

(2015) 12 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

Case No : 1051 of 2010

M/S. CADBURY INDIA LTD

APPELLANT

Vs

KANTEPPA & ANR

RESPONDENT

Date of Decision : 03-12-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21 (b) - Jurisdiction of the National Commission
Prevention of Food Adulteration Act, 1954, Section 3, Section 12

Citation : 2016 1 CPJ 436 : 2016 1 CPR 315

Hon'ble Judges : D.K. Jain, M. Shreesha

Advocate : Gaurav Nair

Judgement

1. Challenge in this Revision Petition, under Section 21 (b) of the Consumer Protection Act, 1986 (for short, "the Act") by Cadbury India Ltd., (for short "Cadbury"), is to the order dated 05.01.2010, passed by the State Consumer Disputes Redressal Commission, Karnataka at Bengaluru (for short "the State Commission"), in First Appeal No. 4241 of 2009. By the impugned order, the State Commission has affirmed the order dated 17.11.2009 passed by the District Consumer Disputes Redressal Forum, Bijapur (for short "the District Forum") in Consumer Complaint No. 101/2009, whereby Cadbury had been directed to pay to the Complainant, Respondent No.1 herein, a sum of 10/- as the cost of one piece of Cadbury Dairy Milk Chocolate, 10,000/- as compensation for mental agony and 2,000/- for the medical expenses, along with a sum of 25,000/- towards costs.

2. Succinctly put, the facts giving rise to the present petition are: On 01.08.2009, the Complainant purchased two Cadbury Dairy Milk Chocolates, manufactured by Cadbury from its retailer, viz. Roshan Bakery & Sweetmart, Janata Bazaar Complex, Near Gandhi Chowk, Bijapur - Respondent No.2 herein, for 10/- against receipt. The Complainant gave one of the chocolates to his son and another to his wife to eat. He also had a small bite of the chocolate.

However, while eating the same he found some worms and its eggs in the chocolate. Immediately, he stopped his wife and son from eating the same, but by that time they had consumed the chocolate. According to the Complainant, all three of them had nausea and vomiting. They had to be rushed for medical aid. After the first aid by a family Doctor, they were sent back to the home. Because of the trauma the family had undergone on account of consumption of the chocolates, the Complainant got a panchanama of the remaining portion of chocolates prepared and approached the Retailer for replacement of the same. The Retailer declined to oblige him. Alleging deficiency in service on the part of Cadbury and its retailer in supplying and selling contaminated chocolates, the Complainant filed the complaint in the District Forum, praying for inter-alia a direction to the Respondents to pay 10/- towards the cost of the Chocolates; 50,000/- as compensation for mental agony suffered by him and his family members and 2,000/- as medical expenses incurred.

3. Cadbury contested the Complaint on diverse grounds. In its written version, it raised a preliminary objection regarding the maintainability of the Complaint under the Act, on the plea that since the subject matter of the case fell within the purview of the Prevention of Food Adulteration Act, 1954, a purchaser of any food article is required to have the food article analyzed by the Public Analyst and take appropriate action in terms of Section 12 thereof. On merits, it was pleaded that: (i) the Complainant has failed to follow the procedure laid down in Section 13 (c) (d) and (e) of the Act, envisaging analysis or testing of the goods complained against; (ii) the purchase receipt does not show the item as "Cadbury Dairy Milk Chocolate" as it only mentions "Dairy Milk Chocolate"; (iii) Opposite Party No.2 was not the Retailer of the products manufactured by it; (iv) there were large number and variety of spurious products in the market, hence, the possibility of the chocolates in question being spurious could not be ruled out for which the onus of proving the same was on the Complainant; (v) no medical certificate had been produced by the Complainant indicating that he and his family did suffer from vomiting due to eating of the subject chocolates; (vi) the panchanama of the chocolates was conducted in its absence and, therefore, it cannot be relied upon; (vii) the District Forum lacked territorial jurisdiction to entertain the Complaint as the Head Office of Cadbury was located in Mumbai; and (viii) highest standards of manufacturing practices were being maintained while manufacturing various products.

4. Though no relief was sought by the Complainant against the Retailer, yet a written version was filed on its behalf, admitting that the chocolates, manufactured by Cadbury had been sold by it to the Complainant on 01.08.2009 against payment. However, it denied liability on account of any manufacturing defect in the chocolates.

5. On the basis of the pleadings and the supporting evidence adduced by the parties before it, the District Forum framed the following questions for consideration:- (i) Whether the Forum had the jurisdiction to decide the matter?

- (ii) Whether there was any deficiency in service on the part of the Respondents?
- (iii) Whether the Complainant was entitled to the compensation as claimed?
- (iv) What orders?

