

A

INDIAN OIL CORPORATION

v.

CONSUMER PROTECTION COUNCIL, KERALA AND ANR.

DECEMBER 7, 1993

B

[M.N. VENATACHALIAH, CJ. AND S. MOHAN, J.]

C

Consumer Protection Act, 1986—Section 2(1) (g)—Deficiency of service—Unauthorised gas connection—Cylinder and regulator possessed without a subscription voucher—Illegal act—No privity of contract between Oil Corporation and such a consumer—Refusal of regularisation of gas connection—Whether deficiency in service—Held, No.

D

Liquefied Petroleum Gas (Regulation of Supply & Distribution) Order, 1988—Section 3(2)—Gas Cylinder and regulator possessed without a subscription voucher—Illegal act—Unauthorised gas connection.

E

Complainant had taken L.P.G. connection through an authorised Agent of Indian Oil Corporation. Cylinder was regularly supplied. When the complainant requested for regularisation of his gas connection the Oil Corporation refused the same. He filed a complaint before the Consumer Redressal Forum claiming regularisation of his gas connection and compensation. According to the complainant, the refusal amounted to a deficiency of service by the Indian Oil Corporation.

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The District Forum allowed the complaint and directed the Corporation to regularise the connection and issue a subscription voucher. Appeal filed against the order was dismissed. Appellant's plea that there was no privity of contract between the Indian Oil Corporation and the complainant and further the complainant was having unauthorised or illegal gas connection and that could not be regularised, was not accepted. Revision filed before the National Consumer Dispute Redressal Commission was also dismissed. This appeal had been filed against the order of the National Commission.

G

The appellant urged that it was not open to the complainant to seek remedy u/s 2(g) of the Consumer Protection Act as there was no privity of contract between the complainant and the appellant corporation, and that since the complainant had failed to furnish a subscription voucher he could

H

not raise any claim as against the appellant.

In opposition, respondents contended that the subscription voucher was not the sole evidence to establish the existence of an authorised connection; and that possession of LPG gas Cylinder, pressure regulator and regular supply and refill of cylinders would constitute enough evidence to establish consumership.

Allowing the appeal, this Court

HELD : Production of the subscription voucher is essential to establish legal connection to bind the appellant Corporation. Therefore, on the strength the obtaining possession by means of an unauthorised connection it is not open to foist a contract on the Corporation. In so far there is no privity of contract between the appellant and the consumer, no 'deficiency' as defined u/s 2(g) of the Consumer Protection Act arises. Therefore, the action itself is not maintainable before the Consumer Forum.

[889-A, C, 890-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7330 of 1993.

From the Judgment and Order dated 17.3.93 of the National Consumer Disputes Redressal Commission in R.P. No. 266 of 1992.

Ms. Asha Jain Madan for the Appellant.

K.R. Nambiar for the Respondents.

The Judgment of the Court was delivered by

MOHAN, J. Leave granted.

This appeal by special leave arise under the following circumstances:

The first respondent is a voluntary Consumer Organisation in Kerala, registered under the Scientific, Literary and Charitable Societies Registration Act. Dr. P. Kamalasanan, Ram Nivas (Gayatri), Sesthamcotta is a member and Secretary of the 1st respondent, he had taken L.P.G. Connection through M/s. Karthika Gas Agency who is the authorised distributor of the appellant. The said Karthika Gas Agency is the 2nd respondent.

The 2nd respondent committed several irregularities in giving gas connection and in providing refills of L.P.G. cylinders to him. The Gas Agency had given more connections than authorised by the appellant, the

- A Indian Oil Corporation. That amounted to deficiency in their service. The 2nd respondent is the authorised Agent of Indian Oil Corporation. However, the appellant-Corporation did not take adequate care to ensure that the Agency would not cheat the consumers. Notwithstanding the fact that the appellant was aware of the misconduct of the 2nd respondent, it did not take effective steps to put a stop to the irregularities committed by the
- B 2nd respondent.

