

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION AT NEW DELHI**

**RESERVED ON : 13.09.2024
PRONOUNCED ON: 28.02.2025**

REVISION PETITION NO.3453 OF 2017

(Against the order dated 04.10.2017 in Appeal No.445/2017
Chhattisgarh State Consumer Disputes Redressal Commission Raipur)

1. Jai Prakash Yadav,
S/o Late Shri Bakunth Yadav

2. Smt. Gyanti Devi Yadav
W/o Shri Jai Prakash Yadav

3. Ku.Nandni Yadav
D/o Shri Jai Prakash Yadav

All R/o : Chandrashekhar Azad Nagar,
Nandni Road, Behind Dena Bank,
Sector 11, Ward No.27, Power House,
Bhilai, District Durg (C.G.).

... Petitioners

Versus

1. Ravi Gas Agency
Kailash Nagar, Housing Board,
Power House, Bhilai, District Durg (C.G.).

2. Regional Manager,
Bharat Petroleum Corporation Limited,
Nagar Ghadi Chowk, Veer Narayan Complex,
Raipur, District Raipur (C.G.)

3. Bharat Petroleum Corporation Limited,
Bharat Bhawan, 4-6 Karim Bhay Road,
Belard Estate, PO Box No.688,
Mumbai (Maharashtra).

4. United India Insurance Co. Ltd.
Division Office No.17,
226, Kanada Building, DRDM Road,
Fort, Mumbai (Maharashtra).

... Respondents

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd), MEMBER**

For the Petitioner :Mr. Rajesh Kumar Bhawnani, Advocate (Through VC)

For the Respondents No.1 to 3: None appeared

For the Respondent No.4: Mr. Maibam N. Singh, Advocate (through VC)

JUDGMENT

AVM J. RAJENDRA, AVSM VSM (Retd), MEMBER

1. This Revision Petition No.3453 of 2017 challenges the order of Chhattisgarh State Consumer Disputes Redressal Commission, Raipur ('State Commission') dated 04.10.2017 dismissing FA No. 445 of 2017 filed by the Petitioners/ Complainants and affirmed the District Consumer Disputes Redressal Forum Durg ('District Forum') order dated 15.05.2017 dismissing CC No.486 of 2015.

2. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum.

3. Brief facts of the case, as per the complainant, are that the complainant, a long-time consumer of OP-1 (a gas cylinder supplier), alleged that on 13.02.2015, a defective gas cylinder was delivered by OP-1's helper. When the complainant's wife (Complainant No. 2) attempted to light the gas stove at 8:30 PM to prepare food, a gas leakage occurred, resulting in a fire that severely damaged the house. The complainants' daughter, Ms Nandni sustained critical burn injuries. She was rushed to Sector 9 Hospital in Bhilai, where she was hospitalized for two months. The treatment cost Rs. 6,60,000/-, and the hospital indicated that further surgeries would require an additional Rs.5,00,000/-. The fire also caused total damage to the house, valued at Rs. 4,00,000/-. An FIR was filed at Police Station Chhawani Bhilai.

Despite being aware of the incident, OP-1 failed to provide compensation and instead threatened the complainants against taking legal action. OP-4, the insurance company, paid Rs.93,000/-, but no further compensation was provided. The complainants approached the District Forum seeking relief as outlined in their complaint.

4. In the written version filed before the District Forum, OP-1 denied any negligence and contended that the gas cylinders are verified and seal-packed before delivery. The incident occurred due to the complainants' use of a regulator, pipe and flame which was not approved by OP-1 and violative of norms. OP-1 paid Rs.1,50,000/- for the complainants' treatment and expenses. OP-1 accused the complainants of withholding this information in the complaint. In their written version filed before the District Forum, the OP- 2 & 3 asserted that they acted promptly, paying Rs.93,000/- to the complainants on 14.08.2015. They maintained that the cylinders are supplied only after thorough verification and investigation, denying any negligence on their part. The OP No. 4 did not file a reply.

5. The District Forum, vide order dated 15.05.2017, dismissed the complaint with the following reasons:

“(11) On the basis of the submissions of the parties, the following considerable Issues arise in the case, findings whereof are as follows:

1. Whether the complainant is entitled to receive from the Respondent No.1 and 2 the compensation in the sum of Rs.15,37,734/- along with the interest? No.

2. Whether the complainant is entitled to receive from the Respondent No.1 and 2 the compensation for mental agony sum in the of Rs.5,00,000/-? No.

3. Any other relief and litigation cost? Accordingly, the complaint is dismissed.

: BASIS OF CONCLUSION:

(12) Upon consideration of the case all the considerable issues are being resolving.

