

(2001) 12 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

MOHAN BHANDAR

APPELLANT

Vs

N.LOKESH

RESPONDENT

Date of Decision : 20-12-2001

Acts Referred:

Citation : 2002 1 CLT 692 : 2002 1 CPC 491 : 2002 1 CPR 254 : 2002 3 CPJ 236

Hon'ble Judges : T.Jayarama Chouta , B.H.Kamalamma , Abdul Perwads J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the order passed by the District Forum, Mysore on 8.3.2001 in Complaint No. 137 of 2000, holding that opposite Parties I and II are guilty of deficiency in service.

2. THE factual matrix of the case centered around the sale of a bottle of Mango Pickle by opposite party-I, manufactured by opposite party-2, which according to the complainant, did not contain the details required to be mandatorily displayed on the package. It was alleged that since essential information like month and year of manufacture was not displayed, the opposite parties were guilty of deficiency in service under the C.P. Act, not to speak of violating the provisions of the Standards of Weights and Measures Acts and the Rules made thereunder. The opposite parties denied the allegations contending that the goods in question were not sold to the complainant on 14.6.2000, and if at all the complainant makes such a claim, he ought to have got the transaction witnessed by the salesman or by some one present on the spot. It was further contended that opposite party-I had not refused to take back the jar of pickles on the premises that goods once sold cannot be taken back. Opposite party-II took up the specific defence that since the complainant has not opened the bottle till then, he has not suffered any injury or harm and hence he was not entitled to invoke the provisions of the C.P. Act. Moreover, since the Notification of Government of India, Department of Health, amending Rule 32 of the P.F.A. Rules, 1955 (in view of the decision of the Hon'ble Supreme Court in Dwarkanath & Anr. v. Municipal Corporation of Delhi, reported in AIR 1971 SC 1844, came into force from

1.9.2000, no display regarding batch/lot/code numbers on the package sold to the complainant was necessary and consequently no deficiency in service could be attributed to the manufacturer.

The District Forum, on due consideration of the legal aspects involved, however came to the conclusion that opposite parties I and II were guilty of deficiency in service and hence directed them to refund the cost of goods of Rs. 48/-. A sum of Rs. 750/- was also ordered to be paid to the complainant along with costs of Rs. 250/-. The complaint against opposite party 3 was dismissed as not maintainable. This appeal is directed against the said order of the District Forum.

3. WE have heard Mr. S. Rajendra, learned Counsel for opposite parties I and II, who brought to our notice that the expiry date was needed to be mentioned on goods only with effect from 1.9.2000 and hence there is no cause for the complainant to contend that the opposite parties, particularly opposite party-2, has violated any law in force. Moreover, it was contended that the bottle produced by the complainant before the District Forum was not the one sold by O.P.-I which was also not manufactured by O.P.-II and that an ulterior motive was behind the whole effort conceived by the complainant. It was urged that before the District Forum opposite parties I and II had only confirmed that the seal of the jar was intact, but had not admitted that opposite party-I had sold it to the complainant. The petitioner pointed out that the Inspector of Legal Metrology who had inspected the goods manufactured by opposite party-2 had given a clean chit as regards compliance of necessary legal requirements and hence the complaint smacks of clear vexatious intentions. We have obtained District Forum records and going through them between the lines, we find that the District Forum has dealt with the aspects of the sale of goods in para 23 of its order in the following words. "23. The first and foremost contention of the 1st respondent is that the complainant has not at all purchased the alleged bottle containing the Mango Pickles from the 1st respondent. But this plea is pleaded by the 1st respondent in the version. Further the version by the 2nd respondent is conspicuously silent about the fact that the complainant has not purchased the pickles as pleaded by the 1st respondent. However the 1st respondent and the Counsel for the 1st and 2nd respondents did not dispute that receipt produced by the complainant along with complaint. The perusal of the same reveals the fact that the 1st respondent has issued the receipt for having sold three food articles to the complainant out of which the bottle containing the Mango Pickles is one which is in sealed condition and produced by the complainant before this Forum. The Counsel for both the 1st and 2nd respondents and 1st respondent who was before the Forum admitted the fact that the said bottle which is in sealed condition containing the Mango Pickles is purchased by the complainant under the receipt referred to above. Further it is pertinent to note here that the 1st respondent also not disputed that the said bottle which is in sealed condition containing Mango Pickles is manufactured by the 2nd respondent. Further the 1st respondent has not disputed the fact that the said bottle containing the Mango Pickles is manufactured by the 2nd respondent. The material placed on record

