

(2000) 09 NCDRC CK 0072

In the National Consumer Disputes Redressal Commission

G.S.BAL

APPELLANT

Vs

SRI KALISWARI FIRE WORKS

RESPONDENT

Date of Decision : 08-09-2000

Acts Referred:

Citation : 2002 2 CPJ 68

Hon'ble Judges : P.K.Vasudeva , Devinderjit Dhatt J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant G.S. Bal and his ward Master Gagandeep Singh Bal, aged 13 years filed this complaint under Section 17 of the Consumer Protection Act, 1986. Gagandeep Singh Bal, a student of 7th Class is living with complainant No. 1, G.S. Bal. On the occasion of Diwali-1995 the complainant No. 1 along with complainant No. 2, Master Gagandeep on 23.10.1995 went to the market of Sector 44-C, Chandigarh to purchase fire crackers in order to celebrate Diwali festival. THEY purchased fire crackers from respondent No. 4, M/s. Rummy Stores, Sector 44D, Chandigarh who had put up a stall in the market. THE complainant No. 1 purchased crackers named "Bullet" bearing "Cock" brand which were manufactured by respondent No. 1, M/s. Sri Kaliswari Fire Works, Sivakasi, Tamilnadu. THE complainants purchased alleged crackers worth Rs. 700/- as part of other crackers. In the evening of 23.10.1995 at about 9.30 p.m. complainant No. 1 lighted one of the "Bullet" which was manufactured by respondent No. 1 and after lighting, Master Gagandeep retreated by 10 to 15 feet to join his friends, mother and guardian, the said cracker exploded with a loud sound. Although the said child was standing quite far away yet a splinter from the said cracker ripped through his left eye-lid and hit the eye-ball. THE complainant was hospitalized and the injury being serious, he was referred to the Post Graduate Institute of Medical Education and Research (PGI), Chandigarh where he was operated on the intervening night of 23/24.10.1995 and his 1.5 cm. cut on the eye-lid was stitched besides repairing the corneal wound. THEREafter he remained in the PGI as an indoor patient till 30.10.1995 and thereafter outdoor patient. On 6.11.1995 the PGI Authorities expressed their

inability to either cure or treat the eye of the child. In spite of the best efforts of leading Eye Surgeons of Chandigarh, Amritsar and Madras his eye could not be saved. THE complainant has prayed that the strict action be taken against respondent Nos. 1 to 3 and they be directed to pay the following compensation : (1) pay Rs. 20 lacs as compensation/damages to the complainants along with 24% interest from the date of the said accident till realization of the said amount, for the loss and injury suffered by the complainants due to the negligence of O.P. Nos. 1 to 3; (2) discontinue the unfair trade practice of manufacturing and selling the hazardous fire crackers; (3) withdraw the fire crackers namely "bullet" and other fire crackers from sale, which have not been manufactured by them in accordance with the explosive rules and other such guidelines/instructions; and (4) to pay the costs of the proceedings.

Consequently complainant No. 1 approached Dr. B.R. Sharma, a Forensic Science Expert and sought his opinion regarding constitution/composition of the crackers in dispute. Out of the 10 packets, 8 packets containing the total of 80 such crackers were still with the complainants and all those 80 crackers were supplied to the Expert who ultimately conducted tests thereon. According to his report dated 8.8.1996 he opined that the manufacturer has not manufactured the crackers according to the specified rules and that the use of compacted soil got baked in the process of firing which resulted in fragmental missiles and one such missile had damaged the eye of complainant No. 2. THE observations made in his report are as under : "THE use of compacted soil which got baked in the firing process is not only illegal, but it is highly dangerous. THE fragment missiles could be truly mini-missile which could prove highly dangerous especially to the clientele, the Mini-Men-the children. Not only they can destroy eyes but in some cases, they could prove far more dangerous even at unbelievable ranges."

THE expert has mentioned in his report that the "base plug and top plug" in the tested fire crackers were so hard and tough that it could not be broken with hands. THE expert has opined that the main objective of the manufacturer of the said cracker, was to create maximum explosive noise and by doing so the manufacturer had created a gun like situation, and the use of tight plugs instead of paper and strings, allowed the development of high pressure in the cracker like guns projectiles which is against the rules. THE top plug becomes the main projectile and its fragments act like mini bullets. THE perusal of the report indicates that the crackers manufactured by the respondent under the trade name "Bullet" did not conform to the specifications prescribed under the Explosives Act, 1884.

2. IN the complaint it has been averred that against the purchase of fire crackers no bill was demanded or given. Further during the Diwali of 1996 the complainant again purchased 10 boxes of the similar fire crackers manufactured by respondent No. 1 from Classic Emporium, Sector 44D, Chandigarh and the receipt of the same was obtained. The complainant has averred that respondent Nos. 1 to 3 are carrying on unfair trade practice and are offering the hazardous

fire crackers for sale to the general public every year, specially on the occasion of Diwali. Thousands of children and adults received injuries due to manufacturing defects in fire crackers but manufacturers of fire crackers go-scot free for want of proper awareness amongst the public as the cause of the injuries is not investigated at all. The learned Counsel of the complainants during arguments raised an objection saying that the present Bench of the Commission is barred from hearing this case because of the absence of President of the Commission.

