(2009) 03 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

B.S. Sharma APPELLANT

Vs

Jewellers Madanlal Chhaganlal RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Citation : 2009 2 CPJ 212

Hon'ble Judges : B.N.P.SINGH , P.D.SHENOY J.

Final Decision : R.P. allowed

Judgement

1. HEARD the learned Counsel for the respondent and the petitioner in person.

2. IN this case, the complainant had purchased a gold ring of 2.52 grams by paying a sum of Rs. 1,247 to M/s. Jewellers Madanlal Chhaganlal on 24.11.2001. At the time of sale, the purity of the gold was mentioned as 23 carats. It is the case of the complainant that he got the ring examined and it was found to be 20 carats instead of 23 carats. Accordingly he filed a complaint before District Forum seeking compensation of Rs. 25,000 and replacement of the ring with 23 carats or its price with interest and Rs. 5,000 as cost of the proceedings. The District Forum did not send the ring for testing to any laboratory. However, on the oral instructions from the District Forum the complainant got the ring test by M/s. Inter -Continental Service Agency Bureau, New Delhi, which on 8.8.2002, found the purity of the ring to be 20.5 carats i.e., 85.5% purity. The District Forum, however, dismissed the complaint. Aggrieved by the order of the District Forum, on behalf of the complainant - Akhil Bhartiya Upbhokta Congress filed an appeal which was also dismissed.

3. DISSATISFI ED by the order of the State Commission, the petitioner has filed this revision petition before us. The learned representative of the petitioner submitted that though it was the duty of the District Forum to have complied with Section 13 of the C.P. Act. However, he himself got the ring tested from a laboratory and found the purity of ring to 20.5 carats i.e. 85.5%. He obtained a receipt from M/s. Inter -Continental Service Agency Bureau and found the ring after testing purity at 75%. According to the opposite party - the Jeweller had

assured the complainant that it would accept if the ring is returned with 85.5% purity. On the other hand the test conducted by the complainant - Shri Sharma shows that it is 85.6%, which clarifies that it was higher than what the jeweller had assured. Now the issue is what is actual purity stated to be sold. It is clear from the receipts issued by the jeweller that it had a purity of 23 carats meaning thereby 95%. Even the Bureau of Indian Standards has prescribed that 22 carats purity, which comes to 91.6% and the affidavit filed by the jeweller before the District Forum is clear from the test report which shows 85.5% which is higher than what has been promised by the jeweller. However, at present there are hallmarks and as the jeweller had obtained the licence for the same, hence, such low purity gold is not being sold as in older days. Be it may be so, it is clear that the ring sold to the complainant was of lesser purity than what it was assured in the receipt issued to the complainant.

4. IN a petition filed by Akhil Bhartiya Upbhokta Congress v. Aggarwal Jewellers, I (2006) CPJ 32 (NC), the Commission issued notices to the Cabinet Secretary, Union of India, the Governor, Reserve Bank of India and the Director General, Bureau of Indian Standards to assist the Commission how to achieve the discontinuance of the unfair trade practice prevailing in the jewellery trade. The Central Government filed an affidavit to consider the feasibility of making hallmarking mandatory. Central Government filed another affidavit that they would make hallmarking machinery available in a phased manner from year 2008. The main objective of this exercise is to make hallmarking mandatory for the jewellery trade.

5. IT was observed by the National Commission, "Simpliciter awareness on the part of the consumer will not serve any purpose. Therefore, till the hallmarking is made compulsory, Government can issue appropriate directions under the provisions of various Acts, to see that before sale of the precious articles, it should contain a mark of its quality/purity."

6. SECTION 2 (f) of the Consumer Protection Act, 1986 which reads as under: " 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 for the time being in force or (under any contract, express or implied, or) as is claimed by the trader in any manner whatsoever in relation to any goods."

7. THEREFORE in this case there is a clear -cut defect in the gold ring sold to the consumer.

8. THE Bureau of Indian Standards had conducted a survey in October 2001 on gold jewellery and 15 jewellery items were purchased as random samples from small and big outlets from seven important markets in Delhi. Twelve out of 15 samples were of much lower quality caratage. That meant that 80% of the consumers got only 84.5% value of the money they paid for gold.

9. IN view of the above analysis, we hold that the respondent jeweller has resorted to unfair trade practice accordingly, we set aside the order of the Fora

below and allow the complaint of the complainant. We direct the respondent to pay the complainant a lump sum compensation of Rs. 25,000 for resorting to unfair trade practice and also for causing mental agony, harassment and pecuniary loss to the complainant, as the complainant had to fight his case upto the level of the National Commission and we also award Rs. 10,000 as cost to the complainant.

