(2002) 12 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

Bajaj Auto Finance Ltd. APPELLANT

Vs

VIJAYA KUMAR ADVANT RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:

Citation : 2004 1 CPC 240 : 2004 1 CPJ 177

Hon'ble Judges : P.Ramakrishnam Raju , C.P.Suresh J.

Final Decision : Appeal dismissed

Judgement

1. THE unsuccessful opposite party No. 2 against whom the complaint was allowed is the appellant before this Commission. 1. THE facts in brief are that on 28.8.1992 the complainant purchased a Bajaj Chetak Scooter from the first opposite party, who is a dealer in Bajaj Auto Vehicles, for Rs. 17,895/- under Invoice No. 3851 dated 28.8.1992 (Ex. A-7) under a finance scheme titled as "Olympic Scheme" offered by the second opposite party.

2. AN application of Hire Purchase Finance, Ex. B-1, was submitted by the complainant on 26.8.1992 to the second opposite party for finance of Rs. 19,500/- to purchase the said vehicle. The amount is to be repaid in 36 monthly instalments. The second opposite party agreed to finance the said amount with interest @ 10.75% p.a. for a period of three years, worked out the entire amount payable by the complainant at Rs. 25,812/- which is to be paid in 36 monthly instalments of Rs. 717/- per month. The second opposite party also obtained an agreement Ex. B-2 and a promissory note from the complainant on the same day. However, the second opposite party, collected, at the vez out-set, a sum of Rs. 405/- towards margin money, Rs. 3,800/- in advance, towards last few instalments viz., Rs. 215/- towards part of 31st instalment, Rs. 3,585/- towards 32nd to 36th instalments and Rs. 550/- towards documentation charges, in all Rs. 4,350/- by means of a demand draft dated 27.8.1992 from the complainant.

The complainant alleges that the collection of Rs. 3,800/- from him partly towards 31st instalment, and fully towards 32nd and 36th instalments, in advance, at the time of lending and subjecting it to interest at 10.75% in the beginning for a full period of three years amounts to unfair trade practice. Therefore, he approached the District Forum.

3. THE first opposite party filed his written version stating that it has only furnished the details of the finance schemes of various vehicle financiers with whom it has an understanding, and it is not responsible for mis-statement etc. The second opposite party filed its counter affidavit wherein, it is alleged that under the Hire Purchase Finance Scheme, viz., "Olympic Scheme", the intending hirer was required to remit a sum of Rs. 3,800/- towards cost of last few monthly instalments in advance, by way of condition precedent, for acquiring financial assistance from it. Through paper advertisements and pamphlets, the factum of advance instalments payable, and interest chargeable thereon, were clearly explained and the complainant had signed on the application form only after understanding the operation of Olympic Scheme and upon agreeing to the terms and conditions thereof. At this belated stage, it is not open to him to renegade from the terms and conditions earlier assented to by him. It also further pleaded that the District Forum has no jurisdiction as the subject transaction was one of hire purchases. It also further averred that the sale could be concluded only on the payment of the last instalment, and till then, the respective instalments were no more than hire charges which cannot be interfered with under the Consumer Protection Act. The sanctioning of a loan cannot be termed as ''service'' and the complainant "consumer" under the Act. The interest charged on the margin money collected from the complainant as advance instalments does not amount to unfair trade practice.

4. BASING on these pleadings and the evidence adduced the District Forum allowed the complaint and directed the second opposite party, appellant herein to pay to the complainant interest at 18% per annum from 28.8.1992 on Rs. 215/- for 30 months, on the 32nd instalment of Rs. 717/- for 31 months, on the 33rd instalment of Rs. 717/- for 33 months, on the 35th instalment of Rs. 717/- for 34 months and on the 36th instalment of Rs. 717/- for 35 months and compensation of Rs. 1,000/- and costs of Rs. 200/- within a month from the date of this order. Aggrieved by the said finding and order, the second opposite party preferred this appeal. The point for consideration is, whether there is any deficiency in service on the part of the appellant, if so, to what extent ? The facts in brief are that the complainant has purchased a vehicle from the first opposite party for consideration under Hire Purchase Scheme financed by the second opposite party. The complainant executed an agreement in favour of the second opposite party, Ex. B-2, which shows that the complainant had agreed to pay the total amount of Rs. 25,812/- in monthly instalments of Rs. 717/- per month viz., Rs. 542/- towards principal and Rs. 175/- towards finance charges. The opposite party has collected the amount due under the instalments 32, 33, 35 and 36. The complainant approached the District Forum claiming interest over this amount @ 18% p.a. The opposite party contends that the Hire Purchase Scheme does not come under the purview of the C.P. Act and the complaint is, therefore, not maintainable.

