
(2017) 10 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

Case No : 2301 of 2016

ARINDAM KAR S/O. RANJIT KAR

APPELLANT

Vs

PROPRIETOR, RUPASHI CINEMA HALL

RESPONDENT

Date of Decision : 12-10-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation : (2017) 10 NCDRC CK 0004

Hon'ble Judges : B.C. Gupta

Advocate : Pranab Prakash, Sanjoy Kumar Ghosh, Rupali S. Ghosh

Judgement

1. This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the order dated 11.05.2016, passed by the Tripura State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in First Appeal No. A/03/2016, "Arindam Kar versus Proprietor, Rupashi Cinema Hall", vide which, while dismissing the appeal, the order dated 06.01.2016, passed by the District Forum Agartala in consumer complaint No. CC/14/2015, filed by the present petitioner/complainant, dismissing the said complaint, was upheld.

2. The facts of the case are that the petitioner/complainant Arindam Kar is a practising Advocate at Agartala, Tripura and a member of the local Bar Association. On 20.10.2014, the complainant, alongwith his three other Advocate colleagues, went to the premises of the Opposite Party (OP)/respondent, Rupashi Cinema Hall to watch a movie "Chotuskone" (Bengali) being screened in that Cinema Hall, and for that purpose, they purchased 4 tickets of 50/- each, amounting to 200/-. Before entering the cinema hall of screen-I, the complainant went to the food outlet situated at the same floor of the premises for buying drinks and snacks. It is stated that the said food outlet did not have any banner etc., displaying their name, but it was a part and parcel of the Rupashi Cinema Hall. The complainant purchased four cans of Coca-Cola, for which he was charged a sum of 160/-, @40/- for each can. The complainant asked receipt for

the payment made by him, but the staff at that shop refused to provide him any money receipt. The complainant went inside the cinema hall to watch the movie. During interval, one of their colleagues noticed that the maximum retail price (MRP) of the Coca-Cola can was mentioned as 25/- on each can. The complainant went to the food outlet again, enquiring about overcharging for the cold drinks, but he was told that they had to pay some cost and other expenses etc. to the OP, Rupashi Cinema Hall and hence, they were charging more than the MRP printed on the product. The complainant issued a legal notice to the OP/Respondent on 22.10.2014, alleging harassment at the hands of the OP. However, the OP/respondent replied on 27.10.2014, saying that there were many rented shops in the said premises and the shop-keepers had valid trade licence and separate identity. In this manner, the matter was between the shop-keeper and the customer and the OP Rupashi Cinema Hall were not involved in any manner. The complainant then filed the consumer complaint in question, alleging that some other food outlets on the premises had their names displayed, but the food outlet from where they purchased the Coca-Cola cans, did not display any name or separate identity, which could separate it from the Rupashi Cinema Hall. The complainant sought directions to the OP Rupashi Cinema Hall through the consumer complaint to award them a sum of 2,50,000/- for mental harassment and damage to the reputation of the complainant alongwith litigation cost.

3. The complaint was resisted by the OP Rupashi Cinema Hall by filing their written statement before the District Forum, in which they stated that the said complaint was not maintainable against them, as no cause of action had accrued to the complainant against them. There was no privity of contract between the complainant and the OP Rupashi Cinema Hall. The OP/respondent denied all the facts and allegations listed in the complaint, and even the visit of the complainant to the Rupashi Cinema Hall to watch the movie on that day. They further denied that the food outlet in question was a part and parcel of the Rupashi Cinema Hall.

4. The District Forum after considering the averments of the parties, dismissed the consumer complaint vide their order dated 06.01.2016, saying that the OP Rupashi Cinema Hall was not the seller of Coca-Cola cans and hence, not involved in any unfair trade practice. However, the District Forum further observed in their order as follows:-

"It is admitted & established fact that Opposite party is not seller of Coca Cola cans. The seller is not made party. Petitioner heard from others that Food outlet of Rupashi Cinema Hall charges Rs. 10 extra upon the MRP. This is hearsay evidence only. On the basis of it we cannot say that OP was involved in the unfair trade practice. Demanding or selling for any amount more than MRP in any place except Hotel or Restaurant where extra service charge is taken definitely is a unfair trade practice."

