

**IN THE COURT OF THE PRESIDENT, DISTRICT CONSUMER DISPUTES
REDSRESSAL COMMISSION, BOUDH.**

C.C.No. 2/2021

Dusmanta Mishra
S/O: Ram Chandra Mishra
At: Bagichasahi, Boudh
Po: Boudh
Ps/Dist: Boudh.....Complainant.

-Versus-

1. The Vodafone Idea Mobile Services Ltd, Bhubaneswar
At/Po: Bhubaneswar
Dist: Khurdha
2. Vodafone Idea Limited (Formerly Idea Cellular Limited)
An Aditya Birla Group and Vodafone Partnership,
Birla Centurion, 10th floor Plot No 794,
B.wing Padurang, Budhakar Marg,
Worli, Mumbai-400030Opp.Parties.

Date of Institution: 01.01.2021

Date of Final Order: 13.11.2023

Present: Sri H.B.Nayak, LL.M, Hon'ble President
and Sri P.K.Nayak, M.A.LL.B, Hon'ble Member
Advocate for the complainant: In Person
Advocate for the O.P No.1 and O.P No.2: Sri Dillip Kumar Nanda

By H.B.Nayak, LL.M, Hon'ble President.
Final Order, dtd 13.11.2023

(1) Brief facts of the complainant's complaint is that he had taken distributorship of Vodafone to maintain his livelihood w.e.f 31.05.2017, for this he had submitted all the required documents as per requirement of O.Ps including an undertaking cum indemnity in favour of O.Ps. It is averred that he had deposited Rs.25,000/- with O.Ps through A/C payee cheque towards security deposit which is refundable after cancellation /discharge of agreement. It is also stated that after getting distributorship, the complainant had been doing his duty and business relationship perfectly from the year 2019. But O.Ps have stopped their network in Boudh area without prior intimation to the complainant as a result of which some paper vouchers worth Rs.70,000/- are still pending with him. Owing to such activities of O.Ps complainant has suffered financial loss and agony. It is also averred that for refund of paper voucher and security deposit amount of Rs.25,000/- he had approached O.Ps on several occasions, but in vain. Therefore

being aggrieved with the act & conduct of O.Ps at last the present complaint has been filed seeking reliefs like refund of security deposit of Rs.25,000/- with interest @ 15% from the year 2019 till realization and refund of Rs.70,000/- towards unused paper voucher with interest @15% P.A and further claims Rs.20,000/- towards compensation and cost of litigation.

(2) **Per contra**, O.Ps in their written version/statement stated that.

(i) Vodafone mobile services limited stands dissolved w.e.f 31st august ,2018 and that the name of idea cellular limited thereafter has been changed from “ Idea cellular Limited” to Vodafone Idea Limited”.

(ii) The present complainant is not maintainable on the sole ground of mis-joinder and non-joinder of necessary parties and that the complainant herein is not comes under the preview of “ Consumer “ as defined in the Act and that no *Prima-facie* case is made out against O.Ps.

(iii) The complainant should have approached the civil court instead of the commission for redressal of this grievance, if any at all, it is because the dispute relates to non-performance of contractual obligations, etc.

(iv) It is also averred that the complaint is barred for want of jurisdiction as because efficacious and alternate remedy are being provided under special statue like Indian Telegraphic Act,1885,indian wireless Telegraphy Act,1933 and Telecom regulatory Authority of India Act,1997,therefore the complaint is liable to be dismissed in *limine*.

(V) **In short**, all allegations against O.Ps are emphatically denied and disputed. At paragraph 1 at page 18, it is stated that (since relevant) **RCV** (Recharge Coupon Voucher) once sold to any distributor/partners by the company is not to be purchased back by the company as such it cannot be refund back may be being the amount of unsold vouchers. Furthermore, it is specially stated in pleading (at page 18 of Written Version) regarding security deposit amount by a distributor-“it can be returned by the company upon closing of all market formalities and submission of written request by the distributor before the company.

It is relevant to note that O.Ps have denied stating that there is no occasion to deposit of Rs.25,000/- by the complainant as security amount for distributorship on ground that no agreement of distributorship is existed between the parties.

Vi) **In toto**, O.Ps averred that there was no **deficiency in services** nor the complainant is entitled for any single relief as claimed for any act and negligence of O.P.s.

With the above specific submissions, O.Ps seek dismissal of the complaint in *limine*.

