

(1991) 03 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

NAGAR PALIKA NIGAM, REWA , M.P.STATE

APPELLANT

Vs

RAVIKANT PANDEY

RESPONDENT

Date of Decision : 12-03-1991

Acts Referred:

Citation : 1991 2 CPR 372 : 1992 1 CPJ 102

Hon'ble Judges : Y.B.Suryavanshi , M.L.Tiwari , Meena Sapre J.

Final Decision : Appeal allowed

Judgement

1. BOTH the appeals have been heard together since they arise out of common orders passed by the District Forum on 29.11.1990, between the same parties involving common questions of facts and law. The Forum has awarded Rs. 3,000/- as compensation on account of mental pain bodily suffering and the medical and other sundry expenses with a direction that the compensation be paid by two opposite parties i.e., P.H.E.D. and Nagar Palika, Rs. 1,500/- each. The other two Opposite Parties Nos. 1 and 4 respectively were State of M.P. through Collector and Chief-Medical Officer, but only two O.Ps. stated above have been held liable for compensation.

2. THE original complaint against five O.Ps. claiming Rs. 25,000.00 as total compensation averred, that the complainant Ravikant Pandey through out from 19/5/1990 to 9/7/1990 suffered from "pilia" i.e., jaundice. THE compensation is claimed under different heads viz. -

-Rs. 1,200/- : Compensation for loss of "pri vate service";

-Rs. 2,000/-: For being unable to attend do mestic chores;

-Rs. 15,000/- : Loss from agricultural income since three members in the family during the period attended on the complainant.

-Rs. 6,000/- : On account of weakness i.e., injury to health and medical advice for rest three months.

-Rs. 5,000/-: Medical expenses.

O.P. No. 4 i.e., Chief Medical Officer denied the entire claim for want of particulars, and also averred that the claim is highly exaggerated and is also liable to be dismissed because the complainant is not a "consumer" as envisaged under the Act. The Nagar Nigam O.P. No. 5, has also denied the claim. O.P. Nos. 2 and 3, while denying the claim as also their liability, stated, that the jaundice could be caused not necessarily through polluted water-supply, but also because of various other factors, such as, non-washing of hands after ablutions, consumption of contaminated articles like ice-cream, cold-drinks, rotten vegetables, unhygienic surroundings, non-washing of vegetables before use, etc. So far as the water supply to the city of Rewa is concerned, the samples are taken daily for maintenance of quality as per prescribed standards and no complaint, whatsoever, about water supply was received, otherwise preventive action would have been taken. There was "Quality Control" in the supply of water, and therefore, the P.H.E.D. is not liable.

The complainant examined himself besides two witnesses viz., Govind Prashad Shukla and Rajendra Prashad Mishra. Only one witness was examined on behalf of the opposite party. The Forum held that the complainant suffered from jaundice from 19/5/1990 to 9/7/1990. In the absence of evidence about the damages claimed on various grounds, the learned President found them "not proved", and dismissed the entire claim. However, the learned two members in their dissenting judgment found that the claim for damages regarding Rs. 1,200.00, Rs. 15,000.00 and Rs. 2,000.00 has not been proved. However, they held that Dr. Pande prescribed the medicines and had advised the fruit-diet; that the complainant suffered illness for 2 months and the after effects of jaundice must have continued further, even for about 2- 3 months. Therefore, on an estimate of expenses on medicines, fruits and sundry expenses at the rate of Rs. 500.00 per month damages of Rs. 2,000.00 were awarded on that count, and a further amount of Rs. 1,000.00 for bodily and mental pain and suffering total Rs. 3,000.00.

3. O.Ps. the Nagar Palika Nigam and P.H.E.D. have been held liable on the ground that in a similar case before that Forum viz., Tribhuvan Prashad Chaturvedi v. M.P. State and Others (Complaint Case No. 1 of 1990) three Reports of Experts were produced in which it was noted that the gutters are not clean, the pipe-lines run under the drainage pipes at many places etc., consequently there is pollution in water supply. Thus, on consideration of those reports and taking the view that the complainant is a "consumer" of the water supply services rendered for consideration, those O.Ps. are held liable as stated earlier. Whether the complainant is a "consumer"? In last but one Para of the orders passed by the learned members, it has been held that the Municipal Corporation and P.H.E.D. are responsible for supply of polluted water and, are therefore, liable. Admittedly, the complainant had stated that there is no water connection in his name. He lives in a rented house and the billing is in the name

of the landlord. Thus, he has not produced any such bills. Hence, learned counsel Shri Jodhani, appearing for the appellants, urged, that the complainant has failed to prove that he is "consumer" within the definition of Section 2(1)(d). In fact, from the record we find that though the complainant may not be paying directly bills for water supply, but from the statement of Prabhudayal Chaturvedi, Asstt. Engineer, P.H.E.D. there are two or three tenants, though there is only one water tap. The landlord realises rent and separate amounts for water and electricity charges from those tenants. Section 2(1)(d) reads as follows: "Section 2(d) "Consumer" means any person who - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person." (Emphasis supplied) The expressions underlined would bring even a tenant within the definition of "consumer". The word "includes" has enlarged the scope of the Section. The definition being "inclusive", its scope is widened. The water-tap provided by the land lord is common to all the tenants, and landlord might be taken extra charges from various tenants for such service. The billing may be in the name of the landlord, but the tenants are the "beneficiaries of such services". We think this interpretation of the word "consumer" is consistent with the scheme of the Act, and intention of the Legislation. Therefore, we are not inclined to agree with Shri Jodhani that in such a situation the complainant may not be called a "consumer".

