

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB
DAKSHIN MARG, SECTOR 37-A, CHANDIGARH**

First Appeal No. 1442 of 2014

Date of institution: 27.10.2014

Date of Decision: 11.12.2015

Ram Chander Goyal aged about 75 years S/o Sh. Mattu Ram Goyal R/o
Mattu Ram Street, Ward No. 12, Gurudwara Road, H.No. BVI-370,
Goniana Mandi, Tehsil & Distt. Bathinda.

Appellant/Complainant

Versus

1. The E-Health Point Co. Pvt. Ltd., C/o Advocate Sh. M.L. Angi, C-7,
Civil Lines, Bathinda through its Incharge/Manager.
2. Director, Health Point Service India Pvt. Ltd., Regd. Office at Plot
No. 67, Road No. 3, Jupiter Colony, Sikh, Village Secunderabad
500009 Andhra Pradesh.
3. The Executive Officer, Nagar Council, Goniana Mandi, Tehsil and
District Bathinda.

Respondents/OPs

**First Appeal against the order dated 9.9.2014
passed by the District Consumer Disputes
Redressal Forum, Bathinda.**

Quorum:-

Shri Gurcharan Singh Saran, Presiding Judicial Member

Shri Jasbir Singh Gill, Member

Present:-

For the appellant : Sh. Madan Lal, Representative

For respondents No.1&2 : Ex.-parte.

For respondent No.3 : None.

Gurcharan Singh Saran, Presiding Judicial Member

ORDER

The appellant/complainant(hereinafter referred as complainant) has filed the present appeal against the order dated 9.9.2014 passed by the District Consumer Disputes Redressal Forum, Bathinda(hereinafter referred as the District Forum) in consumer complaint No. 203 dated 18.3.2014 vide which the complaint filed by complainant was partly allowed vide which Op Nos. 1 & 2 were directed to issue the card of RO water supply Cans to the complainant without any validity/limitation i.e. subject to completion of the supply of number of Cans and also pay Rs. 2500/- as compensation.

2. A complaint was filed by the complainant under the Consumer Protection Act, 1986 (in short 'the Act') against the respondents/OPs(hereinafter referred as Ops) on the averments that the complainant retired as Senior Cotton Purchase Officer. He always provided social services to the general public. He was using RO water by way of taking RO cards from Ops. RO Centre, Nagar Council Library, Near Mandi Chowk and Ops issued monthly water supply RO card whereas there was no condition in the agreement to issue monthly card with any limitation. Further Ops were receiving Rs. 80/- per month for 30 cans and Rs. 50/- for 15 Cans from the complainant. Many times complainant was using 13-14 Cans of 20 Litres RO water in a month but he was forced to pay excess amount for monthly card. On 2.5.2011, Op Nos. 1 & 2 on behalf of the Company entered into an agreement with Op No. 3 vide resolution No. 18 dated 11.3.2011 that Op No. 2 will be delivering potable water at Water Works Site as per WHO/ norms and HSI will submit an

analysis report of clear water on six month basis. If any, clearance was required from the National/State/District Government Departments, same will be coordinated and arranged by HSI with the help of MC and agreement dated 2.5.2011 was executed between the parties. As per this agreement, RO water was to be supplied to the general public @ Rs. 12.5 paisa per litre. On inquiry, it was found that Op No. 1 on behalf of Op No. 2 was delivering the potable water to the general public at Goniana Mandi but they failed to deliver/distribute water to the general public daily as per WHO/BIS norms. The complainant visited the office of Ops and requested Ops for charging the supply water for domestic use @ Rs. 12.5 paisa per litre but it was not being done. Then he got issued a registered legal notice through his counsel on 1.3.2014. However, Ops did not pay any heed to the notice of the complainant. Aforesaid act of Ops, caused great mental tension, agony, botheration, harassment and humiliation to the complainant, as such, the complainant was entitled compensation to the tune of Rs. 60,000/-. The complainant availed the services of Ops for delivering the potable water as per WHO/BIS norms, as such, the complainant was a consumer qua Ops. The act of Ops amounted to deficiency in services. Hence, the complaint with a direction to Ops to pay Rs. 10,000/- and Rs. 60,000/- as compensation, to supply water @ Rs. 12.5 paisa per litre. The direction be also given to delete the limitation period of 1 month on the RO cards and not to charge the excess amount.

