

India Oil Corpn vs Consumer Protection Council (Mohan, ... on 7 December, 1993

Equivalent citations: 1993 SCC (1) 397, 1993 SCALE (4)620, AIRONLINE 1993 SC 354, (1993) 6 JT 645 (SC), (1994) 1 CIVLJ 697, (1994) 1 COMLJ 338, (1994) 1 CPR 255, (1994) 1 CURLJ(CCR) 170, (1994) 1 EFR 315, (1994) 1 ORISSA LR 210, 1994 (1) SCC 397, (1994) 4 BOM CR 37, (1994) 79 COMCAS 577, (1994) IJR 68 (SC), 1994 UJ(SC) 1 115, (1993) 68 ELT 513, (1995) 30 ATC 534, 1995 SCC (L&S) 1093, 1995 SCC (SUPP) 3 77, (1997) 69 ECR 288, 2004 (12) SCC 410, (2004) 16 ALLINDCAS 862, (2004) 16 INDLD 385, (2004) 2 JCR 121 (SC), (2004) 2 RECCIVR 251, (2004) 2 SCALE 595, (2004) 2 SUPREME 291, (2004) 55 ALL LR 241

Author: S. Mohan

Bench: S. Mohan

PETITIONER:
INDIA OIL CORPN.

Vs.

RESPONDENT:
CONSUMER PROTECTION COUNCIL (Mohan, J.)

DATE OF JUDGMENT07/12/1993

BENCH:
MOHAN, S. (J)
BENCH:
MOHAN, S. (J)
VENKATACHALLIAH, M.N.(CJ)

CITATION:
1993 SCC (1) 397 1993 SCALE (4)620

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MOHAN, J.- Leave granted.

2. This appeal by special leave arises under the following circumstances. The first respondent is a voluntary Consumer Organisation in Kerala, + From the judgment and order dated March 17, 1993 of the National Consumer Disputes redressable Commission in R.P.No. 266 of 1992.

registered under the Scientific, Literary and Charitable Societies Registration Act. Dr P. Kamalasanan, Ram Nivas (Gayathri), Sasthamcotta is a member and Secretary of Respondent 1. He had taken LPG connection through M/s Karthika Gas Agency who is the authorised distributor of the appellant. The said Karthika Gas Agency is the second respondent.

3. The second respondent committed several irregularities in giving gas connection and in providing refills of LPG cylinders to him. The Gas Agency had given more connections than authorised by the appellant, the Indian Oil Corporation. That amounted to deficiency in their service. The second respondent is the authorised agent of Indian Oil Corporation. However, the appellant-Corporation did not take adequate care to ensure that the agency would not cheat the consumers. Notwithstanding the fact that the appellant was aware of the misconduct of the second respondent, it did not take any effective steps to put a stop to the irregularities committed by the second respondent.

4. Dr Kamalasanan, the affected consumer, took up the matter with the appellant-Corporation. It was replied by the Corporation on March 23, 1990 admitting the fact that the irregularities were committed by the second respondent.

5. On January 21, 1987 Dr Kamalasanan paid an amount of Rs 2036.65 towards the charges for getting an LPG connection. That included the price of the gas stove and the necessary deposit towards the LPG connection. On the said date a consumer number was also accorded for which a sum of Rs 61.65 was paid. Having regard to the irregularities committed by the second respondent the appellant suspended the agency. However, the agency came to be revived later on. The second respondent gave Dr Kamalasanan a new registration for the connection and started the regular supply of gas cylinder. Such registration was accorded on June 20, 1988. The registration number was 1624. Cylinder was supplied regularly till May 1990. When the consumer requested for regularisation of his gas connection the appellant refused the same. According to the consumer this would amount to a deficiency of service by the Indian Oil Corporation, the appellant since the second respondent is the authorised agent of the Indian Oil Corporation. On these allegations he preferred a complaint before the Consumer Disputes Redressal Forum, Kollam claiming regularisation of his gas connection and a compensation of Rs 500.

6. The District Forum accepted the case of the complainant. The appellant-Corporation was directed to regularise the connection given by the second respondent to first respondent on January 21, 1987 and issue a subscription voucher and also pay Rs 100 as cost.

7. Against the said order, an appeal was filed before the Kerala State Consumer Dispute Redressal Commission in Appeal No. 32 of 1991. By order dated June 10, 1992 the appellant's plea that there

was no privity of contract between the first respondent and the appellant as per clause 2(g) of the Consumer Protection Act, 1986 and further the complainant was having unauthorised or illegal gas connection and that could not be regularised, was not accepted. Accordingly the appeal was dismissed.

8. The revision filed before the National Consumer Disputes Redressal Commission, New Delhi also suffered the same fate since by an order dated March 17, 1993 the same was dismissed. Hence, the present appeal.

9. The contentions on behalf of the appellant are as under:

It is not open to the complainant to seek remedy under clause 2(g) of the Consumer Protection Act, 1986 as there is no privity of contract between the complainant and the appellant-Corporation.