CONCLUSION OF FORUM:

(13) That upon observing the case, we find that according to the order dated 01.08.2016 passed by the Chhattisgarh State Commission, Raipur, this case was received for review/ consideration, in compliance whereof the insurance company was made party, in addition, the complainant also made amendments regarding receipt of Rs.93,000/- in his complaint.

(14) That the Respondent: No.4 remained absent upon receipt of notice, while Respondent No.4 Insurance Company was Intimated by Registered A/D.

(15) That upon observation of paragraph 4 at page no.4 of the case is clear that the complainant has demanded the remaining amount except for Rs.93,000/- in subsequent condition, the complainant has also acknowledged receipt of Rs.93,000/- by amending his complaint.

(16) That upon observing the case, we find that the complainant has asserted that the gas cylinders cited by Respondent No. 1 have been given on 13.02.2015, but if we observe the receipt of Annexure N.A.1, then it is the tense of Tariq on date 11.02.2015, copy of the complainant's gas connection booklet mentioned in the Annexure A-18(a) is the date 11.02.2015 to deliver the cylinder. In this way, firstly It is proved that the delivery of the alleged cylinders to the complainant was not given on 13.02.2015. Rather it was done prior to the date the incident date Is 15.02.2015, that is, before the date the gas cylinders were installed in the complainant's house.

(17) The complainant argues that the 'Gas cylinder was a defective, so, as soon as the lighter was turned on fire taken place at 08.30 hrs, but when the gas cylinders are before the date of 13.02.2015, of course, if the gas cylinder was effective, and the gas leak from it, there was also a smell of gas in the little room, and thus the event could have happened on the first day, obviously the gas leak is taking place from the gas cylinder one or two days already, if the gas stove on the lighter was turned on, surely there was a possibility of a fire before the date 13.02.2015, so the question now is that when the gas cylinders were supplied on 10.02.2015, so, on 13.02.2015, the Incident of fire happened only.

(18) That the complainant did not mention anywhere in his affidavit /complaint that the said gas cylinder was fitted with which Tariq was going on. The complainant has asserted in Step 1 of his complaint that the gas cylinder was given by Helper, but who did fit and when, it is not mentioned, if gas was leaked for two days then the gas, cylinder would result in the loss of gas, but in this regard no evidence has been produced by the complainant that actually gas cylinders, when gas was fitted in the stove.

(19) That one important question to consider is that the complainant's assertion, is that at 08.30 p.m., the complainant's wife started gas stove by gas lighter, so the gas spread throughout the house and there was a fire, then the scene is established that in this situation, Complainant No.2 was also hurt by the incident of fire, because the complainant has not proven that when the fire started, he immediately ran away from the kitchen, this situation also causes doubts in the complainant's case. The complainant has not submitted all the key facts in the matter, staying in the family of the complainant is obvious from the observation of the case the complainant has not clarified that at that time, how many people of the family were present. It has not been proven by the complainant that who brought the gas cylinder, and who made the person fit this does not prove that the alleged cylinders were installed by the untrained person of the dealer. So the conclusion is that the dealer had installed the cylinder by the employee under the distributor by this time there was no problem In gas cylinders, it is obvious that the employee employed by the respondent, who performs the supply of gas cylinders, keeps the technical information regarding gas

cylinders, if gas leakage from the gas cylinder was being offered, it would have been a gas smell, but such complainant has not proven. The complainant does not even have the basis that when the gas. cylinder gas was applied in the stove then the smell of gas was coming, because the incident is around 8.30 pm, and before that gas cylinder would have been found, because the delivery date of gas cylinder is shown on 11.02.2015, otherwise, there is no such situation in the situation that the Gas cylinders are supplied by respondent at 08.30 pm, and when there was a fire incident, rather, it is natural that the duration of the supply of gas cylinders is usually during the day, there is no duration of work to supply gas cylinders at night, then this question is established that, during the day when the smell of gas leakage did not come, at 8:30 pm, how was the fire incident, it is natural at 08.30 pm that all members of the family are in the house, then only complainant number 3 got hurt and the rest of the family members did not, the complainant has not given any explanation in this regard.

(20) That the Respondents argue that the Respondent No. 2 and 3 were supplied to the above mentioned gas cylinder as 57 days before the respondent no.1, and if gas was leaked out of the said cylinder in these 57. days, gas would not save gas in the cylinders, and whatever incident has happened, it has only happened because of complainant's negligence, because before the gas cylinders provided the complainant's responsibility was he adopts all the security measures which he did not adopt, because Ashish Parulekar, who is Regional Manager of Respondent Number 2 and 3, in his affidavit it is mentioned that the complainant used his own careless gas cylinder, used the unauthorized regulator and used a green tube. This proven evidence proves that the gas cylinders were completely safe when the gas cylinders generated by the respondents reached the complainant's house, but since the complainant used the unauthorized regulator himself and used a green tube due to which the gas was leakage and the incidence of the said fire occurred, in that case the respondent cannot be found guilty of inadequacies or business misdeeds.

