
(2006) 12 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

Cadbury India Ltd

APPELLANT

Vs

L NIRANJAN

RESPONDENT

Date of Decision : 04-12-2006

Acts Referred:

Citation : 2007 1 CPJ 40

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Advocate : Surekha Raman

Judgement

1. HEARD the learned Counsel for the petitioner.
2. COMPLAINANT purchased a Cadbury chocolate for presenting it as a birthday gift. Unfortunately, when the said chocolate was opened, it was found that chocolate was infested with worms and fungus. As it was a birthday party, the situation became unpleasant. He, therefore, approached the District Forum, Bangalore for compensation. Before the District Forum, it was contended by the petitioner that it is multi-national Company and is always complying with the norms prescribed by various legislations, such as, the Prevention of Food Adulteration Act, the Standards of Weights and Measures Act, etc. The District Forum, on the basis of the application filed by the complainant, sent the product to the Public Health Institute for analysis and the report was obtained. As per the report, it was infested with worms.

However, learned Counsel appearing on behalf of the petitioner multi-national company vehemently contended that if the chocolate is not kept in a cool condition, petitioner cannot be held liable. She further submits that the chocolate was sent to Public Health Institute for analysis after lapse of four months and the same was in the possession of the complainant. She, therefore, submits that the petitioner is not liable because the complainant has failed to establish that the chocolate was infested with worms.

3. IT may be true that in a criminal prosecution under the Prevention of Food Adulteration Act, petitioner may get benefit of doubt for some procedural lapse

on the part of the complainant but before a Consumer Forum, question which is required to be decided is why a small person, who purchased a birthday gift, would file a false complaint against a multi-national company and litigate for a small amount not only before the Consumer Fora but before the Apex Court. In our view, there is no reason to disbelieve the complainant who immediately approached the Consumer Fora with the chocolate which was infested with worms. Public Analyst's report is a subsequent aspect. Regarding the contention that such chocolates are required to be kept or preserved in a cool condition which may require refrigerator, learned Counsel appearing on behalf of the petitioner submits that if a retailer or vendor of such chocolates commits something wrong in not preserving it at appropriate place, manufacturer is not liable. In our view, there is no restriction by the petitioner that the retailer not having a refrigerator should not sell such chocolates. It is for the manufacturer to watch that unauthorized persons do not carry out the business of selling such perishable articles which may become hazardous for the health, if not properly preserved. On the contrary, before the District Forum, petitioner has given an undertaking that reasonable steps would be taken to see that products are stored under hygienic condition by providing vis-coolers and other storage devices to the retail outlets.

4. HOWEVER, it is pointed out that the duty of maintaining hygienic condition is the primary responsibility of the Local Health Authority which issues licences for storage to the retailers. It is true that it is the duty of the Local Health Authority to take steps and test such articles every now and then but unfortunately that practice is not prevailing in our country for various reasons. But, that would not give licence to multi-national companies to exploit the situation and take benefit by contending that chocolate, in question, was sent after few months by forgetting the fact that complainant himself has verified that chocolate was infested with worms. It is also admitted that due to high fat content the chocolate is not conducive to fungal growth and such occurrence can be associated with bad storage conditions, which are largely prevalent at retail outlets. The aforesaid admission makes it clear that with the bad storage conditions which are largely prevalent at the retail outlets, such fungal growth can occur. If such is the position, not only Local Authority should take action and verify such chocolates but also it is the duty of the manufacturer that such things do not occur. To prevent this practice, we hope that petitioner, in their advertisements, as a matter of routine, should make it clear that consumer shall not purchase such chocolates from a retailer who is not having fridge or vis-cooler.

5. FOR considering further contentions, notice to the respondent returnable on 14. 3. 2007.

6. MEANWHILE, petitioner shall deposit Rs. 10,000 as awarded by the State Commission plus Rs. 5,000 as costs to the respondent for coming here, with the District Forum. Ordered accordingly.