6. Rejecting the preliminary objection regarding the jurisdiction of a Consumer Fora to deal with such a Complaint, the District Forum held that Section 3 of the Act, not being in derogation of provisions of the Prevention of Food Adulteration Act, 1954, a Consumer Fora had jurisdiction to try the Complaint. Similarly, rejecting the plea of the Cadbury that in the absence of a Laboratory test, as envisaged under Section 13 (1) (c) of the Act, the Complainant had failed to prove that the chocolates were not fit for consumption, the District Forum opined that in the present case the laboratory test as stipulated u/s 13 (c) (d) (e) of the Act was not required since the worms and eggs in the contaminated chocolates were visible to the naked eyes, when the Complaint was filed and Chocolates were produced on 04.08.09. The Forum had itself seen the infested Cadbury chocolates. It was on the request of the Forum that the Complainant took back the chocolates to his house because the Forum did not have the facility of fridge to store them. However, when the case was posted for orders, the said chocolates were handed over by the Complainant to the Forum along with Memo dated 30.10.2009. The District Forum also observed that the Complainant had produced a medical certificate, which showed that on 01.08.2009, the Complainant, along with his son and wife, were treated by the doctor for nausea and vomiting. Mainly relying on its own visual inspection of the chocolates, the District Forum came to the conclusion that deficiency in service on the part of Cadbury, on account of supply of defective chocolates, was established. Accordingly, the District Forum allowed the Complaint with the afore-said directions. 7. Aggrieved, Cadbury filed an appeal before the State Commission.

8. On reappraisal of the evidence adduced by the parties, as noted above, the State Commission has affirmed the order passed by District Forum observing thus:- " The main ground urged by the Appellant is that the Respondent No.1 has not proved that the chocolates purchased by him through Respondent No.2 were contaminated one and with worms by examining any expert. The observation made by the District Forum that the Appellant/Opposite Party has not seriously challenged the evidence placed on record by the Respondent/Complainant by way of affidavit. Ex.C.3 is the Cadbury Dairy Milk Chocolate deposited before the District Forum which is full of worms. Ex.C.4 is the Doctor Certificate confirming the treatment taken by the Respondent and his wife and son for their ailment. Mere non-mentioning of fee collected by the Doctor in the certificate cannot throw out the Complainant on the ground (sic) that the Respondent No.1 as well as his wife have not taken treatment. The District Forum after opening the wrapper contained the Cadbury chocolate deposited before it, noticed worms, that itself is sufficient to come to a conclusion that there is a defect in manufacturing of chocolates by the Appellant/Opposite Party. Supplying of chocolates to a dealer from whom the Respondent No.1 has purchased the

chocolates on payment of 10/- has suffered mental agony and deficiency in service or unfair trade practice in selling of such chocolates without taking proper care and proper production by the manufacturer. Hence, we feel that the District Forum is right in allowing the Complaint." Hence, the present Revision Petition.

9. Despite service the Respondent/Complainant remains unrepresented. Accordingly, we heard Mr. Gaurav Nair Learned Counsel for Cadbury.

10. The main thrust of the arguments of the Learned Counsel was that the finding returned by the Fora below to the effect that there was defect in manufacturing of the chocolates in question on a bare visual inspection by the Members of the District Forum is unsustainable because the same has been recorded without following the mandatory procedure contained in Section 13 (1) (c) of the Act. Learned Counsel was at pains to explain that in so far as the process of manufacturing the chocolates is concerned, at all stages of its manufacturing, Cadbury not only scrupulously observes quality and safety measures prescribed in this behalf under the relevant statutes, it also issues advisory to the retailers to store them under dry conditions and controlled temperature etc. It was urged that if at all, the stand of the Complainant was to be believed, the source of alleged infestation could be due to unhygienic and inadequate storage conditions at the Retailers shop, which aspect having been ignored by both the Forums below, the impugned order suffers from material irregularity and cannot, therefore, be sustained.

11. Having bestowed our anxious consideration to the material on record, we are inclined to agree with the Learned Counsel. Section 13 (1) (c) of the Act provides that where a Complainant alleges any defect in the goods, which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from him, seal and authenticate it in the prescribed manner and refer the sample, so sealed, to the appropriate Laboratory along with requisite directions, with a view to finding out whether such goods suffer from any defect alleged in the Complaint or any other defect. In our view, the said provision applies in its full rigour in the kind of goods, involved in the present case, viz. perishable goods, as the definition of the expression "defect" in section 2 (1) (f) of the Act is very wide. It means any fault, imperfection or shortcoming in the quality, purity or standard which is required to be maintained by or under any law for the time being in force. In the present case, since the pieces of Chocolates produced by the Complainant before the District Forum, were alleged to be infested with live worms and its eggs, in our opinion, the District Forum, instead of relying on its own visual inspection of the chocolates, should have followed the procedure laid down in Section 13 (1) (c) of the Act. The analysis of the chocolates and the report of the Laboratory would have also been useful in examining the plea of Cadbury that the alleged infestation could be during the post-manufacturing period. We also find substance in the contention of the Learned Counsel that the Forums below have erred in not adjudicating upon the second limb of the plea raised on behalf of Cadbury that

infestation of worms could be at the shop of the Retailer/Seller due to lack of adequate storage facilities. We feel that without examining the said plea, the order exonerating the Retailer also stands vitiated.

12. For the foregoing reasons, in our opinion, both the Forums below have committed material irregularity in not following the proper procedure laid down in the Act for deciding the issue before them. Consequently, the Revision Petition is allowed and the impugned order is set aside but with no order as to costs. It will be open to Cadbury to withdraw the amount deposited in this Commission, in terms of order dated 11.08.2010.