3. Complaint was contested by Ops. Op Nos. 1 & 2 in their written reply submitted that they had introduced the monthly usage

card for drawing safe drinking water upto 30 Cans on daily basis. Taking into the need of the customers, they also introduced 15 cans card with the same validity, therefore, it was the choice of the customers either to opt for a 30 cans card or 15 cans card facility. The complainant had taken both options, therefore, he has the choice to exercise either or both depending upon his requirement. There was no force/compulsion on behalf of Ops. The RO water was being routinely tested on bio-annual basis as per the agreement dated 2.5.2011 from various Government Laboratories. The area of Goniana Mandi was not to be considered as Uranium affected area, therefore, Uranium related tests were not prescribed in any of the Government Tested Laboratories. Test of Uranium was being carried out in special laboratories i.e. Bhabha Atomic Research Centre, Mumbai and the said test was extremely costly, therefore, Op Nos. 1 & 2 were sending their samples to the Government Laboratories. The RO Plant was initiated in Goniana Mandi in May, 2011 and they had revised the price from Rs. 12.5 paise per litre to Rs. 15 paise per litre i.e. increase of 5%, which is very insignificant. Even the Government of Punjab in 2013 had fixed the rate Rs. 90/- per month or 15 paise per litre for household users availing RO water, therefore, there was no deficiency in service on the part of these Ops. Complaint was wrongly filed against these Ops and it be dismissed.

4. Op No. 3 in its written version took the legal objections that according to Point No. 7.1 of the agreement dated 2.5.2011, it was clearly mentioned that Health Services India Ltd. could revise the rates periodically as may be required, pursuant to any hike in the

electricity charges, minimum wages or associated Taxes etc.; the complainant had got no locus-standi or cause of action to file this complaint; the complainant had not come to the Forum with clean hands and had suppressed and concealed the material facts from the Forum by twisting and distorting the facts with an ulterior motive to draw undue benefit; the complaint was not maintainable in the present form against this Op. The complainant was not consumer as defined under the Act; the complainant was estopped by his own act and conduct and by acquiescence to file this complaint; complaint did not disclose any cause of action and was purely misuse and abuse the process of law and that the complaint was false, frivolous and vexatious to the knowledge of the complainant, therefore, liable to be dismissed with special costs. On merits, it was denied for want of knowledge that the complainant had obtained the RO water from Op No. 1. However, the complainant was never forced to pay excess charges and no excess charges were received from him. It was reiterated that according to point No. 7.1 of the agreement, Ops reserve their right to enhance the price as referred above i.e. test of RO water was being conducted periodically as per the agreement clause. It was denied that any act and conduct of this Op had caused any mental tension, harassment, botheration or humiliation, which necessitated the filing of the complaint or that he was entitled to any compensation as alleged in the complaint.

5. The parties were allowed by the learned District Forum to lead their evidence.

6. In support of his allegations, the complainant had tendered into evidence affidavits of Ram Chander Goyal Exs. C-1 & 12, RO cards copy Exs. C-2 to 8, agreement Ex. C-9, legal notice Ex. C-10, postal receipts Ex. C-11, water cards Exs. C-13 & 14, letter Ex. C-15, BIS norms Ex. C-16, newspaper cuttings Exs. C-17 to 24, affidavit of Dinesh Kumar Ex., C-25, card copy Ex. C-26, affidavit of Om Parkash Ex. C-27, card copy Ex. C-28, affidavit of Rajinder Singh Ex. C-29, copy of list Ex. C-30, letter Ex. C-31, parameters Ex. C-32, net document Ex. C-33, newspaper cuttings Exs. C-34 & 35. On the other hand, Op Nos. 1 & 2 had tendered into evidence test reports Exs. Op-1/1 to 33, affidavit of Abhishekh Mittal Ex. Op-1/34, resolution Ex. Op-1/35, list Ex. Op-1/36, invitation for bids Ex. Op-1/37, list Exs. Op-1/38 to 45. Op No. 3 had tendered into evidence affidavit of Bhupinder Singh Ex. Op-3/1, authorisation letter Ex. Op-3/2, agreement Ex. Op-3/3, reply to legal notice Ex. Op-3/4.

