

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 9257 OF 2019

(Arising out of SLP (C) No(s).14941 of 2014)

CHAIRMAN-CUM-MANAGING DIRECTOR
ONGC LTD. & ORS.

...APPELLANT(S)

Versus

CONSUMER EDUCATION RESEARCH
SOCIETY & ORS.

...RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 9258 OF 2019

(Arising out of SLP (C) Nos. 26660 of 2014)

CIVIL APPEAL NOS. 9259 OF 2019

(Arising out of SLP (C) No. 26659 of 2014)

CIVIL APPEAL NOS. 9260 OF 2019

(Arising out of SLP (C) No. 26662 of 2014)

CIVIL APPEAL NOS. 9261 OF 2019

(Arising out of SLP (C) No. 26655 of 2014)

CIVIL APPEAL NOS. 9262 OF 2019

(Arising out of SLP (C) No. 26657 of 2014)

CIVIL APPEAL NOS. 9263 OF 2019

(Arising out of SLP (C) No. 26661 of 2014)

CIVIL APPEAL NOS. 9264 OF 2019

(Arising out of SLP (C) No. 26663 of 2014)

J U D G M E N T

Deepak Gupta, J.

Leave granted.

2. All these appeals are being disposed of by a common judgment since the issue involved is common in all the cases.

3. At the outset, we may note that Shri Krishnan Venugopal, learned senior counsel appearing for the appellants submits that without prejudice to the rights of the appellants to challenge the impugned orders of the National Consumer Disputes Redressal Commission as well as the Gujarat State Consumer Disputes Redressal Commission and the District Forum, the appellants shall pay the amount as directed in the impugned orders. This has been done because the amounts involved are small, the appellants had retired a long time back and they should not be forced to go into the second round of litigation.

4. The main issue involved is whether there is relationship of consumer and service provider existing between the private respondents (claimants) and the appellants.

5. The undisputed facts are that all the claimants were employees of the Oil and Natural Gas Commission (for short 'the ONGC'). A Self Contributory, Post Retirement and Death in Service Benefits Scheme, 1991 (for short 'the Scheme') was

introduced in the ONGC after obtaining permission of the Government of India and the relevant portion of the letter dated 18.09.1991 granting permission reads as follows:-

“(i) Contribution to the fund to be established from the employee of the ONGC would be in cash, with a token contribution of Rs.100 per annum by ONGC.”

The Scheme has also been annexed and the relevant portion of the Scheme reads as follows:-

“1(c) Membership

- (i) xxx xxx xxx
- (ii) The Scheme shall be optional to the existing executives in regular service of the Commission on the effective date of the Scheme 01 04 1990. However, it will be compulsory for executives joining regular service in the Commission as new entrant on or after the effective date of the Scheme. Option once exercised shall be final and irrevocable.

xxx xxx xxx

2 Contribution

- 2.1 The contribution to be made by the member-employee shall be calculated on his salary and the rate will be as given hereunder depending on his age on the effective date of the Scheme for employees on the rolls of ONGC as on 01.04.1990 and on the date of joining ONGC for new entrants. The rate of contribution fixed at the time of entry will remain constant. The following rates of the contribution are payable in the various age groups:

- (i) Below 25 years -0.5% of salary

(ii)	25 and upto 35 years	-0.75% of Salary
(iii)	above 30 and up to 35 years	-1% of salary
(iv)	above 35 and up to 40 years	-2% of salary
(v)	Above 40 and up to 45 years	-3% of salary
(vi)	Above 45 and up to 48 years	-4.5% of salary
(vii)	Above 48 and up to 50 years	-4.5% of salary
	Above 50 and up to 58 years	-5% of salary
	xxx	xxx

5. MANAGING THE SCHEME

(a) The Scheme shall be run by a Trust consisting of trustees to be nominated by the Chairman ONGC and representative as may nominated on the board by CWC of ASTO. The Trust would make investment plan of the fund as per pattern of Rule 67 (2) of Income Tax Rule 1961 and would purchase annuity from LIC for the beneficiaries under the Scheme.

