(1994) 03 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

CADILA LABORATORY LTD. APPELLANT

Vs

JAMES AMBROIES And OTHERS RESPONDENT

Date of Decision : 10-03-1994

Acts Referred:

Citation : 1994 2 CPR 287 : 1995 2 CPJ 68

Hon'ble Judges : David Annoussamy , A.Veerapandian , J.Anjani Dayanand J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal by the opposite party No. 3.

2. THE complainant shown as Respondent No. 1 is the consumer. THE Respondent No. 2/ opposite party No. 1 is the retail dealer. Respondent No. 3/ opposite party No. 2 is the whole sale dealer. THE Appellant/opposite party No. 3 is the packer-cum-marketer. The facts of the case are quite simple. The complainant purchased from opposite party No. 1 a Second Nature Talcum Powder weighing 400 gms. on 30-12-92 and paid Rs. 46.50. When at home he compared the price with the one paid last time and he found that it was only Rs. 38.50. He noted that there was a superimposed price label and on suspicion he removed it and found that the original price printed on the tin was Rs. 38.50. The opposite party No. 3 admitted that he affixed the new price and claimed that he had every right to do so. The opposite party Nos. 1 and 2 declined responsibility in the matter. The District Forum in the order dated 13.9.93 found that the price ought not have been modified by the opposite party No. 3 and ordered him to pay the excess amount of Rs. 8/- is well as a compensation of Rs. 250/- as against the amount of Rs. 1,000/- claimed and ordered also to pay a cost of Rs. 200/-. Aggrieved by that order the opposite party No. 3 has preferred this appeal.

One of the grounds raised by the Appellant is that there has been change in taxes justifying the increase in price. But the learned Counsel for the Appellant fairly conceded in the course of arguments that there was no such increase. The only two main grounds urged before this Commission are (1) that there was no privity of contract between the complainant and the opposite party No. 3, and

(2) that the opposite party No. 3 as a packer-cum-marketer has every right to fix the price, taking into account the costs and conditions of the market and that there was no prohibition to fix the price as he thought it fit.

3. WE shall consider these two grounds. First the absence of privity of contract between the complainant and opposite party No. 3. To decide the question we have simply to refer to the definitions found in the Act. As per Section 2(1)(c)(iv) "complaint" means any allegation in writing made by a complainant that - 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. The word "trader" defined under Section 2(1)(g) is as follows: - "Trader in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packet thereof." It is seen from the second definition that the packer is a trader as defined under the word "complaint". Therefore the complaint has been validly made and the question of privity of contract does not arise in this case. As per the Consumer Protection Act, Opposite Party No. 3 is the person who has to answer the claim of the Complainant. The second ground urged is that it is always open to the dealer to fix the price taking into account all the factors. It is .true that when there is no regulation in a country the price get fixed by mutual discussion between the parties. But when there is a regulation the price has to be according to that regulation. This is what flows from the definition of the "complaint" under Section 2(1)(c)(iv) of the Consumer Protection Act, which we have already abstracted above. As far as the packed goods are concerned as per Rule 23(2), as amended of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, "no retail dealer or other person including manufacturer, packer and wholesale dealer shall make any sale of any commodity in packaged form at a price exceeding the retail sale price thereof." In this case it is admitted that the manufacturer has fixed the price at Rs. 38.50, so the packer is prohibited from changing that rate as per the above rule. This rule as amended has come into effect from January, 1992 ahd the cause of action arose in December, 1992. It is not even alleged that the change was effected by opposite party No. 3 prior to January, 1992. So this is not a case where the packer can, according to his wish, fix the price.

4. THE learned Counsel for the Appellant strenuously argued and placed before us two decisions. THE first is the one rendered by the State Consumer Disputes Redressal Commission, Madras in Consumer Action Group v. MD., THE T.N. Co-Op. Milk Producers Federation, (AAVIN) 1991 (1) MWN (CP) page 180. In that decision it was held that there is no provision under the Consumer Protection Act, which enables the Redressal Agencies under this Act to fix the price of an article or hold that the price charged for an article is in excess, in the absence of any price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods. We fail to see how this decision furthers the case of the Appellant. THE District Forum has not fixed the price of

any article. It was found that Opposite Party No. 3 has tampered with the price fixed on a package much against the provision of law as contained under Section 23(2) of the Rules regarding the packaged commodities referred to above. The second decision is the one rendered by the National Consumer Disputes Redressal Commission in Maruti Udayog Ltd. v. M/s. Annalamai Bus Transport Ltd., Madurai v. Kodaikkanai L Township & Ors. 1992 (3) MWN (CP) 161 holding that no relief can be granted by the Forum on a complaint against charging of a higher price in violation of the rate contract, which is contractual and not statutory, if there has not been any fixation of the price by any law. This decision has also no application to the facts of this case because there is no rate contract in the purchase by the complainant of Second Nature Talcum Powder from the opposite parties. The price was fixed freely by the manufacturer. It became unalterable by effect of law. Once it has been indicated in the packet by the manufacturer no modification can be made by the packer as per the provisions of Rule 23(2) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977. This ground of the appeal also fails. In the result, the appeal is dismissed with costs of Rs.500/- to be paid to the Respondent No. 1/ Complainant. Appeal dismissed by costs.