

(2004) 10 NCDRC CK 0081

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

ANUP MAZUMDAR

APPELLANT

Vs

KANGER GHATI NATIONAL PARK

RESPONDENT

Date of Decision: Oct. 19, 2004

Citation: 2005 2 CLT 303 : 2005 2 CPJ 163

Hon'ble Judges: V.K.Agrawal , Veena Misra , R.S.Awasthis J.

Advocate: Sudeep Johari , B.B.L.Shrivastava

Judgement

1. THE complainant has filed this complaint under Section 17 of the Consumer Protection Act, 1986 against the opposite party for getting the relief of Rs. 7,00,000/- towards damages.

2. IN brief the facts as narrated in the complaint are that on 16.12.2001 the complainant, with his three friends, had gone to see Kutumsar Caves at Kanger Valley National Park, Jagdalpur, Bastar. They had paid a sum of Rs. 185/- vide receipt No. 4364 towards fee and the same included fee towards guide and light arrangements, besides other heads.

It is averred in the complaint that the guide provided by the authorities was not a trained guide and further that the guide had no torch but only a petromax and after going nearly 300 ft. inside the cave, the light of the petromax became very dim due to lack of oxygen and consequently the complainant fell into nearly 30 ft. deep ditch and was thereby injured. It is also averred that the opposite party had failed to provide necessary safety measures at the place of accident. As soon as the complainant fell in the ditch the guide, namely Gopal ran away and it was with the

help of another guide Sitaram and other tourists that the complainant could be taken out.

Immediately after the incident the employees near the gate of Kanger Valley National Park were informed but they made no efforts to provide first aid to the complainant. Then the complainant was taken to the Government Hospital but the doctor was of the opinion that it was only a muscular pain. Thereafter, the friends of the complainant took him to his home town Rajnandgaon. The orthopaedic surgeon Dr. Sandeep Bakshi was consulted who advised x-ray and CT Scan. It was revealed from the aforesaid tests that the spinal cord has tilted towards left and there is fracture of four lumbar spine. The doctor had advised 6 months complete bed rest hence the complainant was totally dependent on others for the aforesaid period.

3. AS averred in the complaint the complainant is an Advocate practising at the High Court, Bilaspur and due to the aforesaid accident, caused solely due to the negligence of the concerned department, he could not practise for a period of six months and consequently he as well as his clients also suffered great loss. It is further averred that prior to accident the complainant was a healthy young bachelor but after the accident he is a disabled person as he cannot move around/walk or conduct his daily work without putting on steel jacket, he cannot drive the vehicle, he is also unable to work as efficiently as he used to do earlier, he also had to spend huge amount in his treatment and there is possibility of future expenditure in treatment also. Besides physical pain and suffering the complainant has also undergone great mental shock and suffering.

On 28.1.2002 the complainant had given notice to the opposite party and a copy of the same was also to the Superintendent of Police and the Collector, Bastar. Earlier the complainant could not make a report to the police due to the reason that as he was in great suffering and was also unable to walk, his friends had immediately taken him to Rajnandgaon. The opposite party in reply to the aforesaid notice, dated 19.3.2001, had stated that the department is not responsible for the accident, hence the complainant preferred the complaint for recovery of Rs. 6,00,000/- as damages towards the loss as even after complete bed rest for six months the complainant has not completely recovered and a sum of Rs. 1,00,000/- towards treatment.

4. IT is specifically averred in the complaint that the complainant is the consumer of the opposite party and it was due to negligence and the deficiency in service on part of the opposite party that the complainant had to suffer.

The opposite party has, in written version, raised an objection regarding filing the complaint against the Director, Kanger Valley National Park, Jagdalpur instead of filing the same against the State of Chhattisgarh through Collector, Bastar. The opposite party has submitted written statement/reply of denial and has denied all the averments made by the complainant. It is denied that the complainant is a consumer but has admitted that the complainant was permitted to enter the Kanger Valley and fee was also charged for light arrangements and also for providing guide. The opposite party has averred that there is no proof that the complainant had visited the caves as alleged. The allegations that the guide was not a trained guide and further that he had no proper light arrangements have also been denied. It is also denied that the light of the petromax had become dim after going nearly 300 ft. inside the cave and as a result the complainant had fallen into the 30 ft. deep ditch and suffered injuries. It is averred that there is no such 30 ft. deep place in the said cave as alleged by the complainant. The opposite party has also denied that there were no proper safety measures where the complainant had fallen. The opposite party has also denied the allegation of the complainant that the guide had run away after the alleged accident. It has been specifically averred in the written version that no body is permitted to enter the cave without proper provision for light and the guides are provided with torch and also that all the guides are trained guides and there was no possibility of any accident. It has further been denied that the complainant has become a disabled person and is constrained to wear steel jacket as alleged. The allegations of mental shock and suffering have also been denied. The opposite party has filed affidavit dated 13.8.2003, of Shri V. Shetteppanwar, Director, Kanger Valley National Park, Jagdalpur.