5. THE provision of facilities in connection with financial is specifically included in the explanatory part of the definition of ''service'' given in Section 2(1)(o) of the C.P. Act. THE opposite party No. 2 had obviously financed a sum of Rs. 19,500/- to the complainant for the purchase of the said vehicle in consideration for repayment of the said amount in instalments together with finance charges, so that, the complainant who availed the said service of the opposite party No. 2 for such consideration is a consumer as against the opposite party No. 2 also.

6. SERVICE has to be distinguished from the consideration paid for it and while a complaint can be brought on the ground of deficiency in service but a dispute as to consideration cannot also be termed as a dispute or deficiency as to service unless the service which is hired or availed undertaken is two-fold, namely, performing the job undertaken by it and charging for it in accordance with some statutory or contractual, scale, formula or rule as, for instance, the Telephone Department, which not only renders service of providing telephone facility, but also billing the consumer as per the relevant law and rules, or the Electricity Board, which not only renders the service of providing electric power, but also billing the consumer as per the relevant law and rules. The learned Counsel for the opposite party No. 2 has contend that the complainant had agreed for payment of the last few instalments in advance and still subjecting the amount of the said instalments to interest on par with the remaining amount, so that, he cannot now turn round and assail the same.

Opposite party No. 2 filed two documents, the first of which, marked as Ex. B-1, is the application for hire purchase finance wherein against the heading "Number of Instalment(s) in Adv." is written "5 instalments + Rs. 215" but a perusal of the entire application shows that the writing against the said heading is with a different ink. The only conclusion which we can draw from this difference in the ink is that at the time the complainant signed this application nothing was written against the said heading and it was blank, but it has been filled up as above before the said application is filed in this case in support of the defence of the opposite party No. 2. We cannot, therefore, say that at the time the complainant submitted the said application on 26.8.1992 he had agreed for the collection of last few instalments in advance.

7. THE agreement executed by the complainant in favour of the opposite party No. 2 is a second document, which is marked as Ex. B-2 but it merely shows that the complainant had agreed, thereunder, to pay to the opposite party No. 2 the total amount of Rs. 25,812/- in monthly instalments of Rs. 717/- per month commencing from 21st of September, 1992 and that each instalment of Rs. 717/- comprised of Rs. 542/- towards the principal and Rs. 175/- towards finance charges. This agreement also does not so much as whisper that the complainant had agreed thereunder to pay the last few instalments in advance. THE contention of the learned Counsel for the opposite party No. 2 is that in his application and hire purchase agreement the complainant had agreed to pay the last few instalments in advance and that he cannot now go back on such

agreement does not, therefore, stand the test of scrutiny. Section 2(1)(r) of the said Act defines unfair trade practice to mean 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 deceptive practice, including any of the practices set out therein. The litmus test to determine as to whether a trade practice amounts to an unfair trade practice is as to whether it adopts an unfair method or deceptive practice and does so for promoting sale, use or supply of any goods or for the provision of any service.

8. THE opposite party No. 2 received a down payment of Rs. 3,800/- towards the sale price of the said vehicle and advanced a loan of the balance amount only. Even so, it included the said amount in the amount financed by it, disguised it as Rs. 215/- towards the 31st instalment and the balance amount towards 32nd to 36th instalments and notwithstanding its advance receipt subjected the said amount also to full interest at 10.75% per annum flat, for the entire period of three years. THE opposite party No. 2, so to say charged interest not only on the amount which it had actually financed but also on the amount which it did not finance, and instead, the complainant paid in cash at the outset. We think that this trade practice amounts to unfair method because recovery of interest on the amount never lent to the borrower is not fair and also amounts to deceptive practice because the opposite party No. 2 has deceptively disguised this initial down payment as the amount of the last few instalments. We have no doubt in our minds that this is unfair trade practice so that the opposite party No. 2, which is guilty of it, is liable to compensate the complainant for the loss and injury sustained by him, on account of such unfair trade practice. The defence of the opposite party No. 2 that the said collection was in the nature of margin money and that levy of interest on margin money does not incur the wrath of the Consumer Protection Act has no legs to stand upon, because the opposite party No. 2 had separately collected margin money of Rs. 405/-, apart from Rs. 550/- towards documentation charges, though we find only one document, namely Hire Purchase Agreement, on which hardly anything was spent. The complainant is obviously entitled to interest at a suitable rate, which we fix at 18% per annum, on the amount of the last few instalments from 28.8.1992, till each of such instalments fell due for payment. In view of the findings above, we find no merits in this appeal and this appeal is liable to be dismissed and accordingly dismissed with costs of Rs. 1,000/-. Time for payment six weeks. Appeal dismissed.

