

**(2003) 03 NCDRC CK 0025**

**In the National Consumer Disputes Redressal Commission**

INDIAN HOTELS COMPANY LTD.

APPELLANT

Vs

MOHAMED AZIZ VAKHARIA

RESPONDENT

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**Date of Decision :** 25-03-2003

**Acts Referred:**

**Citation :** 2003 4 CPJ 511 : 2004 1 CPC 41

**Hon'ble Judges :** M.S.Rane , V.K.Data J.

**Final Decision :** Appeal dismissed

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**Judgement**

1. THIS appeal has been preferred by the Original O.P. in the form of complaint questioning the legality and validity of the order dated 23.10.2001 passed by the South Mumbai District Forum, Mumbai in the aforesaid complaint holding the appellant herein deficient in the matter of transfer of 100 shares which the complainant purchased through Broker. Few Relevant Facts :

2. SOMEWHERE around 1995 the complainant purchased 100 Equity Shares of O.P. through a Broker. The complainant paid the consideration thereof to the Broker. Uncontroverted facts show that the Broker in question reverted to the O.Ps. and the O.Ps. transferred 50 Shares out of 100 Shares in the name of the complainant. It further shows that the O.Ps. also issued Dividends to the complainant upon transferred 50 Shares for the year 1994-95, 1995-96 and 1996-97.

Since 100 Shares were proposed to be purchased by the complainant, out of which 50 Shares having been transferred, the complainant expected the transfer of remaining 50 Shares. However, to his dismay and surprise on 4.7.1998 the complainant received the letter from the O.Ps. informing that the Shares so transferred are the part of stolen Shares and that being so, the transfer effected was through inadvertence. The complainant however protested.

3. AS the complainant was denied his entitlements in respect of 50 Shares already transferred and non-transfer of the remaining 50 Shares out of 100 Shares despite payment of consideration that the complaint was filed. Before the

District Forum the O.P. opposed the claim of the complainant on several grounds such as complainant not being a Consumer, the subject matter not being a consumer dispute, the Broker in question having been not made a party and that the shares being the subject matter of theft, purported transfer was not binding upon it, etc.

4. THE District Forum in its elaborate judgment has considered all the rival contentions raised. THE point raised with regard to non-joinder of the Broker has also been taken note of by the District Forum when it held that non-joinder was not justified. However, as stated earlier, the stories set up of the alleged theft was shrouded with doubtful circumstances. Although the District Forum has not specifically dealt with this aspect in a perspective it required, we can judge from the facts as have been reflected in the impugned order. The record shows that after transfer the O.Ps. paid dividend to the complainant for the years 1994-95, 1995-96 and 1996-97 and it is only in July 1998, i.e. after interval of about three years and odd that the involvement of shares has been cropped up.

5. THIS raised some amount of doubt which may not be said to be well founded but legitimate one. If the bona fide holder of shares did not receive dividend for three years, one fails to understand why the holder of shares kept silent for all these years. What is more pertinent to note is the O.Ps. were prompt enough to take action in informing the complainant about the so-called complaint of theft made at the belated stage and in any event after lapse of three and a half years, without producing however any proof in support.

6. THIS aspect has not been sufficiently explained by and on behalf of O.P. to the District Forum nor it has been convincingly explained even before us. In our view the said conduct of the O.P. would also be reflect in judging the element of deficiency as is alleged in the dispute herein. In retrospect we are of the view that the District Forum in such circumstances has awarded Rs. 10,000/- for lapse on the part of the O.P. as noticed herein above and Rs. 300/- to the cost of proceedings. In the circumstances the award would not require any variation of interference as is claimed in this appeal. Hence the order. ORDER 1. No merit. Appeal stands dismissed. 2. No order as to cost. 3. Six weeks" time is granted to the O.P. for compliance of the order from today. 4. Office to furnish copies of the order to the parties.

Appeal dismissed.