

(2006) 07 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

ENTERTAINMENT PARADISE E P

APPELLANT

Vs

BHAVNISH KUMAWAT

RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

Citation : 2008 4 CPJ 582

Hon'ble Judges : Sunil Kumar Garg , T.P.Gupta , Vimla Sethias J.

Advocate : S.S.Hora

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act of 1986") has been filed by the appellant-opposite party against the order dated 24. 1. 2007 passed by the learned District Forum, Jaipur-II, Jaipur in case No. 842/2005 by which the complaint filed by the complainant-respondent under Section 12 of the Act of 1986 was allowed in the manner that the appellant was directed to return to the complainant-respondent a sum of Rs. 6 and 66 paise, as price charged in excess for two bottles of mineral water within two months from the date of order failing which the complainant-respondent would be entitled to get interest on the above amount at the rate of 9% p. a. from the date of order till payment was made and the appellant was further directed to pay to the complainant-respondent sum of Rs. 3,000 as amount of compensation for mental agony and Rs. 2,000 as cost of litigation.

2. IT may be stated here that the complainant-respondent had filed a complaint against the appellant before the District Forum, Jaipur-II, Jaipur on 15. 9. 2005 stating inter alia that on 28th August, 2005, he had visited the Cinema Hall of the appellant for the purpose of seeing movie "no Entry" and he had purchased two tickets of platinum class after paying Rs. 160 (Rs. 80 per ticket). It was further stated in the complaint that since the complainant-respondent was feeling thirst, therefore, he wanted to drink water, but there was no facility of drinking water in the Cinema Hall of the appellant and, thus, he had purchased two bottles of mineral water after paying Rs. 30 (Rs. 15 per bottle), whereas market value of one bottle of mineral water was Rs. 10. Thus, the appellant had

charged excess amount while selling the bottles of mineral water to the complainant-respondent and for that, the present complaint was filed. A reply was filed by the appellant stating inter alia that facilities of drinking water have been provided by the appellant in the Cinema Hall and the fact that one bottle of mineral water was sold in the Cinema of the appellant for Rs. 13. 33 was not in dispute as slip of EP Canteen is on the record.

After hearing the parties, the learned District Forum, Jaipur-II, Jaipur through order dated 24. 1. 2007 had allowed the complaint of the complainant-respondent in the manner as indicated above holding inter alia that one bottle of mineral water was having fixed price of Rs. 10, but the appellant had charged Rs. 13. 33 for one bottle of mineral water from the complainant respondent and, thus, the appellant had charged excess amount of Rs. 3. 33 per bottle of mineral water and for that deficiency in service, the impugned order was passed.

3. AGGRIEVED from the said order dated 24. 1. 2007 passed by the learned District Forum, Jaipur-II, Jaipur, the appellant has preferred this appeal. In this appeal, the main contention of the learned Counsel for the appellant is that in the Cinema Hall of the appellant, food items are also being made available at appropriate prices and providing of mineral water is an additional facility, which is being provided to the consumers and the prices, which are being charged for providing such facilities, vary from place to place and even in Surya Mahal Restroplex Pvt. Ltd. , the price for one bottle of mineral water is being charged at Rs. 25, though the appellant had charged Rs. 13. 33 per bottle of mineral water and, thus, since the canteen was being maintained, therefore, if any excess amount was charged after issuing slip, it cannot be said that any unfair trade practice was adopted by the appellant. Hence, the findings of the learned District Forum cannot be sustained and the same are liable to be set aside, being wholly illegal, erroneous and perverse one and this appeal deserves to be allowed.

4. ON the other hand, the respondent had supported the impugned order of the learned District Forum. We have heard the learned Counsel appearing for the appellant and the respondent present in person and gone through the entire materials available on record. In this case, there is no dispute on the point that the maximum retail price of one bottle of mineral water, as printed on it, was Rs. 10 and the same was sold to the complainant-respondent in the Cinema Hall of the appellant at Rs. 13. 33 and, thus, Rs. 3. 33 per bottle were charged more by the appellant from the complainant-respondent.

5. THUS, the question for consideration is whether in the facts and circumstances of the case, charging of excess amount to the tune of Rs. 3. 33 per bottle of mineral water amounted to unfair trade practice as defined in Section 2 (1) (r) (ix) of the Act of 1986 and deficiency in service on the part of the appellant, as held by the learned District Forum or not.

6. IT is well settled proposition of law that matters relating to pricing may be adjudicated by Consumer Fora in cases where price is fixed by law or there is a

deliberate or intentional act on the part of the seller of goods to take advantage of a higher price of the goods or there is a price dispute due to unfair trade price as per Section 2 (1) (r) (ix) of the Act of 1986. In *Standard Automobiles v. Dr. Syed Ashraf*, II (1991) CPJ 626 (Kerala) where price of the ignition coil was Rs. 75 inclusive of all taxes, but appellants of that case had sold the coil for Rs. 88 and, thus, charging of excess amount was found to be unfair trade practice on the part of the appellants of that case.

In *Eko Electronics and Ors. v. Saira Mehta*, II (1999) CPJ 599 (Punjab), it was held that over charging of T. V. price amounts to unfair trade practice.

7. IN *R. L. Aggarwal v. Previous And Present Contractors, Cycle, Scooter Stand and Ors.*, II (2001) CPJ 19=2001 (1) Con. LT 563, it was held that over-charging of parking fee for parking scooter Rs. 3 instead of 0. 50 paisa amounted to unfair trade practice and deficiency in service. In this case, the maximum retail price of one bottle of mineral water, as printed on it, was Rs. 10, but the same was sold to the complainant-respondent in the Cinema Hall of the appellant at Rs. 13. 33 and, thus, Rs. 3. 33 per bottle of mineral water were charged more by the appellant from the complainant-respondent and in our considered opinion, that act on the part of the appellant charging more price than fixed on the bottle of mineral water amounted to unfair trade practice as defined in Section 2 (1) (r) (ix) of the Act of 1986 and deficiency in service and the learned District Forum has rightly held so.

8. NO doubt in the institutions like the appellant, food items are being served and charges for supplying food could be charged by them at any rate because maximum charges on them are not fixed by any law or by the appropriate authorities of the Government. Therefore, if, for food items, they charge prices varying from Hotel to Hotel, the District Fora should not interfere, but since in the present case, the maximum retail price of bottle of mineral water was fixed at Rs. 10 by the appropriate authorities of the Government, whereas the appellant had charged Rs. 13. 33, therefore, the act of the appellant charging more amount than fixed on the bottle of mineral water, taking advantage of the situation amounted to unfair trade practice as defined in Section 2 (1) (r) (ix) of the Act of 1986 and deficiency in service, as held by the learned District Forum. We are in agreement with the findings of the learned District Forum as they are based on correct appreciation of entire materials and evidence available on record and they do not suffer from any basic infirmity or illegality or perversity. Hence, no interference is called for with the same. Apart from this, the amount of compensation awarded by the learned District Forum also appears to be just, proper, reasonable and equitable one and, thus, from that point of view also, no interference is called for and this appeal deserves to be dismissed. Accordingly, this appeal filed by the appellant is dismissed. Appeal dismissed.