

Appeal No.
286 of 2022

General Manager, BSNL
Vs.
Sh. Prem Prakash Muyal

18.11.2024

STATE CONSUMER DISPUTES REDRESSAL COMMISSION, UTTARAKHAND, DEHRADUN

Date of Institution : 20.12.2022

Date of Final Hearing : 06.11.2024

Date of Pronouncement : 18.11.2024

First Appeal No. 286 / 2022

General Manager
Bharat Sanchar Nigam Limited, Telecom
District Dehradun, Patel Nagar, Dehradun
(Through: Ms. Anupama Gautam, Advocate)
.....Appellant

VERSUS

Sh. Prem Prakash Muyal S/o Late Sh. Shyam Lal Muyal
R/o Prakash Villa, 65/15 A, Rajpur Road, Dehradun
(Through: Sh. Shivcharan Singh Rawat, Advocate)
.....Respondent

Coram:

Mr. M.K. Singhal,
Mr. C.M. Singh,

Member (Judicial)
Member

ORDER

(Per: Mr. M.K. Singhal, Member (Judicial):

This appeal under Section 41 of the Consumer Protection Act, 2019 has been directed against judgment and order dated 25.10.2022 passed by the learned District Consumer Disputes Redressal Commission, Dehradun in consumer complaint No. 99 of 2017 styled as Sh. Prem Prakash Muyal Vs. General Manager, Bharat Sanchar Nigam Limited, wherein and whereby the complaint case was allowed.

2. The facts giving rise to the present appeal, in brief, are as such that the complainant has planned to go U.S.A. and went to telecom service provider of Idea Cellular because the complainant was in need of mobile number to communicate his relatives. The complainant purchased / subscribed a plan as suggested by the service provider, i.e. Idea Cellular. In order to be in touch with his relatives, the complainant wanted an international roaming facility for his another mobile number for which the services were provided by the opposite party – BSNL. He contacted the officer of the opposite party and asked and applied for international roaming call only. He never used internet facility of the opposite party during his stay in U.S.A.; the officer has apprised him that pre-paid mobile will be changed to post-paid only then international roaming facility will be provided. All the formalities were done and Rs. 5,000/- was deposited as security amount, thereafter international roaming SIM card was issued to the complainant was activated on 09/10th June, 2015. When the complainant had reached San Francisco (U.S.A.), he came to know that the SIM provided by the opposite party was also having internet facility and he used internet facility assuming that the said facility is without any charges. He returned to Delhi on 22nd June, 2015 and received a bill No. 352080430 dated 19.06.2015 amounting to Rs. 4,63,770/-. After seeing it, he was surprised and then he contacted to the officer of the opposite party, who told him that 98% of the bill is for internet facility. The complainant told that he has not applied for internet facility, the officer was unanswered. The complainant has asked the officer when the usage was beyond the security amount, i.e. Rs. 5,000/-, then the service of internet should be stopped, but the officer had not replied satisfactorily, while the Idea Cellular had stopped the services when the usage of internet beyond the security amount.

On 08.07.2015, the complainant met with General Manager, Telecom and apprised him all the facts, then the General Manager has assured him to issue necessary instruction. Being a complainant is a

pensioner and is unable to pay the bill amount, so he requested to the General Manager for installment, then the complainant applied for the same on 08.07.2015 and Rs. 25,000/- was fixed as installment. Meanwhile, the complainant has received a second bill No. 3562328876 dated 19.07.2017 for the period from 19.06.2015 to 18.07.2015 for a sum of Rs. 6,64,973/- including the outstanding bill. The complainant was surprised while the said mobile number was used only during the visit in America and after that the service of that SIM was stopped. Then the complainant sought information under RTI Act. There is a mal-practice which was done by the opposite party because the opposite party has not disclosed this fact to the complainant while the complaint has not demanded this service. The opposite party was under obligation to inform all the things to the consumer. The complainant was pressurized to pay the amount in installments, inspite of financial hardship, he has paid Rs. 3,25,000/- by 22.03.2017, so the complainant has filed this complaint before the District Commission, Dehradun and prayed that the opposite party should be barred to recover Rs. 3,38,003/- and direction be given to the opposite party to return Rs. 3,25,000/- to the complainant and Rs. 2,50,000/- for mental harassment.

3. The opposite party – Bharat Sanchar Nigam Limited through General Manager has filed its written statement stating that the complainant has applied for international roaming facility and whenever ISD facility and international roaming facility is provided, it is provided on the request of consumer. A bill for the period from 19.05.2015 to 18.06.2015 for Rs. 4,63,770/- was charged. It is also true that after receiving the bill, the complainant has contacted the opposite party. On the request of complainant, his pre-paid connection was converted to post-paid and international roaming facility was provided to him. Without request of any consumer, international roaming facility is not provided. It is the admission

of the consumer and he has taken the facility provided by the opposite party and he has also requested for installment. The complainant has deposited the amount of Rs. 3,25,000/-, so the complainant is estopped to raise any issue. The complaint is time barred and is liable to be rejected.

