

(2000) 09 NCDRC CK 0064

In the National Consumer Disputes Redressal Commission

N. SENTHIL KUMAR

APPELLANT

Vs

SENIOR DIVISIONAL MANAGER, INDIAN OIL CORPORATION
LIMITED

RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:

Citation : 2001 1 CPC 512 : 2001 1 CPJ 119 : 2001 1 CPR 587

Hon'ble Judges : M.S.Janarthanam , Banumathi Baskaran J.

Final Decision : Appeal dismissed

Judgement

1. THE foundational or jurisdictional facts, if stated in brevity, will enable us to understand the crux of the issue involved for consideration in this appeal. We, therefore, do so.

2. THE appellant/complainant namely, one N. Senthil Kumar, it appears, applied for appointment as a dealer for running retail outlet to sell petroleum products to the Indian Oil Corporation Limited, 8/1079, Avanasi Salai, Coimbatore-641 018 represented by its Senior Divisional Manager, the opposite parties. He, it is said, paid a sum of Rs. 50/- to the opposite party representing the cost of application. He was not, however, favoured with an order of dealership as prayed for by him. Consequently, he applied for the refund of Rs. 50/- representing the cost of the application. The refund as prayed for has not been ordered by the opposite party.

The aggrieved appellant-complainant knocked at the doors of the Forum below by the institution of the complaint against the opposite party for certain reliefs as prayed for in the complaint.

3. THE Forum below after perusal of the averments of the documents filed alongwith the complaint returned the complaint by passing an order as below : "THE complainant has applied for appointment as a dealer for running retail outlet to sell petroleum products. THE transaction is commercial transaction. It will not come under the Explanation under Section 2(d)(i) or (ii). Hence, the complaint is not admissible in this Forum."

Aggrieved by the order as above, the present action has been resorted to.

4. PROCESS had been served on the opposite party. The opposite party in fact entered appearance through a Counsel of his choice namely, learned Counsel Mr. P.S. Sivasubramaniam. When this matter came up for hearing today, the appellant/complainant appearing for himself is absent and made no representation on his behalf. Learned Counsel appearing for the respondent/opposite party namely, Mr. P.S. Sivasubramaniam is also called absent and made no representation on his behalf. The fact that the appellant/complainant and learned Counsel appearing for the respondent/opposite party are absent, does not mean that we cannot dispose of the case on merits, of course on perusal of the materials placed on record. We perused the materials placed on record. Such perusal reveals that the amount of Rs. 50/- paid by the complainant/appellant for procuring application form is non-refundable. This aspect of the matter is getting reflected in the advertisement made by the opposite party. This apart, no averment is traceable in the complaint as respects the factum of the complainant coming within the purview of Explanation appended to Section 2(1)(d)(ii) of the Consumer Protection Act. In such state of affairs, the order of the Forum below cannot at all be stated to be not sustainable. As such, this appeal deserves to be dismissed.

5. IN fine, the appeal fails and the same is dismissed. We, however, make no order as to costs on the facts and in the circumstances of the case. Appeal dismissed.