(21) As a result, find it advisable to give advantage of the judgment:

- 1) ***Narsimha Kamta & Others versus Ghayi Gas Services & Others passed in order dated 17.02.2007 (Maharashtra State Commission); and***
- 2) ***New India Insurance Company Limited versus Mala & Others II(2007) C.P.J. 80 (N.C.)***

(22) Although we fully sympathize with the physical damage/ injuries caused to the daughter of the complainant, but from the explanation/ evidence mentioned above, we extract that the Respondents are not responsible for low service and serious business mistreatment, as a result, we do not find the proper basis to allow the claim of the complainant, therefore, complaint is dismissed.

(23) In view of the facts and circumstances of the case, the parties will bear their own expenses.”

(Extracted from translated copy)

6. Being aggrieved, the Complainants filed FA No.445 of 2017 and the State Commission vide order dated 04.10.2017 dismissed the Appeal with following observations:

“25. In view of the above discussion we arrive at the conclusion that the Respondents are not responsible for any type of service reduction and professional malpractice towards the Appellant/ Complainant. As a result, do not find proper basis to allow the Appeal filed by the Appellant/Complainant. The order passed by the District Forum does not have any kind of irregularity and illegality, neither it requires intervention of this Commissioner.

26. That the appeal filed by the Appellant /Complainant being baseless is dismissed. The order dated 15.05.2017 passed by the District Forum is confirmed. Considering the circumstances of the case, the cost of this Appeal will be borne by the parties respectively.”

(Extracted from translated copy)

7. Being dissatisfied by the Impugned Order dated 24.03.2017 passed by the learned State Commission, the Petitioners/ Complainants filed the instant Revision Petition No.3453 of 2017.

8. In his arguments, the learned Counsel for the Complainants reiterated the grounds raised in the Revision Petition, challenging the dismissal of the consumer complaint and the appeal by the District Forum and the State Commission. The primary contention is that both the fora failed to appreciate critical evidence and legal principles, leading to an erroneous dismissal of the case. He asserted that the State Commission overlooked that the gas cylinder was supplied by OP-1 on 13.02.2015, and the fire incident occurred on the same day. The Commission erroneously concluded that the pipe and regulator were from another company, ignoring the evidence that the fire was caused due to leakage from the cylinder supplied by OP-1. The State Commission failed to consider that the complainant's daughter had suffered severe burns due to the fire caused by the gas leakage, and the complainant had to seek immediate medical assistance. The Commission's observation that the incident was "suspicious" was unjustified and contrary to the evidence on record. He argued that OP-1 admitted fault by providing Rs. 50,000/- as assistance to the complainant when the incident occurred. However, when the medical expenses exceeded this amount, OP-1 abandoned the complainant. This admission of liability was ignored by the State Commission, which wrongly dismissed the complaint. He further argued that OP-2 and 3 admitted in their written statements that they paid Rs. 93,000/- to the

complainants after an investigation revealed that the incident occurred due to their negligence. Despite this admission, the State Commission dismissed the appeal on incorrect grounds, failing to consider this critical admission of liability. The State Commission failed to consider that the gas cylinder was fitted by an employee of the gas company on the same day, and the fire occurred immediately after the gas was turned on. If there had been any issue with the pipe or regulator, the employee would have noticed it during installation. The conclusion that the fire was caused due to unauthorized pipe or regulator is untenable. The complainant's daughter suffered 65% burns and needed extensive medical treatment, with ongoing expenses. The compensation of Rs.93,000/- paid by OP-2 and 3 is grossly inadequate considering the severity of the injuries and the lifelong impact. The State Commission's failure to award appropriate compensation is a serious error. The State Commission erred in concluding that the cylinder would have been damaged if there was a leakage and the police report (Nuksani Panchanama) clearly indicated cylinder damage. The Commission also failed to consider that the cylinder was negligently sealed and not properly checked before release, leading to the leakage and fire for which OPs are responsible. The dismissal of the complaint without considering the negligence on the part of OPs is contrary to the Consumer Protection Act, 1986.

