

Application No.459/2019

BEFORE THE PERMANENT LOK ADALAT (PUBLIC UTILITY SERVICES) UNION TERRITORY CHANDIGARH.

APPLICATION NO.459/2019

DATE OF PRESENTATION:31.07.2019.

DATE OF DECISION: 05.03.2021.

✓ Manoj Kumar, resident of House No.3123/2, Sector-41-D, Chandigarh.

.....Applicant

Versus

1. General Manager, Delhi Dwarka Niwas 306, Sector-132, Noida Uttar Pradesh.
2. BSNL through General Manager, Plot No.2 Himalaya Marg, Sub city centre, Sector-34-A, Chandigarh.

.....Respondent.

Present: Petitioner in person.
Sh.Navdeep Monga Adv., for respondents.

QUORUM: Ms.Shyama Dogra, Chairman.
Ms.Sakshi Singh, Member.

ORDER

This complaint was filed by the applicant for issuance of directions to the respondents to immediately stop sending promotional messages on the mobile numbers of the applicant and to compensate him with Rs.70,000/- for unnecessary disturbing him for mental agony and harassment and infringement of his privacy and payment of Rs.10,000/- as litigation charges.

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The applicant has appeared in person and submitted that he is a practicing Advocate having mobile number registered with respondent no.1 and using their services for the last so many years. He has registered his mobile number in Fully DND (Do not disturb) service. He submitted that the respondents have not been providing proper service and failed to register his genuine complaint by violating the guidelines issued by the of Telecom Regulatory Authority of India. Despite his registering his mobile number fully DND, he has been receiving promotional messages from respondent no.1 and he had requested it for not sending him for such messages but no attention was paid to his request, resulting into sending legal notice to respondent no.1. Print out of promotional message is also placed on record as annexure C-1 along with legal notice as annexure C-2. Apart from this message, applicant has also placed on record message received on his mobile No.9463200370 on 30.07.2019 at about 8:47 p.m with text body, which reads as follows:-

"Delhi Development Authority Approved affordable Flat, Near Airport @18 Lacs, Assan Kishto Mein-2nd Aug Reg@11000-Call 9811631214"

On receiving, this message, the applicant contacting respondent no.2 on 1909, which is a common complaint number, at about 9:00 p.m on 30.07.2019 to register his complaint against respondent no.1. However, executive of the respondent no.2 namely Rinku refused to register the complaint. His request to transfer his call to some other senior executive was also not accepted. Therefore, on the next day on 31.07.2019 at about 10:20 a.m, the applicant again contacted the opposite party on customer care no.1909 and executive

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Suman again refused to register his complaint by saying that they could not do it if such messages are not received from BSNL. So, submission of the applicant is that there is a clear proof of deficiency in service by respondent in-violation of rules and regulations of Telecom Regulatory Authority of India (in short T.R.A.I).

The applicant has supported his plea with affidavit and photocopy of print out of those messages have also been placed on record.

The respondents have filed written statement/reply disputing the maintainability of this application on the ground that customer care number 1909 has been initiated by the TRAI and not by the answering respondents. Therefore, T.R.A.I is a necessary party. This case is bad for non-joinder of necessary party and is non-suited. It is the T.R.A.I, who has started the portal/services of unsolicited commercial communications and BSNL has nothing to do with these communications. The mobile number of the applicant was registered in NCPPTRAI portal on 21.1.2019 with preferences of no call and no messages. This portal being initiated, maintained and look after by T.R.A.I, the answering respondents has no role to play.

It is also submitted that the sender of the promotional message is ID HP-Yojana of tele-marketer. It does not belong to BSNL. The procedure as to how to lodge a complaint upon receiving unsolicited commercial communication is in the NCPR duly mentioned in the website of T.R.A.I as reflected in annexure R-1 which is also being downloaded by the respondent from the official website of T.R.A.I i.e nccptrai.gov.in. Respondent has submitted that the applicant is using the mobile service of BSNL from 28.11.2018. Since,

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the respondents have not violated any guidelines of T.R.A.I at any point of time and performing their work as per T.R.A.I and office guidelines, therefore, keeping in view that respondents have not sent any promotional message to the applicant, this application is not maintainable as there is no deficiency in service on the part of the respondents.

The applicant has reiterated his submission while arguing the case and supported the contention with the case law decided by Tamil Nadu State Consumer Disputes Redressal Commission in the case No.49/2012 decided on 30.4.2014 titled as S.Ramu Vs. M/s HDFC Bank Limited & others. In this case it was held that unsolicited commercial calls and telemarketing is violative of right to privacy of customer mentioning to unfair trade practice and compensation for Rs.3,00,000/- was awarded. The applicant has also placed on record notification of T.R.A.I dated 19.7.2018, wherein, definition of privacy including the basic telephone service provider cellular mobile telephone service provider, unified access service provider, universal access service provider and virtual network operator (VNO) as defined in the respective licenses issued by department of telecommunications (DoT) is provided.

