(2016) 05 NCDRC CK 0100

In the National Consumer Disputes Redressal Commission

Case No : 119 of 2011

HINDUSTAN COCA COLA BEVERAGES PVT. LTD — APPELLANT

Vs

VISHAMBAR DAYAL MANGAL & ANR. — RESPONDENT

Date of Decision : 20-05-2016

Acts Referred:

Citation : 2016 3 CPR 273

Hon'ble Judges : B.C. Gupta

Advocate : Rajiv Tyagi, Gyanendra Sharma

Judgement

1. The impugned order dated 29.11.2010, passed by Rajasthan State Commission, Jaipur (hereinafter referred to ''State Commission) in First Appeal No.2146/2004, Vishambar Dayal Mangal vs. Hindustan Coca Cola Beverages Pvt. Ltd., has been challenged by way of this revision petition, filed by the petitioner/ opposite party, Hindustan Coca Cola Beverages Pvt. Ltd.. The State Commission vide impugned order allowed the appeal filed by the complainant/respondent, Vishambar Dayal Mangal and set aside the order dated 20.10.2004 of the District Forum, vide which, the consumer complaint filed by the present respondent was dismissed.

2. The facts of the case are that Vishambar Dayal Mangal, who is now being represented by his legal heirs, filed a consumer complaint, saying that the present petitioner/OP-1, Hindustan Coca Cola Beverages Pvt. Ltd. advertised a general scheme, under which prizes as printed on the crowns of the bottles of cold drinks, manufactured by them were to be given to the consumers. It has been stated that the complainant, attracted by the said scheme of the petitioner, started consuming cold drinks manufactured and sold by the company and in the process, purchased Thumps up and Limca bottes in April 2001 from a retail shopkeeper, Bhagwan Das s/o Lakhan Lal. In one of the Limca bottles, he found a prize of 100 gm. of gold printed on the crown, whereupon he informed the dealer of the company, Jagdish Prasad Goyal, before the last date of the scheme and also gave the prize crown to him. The said Jagdish Prasad Goyal went to the

office of OP-1 in Jaipur, but he could not meet the General Manager and other officials of the company, as they were away to Delhi. The dealer returned the crown back to the complainant and assured him that he shall take up the matter at his own level with the company. The complainant sent notice dated 24.5.2001 to OP-1 claiming the prize of 100 gm. of gold, but on their failure to do so, he filed the consumer complaint in question, claiming 100 gms. of gold as prize, or in the alternative, to get a sum of Rs.45,000/- alongwith interest @ 12% per annum w.e.f. 15.5.2001.

3. The complaint was resisted by the OP-1 by filing a written statement before the District Forum, in which they stated that a prize winner was not covered under the definition of ''consumer''. They also stated that the complainant had not furnished details of purchase bills with his complaint, nor any copies of such bills had been supplied to respondent no.1. OP-1 further stated that the scheme was valid from 1.3.2001 to 15.4.2001 and the details were duly published in the newspapers. It is stated therein that for getting cash prizes, the crowns were to be given to the retailers, who were authorized to provide such cash prizes. In the case of gold prize, however, the ''liner'' below the rubber was to be sent to the company. In the present case, since the liner had not been surrendered by the complainant, he could not be given any prize. The complainant had made a concocted story that their dealer, Jagdish Prasad Goyal went to the company to claim the prize. The OP-1 requested that the complaint was liable to be dismissed.

4. The District Forum vide their order dated 20.10.2004 concluded that the scheme was up to 15.4.2001 and the complainant had not been able to prove that he had purchased Limca bottle before 15.4.2001. It was also stated that the complainant did not have the rubber liner with the crown. Being aggrieved against this order, the complainant challenged the same by way of appeal before the State Commission, which was allowed, vide order dated 29.11.2010, and a direction was given to the petitioner/OP-1 to provide 100 gms. of gold, or its value as prize to the complainant alongwith 12% interest per annum . It was also directed that Rs.10,000/- as damages and Rs.5,000/- as litigation expenses shall be paid to the complainant. Being aggrieved against the said order, the OP-1, manufacturing company is before this Commission by way of the present revision petition.