9. OP-1 to 3 did not appear during the arguments but submitted written arguments. OP-1 contended that the fire was caused due to leakage from an unauthorized gas pipe and regulator and not from the cylinder supplied by them. The Assistant Manager (LPG) confirmed in his report dated 27.02.2015 that the regulator, gas pipe, and burners were not from the authorized source. This report was unchallenged and remains uncontroverted. Both the District Forum and State Commission held that the complainants were negligent in using unauthorized equipment, which led to the gas leakage and subsequent fire. The complainants failed to prove any negligence or deficiency on the part of OPs. OP-2 and 3 admitted to paying Rs. 93,000/- after an investigation, but they maintained that this payment was made without admitting liability. As the fire was caused due to the complainants' negligence, and no further compensation was warranted. It was for the complainants to prove negligence of the OPs, which was not done. They sought for the dismissal of the Revision Petition, arguing that it was an abuse of the legal process.

10. In his arguments, the learned Counsel for the OP-4 (Insurance Company) asserted that the complainants have no privity of contract with OP-4. The insurance policy was taken by Bharat Petroleum Corporation Ltd. (OP-2 & 3) to indemnify them against legal liabilities. The complainants cannot directly claim compensation from the

insurance company. He further contended that even if BPCL is held liable, the maximum liability of OP-4 under the policy is Rs. 5 lakhs. The injuries suffered by the complainant's daughter do not fall under Section-II of the insurance policy, and thus, no claim is payable. He further argued that the District Forum and State Commission found no negligence on the part of OPs. Therefore, the Revision Petition is not maintainable under Section 21 of the Act, and it should be dismissed with costs. OP-4 relied on the judgment of the National Commission in ***Sushila Devi vs. NK Cooking Gas Agency & Others, (Revision Petition No. 364 of 2016)***, where a similar complaint was dismissed.

11. We have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned counsels for both the parties.

12. It is undisputed position that Complainant No. 1 is a consumer of the gas connection provided by the OPs and that a gas cylinder was delivered by OP-1 on 13.02.2015 and it was fixed by the staff of OP-1. When Complainant No. 2 attempted to light the gas stove at about 8:30 PM on the same day, the gas leakage occurred, resulting in a fire accident damaging their house and the complainants' daughter sustained severe burn injuries. She was rushed to Sector 9 Hospital in Bhilai, where she was hospitalized for two months. The Complainants'

stated to have incurred Rs.6,00,000 towards treatment cost and further surgeries would require an additional Rs.5,00,000. The fire also stated to have caused damage to the house to the extent of Rs. 4,00,000. It is the contention of OPs that the complainant had used a regulator and connecting tube for the gas stove, which were not of the quality prescribed by OPs, because of which the leakage occurred. As it is the allegation of OPs that the leakage took place due to use of certain non-standard equipment by the complaint, the onus to prove the same is also on OPs. However, while the complainants' vehemently rejected such use of non-standard material, other than the report of the OPs representative, there is no evidence to establish the same. It is also undisputed that there is an insurance policy for protecting consumers against such accidents by Bharat Petroleum Corporation Ltd (BPCL)/ OP-2 and 3 with United India Insurance Company Ltd. It has been stated that the maximum compensation of Rs. 5,00,000 is admissible under the said policy towards compensating the medical expenses and property damage in such cases. It is also undisputed that the gas leak and fire incident have occasioned, and the complainants' daughter suffered injuries and their house sustained damage. In the absence of substantial evidence that was brought forth by OPs to establish that this incident falls within the exceptions to the said insurance contract, the OPs are liable to compensate them in terms of the said policy.

13. At the same time, it is the contention of OPs that Rs.1,50,000 and Rs.93,000 was already paid to the complainants as compensation. Evidently, the learned District Forum in CC No. 486 of 2015 dated 15.05.2017 as well as the learned State Commission in FA No. 445 of 2017 dated 04.10.2017 failed to consider the compensation liable to be paid under the insurance policy brought on record. Therefore, after due consideration of the entire facts and circumstances of the case, and the arguments advanced by learned counsels for both the parties, we are of considered view that the complainants are entitled for payment of Rs.5,00,000 as compensation towards treatment of their daughter for the injuries suffered as well as for damage to the property due to the fire accident. The BPCL (OP-3) is directed to pay Rs.5,00,000 to the complainants within two months from the date of this order along with simple interest @ 9% per annum from 13.04.2015 (i.e. from 2 months after the date of incident) till the date of payment. In the event of delay in payment beyond two months, the rate of simple interest liable to be paid for the entire period shall be @ 12% per annum. We also make it clear that the amount already paid by the OPs to the complainants as compensation for the same accident is liable to be deducted from this amount.

14. The Revision Petition No. 3453 of 2017 is disposed of with the above directions.

15. Considering the facts and circumstances of the case, there shall be no order as to costs.

16. All pending Applications, if any, are also disposed of accordingly.

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(SUBHASH CHANDRA)
PRESIDING MEMBER

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(AVM J. RAJENDRA, AVSM, VSM (RETD.))
MEMBER

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