

(1993) 10 NCDRC CK 0083

In the National Consumer Disputes Redressal Commission

ENKON

APPELLANT

Vs

FRENCH MOTOR CAR COMPANY PVT.LTD

RESPONDENT

Date of Decision : 11-10-1993

Acts Referred:

Citation : 1994 1 CPJ 418 : 1994 2 CPR 559

Hon'ble Judges : Jyotirmoyee Nag , Sunil Kanti Kar , S.Dutta J.

Final Decision : Complaint dismissed

Judgement

1. THE petitioner/complainant lodged this complaint inter alia alleging that it had paid the sum of Rs. 4,46,440/- including registration fees to the Opposite Party No. 1 against purchase of Diesel Car known as Tata Estate. THE final payment was made within 12.2.93. Accordingly the Diesel Car was supposed to be delivered within one month from the date of final payment. It was further alleged that the Opposite Party No. 1 failed and neglected to deliver the said Diesel Car to the petitioner/complainant inspite of several correspondences dated 16.3.93 and 8.4.93 made by the petitioner/complainant and the said letters have been made annexures as "J" and "K" with the petition of complaint. It was further alleged that the complainant/ petitioner took loan of Rs. 3,00,000/- on interest from the City Bank for making payment of the said sum to the Opposite Party No. 1 and as the Opposite Party No. 1 withheld delivery of the Diesel Car, it was deprived from utilising the same and suffered monetary loss which is still continuing as such the Opposite Party No. 1 is liable to compensate to the petitioner/ complainant to the tune of Rs. 85,0007calculated upto 29th April, 1993 and also sought for cost of the proceedings etc.

2. THE case of the Opposite Parties that the petitioner/complainant is not a consumer as per provision of Consumer Protection Act, 1986. It contended that it is an authorised dealer of the Opposite Party No. 2 and both the Opposite Party Nos. 1 & 2 are the companies within the meaning of the Companies Act. THE Opposite Party No. 1 is a manufacturer of Motor vehicle of various models and one of the models of Diesel Car manufactured by Opposite Party No. 2 is known

as Tata Estate and the Opposite Party No. 1 is also the dealer of the Opposite Party No. 2 is respect of the said Tata Estate model of Diesel Car manufactured by the Opposite Party No. 2. It is admitted by the Opposite Party No. 1 that the complainant paid the sum of Rs. 4,46,440/- including registration fees by 12.2.93. It is contended by the Opposite Party No. 1 that on the basis of the said payment the Sales Invoice-cum-delivery Challan Nos. 30436, 30437 and 30438 all dated February 26th, 1993 issued for three Tata Estate Diesel vehicles one of which meant for the petitioner/complainant and the said vehicle was to be taken out from the custody of the Opposite Party No. 2 by virtue of Gate Pass No. 7103 dated 1st March, 1993. It is stated by the Opposite Party No. 1 that due to budget concession allowed by the Central Government for the financial year 1993-94, the price of the automobiles fell down to some extent and in view of this changed circumstances, the Opposite Party No. 2 issued a revised price list for its diesel vehicles and such revised price list was effective from 1st March, 1993. It is contended that when the said three Tata Estate diesel vehicles became available with the Opposite Party No. 1 for onwards delivery to three customers on the basis priority numbers and against full payment of price, the Opposite Party No. 1 duly informed the petitioner/complainant for taking delivery of the vehicle as it was readily available. It is contended by the Opposite Party No. 1 that the petitioner/complainant by its letter dated 16.3.93 informed the Opposite Party No. 1 that it was not willing to take delivery of the vehicle at the old price since after the budget for the year 1993-94 the price of the vehicle had fallen down and desired to have delivery of the vehicle at a reduced price. A copy of the said letter written by the petitioner/complainant to the Opposite Party No. 1 has been made annexure "D" to the opposition.

In view of the said fact, the Opposite Party No. 1 negotiated the matter with Opposite Party No. 2 and accordingly when it got the clearance of the Opposite Party No. 2 for delivery of the vehicle at the reduced price, it further offered to the complainant/petitioner to take delivery of the vehicle at the reduced price as per Gate Pass No. 7199 dated 29th March, 1993 and kept ready the said diesel vehicle for delivery to the complainant/petitioner but the complainant for the reasons best known to it did not take delivery of the vehicle and the said diesel vehicle still lying ready for delivery to the complainant/ petitioner under custody of the Opposite Party No. 2 and inspite of repeated requests for taking delivery of the diesel vehicle the complainant/ petitioner had not taken delivery of the same. The Opposite Party No. 1 further by its letter dated 12th May, 1993 informed the complainant/petitioner to take delivery of the diesel vehicle but the complainant/petitioner failed and/or neglected to take delivery of the vehicle for the reasons not known to the Opposite Party No. 1. The Opposite Party No. 1 also denied all material allegations as made out by the complainant/ petitioner in its petition of the complaint. The Opposite Party No. 1 further contended that the petition of complaint cannot be made against a company as the company is not included within the definition under Section 2(1)(m) read with Section 2(1)(d) of the Consumer Protection Act. Further it was alleged by the Opposite Party No. 1 that

the complainant/petitioner did not specify the allegations as per provision of Section 2(1)(c) for making this complaint before the State Commission, Accordingly the Opposite Party prayed for dismissal of the complaint with cost.