5. During hearing, it was contended by the learned counsel for the petitioner that under ''Limca Dhanadhan'' offer, as floated by them, the prizes were to be given for purchases made between 1.3.2001 to 15.4.2001. There was a gold prize, as per which, the prize winner could get upto 1 kg. of gold and there were cash prizes from Rs.50 paisa to Rs.5/- also. The cash prize was to be given to the consumer in exchange of the Limca crown by the dealer at that very time. However, for gold prize, the consumer was required to send the liner below the crown to the company. The learned counsel stated that the complainant in the present case did not send the liner to the company and moreover, there was no

proof of the purchase of the cold drink, in question. In the grounds of revision petition also, they had mentioned that the scheme was valid for purchases between 1.3.2001 to 15.4.2001 only. The learned counsel stated that he complainant had furnished the credit register of the shop, showing only the date of purchase as 11.4.2001, but there was no proof of purchase or purchase receipts etc. Learned counsel stated that the District Forum had

rightly dismissed the said complaint. No statement from the local dealer etc. had been recorded, neither any affidavit had been filed in support of the version of the complainant. The learned counsel stated that the complainant did not fall under the category of ''consumer'' and moreover, OP-1 had not caused any deficiency in service towards the complainant, for which he may be held liable to pay compensation.

6. I have perused the entire material on record and given a thoughtful consideration to the arguments advanced by the learned counsel for the parties.

7. In the grounds of revision petition as well as the arguments made by the learned counsel for the petitioner before me, it has been stated that the scheme, under which the prizes were being offered, was valid from 1.3.2001 to 15.4.2001. It has not been stated anywhere that the prizes under the scheme could be received during the period ending 15.4.2001 only. A perusal of copy of Limca Dhanadhan offer placed on record by the petitioner also does not mention any time prescribed for obtaining prizes under the scheme. The State Commission have, therefore, rightly observed in their order that no upper date or limit had been prescribed for receiving the prizes. Moreover, it has been stated in the offer that for all gold prizes, the liner was to be sent to the mentioned address. It can be safely presumed, therefore, that if the purchase was made on 15.4.2001 itself, or during the later part of that day, the purchaser was eligible to get the prize, although it would not have been possible to him to send the liner to the prescribed address on that very day. The basic issue to be decided in this case, therefore, is whether the purchase was made by the complainant prior to 15.4.2001 or later. The State Commission have referred to a copy of the register produced on record, where it has been mentioned that the complainant purchased the goods on 11.4.2001 for an amount of Rs.251.50. These goods included snacks, biscuits, soap, besides of coca cola-6, limca bottle-6 and other household articles. The said bottle in question was purchased from Bhagwan Das, whose affidavit has also been produced on record. He stated in the said affidavit that in March and April, 2001, 34 crates of thumps up and limca were purchased by the complainant from his shop, giving rise to the presumption that the complainant regularly used to purchase the said material from the shop of Bhagwan Das.

8. The State Commission further observed in their order that the petitioner company had not disputed that the prize crown was not genuine. The State Commission has also observed that pleadings were made only in relation to the liner and they had seen the liner below which 100 gms. of gold was clearly

mentioned. As observed already, the petitioner in their revision petition have only stated that the scheme was valid till 15.4.2001, but the complainant failed to send the rubber liner to the petitioner company before that date. I do not find any justification on the part of the petitioner to take the plea that the liner should have been sent to them before 15.4.2001 and that the complainant is not eligible to get the prize for his failure do so.

9. Based on the discussions above, I do not find any merit in this revision petition and the same is ordered to be dismissed. The order passed by the State Commission does not suffer from any illegality, irregularity or jurisdictional error and the same is ordered to be upheld with no order as to costs.