

(2015) 03 NCDRC CK 0081

In the National Consumer Disputes Redressal Commission

Case No : NO 3699 of 2009

M/S. CADBURY INDIA LTD. & ANR.

APPELLANT

Vs

GRAHAK PARISHAD & ANR.

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : 2015 2 CPJ 754

Hon'ble Judges : K.S. Chaudhari

Advocate : Surekha Raman

Judgement

1. This revision has been filed by the petitioner against order dated 24.6.2009 passed by State Commission in Appeal No. 1151 of 2007- Cadbury India Ltd. & Anr. Vs. Grahak Parishad & Anr.; by which while dismissing appeal with cost of Rs. 5,000/-, order of the District Forum allowing complaint was upheld. Brief facts of the case are that complainant No. 2/respondent No. 2 purchased one pack of " Cadburys Resins" from Harisons Department on 14.1.2004 manufactured by opposite party No. 1/petitioner No. 1. The chocolate was purchased in a packed and sealed polythene pack on which manufacturing date was shown as May, 2003 and expiry date was shown as May, 2004. It was, further, submitted that complainant purchased Cadbury for his children and when paper box cover was opened, he found insects inside the sealed pack. Complainant immediately contacted opposite party No. 1 officers who sent representatives, saw chocolate and intimated to the complainant that they will inform to Technical Department about this fact. Opposite party No.1's, local distributor, offered complainant one box full of different kind of Cadbury chocolates which he refused to accept. It was further submitted that Cadbury manufactured by opposite party No. 1 was injurious to health, life and safety of people. Complainant No. 1 /respondent No. 1 is registered Consumer Society who works for protection of consumers. Alleging deficiency on the part of opposite party, complainant filed complaint before District Forum. Opposite party

resisted complaint and denied any responsibility and submitted that Consumer Fora had no jurisdiction to entertain the complaint. It was further submitted that complainant has not produced any proof of purchase of aforesaid chocolate. In the manner shown in the complaint, complainant has not followed procedure for sample testing and has not impleaded M/s. Harisons Stores as a party from whom Cadbury is said to have been purchased. It was, further, submitted that insects grow in 45 days and they do not survive for more than 3-4 days and in such circumstances, insects might have developed in the shop and prayed for dismissal of complaint. Learned District Forum after hearing both the parties, allowed complaint and directed opposite parties to pay Rs. 25,000/- to complainant No. 2 and Rs. 50,000/- to be deposited in Consumer Welfare Fund and further directed to pay Rs. 10,000/- as cost of litigation. Appeal filed by opposite party was dismissed by Learned State Commission vide impugned order against which this revision petition has been filed.

None appeared for respondents even after service and they were proceeded exparte. Heard Learned Counsel for petitioner and perused record.

Learned Counsel for petitioner submitted that on account of non-impleading alleged Store from where Cadbury was purchased and non-proving purchase of Cadbury, Learned District Forum committed error in allowing complaint and Learned State Commission further committed error in dismissing appeal on the basis of judgment which has been set aside, hence, revision petition be allowed and impugned order be set aside and complaint be dismissed. Learned State Commission has mentioned in para 12 of the order that complainant has not produced any bill pertaining to purchase of Cadbury chocolate. It is also not disputed that concerned Store from where Cadbury was purchased has not been impleaded as a party. Learned State Commission presumed purchase of Cadbury from Harisons Stores without any basis and in the absence of proving purchase of Cadbury from Harisons Stores and non-impleadment of Store as opposite party, complaint was not maintainable because Cadbury was manufactured in May, 2003 and complaint alleged purchase of Cadbury on 14.1.2004 and in such circumstances, no liability can be fastened on the manufacturer on account of insects in the Cadbury as insects cannot survive for such a long period if they developed before sale by petitioner. Chocolates can be infected by fungus only after it is not kept at a controlled temperature. Non-production of bill for purchase of Cadbury may be on two counts; firstly, complainant might not have purchased Cadbury from Harisons Stores and might have received it as a gift and secondly, he might have purchased it long back before opening it and might not have kept at controlled temperature on account of which insects developed in the Cadbury.

