

(1993) 08 NCDRC CK 0060

In the National Consumer Disputes Redressal Commission

Indian Oil Corporation

APPELLANT

Vs

V.Ramakrishnan

RESPONDENT

Date of Decision : 05-08-1993

Acts Referred:

Citation : 1994 3 CPJ 224

Hon'ble Judges : S.A.Kader , R.N.Manickam , Ramani Mathuranayagam J.

Final Decision : Appeal allowed

Judgement

1. THE appeal arises out of the order of the District Consumer Disputes Redressal Forum, Tuticorin dated 4.2.93 in O.P. 7/92. THE first Opp. Party is the appellant.

2. THE complainant was a consumer who was getting gas connection from M/s. Shanmugam Gas Service who were the authorized agents of the first Opp. Party. THE agency in favour of M/s. Shanmugam Gas Service was cancelled and transferred to M/s. Arasan Fuel Service. At that time it was found that the deposit amounts made by the complainant and others were not credited to the account of the first Opp. Party. THEse consumers were called upon to regularise the membership by payment of full deposit. It is alleged by the complainant that he offered to pay the amount, but it was refused. Subsequently, the first Opp. Party issued a notice calling upon the complainant to surrender the cylinder and accessories to their new agent, the second Opp. Party. Hence this complaint for directing the first Opp. Party to regularise the complainant's consumership by accepting fresh deposit. The Opp. Parties 1 & 2 filed a joint counter. It is admitted that M/s. Shanmugam Gas Service who originally agent of the first Opp. Party. It is not known whether the complainant paid the deposit to M/s. Shanmugam Gas Service as alleged by him. The agency in favour of M/s. Shanmugam Gas Service was cancelled and transferred to M/s. Arasan Fuel Service. At that time it was found that the deposits of the complainant and many other consumers had not been credited in the books of M/s. Shanmugam Gas Service and no subscription voucher has been issued to them. The first Opp. Party however offered to regularise the membership of the complainant and

other by paying full deposit of Rs. 350/-. Some of those consumers made the deposit except the complainant and a few persons. They were therefore called upon to surrender the gas cylinders. Meanwhile a few persons similarly placed who did not have the subscription vouchers filed a suit in the Court of the District Munsiff, Tuticorin, in a representative capacity in O.S. 369/ 80 claiming that they were not liable to make any deposit. The suit was dismissed and the appeal preferred there against in A.S. 44/87 on the file of the Sub Court was also dismissed. The complainant is bound by that decision and is not entitled to claim any relief or filed this complaint.

The District Forum found that the complainant is not bound by the decision of the District Munsiff in O.S. 369/80 and directed the Opp. Parties to give fresh gas connection to the complainant within one month after receiving the necessary deposit failing which to suffer imprisonment for one month. It is this order that is challenged in the appeal by the first Opp. Party.

3. IT is admitted that originally M/s. Shanmugam Gas Agency was the distributor of gas cylinders appointed by the Indian Oil Corporation. IT seems that several consumers have been given gas connection without receiving deposits and this was found out when the agency in favour of Shanmugam Gas Service was cancelled and transferred to M/s. Arasan Fuel Service. These consumers were not in possession of subscription vouchers to show that they had made deposits. Consequently the first Opp. Party Indane Oil Corporation called upon these persons to make fresh deposit to the distributor and regularise their membership, some of them have done so while others have not. The complainant is one of the persons who has not made fresh deposit and regularise their membership. The Indane Oil Corporation has issued notice to all these persons to surrender the gas cylinder and other equipments. He has now come forward with this complaint for orders and directing the Opp. Parties 1 and 2 to give a fresh connection after receiving the necessary deposit. The point raised by the 1st Opp. Party is that some of the consumers who did not have subscription vouchers like the complainant filed a representative suit on the file of the District Munsiff, Tuticorin in O.S. 369/80 for a declaration that they were not liable to pay fresh deposit and for injunction. The said suit was dismissed and an appeal there against in A.S. 44/87 on the file of the Sub-Court has also been dismissed and hence the present complaint is not maintainable. The District Forum has found that this judgment is not binding upon the complainant.

4. EXH. B1 is the copy of the judgment of the District Munsiff of Tuticorin in O.S. 369/80. It has been filed by 6 plaintiffs on their behalf and as representatives of Indane Gas Consumers who did not possess subscription vouchers under Order 1 Rule 8 of the Code of Civil Procedure. The said suit has been dismissed and appeal prepared there again has also been dismissed in A.S. 44/87. The decree copy in the appeal in EXH. B 3. It is contended on behalf of the complainant that he was not a party to the suit and he was not bound by the judgment. This contention seems to have been accepted by the District Forum. Under

Explanation VI to Sec. 11 of the Code of Civil Procedure where persons litigate bonafide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating. The above suit in O.S. 369/80 was a representative action filed by some plaintiffs on their behalf and as representatives of consumers of LPG connection who had no subscription vouchers. The complainant being one of them, shall be deemed to claim under the plaintiffs in that suit. The said judgment therefore operates res-judicata. The present claim must therefore failed. This aspect of the matter has not been considered by the District Forum. In the result the appeal is allowed, the order of the District Forum is set aside and the complaint is dismissed, but without costs throughout. Appeal allowed.