7. After going through the allegations in the complaint, written versions filed by Ops, evidence and documents brought on the record, complaint was partly allowed as referred above.

8. Aggrieved with the order passed by the learned District Forum, the appellant/complainant has filed the present appeal for enhancement of the compensation.

9. We have heard Mr. Madan Lal, representative of the appellant whereas respondents No. 1 & 2 were ex-parte. Sh. Vishwajit Bedi, Advocate had appeared on behalf of respondent No. 3 but he also did not appear on the date of argument i.e. 9.12.2015, therefore, we have gone through the grounds of appeal and record of

the District Forum with the assistance of Mr. Madan Lal, representative of the appellant/complainant.

10. It has been argued by the representative of the complainant that to provide potable water to the residents of the Goniana Mandi. An agreement was executed between Municipal Council, Goniana Mandi and Health Point Co. Pvt. Ltd and accordingly, potable water was to be supplied as per the terms and conditions contained in the agreement. It has been argued by the representative of the complainant that although partly complaint was allowed by the District Forum with the direction to Ops to issue card of RO water supply to the complainant without any validity/limitation whereas other points for which relief was sought by the complainant were wrongly denied by the District Forum.

11. In the complaint, it was contended by the complainant that as per the agreement, it was agreed to supply water @ 12.5 paise per litre and lateron, the rate was revised to 15 paise per litre by Op Nos. 1 & 2 without complying with the provisions of the agreement. According to Clause No. 7.1, it has been provided as under:-

“7.1 HIS would treat and supply water to domestic users @ 12.5 paisa per litter at water point. HIS can revised this rate periodically as may be required, pursuant to any hike in electricity charges, minimum wages, any associated taxes etc.. If the HIS will charge extra rate from the rate agreed upon the municipal council the same would be referred to the Joint Committee for an immediate resolution of the issue, failing

which the MC may cancel the agreement of the concerned site.”

12. In case we go through this provision, no doubt that Op Nos. 1 & 2 can revise the rates periodically but the matter would be referred to the Joint Committee for immediate resolution of the issue, failing which the MC may cancel the agreement. In Clause 7.3, it has been provided that MC and Health Point would form a Committee for enhancement in the rates. For ready reference Clause 7.3 is referred as under:-

“7.3 MC and Healthpoint would form a committee, with equal representation from both sides, under the Chairmanship of Deputy Commissioner/ Chairman District Planning Board, Bathinda, which would oversee successful implementation of the project and will also act as a dispute resolution mechanism as required. This Committee would also appropriately and procedurally look into any instances which occurs due to use of water delivered by HIS wherein the responsibility of such supply will be of HIS.”

Committee will be under the Chairmanship of Deputy Commissioner/Chairman District Planning Board, Bathinda alongwith MC and Health point, therefore, in case the rate was to be revised then the matter was to be referred to the Joint Committee under the Chairmanship of Deputy Commissioner/Chairman District Planning Board, Bathinda. However, Ops have not placed on the record any document for increase in the rate of water decided by the Joint Committee under the Chairmanship of Deputy

Commissioner/Chairman District Planning Board, Bathinda, the documents Ex. Op-1/1 to Op-1/33 are the water testing laboratory reports. Ex. Op-1/34 is the affidavit of Abhishekh Mittal, Authorised Signatory of Op Nos. 1 & 2. Ex. Op-1/35 is the certified copy of the Board Resolution of Op No. 1 dated 9.6.2014. Op No. Op-1/37 is the letter issued by the Government of Punjab, Department of Water Supply and Sanitation inviting for bids through e-tendering for installation of reverse osmosis plants on boot basis, therefore, it relates to the installation of new RO's and not applicable to the previous RO's those will be governed under the agreement. No doubt that there is a clause in the agreement to periodically increase the rate of RO water taking into account various factors mentioned in the agreement but the matter was required to be put up before the Joint Committee headed by Deputy Commissioner/Chairman District Planning Board but the matter was never put up before the Committee and the Committee did not decide to increase the rates of RO water, therefore, without the recommendations of the Deputy Commissioner/Chairman District Planning Board, the rates cannot be increased. Therefore, Op Nos. 1 & 2 will not be entitled to increase the rates till these are approved by the Joint Committee headed by Deputy Commissioner. Whereas the District Forum has referred only to Clause 7.1 of the agreement but failed to refer Clause No. 7.3 wherein the provisions of Joint Committee was there to approve the increased rates. Therefore, the District Forum has not taken into consideration of the clauses while dealing with this issue. Therefore,

