

(1992) 09 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

Col. R.K. NAYAR

APPELLANT

Vs

INCAP HOUSING DEVELOPMENT CORPORATION

RESPONDENT

Date of Decision : 23-09-1992

Acts Referred:

Citation : 1992 2 CPR 577 : 1992 3 CPJ 430 : 1994 1 CLT 263

Hon'ble Judges : R.N.Mittal , B.L.Anand J.

Final Decision : Complaint dismissed

Judgement

1. A preliminary question that arises for determination in the present case is, if a complaint has been filed by the complainant before the MRTP Commission and the proceedings in the complaint are pending whether another complaint can be filed by him before the State Commission for recovery of the damages. A complaint was filed in the State Commission by the complainant on 12.12.91 against the respondent for the recovery of Rs. 9.32 lacs as compensation on the ground that they failed to advance the loan as promised on account of which he suffered loss. The respondent moved an application to the effect the prior to the filing of the complaint he had filed an application under Section 36-B(a) of the M.R.T.P. on 7-1-91 before the M.R.T.P. Commission. The allegations made by him in the application as well as in the complaint before the State Commission are the same and that application is still pending before the M.R.T.P. Commission. The said commission has got the jurisdiction to grant the relief which is claimed by the complainant before the State Commission and therefore, he is not entitled to institute the present complaint

2. IN the reply to the application the respondent has admitted that he filed an application under Section 36-B(a) of the MRTP Act before the Commission and that is still pending. He further stated that the prayer made by him before the M.R.T.P. Commission is not the same as made by him before this Commission. It is pleaded by him that in the said circumstances the complaint can be entertained and decided by the State Commission. There is no dispute about the facts of the case. If the various provisions of the M.R.T.P. Act and Consumer

Protection Act are seen, it is evident that the Consumers can make complaint either before the State Commission or M.R.T.P. Commission for the same relief. However, the powers of M.R.T.P. Commission are slightly wider in granting same reliefs to the Consumers. Sections 36-B and 12-B of the M.R.T.P. Act reads as follows :- 36-B. "Inquiry into unfair trade practices by Commission :- The Commission may inquire into any unfair trade practice,- (a) upon receiving a complaint of facts which constitutes such practice from any trade association or from any consumer or a registered consumer's association, whether such consumer is a member of that Consumer's association or not; or (b) upon a reference made to it by the Central Government or a State Government; (c) upon an application made to it by the Director-General, or (d) upon its own knowledge or information.

12-B. "Power of Commission to award compensation- (1) Where, as a result of the monopolistic or restrictive or unfair trade practice, carried on by any undertaking or any person; any loss or damage is caused to the Central Government, or any State Government or any trader or class of traders or any consumer, such Government or, as the case may be trader or class of traders or consumer may, without prejudice to the right of such Government, trader or class of traders or consumer to institute a suit for the recovery of any compensation for the loss or damage as caused, make an application to the Commission for an order for the recovery from that undertaking or owner thereof or, as the case may be, from such person of such amount as the Commission may determine, as compensation for the loss or damages so caused. (2)xxxxx xxxxx xxxxx (3)The Commission may, after an inquiry made into the allegations made in the application filed under Sub-section (1), make an order directing the owner of the undertaking or other person to make payment, to the applicant, of the amount determined by it as realisable from the undertaking or the owner thereof, or, as the case may be, from the other person, as compensation for the loss or damage caused to the applicant by reason of any monopolistic or restrictive, or unfair trade practice carried on by such undertaking or other person. (4) Where a decree for the recovery of any amount as compensation for any loss or damage referred to in Sub-section (1) has been passed by Court in favour of any person or persons referred to in Sub-section (1) or, as the case may be, Sub-section (2), the amount, if any paid or recovered in pursuance of the order made by the Commission under Sub-section (3) shall be set off against the amount payable under such decree and the decree shall notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance, if any, left after such set off.

From a perusal of the Sections it is evident that a prayer can be made to the Commission under the MRTP Act for granting compensation. In case the Commission under the MRTP Act and the State Commission under the Consumer Protection Act decide the question of compensation in the same matter and between the same parties differently, a strange situation will arise upon. It is

well-settled that the orders passed by the Courts should not be inconsistent. If two consistent orders are rendered by two different Commissions the question will arise as to which should be enforced. Such an anomalous situation should not be allowed to arise. In the circumstances, if cognizance of a case has been taken by a Forum under one enactment, its cognizance should not be taken by the another Forum under another enactment unless specifically permitted by the legislation.

3. IN the above said view we are fortified by the decision of this Commission as well as that of the National Commission. The National Commission in *Hindustan Motors Ltd. v. M/s. Padma Vithal Amrapurkar & Others*, I (1992) CPJ 108 (NC) adjudicated upon similar matter. IN that case Ms. Amrapurkar filed a complaint before the State Commission, Maharashtra, alleging manufacturing defect as well as the deficiency in after-sale service with regard to Ambassador car purchased by her on 19.12.88. She claimed an amount of Rs. 3,54,000/- as compensation. On 26.7.89 she made a complaint to the Chairman of M.R.T.P. Commission in this regard. An order was passed by the MRTP Commission that the repairs of the car be effected and the engine of the car be replaced. The State Commission awarded Rs. 22,000/- as compensation against respondent No. 1. Both the parties filed the appeal before the National Commission. It was ordered by the learned National Commission, that since the complainant had initially opted to approach the MRTP Commission for relief and the Commission after consideration of the whole matter had granted the same by way of engine being replaced, which had been done, thereafter it was not open to her to approach the State Commission for relief in respect of the same matter. IN case she was not satisfied with the relief granted by the MRTP Commission, the proper course to be adopted by her was to go in appeal to the higher authority, which was the Supreme Court. After making the above observations the appeal filed by Hindustan Motor was accepted and the order of the State Commission was set-aside. Similar question arose in *M/s. Byford v. Ramesh Taneja* I (1991) CPJ 586. IN that case the grievance of M/s. Byford the appellant was that the respondent had chosen MRTP Commission for seeking relief of his grievances. Thereafter he filed a complaint before the State Commission. The argument was raised that the State Commission had no jurisdiction to entertain the complaint. It was observed that the respondent having already approached MRTP Commission for the redress of his grievance he could not take parallel proceedings before the District Forum. Adverting to the facts of the present case it is not disputed that the complainant Col. R.K. Nayar has already moved an application for appropriate proceedings before MRTP Commission under the MRTP Act. The Commission on that application has taken cognizance of the matter and is proceedings with the case. No final decision has yet been taken by it. The complainant is entitled to claim compensation in those proceedings under Section 12-B of the M.R.T.P. Act. He has also made a general prayer in that application that the MRTP Commission may pass such orders or further orders as deemed fit in the facts and circumstances of the case. Subsequently the complainant has filed a complaint

before the State Commission for granting Rs. 9.32 loss to him as compensation. The MRTTP Commission has got the jurisdiction to grant the complainant compensation in addition to the relief of "Cease and desist".

4. AFTER taking into consideration the facts and circumstances of the case, we are of the view that the complainant could not file the complaint before the State Commission where the same matter was pending before the MRTTP Commission. Consequently the complaint is dismissed. Before parting with the order it may be observed that this order will not adversely affect the rights of the claimant to claim any relief from the MRTTP Commission under the M.R.T.P. Act. No costs. Complaint dismissed.