did not raise any objection at any time for the use of the telephone by the reconstituted firm. The telephone bills were sent to the reconstituted firm and it was paying the same. In those circumstances, I am constrained to hold that the Telecommunication Department shall be deemed to have knowledge of the transfer of the telephone in favour of the reconstituted firm and it did not raise any objection for such transfer. Therefore, the Department shall be deemed to have approved the transfer. In such circumstances, it is not necessary for the appellant to seek approval of the Department for transfer of the telephone in its favour.

11. The appellant herein claimed compensation of Rs. 3,050/- the particulars of which have been mentioned in the complaint. According to the appellant, it has suffered loss in business at the rate of Rs. 20/- per day due to the non-shifting of the external extension (plan 104). The application for shifting of was made on October 31, 1988. By his letter dated November 24, 1988, the 4th respondent herein informed the appellant that it was not feasible (at present) to shift the external extension as there were no cable pairs at both the sides, i.e., at main and also at extension. Then, the appellant approached the 3rd respondent, who informed the appellant through his letter dated December 14, 1988 that the 1st respondent was requested to shift the external extension (plan 104) immediately. It is the case of the appellant that immediately after the letter dated December 14, 1988 was received, Sri Pradeep Kumar Biyani approached the 1st respondent for

getting the needful done, but he bluntly refused in discourteous and arrogant manner. However, this allegation has been denied by the respondents. It was stated in the counter filed by the respondent before the District Forum, that soon after the letter dated December 14, 1988 was received from the 3rd respondent, the 1st respondent apprised him that the shift cannot be done immediately for want of underground cable capacity in Gujarathipeta area and that the shifting can be done only after laying the new cable pairs in that area. Then, the 3rd respondent informed the appellant through his letter dated December 27, 1988 that the external extension could not be shifted due to want of certain stores and that it will be shifted soon after the receipt of stores. The appellant was requested to kindly bear with the Department for some more time. As the extension was not shifted till January 26, 1989, the appellant filed a complaint before the District Forum on January 27, 1989 alleging that there was harassment by the Department and it was put to loss and injury due to non-shifting of the external extension. For the first time, the Department raised an objection in the counter filed on its behalf before the District Forum that the appellant was not an authorised subscriber, the telephone No, SK-279 was not transferred in its, favour and shift of the external extension can be done only after the transfer was effected. The District Forum directed shifting of the external extension (plan 104) within one week from the date of receipt of its order dated March 21, 1989. The external extension was shifted pursuant to that order on March 29, 1989.

12. On the basis of the facts referred to above, it has to be decided whether there was any negligence on the part of Telecommunication Department in shifting the external extension (plan 104). The Department has not produced any material either before the District Forum or before this Commission as to when the cable pairs were laid and when the underground cable capacity in Gujarathipeta area was available for shifting the external extension. From the letters written by the Department, it appears that the delay in shifting of external extension was due to want of certain stores. But the delay of more than four months from October 31, 1988 till March 29, 1989 cannot be said to be reasonable delay in the matter of shifting of telephone. The specific case of the appellant was that he was harassed by the Telecommunication Department. Though the appellant has been using the telephone No. SK-279 ever since its reconstitution, the Department came forward

for the first time with a plea that the use of the telephone by the appellant was unauthorised, after the present complaint was filed before the District Forum. The appellant is a firm carrying on business and naturally it requires a telephone for the purpose of its business. The external extension was not shifted till a direction was issued by the District Forum. As I have already mentioned, nothing has been stated by the Telecommunication Departments to what steps it had taken to obtain the necessary stores for shifting the external extension (plan 104) and when the stores was received. In the absence of any material produced by the Department justifying the delay shifting the external extension, and having regard to the long delay of more than four months in shifting the external extension, it can reasonably be inferred that due to the negligence on the part of the respondents 1,4 and 5 there was delay in shifting the external extension (plan 104). The appellant has claimed that it has suffered loss in business at the rate of Rs. 20/- per day due to the non-shifting of the external extension. The shift was made more than 140 days after the application was made. Having regard to the facts and circumstances of the case. I determine the loss suffered by the appellant in business due to the non-shifting of the external extension (plan 104) on a modest estimate, at Rs. 10/- per day. Thus, the loss suffered by the appellant for 140 days comes to Rs. 1,400/-. Therefore, it is directed that the respondents shall pay to the appellant 1,400/- by way of compensation for the loss suffered by it.

13. The appeal is allowed to the extent indicated above.

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