

BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM,
CENTRAL MUMBAI DISTRICT

Complaint No. CMDF/CC/149/2009/2640

Date of Filing : 04.08.2009

Date of Order : 31.12.2009

Consumers Welfare Association
402, B-Wing, Ashoka Complex,
Justice Ranade Road, Dadar,
Mumbai- 400028.

..... Complainant.

Vs

Bharti Airtel Limited
Peninsula Chambers, Ground Floor,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai- 400013.

.....Opponent.

Appearance : Ld. A/R Shri Jahangir Gai for Complainant.
Opponent Ex-parte.

CORAM :

Smt S.P.Mahajan, President.

Shri S.S.Patil, Member.

Per S. S. Patil, Member

1. This is the complaint regarding the deficiency on the part of the Opponent as it assessed a bill of Rs. 5857.75 who had called number 10000000000 which is not in existence and disconnected the phone of the Complainant in order to compel him to make payment of the fake and disputed bill.
2. The brief facts of the complaint are that one Dr. Dhananjay Panchal while traveling to U.S.A. (United States of America) was provided with international roaming facility on his mobile phone No. 9967658428 by the Opponent. Shri Panchal received a mobile phone bill dt. 3.10.08 for the period from 2.9.08 to 1.10.08. In this bill, the amount charged for below described call number was disputed by Dr. Panchal:
 - a. Number dialed 10000000000.
 - b. It was an outgoing call through International Roaming.
 - c. Call date was 15.09.08.
 - d. Call time was 21.12.23.
 - e. Call duration was 1:54:23.
 - f. Amount (Charged for this call) Rs. 5857.75.
 - g. Service provider (having tie up with Opponent) mobile-U.S.A.
3. The Complainant states that Dr. Panchal refused to pay the charges for the above said call only. The Opponent then disconnected the mobile phone on 14.12.08 for non payment of the disputed bill.
4. The Complainant further states that they made inquiries on behalf of Dr. Panchal to ascertain whether the dialed No. 10000000000 was in existence. The Complainant received a reply from the Commerce and Economic Deptt. of the Consulate General of India in New York

- stating that the said No. 10000000000 is not a valid number in New York City which can be dialed from a mobile phone.
5. The Complainant further adds that Dr. Panchal and the Complainant took up the matter with the Opponent. However, the Opponent refused to respond to them and informed Dr. Panchal that the bill was correct and it would have to be paid. The Opponent sent a legal notice to Dr. Panchal for taking legal action for non-payment of the said disputed call.
 6. It is further stated that Dr. Panchal has executed a Power of Attorney in favour of the Complainant. The Complainant has sought direction for Opponent to discontinue the unfair trade practice of billing for non-existent phone number and quash the illegal charges levied for the above said call.
 7. The Complainant further asserted that the Opponent should reconnect Complainant's mobile number without any charges. The complaint was admitted and the Opponent was duly served with the notice. Its advocate Shri Sanjay Sinha filed his Vakalatnama on 23.09.09 and thereafter, remained absent. The Forum proceeded exparte.
 8. The Complainant attached the following documents in support to his complaint:
 - a. Airtel bill for mobile No. 9967658428 for the period from 2.9.08 to 1.10.08 for Rs. 9841.86 in the name of Dr. Dhananjay Panchal.
 - b. Itemized statement for mobile No. 9967658428 from 20.09.08 to 1.10.08 including local and International Roaming incoming and Outgoing call charges.
 - c. Correspondence of Complainant with undisclosed recipient dt. 14.02.09 and its reply dt. 17.02.09.
 - d. Special Power of Attorney by Dr. Panchal in favour of the Complainant.
 - e. Thereafter, the Complainant also submitted the following documents alongwith his written arguments:
 - i) Information regarding BSNL.
 - ii) History of Telecommunication in Kerala.
 - iii) Copy of the Indian Telegraph Act, 1885 quoting the definition of telegraph authority and see 4 to 10.
 - iv) Copy of TRAI Act, 1997 (Amendment).
 - v) Copy of Gazette of India containing TRAI (Amendment) Ordinance 2000. No.2 of 2000.
 - vi) Copy of Telecom Consumers Protection and Redressal of Grievances Regulations, 2007 (3 of 2007).
 - vii) Copy of judgment in Civil Appeal No. 7687 of 2004 in General Manager Telecom V/s M.Krishnan & Anr.
 9. The Complainant also filed written argument and judgment in Writ Petition No. 7824 of 2005 in Bharati Tel. Ventures Ltd. V/s State of Maharashtra and Anr.
 10. We perused the complaint, documents filed with the complaint and written argument and heard the Ld. A/R for the Complainant at length. Though the Opponent remained absent throughout the

proceeding, the Forum raised the point whether the complaint is maintainable in view of the Hon. Apex Court judgment in Civil Appeal No. 7687/04 in General Manager, Telecom V/s M.Krishnan and Anr.

11. The relevant observations made by the Hon. Apex Court in the aforesaid judgment are follows:

"In our opinion when there is a special remedy provided in Section 7-B of the Indian Telegraph Act regarding disputes in respect of telephone bills, then the remedy under the Consumer Protection Act is by implication barred. Section 7-B of the Telegraph Act reads as under:-

"S.7B Arbitration of Disputes:-

1. Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been provided, the dispute shall be determined by arbitration and shall, for the purpose of such determination, be referred to an arbitrator appointed by the Central Government either specifically for the determination of that dispute or generally for the determination of disputes under this section.
2. The award of the arbitrator appointed under sub-s.(1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court."

