

(1991) 11 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

Prabhu Dutt Sharma

APPELLANT

Vs

PROPRIETOR/MANAGER KHWAJA GAS AGENCY

RESPONDENT

Date of Decision : 26-11-1991

Acts Referred:

Citation : 1992 2 CPJ 665

Hon'ble Judges : S.K.Mal Lodha , Damodar Thanvi , Saria Khan J.

Final Decision : Appeal dismissed

Judgement

1. AGGRIEVED against the order dated 5.4.91 passed by the District Forum, Ajmer in Complaint Case No. 190/91, the unsuccessful complainant has filed this appeal under Section 15 of the Consumer Protection Act, 1986 ("the Act" herein). By the impugned order the complaint was dismissed. The complainant-appellant filed a complaint before the District Forum, Ajmer on 7.11.90 praying that the opposite party-respondent may be directed to pay compensation to the tune of Rs. 5,000/-. The complaint was filed against the Proprietor/Manager Khwaja Gas Agency, Bharat Petroleum Corporation, Ajmer. It was stated that the opposite party compelled the complainant to purchase the gas stove and harassed him by insisting that until he purchases the gas stove connection will not be released in his favour. The complainant alleged that he was allotted registration from number and lottery No. 1346/1601. It is said that the complainant went several times alongwith the affidavit, allotment letter and ration card but he avoided the gas connection and coerced to purchase the gas stove. Alongwith the complaint, he submitted acknowledgement receipt, allotment letter, bill No. 368 dated 5.8.90 for the purchase of the gas stove and ration card. The opposite party filed the version of the case resisting the complaint. It was stated that the opposite party sent an information letter dated 12.6.89 to the complainant but he did not come in time to the agency. He came there about 14 months after. It was stated that the bill of the gas stove submitted by the complainant is of 5.8.90. According to the conditions of the Company the gas stove should be according to the standard laid down by IS I mark and for that a sum of Rs. 10/- has to be deposited for inspection. The

complainant did not deposit the amount. He also did not submit the affidavit. An objection was raised that the opposite party is merely a representative of the BPC of the Govt. of India and is bound to comply with the rules and conditions of the Company. The complaint has deliberately not impleaded the company as a party to the complaint. A plea was taken that the complainant is not a consumer under the Act. It was alleged that according to the circular issued by the Corporation new gas connections have been stopped. With the version of the case photo stat copies of the documents were submitted. No oral evidence was adduced by the complainant despite the direction given by the District Forum. The District Forum heard the arguments and passed the impugned order on 5.4.91. The complainant was dismissed.

2. THE complainant has filed this appeal as aforesaid. Service was presumed to be sufficient on the appellant vide order sheet dated 24.10.91. THE complainant did not appear on 24.10.91. We, therefore, heard the arguments of Mr. Devkinandan Sharma, learned Counsel for the respondent and considered the record. The complainant merely got himself registered with the opposite party for the release of the gas connection. A letter of allotment dated 12.6.89 was issued to the complainant under postal certificate. It was submitted by the learned Counsel for the respondent that the complainant's name was registered for the release of the gas connection and by merely registering he does not become a CONSUMER. Reliance was placed by him on the decision rendered in *Vinayaka Agencies and Another v. D.N. Shridhar, II* (1991) CPJ 295. The facts in that case were more or less the same with those in the present case. It was observed that case as under: "By merely registering, he will not be a consumer. He has neither purchased the goods for consideration nor hired the services of the appellants for consideration. Hence he will not be a consumer and his complaint could not have been entertained by the District Forum. Hence the order passed by the District Forum cannot be sustained".

The observations extracted hereinabove are on all fours to the present case. The complainant merely got himself registered and by lottery No. 1346/1601 was allotted to him. He has not paid any consideration. He cannot be said to have hired any services of the opposite party. Since the goods were not supplied the question of their being defective does not arise. In this view of the matter the complainant-appellant cannot be said to be a consumer.

3. ON merits the District Forum has found that the allegation that the opposite party coerced him to purchase the gas stove is not reliable. No evidence was adduced by him in this connection. A perusal of the letter of intimation dated 12.6.89 shows that the complainant may take the gas connection within 90 days. The complainant has produced the bill regarding purchase of the gas stove which is dated 5.8.90. This shows that the gas stove was in his possession on 5.8.90 and not earlier. It has been stated by the complainant that though he was having the gas stove on 5.8.90 still the opposite party was forcing him to purchase the gas stove. The intimation letter in regard to the release of gas connection is

dated 12.6.89. The bill for the purchase of the gas stove is dated 5.8.90. It is, therefore clear that the complainant was not in possession of a gas stove within 90 days from the date of the letter i.e. 12.6.89. In these circumstances the conclusion is that he was not having the gas stove within 90 days of the date of the intimation of letter for he was asked to take delivery within 90 days. All this shows that the complainant was not in possession of the gas stove during these 90 days. No satisfactory evidence in this connection has been placed on record by the complainant that he was coerced to purchase the gas stove. It may be stated that the opposite party has placed on record a circular letter from Bharat Petroleum Corp. Ltd. dated 19.5.88 that no gas agency will compel any person to purchase the gas stove and if any person wants to have the gas stove the gas agency will make arrangements for it. If the consumer has gas stove, he will have to pay Rs. 10/- for its checking. Admittedly no amount of Rs. 10/- was deposited by the complainant for checking of the gas stove. We agree with the reasons given by the District Forum that the complainant has failed to establish that the opposite party coerced him to purchase the gas stove and that the case as set up has not been substantiated. The order dismissing the complaint is affirmed. The appeal has no force and it is accordingly dismissed without any order as to costs. Appeal dismissed.