(2011) 01 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

Marine Container Services (India) Pvt. Ltd. APPELLANT

Vs

Mercedes Benz India Ltd. RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Citation : 2011 0 NCDRC 39 : 2011 1 CPJ 86 : 2011 1 CPR 150

Hon'ble Judges : R.C.Jain , S.K.Naik J.

Final Decision : Complaint fails and is dismissed

Judgement

1. MARINE Container Services (India) Pvt. Ltd. has filed the present complaint alleging adoption of unfair trade practice within the meaning of section 2(1) (r) of the Consumer Protection Act, 1986, on the part of the opposite parties in relation to the sale of Mercedes Benz car model E-220 to it. The complaint has been filed with the averments and allegations that OP No.1 Mercedes Benz India Ltd. has entered into a joint venture with OP No.2 Tata Engineering and Locomotive Co. Ltd., to promote the successful models of Mercedes Benz car in particular E-class range of 220 (petrol) and E-250D (Diesel) in India.

2. ON or about 04.12.95, the complainant came across an advertisement issued by the opposite parties under the heading The 3-pointed start comes to India mentioning that the bookings for the Mercedes Benz E220 (petrol) and E250D (diesel) would be open upto 14.12.1995. Complainant accordingly booked one Mercedes Benz E250D car by paying Rs. 1,30,000/- through demand draft bearing no.551969 dated 28.11.95 drawn on Canara Bank, Bombay. The complainant received proforma invoice dated 13.5.96 giving full and complete details of the vehicle. The total value of the car was Rs.23,25,778.32 with the stipulation that prices and taxes at the time of the delivery of the vehicle would be applicable irrespective of the time when the order was placed. ON the same date as that of the invoice, the opposite party no.2 informed the complainant that the booking made by the complainant for Mercedes Benz-E class had matured for allotment and balance payment being made within 30 days of the receipt of the letter and in case of failure to do so, number would be bypassed

and in case of 60 days delay, the priority number would stand automatically cancelled. The said letter also stipulated the delivery period of the car as 6 to 8 weeks after receipt of the balance payment. ON or about 01.8.96, the complainant-company paid the balance amount of Rs.21,06.325/- and opted for automatic transmission vehicle rather than manual and requested the necessary change be made in the record of the opposite parties. Few days thereafter, the complainant-company came across a newspaper clipping in the Economic Times dated 24.08.96 reporting that Mercedes Benz India (Pvt.) Ltd. was planning to phase out E220 and E250D versions of their car running on Indian roads being the older versions as it had already phased out the said versions from the European and American markets. Becoming suspect, a representative of the complainant had a telephonic conversation with certain Mr.P Praveen of the Worli Showroom of the opposite party in order to clarify the position on the above aspect and thereafter, the opposite party no.2 issued a communication dated 03.09.1996 interalia stating as under: This is in reference to your telephonic conversation with Mr.P.Praveen of our Worli Showroom with regard to manufacturing plan of MB cars in India. Kindly note, there is no plan to introduce MB car type E-300 Diesel (W-124 Series) nor is there any plan to phase out the present models of E-220 and E-250 Diesel. However, Automatic Transmission will be available as an optional item sometime towards Mid November 1996. A press release jointly issued by MBIL and Telco is enclosed for your ready reference clarifying the misconceptions about the introduction of new model. We trust we have clarified your queries. Assuring you of our best attention at all times. A Joint Press Release by Mercedes Benz India Limited and Telco as referred in the said communication dated 26.8.96 interalia reads as under: In view of several unwarranted press reports appearing recently in newspapers and magazines, the Managements of Mercedes-Benz India Ltd. (MBIL) and Telco are constrained to issue a joint press release to clear the air of unnecessary speculation: Accordingly, MBIL and TELCO would like to advise as follows: 1. Daimler Benz AG & Mercedes-Benz AG, Germany have a long standing collaboration and business relationship with TELCO in India for several decades, going back to 1954. This relationship culminated in the establishment of a Joint Venture-Mercedes-Benz India Ltd.-in 1994, in Pune.

2. MBIL was established with a share-holding of 51% by Daimler Benz AG, Germany and 49% by TELCO, and this will continue. There is no discussion or proposal for any change in India. 3. The Joint Venture launched the E220 (Petrol) and E250D (Diesel), highly successful models of the Mercedes-Benz E-class range in India and these models will continue. While MBIL, like all other automobile companies, continued to review its model policy, there is no plan to phase out these tried and proven models, in the immediate future. 4.Customers should rest assured in respect of continued support for the E220 and E250D.

5. MBIL and TELCO continue to improve on their sales performance in order to ensure that the customers get the car of their choice as fast as possible. As of date, over 1500 cars have been sold by TELCO since initial commercial sale in

January 1996. 6. The MBIL Board Meeting scheduled on 13th September 1996 will take place in Mumbai as scheduled with the Directors of both Daimler Benz AG/Merceedes-Benz AG as well as TELCO, attending the meeting. 7. Both MBIL and TELCO value their association with each other and expect great success from this Joint Venture.

