
(1993) 12 NCDRC CK 0070

In the National Consumer Disputes Redressal Commission

BHARGAV AUTO And ELECTRIC STORES

APPELLANT

Vs

LAJJARAM TIWARI

RESPONDENT

Date of Decision : 09-12-1993

Acts Referred:

Citation : 1994 2 CPJ 66

Hon'ble Judges : V.S.Kokje , M.L.Tiwari J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal filed by the Original Opposite Party against the decision of District Forum, Gwalior allowing the complaint against Appellant and directing the Appellant to refund a sum of Rs. 115.43 paise as the excess price recovered on a cut-out with Rs. 200/- as compensation, Rs. 100/- as expenses of litigation and Rs. 250/- as Lawyer's fee.

2. THE complainant had alleged that on 5-10- 91 he had purchased a cut-out manufactured by LUCAS Company from the Opposite Party's shop. It was sold to him for Rs. 484/-on 5-10-91 and Cash Memo No. 1613 was given to him. It is alleged by the Complainant that on the cartoon in which the cut-out was packed the maximum retail price inclusive all taxes was printed as Rs. 368-57 paise. Thus, a sum of Rs. 115.43 paise was charged over and above the maximum retail price. THE Complainant claimed this amount back with Rs. 1000/- as compensation. In reply the Opposite Party, the Appellant herein; admitted to have sold the article for Rs. 484/-, but, it was denied that excess price was charged. According to the Opposite Party, the price charged was authorized by the Company vide circular dated 10th August, 1991. According to this circular, the maximum retail price was Rs. 484.95 paise. The District Forum relied on the version of the Complainant and held that excess price had been charged. The ground on which it was so held was that under the Standards of Weights and Measures Act, 1976 price in excess of the price printed on the cartoon cannot be charged.

We have perused the record and heard the Appellant's Counsel who was

present. The Respondent did not appear despite notice. The point which stare us in the face is whether a Consumer Disputes Redressal Agency can grant any relief to any consumer in case of a grievance of charging excess price. It is no doubt true that a grievance of charging excess price is covered in the definition of the term "Complaint." The relevant part of the definition is reproduced hereunder : - "2. Definition..(1) In this Act, unless the context otherwise requires- (c) "complaint" means any allegation in writing made by a complainant that - (i).. (ii).. (iii). (iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods; with a view to obtaining any relief provided by or under this Act."

3. HOWEVER, only because charging of excess price falls in the definition of "complaint", no relief can be granted by a Consumer Disputes Redressal Agency under the Consumer Protection Act, 1986, unless jurisdiction to grant such relief is specifically conferred by any other provision in the Consumer Protection Act, 1986. The jurisdiction of the District Forum to grant relief is given in Section 14 of the Act. Sub-section (1) of Section 14 of the Act is relevant for our purposes and is being reproduced here under : - "14. Finding of the District Forum- (1) If, after the proceeding conducted under Section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to (do) one or more of the following things, namely- (a) to remove defect pointed out by the appropriate laboratory from the goods in question; (b) To replace the goods with new goods of similar description which shall be free from any defect; (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant; (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party; (e) to remove the defects or deficiencies in the services in question; (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them; (g) not to offer the hazardous goods for sale; (h) to withdraw the hazardous goods from being offered for sale; (i) to provide for adequate costs to parties."

It would be clear from the plain language of Section 14 that the jurisdiction to grant reliefs in Clauses (a) to (i) of Sub-section (1) of Section 14 arises only when the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved. Thus, a finding that the goods complained against suffer from any of the defects specified in the complaint or any of the allegations contained in the complaint about the services are proved is a sine qua non for conferring jurisdiction on the District Forum to grant any of the reliefs mentioned in Sub-section (1) of Section 14 of the Act. It would be noticed that the language used so far as the complaints about the services are concerned in the aforesaid provision is wide and general. But, the

language used so far as the complaints about the goods are concerned is specific for getting any relief under the Act. A purchaser of the goods has to prove that the goods complained against suffer from any of the defects specified in the complaint. He cannot otherwise get any relief from the District Forum. The term "defect" has been defined in Section 2(1)(f) of the Act as follows : - "2(1)(f) : "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law (under any contract express or implied) as is claimed by the trader in any manner whatsoever in relation to any goods."

A plain reading of the definition would show that charging of excess price cannot be said to be a defect in the goods. In the face of this plain and unambiguous language used by the Legislature, it cannot be said that Section 14 empowers the District Forum to grant any relief in case of charging of excess price by a trader. This may be a legislative lacuna or a loop-hole but, it is not for us to plug it or to ignore it. We, therefore, hold that no relief can be granted by a District Forum in th matter of complaints regarding charging of excess price.

4. EVEN on the merits of the case, we are not convinced that the Complainant had been successful in proving that the price charged was an excess price. The cartoon on which the price was printed has not been produced before the District Forum. Moreover, to fall within the definition of "complaint" it has to be shown that a trader has charged for the goods a price in excess of the price fixed by or under any law for the time being in force or has charged price in excess of price displayed on the goods or any package containing such goods. When the complaint is that the price in excess of what was displayed on the package has been charged, if, the Opposite Party proves that the price displayed on the goods was not the current price which could be legally charged, no relief can be granted to the Com plainant. Consumer can be said to suffer only when a price which is prohibited by law has been charged from him. He cannot be taken to have suffered only because the printed price on the package in which the goods are sold has not been updated to bring it in conformity with the current price which could be legally charged on the goods. The District Forum has unnecessarily brought in the provisions of the Standards of Weights and Measures Act, 1976 and the Rules made there under. The provisions regarding package of commodities are contained in Part-IV of the Standards of Weights and Measures Act covering Sections 31 to 46. Firstly, the provisions apply to inter-State trade or commerce only by virtue of Section 31 of the Act. The term "inter- State trade or commerce" is defined in Section 2(m) of the Act. There is no material placed on record to show that the sale was a inter-State sale. So far as Rule 6 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 so far as printing of price etc. is concerned, in absence of anything in the Act itself to govern regulation of price , it is very much doubtful whether the Rules are intravires the Act. In any case, any breach of the Rules in any other Act cannot be taken as a basis for grant of relief under the Consumer Protection Act, 1986 unless there is some power granted by the Act to grant any such relief. For the

aforesaid reasons the appeal is allowed. The order of the District Forum, Gwalior is set-aside. Parties shall bear their own costs. Appeal allowed.