(1993) 03 NCDRC CK 0091

In the National Consumer Disputes Redressal Commission

INDIAN OIL CORPORATION LTD.-/O.P. APPELLANT

Vs

BAKSHISH RAI SHARMA RESPONDENT

Date of Decision : 04-03-1993

Acts Referred:

Citation : 1993 0 CPC 281 : 1993 2 CLT 9 : 1993 2 CPJ 663

Hon'ble Judges : S.S.Sandhawalia , Basanti Devi , S.Kulwant Singh J.

Final Decision : Appeals dismissed with costs

Judgement

1. MR. Justice S.S. Sandhawalia, President-Whether the redressal agencies under the Act can direct the removal of an established "deficiency" in the "service" hired by a consumer? This is the solitary core question in this set of connected appeals.

2. M/s. Indian Oil Corporation appeals against the four virtually identical orders of the District Forum, Yamuna-nagar. Admittedly the issues of fact and law are common and the learned Counsel for the parties are agreed that this order will govern all of them. The representative matrix of facts may be noticed from First Appeal No. 45 of 1993, M/s. Indian Oil Corporation Ltd. v. Bakshish Rai Sharma & Anr. The respondent in his complaint had alleged that he had applied for the issue of a new L.P.G. connection of Indane owned by the appellant Corporation way back on the 19th of February, 1987. He was duly allotted registration No. 423 of the Northern Region and receiptcum-Form No. S169 was issued in his favour. However, despite the passage of nearly six years the L.P.G. connection was not being released to him. Consequently a direction was sought for the issuance of the connection and compensation to the tune of Rs. 5,000/- was claimed for the allegedly patent deficiency in the service.

On notice being issued, the appellants took up the plea that the respondent would be deemed to have booked a new connection in case he produces the original booking slip. It was the case that the appellants had authorized the release of 185 new connections through M/s. Yamuna Nagar Gas Agency and M/s. Madan Gas Service. It was averred that 150 were to be released by the former and 35 new connections by the later concern. The detailed averment was that M/s. Madan Gas Agency was asked to transfer 150 names from its waiting list to Yamuna Nagar Gas Agency but the latter instead of transferring 150 names from the top of the waiting list i.e. form S. Nos. 1 to 150 transferred the waiting list from S. No. 501 to 650 without the permission of the appellants. In this way, new connections were issued by M/s. Yamuna Nagar Gas Agency to the persons registered at S. Nos. 501 to 650. It was also pleaded that M/s. Madan Gas Agency issued 35 new connections from the waiting list from S. Nos. 651 to 685 without the permission and knowledge of the appellants. On further enquiry, it was found that the Registration Book in respect of S. Nos. 1 to 500 had been misplaced or lost and was not traceable with regard to which no intimation had been sent. On this premise it was stated that the turn of the complainant had not yet matured and he was not entitled to a new gas connection.

3. IN their written statement, M/s. Madan Gas Agency pleaded that the original Registration Book was with the appellant Corporation and in the absence thereof they were even unable to state whether the complainant had registered himself for a connection or not. It was conceded that the said concern had been authorized to release only 35 gas connections and consequently it was beyond his powers to issue any connection to the complainant because the distribution and supply there of was controlled by the appellant-corporation. On a consideration of the material before it the District Forum came to a categoric conclusion that the complainant-respondent was far senior as against the persons to whom admittedly new LPG connections had been released. It was found that the appellants were vicariously liable for any default on the part of its agents M/s. Madan Gas Agency. The categoric conclusion arrived at was that there was a patent deficiency in service on the part of the appellants and their agents and they were equally liable for the same. The consequential relief ordered was that the appellants shall release a new connection to the respondent within two months and further compensation to the tune of Rs. 500/- was also awarded for the alleged mistake of the agents of the appellant-corporation.

