

(2004) 08 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

Darshan Singh Ahuja

APPELLANT

Vs

HAMDARD (WAKF) LABORATORIES

RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Citation : 2004 4 CPJ 726

Hon'ble Judges : K.K.Srivastava , MajGenS.P.Kapoor , Devinderjit Dhatt J.

Final Decision : Appeal allowed

Judgement

1. THE appellant/complainant Shri Darshan Singh Ahuja son of Shri Amar Singh resident of House No. 5432/3, Mani Majra Housing Complex, Mani Majra, U.T., Chandigarh purchased two bottles of Sherbet Rooh-Afzah from respondent No. 2 M/s. Ravi Stores, Shop No. 20-21, Sector 14, Punjab University Campus Market, Chandigarh and manufactured by respondent No. 1-M/s. Harnard (Wakf) Laboratories, Harnard Building, 2A/3, Aaf Ali Road, New Delhi, which was manufactured and marketed in the month of April, 2002. One of the two bottles was used after it was purchased and drinking of Sherbet gave some different taste to the family members of the complainant and other persons who took the same. THE second bottle of Sherbet Rooh-Afzah, however, was lying with the complainant and the same was taken out of the shelf for use in the year before the filing of the complaint. When the second bottle was taken out then it was detected that Sherbet had turned to jet black from the usual pink colour and the liquid inside the bottle gave an appearance of thick tarcoal. THE appellant apprehended that the contents of the bottle had become toxic and poisonous and, therefore, unfit for human consumption. THE matter was taken up by the complainant with Mr. M. Waseen, Local Sales Supervisor of respondent No. 1 who promised to look into the matter but he also did not respond to the grievances of the complainant who then contacted the responsible person of respondent No. 1 and made several telephone calls at Delhi as well as Lal Kuan and spent a sum of Rs. 400/- on telephone calls. It was alleged that the date of booking printed on the bottle mentioned as 5/2002 along with a remark "Best Before 24 Months", which mean that the contents could be consumed up to April, 2004. A legal

notice dated 9.10.2003 was served on the respondent No. 1 through Counsel Mr. Rajinder Singh Raj, Advocate, which was replied by the respondent No. 1 vide letter dated 28.10.2003.

2. IN the reply to the legal notice, the respondent No. 1 accused the complainant of tampering with the cap of the bottle, which was sealed but provided no relief to the grievances of the appellant, which led to the filing of the complaint alleging that the conduct of respondent No. 1 was wholly unprofessional and against the ethics of the trade and it amounted to deficiency in service and criminal breach of trust. The complainant prayed for exemplary compensation of a sum of Rs. 2 lacs with interest up to the date of actual payment. The complaint was supported by an affidavit of the complainant Shri Darshan Singh Ahuja who annexed copy of legal notice (Annexure A-1) and photocopy of the reply letter dated 28.10.2003 (Annexure A-2) sent by the respondent No. 1-M/s. Hamdard (Wakf) Limited. The District Forum dismissed the complaint in limine without issuing notices to the respondents on the ground that there was no deficiency in service or unfair trade practice committed by the respondent. Apart from it, it was held that the appellant had claimed compensation, which was of a inflated sum and was irrational if not ludicrous and relied on the case of Dr. Arun Jain v. Thai Airways International Ltd., II (2003) CPJ 201 (NC)=2003 CTJ 244 (CP) (NCDRC), and held that the Hon''ble National Consumer Disputes Redressal Commission, New Delhi [for short hereinafter referred to as the National Commission] ruled that the consumer complaints making preposterous claims should be thrown out at the very threshold. Applying the said ratio of the decision of the Hon''ble National Commission, the complaint was dismissed.

Feeling aggrieved against the impugned judgment and order dated 8.3.2004, the complainant filed this appeal. Notice of appeal was issued to the respondents. Respondent No. 1 appeared through Mr. Gopal Sharma, Advocate whereas respondent No. 2 appeared through Mr. Hari Pal Verma, Advocate. The record of the complaint case was summoned. We have heard the learned Counsels for the parties and have carefully gone through the impugned judgment and order and the record of the complaint case.