Learned State Commission has placed reliance on judgment reported in IV (2005) CPJ 584- Rajnesh R. Swami & Ors. Vs. Cadbury India Ltd. & Ors. and dismissed appeal on 24.6.2009 whereas aforesaid judgment had already been set aside by this Commission in FA/510/2005- Cadbury India Ltd. Vs. Rajanesh

R. Swamy & Ors. by order dated 30.4.2009. Thus, it becomes clear that Learned State Commission placed reliance on judgment which had already been set aside before passing judgment by the State Commission. In this judgment, this Commission further observed as under:- "Finally, we are unable to see why the impugned order does not deal at all with the role and liability of the retail dealer of the chocolates in question (opposite party no. 2 before the State Commission and respondent no. 3 here) for his negligence in service, which is palpable in the facts of the case."

This Commission in RP No. 3566 of 2006- Cadbury India Ltd. Vs. L. Niranjana which has been referred by Learned State Commission in its order, observed as under:- " The shop from where the chocolates were purchased has not been made a party/respondent. The conditions under which the chocolates were stored by the shop-keeper has not come on the record. Judicial notice can be taken of the fact that perishable items like chocolate have to be kept at a certain temperature so that they remain fit for consumption. The allegation in complaint is that one of the chocolates was found to be infected with fungus and a worm was embedded in the chocolate. This is not a manufacturing defect. Chocolate can be infected by fungus only if it is not kept at a controlled temperature. Similarly, worm in the chocolate can come if the chocolate is not kept at a controlled temperature. It was not a manufacturing defect for which the petitioner could be made liable. It was at the most a case of defect in service for which the shop-keeper who sold the chocolate could be held liable but unfortunately the shop-keeper has not been made a party/respondent."

Learned State Commission mis-interpreted this judgment and in the aforesaid judgment, it has clearly been mentioned that as the shop from where Cadbury was purchased has not been made opposite party, no liability can be fastened on the manufacturer and there is no manufacturing defect. This Commission in RP No. 4366 of 2009- Cadbury India Ltd. & Ors. Vs. A. Ramachandran Nair observed as under:- " The shop from where the chocolates were purchased had not been made a party/respondent. The date on which chocolate was manufactured has not come on the record. Conditions under which the chocolates were stored by the shop-keeper has also not come on the record. Judicial notice can be taken of the fact that perishable items like chocolate have to be kept at a certain temperature so that they remain fit for consumption. The allegation in complaint is that one of the chocolates was found to be infected with fungus and a worm was embedded in the chocolate. This is not a manufacturing defect. Chocolate can be infected by fungus only if it is not kept at a controlled temperature. Similarly, worm in the chocolate can come if the chocolate is not kept at a controlled temperature. It was not a manufacturing defect for which the petitioner could be made liable. It was at the most a case of defect in service for which the shop-keeper who sold the chocolate could be held liable but unfortunately, the shop-keeper has not been made a party/respondent."

In the light of aforesaid judgements, it becomes clear that on account of not

producing purchase voucher of Cadbury and not impleading the shop owner from where Cadbury was purchased, complaint was not maintainable against petitioner and no manufacturing defect can be attributed on the growth of insects in Cadbury after eight months of purchase. Learned District Forum committed error in allowing complaint and Learned State Commission further committed error in dismissing appeal and revision petition is to be allowed.

Consequently, revision petition filed by the petitioner is allowed and order dated 24.6.2009 passed by Learned State Commission in Appeal No. 1151 of 2007- Cadbury India Ltd. & Anr. Vs. Grahak Parishad & Anr. and order of District Forum dated 21.8.2007 passed in Complaint No. 58/2004 - Grahak Parishad Vs. Cadbury (India) Private Ltd. & Anr.; are set aside and complaint stand dismissed with no order as to costs.