2) With above, **three issues are being framed** to sub serve the **cause of justice** considering the rival contentions.

i) Whether the complaint is maintainable before the Commission and that whether the complainant is a consumer?

ii) Whether, there is “deficiency in rendering services” by O.Ps as claimed of?

iii) Whether, the complainant is entitled for any relief/reliefs as claimed for?

4. Observation of Commission

Regard being had to the issues involved, it would be better to deal the above issues, exercising the principle of **justness, reasonableness, and procedure established by law.**

All the issues are discussed cumulatively for brevity.

In the instant case, admittedly, O.Ps are engaged in providing unified Access services, including Pre-paid and postpaid and other related services to subscribers having engaged the **complainant as its distributor** having registered office at **Bagicha Sahi, Boudh.** O.Ps are held to be “**service provider**” and the complainant who purchase goods and services for commercial purpose would not preclude him, from the definition of “**consumer**”, it is because such **commercial use** is for the purpose of **earning his livelihood by means of self –employment.** It is also admitted fact that Vodafone mobile service limited **stood amalgamated** with ides cellular limited **w.e.f. 31st August, 2018.** At Para 17 of the written version, O.Ps are admitted that Vodafone idea limited (then as Vodafone mobile services limited) executed a Distributorship Agreement with M/S Bhubaneswar Telecom, represented by its Proprietor, the present complainant Dushamanta Mishra. Admittedly there was issuance of Recharge coupon Vouchers (**RCV**) in lieu of payments made to Vodafone idea limited by he complainant and that on different occasions on demand by the complainant **RCV** of different denominations were being issued. The averments made by the O.Ps that as per business and industry practices, **RCV**, once sold to any distributors can not be purchased back by the company is unsustainable in law, considering the facts situation of this case.

On the otherhand, the complainant has proved sufficiently that he had deposited **security amount of Rs.25,000/- dtd.12.09.2017 vide Andhra Bank A/C Payee cheque in favour of Vodafone mobile services limited** for the said purpose. Contrary to that the O.Ps are stated that security deposit amount by any distributor are returned by the company only upon closing of all market formalities and submission of written request by the Distributor before the company. In this respect the pleading of the O.ps are not convincing and reliable. It is further stated that the complainant had never executed any distributorship agreement with Vodafone mobile services limited on individual capacity hence the question of deposit of security amount of Rs.25,000/- does not and cannot arise is neither relevant nor convincing and it is self-contradictory in nature.

The complainant also submitted, Xerox copy of **undertaking cum Indemnity** executed in favour of Vodafone Services limited on 31.05.2017 and a **letter of**

request for refund of security money and paper vouchers of Rs.70,000/-.The complainant in his affidavit evidence, dtd.14.03.2023 also stated that-feeling aggrieved he has sent letter to O.Ps through post but they remained silent. On the otherhand to substantiate his stand of refund of amount of the so called papers vouchers of Rs.70,000/-, the complainant has not adduce any evidence or supportive documents i.e original paper vouchers available with him.

Therefore, considering the factual situation and available evidence on record, it can be safely conclude that the complainant is not at fault from his side and he is entitled to refund of his security amount of Rs.25,000/- from the O.Ps.

We are of the considerate view that it is a simple case of refund of security amount and there is no legal impediment to give a direction of refund and awarding compensation for agony, etc. All the cited case laws on behalf of the O.Ps are not applicable, considering the facts and circumstances of this case.

It is to note that after **discharge of the agreement/business deal**, despite request, the security amount of Rs.25,000/- has not been refunded to the complainant, which can be terms as **negligence and deficiency in service**, as such the O.Ps are **jointly and severally liable**. Added to this, O.Ps have also not assigned any ground for non-refund of the security amount till date, consequently put financial loss and agony to the complainant.

ORDER

The complaint of the complainant is partly allowed on contest against O.Ps as such the O.Ps are jointly and severally liable to refund to the complainant a sum of Rs.25, 000/-(Rupees twenty five thousand) only towards security deposit and Rs.10, 000/-(Rupees ten thousand) only for deficiency in service since the security amount has not been refunded forthwith after discharge of the agreement. Moreover, Rs.8, 000/-(Rupees eight thousand) only towards mental agony and Rs.3, 000/-(Rupees three thousand) for cost of litigation will serve cause of justice. The O.Ps are directed to carry out the order within 30 (thirty) days, failing which 9% interest will be charged from the date of failure till realisation.

Pronounce in open Commission on the 13th day of November, 2023 with seal and signature of President and Member.

Supply free copy to parties, if applied for.

I agree

Dictated by me

Member,
Dist.C.D.R.Commission,Boudh.

President,
Dist.C.D.R.Commission,Boudh.