Dr. Kamalasanan, the affected consumer, took up the matter with the appellant-Corporation. It was replied by the Corporation on 23rd of March, 1990 admitting the fact that the irregularities were committed by

- C the 2nd respondent.
- On 21st January, 1987 Dr. Kamalasanan paid an amount of Rs. 2, 036.65 towards the charges for getting an L.P.G. connection. That included the price of the gas stove and the necessary deposit towards the L.P.G. connection. On the said date a consumer number was also accorded for which a sum of Rs. 61.65 was paid. Having regard to the irregularities committed by the 2nd respondent the appellant suspended the agency. However, the agency came to be revived later on. The 2nd respondent the appellant suspended the agency. However, the agency came to be revived later on. The 2nd respondent gave Dr. Kamalasanan a new registration for the connection and started the regular supply of gas cylinder. Such registration was accorded on 20th June, 1988. The registration number was 1624. Cylinder was supplied regularly till May 1990. When the consumer requested for regularisation of his gas connection the appellant refused the same. According to the consumer this would amount to a deficiency of service by the Indian Oil Corporation, the appellant since the 2nd respondent is the authorised Agent of the Indian Oil Corporation. On these
- D allegations he preferred a complaint before the Consumer Disputes Redressal Forum, Kollam claiming regularisation of his gas connection and a compensation of Rs. 500.

- The District Forum accepted the case of the complainant. The appellant-Corporation was directed to regularise the connection given by the 2nd respondent to 1st respondent on 21.01.87 and issue a subscription voucher and also pay Rs. 100 as cost.

- Against the said order, an appeal was filed before the Kerala State Consumer Dispute Redressal Commission in Appeal No. 32 of 1991. By
- H order dated 10th June, 1992 the appellant's plea that there was no privity

of contract between the 1st respondent and the appellant as per clause 2(g) of the Consumer Protection Act, 1986 and further the complainant was having unauthorised or illegal gas connection and that could not be regularised, was not accepted. Accordingly the appeal was dismissed.

The revision filed before the National Consumer Disputes Redressal Commission, New Delhi also suffered the same fate since by an order dated 17th March, 1993 the same was dismissed. Hence, the present appeal.

The contentions on behalf of the appellant are as under :

It is not open to the complainant to seek remedy under clause 2(g) of the Consumer Protection Act, 1986 as there is no privity of contract between the complainant and the appellant-Corporation.

A person becomes an L.P.G. customer of the Corporation only on signing a subscription voucher. That voucher contains the terms and conditions governing the loaning of gas cylinders and pressure regulator. Where, therefore, the cylinder and regulator are possessed without a subscription voucher it would tantamount to illegal act as contemplated in Section 3(2) of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988. In so far as Dr. Kamalasanan had failed to furnish a subscription voucher he cannot raise any claim as against the appellant. In the instance case there is no deficiency of service. On such an enquiry it was found that M/s. Karthika Gas Agency has committed several irregularities. Alternative arrangements came to be made through another dealer where the 2nd respondent, Karthika Gas Agency has issued several unauthorised connections which would amount to a criminal breach of trust. No liability can be fastened on the appellant.

Clause 17 of the L.P.G. distributorship agreement clearly postulates the distributor to act as principal and not as an agent. In fact, the complainant was informed under letter dated 23rd of March, 1990 as to the correct position. In these circumstances, if there is no legal obligation to regularise the connection the complaint ought to have been thrown out. The authorities below erred in their approach.

In opposition to this, the learned counsel for the respondent would contend that the subscription voucher is not the sole evidence to establish the existence of an authorised connection. Possession of L.P.G. Cylinder, pressure regulator and regular supply and refill of cylinders would constitute enough evidence to establish consumership since no other person

- A can possess these items as they are monopoly items available with L.P.G. producing companies only.

The letter dated 08.12.89 establishes the fact that the appellant was aware of the unauthorised acts of dealer from 1989 onwards where for the unauthorised act of 2nd respondent his agency came to be terminated.

- B There was no justification whatever to revive the same. Besides, how the appellant allowed the 2nd respondent to give continuous supply of gas cylinder is not explained. Therefore, the presumption is that the appellant had ratified the unauthorised acts of the respondent.