Acknowledging the said letter of opposite party no2, complainant issued letter dated 09.09.1996 interalia stating as under: Many thanks for your letter Ref. No.ADT.KKG:10154 dated September 3, 1996. However, during the telecom and personal visit of Mr.P.Praveen of your office, he had mentioned that there are no plans to upgrade the current model being manufactured for the next five to six years. In view of the above we need a clear undertaking incorporating the following: a. Mercedes Benz India Pvt. Ltd will not launch any model including E-300 Diesel Series in next five years. b. In the event of launching a new model, the existing car given to us will be replaced by the new model. Without the above undertaking, we will be unable to ratify our earlier decision to buy a E-250 D Mercedes Benz Car. Please appreciate that we are no interested in purchasing this model if same is likely to be replaced with later model in the near future.

Request you early reply.

3. COMPLAINANT sent two reminders dated 17.09.96 and 24.9.96 in order to seek a reply / confirmation of its letter dated 09.09.1996 but the opposite party did not send any communication either confirming or controverting the same. It is admitted position that complainant took the delivery of E250 Diesel car with automatic transmission on 05.03.97 by paying cost of accessories. It is pertinent to note here that the complainant made no grievance of any kind either in the said car or the after sales services provided by the opposite parties and according to the counsel for the complainant, the car is smoothly running on road even now and giving good service. The grievance of the complainant which is the basis of the present complaint, however, is that opposite parties have adopted unfair trade practice in selling the said car to the complainant with incorrect representation that there was no plan to introduce a higher model MB type E-300 (diesel) (W-124 series) because contrary to the representations made by them, opposite parties had infact launched the said upgraded model in India in the year 1998. Had the opposite party not held out to the complainant the above representation, it would not have opted to go for the model E-250 Diesel and would have waited for the launch of the upgraded model E-300 Diesel, which conduct of the opposite parties tantamounts to adoption of unfair trade practice and on that account the complainant has suffered loss and injury which the opposite parties are liable to compensate the complainant. Accordingly, complaint was filed seeking the following reliefs: a. This Honble Forum direct/ order/decree the opposite parties to jointly and severally give the complainant a Mercedes Benz new E-Class Saloon vehicle by replacing the existing E-250 model at the same price. The new vehicle would be covered by the usual warranty from the date of delivery. b. This Honble Forum direct/order/decree the opposite

parties to jointly and severally pay interest on Rs.23,25,778.32 from 12.3.97 till payment and / or realization thereof.

c. This Honble Forum direct/order/decree the opposite parties to jointly and severally pay to the complainant Rs.2 lakhs towards mental agony sustained by the complainant at being given a vehicle of an older version which had already been phased out in the European and Americal markets as a taxi.

d. Four such further and other reliefs as this Honble Forum may deed fit, proper and expedient in the circumstances of the case. e. For costs of defending this complaint.

The complaint was resisted by the opposite parties by filing separate written versions. In the written version filed on behalf of the opposite party no.1, it has raised preliminary objections about the status of the complainant as a consumer covered under the definition of section 2 (1) (d) of the Consumer Protection Act, 1986; no case of unfair trade practice is made out from the documents annexed with the complaint; unjust demand of the complainant having not been acceded is being camouflaged as a claim based on unfair trade practice; complainant is trying to foist a speculative and vexatious claim on the opposite parties in order to exploit consumer jurisdiction for indulging in legal adverturism for which the complaint is liable to pay the cost for defending the proceedings. On merits it is denied that opposite party is guilty of any unfair trade practice or complainant is entitled to any relief much less the reliefs claimed by it. In the written version filed on behalf of opposite party no.2, the factum of complainant having booked a mercedes E-250D car with manual transmission earlier and later having changed his preference to an automatic transmission model in the year 1995 as also the correspondence exchanged between the parties in the year 1996 and the factum of delivery of car are not disputed. It is also not disputed that higher model of E-300 was launched by the opposite parties in India sometimes in 1998. It is however, emphatically denied that the act and conduct of the opposite parties in any way constitute any unfair trade practice in the sale of the said car to the complainant.

4. IN support of its case, complainant has filed affidavit of R. Guru, Manager Accounts and Administration while the opposite parties have filed the affidavit of M.S.Pradeep, Managner Legal, Tata Motors Limited and that of Mr.R.B.Pendse, General Manager, Legal Affairs and Company Secretary on behalf of opposite party no.1 respectively. Besides, parties largely relied on the documents most of which have been referred in the earlier part of this order. We have heard Mr.Sanjeev Bhatnagar, Advocate, learned counsel representing the complainant, Mr.M.S.Pandit, Advocate, learned counsel representing opposite party No.1 and Mr.Aditya Narain, Advocate, learned counsel representing the opposite party No.2 and have considered their respective submissions. The sole question which arises for our consideration and answer to which will decide the fate of this complaint is as to whether the opposite parties have adopted unfair trade practice in selling a Mercedes Benz Car E-250 Diesel model to the complainant. Term unfair trade

practice has been defined in section 2 (1) (r) of the Consumer Protection Act, 1986 as under: Unfair trade practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:- (1) the practice of making any statement whether orally or in writing or by visible representation which,- (i) falsely represents that the goods of a particular standard quality, quantity, grade, composition, style or model; (ii) falsely represents that the services are of a particular standard, quality or grade; (iii) falsely represents any re-built, second hand, renovated, reconditioned or old goods as new goods; (iv) represents that the goods or services have sponsorship, approval, performance, characterstics, accessories, uses or benefits which such goods or services do not have; (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have; (vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services; (vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof: Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of such defence shall lie on the person raising such defence; (viii) makes to the public a representation in a form that purports to be - (i) a warranty or guarantee of a product or of any goods or services; or (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranted or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out.

