

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 2627 OF 2019**

(Against the Order dated 07/06/2019 in Appeal No. 5/2019 of the State Commission Delhi)

1. AJAY KUMAR SWAMI

279, GROUND FLOOR, HARI NAGAR ASHRAM,  
NEW DELHI-110014

.....Petitioner(s)

Versus

1. BHARAT SANCHAR NIGAM LIMITED & ANR.  
REGISTERED AND CORPORATE OFFICE BHARAT  
SANCHAR BHAWAN, H.C. MATHUR LANE,  
JANPATH  
NEW DELHI-110001

2. BHARAT SANCHAR NIGAM LTD.

BSNL TELEPHONE EXCHANGE OFFICE  
RUDRAPUR(U.S. NAGAR) UTTRAKHAND-263153

.....Respondent(s)

**BEFORE:**

**HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER**

**For the Petitioner : IN PERSON**

**For the Respondent :**

**Dated : 19 Mar 2021**

**ORDER**

**PER MS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER**

The Revision Petition has been filed by the Complainant with a delay of 50 days. Delay in filing the Complaint is hereby condoned and the arguments on the merits of the Revision Petition have been heard.

2. The present Revision Petition has been filed against the order dated 07.06.2019 of the State Commission in Appeal No. 05/2019 whereby the appeal of the Complainant was dismissed. The appeal was preferred against the order dated 28.11.2018 of the District Forum-VI in Complaint No. 413 of 2018, whereby the Complaint of the Petitioner was dismissed on the ground of the territorial jurisdiction. Vide the impugned order the State Commission while dismissing the appeal has also held that Complainant was not a 'consumer'.

3. Petitioner has argued that the findings of the Fora below is without justification because in terms of the provisions of Section 2(1)(d), he is a 'consumer' as he is the beneficiary of the service provided by the Respondent. He has relied upon the findings of the Hon'ble Supreme Court in the case of **Lucknow Development Authority Vs. M.K. Gupta 1994 SCC(1) 243**. In order to substantiate his arguments that the District Forum in Delhi has the territorial jurisdiction he has relied on the findings of this Commission in the case of **FA No. 81 of 2015 BMW India Private Ltd. Vs. Mukul Aggarwal & Ors.**

4. I have heard the arguments and perused the relevant record. The brief facts as narrated by the Petitioner in the Complaint are that his father Sh. Shyam Sunder Swami got a landline connection installed from the Respondent No. 2 i.e. Bharat Sanchar Nigam Limited, Ruidrapur, Utrakhnad at Udham Singh Nagar, Rudrapur, Utrakhnad. The landline was not functioning properly. There was deterioration in the services of the said landline and the Complainant who is a resident of Delhi filed a Complaint in Delhi District Forum.

5. The District Forum on the basis of these pleaded facts concluded as under:-

(2) On the issue of territorial jurisdiction it is argued by the complainant that the OP has its office at Janpath, New Delhi falling under the territorial jurisdiction of this Forum.

The perusal of the file shows that the dispute regarding the non-functioning of the landline connection was at the residence of the complainant's father at Rudra Pur, Utrakhnad. All the complaints and communication regarding the complaints are exchanged between the parties from Haldwani office of the OP. The complainant has failed to place on record any document which shows that the alleged cause of action accrued within the territorial jurisdiction of this Forum. Moreover, the e-mails communication exchanged between the complainant and the OP is from the Haldwani Office of the OP Company. In other words neither the OP nor the cause of action arose within the territorial jurisdiction of this Forum.

**On the issue of Territorial Jurisdiction, we are guided by the Hon'ble Apex court in the case of Sonic Surgical where in the following order were passed. In Sonic Surgical versus National Insurance Co. Ltd Civil Appeal No. 1560 of 2004 decided by Hon'ble Supreme Court on 20/10/2009, the Hon'ble Supreme Court passed the following orders: -**

