

(2004) 01 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

NIRMAL KUMAR BHANDARI

APPELLANT

Vs

MEWAR JAWA GAS

RESPONDENT

Date of Decision : 20-01-2004

Acts Referred:

Citation : 2005 1 CPJ 553

Hon'ble Judges : M.A.A.Khan , Ratan Prakash J.

Final Decision : Appeal allowed

Judgement

1. THESE three appeals involve same facts, giving rise to almost same questions of fact and law for adjudication. THESE were, therefore, taken up for hearing together.

2. BRIEFLY stated the relevant facts are that late Smt. Jhankar Devi was undisputedly the consumer of the services of Mewar Jawa Gas, which is a gas distributor at Udaipur of M/s. Hindustan Petroleum Corporation Ltd., Mumbai. The case of the complainant was that in the morning of 17.4.1992 when Smt. Renu Bhandari and Jyoti Bhandari tried to use the gas cylinder for preparation of some estables, it was felt by them that there was some gas smell in the kitchen whereupon they opened the windows and doors of the kitchen and after some time when they lighted a match stick the kitchen caught fire. Both the ladies were badly injured and the property was damaged. The burn injuries resulted in the death of the 2 ladies. The husbands of the two deceased ladies filed their separate complaints and both the brothers further filed another complaint praying for payment of compensation for the damage caused to the building from fire. It may be noted that respondent Nos. 1 and 2, the distributor and manufacturer of LPG respectively, had obtained Group Insurance Traders Policy from the Insurance Company respondent No. 3 against damage caused by fire to the stock of the distributor/manufacturer and death/injuries caused to the consumers of the gas. All the three persons were arrayed as opposite parties to the 3 complaints. The three complaints were decided by the D.F. vide their orders of the even date i.e. 31.10.1995 whereby it was held that the respondents did

not render deficient services to the complainants. All the 3 complaints were dismissed giving rise to these 3 appeals by the complainants.

In the course of hearing it was pointed out by the learned Counsel for the appellant that in order to elicit truth from respondents' own witnesses Sarvashri A.K. Jain, Rameshwar Lal Jawa and Anandi Lal, the complainants had moved application seeking permission for cross-examining them but such application was not considered at the time with the observation that they would be considered at the time of final disposal of the complaints. The learned Counsel further pointed out that whereas the witnesses produced by the appellants were allowed to be cross-examined by the respondents, the appellants were not given any opportunity by the D.F. to cross-examine any of the witnesses produced by them. It was thus submitted that in order to decide the issue involved in these complaints/appeals justify it was necessary that the appellant should be given an opportunity of cross-examining the 3 witnesses of the respondents, as named above.

3. THE learned Counsel for the respondents however submitted that in the impugned order, the D.F. has mentioned the reason as to why it did not consider it proper to permit the appellants to cross-examine the witnesses of the respondents. It was pointed out that the D.F. had gone through the report prepared by Shri A.K. Jain, Senior Sales Manager who had prepared an inspection report in the present case on 3.5.1992. THE D.F. pointed out that Shri Jain had expressed his opinion over the causes of the accident and in view of such facts stated by him in his report, it was not necessary to permit the appellants to cross-examine any of the witnesses of the respondent. No doubt proceedings under the C.P. Act, 1986 are summary in nature and ordinary witnesses should not be allowed to be examined or cross-examined as such practice, if adopted in routine, may adversely affect the very object and purpose of the C.P. Act for speedy and expeditious disposal of the cases of the parties. But once it is considered proper by the redressal agency to permit a party to examine the witnesses and the other party to cross-examine such witnesses, it would be permissible to call the witnesses of the adversary also in order to appreciate the respective versions of the parties. The application moved by the appellants on 15.9.1995 should have been disposed of either way by the D.F. at that point of time so that the appellants could have come to know of the reasons which found favour with the D.F. to reject their prayer.

4. IN any case, since the witnesses produced by the appellants were allowed to be cross-examined by the respondents we are of the opinion that the 3 witnesses named above should also be permitted to be cross-examined, particularly when the evidence of such witnesses was material for just decision of the dispute between them. In view of the above the impugned orders in all the 3 appeals are set aside and the cases sent back to the D.F., Udaipur for permitting the appellants to cross-examine all the three witnesses, named above, and then to decide the 3 complaints afresh according to law, after giving proper opportunity

of being heard to both the parties, within a period of 3 months after putting in appearance by the parties before the Forum. The appellant further appears to have moved an application for summoning the instruments which were stated to have been taken by Shri A.K. Jain at the time of inspection and on whose inspection he had come to form the opinion that the appellants and not the respondents were responsible for the unfortunate incident in the present case. The D.F. may also require the respondents to produce such instruments at the time of cross-examination of the witnesses.

5. PARTIES are directed to appear before the D.F. on 23.2.2004. Record of the complainants be sent forthwith. Appeal allowed.