Rule 413 of the Telegraph Rules provides that all services relating to telephone are subject to Telegraph Rules. A telephone connection can be disconnected by the Telegraph Authority for default of payment under Rule 443 of the Rules.

It is well settled that the special law overrules the general law. Hence, in our opinion the High Court was not correct in its approach.

In Chairman, Thiruvalluvar Transport Corporation V/s Consumer Protection Council (1995) 2 SCC 479 it was held that the National Commission has no jurisdiction to adjudicate upon claims for compensation arising out of motor vehicles accidents. We agree with the view taken in the aforesaid judgment.

In view of the above, we allow this appeal, set aside the impugned judgment and order of the High Court as well as the order of the District Consumer Forum dated 26.11.2001."

12. The relevant facts of the Civil Appeal No. 7687/04 were that the Gen. Manager Telecom (OP) disconnected the telephone service of the Complainant for non-payment of the telephone bill. The A/R of the

Complainant pointed out that in Appeal No. 7687/04, the Opponent is a telegraph authority but in present case, the Opponent is not a telegraph authority as defined in sec 3 (6) of Indian Telegraph Act, 1885 and hence this judgment is not applicable to the complaint before this Forum as section 7B of Indian Telegraph Act applies to disputes between the telegraph authority and a telephone service availing person (consumer).

13. It was also pointed out by the A/R that the complaint of an individual consumer is maintainable before the Forum/Commission and can be adjudicated as per sec 14 Proviso B of the Telecom Regulatory Authority of India (Amendment) Ordinance 2000.
14. It was further pointed out that any consumer can exercise his right under Consumer Protection Act, 1986 as per sec 25 of Telecom Consumers Protection and Redressal of Grievances Regulations, 2007.
15. Sec 3 sub-sec 6 of Indian Telegraph Act of Telegraph Act defines Telegraph Authority as "Telegraph Authority means the Director General of Post and Telegraphs and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act." Certainly the Opponent in this complaint is neither the Director General nor an officer empowered by the Director General of Post and Telegraph to perform any functions of the telegraph authority.
16. Therefore, the Opponent in this case not being a telegraph authority, sec 7B of the Indian Telegraph Act is not applicable in the present dispute. Sec 7B of the above said Act deals with the dispute between telegraph authority and a consumer.
17. In the present case, the dispute is between an individual consumer and a service provider/licensee. The Opponent is only a service provider/licensee as defined in sec (e) of sec 1 Part II of Telecom Regulatory Authority of India TRAI Act, 1997 quote-

"(e) Licensee : means any person licensed under sub sec (1) of sec 4 of the Indian Telegraph Act, 1885 for providing specified public telecommunication service."

" (j) Service provider: "means the Govt. and includes licensee."
So the Opponent in this case is only the licensee/service provider. Therefore, the dispute before this Forum is between service Provider/licensee and a consumer."

18. The relevant provisions of sec 14 proviso B of Telecom Regulatory Authority of India and sec 25 of Telecom Consumers Protection and Redressal of Grievances Regulation 2007 are as below.

The relevant portion of sec 14 proviso B :

"The Central Govt. shall by notification, establish a Appellate Tribunal to be known as the Telecom Dispute Settlement and Appellate Tribunal to.

- a. adjudicate any dispute.
 - (i) between a licensor and a licensee.

(iii) between a service provider and a group of consumers.

Provided that nothing in this clause shall apply in respect of matters relating to:

(B) the complaint of an individual consumer

Maintainable before a Consumer Disputes Redressal Forum. A Consumer Disputes Redressal Commission or the National Consumer Disputes

Redressal Commission established under sec 9 of the Consumer Protection Act, 1986."

Section 25 of Telecom Consumers Protection and Redressal of Grievances Regulation 2007.

Right of consumers to seek redressal under the Consumer Protection Act, 1986 or any other law for time being in force.

"Any consumer may, at any time

a. During pendency of redressal of his grievances, whether by filing of complaint or appeal under these regulations.

OR

b. before or after filing of complaint or appeal under these regulations,

exercise his right conferred upon him under the Consumer Protection Act, 1986 or any other law for the time being in force and seek redressal of his grievances under that Act or law.

19. Thus taking into consideration the above provisions of law and the facts of the present case in hand, the dispute between the individual consumer and the licensee/service provider is maintainable before this Forum.

20. So far as the merit of the complaint is concerned, Exh. A to the complaint page 14 entry No. 4 clearly shows that Opponent has charged Rs. 5857.75 for one call for phone No. '10000000000'.

21. Exh. B page 15 contains a communication from Manjit Nair, Commerce and Economic Consulate Gen. of India, New York intimating "This number '10000000000' is not a valid phone number which can be dialed from a mobile phone being used in New York City in USA."

The above documents clearly shows that the Opponent has charged Rs. 5857.75 for a phone call on a number which was not in existence and hence he is deficient in providing a service to the Complainant and it has committed unfair trade practice. Hence the order:

ORDER

The Complaint bearing No. CMDF/CC/149/2009 is allowed in the following terms:

1. Opponent is directed to cancel the charges Rs. 5857.75 for the call on Phone 10000000000 from Mobile Phone No. 9967658428.
2. The Opponent is directed to reconnect the Mobile Phone No. 9967658428.
3. The Opponent is also directed to pay to the Complainant Rs. 5000/- towards the cost of this complaint.
4. The Opponent is directed to comply with the aforesaid order within 30 days of the receipt of this order.

MUMBAI:

(S.S.Patil)

(S.P.Mahajan)

DATED : 31.12.2009.

Member

President