4. MR. Ashish Kapoor, the learned Advocate for the appellant had incisively raised a solitary contention. He pinned himself primarily on Section 14 to contend that the only relief''s which the Redressal Agencies could grant were confined to Clauses (a), (b), (c)and (d)of Sub-section (1) thereof. It was frontally argued that the District Forum could not issue any direction or an injunction to remove the deficiency in service even after factually finding that the same had been established. The submission was that only the return of the charges paid by the complainant, or at best the monetary Compensation for any loss or injury could be granted but no direction of the nature to release a new connection to the appellant could be given. Primal reliance was placed on passing observations in the order of the National Commission in 1991 Consumer Protection Reporter 391, CCand 1991 (1) Consumer Protection Reporter 614, Rajasthan State Industrial Development & Investment Corporation Ltd. v. M/s. Premier Paints. Reference was also made to the order of the Karnataka State Commission in 1992 (1) CPR

482, Chairman Karnataka Housing Board v. Sri K.S. Panchapakeshan. There is no manner of doubt that the submission aforesaid raises a question of considerable significance within the consumer jurisdiction. We are inclined to hold, and as would be shown here-after, that the issue is concluded against the appellants by the binding precedents of the National Commission and equally the persuasive ones of the other State Commissions. However, before getting enmeshed in the morass of conflicting precedent it seems apt to first examine the meaningful question on the language of the statute itself and on larger principle. At the very outset it may be noticed that without being exhaustive there is a twin aspect of the consumer jurisdiction. The one pertains to the defects in the goods purchased whilst the other relates to the "deficiency" in the services hired by the consumer. Since here we are primarily concerned with the issue of the "deficiency" in "service", it becomes necessary for clarity''s sake to examine the matter pointedly with regard to that alone.

5. IN view of the above, what would call for pointed notice is the threshold definition of the complaint in Section 2(1)(c) which inevitably is the foundational base for the lis in the consumer jurisdiction. The relevant part thereof would merit notice in extenso : - "2(1)(c) "complaint" means any allegation in writing made by a complainant that - (i) xx xx xx (ii) xx xx xx (iii) the services mentioned in the complaint suffer from deficiency in any respect; (iv) xx xx xx with a view to obtaining any relief provided by or under this Act."

6. EVEN a plain reading of the above would make it manifest that in this context the very cause of action stems from a "deficiency" in the "service" hired. In order to even maintain the complaint as such, the complainant who has a grievance about the services has in essence to allege a patent deficiency therein to make out a lis for adjudication. That by itself is not enough and as the language of the afore-quoted definition would indicate that the same must be with a view to obtaining any relief there for provided by the statute. Consequently, the very heart of the matter in cases of this nature is the allegation of the deficiency in service and the inevitable relief of the removal thereof. Can it possibly be said that the statute which pins the very cause of action and the complaint on such a foundational base would then bar or deny any relief for the removal of such deficiency? It is somewhat plain that on the language of the statute and on larger principle this cannot possibly be so. Obviously enough, the main grievance of the deficiency in service is raised only with a view to obtaining the relief of the removal there of. The monetary compensation if any, can only be additional or ancillary to the primal relief''s sought. In our view, it would be somewhat farcical to hold that the basic deficiency cannot be directed to be removed and only quantum compensation can be awarded within this beneficent jurisdiction. To hold otherwise, would perhaps be the classic case of putting the cart before the horse. Viewed from another refreshing angle, what deserves highlighting is the fact that the Act creates and confers certain valuable rights on the consumers. It is somewhat elementary that by virtue of the provisions thereof, a consumer as defined in Clause (d) (ii) who hires any service for consideration is entitled as of

right that no deficiency in such services which have been undertaken to be performed exist at all. As is now well settled such deficiency has been widely defined in Clause (g) of Section 2. In sum, therefore, the Act in this context confers upon the consumers a basic right of a meticulous performance of the services hired by them without any deficiency therein. Once that is so, one must hearken back to the basic legal maxim "ubi-jus-ibi-remedium". It has by now become a salient premise of our jurisprudence that every legal right has a remedy there for. Were it to be otherwise, then the mere conferring of a right with no provided remedy would be tantamount to the classic exercise of a wild goose chase. It follows therefore, that if the consumer has a right to claim a deficiency-free service, he is ipso facto entitled to the relief of the removal of such deficiency when he establishes the same in the consumer jurisdiction. The settled canon of construction is that in cases of doubt one has to find the kernel of the true intention of the Legislature. To our mind, it cannot be easily laid at the door of Parliament that it expressly created a basic consumer right of deficiency-free service but barred the removal thereof by way of redress under the Act. Holding so, would be contrary to sound interpretation and in practical effect would be tantamount to taking away or nullifying what the Legislature has in express terms conferred.