The complainant has also filed rejoinder wherein it is averred that as receipt for entry fee was issued under Wild Life Protection (M.P.) Rules, 1974 the Director, Kanger Valley National Forest is the proper party and not the Collector, Bastar as alleged by the opposite party. It is averred that the receipt was in the name of Ajit Singh and three others and the complainant and his friends had collectively obtained the aforesaid receipt. The complainant has also averred that there is neither any permanent arrangement for light nor any caution at the main entrance regarding pits or ditches. It is further averred that the guide of the complainant namely Gopal was the local resident fully acquainted with the area and as such was employed as guide. However, he was not a trained guide as he himself had told them. Further the opposite party has failed to file any other document in support of their contentions except the affidavit. It has been reiterated that neither the guide was trained nor any other light except the petromax was provided and the light of the petromax also had become dim inside the cave. The complainant has also averred that as no doctor was available in the nearby area, the friends of the

complainant took him to Primary Health Centre, Vill. Dorba. The complainant has specifically denied the averment of the opposite parties and has stated that there was neither any complaint book or suggestion book at the main entrance of the National Park nor there was any provision for rendering first aid as contended by the opposite party. The complainant has also averred in the rejoinder that his lumbar spine L. 2, L.3 and L.4 have fractured and his spinal cord has bent towards left so in order to provide support to the spinal cord he is advised to wear a belt round the waste and also to put on a steel jacket. It is further averred that the accident was caused due to the fact that there were no permanent arrangement for light and further there was absence of instructions and no barricading near the place of accident and the opposite party is liable for the same. The complainant has filed his own affidavit as well as the affidavits of Anil Nakli, Ajit Singh, who accompanied the complainant during the visit to Kanger Valley and who were present at the time of accident. The complainant has also filed some documents relating to his treatment.

5. THE opposite party has later filed affidavits of the Park Ranger Mohan Singh Nayak, guide Sitaram, guide Gangra dated 13.11.2003 and two photographs.

6. HEARD the arguments of both the Counsel and perused the record including the affidavits filed by both the parties.

The question to be considered while deciding the complaints are:

(a) Whether the opposite party is the proper party for purposes of this complaint? (b) Whether the complainant is a consumer of the opposite party? (c) Whether the accident of the complainant was caused due to negligence on the part of the opposite party? (d) Whether the complainant is entitled to get any relief, if yes, what?

First of all we will consider the question whether the opposite party is the proper party for purposes of this complaint. It is noticed that the complainant has filed the complaint against the Director, Kanger Valley National Park, Jagdalpur as it was the opposite party who had charged the fee under Rule 36 of Wild Life Protection (M.P.) Rules, 1974. In this regard the learned Counsel for the opposite party submitted that a suit against the State can only be filed against the State through either the

Secretary of the concerned Department or the Collector of the District. This submission is quite correct. However, so far as the proceedings before Consumer Fora are concerned, the same do not come within the category of "suit". There is no doubt that Consumer Protection Act, 1986 is a beneficial legislation specially enacted to confer additional consumer rights and to preserve and guard the existing one under the law. It has been held by the Hon'ble National Commission in a catena of cases that the complaints should not be thrown out on the basis of mere technicalities. We are of the opinion that since the fee was paid under the receipt issued by Wild Life Protection (M.P.) Rules, 1974 complaint can be filed against the Director, Kanger Valley National Forest.

7. THE next question to be considered is whether the complainant is a consumer of the opposite party. THE complainant submitted that the opposite party had issued the permit for entry in the Kanger Valley National Park including visit to the Kutumsar cave and had charged a total fee of Rs. 185/- from the complainant and his three friends. It was further submitted that the said fee included permit fee, vehicle fee, fee for light, guide and camera. Though the opposite party has denied that the complainant is a consumer but has admitted payment of fee. We are of the considered opinion that the complainant is a "Consumer" as defined in Section 2(1)(d)(ii) of the Consumer Protection Act as he had paid necessary fee for entering the National Park, including the cave and also for availing the services of the guide provided by the opposite party and also for the light to be provided during visit to the aforesaid cave.

