

A CHAIRMAN-CUM-MANAGING DIRECTOR
ONGC LTD. & ORS.

v.

CONSUMER EDUCATION RESEARCH SOCIETY & ORS.

B (Civil Appeal No. 9257 of 2019)

DECEMBER 09, 2019

[S. ABDUL NAZEER AND DEEPAK GUPTA, JJ.]

C *Consumer Protection Act, 1986: Consumer-Service provider relationship – Whether there is relationship of consumer and service provider existing between the private respondents (claimants) and the appellants – All the claimants were employees of the ONGC – A Self Contributory, Post Retirement and Death in Service Benefits Scheme, 1991 was introduced in the ONGC after obtaining permission of the Government of India on 18.09.1991*
D *– Case of the claimants was that due to delay in sending their claims to the LIC, they suffered a loss – Consumer Fora held that the employees were consumers of the ONGC and held in favour of the claimants – Held: There was no privity of contract for providing service between the ONGC and the claimants – Letter dated 18.09.1991 and the Scheme showed that contributors to the*
E *Scheme were the employees of ONGC – The employer was only making a token contribution of Rs.100 per annum, the Scheme was also voluntary and optional for the employees who were in service – The Scheme envisaged that every employee shall contribute to the fund at rates specified therein – The Scheme was managed and*
F *run by a Trust and not by the ONGC – The service, if any, was being rendered by the Trust and not by the ONGC – Thus, there was no relationship of consumer and service provider between the claimants and the ONGC – However, in view of the submission for the appellant that without prejudice to their rights to challenge the*
G *impugned orders of consumer forums, the appellants shall pay the amount as directed in the impugned orders, ONGC is directed to pay the amounts under the order impugned to the claimants.*

Partly allowing the appeals, the Court

HELD: 1. There is virtually no privity of contract for
H **providing service between the ONGC and the claimants. From**

a perusal of the letter dated 18.09.1991 and the Scheme, it is apparent that contributors to the Scheme were the employees of ONGC. Whereas the employer was only making a token contribution of Rs.100 per annum, the Scheme was also voluntary and optional for the employees who were in service from the effective date i.e. 01.04.1990. It is not disputed that all the claimants were in service before the effective date. The Scheme envisages that every employee shall contribute to the fund at rates specified therein. The younger the employee, the percentage deducted from his salary is less and this rises progressively as the age increases. It has obviously been done to ensure that the contribution of the employee is equal i.e. those who have less years of remaining service will contribute at a higher rate and those who have more years of remaining service will contribute at a lower rate. The most important aspect is that the Scheme is managed and run by a Trust and not by the ONGC. The trustees of the Trust are nominated by the Chairman of the ONGC and representatives may be nominated to the Board of Trustees by the Central Working Committee (CWC) of Association of Scientific and Technical Officers. 7 trustees are nominated by the Chairman of the ONGC and 6 by the CWC. Be that as it may, it is the Trust which manages the fund. Therefore, without going into the question as to whether any amount is being paid by the employees for contribution to the services rendered by the Trust, it is apparent that the service, if any, is being rendered by the Trust and not by the ONGC. Therefore, there is no relationship of consumer and service provider between the claimants and the ONGC. [Para 7] [779-F-G; 780-A-E]

Jagmittar Sain Bhagat & Ors. vs. Director, Health Services, Haryana & Ors. (2013) 10 SCC 136 : [2013] 8 SCR 77 ; Regional Provident Fund Commissioner v. Shiv Kumar Joshi (2000) 1 SCC 98 : [1999] 5 Suppl. SCR 294 ; Regional Provident Fund Commissioner v. Bhavani (2008) 7 SCC 111 – referred to.

2. The orders of the National Consumer Disputes Redressal Commission and the State Consumer Disputes Redressal Commission are set aside in so far as it held that

- A there is a relationship of consumer and service provider between the claimants and the ONGC. However, in view of the statement made by the counsel of appellant, recorded in the opening portion of this judgment the ONGC is directed to pay the amounts payable (other than the costs) under the orders impugned to the claimants. [Para 8] [780-F-G]
- B

Case Law Reference

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|-------------------------|-------------|--------|
| [2013] 8 SCR 77 | referred to | Para 6 |
| [1999] 5 Suppl. SCR 294 | referred to | Para 6 |
| C (2008) 7 SCC 111 | referred to | Para 6 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9257 of 2019.