the view of the District Forum that Ops have the right to periodically revise the rate with the approval of the Joint Committee.

13. The next point raised by the complainant in his complaint was for delivery of potable water as per the WHO/BIS norms. No doubt that Ops have placed on the record various Laboratory reports running from Exs. Op-1/1 to Op-1/33 but all these reports will show that there is no Uranium test. It has also been admitted by Ops in their written reply that the testing of Uranium is not in the Government Labs perhaps this area was free from Uranium but the complainant has placed on the record various press releases Exs. C-17, 18, 19, 20, 21, 22, 23, 24 and 34 in which it has been observed that approximately 42% water samples found with high uranium content in six Districts of Malwa Belt of the State of Punjab including Bathinda and Goniana Mandi is part of District Bathinda. The residents of Goniana Mandi had written a letter Ex. C-30 to Op Nos. 1 & 2 that the water being supplied to the residents of the City from Mandi Water Plant is not pure. Ex. C-32 is the letter issued by Water and Sanitation Department of the Government of Punjab with regard to strengthening of water facility, it also includes the test of Uranium at Point No. 41(c). A plea has been taken by Op Nos. 1 & 2 that its test is possible at Bhabha Atomic Research Centre, Mumbai, which is very costly, therefore, they did not refer the same to that Centre. Since there is agreement between Op Nos. 1 & 2 on the one side and Op No. 3 on the other side in which Op Nos. 1 & 2 had undertaken to supply potable water according to BIS/WHO norms, therefore, in case Op Nos. 1 & 2 were to continue with the agreement and till

agreement is there on behalf of Op Nos. 1 & 2 with Op No. 3, they will have to resort to this test also because this test is very important from the health point of the residents of those Cities because impure water is causing danger to the life of the residents as cancer disease had spread like anything due to non-potable water in that area.

14. No doubt that the District Forum has considered that Ops are going for various tests from time to time as per the agreement but the District Forum has failed to note with regard to the uranium test to which the residents of the City were more concerned. Therefore, the direction was also required to be given to Ops to go for Uranium test in the water and supply the water in case Uranium is within the prescribed limits.

15. It has been further argued that compensation of Rs. 60,000/- was demanded whereas the District Forum allowed compensation of just Rs. 2500/-. The main concern of the residents is to get water supply at the cheaper rate as per the scheme of the Government, which is already at a very subsidised rate. When other reliefs allowed to the complainant, the compensation should not be the criteria when already the water on subsidised rates is being supplied to the respondents, therefore, in our opinion, no case is made out for enhancement of the compensation.

16. None was present on behalf of the respondents to rebut these arguments.

17. In view of the above, we partly accept the appeal. Apart from the appeal allowed by the District Forum, the respondents/Op Nos. 1 & 2 are further directed not to charge enhanced rate of R.O.

water then as agreed in the agreement dated 2.5.2011, until the enhanced rates are approved by the Joint Committee headed by Deputy Commissioner/Chairman District Planning Board, Bathinda as per Point No. 7.3 of the agreement. Op Nos. 1 & 2 are also directed to go for Uranium test of the water periodically as per agreement.

18. The arguments in this appeal were heard on 9.12.2015 and the order was reserved. Now the order be communicated to the parties as per rules.

19. The appeal could not be decided within the statutory period due to heavy pendency of Court cases.

(Gurcharan Singh Saran)
Presiding Judicial Member

December 11, 2015.
as

(Jasbir Singh Gill)
Member