5. Being aggrieved against the said order of the District Forum, the complainant challenged the same by way of an appeal before the State Commission, but the

said appeal having been dismissed vide impugned order dated 11.05.2016, the complainant is before this Commission by way of the present revision petition.

6. The State Commission observed that the complainants as practising advocates are conscious consumers and hence, they should not have purchased the Coca-Cola cans from an unnamed and un-bannered food outlet shop.

7. During hearing before me, the learned counsel for the petitioner/complainant stated that the factum of charging price over and above the MRP printed on the Coca-Cola cans had not been denied anywhere in the averments made in the proceedings in this consumer complaint. Even the District Forum observed in their order that the "consumer complaint appears to be true." They, however, directed the Legal Metrology Department of the Government of Tripura to find out the actual seller in Rupashi Cinema Hall, doing this unfair trade practice. However, since unnamed and un-bannered food outlet was allowed to function within the premises of the OP Cinema, they were guilty of deficiency in service towards the complainants and hence, liable to pay compensation to them.

8. The OP/Respondent has not denied in their reply to legal notice etc. that the said incident had not taken place. The learned counsel for the respondent stated, however, that keeping in view the concurrent findings of the consumer fora below, there was no justification for the exercise of revisional jurisdiction in the matter. Relying upon the judgment of the Hon'ble Apex Court in " Rubi (Chandra) Dutta Vs. United India Insurance Co. Ltd. [(2011) 11 SCC 269] ", the learned counsel argued that such jurisdiction could be exercised only, if there was a jurisdictional error or material defect in the orders passed by the consumer fora below. The learned counsel stated that there was no cogent and convincing evidence to substantiate the allegations levelled in the complaint and hence, the complaint had been rightly ordered to be dismissed by the consumer fora below.

9. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

10. The main issue involved in the present case is whether there was an incident of overcharging for the Coca-Cola cans beyond the MRP from the complainant on the premises of the OP Rupashi Cinema Hall, and whether the said OP is responsible in any manner for the said incident. In this regard, the legal notice sent by the complainants dated 22.10.2014 is of great significance and relevance. It has been explicitly stated in the said notice by the complainant, who is himself an Advocate that he purchased four Coca-Cola cans from the retail food outlet situated at the premises of the OP Rupashi Cinema Hall, for which he had to pay a sum of 40/- per can. When he sought proper money receipt for the same, there was plain denial on the part of the vendor to issue the receipt. In reply to the said legal notice, the OP Rupashi Cinema Hall stated vide their letter dated 27.10.2014 as follows:-

"In reply to your above letter I would like to mention here that I think that your letter does not deserve as "Legal Notice" as it is a letter in a plain paper having

no identity of yours like Registration Number, Letter head or any Advocate Rubber Stamp.

However, I would like to inform that there are many rented shops in the said premises. Every shop keeper has valid Trade License and separate identity. I do not know that complaint made by you whether fact or not. It is simply between yourself and shop keeper. So I am not in any way involved in the matter."

11. It is clear from the reply that the OP simply tried to wash its hands off the whole incident, saying that the matter was between the complainant and the shop-keeper. This version of the OP/respondent cannot be accepted by any stretch of imagination, keeping in view the fact that the existence of the said food outlet, from which the Coca-Cola cans were purchased, has not been denied anywhere by the OP/respondent. It has also not been denied that the said food outlet was unnamed and unbannered. It is evident, therefore, that the OP/respondent as owner of the premises, was responsible for the running of the said food outlet at that place. There is a privity of contract between the complainant and the OP Rupashi Cinema Hall, as the complainant duly purchased the tickets of 50/- per person for watching the movie on the premises of the said Rupashi Cinema Hall. In case, any deficiency in service is there on the part of the unnamed and unbannered food outlet by way of overcharging or not issuing the money receipt, the responsibility lies on the OP/respondent for the same, and they are liable to compensate the complainants for the said deficiency in service.

