(1999) 02 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

EKO ELECTRONICS APPELLANT

Vs

SAIRA MEHTA RESPONDENT

Date of Decision : 25-02-1999

Acts Referred:

Citation : 1999 2 CLT 24 : 1999 2 CPC 411 : 1999 2 CPJ 599

Hon'ble Judges : A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Appeal dismissed

Judgement

1. DISTRICT Forum, Patiala on March 4, 1998 decided the complaint of Saira Mehta with the direction to the opposite parties, M/s. EKO Electronics, Patiala and its partners Harbant Singh and Jasbir Singh to pay in lump-sum Rs. 2,000/- inclusive of Rs. 1,887/- the excess amount charged and Rs. 113/- costs. The opposite parties have challenged the aforesaid order in this appeal.

2. ON February 2, 1994 Saira Mehta, the complainant purchased one Oscar television from the shop of the opposite party on payment of Rs. 14,300/-. Since defect occurred in the television immediately after its purchase, subsequently, the opposite parties agreed to exchange the aforesaid television with BPL television. ON December 24,1994 BPL television was given to the complainant on charging Rs. 6,347/-, which included a sum of Rs. 1,887/- towards sales tax extra charged. Thus, the present disputes relates to refund of the amount of Rs. 1,887/- which were charged in excess of the price of the television and this amounted to unfair trade practice as well. In the written statement filed, the opposite parties took up the stand that in fact Rs. 4,060/- were charged at the time of exchange and no excess amount as claimed was charged. ON behalf of the complainant affidavit of the complainant and affidavit of H.S. Mander, Advocate, affidavit of Rajinder Kaur Mehta, were produced alongwith documents Annexure C-4, copy of written statement filed by the opposite parties in the previous complaint, Gurbax Mehta v. Harbant Singh, Ex. C-6 a certificate from BPL Company that the televisions of BPL are sold as tax paid items, in other words the price quoted by the dealer is inclusive of the sales tax, Ex. C-7 is letter

of Gurbax Mehta, in response to which certificate Ex. C-6 was issued, Ex. C-8 is the letter of Gurbax Mehta, Advocate addressed to the Taxation Officer, Patiala making a complaint against the opposite parties for excess charging of sales tax. Ex. C-12 is the legal notice issued to Harbant Singh and Jasbir Singh, partners of the opposite party. Ex. C-13 is the Cash Memo of BPL television, which is in the sum of Rs. 18,360/-, Ex. C-14 is the Cash Memo in respect of previous television purchased for Rs. 14,300/-. ON the other hand affidavit of Harbant Singh alongwith documents were produced. Ex. R-l is the receipt for Rs. 14,300/-. Ex. R-2 is copy of the account of Saira Mehta, complainant making debit and credit entries. Ex. R-3 is the voucher in respect of making payment of Rs. 14,300/- dated 24.12.1994. Ex. R-4 is the receipt of BPL television already referred to above. Ex. R-5 is the copy of the notice issued by Excise and Taxation Officer, to the opposite party for verification of payment of sales tax. Ex. R-6 is the copy of the order passed by the District Forum, Patiala dated March 21, 1996 dismissing the complaint filed by Gurbax Mehta on the ground that he had no locus standi to file the same. Ex. R-7 is the copy of the order passed by District Forum, Patiala dated October 11,1996 dismissing the complaint filed by Saira Mehta with permission to file fresh complaint. Mark ''X'' document was produced on behalf of the complainant, and as per evidence of the complainant, it was executed by Harbant Singh, partner of the opposite party. Though in the written statement as well as in the affidavit of Harbant Singh execution of this document has been denied, on going through the entire evidence produced on the file, we find corroboration to this evidence that in fact a sum of Rs. 6,347/- was charged by the opposite party, at the time of exchange of Oscar television with BPL television. The other evidence produced by the complainant is affidavit of H.S. Mander, Advocate, i.e. Annexure C-2 wherein it is mentioned that the opposite party fraudulently charged Rs. 1,887/- over and above the price of the television towards sales tax. To the same effect is the affidavit of Rajinder Kaur Mehta, mother of the complainant, Annexure C-3 that they paid Rs, 6,347/- in cash to Jasbir Singh and not Rs. 4,060/-. Jasbir Singh''s affidavit has not been produced on behalf of the opposite party to deny the assertion of payment of Rs. 6,347/- in cash by the complainant. Thus stay of the opposite party is on the documents of receipts and vouchers issued. As far as voucher is concerned, which is Annexure R-3 it only relates to payment of price of Rs. 14,300/- of the old television. This document does not indicate the price of the new television or the amount received on exchange. Similarly nothing turned down on the receipt Ex. R-4, which is in the sum of Rs. 18,360/- the price as shown for the BPL television. May be in the record prepared by the opposite party, such price was indicated but in fact excess amount was charged as is evidence produced by the complainant. If that is so, it clearly amounts to over-charging and unfair trade practice.

The question as to whether sales tax is included in the price quoted, the complainant relies upon the certificate as issued by BPL Company, Annexure C-6. It is in this view of the matter that the assertion made in the written statement filed in the previous case Annexure C- 4 that is relevant. In para 3, it was mentioned that the complainant was bound to pay the difference of the price of both the televisions. They were also informed that they will have to pay the sales tax for the purchase of another television, which is of another make. In para 4 it was specifically stated that it was wrong that the respondent charged Rs. 1,887/- over and above the original value/price. It was also wrong that the price of BPL television includes sales tax at the source and the amount involved of Rs. 1,887/- was included in the price quoted at that time. This stand taken up in the written statement is clearly contrary to the certificate issued by M/s. BPL Company. On behalf of the opposite party it has not been shown as to what was the actual price fixed by M/s. BPL for sale of such a television and further the rate of sales tax payable, that it could be calculated and a finding could be recorded in favour of the opposite party, in this respect. As discussed above, it is a clear case of over-charging which amounts to unfair trade practice and the District Forum was fully justified in allowing the complaint and granting the relief. This appeal is dismissed with costs of Rs. 500/- while affirming the order of the District Forum. Appeal dismissed.