Now the question arises as to whether the accident of the complainant was caused due to negligence on part of the opposite party. It has been submitted on behalf of the complainant that the sole cause of his accidental fall in the ditch was that the opposite party has failed to provide any permanent light inside the cave or to provide torch in addition to the petromax provided to the guide whose light had become very dim as they went nearly 300 ft. inside the cave. It was also submitted that the reason for dimming of light was lack of oxygen inside the cave and the guide Gopal had revealed this fact to the complainant and his friends. The said guide had also told that guides employed by the opposite party were local people having knowledge of the area and no formal training is provided to them. The learned Counsel for the complainant further submitted that there was no barricading at the spot of accident and no warning regarding the danger though the opposite party was obliged to provide the same in order to ensure safety of visitors. The learned Counsel for the opposite party submitted that all the guides employed by the opposite party are trained guides and are provided with gas, torch and

drinking water and nobody is permitted to enter the cave unless such arrangements are made. It was further submitted that the Kutumsar cave is a natural cave and prior to entry every person is told that in case of accident the visitor/tourist himself shall be liable. It was further submitted that a board containing caution in this regard has been displayed outside the cave. However, learned Counsel for the complainant specifically denied that there was any such sign board at the entrance of the said cave.

8. IT is undisputed that the Kanger Valley is a National Park and is under the occupation and control of the State and the Director is in-charge of the same. IT is also not in dispute that entry fee is leviable under provisions of the Wild Life Protection (M.P.) Rules, 1974 as amended from time-to-time. For deciding the question whether there was negligence on part of opposite party we will have to turn to the provisions regarding liability of occupiers of dangerous land and structures under the law of torts.

Under the law of Torts the liability of dangerous premises is based on their occupation and control of the same. The person responsible for the condition of the premises is he who is in actual possession of them for the time being and he has certain duties towards the entrants of various categories/classes. There are four classes of entrants-(1) Persons who enter under a contract-Highest degree of care is owed towards them. (2) Invitees-Invitee is a person who enters on the premises with permission of the occupier, in a matter in which the occupier has himself some pecuniary or material interest. He is a person who receives permission from the occupier as a matter of business and not as matter of grace. (3) Licensee-Licensee is one who enters on the premises with permission of the occupier granted gratuitously in a matter in which the occupier himself has no interest. (4) Trespasser-Persons who enter without permission are trespassers. The occupier owes the highest degree of care to persons who enter under contract, lesser degree is owed to the invitee, still lesser to the licensee and the lowest to the trespasser (under certain circumstances only). The complainant in the instant case comes under the category of invitee, who entered the premises after payment of fee prescribed for such entry, as such the opposite party owed a duty to keep the premises reasonably safe for the purpose for which the invitee was permitted to enter the premises.

It is noticed that the complainant had made specific averments in the complaint and stated in the affidavit that they were not provided with a trained guide and further that the guide had no torch but only a petromax and after going nearly 300 ft. inside the cave, the light of the petromax became very dim due to lack of oxygen and

consequently the complainant fell into nearly 30 ft. deep ditch and was thereby injured. It is also averred that the opposite party had failed to provide necessary safety measures at the place of accident. In reply to this the opposite party has altogether denied the averments of the complainant including the averment that there was an accident. The affidavit filed by the opposite party was also very cryptic. It is also noticed that the complainant had filed detailed affidavit after the reply and affidavit was filed by the opposite party and had reiterated averments of the complaint and had also stated in categorical terms in para 4 of the affidavit that no warning regarding the presence of various pits and ditches was given prior to entry to the cave nor there was any barricading or notice board on the date of incident nor any other measures were taken to guard the ditches etc. Thereafter the opposite party submitted three other affidavits and it is stated therein that at the entrance of cave there is a board of caution and prior to entrance into the cave the attention of visitors is drawn to the said board and in case they give their consent, they are taken inside after making proper arrangements for torch, gas and drinking water. However, we have noticed that there was no averment regarding notice of caution in the written version. The opposite party has also filed two photographs allegedly covering the aforesaid board of caution. However, the location of the said notice of caution cannot be gathered from the photographs and further we have no material before us to come to a definite conclusion that the said board was displayed on the date of incident also. As there was no averment in the written version regarding the board of caution the balance tilts in favour of the consumer that on the ill-fated day there was no such board.