Turning now to Section 14, which is the sheet anchor of the learned Counsel for the appellant, it seems true that Clauses (a) to (d) thereof do not in terms employ the language of removing the deficiency as such. It however deserves notice that in the analogous context of a defect in goods Clause (a) visualizes the removal of the defect pointed out by the appropriate laboratory from the goods in question. However, a similar relief in the context of the deficiency in service seem implicit in Clauses (c) and (d) of Sub-section (1) of Section 14.

7. APART from the above, putting the appellants'' case at the highest, one may assume in their favour that there may be a lacuna in Section 14 of the Act. That brings one at once to the cross-road of a legal conundrum epitomized in the celebrated observations of Denning L.J. in Seaford Court Estates Ltd. v. Asher, 1949 (2) Kings Bench 481. What have now become virtually classic words would yet bear repetition within the somewhat nascent consumer jurisdiction : - "xx xx xx Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that , or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsmen. He must set to work on the constructive

task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which was passed to remedy, and then he must supplement the written word so as to give "force and life " to the intention of the legislature."

In view of the hallowed observations above, the kernel question arises whether the Redressal Agencies under the Act should fold their hands and blame the Draftsmen for the lacuna in Section 14, or in the alternative to give "force and life" to the real intention of the Legislature. The answer in our view must necessary be the latter one. This seems to be more so because it has now come to be settled that the Act is a beneficent statute in construing which the object thereof has to be furthered, and where two constructions are reasonably possible the broader one must be adopted if it advances its larger purpose. This has been authoritatively so held in the Regional Provident Funds Commissioner, Punjab v. Shib Metal Works, AIR 1965 SC 1076 in the following terms : - "If the words used in the entry are capable of a narrow or broad construction, each construction being reasonably possible, and it appears that the broad construction would help the furtherance of the object, then it would be necessary to prefer the said construction."

8. INEVITABLY one must now advert to the precedents which were primarily projected by the learned Counsel for the appellant. Reference may first be made to Kongra Ananth Ram v. Telecom Distt. Engineer (supra). What first deserves notice therein is the fact that neither of the parties was at all represented before the National Commission and on the threshold it was held that there was no improper or illegal exercise or failure to exercise jurisdiction which could possibly merit interference in the revision petition under Section 21 of the Act. The revision petition was therefore, summarily dismissed on this score. However, before parting with the order, the National Commission made an observation in the interest of the consumers. It noticed that the District Forum chose to give a curious direction to the Telecommunication department for providing trouble free telephone service to all the subscribers and improve the image of the department in the eye of the public. Obviously, this type of general relief de hors the complainant''s case could not be possibly granted and the National Commission rightly frowned thereon. These observations in this context cannot possibly be a warrant for the proposition that even where a complainant establishes a patent deficiency in service, the removal thereof cannot be directed. In our view the short order of the National Commission in the case is plainly distinguishable. What has been said above, applies mutatis mutandis to the other case of the Rajasthan State Industrial Development & Investment Corporation Ltd. v. M/s. Premier Paints (supra). The brief order in this case would make it manifest that the District Forum had passed a curious order directing that lease deed in respect of the land allotted in Malvia Industrial Area in favour of M/s. Premier Paints in the possession of Rajasthan State Industrial Development & Investment Corporation to enable the latter to grant any further loan if possible. Plainly

enough, such a relief transgressed all the bounds of consumer jurisdiction and the National Commission rightly set aside the same and expressed their disapproval thereof. We are unable to see how the brief observation made in the peculiar facts and circumstances of the said case would in any way advance the stand of the appellants herein. Yet again, a reference to the Chairman Karnataka Housing Board v. Sri K.S. Panchapakeshan (supra) would indicate that therein the District Forum Bangalore had directed the opposite party to execute a sale deed in favour of the complainant in respect of a house allotted to him without demanding any escalation charges, cost of the house. Inevitably, setting aside the said order, the Karnataka State Commission observed that there was no power to issue an order of this nature. This brief observation in the said case does not in any way sustain the doctrinaire stand being taken on behalf of the appellant. It is plain that the pointed question before us was not even remotely raised before the Karnataka State Commission far from the same having been incisively adjudicated upon as such.