10. A person becomes an LPG customer of the Corporation only on signing a subscription voucher. That voucher contains the terms and conditions governing the loaning of gas cylinders and pressure regulator. Where, therefore, the cylinder and regulator are possessed without a subscription voucher it would tantamount to illegal act as contemplated in Section 3(2) of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988. Insofar as Dr Kamalasanan had failed to furnish a subscription voucher he cannot raise any claim as against the appellant. In the instant case there is no deficiency of service. On such an enquiry it was found that M/s Karthika Gas Agency has committed several irregularities. Alternative arrangements came to be made through another dealer. Where the second respondent, Karthika Gas Agency has issued several unauthorised connections which would amount to a criminal breach of trust, no liability can be fastened on the appellant.

11. Clause 17 of the LPG distributorship agreement clearly postulates the distributor to act as principal and not as an agent. In fact, the complainant was informed under letter dated March 23, 1990 as to the correct position. In these circumstances, if there is no legal obligation to regularise the connection the complaint ought to have been thrown out. The authorities below erred in their approach.

12. In opposition to this, the learned counsel for the respondent would contend that the subscription voucher is not the sole evidence to establish the existence of an authorised connection. Possession of LPG gas cylinder, pressure regulator and regular supply and refill of cylinders would constitute enough evidence to establish consumer-ship since no other person can possess these items as they are monopoly items available with LPG producing companies only.

13. The letter dated December 8, 1989 establishes the fact that the appellant was aware of the unauthorised acts of dealer from 1989 onwards. Where for the unauthorised act of second respondent his agency came to be terminated, there was no justification whatever to revive the same. Besides, how the appellant allowed the second respondent to give continuous supply of gas cylinder is not explained. Therefore, the presumption is that the appellant had ratified the

unauthorised acts of the respondent.

14. In order to decide this question it is necessary for us to look at clause 1 (a) of Ex. R-2. That is the memorandum of agreement between Indian Oil Corporation and M/s Karthika Gas Agency. That establishes the relationship between Indian Oil Corporation, the appellant and Karthika Gas Agency as distributor of the Corporation, on principal to principal basis. (emphasis supplied) Clause 17 of the agreement is as under:

"In all contracts or engagements entered into by the Distributor with the customers for sale of LPG and/or the sale and/or installation and/or repairs of appliances and/or connections thereof with LPG cylinders (filled or empty) and/or refills and/or pressure regulators and/or attached equipment the Distributor shall act and shall always be deemed to have acted as a principal and not as an agent or on account of the Corporation, and the Corporation shall not in any way be liable in any manner in respect of such contracts and/or engagements and/or in respect of any act or omission on the part of the Distributor, his servants, agents and workmen in regard to such installation, sale, distribution, connections, repairs or otherwise. The Distributor shall be bound to inform the customers in writing of this provision, through correspondence or at the time of enrollment, of the customer."

15. Thus, it is clear that the relationship is one of principal to principal basis. The reliance by the authorities below that the circumstances, documents and conduct of parties proved the relationship as of principal and agent is difficult to understand. This is a case in which the second respondent Karthika Gas Agency has given an unauthorised connection. If it was a legal connection nothing would have been easier than to produce the subscription voucher. Such a voucher as rightly pointed out by the learned counsel for the appellant, is important and will bind the appellant-Corporation. The authorities below have not given due importance to the subscription voucher. Section 3(2) of the LPG Control Order reads as under:

"No person shall possess or use liquefied petroleum gas filled in cylinder or in bulk form unless he has received supply thereof from a distributor or from an Oil Company."

16. The possession of an LPG gas cylinder by Dr Kamalasanan in this case has not been proved to be authorised. Therefore, on the strength of obtaining possession by means of an unauthorised connection it is not open to the first respondent to foist a contract on the Corporation.

17. The letter dated March 23, 1990 to Dr Kamalasanan is as under:

"Indian Oil Corporation Limited LPG : 104 23-03-1990 Dr P. Kamalasanan
Consumer Protection Council of Kerala TC 5/96, Perurkada, Trivandrum 695 005.

Dear Sir, Sub: LPG distribution at Karunagapally.

We make reference to your letter dated January 8, 1990 on the subject. On enquiry it is understood that M/s Karthika Gas Agencies, Karunagapally, has released a number of cylinders and regulators unauthorisedly to various persons in Karunagapally. It is also understood that for such releases a receipt in the name of the Karthika Gas Enterprises has been issued and not in the name of Karthika Gas Agencies, who are our authorised distributors. This appears to be a clear unauthorised action entailing criminal breach of trust. However, insofar as we are not provided with a valid document such as receipt of subscription voucher issued by M/s Karthika Gas Agencies who are our authorised distributors we may not be in a position to take any action in regularising the connection.

In regard to the supply of refills we are taking up the matter suitably with our Manager, Trivandrum to further streamline the existing, arrangement of supplies ex Haripad. Thanking you, Yours faithfully, for INDIAN OIL CORPN. LTD., sd/-

Area Manager"

18. This puts the position beyond doubt. It should have made the consumer aware of his legal rights. Further, in this case for the unauthorised acts of second respondent, its distributorship came to be cancelled. The fact that it was revived is of no consequence if due regard is to be had to clause 17 of the agreement which has been extracted above. Section 2(g) of the Consumer Protection Act states as follows:

"(g) 'deficiency' means 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;"

19. Insofar as there is no privity of contract between the appellant and the consumer no 'deficiency' as defined under Section 2(g) (quoted above) arises. Therefore, the action itself is not maintainable before the Consumer Forum. For all these reasons, we set aside the judgments of the authorities below. Civil Appeal will stand allowed. However, in the circumstances of the case there shall be no order as to costs.