12. From the documents produced on record, it is clear that Shri Arindam Kar, the complainant, Smt. Swaranalata Tripura, Smt. Rumela Ghua, Sh. Dhurabajyoti Saha, who all went together to watch the movie at the OP Rupashi Cinema Hall, have filed their respective affidavits, supporting the said incident, rather they stated that on previous occasion also, there was incident of overcharging on the part of the said food outlet. It is evident, therefore, that the case of the complainant having been fully established by evidence, the OP Rupashi Cinema Hall cannot escape their liability to pay compensation to them for their deficiency in service as well as causing mental harassment to their customers.

13. The main line of argument taken by the OP Rupashi Cinema Hall is that this Commission had limited scope in exercising the revisional jurisdiction, keeping in view the concurrent findings of the consumer fora below. It has been explicitly laid down in the judgment of the Hon"ble Supreme Court in " Rubi (Chandra) Dutta Vs. United India Insurance Co. Ltd. (supra)", that this jurisdiction could be exercised, if there was a jurisdictional error or material defect in the orders passed by the consumer fora below. It is evident that the orders passed by the District Forum as well as the State Commission do suffer from "material defect". The District Forum has itself held that the complaint appeared to be true. However, they dismissed the complaint after giving direction to the Legal Metrology Department of the State Government to take necessary action in the matter. As per the facts and circumstances on record, the OP/respondent could not escape their liability to pay compensation to the complainants for the wrong-

doings being done on their premises.

14. It shall be worthwhile to quote here the preamble of the Consumer Protection Act, 1986, which reads as follows:-

"An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers" disputes and for matters connected therewith."

15. It is clear from the above preamble that the main objective for the enactment of the Act was to ensure better protection of the interests of the consumers. In the present case, a group of practising Advocates have taken the initiative to bring into focus the wrong-doings/malpractices being done at the premises of a public place, called the Rupashi Cinema Hall. The State Commission observed that as practising Advocates, they are conscious consumers and hence, they should not have purchased the Coca-Cola cans from an unnamed, unbannered shop. I have no reason to agree with the State Commission on this count. A group of practising Advocates, who are an enlightened section of the society, rather they are a part and parcel of the Justice Delivery System in this country, have a greater responsibility to bring into focus any act of malpractice, being indulged into by any public or private establishment. It is appreciable that these Advocates have highlighted the misdeeds being done on the premises of a public place and sought remedial action against the same. The action taken by them amounts to great service to the public at large.

16. Based on the discussion above, this revision petition is allowed, the orders passed by both the consumer fora below are set aside, being perverse in the eyes of law. This consumer complaint is allowed and a sum of 50,000/- is awarded as compensation to the complainant, which shall be payable within four weeks of the date of this order alongwith interest @9% p.a. from the date of filing of the complaint till realisation. In addition, a sum of 50,000/- shall be payable to the complainant as litigation cost, as they have been pursuing the complaint right from the District Forum to this Commission, for which they must have incurred heavy expenditure. It is further stated that as directed by the District Forum in their order, the Department of Legal Metrology of the State Government shall play a pro-active role in the matter and ensure proper checking of the premises of such establishments and make them follow and implement the legal provisions on the subject. It is made clear that the public at large must be made aware about the prices to be charged for any commodity sold on the premises of a public place like this Cinema Hall and proper receipts against the payment received should always be provided to them. It is observed that if the concerned public authorities perform their functions in a diligent manner, it shall ensure proper protection to the consumers and save them from the hassles of resorting to avoidable litigation.