

(2010) 07 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

Ashok Kumar Shivpuri

APPELLANT

Vs

Akbarally

RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Citation : 2010 4 CPJ 207

Hon'ble Judges : K.S.Gupta , R.K.Batta J.

Advocate : M.Sufian Siddiqui , Gaurav Jain

Judgement

1. THE complaint filed by the petitioner was dismissed by the District Forum and appeal filed by the petitioner against the said order of the District Forum was also dismissed. We have heard the petitioner who is present in person and Counsel for the OPs. Notice was issued for final disposal at the admission stage.

2. THE complainant had approached the District Forum with a grievance that he was eligible to get Reliance mobile irrespective of whether he took connection or not as per the advertisement. The case of the complainant is that on the basis of advertisement "Diwali Dhamaal", he had purchased goods worth Rs. 14,178 from OP No. 1 - M/s. Akbarally's. He was given three free gifts under the said scheme, but he was denied Reliance mobile on the ground that Reliance mobile would be provided only if he took Reliance connection on payment of required charges. The grievance of the complainant is that OP No. 1 was forcibly selling the connection duly activated under the garb of the said advertisement wherein it was clearly shown that a free Reliance mobile set shall be provided on purchase of goods valued from Rs. 1,000 to Rs. 10,000 and above besides guaranteed gifts etc. The complainant also alleged that OP No. 1, M/s. Akbarally's in collusion with Reliance Industries Ltd.-OP No. 2 were cheating the customers by misguiding under the garb of promotion scheme.

3. THE OP No. 1, M/s. Akbarally's refuted the allegations made by the complainant by stating that the offer was very clear which shows that conditions apply and as such the complainant was required to comply with the conditions which he failed to do so. It is further submitted that no deficiency in service has

been pointed out. It has been explained that the hand set i.e. mobile of Reliance make does not function like other mobiles unless activated and connected by the Company to use the hand set and the Reliance mobile works on CDMA technology in which Sim Card is fixed and cannot be detached. It is also pointed out that the other mobiles function on GSM technology with a detachable Sim Card. It is further stated that for acquiring the Reliance mobile, certain documents are required to be submitted to the Company for connection and the handset is by itself is not available in the market. In the scheme offered the upfront charge of Rs. 501 was waived, but the connection charges were required to be paid and certain documents were to be filed to avail of the scheme. It is also pointed out that in the advertisement it is clearly stated "Plus Reliance India Mobile Connection" * with an asterix mark which at the bottom of the page shows "subject to RIM approval". OP No. 1 further submitted that one more note is shown at the bottom, which shows "Conditions apply". These conditions include that for a mobile handset, connection is required to be taken and undertaking has to be furnished. The complainant refused to sign the undertaking and as such, he was not entitled to a Reliance mobile phone.

4. OP No. 2, Reliance Industries Ltd. took up the same stand in para 6 of its written statement and submitted that OP No. 2 cannot give connection unless the customer adopts any one of the schemes by filling up application form and furnish required documents. The complainant failed to comply with the conditions as required for Reliance mobile connection and hence there was no question of giving him any mobile connection.

5. THE District Forum held that in addition to the gifts, the Reliance mobile connection was to be given in terms of advertisement "Diwali Dhamaal", but in the said advertisement there was a star and near the star there was written terms and conditions apply. The District Forum held that there was no deficiency in service. However, the District Forum in para 11(5) has proceeded on the wrong presumption that the complainant had demanded Reliance mobile connection. In fact, a bare reading of the complaint shows that the complainant had asked for Reliance mobile only. In para 11(6), the District Forum held that 3 gifts were given to the complainant and in the advertisement it was written down that Reliance India Mobile connection will be given, but certain terms and conditions will be there. Since the complainant did not fulfil the terms and conditions, the complaint was dismissed.

6. THE complainant had filed a appeal before the State Commission, but the State Commission summarily dismissed the appeal after holding that the District Forum had given adequate and sufficient reasons in para 6 of the judgment. In fact, the State Commission should have examined the issues involved instead of summarily dismissing the appeal. Be that as it may, instead of remanding the matter we shall deal with the matter on merits.

