

(2002) 05 J&K CK 0021
In the Jammu And Kashmir High Court
Case No : C.I.M.A. No. 454 of 1997

Alson Automobiles Private Limited	Vs	APPELLANT
J. and K. Project Construction Corporation and Others		RESPONDENT

Date of Decision : 28-05-2002

Acts Referred:

Jammu and Kashmir Consumer Protection Act, 1987 — Section 2

Citation : AIR 2003 J&K 15 : (2003) 2 JKJ 740

Hon'ble Judges : B.C. Patel, C.J.;N.A. Kakru, J

Bench : Division Bench

Advocate : A. Andrabi, for the Appellant;

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.—M/s Alson Automobiles Private Ltd. having its office at Srinagar has preferred this appeal against order made by

President, J. & K. Consumer Protection Commission, Srinagar on 31-1-1997 on a complaint No. 86 of 1997 filed by Dy. General Manager, J. &

K. Project Construction Corporation Ltd., Srinagar, allowing the claim of the complainant and directing original opponents Nos. 1 and 2 to refund

a sum of Rs. 2,24,241/- to the complainant with 10% interest on the sum from the date of deposit till the date of final payment and also directing it

to pay an amount of Rs. 30,000/- as compensation,

2. We were taken through the judgment memo of complaint, written statement, filed by opposite party No. 1 namely, the appellant herein as also

the relevant provisions contained in J. & K. Consumer Protection Act, 1987 (hereinafter to be called ""the Act"") and particularly Sub-clause (d) of

Section 2 of the Act. It was specifically pleaded before the Consumer Forum that the Corporation engaged in business of construction of the

Buildings and Bridges at different places, all over the State and was badly in need of vehicle for keeping supervision of the works. In reply in para

No. 7 appellant has pointed out the inter se disputes between the partners of the firm but there is nothing to indicate that any specific plea was

raised that the complainant was engaged in re-sale of the vehicles or was engaged in any commercial activities and therefore, was not entitled to

approach the forum.

3. Section 2 (d)(i) of the Act defines the Consumer. Learned counsel relying on the later part of the aforesaid provision submitted that if a person

obtains goods for resale or for any commercial purposes then he cannot be treated as a consumer and if that be so, the Act would not be

attracted. There is no question of re-sale and the learned counsel has not urged on that ground but has urged on the ground that the Corporation

namely the Complainant is engaged in commercial activities and therefore, vehicles so used in aid of commercial activities requires to be treated for

commercial and therefore, the Commission would have no jurisdiction. Our attention was drawn to a case titled Z.S. Traders Vs. Director,

Siemens Ltd., New Delhi and Another, wherein there was a purchase of X-ray plant by a business concern and such purchase was not made by

an unemployed person to earn livelihood. In such facts the Court held that the purchaser is not a consumer,

4. Strong reliance was placed by learned counsel for the appellant on the reported judgment of the Apex Court in case Laxmi Engineering Works

Vs. P.S.G. Industrial Institute, wherein it is held at para 14 (of C.P.R.) : (Para 24 of AIR) as under :

We must, therefore, hold that (i) the explanation added by the Consumer Protection (Amendment) Act 50 of 1993 (replacing Ordinance 24 of

1993) with effect from 18-6-1993 is clarificatory in nature and applies to all pending proceedings.

(ii) Whether the purpose for which a person has brought goods is a ""commercial purpose"" within the meaning of the definition expression

Consumer"" in Section 2(d) of the Act is always a question of fact to be decided in the facts and circumstances of each case.

(iii) A person who buys goods and use them himself exclusively for the purpose of livelihood, by means of self-employment is within the definition

of the expression ""Consumer"".

Reading the aforesaid para one has to establish by leading cogent and convincing evidence that a person is a consumer or a person engaged in

commercial activities so as to convey that he is not a Consumer, Reading the reply it is clear that no contention was raised and no evidence was led

to substantiate that the complainant is not a consumer. In absence of contention and evidence the arguments cannot be accepted.

5. Even if a person who buys goods and use them himself exclusively for the purpose of earning livelihood, is within the definition of expression

consumer"". Thus a taxi driver buying a vehicle-Taxi for self employment yet he cannot be branded as a non-consumer. In the instant case the

vehicle was purchased for the purpose of supervision of the works. If a corporation is running the fleets of vehicles for passenger service, certainly

it could be said that the Corporation is engaged in commercial activities. But when a Corporation in the instant case is not engaged in such activities

or in business activities and has purchased the vehicle namely Ambassador Car for the purpose of supervision of the works by the Officers then in

the opinion of the Court, the complainant can be said to be a consumer.

6. The Apex Court has pointed out that the explanation reduces the question, what is a ""commercial purpose"" to a question of fact to be decided in

the facts of each case. It is not the value of the goods that matters but the purpose to which the goods bought are put to. The several words

employed in the explanation viz., ""uses them by himself, exclusively for the purpose of earning his livelihood"" and ""by means of self employment

make the intention of Parliament abundantly clear, that the goods bought must be used by the buyer himself, by employing himself for earning his

livelihood.

7. In the instant case the vehicle was used by the Corporation itself and in the facts and circumstances of this case it is not possible to take a

different view than the view taken by the Consumer Forum and hence the appeal having no merit is required to be dismissed. Accordingly the

appeal is dismissed along with connected CMPs.

8. It goes without saying that the amount of Rs. 75,000/- deposited before this court may be returned back to the appellant subject to the

condition that he will satisfy the Registrar Judicial to the effect that the decretal

amount has been paid.