

A.F.R

ORAL
STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UTTAR PRADESH LUCKNOW

REVISION NO.16 OF 2014

Jan Soochana Adhikari/Telecom District Manager, BSNL, Telecom District
Etawah/Auraiya

Revisionist/Opposite party no.1

Versus

1. Tajuddin Faridi son of Fahimuddin Faridi resident of near Nai
Dharamshala, Sanjay Gate, Mohalla Guruhai city and district Auraiya
presently residing at House no. 130/307, B-2 Ajitganj, Transport
Nagar, Kanpur

Complainant/respondent

2. State of U.P. through Collector, Auraiya

3. Sangarh Amin, Chhetra Mohalla Guruhai, city and district Auraiya
through Tehsildar Auraiya, District Auraiya

Proforma respondents

BEFORE

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT

HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER

For the Revisionist

: Dr. Uday Veer Singh, Advocate

For the Respondent

: None is present.

DATED: 20.02.2014

JUDGMENT

MR.JUSTICE VIRENDRA SINGH, PRESIDENT

This revision is preferred by the revisionist/opposite party against the judgment dated 06.01.2014 passed by the District Consumer Forum, Auraiya in complaint case no. 80 of 2013, seeking to set aside the judgment passed by the District Consumer Forum.

At the time of hearing on admission of this revision we have asked the learned counsel for the revisionist that the impugned order may be appealable as per the provisions under Section 15 of the Consumer Protection Act 1986, as it provides that any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the

State Commission but the learned counsel for the revisionist contended that the revision is to be worth admission for hearing in this case as Section 17 of the Consumer Protection Act as per Sub clause (b) provides that the State Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

Learned counsel for the revisionist contended in this regard that since the PCO holder does not come under the purview of definition of consumer as held by Hon'ble Apex Commission and the learned forum ought to have taken judicial notice on the issue that the complainant was not consumer of the revisionist/BSNL as the complainant was the franchise holder (PCO holder) of the BSNL and therefore, it was incumbent upon the Forum to adjudicate as to whether the complainant was a consumer or not before quashing the recovery certificate issued by the opposite party/revisionist and as such the District Consumer Forum exercised its jurisdiction illegally and in doing so also committed material irregularity.

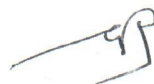
It is also contented that if the complainant/respondent was aggrieved from the revisionist/opposite party for allegedly not providing the information under the Right to Information Act 2005, he could have challenged the same by way of appeal under the said Act and the relief sought so far could not be granted under the Act of 1986 and in granting the relief related to Right to Information Act, the Forum has exercised its jurisdiction not vested in it.

We are not convinced with the contentions of the learned counsel for the revisionist. The perusal of the impugned order shows that the complaint of the complainant is allowed by the District Consumer Forum, thereby directing the opposite party/revisionist to provide the relevant factual information to the complainant and a sum of Rs.30,000/- be also paid to the complainant as compensation and further the Recovery Certificate of



Rs.1,36,246/- has also been cancelled by the District Consumer Forum issued against the complainant by the opposite party/revisionist. The dispute in between the parties before the District Consumer Forum remained pertaining to the payment of dues and issuance of N.O.C. in respect to the PCO alleged to have been run by the complainant allowed/sanctioned by the opposite party/revisionist and the information not provided by the revisionist/opposite party to the complainant sought by the complainant under Right to Information Act. Whatever may be the dispute in between the parties in this regard we need not to comment on merit of the case in between the parties but we are constrained to accept the contention of the learned counsel for the revisionist that in this case the revision shall lie instead of filing the appeal under Section 15 of the Consumer Protection Act. We are of this view that whatever may be the dispute between the parties before the District Consumer Forum, if it has been finally decided on merit of the case, the appeal shall lie against that order as per provisions under Section 15 of the Consumer Protection Act, wherein it is provided that any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of order, in such form and manner as may be prescribed and since in this case before us the District Consumer Forum by way of impugned order has finally decided the facts in dispute in between the parties on merit, therefore, the only recourse was available to the aggrieved party to prefer an appeal before this Commission as per provisions of Section 15 of the Consumer Protection Act.

So far as the question of Section 17 Sub Clause (b) of the Act is concerned, no doubt the State Commission have the jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity, we are of this view that this provision applies merely in those cases wherein interim order has been passed by the District



Consumer Forum, thereby invoking jurisdiction not vested in the District Consumer Forum or not exercising the jurisdiction which is vested in the District Consumer Forum or acted in exercise of jurisdiction illegally or with material irregularity. The cases decided on the pleadings of the parties on merit are not covered under Section 17 (b) of the Consumer Protection Act.

The learned counsel for the revisionist placed reliance on those words occurred in Section 17(b) of the Consumer Protection Act "or has been decided" and submitted that if the case is decided by the District Consumer Forum, the revision may be preferred by the aggrieved party. We are not convinced with this contention of the learned counsel for the revisionist because if such interpretation of the learned counsel for the revisionist is accepted then for every order passed in each and every case decided or pending in the District Consumer Forum, the revision shall lie and the provisions under Section 15 of the Consumer Protection Act pertaining to appeal shall become redundant. This much does not seem to have been the intention of the Legislation, thereby enacting Section 15 and Section 17 separately in the Consumer Protection Act. In our view the words occurred in Section 17 Sub Clause (b) "or has been decided" have been used by the Legislation for such type of cases wherein on the point of jurisdiction or any other preliminary issue the case is finally decided by the District Consumer Forum invoking jurisdiction wrongly or with material irregularity. The record may be called for by State Commission in such orders but wherein the case is decided after hearing of both the parties finally on merits of the case, the revision under Section 17 Sub clause (b) shall not be filed and in such type of cases merely Section 15 of the Consumer Protection Act shall be applicable.

Therefore, since in this case before us the District Consumer Forum has finally decided the case in between the parties on the pleadings and evidence on merit, the revision in this case is not entertainable and this



revision is worth rejection accordingly at the time of its admission.

ORDER

The revision is hereby rejected.



(JUSTICE VIRENDRA SINGH)
PRESIDENT



(SYED ALI AZHAR RIZVI)
MEMBER

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