JUDGMENT

3. IT is admitted that the payment of Rs. 4,46,440/- was made by the complainant/petitioner to the Opposite Party No. 1 within 12th February, 1993 against the price of the Tata Estate diesel vehicle. IT appears that as per terms the Opposite Party No. 1 offered the diesel vehicle to the complainant/petitioner for taking delivery from the custody of the Opposite Party No. 2 as per Gate Pass No. 7103 dated 1st March, 1993. IT also appears that due to budget concession during financial year 1993-94 the prices all sorts of vehicles had fallen down to some extent and as per request of the petitioner/complainant, the Opposite Party No. 1 negotiated the matter with its principal, the Opposite Party No. 2 for reduction in price and when the Opposite Party No. 2 agreed to deliver the vehicle at the reduced price as per Government Budget, the Opposite Party No. 1 further informed the petitioner/complainant to take delivery of the Tata Estate diesel vehicle at the reduced price from the custody of the Opposite Party No. 2 as per Gate Pass No. 7199 dated 29th March, 1993. IT appears that as per obligations on the part of the Opposite Party No. 1 it timely offered to take delivery of the vehicle by the complainant/petitioner within one month from the date of its full payment and subsequently due to negotiation for reduction in price as per government budget, it took another 2/3 weeks for making second offer for taking delivery of the diesel vehicle by the complainant/petitioner after negotiations with the Opposite Party No. 2. The said diesel vehicle still lying with ready for delivery to the complainant/petitioner. From the facts stated above we do not find any deficiency in service on the part of the Opposite Party No. 1 for delivery of the vehicle to the complainant/petitioner inasmuch, as that the intimation was given to the petitioner/complainant for taking delivery of the diesel vehicle as per Gate Pass No. 7103 dated 1st March, 1993 well within one month from the date of receipts of the full payment of the diesel vehicle and second intimation given to the petitioner/complainant by 29th March, 1993 for taking delivery of the said diesel vehicle at the reduced price after negotiation with the Opposite Party No. 2, to reduce the price and thus the delay of 2/3 weeks is not at all deficiency in service on the part of the Opposite Party No. 1 because the said 2/3 weeks time was quite reasonable for making negotiations with the Opposite Party No. 2 by the Opposite Party No. 1 for delivery of the diesel vehicle at the reduced price as per budget year 1993-94, It is not possible for Opposite Party No. 1 without having negotiated the matter with the Opposite Party No. 2 who is the principal of the Opposite Party No. 1 to offer the diesel vehicle to the petitioner/complainant at a reduced price. So the conduct of the Opposite Party No. 2 is quite fair and appreciated.

4. BUT as regards point raised by the Opposite Party No. 1 that the Opposite Party Nos. 1 & 2 are the companies no complaint could be made against them as per definition of person under Section 2(1)(m) read with Section 2(1)(d) of the

Consumers Protection Act. It is totally misconceived on the part of the Opposite Party No. 1 because in those Sections the "person" defined in relation to consumer but not in relation to the seller. Obviously the company even being a consumer in any case is excluded from the definition of "person" under Section 2(1)(m) and is not eligible to lodge a complaint as per provision of the Consumer Protection Act but other than the company any other person as defined under 2(1)(m) read with Section 2(1)(d) can lodge a complaint against any seller whoever it may be provided that such Consumer falling within the definition of Section 2(1)(m) obtains such goods against the consideration for resale or for any commercial purpose is barred to lodge a complaint under this Act. So in that score we do not agree that the petitioner/complainant is not eligible consumer as per provision of Consumer Protection Act to lodge this complaint when the diesel vehicle is not meant for commercial purpose. However on merit the petition of complaint is disposed of by giving our observation that there is no negligence or deficiency in service on the part of the Opposite Parties to deliver the diesel vehicle to the petitioner/complainant as per contractual obligation. So we are not inclined to pass any order for compensation and /or damages as claimed by the complainant/petitioner. The petitioner/complainant is however at liberty to take the Tata Estate diesel vehicle bearing Chasis No. 575005964577 and Engine No. 483 DL 41608271 lying ready under the custody of the Opposite Party No. 2 at the reduced price as offered by the Opposite Party Nos. 1 & 2. There will be no order as to the cost. Complaint dismissed.