7. THE complainant has placed before us the coloured advertisement "Diwali Dhamaal offer", which reads as under: 8 Prize Cheques" Diwali Worth Rs. 1 lac

each Dhamaal Oct. 11-Oct. 26 Plus Hazaron Ke Guaranteed Gift Plus Reliance India Mobile connection* Plus over 100 prizes to be won Here's the DIWALI DHAMAAL Offer": PURCHASE VALUE PRIZE and GIFT Rs. 1000 to 1499 - Reliance Mobile Rs. 1500 to 2499 - Reliance Mobile plus Chance to win a Prize Cheque worth Rs. 1 lac Rs. 2500 to 4999 - Reliance Mobile plus Guaranteed gift worth Rs. 500 plus Chance to win a Prize Cheque worth Rs. 1 lac Rs. 5000 to 9999 - Reliance Mobile plus Guaranteed gift worth Rs. 1000 plus Chance to win a Prize Cheque worth Rs. 1 lac Rs. 10000 and above - Reliance Mobile plus Guaranteed gift worth Rs. 2000 plus Chance to win a Prize Cheque worth Rs. 1 lac

8. THE impression, which any layman will get, is that Reliance mobile is a part of prize and gift. The general public may not be aware as to the technology behind Reliance mobile or that the Reliance mobile does not function unless activated or connected by the Company to use the handset like other mobiles which function on GSM technology with detachable Sim Card. Though, the advertisement speaks of "Plus Reliance Mobile Connection" and there is one asterix mark and the asterix mark has been explained at the bottom subject to RIM approval. The contention of the OP is that conditions apply to the free gift on Reliance India mobile in view of ** marks at the bottom of the advertisement which states "condition apply". However, it is pertinent to note that no asterix mark is shown against the "Plus Reliance India Mobile Connection" which is prize and gift consequent to making purchases under the "Diwali Dhamaal offer". Therefore, the contention of the respondents that because of ** marks at the bottom of the advertisement condition applied to the free gift of Reliance mobile is without any merit whatsoever. Thus, the advertisement stating that a free mobile set will be given is misleading inasmuch as the purchaser as per contention of the OPs has to pay for the activation and connection of the Reliance Mobile. In the light of the advertisement, the complainant was entitled to Reliance mobile and he could not be forced to get the same activated unless it was clearly explained in the advertisement that the purchaser of goods shall be entitled to free activation of Reliance mobile only on making payment for activation thereof. In our view, the advertisement in question is a misleading advertisement amounting to unfair trade practice on the part of the OPs since the sales of Reliance mobiles are sponsored by OP No. 1 in collaboration with OP No. 2, Reliance Industries Ltd.

9. SECTION 2(1)(r) of the C.P. Act defines "Unfair Trade Practice" as under: "Unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:

The definition of "Unfair Trade Practice" is an inclusive definition and the purpose of inclusive clause is to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the definition clause declares

that they shall include. When the question of interpretation of the term "unfair trade practice" arises, it must be remembered that the object of the provision is to bring honesty and truth in the relationship between the manufacturer and the consumer. When a problem arises as to whether a particular act can be condemned as an "unfair trade practice" or not, the key to the solution would be to examine whether it contains a false statement and is misleading and further what is the effect of such a representation made by the manufacturer on the common man? Does it lead a reasonable person in the position of a buyer to a wrong conclusion? The issue cannot be resolved merely by examining whether the representation is correct or incorrect in the literal sense. A representation containing a statement apparently correct in the technical sense may have the effect of misleading the buyer by using tricky language. Similarly, a statement, which may be inaccurate in the technical literal sense can convey the truth and sometimes more effectively than a literally correct statement. It is, therefore, necessary to examine whether the representation, complained of, contains the element of misleading the buyer. Does a reasonable man on reading the advertisement form a belief different from what the truth is? The position will have to be viewed with objectivity, in an impersonal manner. It is stated in Halsbury's Laws of England (Fourth Edition, paragraph 1044 and 1045) that a representation will be deemed to be false if it is false in substance and in fact; and the test by which the representation is to be judged is to see whether the discrepancy between the fact as represented and the actual fact is such as would be considered material by a reasonable representee.

10. IN our view, any misleading advertisement for the purpose of promoting the sales would amount to unfair trade practice. In view of this, we hold both the respondents responsible for unfair trade practice in question. The complaint is accordingly allowed and we are of the opinion that a lump sum compensation of Rs. 50,000 be awarded including cost of litigation expenses incurred etc. in favour of the complainant for the unfair trade practice adopted by the respondents. R.P. allowed.