Respondent Nos. 2 and 3 being the Branch Office of respondent No. 1, reply by way of affidavit has been filed by respondent No. 1 and raised preliminary objections that the complainants do not fall under the provisions of Section 2(1) (d) of the Consumer Protection Act, 1986 and there is no deficiency on the part of the respondent and thus the complaint is not maintainable and is liable to be dismissed/rejected. Further it has also been averred that the Department of Explosives, Govt. of India, Nagpur has not been made party in the array of opposite parties so as to prove the specific allegations levelled by the complainants regarding the specifications of the explosives used in the manufacturing of crackers, manufacturing process etc. Further it has been averred that the lighting of the fireworks with due safety is purely the responsibility of users, specially under the supervision of adult members of the family. The respondent has further averred that the complainant has not placed on record any authenticated bill whatsoever to show the purchase of crackers named "Bullet" bearing "Cock" brand. It is not disputed that the respondent is not the manufacturer of these brand name crackers and the alleged crackers were not supplied to respondent No. 4 by the respondent for sale or for any other reason. No averments whatever have been made in the complaint that the alleged injury has been caused due to the cracker. Respondents have got the proper licence for manufacturing the crackers and the same has been issued under the Explosives Act, 1884 and the rules framed therein known as the Explosives Rules, 1983.

3. IT has also been averred that the report submitted by the Forensic Science Laboratory expert is not correct. This is for the reason that the variety of fire works being manufactured by the respondent is duly checked by the Chief Controller of Explosives, Explosives Department, Nagpur. The allegation of the complainants that the Bullet brand did not conform to the specifications prescribed under the Explosives Act, 1884 is totally baseless and unfounded because they are strictly following the rules and regulations of the Act. There is a periodical checking by the experts of the Explosives Department in the manufacturing process and surprise checking is also carried out. IT has been further averred that as per the Explosives Rules, 1983 whenever the fire causes such injury or by the explosive, the affected person will inform the police and the Police Department only will refer the claim to the Explosives Department. The Explosives Department, if necessary, will forward it to the F.S.L. and after that the Explosives Department themselves will form an opinion upon the report, if any, given by the F.S.L. In the present case, the F.S.L. has over-reached its

jurisdiction. The injury to the complainant No. 2 has been because of lighting of crackers in the negligent manner. The complainants might not have placed the cracker in the flat and harden surface while lighting. The story put-forth by the complainants seems to be unbelievable because of contradiction within the complaint.

4. WE are of the opinion that the complainants are very much consumer under the Consumer Protection Act because they purchased crackers worth Rs. 700/- and used them for exploding to celebrate Diwali. However, it has not been established that there was any deficiency in service on the part of the manufacturer as the remnants of the cracker, which damaged the eye of the child, could not be sent for test in the laboratory. In the light of observations made by the Hon''ble Supreme Court in *Gulzari Lal Agarwal v. Accounts Officer, III* (1996) CPJ 12 (SC)=1996 (3) CPR 229 (SC), that where the President being non-functional, Sub-rules (9) and (10) of Rule 6 will govern the proceedings. Sub-rule (9) provides that where any such vacancy occurs in the Office of the President of the State Commission, the senior most (in order of appointment) Member holding office for the time being, shall discharge the function of the President until a person is appointed to fill such vacancy. This sub-rule is made with a view to make the State Commission functional in the absence of the President and not to allow the State Commission to render non-functional for want of the President. It is well settled that every provision in the Act needs to be construed harmoniously with a view to promote the object and spirit of the Act. Since similar is the provision in Sub-rule (8) of Rule 6 of the Chandigarh Consumer Protection Rules, 1987, the present Bench, therefore, is absolutely competent to dispose of the case now in hand in the absence of the President. Padambhushan Prof. P. Chandra Sekharan of Forensic Science who was associated with Rajiv Gandhi murder case during his cross-examination has controverted the report of Dr. B.R. Sharma saying that the remnants of the explosives were not supplied to him but he examined similar samples purchased from the market and Dr. Sharma examined unfired crackers and not the remnants of those which were fired. He further said that the Department of Explosives, Government of India permits use of clay and for this purpose he relied upon Clause 7 which frame class of the Explosives Rules, 1983, Schedule.

5. AFTER hearing the learned Counsel for the parties and careful examination of documents and evidence and the report of Dr. B.R. Sharma as well as that of Prof. P. Chandra Sekharan, this Commission is of the opinion that the complaint is not maintainable for the following reasons that : (1) the complainant has prayed for compensation for more than Rs. 20 lacs which is beyond the pecuniary jurisdiction of this Commission; and (2) there are far too many witnesses required for examination and voluminous law points involved, which need thorough consideration and which cannot be decided summarily by this Commission under Section 13 of the Consumer Protection Act, 1986. In conclusion the complaint fails and is dismissed. However, the complainants are at liberty to seek remedy before the Appropriate Authority, which they deem fit.

Complaint dismissed.