6. Scheme is based on voluntary contribution by the member employees. No contribution will be made by ONGC towards this Scheme except Rs.100 p.a. No. other financial liability on account of this Scheme will devolve on ONGC or the Govt. of India.”

It is not necessary to deal with other facts. The case of the claimants was that due to delay in sending their claims to the LIC, they suffered a loss. This averment is denied by the appellants but, in our view, that is not very relevant. The Consumer Fora held that the employees were consumers of the ONGC and therefore passed orders awarding various amounts and costs in favour of the claimants and hence the ONGC is liable to pay the same.

6. Shri Venugopal has raised various pleas before us. The first is that in terms of the definition of consumer in the Consumer Protection Act, 1986 (for short 'the Act'), the first essential ingredient is payment of consideration for availing services. The second contention is that rendering of service free of charge under a contract of personal service is not included in the definition of service under the Act. We may refer to Section 2(d) of the Act, which reads as follows:-

“(d) “consumer” means any person who,—

(i) XXX XXX XXX

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose;”

We may also refer to Section 2(o) of the Act, which reads as follows:-

“(o) “service” means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing,

supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;”

Shri Venugopal has relied upon the judgment of this Court in the case of ***Jagmittar Sain Bhagat & Ors. vs. Director, Health Services, Haryana & Ors.***¹ in this regard. On the other hand, learned counsel for the respondents has placed reliance on the judgment of this Court in ***Regional Provident Fund Commissioner v. Shiv Kumar Joshi***² and ***Regional Provident Fund Commissioner v. Bhavani***³.

7. In our opinion, it is not necessary to answer all the issues raised by Shri Venugopal since, in our opinion, there is virtually no privity of contract for providing service between the ONGC and the claimants. From a perusal of the letter dated 18.09.1991 and the Scheme, relevant portion of which has been quoted above, it is apparent that contributors to the Scheme were the employees of ONGC. Whereas the employer was only making a token contribution of Rs.100 per annum, the Scheme was also

1 2013(10) SCC 136

2 2000(1) SCC 98

3 (2008) 7 SCC 111

voluntary and optional for the employees who were in service from the effective date i.e. 01.04.1990. It is not disputed that all the claimants were in service before the effective date. The Scheme envisages that every employee shall contribute to the fund at rates specified therein. The younger the employee, the percentage deducted from his salary is less and this rises progressively as the age increases. It has obviously been done to ensure that the contribution of the employee is equal i.e. those who have less years of remaining service will contribute at a higher rate and those who have more years of remaining service will contribute at a lower rate. The most important aspect is that the Scheme is managed and run by a Trust and not by the ONGC. The trustees of the Trust are nominated by the Chairman of the ONGC and representatives may be nominated to the Board of Trustees by the Central Working Committee (CWC) of Association of Scientific and Technical Officers. We have been informed at the Bar that 7 trustees are nominated by the Chairman of the ONGC and 6 by the CWC. Be that as it may, it is the Trust which manages the fund. Therefore, without going into the question as to whether any amount is being paid by the employees for contribution to the services rendered by the Trust,

it is apparent that the service, if any, is being rendered by the Trust and not by the ONGC. Therefore, we have no hesitation in coming to the conclusion that there is no relationship of consumer and service provider between the claimants and the ONGC. We make it clear that we have not gone into the other questions since, in view of the aforesaid decision, it is not necessary to decide the other questions raised by Shri Venugopal.

8. In view of the above discussion, we partly allow the appeals and set aside the orders of the National Consumer Disputes Redressal Commission and the State Consumer Disputes Redressal Commission in so far as it held that there is a relationship of consumer and service provider between the claimants and the ONGC. We also set aside the costs imposed by the National Consumer Disputes Redressal Commission. However, in view of the statement made by Shri Venugopal, recorded in the opening portion of this judgment, we direct the ONGC to pay the amounts payable (other than the costs) under the orders impugned to the claimants within 8 weeks from today.

9. Pending application(s), if any, stand(s) disposed of.

.....J.
(S. Abdul Nazeer)

.....J.
(Deepak Gupta)

New Delhi
December 09, 2019