
(2000) 10 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

J.P.SIRPAUL

APPELLANT

Vs

CITY GAS SERVICE-/

RESPONDENT

Date of Decision : 12-10-2000

Acts Referred:

Citation : 2001 1 CPJ 12

Hon'ble Judges : Sardar Ali Khan J.

Final Decision : NOE disposed of

Judgement

1. THIS order shall dispose of a Restrictive Trade Practices Enquiry instituted under Section 10(a)(iv) and Section 37 of the Monopolies and Restrictive Trade Practices Act, 1969 and Regulation 51 of the Monopolies and Restrictive Trade Practices Commission Regulations, 1991 on receipt of a complaint dated 29th April, 1994 from one Shri J.P. Sirpaul, Flat No. 4051 A, Customs Colony, Chandigarh-160 023 (informant in brief), against M/s. City Gas Service, S.C.O. 171, Sector 37C, Chandigarh (respondent in brief).

2. THE Commission after examining the complaint directed the Director General (Investigation and Registration) (the DG in brief), Bikanar House, Shahjahan Road, New Delhi to investigate into the matter and submit its preliminary investigation report within 45 days vide its order dated 30.9.1994. Based on the recommendations made by the DG in the PIR, the Commission was of the prima facie view that the respondent has indulged in the restrictive trade practices and ordered that a Notice of Enquiry (NOE) be issued against the respondent. NOE was firstly issued under Section 10(a)(i) and 37 of the MRTP Act, 1969. It was subsequently amended on the request of the DG that since there is considerable public interest involved as consumers were being provided refills with extra costs and the amended NOE was issued under Sections 10(a)(iv) and 37 of the MRTP Act, 1969. Contents of amended NOE are reproduced below for proper adjudication of this case : "whereas the respondent is engaged in the business of supply of cooking gas and is an authorised dealer of M/s. Indian Oil Corporation Ltd.; and whereas the MRTP Commission has received a complaint from one Shri

J.P. Sirpaul, Chandigarh alleging that the respondent is charging Rs. 3/- to Rs. 5/- extra over and above the price of gas for delivery of refills; and whereas the DG (I&R) has investigated into the complaint and has found that the respondent is indulging in the trade practice referred to above; the trade practice of charging Rs. 3 /- to Rs. 5/- extra over and above the price of gas for delivery of refills amounts to restrictive trade practice of manipulation of price and conditions of delivery of refills so as to impose unjustified costs and restrictions on the consumers within the meaning of Section 2(o)(ii) of the MRTP Act. XXX XXX XXX"

The amended Notice of Enquiry was despatched to the respondent on 23.5.1997 but there was no proof of service. In terms of Order V Rule 19A of the C.P.C, the service was considered in order vide Commission's order dated 5.11.1997 but the respondent never put in its appearance before the Commission. However, reply to the NOE was filed on behalf of the respondent through an affidavit of Col. R.C.S. Maan, 202, Sector 33-A, Chandigarh.

In its reply, the respondent stated that during 1993, delivery-men of the LPG distributors of Chandigarh agitated for enhancement of delivery charges for taking refills to customers residing on first floor or above. The matter was taken up with the administration and with Oil Companies for enhancement of delivery charges on the pattern of delivery in stations like Simla, Panjor etc., which was rejected and the delivery- men were informed. After giving an ultimatum through press, and went on indefinite strike which resulted in unsatisfactory supply of LPG to the customers. During this trying period, all the distributors somehow managed to keep LPG supply going on by making arrangements at much higher prices.

3. THE respondent further submitted that in the above circumstances, some casual workers/ strikers may have indulged in charging extra money but it was not in their knowledge. Despite several opportunities granted to the respondent, it remained absent and the proceedings against it were set ex-parte on 5.7.1999. The DG filed his evidence by way of affidavit of Shri J.P. Sirpaul, informant, who could not be cross-examined since the respondent preferred to remain absent despite several opportunities.

4. I have heard the ex parte arguments advanced by Mr. C.B.N. Babu, Advocate for the DG. I have carefully gone through the material placed on record. In this case, the informant alleged that the respondent is charging Rs. 3/- to Rs. 5/- extra over and above the price of gas for delivery of refills at 1st and above floors. The respondent in its reply stated that the delivery-men were agitating for enhanced payment for delivery of gas refills at 1st and above floors. Their demand was projected to the concerned Authorities but was rejected by them. Later, they went on strike creating hurdles in delivery of refills and the distributors engaged casual labours in order to supply the refills to the consumers. The respondent admitted on affidavit that some casual labours at their own might have been charging extra money but that is without their consent and it has terminated the services of such delivery-men. From the

above, it has emerged that certainly this is a case where the position went out of the control of the respondent on account of the indefinite strike by the delivery-men. During that period, in order to make the supply going they had to engage casual labourers and it has been very fairly admitted by the respondent that those casual labourers might have charged extra amount of Rs. 3/- to Rs. 5/-. I further find that the respondent did not bow down to the demand of the delivery-men but instead approached the concerned Authorities for enhancement of delivery charges as is the practice in hilly towns such as Simla, Pinjor etc. On getting the refusal from the Authorities, it never accepted their demands. In the aforesaid facts and circumstances of this case, I hold that a case of manipulation of prices and conditions of delivery of refills with a view to impose unjustified costs / restrictions on the consumers within the provisions of Section 2(o) read with Section 2(o)(ii) of the MRTP Act, 1969 cannot be made out. Accordingly, the Notice of Enquiry stands disposed of. No order as to costs. NOE disposed of.