- From the Judgment and Order dated 20.03.2014 of the National Consumer Disputes Redressal Commission, New Delhi in Revision
- D Petition No. 3382 of 2013

With

Civil Appeal Nos. 9258, 9259, 9260, 9261, 9262, 9263, 9264 of 2019.

- E Krishnan Venugopal, Sr. Adv., Jay Cheema, Akshat Razdan, Avinash Das, Sivender Singh, M/S. Cyril Amarchand Mangaldas, Advs. for the Appellants.

Anil Shrivastav, Arjun Garg, Aakash Nandolia, Devansh Srivastava, Advs. for the Respondents.

- F The Judgment of the Court was delivered by

DEEPAK GUPTA, J.

1. Leave granted.

2. All these appeals are being disposed of by a common judgment
- G since the issue involved is common in all the cases.

3. At the outset, we may note that Shri Krishnan Venugopal, learned senior counsel appearing for the appellants submits that without prejudice to the rights of the appellants to challenge the impugned orders of the National Consumer Disputes Redressal Commission as well as
- H the Gujarat State Consumer Disputes Redressal Commission and the

District Forum, the appellants shall pay the amount as directed in the impugned orders. This has been done because the amounts involved are small, the appellants had retired a long time back and they should not be forced to go into the second round of litigation. A

4. The main issue involved is whether there is relationship of consumer and service provider existing between the private respondents (claimants) and the appellants. B

5. The undisputed facts are that all the claimants were employees of the Oil and Natural Gas Commission (for short 'the ONGC'). A Self Contributory, Post Retirement and Death in Service Benefits Scheme, 1991 (for short 'the Scheme') was introduced in the ONGC after obtaining permission of the Government of India and the relevant portion of the letter dated 18.09.1991 granting permission reads as follows:- C

“(i) Contribution to the fund to be established from the employee of the ONGC would be in cash, with a token contribution of Rs.100 per annum by ONGC.” D

The Scheme has also been annexed and the relevant portion of the Scheme reads as follows:-

“1(c) Membership

(i) xxx xxx xxx E

(ii) The Scheme shall be optional to the existing executives in regular service of the Commission on the effective date of the Scheme 01 04 1990 However, t will be compulsory for executives joining regular service in the Commission as new entrant on or after the effective date of the Scheme option once exercise shall be final and irrevocable F

xxx xxx xxx

2 Contribution

2.1 The contribution to be make by the member-employee shall be calculate his salary and the rate will be as given hereunder depending on his age on the effective of the Scheme for employees on the rolls ONGC as on 01.04.1990 and on the date Joining ONGC for new entrants. The rate of contribution fixed at the time of entry will remain constant. The following rates of the contribution are payable in the various age group: G H

A	(i) Below 25 years	-0.5% of salary
	(ii) 25 and upto 35 years	-0.75% of Salary
	(iii) above 30 and up to 35 years	-1% of salary
	(iv) above 35 and up to 40 years	-2% of salary
B	(v) Above 40 and up to 45 years	-3% of salary
	(vi) Above 45 and up to 48 years	-4.5% of salary
	(vii) Above 48 and up to 50 years	-4.5% of salary
	Above 50 and up to 58 years	-5% of salary

C	xxx	xxx	xxx
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5. MANAGING THE SCHEME

(a) The Scheme shall be run by a Trust consisting of trustees to be nominated by the Chairman ONGC and representative as may be nominated on the board by CWC of ASTO. The Trust would make investment plan of the fund as per pattern of Rule 67 (2) of Income Tax Rule 1961 and would purchase annuity from LIC for the beneficiaries under the Scheme.