- C In order to decide this question it is necessary for us to look at clause 1(a) of Exb. R-2. That is the memorandum of agreement between Indian Oil Corporation and M/s. Karthika Gas Agency. That established the relationship between Indian Oil Corporation, the appellant and Karthika Gas Agency as Distributor of the Corporation, *on principal to principal basis*.

- D (Emphasis supplied)

Clause 17 of the agreement is as under ;

- E "In all contracts or engagements entered into by the Distributor with the customers for sale of L.P.G. and/or the sale and/or installation and/or repairs of appliances and/or connections thereof with L.P.G. Cylinders (filled or empty) and/or refills and/or pressure regulators and/or attached equipment the Distributor shall act and shall always be deemed to have acted as a principle and not as an agent or on account of the Corporation, and the Corporation shall not in any way be liable in any manner in respect of such contracts and/or engagements and/or in respect of any act or omission on the part of the Distributor, his servants, agents and workmen in regard to such installation, sale, distribution, connections, repairs or otherwise. The Distributor shall be bound to
- F inform the customers in writing of this provision, through correspondence or at the time of enrolment of the customer."
- G

- H Thus, it is clear that the relationship is one of principal to principal basis. The reliance by the authorities below that the circumstances, documents and conduct of parties proved the relationship *as of principal and agent* is difficult to understand. This is a case in which the 2nd respondent

Karthika Gas Agency has given an unauthorised connection. If it was a legal connection nothing would have been easier than to produce the subscription voucher. Such a voucher as rightly pointed out by the learned counsel for the appellant, is important and will bind the appellant-Corporation. The authorities below have not given due importance to the subscription voucher. Section 3(2) of the L.P.G. Control Order reads as under :

"No person shall possess or use liquefied petroleum gas filled in cylinder or in bulk form unless he has received supply thereof from distributor or from an Oil company."

The possession of an L.P.g. gas cylinder by Dr. Kamalasanan in this case has not been proved to be authorised. Therefore, on the strenght of obtaining possession by means of an unauthorised connection it is not open to the Ist respondent to foist contract on the Corporation.

The letter dated 23rd of March, 1990 to Dr. Kamalasanan is as under:

"Indian Oil Corporation Limited
LPG : 104
23.03.90

Dr. P. Kamalasanan
Consumer Protection Council of Kerala,
TC. 5/96, Perurkada,
Trivendrum 695 005.

Dear Sir,

Sub : *LPG distribution at Karunagapally.*

We make reference to your letter dated 08.01.90 on the subject. On enquiry it is understood Karunagapally, has released a number of cylinders and regulators unauthorisedly to various person in Karunagapally. It is also understood that for such releases a receipt in the name of the *Karthika Gas Enterprises has been issued and not in the name of Karthika Gas Agencies, who are our authorised distributors.* This appears to be a clear Unauthorised action entailing criminal breach of trust. However, in so far as we are not provided with a valid document such as receipt of subscription

A voucher issued by a M/s. Karthika Gas Agencies who are our authorised distributors we may not be in a position to make any action in regularising the connection.

In regard to the supply of refills we are taking up the matter suitably with our Manager, Trivandrum to further streamline the existing agreement of supplies ex Haripad.

Thanking you,

Your faithfully,
For INDIAN OIL CORPN. LTD.,

Sd/-

Area Manager"

D This puts the position beyond doubt. It should have made the consumer aware of his legal rights. Further, in this case for the unauthorised acts of 2nd respondent, its distributorship came to be cancelled. This fact that it was revived is of no consequence if due regard is to be had to clause 17 of the agreement which has been extracted above. Section 2(g) of the Consumer Protection Act states as follows :

E "(g) "deficiency" means any fault, imperfection shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force has been undertaken to be performed by a person in pursuance of the contract or otherwise in relation to any service; "

G In so far there is no privity of contract between the appellant and the consumer no "deficiency" as defined under Sec. 2 (g) (quoted above) arises. Therefore, the action itself is not maintainable before the Consumer Forum. For all these reasons, we set aside the judgments of the authorities below. Civil Appeal will stand allowed. However, in the circumstances of the case there shall be no order as to costs.

A.G.

Appeal allowed.