9. INDEED the persistent reliance of the learned Counsel for the appellants on the aforesaid authorities reminds one of the celebrated observations of Lord Halsbury in ''Quinn v. Leathern'' 901 Appeal Cases 495. Therein it was pointedly laid down that a precedent is only an authority for what it actually decides. It is the ratio deci-dendi thereof which is the kernel of the matter. Following the said view our Apex Court in 1968 Supreme Court 647 ''State of Orissa v. Sudhansu Sekhar Misra & Others'' observed further as follows : "It is not a profitable task to extract a sentence here and there from a judgment and build upon it."

10. IT appears to us that the learned Counsel for the appellant is indulging in the identical unprofitable task which has been disapproved by their Lordships of the Supreme Court. To sum up on this aspect, it has, therefore, to be hold both on the language and the provisions of the Act as also on the larger principles of interpretation that the Redressal Agencies in the consumer jurisdiction would clearly have the power to direct the removal of a deficiency in service.

Now entirely apart from the above, it bears pointed repetition that the basic issue herein is concluded against the appellants, first by the binding precedents of the National Commission and equally by the persuasive ones of the other State Commission. In this context pride of place may first be given to the observations of the National Commission in I (1992) CPJ 47 (NC) ''District Manager Telephones, Patna and Another v. Dr. Tarun Bharthuar & Anr.'' Therein it was expressly observed as follows : "Where, however, the finding of the Consumer Disputes Forum is that a telephone bill was issued only to harass a consumer/subscriber, it would certainly be open to the Consumer Disputes Forum to quash the bills."

11. IT is obvious that the aforesaid relief would be plainly beyond the literal terms of Section 14 of the Act. Yet again, the National Commission in I (1992) CPJ 66 (NC) ''M.K. Gupta v. Lucknow Development Authority'' issued the following mandate expressly beyond the limited language of Section 14 : "Since

the Respondent Lucknow Development Authority has not been able to complete the construction work in the house since August 1988 and the complainant/ appellant has been put to great hardship by reason of his not being able to take possession of the house allotted and registered in his favour, the Commission directs that the respondent Lucknow Development Authority should hand over the possession of the house in ''as is where is'' condition to the complainant/ appellant by not later than 31st of July, 1990."

Within this jurisdiction, in I (1991) CPJ 273 ''Jagdamba Rice Mills v. Union of India, Ministry of Telecommunications''. It was held on the basis of the established facts that the appropriate relief for a deficiency in the telex, service would be in the terms below : "We, therefore, hold that the total demand of Rs. 1,55,381/- vide Annexure P-12 will be wholly unsustainable and the same is hereby set aside, and the respondent department is restrained from recovering the same."

12. THE aforesaid case was carried before the National Commission and in I (1992) CPJ 90 (NC)''Union of India v. Jagdamba Rice Mills'' the National Commission unhesitatingly approved both the findings of fact as also the relief granted by this Commission. It is unnecessary to burden this order with innumerable judgments of the other State Commissions granting similar relief. However, as a representative matrix, reference may profitably be made to the Maharashtra State Commission''s judgment in I (1992) CPJ 140 (Page 148 para 19) Akhil Bharatiya Grahak Panchayat v. Chairman, Life Insurance Corporation of India & Ors.'' the Gujarat State Commission''s view in I (1992) CPJ 235 ''Dr. Nayankuamr H. Shah v. Assistant Accounts Officer, Ahmedabad Telecom Revenue'' and Delhi State Commission''s order in I (1992) CPJ 217 ''Municipal Corporation of Delhi v. Sumer Singh Mann''. To finally conclude the answer to the primal question posed at the outset has to be rendered in the affirmative. It is held that the Redressal Agencies under the Act can direct the removal of an established deficiency in the services hired by a consumer.

13. IN the light of the above, the solitary basic submission raised on behalf of the appellants in all the four appeals must fail and is hereby rejected. All the appeals are consequently dismissed with costs which are assessed at the modest figure of Rs.300/- in each appeal. Appeals dismissed with costs.