
(2011) 07 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

Ansar Pasha

APPELLANT

Vs

TATA MOTORS LTD

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Citation : 2011 4 CPJ 107

Hon'ble Judges : V.B.Gupta , Suresh Chandra J.

Final Decision : Petition dismissed.

Judgement

1. PRESENT revision petition has been filed by the petitioner against order dated 25.1.2010, passed by State Consumer Disputes Redressal Commission, Bangalore (for short "State Commission"). Vide impugned order, appeal filed by the respondents against order dated 8.7.2009 passed by District Forum, Chitradurga, was allowed.

2. BRIEF facts are that petitioner filed a complaint under Section 12 of the Consumer Protection Act, 1986, (for short as "Act") through its Attorney Sh. Mohammed Ishaq, on the allegations that he has purchased Lorry bearing No. KA-18-A/2475 on 18.3.2008 for Rs. 11,53,454 from respondents/OPs. The said Lorry was got body built by spending Rs. 2,40,000. After getting the body built of the said vehicle, petitioner got it registered in RTO on 14.5.2008. Thereafter, on 11.6.2008 he has given power of Attorney to one Sh. Mohammed Ishaq in respect of the said Lorry. After registration of the vehicle, the Attorney holder began to run the Vehicle as per instructions given in the operators sendee book. Thereafter, on 29.7.2008 engine of the said vehicle broke down and it started giving trouble and become unuseful. He took the said vehicle to respondent No. 3, the authorized service centre for service and repair. The said vehicle was fitted with new engine and entire engine assembly was also changed. Thereafter, the said vehicle used to give trouble again and again. The main problem in the vehicle is of leakage in radiator since beginning and when assembly of radiator was replaced by new one the engine got seized and it was replaced by new engine. There has been problems in the vehicle, one or the other, since the date

of its purchase. Since, there are manufacturing defects in the vehicle which was sold by the respondents it amounts to deficiency of service on the part of the respondents.

3. RESPONDENTS in their written statement have stated that petitioner has deliberately suppressed the material facts, as the vehicle in question was sold by the petitioner to a third person way back on 11.6.2008 and petitioner has executed a Power of Attorney in favour of Mr. Ishfaqh on 11.6.2008. Petitioner later on, filed another Power of Attorney dated 18.3.2009, in which Clause 9, which stated about the vehicle having been sold to third party, was deleted. This conduct of the petitioner speaks itself and he has not only suppressed the vital information but has also presented fabricated documents to cover up the issue of transfer to the third party.

4. FURTHER, there is clear prohibition of sale or transfer or alienation of the vehicle before the expiry of warranty period of two years. In case of any unauthorized sale or transfer of the vehicle within the prescribed period, the contract of warranty does not go to the benefit of purchaser. Hence, complainant or his Power of Attorney, have no locus standi to file this complaint.

5. DISTRICT Forum accepted the case of the petitioner and allowed the complaint, by passing the following orders: "(1) The complaint is partly allowed. (2) The Opponents are directed to supply a new TATA 2515/EX/LPT 2516/EX/TURO vehicle by taking back the vehicle bearing KA No. 18/A/2475 within two months of this order. (3) In case of failure to supply the new vehicle, Opponents are directed to pay Rs. 11,53,454 as price of vehicle and Rs. 50,000 towards the cost of body building, within 2 months from date of order. (4) The Opponents are directed to pay Rs. 10,000 as compensation for shock and mental agony within two months of this order. (5) The Opponents are directed to pay 9% interest p.a. on Rs. 12,03,454 from the date of order to the date of realization. (6) The Opponents are directed to pay Rs. 1,000 as cost of the complaint.

6. AGGRIEVED by the order of District Forum respondents filed an appeal before the State Commission and vide impugned order, their appeal has been allowed.

7. WE have heard the learned Counsel for the parties and have gone through the record.

8. IT has been contended by the learned Counsel for the petitioner that there was only an agreement for sale of the vehicle in the name of Mohammed Ishaqh. Mere execution of agreement for sale does not amount to any transfer and as such impugned order is liable to be set aside.

9. ON the other hand, it has been contended by the learned Counsel for the respondents that petitioner has ceased to be the owner of vehicle in question on the date of filing of the complaint, since he had already sold the vehicle to Mr. Mohammad Ishaqh, through the Power of Attorney and this fact has been admitted by the petitioner also. Therefore, petitioner has no locus standi to file

the complaint, as he was no longer the consumer, as required under the Act. Moreover, as per terms and conditions of the warranty, wherein it is stated that in the event of transfer of vehicle during the period of warranty, the warranty shall stand terminated.

10. PETITIONER has filed the complaint under Section 12 of the Act before the District Forum on 11.3.2009. However, as per Power of Attorney dated 11.6.2008 duly executed by the petitioner (copy of which has been placed on record) shows that petitioner has already sold the vehicle in question to one Mr. Mohmmad Ishaqh for a consideration of Rs. 15,02,600, out of which a sum of Rs. 2,42,000 as advance was received and remaining balance amount was to be paid in 46 instalments to the finance company. It is also an admitted fact after filing of the complaint, petitioner has executed another Power of Attorney, dated 18.3.2009 in favour of the same Mr. Mohammad Ishaqh. In Power of Attorney dated 18.3.2009, clause regarding sale of the vehicle (as mentioned in earlier Power of Attorney dated 11.6.2008) was deleted. Petitioner did not bring all these true facts to the notice of District Forum and has thus suppressed these material facts.

11. STATE Commission in its impugned order has also observed about the suppression of material facts by the petitioner in his complaint. Relevant portion of the impugned order reads as under: "8. On perusal of the Power of Attorney executed on 11.6.2008, wherein it is clearly stated as follows: 9. The R. C. owner sold the said vehicle for Rs. 15,02,600 out of which a sum of Rs. 2,42,000 advance has been paid and remaining balance amount is to be repaid in 46 instalments to Sri Rama Finance will be paid after discharging RTA cases, mines cases and police cases, if any on the said vehicle. 10. Admittedly, thereafter, one more GPA was executed on 18.3.2009 to the same person wherein the condition number in the earlier GPA has been vanished. Except condition No. 9 other conditions are same and are incorporated in the GPA executed on 18.3.2009. 11. The reading of the above clearly shows that the complainant has already sold the vehicle in question to the GPA holder and taken advance money from him. This fact was suppressed by the complainant in his complaint. As per the terms and conditions of the warranty, in the event of transfer of the vehicle during the period of warranty, the warranty shall stand terminated. If that is so, are of the view that the impugned order passed by the District Forum is liable to be set aside. The complaint filed by the complainant is liable to be dismissed."

12. THUS it stands proved from the record that petitioner has suppressed and concealed the material facts from the two Fora below. Further more, when the complaint was filed before the District Forum, at that time, petitioner had already sold the vehicle in question and was not the owner. The State Commission under these circumstances has already dismissed the appeal of the petitioner.

13. UNDER Section 21 of the Act, this Commission can interfere with the order of the State Commission, where such State Commission has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. There

is no illegality or material irregularity on part of the State Commission in this case nor the impugned order suffers from any infirmity or erroneous exercise of jurisdiction.

14. FOR the reasons stated above, the order passed by the State Commission is upheld and revision petition is hereby dismissed with costs of Rs. 10,000.

15. PETITIONER is directed to deposit the costs by way of a cross cheque in the name of "Consumer Legal Aid Account", within four weeks from today.

16. IN case, the costs are not deposited within prescribed period, petitioner shall be liable to pay interest @ 9% p.a. till its realization.

17. LIST the mater on 26.8.2011 for compliance. Petition dismissed.