3. IT may be mentioned at the very outset that the District Forum has dismissed the complaint applying the ratio of the decision in the case of Dr. Arun Jain v. Thai Airways International Ltd. (supra), without issuing notice of the complaint case to the respondents arrayed as O.Ps. The Hon''ble Supreme Court of India has in the case of CCI Chambers Co-op. Hsg. Society Ltd. v. Development Credit Bank Ltd., III (2003) CPJ 9 (SC)=V (2003) SLT 85=2003 CTJ 849 (Supreme Court) (CP), laid down the law that before the complaint is dismissed in limine, the Consumer Disputes Redressal Agencies should issue notice to the O.Ps. and take its pleadings on record and only when the pleadings for both the parties are available should the Commission have formed an opinion as to the nature and scope of inquiry i.e., whether it required a detailed and complicated investigation into the facts which was incapable of being undertaken in a summary and speedy

manner. IT was held that dismissing the complaint at a preliminary stage without issuing notice to the O.Ps. is premature. Apart from this, the complaint could not be dismissed only on the ground that the complainant had claimed an inflated sum of Rs. 2 lacs and the same was a preposterous claim as details and breakup were not stated in the complaint or explained at the hearing. The adjudication of the complaint is to be made as per procedure laid down in Section 13 of the Consumer Protection Act, 1986 [for short hereinafter referred to as the C.P. Act] and not in any other manner which is contrary to the procedure laid down in Section 13 of the C.P. Act.

4. SO far as the judgment of the Hon''ble National Commission in the case of Dr. Arun Jain v. Thai Airways International Ltd. (supra), is concerned the Hon''ble National Commission while decided the Original Petition No. 180 of 1997 in the facts and merit of that case and after taking into consideration the pleadings of both sides and evidence led by them. It was in the given facts of the case that the Hon''ble National Commission observed in para 11, inter alia, as under: ".....In the circumstances of the case we agree with the Airlines that to get jurisdiction of the National Commission, complainant inflated his claim to Rs. 35.00 lakhs as compensation which on the fact of it is irrational if not ludicrous. We disapprove this type of practice on the part of any consumer. Rather such type of complaint making preposterous claim should be thrown out at the threshold unless complainant is prepared to correct the mistake and makes a claim which is reasonable and realistic." This observation was made while dealing with the preliminary objection raised by the Airlines that the complainant had bypassed the District Forum and even the State Commission by making a claim of Rs. 35.00 lakhs, which is out of all proportion to any alleged deficiency in service on the part of Airlines. It, therefore, follows that while deciding the original petition, the Hon''ble National Commission upheld the preliminary objection that there was an attempt by the complainant to inflate the amount of compensation so as to confer jurisdiction on the National Commission by bypassing the District Forum and the State Commission. The judgment of the Hon''ble National Commission in the case of Dr. Arun Jain v. Thai Airways International Ltd. (supra) does not lay down the law that the complaint for a sum, which in the opinion of the District Forum or the State Commission is inflated and preposterous should not be admitted for adjudication on merit and be dismissed in limine. It may also be pointed out that the Hon''ble Supreme Court has held in the case of CCI Chambers Co-op. Hsg. Society Ltd. (supra) that merely because recording of evidence is required, or some questions of fact and law arise which would need to be investigated and determined, cannot be a ground for shutting the doors of any Forum under the C.P. Act to the person aggrieved. It has been held that the decisive test is not the complicated nature of the question of fact and law arising for decision. The anvil on which entertainability of a complaint by a Forum under the C.P. Act is to be determined is whether the questions, though complicated they may be, are capable of being determined by summary inquiry i.e., by doing away with the need of a detailed and complicated method of recording evidence.

The Hon''ble National Commission further held that it is only when the dispute arising for adjudication is such as would require recording of lengthy evidence not permissible within the scope of a summary inquiry that a Forum under the C.P. Act may relegate the complainant to a Civil Court.

5. AS a matter of fact, the complainant laid a grievance about the goods purchased by him, which in the instant case are two bottles of Sherbet Rooh-Afzah manufactured by respondent No. 1 from respondent No. 2, which were defective goods or for that matter were goods of hazardous nature and sought relief against the respondents. The question of hiring and availing the services was not there nor even it was a case of unfair trade practice. The averments regarding the goods purchased by the appellant being defective and hazardous in nature had to be adjudicated and if needed, the bottle could be sent for analysis to laboratory competent to test the same but the complaint could not be dismissed on the ground that there was no deficiency in service on the part of the respondents. Moreover, if the case of the complainant who is the appellant before us was found proved then it was the duty of the District Forum to determine the appropriate sum of compensation to which the appellant was entitled as per the evidence and material placed by him before the District Forum during the adjudication of the complaint case.

6. CONSEQUENTLY, the impugned judgment and order passed by the District Forum cannot be sustained in the eye of law. The appeal has considerable force and is allowed. the impugned judgment and order is set aside. The complaint case is remanded to the District Forum-II, U.T., Chandigarh with a direction to allow the respondents, a reasonable time to file the written statement as per the provisions contained under Section 13 of the C.P. Act and thereafter proceed to decide the complaint case on merit within the time prescribed under the C.P. Act. The parties are directed to appear before the District Forum-II, U.T., Chandigarh on 20.8.2004. Copies of this order be sent to the parties free of charge. Appeal allowed.