“Ld. Counsel for the appellant submitted that the respondent-insurance company has a branch office at Chandigarh and hence under the amended Section 17 (2) the complaint could have been filed in Chandigarh. We regret, we cannot agree with the Ld.Counsel for the appellant. In our opinion, an interpretation has to be given to the amended Section 17(2) (b) of the Act, which does not lead to an absurd consequence. If the contention of the Ld.Counsel for the appellant is accepted, it will mean that even if a cause of action has arisen in Ambala, then too the complainant can file a claim petition even in Tamil Nadu or Gauhati or anywhere in India where a branch office of the insurance company is situated. We cannot agree with this contention. It will lead to absurd consequences and lead to bench hunting. In our opinion, the expression ‘branch office’ in the amended Section 17(2) would mean the branch office where the cause of action has arisen. No doubt this would be departing from the plain and literal words of Section 17(2) (b) of the Act but such departure is sometimes necessary (as it is in this case) to avoid absurdity. [vide G.P.Singh’s Principles of Statutory Interpretation, Ninth Edition, 2004 P. 79]

In the present case, since the cause of action arose at Ambala, the State Consumer Redressal Commission, Haryana alone will have jurisdiction to entertain the complaint.”

3. We are, therefore, of the view that this Forum does not have the territorial jurisdiction to entertain the complaint for want of territorial jurisdiction in view of the judgment of Hon’ble Supreme Court in Sonic Surgical case (Supra). The complaint is, therefore, directed to be returned to the complainant along with all annexure against acknowledgment. A copy of the complaint be retained for records. Complaint is accordingly, disposed off in above terms. The copy of the order be sent to complainant free of cost by post. Orders be also sent to [www.confonet.nic.in](http://www.confonet.nic.in) . File be consigned to record room.

6. This order was impugned by way of Appeal, by the Petitioner in Delhi State Commission. After hearing the Complainant the impugned order was passed. Relevant paragraphs are reproduced:-

(6) We are totally in agreement with the observation of the Ld. Consumer District Forum that disputed landline phone connection was installed at the residence of appellant's/complainant's father at Rudrapur, Uttarakhand and all the communications regarding the non functioning of the landline phone, complaints were exchanged between the parties from Haldwani office of the respondent/Opposite Party. The appellant/complainant has miserably failed to show any evidence or documents that the alleged cause of action accrued within the territorial jurisdiction of the Ld. District Consumer Forum in Delhi. Even the e-mails communication exchanged between the appellant/complainant and respondent/Opposite Party are from Haldwani office. Thus, it is evident that neither any cause of action arose within the territorial jurisdiction of Ld. District Forum nor the respondent/OP company with whom the e-mails were exchanged regarding the non functioning of landline connection is situated in Delhi. The only contention of the appellant/complainant is that the corporate office of the respondent/OP is situated at Delhi, as such Ld. District Forum, Delhi has the jurisdiction. We need not consider the aforesaid contention of appellant/complainant in view of other material facts on records which are discussed in the para below.

7. We may mention that complaint is also not maintainable on the ground that appellant/complainant Sh. Ajay Kumar Swami is not a 'consumer' as the alleged landline connection was installed in the name of his father Sh. Shyam Sunder Swami at his father's residence in Udham Singh Nagar, Rudrapur. The contention of the appellant/complainant is that he is a beneficiary of the said connection as he used to receive calls of his father from that connection in Delhi. It is totally a vague argument receiving calls from the alleged telephone number to his mobile number in Delhi does not make him a beneficiary of alleged telephone number. Further it is stated by the appellant/complainant that aforesaid connection had been permanently disconnected on 12.03.2018 at their request before the filing of the complaint as such appellant/complainant was not a 'consumer' as defined under the Act when the complainant was filed before District Forum."

7. It is this order which is impugned before me. Section 11 of the Consumer Protection Act, 1986 deals with the territorial jurisdiction of the District Forum. The provision reads as under:-

**11. Jurisdiction of the District Forum.** —(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to

entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs.

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction:-

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, carry on business or have a branch office], or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

8. From the bare reading of this provision it is apparent that the complaint can be instituted only where all the Opposite Parties are actually and voluntarily residing or carrying on the business or has a Branch Office and works for gain. From the memo. of parties in this case it is apparent that both the Respondents are not residing at the same place. Office of R-1 is situated at Delhi where the complaint has been filed and the office of R-2 is at Rudrapur. The provision of Section 11(2)(b) deals with the eventuality relating to the institution of a complaint where all the Opposite Parties are not placed at one place. In such case the Complaint can be filed with the permission of the Court at the place where either of the Opposite Parties are residing or carrying on its business. In the present case District Forum while dealing with Section 11 refused to grant such permission and directed that the Complaint should be filed at a place where cause of action had arisen. The petitioner has placed reliance on BMW Pvt. Ltd. (supra). This Commission in BMW case has relied on the findings of Hon'ble Supreme Court in **Sonic Surgical vs. National Insurance Compant Ltd. AIR 2010 SCW 298** . The findings given by this Commission in said case is entirely on different set of facts. The Hon'ble Supreme Court in Sonic case had clearly held:

