
(2001) 07 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

AND REGISTRATION DIRECTOR GENERAL OF INVESTIGATION APPELLANT
Vs
COCA-COLA RESPONDENT

Date of Decision : 02-07-2001

Acts Referred:

Citation : 2002 3 CPJ 72

Hon'ble Judges : C.M.Nayar , Moksh Mahajan J.

Final Decision : N.O.E. discharged

Judgement

1. THIS complaint arises out of a communication dated 27.2.1997 sent to the Commission by Shri K. Rama Rao, Flat No. 25, Anand Apartments, Lalithanagar, Hyderabad. The first paragraph of the communication reads as under : "The Coca-Cola Company gave tempting advertisements extensively through many newspapers, advertisement boards, wall paintings, writings, banners about Coca-Cola "Redhot Summer Contest". The entry forms which also are to be completed with the slogan by the contestants were also distributed through the Indian Oil Company Retail outlets. The Coca-Cola Company advertised in newspapers on 18.5.1996 in Andhra Pradesh as per reference MCCANN/CC/3396/TEL."

The conditions imposed by the respondent Company as impugned may be reproduced as under : "Condition No. 4 : The contestants has to send the completed Entry Form by ordinary post. Condition No. 5 : Entry form information completed by the contestants is the property of the Coca-Cola Company. Condition No. 6 : The Coca-Cola can utilise the information completed by the contestants in whatever manner they like without the consent of the contestants. Condition No. 8 : The winners will be informed by ordinary post."

2. THE respondent filed its reply wherein it is submitted that an allegation of restrictive and unfair trade practice is not made out. THE respondent is not indulging in any such practices within the meaning of the MRTP Act, 1969. THE complainant has also not placed on record any material constituting restrictive trade practice or unfair trade practice and, therefore, Notice of Enquiry deserves to be discharged. The D.G. (I&R) has failed to show that the impugned

Conditions 4, 5, 6 and 8 constitute unfair trade practice as covered under Section 36A of the Act. It has not been demonstrated that apprehensions expressed regarding them have been proved correct. Rather we find that the participation in the scheme is not subject to any price or purchase of product and the result of the scheme has been declared as is evident from the list of prize winners enclosed in an Annexure B by the respondent. The cost of the prize on the other hand is explained to have been met by Mahindra & Mahindra Limited as per communication dated October 5, 1998 in which it has been specifically pleaded as follows : "It may also be clarified that the 7 Mahindra Classic jeeps which constituted the prizes under the scheme were provided to Coca-Cola India free of cost by Mahindra & Mahindra Ltd. As such, no cost was incurred by Coca-Cola India for the purchase of the prizes."

There is no material on record to show that the aforesaid scheme was responsible for increase in sales, if any, during the period it continued.

3. THE Supreme Court of India in the case of HMM v. Director General (Investigation and Registration), reported in VI (1998) SLT 621=(1998) 6 Supreme Court Cases 485, has held that in order to hold a scheme amounting to unfair trade practice, there must be material to substantiate the allegation, which is reproduced as below : "For holding a trade practice to be an unfair trade practice, therefore, it must be found that it causes loss or injury to the consumer. Insofar as prizes are concerned, there has to be the intention of not providing them as offered or creating the impression that they are being given or are being offered free of charge when in fact they are fully or partly covered by the amount charged in the transaction as a whole. THE conduct of a lottery for the purpose of promoting the sale, use or supply of a product is an unfair trade practice. It is difficult to see clear, sustainable findings on the aspects in the judgment under appeal."

In view of the above reasons, the Notice of Enquiry deserves and is directed to be discharged. There is no order as to costs on the facts and in the circumstances of the case. N.O.E. discharged.