

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
THIRUVANANTHAPURAM**

First Appeal No. A/109/2022

(Date of Filing : 19 Feb 2022)

(Arisen out of Order Dated 26/11/2021 in Case No. CC/352/2018 of District Kozhikode)

1. GENERAL MANAGER BSNL KOZHIKODE

KOZHIKODE 673001

2. JUNIOR TELECOM OFFICER

MOKERI TELECOM EXCHANGE MOKERI 673507

.....Appellant(s)

Versus

1. VINEETHA R KOTTAI

VINEETHA BHAVAN PATHIRIPATTA P O KOZHIKODE

673507

.....Respondent(s)

BEFORE:

HON'BLE MR. SRI.AJITH KUMAR.D PRESIDING MEMBER

SRI.RADHAKRISHNAN.K.R MEMBER

PRESENT:

Dated : 09 Apr 2024

Final Order / Judgement

KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

VAZHUTHACAUD, THIRUVANANTHAPURAM

APPEAL No. 109/2022

JUDGMENT DATED: 09.04.2024

(Against the Order in C.C. 352/2018 of DCDRC, Kozhikode)

PRESENT:

SRI. AJITH KUMAR D.

: JUDICIAL MEMBER

SRI. RADHAKRISHNAN K.R.

: MEMBER

APPELLANTS:

1. General Manager, B.S. N.L. Office, Kozhikode-673 001.

2. Junior Telecom Officer, Mokeri Telecom Exchange, Mokeri-673 507.

(By Adv. Maya R. Mani)

Vs.

RESPONDENT:

Vineetha R. Kottai, Vineetha Bhavan, Pathiripatta P.O., Kozhikode-673 507.

(Party in person)

JUDGMENT

SRI. AJITH KUMAR D.: JUDICIAL MEMBER

This is an appeal filed by the opposite parties in C.C. No. 352/2018 on the file of the District Consumer Disputes Redressal Commission, Kozhikode (District Commission for short). On 26.11.2021 the District Commission had allowed the complaint filed by the respondent and directed the appellants to pay a sum of Rs. 25,000/- as compensation. Being aggrieved by the aforesaid order this appeal is filed.

2. The case in the complaint is narrated below:

In the year 2015 the complainant had availed a BSNL Broadband connection. The connection remained defective during the period from June 2018 to December 2018. The request for repairs made by the complainant was not attended to. The General Manager and the Junior Telecom Officer of the BSNL are the opposite parties. Since the internet was not working the complainant had contacted the telephone exchange, Mokeri, but she got a reply that the repair could be done only on 04.07.2018 since the JTO was on leave. She waited till 06.07.2018 and the repair being not done as promised subsequently preferred a written complaint to the JTO. Since there was no response, she approached the General Manager, Kozhikode. But in the meantime, the land phone connection was dead. On 25.07.2018 the broadband connection was restored, but it went wrong that night itself. From 30.06.2018 onwards the phone was not functioning. Though the complainant sent several complaints by post and e-mail no positive action was taken. There was dereliction of duty and deficiency of service on the side of the opposite parties. As the complainant was deprived of using the telephone connection she could not contact her son, relatives and friends. She had sought for a compensation of Rs. 1,00,000/- (Rupees One Lakh only) for the mental agony and the financial loss incurred to her.

3. The opposite parties entered appearance and filed version. They admitted that the complainant is a customer who had broadband connection from the Mokeri Telephone Exchange. They would also admit that the complainant had preferred a complaint regarding the non-working of the broadband connection in June 2018. According to them the premises is located 5.5 km away from the exchange building. They would also admit that there was periodical failure of the working of the phone and broadband connection. On checking they could detect a fault in the cable connection and the above defect was repaired on 09.07.2018. But the complainant again reported that the broadband was not available during night hours. As her premises is far away from the exchange, there was possibility of some disturbances in the

cable line. For effecting the repair of the cable sanction had to be obtained from the local authority after large scale excavation of the public road and for reconstruction of telecom alignment for a single party much inconvenience would be caused to the public. According to them, for a single party getting permission is very difficult which is also financially not viable and technically not feasible. Eligible rebate in the rental charges was allowed to the complainant for the faulty period. The cable was replaced in the last week of December 2018. There was no wilful negligence on the part of the BSNL. Hence the opposite parties had sought for dismissal of the complaint.

