

(2017) 01 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

Case No : 2205 of 2016

M/S. PUNJAB MOTORS STORE THROUGH ITS SOLE PROP.
DEEPAK SHARMA

APPELLANT

Vs

M/S. INDIAN OIL CORPORATION LTD. & ANR.

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Limitation Act, 1963, Section 14 -
Exclusion of time of proceeding bona fide in court without jurisdiction
Consumer Protection Act, 1986, Section 2(1)
(d) - Definitions

Citation : 2017 1 CPR 186

Hon'ble Judges : V.K. Jain

Advocate : Nakul Sharma, Priya Puri

Final Decision : Petition Disposed

Judgement

1. The Punjab Motors Store, petitioner in RP No.2205 of 2016 and respondent in RP No.2562 of 2016, entered into an agreement with Indian Oil Corporation Ltd., respondent in RP No.2205 of 2016 and petitioner in RP No.2562 of 2016 on 24.08.2011 whereby the complainant Punjab Motors Store, then a partnership firm, was appointed as the dealer of Indian Oil Corporation Ltd., for the retail sale or supply of certain petroleum products on the terms & conditions contained in the said agreement. As per the aforesaid agreement, the complainant was entitled to a commission on the sale/supply of the petroleum products at the rates fixed by Indian Oil Corporation Ltd. from time to time. The complainant was also to pay a license fee @ Rs.17/- per kiloliter on petrol and Rs.15/- per Kiloliter on HSD. The same could also be varied by the corporation. Alleging illegal act and conduct as well as unfair trade practice on the part of the OP, the complainant approached the concerned District Forum by way of a consumer complaint, seeking approval to the reconstitution of the complainant into a proprietorship concern and also seeking to restrain the corporation from terminating the dealership agreement and supplying the supply of petroleum

products. The complaint was resisted by the corporation which took a preliminary objection that the complainant was not a consumer as defined in the Consumer Protection Act and therefore, the District Forum did not have jurisdiction to adjudicate upon the same.

2. The District Forum vide its order dated 31.10.2014, directed as under: "8. In view of what has been discussed above, this complaint is accepted and the complainant is directed to submit the application for reconstitution of the firm alongwith required documents for this purpose, including fresh affidavit of the legal heirs of Late Suraj Prakash Khanna, as required by the opposite parties vide letter dated 03.02.2014 Ex.C-23, to the opposite parties within a period of twenty days from the date of receipt of a copy of this order. The opposite parties are directed to reconstitute the firm of the complainant in his name i.e. M/s Punjab Motor Stores, Ferozepur Cantt, Punjab, within a further period of thirty days from the date of receipt of application for reconstitution alongwith required documents, as directed above, from the complainant and not to suspend the supply of petroleum products i.e. petrol, diesel, lubricants etc. and not to terminate the dealership of the complainant. Further the opposite parties are directed to restore the Demand on Draft (DOD) facility to the complainant firm, if the same has been withdrawn by the opposite parties. The opposite parties are also directed to restore the sale from nozzle No.1 of MS Midco make dual Disbursing Unit bearing Serial No.8F751 A/B. Further the opposite parties are directed to pay a sum of Rs.10,000/- as compensation for harassment and Rs.5,000/- as litigation expenses to the complainant. Order regarding payment of above awarded amount of compensation and litigation expenses is directed to be complied with by the opposite parties within of thirty days from the date of receipt of a copy of this order. File be consigned to the record room."

3. Being aggrieved from the order passed by the District Forum, the corporation approached the concerned State Commission by way of an appeal. Vide impugned order dated 11.04.2016, the State Commission partly allowed the said appeal. The complainant was held to be a consumer but no compensation was awarded to it.

4. Being aggrieved from the order passed by the State Commission, both the parties have approached this Commission by way of two separate revision petitions.

5. The first question which arises for consideration in these petitions is as to whether the complainant can be said to be a consumer as defined in the Consumer Protection Act or not. Section 2(1)(d) of the Consumer Protection Act, to the extent it is relevant, reads as under:

(d) "consumer" means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for

consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose (emphasis supplied)

It would thus be seen that if a person obtains goods from another person for resale or for any commercial purpose, he cannot be said to be a consumer as defined in the Act. The contention of the complainant is that since it was appointed only as an agent of the corporation and in that capacity was entitled only to a commission, it cannot be said to have purchased the goods for resale and cannot be said to be making profit on the sale of the petroleum products. The contention of the corporation on the other hand is that the complainant was obtaining petroleum products only for resale and therefore, is excluded from the definition of consumer given in Section 2(1)(d) of the Consumer Protection Act.

6. A perusal of the agreement executed between the parties leaves no doubt that the petroleum products were being supplied by the corporation to the complainant only for the purpose of reselling the same and not for the complainant's own consumption. Therefore, it would be difficult to dispute that the petroleum products which otherwise are goods, were obtained for the purpose of resale to the retail consumers who were to use those products in their vehicles. The complainant was also earning profit on the resale of the petroleum products though it was in the form of commission fixed by the corporation from time to time. Therefore, it would be difficult to say that there was no element of profit in the transaction between the parties. The complainant was not obtaining the petroleum products and selling them without any incentive, the same being available to it in the form of commission. What is important is as to whether the complainant was making money in the resale of the petroleum products or not, the nomenclature under which the money was being made, being wholly irrelevant. The complainant was certainly making money in the form of commission which the corporation was paying to it. Therefore, it would be difficult to dispute that the complainant would not be a consumer as defined in Section 2(1)(d) of the Consumer Protection Act.

7. It has been alleged in para 1 of the complaint that the complainant being sole proprietor of Punjab Motors Store, was self-employed in the said petrol pump and had been earning livelihood for himself and his family comprising himself, his wife and his children. Admittedly, at the time the agreement was entered into by the parties, Punjab Motors Store was a partnership firm and not a proprietorship firm of Mr. Deepak Sharma who later filed the complaint as the proprietor of Punjab Motors Store. A perusal of the agreement executed between the parties on 24.08.2011 would show that Punjab Motors Store was a partnership firm of Mr. Suraj Prakash Khanna and Mr. Deepak Sharma. At that time, it was already registered as partnership firm and was carrying on business at G.T. Road, Ferozepur Cantt, Ferozepur. Since the partnership firm was already engaged in business at the time of entering into an agreement dated 24.08.2011, it did not

fall within the purview of the explanation below Section 2(1)(d) of the Consumer Protection Act.

8. For the reasons stated hereinabove, I hold that the complaint before a consumer forum was not maintainable. The impugned orders are therefore, set aside and the complaint is consequently dismissed with no order as to costs. It is however, made clear that dismissal of the complaint shall not come in the way of the complainant approaching a forum other than a consumer forum for the redressal of his grievances. In the event of the complainant approaching a Civil Court, it shall be open to him to seek benefit of the provisions contained in Section 14 of the Limitation Act, if such a benefit is otherwise admissible to him in law. The revision petition stands disposed of.