6. Scheme is based on voluntary contribution by the member employees. No contribution will be made by ONGC towards this Scheme except Rs.100 p.a. No. other financial liability on account of this Scheme will devolve on ONGC or the Govt. of India.”

It is not necessary to deal with other facts. The case of the claimants was that due to delay in sending their claims to the LIC, they suffered a loss. This averment is denied by the appellants but, in our view, that is not very relevant. The Consumer Fora held that the employees were consumers of the ONGC and therefore passed orders awarding various amounts and costs in favour of the claimants and hence the ONGC is liable to pay the same.

6. Shri Venugopal has raised various pleas before us. The first is that in terms of the definition of consumer in the Consumer Protection Act, 1986 (for short ‘the Act’), the first essential ingredient is payment of consideration for availing services. The second contention is that rendering of service free of charge under a contract of personal service is not included in the definition of service under the Act. We may refer to Section 2(d) of the Act, which reads as follows:-

“(d) “consumer” means any person who,—

A

(i) xxx xxx xxx

(ii) 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 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 but does not include a person who avails of such services for any commercial purpose;”

B

C

We may also refer to Section 2(o) of the Act, which reads as follows:-

“(o) “service” means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;”

D

E

Shri Venugopal has relied upon the judgment of this Court in the case of *Jagmittar Sain Bhagat & Ors. vs. Director, Health Services, Haryana & Ors.*¹ in this regard. On the other hand, learned counsel for the respondents has placed reliance on the judgment of this Court in *Regional Provident Fund Commissioner v. Shiv Kumar Joshi*² and *Regional Provident Fund Commissioner v. Bhavani*³.

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7. In our opinion, it is not necessary to answer all the issues raised by Shri Venugopal since, in our opinion, there is virtually no privity of contract for providing service between the ONGC and the claimants. From a perusal of the letter dated 18.09.1991 and the Scheme, relevant portion of which has been quoted above, it is apparent that contributors to the Scheme were the employees of ONGC. Whereas the employer was only making a token contribution of Rs.100 per annum, the Scheme was also voluntary and optional for the employees who were in service

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¹ 2013 (10) SCC 136

² 2000 (1) SCC 98

³ (2008) 7 SCC 111

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- A from the effective date i.e. 01.04.1990. It is not disputed that all the claimants were in service before the effective date. The Scheme envisages that every employee shall contribute to the fund at rates specified therein. The younger the employee, the percentage deducted from his salary is less and this rises progressively as the age increases. It has obviously been done to ensure that the contribution of the
- B employee is equal i.e. those who have less years of remaining service will contribute at a higher rate and those who have more years of remaining service will contribute at a lower rate. The most important aspect is that the Scheme is managed and run by a Trust and not by the ONGC. The trustees of the Trust are nominated by the Chairman
- C of the ONGC and representatives may be nominated to the Board of Trustees by the Central Working Committee (CWC) of Association of Scientific and Technical Officers. We have been informed at the Bar that 7 trustees are nominated by the Chairman of the ONGC and 6 by the CWC. Be that as it may, it is the Trust which manages the fund. Therefore, without going into the question as to whether any amount is
- D being paid by the employees for contribution to the services rendered by the Trust, it is apparent that the service, if any, is being rendered by the Trust and not by the ONGC. Therefore, we have no hesitation in coming to the conclusion that there is no relationship of consumer and service provider between the claimants and the ONGC. We make it
- E clear that we have not gone into the other questions since, in view of the aforesaid decision, it is not necessary to decide the other questions raised by Shri Venugopal.

8. In view of the above discussion, we partly allow the appeals and set aside the orders of the National Consumer Disputes Redressal Commission and the State Consumer Disputes Redressal Commission
- F in so far as it held that there is a relationship of consumer and service provider between the claimants and the ONGC. We also set aside the costs imposed by the National Consumer Disputes Redressal Commission. However, in view of the statement made by Shri Venugopal, recorded in the opening portion of this judgment, we direct the ONGC
- G to pay the amounts payable (other than the costs) under the orders impugned to the claimants within 8 weeks from today.

9. Pending application(s), if any, stand(s) disposed of.