4. The complainant filed proof affidavit and Exts. A1 to A6 were marked. No evidence was let in by the opposite parties.

5. In the Appeal Memorandum it is averred that the District Commission did not consider the fact that there was multiple fault on the cable wire and hence rectification of the same needed considerable time. The District Commission ought to have considered that there are widespread road works in the region during the relevant period. The District Commission failed to consider the version filed by the appellant that the concerned wing of the appellant company had taken all possible efforts to restore the service of the complainant. BSNL is governed by the rules and regulations issued by the Telecom Regulatory Authority of India (TRAI) which clearly contemplates provisions for compensation to the individual subscribers only in the form of rental rebate as per the number of days of default. The District Commission ought to have considered the fact that the compensation awarded would cause similar demands from large number of subscribers. The District Commission ought to have found that the house of the complainant is located 5.5 km away from the Mokeri Telephone Exchange. According to the appellants, the District Commission had acted arbitrarily in passing the award directing to pay compensation of Rs. 25,000/-. They would seek for setting aside the order passed by the District Commission.

6. Heard the counsel for the appellants and the respondent/complainant who appeared in person. Perused the records.

7. The complainant had sworn affidavit in lieu of chief examination. She had also caused production of Ext. A1, the copy of the bill issued by BSNL in her favour dated 06.12.2018 to pay Rs. 759.34 as the total charges with respect to the period from 01.11.2018 to 30.11.2018. Ext. A2 is the copy of the complaint preferred by the complainant to the JTO, Mokeri on 06.07.2018. Since her complaint was not attended, on 17.07.2018 she had filed a complaint to the General Manager of the BSNL reporting the irresponsible conduct on the part of the JTO in not attending her request in correcting the connection. Ext. A3 is the said complaint. On 05.10.2018 the complainant had again preferred a petition to the General Manager since her telephone connection was permanently stopped with effect from 30.09.2018. Ext. A4 is the copy of the above complaint. On 02.11.2018 she had sent another letter to the General Manager informing her intention to file a complaint to the concerned court with respect to the dereliction on the part of the BSNL authorities in not rectifying the defects pertaining to her telephone connection. Ext. A5 is the said letter. Ext. A6 is the copy of the statement given by the complainant. The complainant has sworn affidavit by narrating the laches on the part of the BSNL Authorities in not attending her request for rectification of the telephone connection provided to her.

8. The version of the complainant has been corroborated through the copies of the documents produced in support of the complaint. There is no case for the appellants that they had rectified the defects and restored the telephone connection and broadband facility to the complainant. When a consumer had availed a telephone connection the service provider cannot discard the complaints preferred by the consumer about the non-availability of the internet connection and telephone facility by quoting flimsy reasons like the distance from the telephone exchange, difficulty to fix the cable by digging the road etc.

9. The version given by the complainant stands unchallenged as the complainant was not cross examined. The appellants did not adduce any evidence to substantiate their contention. Appellants have no case that the complainant was a defaulter at any point of time. The materials on record would evidently prove that there was dereliction on the part of the appellants in not attending the case of the respondent so as to restore the internet connection and the telephone facility. An undertaking that the complainant is eligible for rebate in rent is not the requirement. Deficiency of service as per Sec. 2(1)(g) of the Consumer Protection Act, 1986 is defined as

“any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service”.

10. The complainant has remitted the requisite charges for availing the landline connection and internet broadband service. There is no case for the appellants/opposite parties that the complainant has defaulted in remitting the requisite charges. The opposite parties were fully aware about the distance between the telephone exchange and the premises of the complainant when the connection was given. So they cannot turn round and say that it is not feasible to rectify the defects as the house of the complainant is located at a distance of 5.5 km away from the telephone exchange. There is failure on the part of the opposite parties in providing uninterrupted telephone supply and internet broadband service to the complainant. The reasons offered by the appellants/opposite parties do not sound as convincing. When amount is collected from the customers it is the duty and responsibility of the opposite parties in providing uninterrupted service to the customers. At the time of argument the learned counsel for the appellants would submit that the appellants had advised the respondent to avail fibre network and the complainant was not willing to avail the same, it was not economically feasible to rectify the cable for a long distance of 5.5 km. It is also submitted that the complainant has now availed fibre network connection and at present she has no grievance at all.

11. But we are concerned about the inconvenience caused to the complainant with respect to the deficiency of service on the part of the appellants in not attending the complaints of the complainant and to provide her uninterrupted landline and broadband facility. There is convincing evidence adduced by the complainant regarding deficiency of service on the part of the appellants. The District Commission has appreciated the evidence in its correct perspective and reached a conclusion that the complainant was entitled to get compensation of Rs. 25,000/- (Rupees Twenty Five Thousand only). We find no reason to interfere with the order passed by the District Commission. The appeal lacks merits and hence it is liable to be dismissed.

In the result, the appeal is dismissed. Parties shall bear their respective costs.

The respondent/complainant is permitted to receive the statutory deposit made by the appellants at the time of filing the appeal, on proper acknowledgment.

AJITH KUMAR D.: JUDICIAL MEMBER

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RADHAKRISHNAN K.R. : MEMBER

**[HON'BLE MR. SRI.AJITH KUMAR.D]
PRESIDING MEMBER**

**[SRI.RADHAKRISHNAN.K.R]
MEMBER**