

(2008) 01 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

DELHI JAL BOARD

APPELLANT

Vs

NIRANJAN SHAH

RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Citation : 2008 2 CPJ 144

Hon'ble Judges : J.D.Kapoor , Rumnita Mittal J.

Final Decision : Appeal dismissed

Judgement

1. -VIDE impugned order dated 15. 10. 2007 passed by the District Forum, the appellant has been directed to refund the purchase price of the jar of water and to pay Rs. 5,000 as compensation and further directed to observe proper hygiene while bottling the jars and ensure that the jars are thoroughly cleaned before being bottled as the impure water is unsafe for human consumption and bottled water is purchased for the added surety that it is fit for consumption.

2. FEELING aggrieved the appellant has preferred this appeal. Allegations of the respondent leading to the impugned order in brief are that he had purchased 20 ltrs water sealed jar from the appellant on 6. 7. 2004 for drinking purpose. Respondent stated that he is a regular purchaser of the bottled water of DJB but the bottle in question had impurities. The respondent went to the office of the appellant at Greater Kailash-I and the officer present there assured him that action will be taken on his complaint. Thereafter the respondent contacted the Karol Bagh office of DJB and also lodged his complaint over the telephone but was directed to file a written complaint. The respondent faxed the complaint to the appellant. But in spite of having visited the office of the DJB after having filed the complaint nothing has been done on the complaint. The respondent has made a prayer for compensation to the tune of Rs. 10 lacs from DJB for not having resolved his complaint and for having supplied him dirty drinking water.

It is pertinent to mention at this stage that the bottled jar bearing seal of the appellant was produced before the District Forum and the jar was ordered to be kept in the safe custody of the District Forum after affixing the seal of the District

Forum. The District Forum from naked eyes examination of the jar found impurities inside the jar. Since respondent had neither opened the jar nor consumed its content and produced it before in its original condition, the conclusion drawn by the District Forum does not suffer from any infirmity.

3. MAIN contention of the Counsel for the appellant is that the report of purity of water sold during the period is positive and that the sale of bottled water/jar in the relevant period has not declined and since it was examined by the naked eye after expiry of 90 days the impurities detected by the District Forum were bound to creep in. We are not impressed by this contention at all as there is specific finding of fact based on apparent examination of the bottled jar from the naked eyes as to the presence of foreign substance showing the impurity of the water and as such there was no need for any chemical analysis by an Analyst. It was the discretion of District Forum to get it analysed from the laboratory or not. Here is a case where a consumer purchased 20 ltrs of bottled water from the appellant and when he found from the naked eyes that it was having dirt he informed and asked the officers of the appellant Board to kindly see it for itself and replace the jar. The officers of the appellant sent it to the laboratory for examination of the dirt, which was visible by the naked eyes and which could have been seen by the engineers of the appellant Board. To say that the kind of impurity and foreign substance detected from the naked eyes by the District Forum had developed and crept in the water jar because of expiry of 90 days is nothing short of logic chopping. There can be some different type of impurity but not the kind of impurity detected and seen by the District Forum in such a case.

4. THE concept of compensation referred by the Consumer Protection Act, 1986 and for that purpose to protect the interest of consumer has been in case after case given wide connotation and encompasses in its fold each and every element of suffering including mental agony, harassment, physical discomfort, emotional sufferings or injury suffered by the consumer. In this regard the observations of the Hon"ble Supreme Court made in Ghaziabad Development Authority v. Balbir Singh, II (2004) CPJ 12 (SC)=iii (2004) SLT 161= (2004) 5 SCC 65, are quote worthy and are as under: "the word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss. The provisions of the Consumer Protection Act enable a consumer to claim and empower the Commission to redress any injustice done. The Commission or the Forum is entitled to award not only value of goods or services but also to compensate a consumer for injustice suffered by him. The Commission/forum must determine that such sufferance is due to mala fide or capricious or oppressive act. It can then determine amount for which the authority is liable to compensate the consumer for his sufferance due to misfeasance in public office by the officers. Such compensation is for vindicating the strength of law. "

The Hon"ble Supreme Court has gone to the extent of calling upon the District Forum and Commission in another case, Lucknow Development Authority v. M. K.

Gupta, III (1993) CPJ 7 (SC)= (1994) 1 SCC 243, that public officers should be taken to task for their mala fide, oppressive or capricious or arbitrary or negligent act and that the compensation awarded by the District Forum and Commissions should be recovered from their salary. Relevant observations in this regard for penalizing these authorities by way of compensation to the consumers as check on arbitrary and capricious exercise of power or negligence are as under: it is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries. Foregoing reasons persuade us to dismiss the appeal with cost of Rs. 5,000, which shall be deposited with the State Consumer Welfare Fund (Legal Aid), which has been created for protecting the interest of the poor consumers who have no means to engage lawyers to fight against the rich and mighty organisation.

5. BANK Guarantee/fdr, if any, furnished by the appellant be returned forthwith.

6. A copy of this order as per the statutory requirements be forwarded to the parties free of charge and also to the concerned District Forum and thereafter the file be consigned to Record Room. Appeal dismissed.