**10.** In our opinion, an interpretation has to be given to the amended Section 17(2)(b) of the Act, which does not lead to an absurd consequence. If the contention of the learned counsel for the appellant is accepted, it will mean that even if a cause of action has arisen in Ambala, then too the complainant can file a claim petition even in Tamil Nadu or Gauhati or anywhere in India where a branch office of the Insurance Company is situated. We cannot agree with this contention. It will lead to absurd consequences and lead to bench-hunting. In our opinion, the expression “branch office” in the amended Section 17(2) would mean the branch office where the cause of action has arisen. No doubt this would be departing from the plain and literal words of Section 17(2)(b) of the Act but such departure is sometimes necessary (as it is in this case) to avoid absurdity.

The District Forum and the State Commission have rightly after relying on Sonic Surgical case (supra) have returned the Complaint to the Complainant with the direction to file it before a Court of Competent Jurisdiction.

9. The Petitioner has also challenged the findings of the State Commission wherein the State Commission has held that he is not a ‘consumer’ and, therefore, could not have filed the Complaint. The expression ‘consumer’ is defined in Section 2(1)(d).

**Section 2(1)(d)**

(d) “Consumer” means any person who,—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) <sup>12</sup> [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who <sup>12</sup> [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person <sup>13</sup> [but does not include a person who avails of such services for any commercial purpose];

Admittedly, the Petitioner is not the buyer of the services. The service of landline was availed by his father at Rudrapur. Complainant is not residing at the place of his father so that it can be said that his father had obtained landline for the benefit of the Petitioner and, therefore, the Petitioner is a beneficiary of the said landline. The Petitioner has argued that he is a beneficiary since he was receiving the calls of his father who used to ring him up from the landline. The petitioner has relied on the findings of the Hon'ble Supreme Co in the case of **Spring Meadows Hospital & Anr. Vs. Harjol Ahluwalia (1998) 4 SCC 39**. The facts of the case in brief are that the parents filed a complaint claiming damages/ compensation for the wrong treatment of their child by the doctors of the hospital. Plea was taken that since parents had not underwent treatment at the hospital they were not a consumer and complaint was to be dismissed. It was on these facts that the Supreme Court define the expression beneficiary as under:-

12. In the present case, we are concerned with clause (ii) of Section 2(1)(d). In the said clause a consumer would mean a person who hires or avails of any services and includes any beneficiary of such services other than the person who hires or avails of the services. When a young child is taken to a hospital by his parents and the child is treated by the doctor, the parents would come within the definition of consumer having hired the services and the young child would also become a consumer under the inclusive definition being a beneficiary of such services. The definition clause being wide enough to include not only the person who hires the services but also the beneficiary of such services which beneficiary is other than the person who hires the services, the conclusion is irresistible that both the parents of the child as well as the child would be consumer within the meaning of Section 2(1)(d)(ii) of the Act and as such can claim compensation under the Act.

However, in the present case the facts are entirely different. The petitioner has not hired the services of the respondent for himself or for his father. He is also not using the said landline connection but only receiving the calls from the said landline on his phone. There is nothing on record to show that his father had brought the landline for the benefit of complainant, rather it was taken by his father so that he could talk from that landline with the petitioner. The petitioner has also relied on the case of **Lucknow Development Authority Vs. M.K. Gupta (1994) AIR 787** and has alleged that since the Hon'ble Supreme Court has also said that the he is the user of a service he is the beneficiary. This argument has no merit. In the MK Gupta (supra) the Hon'ble Supreme Court has held that:-

*“In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to any or all actual or potential users.”*

It is not the contention of the Petitioner that he has been making calls from the said landline and so using it or is the beneficiary of the said landline simply because he is receiving calls from that landline does not make him fall in definition of 'consumer' under Consumer Protection Act, 1986.

10. I find no illegality or infirmity in the impugned order. The present Revision Petition is dismissed.

.....J  
**DEEPA SHARMA**  
**PRESIDING MEMBER**

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