In chapter-III of this notification, it is made mandatory under clause-6 that every access provider shall establish customer preference registration facility (CPRF) and shall make necessary arrangements to facilitate its customers on 24 hours x 7 days basis throughout the year. It further provides that:-

(1) to provide ways and means to record consent or record revocation of consent related to commercial communication and

exercise his preference(s) from the list(s), mentioned in the schedule-II of choices for:-

- (a) preference(s) of categories of commercial communication;
- (b) preference(s) of the mode(s) of communication,
- (c) preference(s) of time band(s) and types of day(s) of the week including public and national holidays;

(2) to provide following modes, free of cost, to the customer, as per his choice, to register, modify or de register preference(s)

- (a) sending SMS to short code 1909; or
- (b) calling on 1909 or
- (c) interactive voice response system (IVRS) or
- (d) sending USSD; or
- (e) Mobile app developed in this regard either by the authority or by any other person or entity and approved by the authority or
- (f) Web portal with authentication through OTP; or
- (g) Any other means as may be prescribed by the authority from time to time.

(3) to duly acknowledge the receipt within fifteen minutes of the request made by the customer for registering, modifying, deregistering the preference with unique reference number;

Chapter-IV under clause 8 reads as under:-

Every access provider shall undertake following activities in accordance with the provisions of these regulations before allowing any commercial communication through its network(s):-

1. Develop Code(s) practice to establish system and make arrangements to govern the specified activities:-

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- (a) code of practice for Entities of ecosystem (Cop-Entities) as per schedule-1;
- (b) code of practice for registration of preference(s), recording consent(s) and revocation of consent(s) (Cop-Preference) as per Schedule-II;
- (c) code of practice for complaint handling (CoP-Complaints) as per schedule-III;
- (d) code of practice for Unsolicited Commercial Communications Detection (Cop-UCC-Detect) as per schedule-IV;
- (e) Code of practice for monthly reporting (CoP-Reports) as per Schedule-V.

Arguments from both the parties were heard as amicable settlement could not be materialized in absence of authorized person from respondent side.

The main plea raised by the learned counsel for the respondents is that since the portal of unsolicited communication calls is provided by the Telecom Regulatory Authority of India (TRAI), therefore, case is bad for non-joinder of necessary party.

After careful consideration of the matter, the plea of the respondent in this regard does not find favour for the simple reason that the TRAI is the Regulatory Authority, established only for the purpose of regulating telecom communication services providers. This fact is also clear from the notification of T.R.A.I dated 19.7.2018, which provides and defines as to who is the access provider and admittedly BSNL is the basic cellular telephone service provider and commercial messages are also coming on the mobile number registered with the BSNL. Therefore, once the applicant has tried to

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to lodge a complaint on the customer care number provided by the BSNL 1909, which is provided to facilitate the customers on 24 hours x 7 days basis throughout the year, it was incumbent upon the respondent to immediately register the complaint of the applicant, if there was some violation of rules etc., on the part of any person who has been sending unsolicited commercial communication to the customer and the applicant in the present case has been receiving these calls despite the fact that he has registered his mobile number as DND. Thus, the present application is not bad for non-joinder of TRAI as party as it is a Regulatory Authority and BSNL is one of its access provider.

As per chapter-IV, clause-D of regulation-8 "Code of Practice for unsolicited Commercial Communications Detection (Cop-UCC-Detect) schedule 4 provides that it is the function of the access providers to detect telemarketing through unsolicited commercial communication calls after handling/attending the complaint as per schedule-3 by registering it in the system to facilitate its customer to avoid infringement of his privacy. The respondent has failed to perform its duty in this regard.

Thus, after careful consideration of the matter as detailed hereinabove, we are of the view that respondents no.1 and 2 have failed to perform their functions as provided by the TRAI through its notification dated 19.7.2018, it being an access provider and it is a case of infringement of right to privacy of the applicant, who has categorically registered his mobile number as DND for the unsolicited commercial calls by the call service.

(a) Therefore, respondents are liable to compensate the applicant by payment of Rs.30,000/- (Rupees thirty thousand only)

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(b) The respondent instead of settling his claim had compelled the applicant to knock the doors of justice for redressal of his grievance. Therefore, he is held entitled for compensation for Rs.5,000/- (Rupees five thousand only) for mental harassment and Rs.2000/- (Rupees two thousand only) as litigation charges.

(c) Respondents are also directed to immediately stop sending unsolicited commercial messages to the applicant to avoid further mental harassment and infringement of his right to privacy and to approach this Court time and again.

The entire payment as above be paid by the respondents to the applicant within a period of one month from the date of receipt of certified copy of this order, failing which the amount at Sr.No.(a) above, shall carry interest @ 9% from the date of default i.e after expiry of one month and amount at Sr.No.(b) shall carry interest @ 9% per annum from the date of filing of this complaint till realization

In view of this observations and directions as above, this application stands disposed of accordingly.

Copy of this order be given to the parties free of cost. File be consigned to the record room.

Announced:
05.03.2021.

(Sakshi Singh)
Member

(S)

(Shyama Dogra)
Chairman