(2016) 02 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

Case No : 4864 of 2012

COMMISSIONER NAGAR PALIKA NIGAM — APPELLANT

Vs

AFSAR ALI — RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Citation : 2016 2 CPR 60

Hon'ble Judges : K S Chaudhari

Advocate : Umeshwar Dayal, Mohd Faraque

Judgement

1. This revision petition has been filed by the petitioner against order dated 14-09-2012 passed by the learned State Consumer Disputes Redressal Commission, Madhya Pradesh (in short, ''the State Commission''), in First Appeal No. 369 of 2011 Afsar Ali Vs. Nagar Palika Nigam, Singroli, by which while allowing appeal, order of District Forum dismissing complaint was set aside.

2. Brief facts of the case are that petitioner/O.P., the Nagar palika Nigam, published an advertisement in the newspaper, on 9th January, 2008, inviting offers for some vehicles including a Tata Sumo. As the respondent/complainant''s bid of Rs.80,000/- for the Tata Sumo was the highest, it was accepted and he made the payment for the same. During the process of transfer of the vehicle, the respondent learnt from the office of the RTO, that the road tax had not been paid since 31.03.1999. Along with penalty, it amounted to Rs.3,89,352/-. The respondent states that he spent Rs.25,000/- on the repairs of the vehicle to make it roadworthy. As it was not possible for him to pay a further sum of Rs.3,89,352/-, the vehicle was not transferred in his name and he was not able to use it. Alleging deficiency on the part of the opposite party, complainant filed complaint before District Forum. Opposite party resisted complaint and submitted that complainant is a scrap dealer and purchased vehicle after inspecting all the documents prior to purchase. Deposited amount by complainant was admitted by opposite party and further apprised that complainant obtained possession of

vehicle and prayed for dismissal of complaint. Learned District Forum after hearing both the parties dismissed complaint. Appeal filed by the complainant was allowed by learned State Commission vide impugned order, against which this revision petition has been filed.

3. Heard learned counsel for the parties and perused record.

4. Learned counsel for the petitioner submitted that as vehicle was purchased in auction by a scrap dealer, complainant does not fall within the purview of consumer and District Forum rightly dismissed complaint even then learned State Commission committed error in allowing complaint, hence revision petition be allowed and impugned order be set aside. On the other hand learned counsel for the respondent submitted that order passed by learned State Commission is in accordance with law, hence revision petition be dismissed.

5. It is not disputed that complainant purchased vehicle in auction organized by opposite party. As per auction notice reserve price of vehicle was Rs.50,000/- whereas its IDV as per insurance policy was Rs.1,79,955/-. Complainant purchased vehicle in auction for Rs.80,000/- and deposited payment and obtained possession of the vehicle.

6. The core question to be decided is whether complainant was apprised about the fact that road tax was due in the vehicle. Admittedly in auction notice it was not disclosed that any road tax was due in the vehicle. In Condition No. 8 it was mentioned that other information regarding vehicle can be obtained from office which makes it clear that purposely outstanding road tax was not shown in the auction notice. Complainant in Para 7 of the complaint specifically pleaded that it was orally informed by opposite party that full amount of tax has been deposited but no entry is made in the record, which will be corrected later on and this fact has not been specifically denied by opposite party in its reply which makes it clear that complainant was misguided by the fact that due road tax has been deposited whereas it was not deposited. Merely because complainant is scrap dealer it cannot be presumed that he purchased vehicle for disposing vehicle as scrap. Had it been purchased for scrap, he would not have approached to registration authority for transfer of vehicle in his name who apprised about outstanding road tax.

7. Learned State Commission while dismissing appeal rightly observed as under:- "Further, documents filed by the appellant also reveals that the outstanding road tax had not been disclosed to the buyer. In column 9 of Form 28, the period up to which Motor vehicle tax has been paid has been written as ''Life''. The learned counsel for the respondent argued that though the respondent signed on this form, it had been given blank to the appellant. He alleges that it was later filled by the appellant with malafide intention. Even if we accept his argument that a blank form was given, it does not explain why column 10 of this form, which specifically requires the owner to give information if any tax is due, was left blank by the respondent. The second form, Form 29, also contains a declaration

made by the respondent that the vehicle was free all encumbrances. Clearly, the fact that road tax was outstanding was suppressed by the respondent. Since no disclosure of this fact was made, the bid was vitiated and the appellant is entitled for refund of his money."

8. In the light of aforesaid discussion, learned State Commission has not committed any error in allowing appeal and ordering refund of Rs.80,000/-

9. I do not find any illegality, irregularity or jurisdictional error in the impugned order and revision petition is liable to be dismissed.

10. Consequently, revision petition filed by the petitioner is dismissed. Parties to bear their costs.