

(2001) 07 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION)

APPELLANT

Vs

V.S.PARVATHA

RESPONDENT

Date of Decision : 08-07-2001

Acts Referred:

Citation : 2002 2 CPC 7 : 2002 2 CPJ 73

Hon'ble Judges : C.M.Nayar , Moksh Mahajan J.

Final Decision : N.O.E. discharged

Judgement

1. THE respondent - the distributor of M/s. Hindustan Petroleum Corporation Limited, has been charged with adoption and indulgence in restrictive trade practices within the meaning of Section 2(o)(ii) of the Monopolies and Restrictive Trade Practices Act, 1969 (for short, the Act). It is the contention of the D.G. (I&R) that the refilled gas cylinders were supplied to the consumers only after 45 days from the date of booking and the booking list was also not strictly followed on the basis of "first come first served". A list of customers with dates of booking and delivery of gas refills along with consumers' names, waiting list has been filed in support of the allegations so levelled. Pursuant to the Notice of Enquiry, it is the stand of the respondent that the principle of "first come first served" has been strictly followed in the matter of distribution of refills of LPG cylinders. As per procedure, as soon as the customer requests for refill, the same is entered in the register of "refills order" with the time and waiting list number. THEREafter invoice bills are prepared at seriatim and as and when lot for refilled gas cylinders is received from the Hindustan Petroleum Corporation, the customers are given delivery of refills as per seniority of booking. After the delivery is given the date of delivery is noted in the register of refills order. In case of non-delivery of refills, the delivery is made on the next call by the customer. Explanation in regard to certain customers cited in the list has also been furnished. As regards delay in supply of refills, information in the form of customers refills register has been filed to refute the allegations as made. Shortage of gas during the period in question is stated to be the cause of delay of refills to the customers. THE respondent also denied the regular supply of gas cylinders by the other LPG

companies who are also stated to have faced the similar problem. After completion of the pleadings, the following issues were framed. (1) Whether the respondent is or has been indulging in the restrictive trade practices as alleged in the Notice of Enquiry ? (2) Whether such restrictive trade practices are prejudicial to public interest. (3) Remedial action, if any.

2. RIVAL submissions have been considered in the light of the material placed before us and oral evidence rendered on both sides. At the outset, it may be mentioned that the D.G. (I&R) has admitted that except for filing a complaint against the respondent, the complainant has neither supported the allegations by any material nor has appeared for oral testimony. The D.G. (I&R) on the other hand has also mainly relied on the contents of the complaint and the conclusion drawn from the information supplied by the respondent. She, however, is silent on the explanation rendered by the respondent in respect of delay in delivery of cylinders to some of the parties including the complainant. Seen in this background, the perusal of the refills register shows that there has been delay between the booking of the gas refills and the delivery of the same in almost all the cases barring a few ones. There are also cases where delivery of refilled gas cylinders have been given out of turn. As regards former, explanation that there was a shortage of gas during the period in question has also not been effectively denied by the D.G. (I&R). The assertion on the part of the respondent that even the other LPG dealers also supplied the gas refills late to their customers on account of the aforesaid shortage has also not been refuted by way of any material brought on record. The fact that the delay in delivery of the gas refills has been there in almost all the cases (barring a few) is rather a pointer to shortage of gas during the period in question. As regards the delivery of gas refills given to certain customers out of turn, the explanation of the respondent in a few cases including that of the complainant has not been refuted by the D.G. We are inclined to agree with the respondent that during the period of shortage of gas cylinders, customers tend to book in advance to register their seniority. Therefore, the least D.G. could do was to procure the explanation of the respondent in some of the cases as mentioned in the Notice of Enquiry. On the other hand it is essential to show that the trade practice adopted by the party has not only restricted, impaired or distorted the competition but by manipulation of conditions of delivery, it has imposed unjustified cost on the consumers. On the basis of the material placed before us, we are not convinced that charge of restrictive trade practice can be held to have been established against the respondent. Thus, in the facts as stated, Notice of Enquiry deserves and is directed to be discharged. There shall be no order as to the costs on the facts and in the circumstances of the case. N.O.E. discharged.