
(1993) 02 NCDRC CK 0074

In the National Consumer Disputes Redressal Commission

GOPALDAS SOHANLAL CHANDAK

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-02-1993

Acts Referred:

Citation : 1993 2 CPR 210 : 1994 1 CPJ 42

Hon'ble Judges : G.G.Loney , Elipe Dharma Rao J.

Final Decision : Complaint allowed with costs

Judgement

1. THIS complaint is relating to the sale of defective goods. Shortly stated, the facts are that Jeep Vehicle bearing Registered No. MHX-9453, owned by the Government of Maharashtra, at the disposal of Irrigation Department, was put to public auction on 19th December 1989, at Bhandara. The auction sale notice of the said Jeep was published through opposite party No. 3, in News papers. The complainant No. 2 purchased the said jeep giving the highest bid in the auction. He also made the payment of Rs.27,669/-forthe said jeep through Executive Engineer, Minor Irrigation Division, Bhandara. THIS said Executive Engineer also passed an order, dated 23.1.1990, to hand over the said jeep to complainant No. 1 Gopal Chandak, the authorised agent of complainant No. 2. There is also a certificate, dated 24 1.1990, issued by the said Executive Engineer to the effect that Gopal Chandak is allowed to take away the jeep. The aforesaid facts are not in dispute and are supported by news-paper cutting of auction sale, letter of Executive Engineer, dated 23.1.1990, the receipt of payment and the certificate, dated 24.1.1990.

2. IT is the case of complainant that the vehicle mentioned above purchased by him was found to be a petrol engine jeep and not the diesel engine jeep as published in the auction sale notice. Similarly, the complainant also alleged that Executive Engineer, Minor Irrigation (EGS) Division was not the owner of the Saidh jeep purchased by the complainant. As a result of the defects in the goods mentioned above, the complainant could not get registration of the vehicle in his name in the Regional Transport Office. Hence, this complaint for claiming the

refund of the purchase price, garage charges and compensation. The opposite parties Nos. 1 and 2 remained absent on the first date of hearing and did not file the written version. However, opposite party No. 3, the auctioneer of the Government filed the written version and denied his liability. According to the auctioneer, the dispute should have been referred to the Arbitrator as per the terms of the agreement.

We have heard the complainant through Shri Kalantri, the Advocate, the opposite parties Nos. 1 and 2, through the representative and opposite party No. 3, through Shri Kulkarni, Legal Assistant.

3. THE following points arise for our consideration :- (i) Whether the complaint is maintainable before this Commission? (ii) Whether the jeep sold to complainant was a defective good? (iii) Whether the complainant is entitled to refund of price of Jeep with compensation?

We find that although the jeep in question was sold in auction, it is essentially a sale of good. The jeep in question is a Government vehicle, and was sold in auction after following necessary procedure. The complainant No. 2 has paid the full price arrived at the auction and thus became the purchaser of good and, therefore, he is a consumer within the meaning of the Consumer Protection Act. Since the complainant alleged defect in the purchased good and since the allegations are denied by the opposite parties, it has become a consumer dispute and, therefore, it is maintainable before this Commission. The fact that the complainant purchased the jeep after payment of the full consideration is not in dispute. The opposite parties do not dispute the character of complaint as a purchaser of Jeep in question.

4. THE main dispute in this complaint is whether the jeep sold to complainant was defective? THE auction sale notice published by the auctioneer of the Government clearly stated the description of the jeep as "diesel jeep manufactured by Mahindra and owned by Executive Engineer, Minor Irrigation Division (EGS), Bhandara" was to be auctioned on 19th December, 1989. Thus, the representation made by the opposite parties was about the sale of a "Diesel Jeep": THE Irrigation Division tried to wriggle out of the situation by stating that the necessary catalogue of jeeps to be auctioned were distributed at the time of auction. THE opposite parties have not tendered any evidence to show that the complainant was given the copy of the said catalogue or that complaint was made aware before the final bid that it was not a diesel jeep. In the absence of any such evidence making complainant aware about the proper description, we are not prepared to accept that complainant was made aware of this circumstance by the opposite parties. THE printed representation was for a diesel jeep. Relying on that representation, the complainant purchased the jeep as a diesel one. It is, therefore, very clear that the representation made by the opposite parties was defective and misleading. THE complainant was never made aware of correct description of the jeep before the auction commenced. Another defect attributed to the jeep by the complainant is that, when he went to the

R.T.O. to get the jeep transferred in his name, it could not be done by the authorities, since the jeep was not registered in the name of Executive Engineer, Minor Irrigation (EGS) Division, Bhandara, but the registration papers show that it was registered as the "Petrol Jeep" in the name of Executive Engineer, Medium Project Division, Nagpur. THE complainant also alleged that he could not get the registration in his name for another reason that the Engine Number of the said Jeep did not tally with the Engine Number mentioned in the Registration Book, issued by the R.T.O. THE xerox copy of the Registration Book is placed on record. THE complainant has filed detailed affidavit in support of his allegation, dated 16.11.1991, verifying the allegations made in the complaint. From the facts mentioned above coupled with the documentary evidence, we are satisfied that the jeep in question was sold to the complainant by the opposite parties was a defective good. THE first defect is that it was not a diesel engine jeep. THE second defect is that it was not owned by the Irrigation Division opposite party No. 2, and thirdly, the Engine Number of the Jeep in question was different than the Registration Number. In our view, these three circumstances are enough to establish the good as defective. In case of a sale of motor vehicle, its make, its registration number, and its engine number must be correctly reflected in the documents while effecting sale. In our view, the aforesaid three defects in the sale of the jeep to the complainant amounts to the sale of defective good. THE transaction in question is a sale of good to the complainant and in view of our finding that the good was defective, the complaint is maintainable and the complainant is entitled to the appropriate reliefs. The complainant has claimed the refund of the price. In view of the defective good, we find that the complainant is entitled to the refund of Rs. 27,669/-, the price paid to the Government. The second relief is that the complainant has been demanded Rs. 25/- per day as garage charges. It appears that the complainant has not paid the garage charges although demanded by the opposite parties, which the opposite parties shall not recover from the complainant as he could not get valid transfer of the vehicle in his name. The complainant has claimed Rs. 50,000/- as damages for the loss of vehicle for his use. We do not find any material on record to support this claim and, therefore, we reject the claim of Rs.50,000 /- towards damages. The complainant has also claimed Rs.15,000/- as interest at the rate of 18% per annum from the opposite parties. In our view, since the complainant has actually paid Rs. 27,669/- to the opposite parties Nos. 1 and 2 on 23.1.1990 and he could not use the Jeep it will be in the interest of justice to award interest to the complainant on the amount of Rs. 27,669/- from 23.1.1990 till repayment at the rate of 18% per annum as compensation. We find that the amount of compensation and refund is to be made to the complainant by the Opposite Parties Nos. 1 & 2 only and the opposite party No. 3 is not at all liable for the refund of the purchase price as well as the payment of the interest since he was merely acting as an auctioneer. The opposite party No. 3 is neither the owner of the goods nor accepted the money from the complainant and, therefore, he is absolved from the liability for payment of the money. Hence, we pass ORDER The complaint is allowed against opposite parties Nos. 1 and 2 only. Both opposite

parties 1 and 2 shall jointly and severally pay to the complainant Rs. 27,669/- towards the price of the jeep together with interest by way of compensation at the rate of 18% per annum from 23.1.1990 till payment. The aforesaid amount shall be paid to the complainant within the period of two months from the date of receipt of the order. The complainant also be paid Rs. 1000/- as costs. Complaint allowed with costs.