clearly reveals the fact that the pickles manufactured by the 2nd respondent packed in a sealed bottle are purchased on wholesale basis from the 2nd respondent and sold on retail basis to its customers. Thus it is evident that the complainant is the consumer of the 1st and 2nd respondent as contemplated under the provisions of Consumer Protection Act. Therefore, there is no hinderance whatsoever for this Forum to hold that the complainant is the consumer of the 1st and 2nd respondents. Hence Point No. 1 taken for consideration shall have to be answered in the affirmative. As such same is answered accordingly in the affirmative."

4. IN the circumstances stated above, we fully subscribe to the view taken by the District Forum that the Jar of Mango Pickles manufactured by the opposite party-II was purchased by the complainant from opposite party-I at a cost of Rs. 48/-, along with two other items of goods as per the receipt issued by the opposite party-I. Hence, as rightly held by the District Forum, the complainant has the true profile of a "Consumer" within the meaning of that expression under the C.P. Act. The District Forum has discussed in continuation the applicability of Rule 32 of the Prevention of Food Adulteration Rules, 1955 to the facts and circumstances of this case, and has come to the conclusion that the said Rule is not susceptible of being applied in this case as urged by opposite parties I and II, since the complainant has alleged that the opposite parties have violated "standards of Weights and Measures (Packaged Commodities) Rules, 1977" and not the provisions of "Prevention of Food Adulteration Act" and the Rules made thereunder. The District Forum has consequently held that the opposite parties I and II cannot take shelter under the ratio laid down by the Hon'ble Supreme Court in Dwarkanath's case, contending that no display of information as laid down in Clause (2) of Rule 32 of Prevention of Food Adulteration Rules, 1955 is necessary consequent on the Hon'ble Supreme Court holding that Rule 32(2) was not validly prescribed. The District Forum has held that according to Rule 6 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, the information regarding maximum retail price including all taxes, batch number manufacturing date, month and year were supposed to be displayed on the goods sold to the complainant but the bottle produced before it did not show the display of any such information and hence opposite parties I and II are liable to be branded as deficient in service. Rule 6 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 reads as follows : "6. Declaration to be made on every package : (1) Every package shall bear thereon or on a label securely affixed thereto a definite, plain and conspicuous declaration, made in accordance with the provisions of this chapter as to- (a) The name and address of the manufacturer, or where the manufacturer is not the packer, of the packer or with the written consent of the manufacturer, of the manufacturer; (b) the common or generic names of the commodity contained in the package : Explanation-Generic name in relation to a commodity means the name of the genus of the commodity, for example, in the case of common salt, sodium chloride is the generic name; (c) the net quantity, in terms of the standard unit