9. WE have gone through Rule 36 of Wild Life Protection (M.P.) Rules, 1974 and the said Rules provide that "A permit issued under this chapter shall specify all or any of the following particulars, namely:

(a) Purpose of entry, (b) Duration of visit, (c) Areas permitted to be visited or used, (d) Places where camping is permitted, (e) Engagement of guides, (f) Any other condition that may be deemed necessary will be in Form No. 24.

WE are of the opinion that in case the opposite party if at all wish to warn the visitors, such warning/condition for entry could have been made part of the conditions mentioned on the permit/ticket itself. However, permit filed by the complainant does not reveal any such condition. The opposite party also has not filed any documents except the photograph of alleged warning or caution.

10. HOWEVER, even if there was any such board as alleged by the opposite party the same cannot absolve the opposite party from their duty towards the "invitee" as the plea of *volenti non fit injuria* (voluntary assumption of risk) will not succeed against the invitee unless it is proved in unequivocal terms that the invitee had full knowledge of the extent of risk involved and had freely and voluntarily encountered the risk. In the case in hand even the display board containing caution cannot be said to be sufficient warning as the same is in very general terms and cannot be said to be sufficient warning of risks alleged by the complainant. It will not suffice to say that visitors should enter the cave only when they are fully satisfied with the safety measures because the alleged laches in safety measures are such that could be realized only after one enters the cave. It is averred in the complaint and also the affidavits of the friends of the complainant, who were present in the cave with him that the guide provided to them was not a trained one. It is further stated that the guide Gopal himself had told them that they are not provided any formal training, since they are local people they are familiar with the area and have been appointed as guide. Obviously, the very purpose of taking a guide is that he will provide proper guidance to the visitors as the guide has full knowledge of the place as well as the dangers present there, it is obligatory for him to warn the visitors about the same. Though the opposite party has averred that all the guides are trained but have failed to submit any document in support of their statement.

The next allegation in the complaint regarding the light of the petromax becoming dim after going 300 ft. inside the cave is also one that could only be experienced after entering into the cave. It is stated in the affidavit filed by the opposite party later on that the guide is provided with gas, torch and drinking water prior to entry into the cave. It is noticed that though it was averred in the written version that torch was provided but there was no mention of gas being provided. Probably such a statement has been made to counter the allegation of the complainant regarding the light becoming dim due to lack of oxygen. The next allegation that the place was not barricaded can also be appreciated upon entry only and no specific averment has been made in this regard by the opposite party. So far as the presence of pits and ditches is considered it may be expected but it appears that the same became dangerous due to attending circumstances only as has been alleged by the complainant and more particularly due to dimming of light.

In the facts and circumstances of the case we are of the opinion that opposite party has failed to take reasonable care to provide safety measures, even after charging fee for the same and it has thereby rendered themselves guilty of deficiency in service.

11. NOW the question that arises for consideration is whether the complainant is entitled to get any relief, if yes, what? We are of the opinion that since the opposite party is guilty of deficiency in service, they are bound to compensate the complainant.

Now we have to consider the question of quantum of compensation that deserves to be granted to the complainant. In this regard the complainant in his affidavit dated 13.10.2003 has made an averment that he is an Advocate and files his income tax return. He has also stated in the affidavit that he is handicapped on account of the injuries sustained in the accident and faces great problem while climbing the stairs and executing the work. He has further stated that he has spent about Rs. 60,000/- in the treatment at Navjeevan Nursing Home. He has also stated that Dr. Sandeep Baxi has advised him to undergo operation of the spine. The complainant in his complaint claimed compensation of Rs. 7.00 lacs towards expenditure for treatment.

12. HOWEVER, it appears that the complainant only filed receipts of expenses including bills of medicines etc. which amount to Rs. 6,634/- only. No medical certificate regarding the alleged advice of the doctor or permanent disability has been filed by him in support of the averments in the affidavit referred to above. He has also averred in the complaint that he had to remain confined to bed for about 6 months. There is no documentary evidence to support the averments as above. Considering the expenditure incurred by him, the receipt of which have been placed on record, and the contentions raised as above, we consider that besides actual expenditure incurred by him as above, he is also entitled to get Rs. 15,000/- towards compensation for inconvenience caused to him due to the accident. Accordingly total sum of Rs. 21,700/- deserved to be granted.

The complaint is, therefore, allowed with the direction that opposite party/respondent shall pay to the complainant a sum of Rs. 21,700/- within a period of 60 days, failing which opposite party shall also pay interest @ 9% on the aforesaid sum of Rs. 21,700/- from the date of complaint. The complainant is also entitled to get cost of this appeal, which is quantified at Rs. 1,000/- (Rupees one thousand) only. Complaint allowed.