Case of the complainant as put forth in the complaint is that there is no defect in the car in question which was sold by opposite parties to it or in regard to the after sales service. The complainant seems to cover its case under clause VII (supra). Learned counsel for the appellant has strongly contended that representation made by the opposite party no. 2 in their letter dated 03.09.1996 to the effect that there is no plan to introduce MB car type E-300 diesel (W-124 series), was incorrect / false because sometimes later in the year 1998, the opposite parties had launched an upgraded model number E-300 diesel which amounts to adoption of unfair trade practice. On the other hand, it is argued by the counsel for the opposite parties that they made no false or incorrect representation because the said clarification was issued to the complainant going by the position as it stood in the September 1996 which was the correct position inasmuch as opposite parties had launched no upgraded model either in the year 1996 or 1997 or uptil 1998. In support of their contention, heavy reliance has been placed on the decision of the Honble Supreme Court in the case of Man Roland Druckimachinen Ag Vs Multicolour Offset Ltd. and Anr. (2004) 7 SCC 447. The said case emanated from an order passed by the Monopolies and Restrictive Trade Commission who had examined the question of unfair trade practice and the jurisdiction of the said Commission to entertain a complaint based on unfair trade practice within the meaning of section 36-A of the MRTP Act. In para 12 of the said case, the Apex Court observed that in the case of unfair trade practice as invoked by respondent no.1, the object of inquiry is a statement which is a false representation of the kind specified in sub-caluses (i), (ii) or (iii) of clause (1) of Section 36-A or is an advertisement of the kind specified in sub-clauses (vii) or (viii) thereof. The statement or advertisement is the trade practice. The further requirement under the section is that the trade practice complained of must be for the purpose of promoting the sale, use or supply of goods or for promoting the provision of any service. The sale, use or supply need not, for the purposes of the section actually have taken place although it may be relied upon by the complainant to establish the falsity of the representation.

5. WE have given our earnest consideration to the respective contentions. The facts as noted above and the material placed on record would at best establish that complainant-company had booked a mercedez Benz Car E-250D manual transmission car by paying a price of Rs.1,30,000/- and the said booking remained in vogue during whole of the year 1996 when the complainant desired a change in the vehicle from manual transmission to automatic transmission which was acceded by the opposite party without any rancour. Complainant being suspicious through press reports about the launch of a new /upgraded model sought clarification which were duly provided by the opposite parties vide communication dated 03.09.1996 interalia explaining therein that there was no immediate plan to phase out the existing models E-220 and E-250D diesel models and that these models were good. Complainant insisted for an assurance/ guarantee/undertaking from the opposite parties that they will not launch a new model for about five years, which assurance was never given or could have been given by the opposite party. Booking of complainant matured in May 1997 and he paid balance price of the car and took delivery without any stipulation about the replacement of the vehicle by an upgraded model in case a new model was launched within a particular time frame. The complainant has no complaint about the functioning of the car purchased by it or in regard to the after sales service on the part of the opposite parties. On these facts, the question is as to whether opposite parties had made any incorrect / false representations tantamounting to unfair trade practice within the meaning of section 2 (1) (r) of the Act. In our view the answer is a big No because the material brought on record does not establish that either the representation made by the opposite parties was incorrect or false. In any case, vide their letter dated 03.09.1996, the opposite parties can at best be said to have made a representation to the effect that they had no immediate plan to launch a new model. Upgraded model was launched by the opposite party sometimes in the year 1998 i.e. more than one year after the sale of the car to the complainant. Launch of a new model after more than one year of the sale of the car cannot by any stretch come within the meaning of the term immediate. The word immediate has been defined in the Black Law Dictionary as Occuring without delay and in the WEstern Dictionary as happening

or done without delay.

6. WE have, therefore, no hesitation to hold that complainant has miserably failed to establish any unfair trade practice on the part of the opposite parties. It appears to us that the present complaint was nothing but an unfair device on the part of the complainant company to exert pressure on the opposite parties to accede to its unjustified demand to replace the car with a new model launched by the opposite parties in the year 1998. In our view, complaint is wholly misconceived and can also be termed as vexatious. The opposite parties have been unnecessarily dragged in this long drawn litigation for over 12 years. In the result, complaint fails and is hereby dismissed with cost of Rs.20000/- which will go to the Consumer Legal Aid Account NCDRC of this Commission.