4. The District Commission after hearing both the parties and after taking into consideration the entire pleadings, facts and material placed on record passed the impugned judgment and order on dated 25.10.2022 and allowed the complaint in the above terms.

5. On having been aggrieved by the aforesaid judgment and order of the District Commission, the opposite party - appellant has preferred the present appeal before this Commission.

6. In the appeal, the learned counsel for the appellant has alleged that the impugned judgment and order of the District Commission is not in accordance with law; the learned District Commission has committed perversity in allowing the complaint case. The Commission below has committed perversity in ignoring that the respondent – complainant has consumed the internet and was to pay for the same; that it is through settings only that the international roaming is activated. The District Commission has committed perversity that the respondent had volunteered to pay the due amount in installments and also ignoring the written statement and its contents besides the affidavit of a responsible officer. The District Commission has failed to consider that the internet facility was duly enjoyed by the respondent during his stay in U.S.A. and also committed perversity in ignoring that ignorance of law is no excuse. The Commission below has committed perversity in ignoring that the international roaming is provided for higher charges since the various international network circles are used. The District Commission has committed perversity in

concluding beyond the facts and has erroneously observed that the respondent is not liable to pay the due amount and slashed the same leaving the appellant under financial dent who has been stopped from recovering the public money. Hence, the impugned judgment and order of the District Commission is liable to be set aside.

7. We have heard learned counsel for both the parties and perused the material on record available before us.

8. Learned counsel for the respondent has argued that the appellant has violated the rules / provisions of Telecom Regulatory Authority of India (TRAI). The appellant was duty bound to stop the services provided by it when the amount of bill was beyond the security amount. Being appellant has violated the rules framed by the TRAI, the appellant cannot recover the bill amount and the appeal is liable to be dismissed.

9. On perusal of the record, it is quite clear that the respondent has applied for international roaming and call facility. It is also clear that whenever any facility like national or international roaming provided without setting in the mobile of consumer, this facility cannot be started. The consumer cannot resume this type of facility without going into setting of the mobile.

10. From the perusal of the record, it is evidence that the respondent has used international roaming facility and calling facility (IRF & CF). On using international roaming facility and calling facility (paper Nos. 24 & 25) a bill was generated and sent to the respondent. Paper Nos. 26 & 27 are the call details, which were filed by the appellant and it was denied by the respondent that he has not used these outgoing calls. It is also clear that the respondent has applied to settle the due amount in installment. On the

request of respondent, installment was fixed by the appellant and respondent has deposited Rs. 3,25,000/-. So it is crystal clear that the respondent was planning to deposit the bill amount in installments. It is also clear that the respondent has used the services provided by the appellant.

11. It is also clear that TRAI rules are that the services provider shall intimate the post-paid customer (1) in advance about his credit limit and (2) whenever he reaches 80% of the credit limit. Services shall not be disconnected as long as the amount due is below the amount of his security deposit or specified credit limit whichever is higher.

12. By this provision, the appellant was duty bound to inform the respondent about 80% use of the credit limit, but the appellant has not done so. Simultaneously, the respondent has also used the services provided by the appellant. So looking to the rules of equity, one has to pay for the service provided to him, for which the appellant has generated the bill for Rs. 6,64,973/-, out of this Rs. 3,25,000/- has deposited by the respondent. On the other hand, the appellant was also duty bound as per TRAI guidelines to inform the respondent. When he reaches 80% of the security amount, it is the lapse on the part of the appellant and the appellant has to bear for his lapse part. So looking to the rules of equity, it is justifiable that the amount already deposited by the respondent should not be returned to him because he has used the internet / services provided by the appellant and looking to the lapse of the appellant, the appellant is estopped to recover the rest amount from the respondent, i.e. Rs. 3,38,003/-.

13. Thus, we are of the considered view that the District Commission has not considered the facts and evidence available on record and passed impugned judgment and order against the appellant – BSNL, which is not

according to the provisions of law. So the impugned judgment and order is liable to be modified and the appeal deserves to be partly allowed.

14. The appeal is partly allowed. Impugned judgment and order dated 25.10.2022 is modified to the extent that the appellant shall not recover the rest amount of the bill, i.e. Rs. 3,38,003/- from the respondent and the respondent is not liable to get returned the amount, i.e. Rs. 3,25,000/- deposited by him from the appellant. No order as to costs of the appeal.

15. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 /2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. The copy of this order be sent to the concerned District Commission, Dehradun for record and necessary information.

16. File be consigned to record room along with a copy of this Order.

(Mr. M.K. Singhal)
Member (Judicial)

(Mr. C.M. Singh)
Member

Pronounced on: 18.11.2024