of weight or measures of the commodity contained in the package or where the commodity is packed or sold by number, the number of the commodity contained in the package; (d) the month and year in which the commodity is manufactured or pre-packed; (e) the unit sale price of the commodity contained in package if the retail sale price is mentioned by the manufacturer or the packer on the package; (f) the sale price of the package; (g) where the sizes of the commodity contained in the package are relevant, the dimensions of the commodity contained in the package and if the dimensions of each such different price; (h) such other matters areas specified in these rules : Provided that- (A) no declaration as to the month and year in which the commodity is manufactured or pre-packed shall be required to be made on- (i) any bottle containing liquid milk, liquid beverage containing milk as an ingredient, soft drink, ready-to-serve fruit beverages or the like which is returnable by the consumer for being refilled. (ii) Any package containing bread and any uncanned package of (a) vegetables, (b) fruits, (c) ice cream, (d) butter, (e) cheese, (f) fish, (g) meat, or (h) any other like commodity; (ii-a) liquid milk in pouches; (iii) any package containing metallic product; (iv) any cylinder containing liquefied petroleum gas or any other gas; (v) any package containing chemical fertiliser; (B) where any packaging material bearing thereon the month in which any commodity was expected to have been pre-packed is not exhausted during that month, such packaging material may be used for pre-packing, the concerned commodity produced or manufactured during the next succeeding month and not thereafter, but the Central Government may, if it is satisfied that such packaging material could not be exhausted during the period aforesaid by reason or any circumstances beyond the control of the manufacturer or packer, as the case may be, extend the time during which such packaging material may be used, and, where any such packaging material is exhausted before the expiry of the month indicated thereon, the packaging material intended to be used during the next succeeding month may be used for pre-packing the concerned commodity; (C) no declaration as to the sale price shall be required to be made on- (i) any uncanned package of, (a) vegetables, (b) fruits, (c) ice cream, (d) cheese, (e) butter, (f) fish, (g) meat, or (h) any other like commodity; (ii) any bottle containing liquid milk, liquid beverages containing milk as an ingredient, soft drink, ready-to serve fruit beverages, or the like, which is returnable by the consumer for being refilled; (iii) any bottle containing alcoholic beverages, or spirituous liquor; (iv) any package containing animal feed, 1(* * *) exceeding 15 kg. or 151. (v) any package containing a commodity for which controlled price has been fixed by or under any law for the time being in force. Explanation 1-The month and the year in which the commodity is pre-packed may be expressed either in words, or by numerals indicating the month and the year, or by both. Explanation II-Liquid milk does not include condensed milk. (2) Every dealer or other person who makes a retail sale of any commodity in packaged form shall, where local taxes to be added to the price indicated on such package by the manufacturer or the packer, display prominently at a conspicuous place of the premises in which he carries on his retail sale, the rates at which local taxes are

leviable in respect of the commodities sold in packaged form. (3) Where the retail sale price has not been mentioned by the manufacturer or the packer on the package the retail dealer shall display prominently and at a conspicuous place of the premises in which he carries on his retail sale, the rates at which local taxes are leviable in respect of commodities sold in packaged form.

5. IT is evident from a reading of this rule that every package shall bear a declaration with regard to the name and address of the manufacturer, the common or generic name of the contents of the package, the net quantity in terms of standard unit of weight or measure of the contents, the month and year in which the contents are manufactured or pre-packed, the sale price of the package, etc. The rule provides for exemptions from display in the case of certain quick perishables like liquid milk, uncanned packages of vegetables, fruits, ice cream, butter, cheese, fish, meat and any other like commodity. A sealed jar of pickles cannot be classified as a perishable falling in the same category as ice cream, butter, cheese, fish or meat in uncanned packages and hence it cannot be said to fall within the ambit of goods exempted under any other like commodity specified in Sub-clause (i), Clause (h), Sub-rule (1) of Rule 6 culled out above. Consequently, as rightly observed by the District Forum, opposite parties I and II cannot shrug off responsibility of furnishing these informations on the jar containing Mango Pickles sold to the complainant on a label securely fixed on it. When the jar was produced by the complainant for physical inspection, it is stated that none of these informations had been displayed on the jar and hence we do not find any infirmity in the view taken by the District Forum that opposite parties I and II were guilty of deficiency in service. Opposite party II had a statutory obligation to display such particulars on a food item extensively used by the general public which has a tendency to turn deleterious over a period of time by bacterial intervention.

6. HAVING come to such a conclusion, it has to be observed that this is a case involving trade of goods in contravention of Standards of Weights and Measures (Packaged Commodities) Rules, 1977 according to which opposite party-II was required to display necessary information on the packaged commodity. Hence, for any lapse, a complaint is maintainable under Section 2(1)(c)(v) of the C.P. Act. We find that the District Forum has approached this dispute from a proper perspective and has held rightly that opposite parties I and II are guilty of violating the provisions of Rule 6 of the Standards of Weights and Measures (Packaged Commodities) Rules. We also do not find any infirmity in the conclusion arrived at by the District Forum that the complaint against opposite party-III is liable to be dismissed. In this view of the matter, the appellant shall fail. Hence we pass the following : ORDER The appeal is dismissed. The order passed by District Forum shall stand confirmed. No costs. Appeal dismissed.