(1999) 05 NCDRC CK 0083

In the National Consumer Disputes Redressal Commission

MESSRS RAJENDRAS APPELLANT

Vs

Tata Finance Limited RESPONDENT

Date of Decision : 12-05-1999

Acts Referred:

Citation : 1999 3 CPJ 48

Hon'ble Judges : A.N.Divecha , R.K.Anand J.

Final Decision : Complaint dismissed

Judgement

1. THE applicant/complainant has moved this complaint under Section 36B(a) of the Monopolies and Restrictive Trade Practices Act, 1969 (the MRTP Act for brief) charging the respondent with adoption of and indulgence in unfair trade practices qua booking of one car by the applicant/ complainant on 17th January, 1999.

2. IT transpires from the material on record that the applicant/complainant is a proprietor of one firm by the name of Messrs Rajendras. The business of the applicant/complainant through his firm is that of builders. IT transpires from copies of the Income-tax Return and the Assessment Orders annexed to this complaint that he has been using his car for business purposes and he has claimed depreciation and repair charges and car insurance amount and of car loan instalment in his Income-tax Returns. This would prima facie show that he would like to purchase the new car for his business purposes. It may be noted that the word "consumer" has not been defined in the MRTP Act. However, in view of the binding Division Bench ruling of the High Court of Delhi in the case of Ballarpur Industries Limited v. The Director General (Investigation and Registration), reported in (1988) 64 Company Cases at P. 884, the definition of the word "consumer" contained in the Consumer Protection Act, 1986 (the CP Act for brief) will have to be adopted for the purposes of the MRTP Act. The word "consumer" therein is defined in Section 2(d) to exclude a person who purchases goods inter alia for any commercial purpose. A car would certainly fall within the purview of the term "goods" as defined in Section 2(i) of the CP Act. The use of car for his business purposes by the applicant/complainant would certainly be a

commercial purpose.

Learned Advocate Mr. Sabharwal for the applicant/complainant has relied on the binding ruling of the Hon''ble Supreme Court in the case of Laxmi Engineering Works v. PSG Industrial Institute, reported in National Commission and Supreme Court on Consumer Cases at P. 1553 [equivalent to II (1995) CPJ 1 (SC) and (1995) 3 CTJ (Supreme Court) (CP) At p. 289]. On interpretation of the explanation given with respect to the commercial purpose mentioned in the definition of the term "consumer" given in Section 2(d) of the CP Act, it has been held therein that a purchaser of goods for the purpose of earning his livelihood would not amount to commercial purpose. For example, a person purchasing a typewriter and doing work as typist on work basis for earning his livelihood cannot be said to be using his typewriter for any commercial purpose. Another example furnished is that of a person purchasing a car to ply it as a taxi for earning his livelihood. He cannot be said to be using his car for commercial purpose. It therefore becomes clear that the use of the goods purchased should have relation with the nature of activities pursued for earning livelihood. A typist earning his livelihood by doing typing work for others on the typewriter can be said to be using his typewriter not for a commercial purpose because his work to earn livelihood is associated with the typewriter that he has purchased. So will be the case of a taxi driver. That would however not be applicable in the present case for the simple reason that the commercial activities pursued by and on behalf of the applicant/complainant is that of business of builders. The source of livelihood is his business as a builder. The use of car in that business is not directly related to the nature of work pursued. It is not the case of the applicant/ complainant before us that he would like to use the car to be purchased by him as a taxi for earning his livelihood. A taxi is plied for earning. A car is used by a businessman as incidental to his avocation of some other nature. In that view of the matter, there is no escape from the conclusion that the car proposed to be purchased by the applicant/complainant will be used for his business purpose and it would not fall within the purview of the Explanation of the term "commercial purpose" appended to the definition of the word "consumer" contained in Section 2(d) of the CP Act.

3. LEARNED Advocate Mr. Sabharwal for the applicant/complainant submits that the applicant/complainant has filed an affidavit to the effect that he has booked the car for his personal use and not for his business purposes. Looking to the nature of his Income-tax Returns, it becomes doubtful whether he means so when he has claimed deductions with respect to car repair charges, car instalment loan, car depreciation and car insurance amount. Again it would not be possible for this Commission to monitor whether or not he actually uses his car for personal purposes or business purposes. In that view of the matter, we do not consider it proper to rely on such affidavit of the applicant/ complainant. In view of our aforesaid discussion, we are of the opinion that the car to be purchased by the applicant/complainant will be for his business purpose which would be in the nature of commercial purpose and he would therefore fall outside

the purview of the term "consumer" as defined in Section 2(d) of the CP Act. The complaint would therefore not be maintainable before this Commission on the ground that he is not a consumer for the purposes of Section 36B(a) of the MRTP Act. In the result, the complaint is summarily rejected. Complaint dismissed.