4. It is different that in order to satisfy the Forum that the landlord is the "consumer", and as tenant he was beneficiary of the services", the bills and the receipts for payments should have been produced. In fact, this aspect does not seem to have been considered by the parties and the Forum. In absence of proper data placed before the Forum, we do not express any opinion, whether it was a case of water rate/fees i.e. charges for the service rendered by P.H.E.D. in the matter of water supply. It has not been shown or argued whether such water-rate was a fee or tax. A "tax" is the compulsory extraction of money by public authority for public purposes enforceable by law and is not payment for service rendered. "Fees" are the amounts paid for privilege, and are not an obligation, but the payment is voluntary. Fees are distinguished from taxes in that the chief purpose of a tax is to raise funds for the support of the Government or for a public purpose, while a fee may be charged for the privilege or benefit conferred, or service rendered or to meet the expenses connected therewith. Thus, fees are

nothing but payment for some special privilege granted or service rendered". A tax levied for the general purposes of the State provides various forms of facilities to citizens cannot be said to be "consideration" for any specific facility, benefit or service provided by the State. The distinction between tax and fees has been clearly pointed out in C.V.T.S. Jaipur v. State of Rajasthan, First Appeal No. 2 of 1989, decided by National Commission in December, 1989. A catena of decision by the Supreme Court have been referred therein. The question therein was whether a person who goes to receive medical treatment in a Govt. Hospital is a "consumer" as defined in Section 2(1)(d) of the Act, and whether the facility of medical treatment offered in the Govt. Hospital constitute service as defined under Section 2(1)(o) of the Act? In the instant case as noted earlier, this aspect was not properly placed before the Forum in proper perspective. Bills could have been produced. Also the "agreements" which are executed before a pipe connection is given. Similarly, the rules and other terms determining the liabilities of the two parties to such agreements. In absence of all such relevant data, we do not but inclined to express any opinion whether on facts and circumstances of this case, the complainant fall within the definition of "consumer". The second aspect is about the liability of the appellants. Infective hepatitis could be caused due to various risk factors. In order to arrive at a finding that it was caused by the contaminated water supply, it was necessary for the complainant to prove direct nexus between his illness and the negligent act alleged. Actionable negligence has to be proved. The Learned Forum seems to have relied upon three reports by medical experts. Unfortunately for purposes of this particular case before the Forum, at least certified or authentic copies should have been placed on the record, though in another case decision by the same Forum, it had occasion to consider those reports. We have recently occasion to hear appeals arising from the cases in which those reports were placed on record. That record is still available with us, for perusal. First report is that of a team of Doctors from Gandhi Medical College, Bhopal, dated 15.4.1990. The second one relates to the report dt. 19/22.4.1990 of the investigating team from N.I.C.D., New Delhi, and the third one is from National Institute of Neurology, Pune, (C-28/30 April, 1990 and 5.5.1990). The general feature of those reports is that during their survey, leakage in water lines at many places, crossing of water pipes over drains, pipelines submerging under the sewage, etc., were observed. Water supply in the city being intermittent in the morning and evening, the negative pressure in the pipelines sucked the contamination from the sewage system, etc. But there is another side of those reports in which it has been noted that there had been repairs about leakages, and the overall functioning of the water works appeared satisfactory. The team had visited P.H.E.D. water works also. The reports, only give a broad picture; but the negligence at particular places had to be identified. There may not be anything wrong with the main water pipe but the pipeline connection at particular place may get contaminated. And it was upto the complainant to have got sample of such particular water supply from the tap which supplied water to him, which could have been referred to appropriate laboratory for carrying out necessary

analysis. In absence of such evidence, a bare and bald assertion that drinking water from the tap had caused this illness, does not take us here or there. Section 13(1)(c), (d), (e), (f) and (g) are provisions relating to such sample and its analysis by the appropriate laboratories.

5. THE learned counsel for the appellants also argued some other aspects, such as, that the basis for "special damages" does not find place in the complaint. This is not to say that a complaint should always be drafted like a plaint in a Civil Court, but the opposite party should know how and why damages have been claimed and on what basis. Necessary particulars of special damages when they are claimed should be furnished to put the opposite party on guard. THE complaint filed before the Forum suffered from all such lacunas. It has been further rightly contended that virtually no satisfactory evidence has been produced even in respect of damages claimed under various heads (Para 2 supra). Even the doctor concerned has not been examined. This unsatisfactory feature of evidence has been noted even by the District. Forum.

6. TO conclude, we are unable to affirm the finding of the learned Forum that the complainant fell ill only because of insanitary conditions created by the Municipal Corporation, and polluted water supply by P.H.E.D. No direct nexus between the illness and alleged negligence has been proved. In the result, the impugned orders dated 29/11/1990 directing the Municipal Corporation, Rewa, and P.H.E.D., Rewa, to pay total damages of Rs. 3,000/- (with a direction of apportioning the said amount into Rs. 1,500.00 each) are hereby set aside. The appeal is accordingly allowed, but the parties shall bear their costs as incurred throughout. Appeal allowed.