
(2006) 02 NCDRC CK 0085

In the National Consumer Disputes Redressal Commission

N. RAVINDRANATH KAMATH

APPELLANT

Vs

SPICE COMMUNICATIONS LTD.

RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Citation : 2006 2 CPC 614 : 2006 4 CPJ 67

Hon'ble Judges : K.S.Gupta J.

Final Decision : Revision Petition allowed

Judgement

1. THIS revision is directed against the order dated 22.3.2004 of Karnataka State Consumer Disputes Redressal Commission, Bangalore dismissing appeal against the order dated 7.8.2001 of a District Forum whereby complaint filed by petitioner/complainant was dismissed.

2. FACTS giving rise to this revision, in brief are these. During 1999 a sales executive of respondent/Opposite Party allegedly approached and induced the petitioner to subscribe for a spice connection. He assured that Virajpet would be having spice tower by October, 1999. Sales executive also supplied form and booklet wherein map of Karnataka was printed indicating that tower will be erected at Virajpet. Acting on that assurance, the petitioner filed application dated 13.8.1999 for a connection in addition to paying Rs. 3,100 to the respondent. Sim card was supplied at a cost of Rs. 6,800. It was stated that as the tower was not erected in October, 1999, the petitioner was unable to use the cell phone from Virajpet despite a sum of Rs. 22 being deducted per day from the currency purchased by him from the respondent and/or its dealer. Complaint was filed claiming a total of Rs. 1,27,896 with interest by the petitioner which was contested by filing written version by the respondent. In written version, though the issuance of spice connection in August 1999 was not denied but it was alleged that the mobile phone purchased by the petitioner was used in Mangalore, Bangalore and Virajpet. It was further alleged that huge expenses are incurred in erecting a tower and as it was not viable the tower was not erected at Virajpet. In the brochure, it was only stated that tower was expected.

It was denied that it was assured to the petitioner that tower at Virajpet would be constructed by October, 1999 as alleged. It was also alleged that petitioner continues to be the subscriber for more than 2 years and spice service should have been discontinued if there was no utility. It was contended by Mrs. Kiran Suri for petitioner that the brochure issued by respondent is silent that tower at Virajpet was to be erected only if it was viable. Attention was invited to the map of Karnataka as printed in the brochure admittedly issued by the respondent wherein Virajpet along with other places are shown in dark green with the note as: "YOU CAN TALK HERE BY MID" 99"

According to Mrs. Suri, it was a clear case of unfair trade practice on the part of respondent. On the other hand, it was urged by Mr. V.B. Joshi for respondent that petitioner had been using the mobile connection for more than 2 years from Mangalore and Bangalore and if the tower was not erected at Virajpet it was open to the petitioner to have surrendered the connection. Section 2 (r)(viii)(i) of Consumer Protection Act, 1986 (for short the Act) which is material, reads thus : "Unfair trade practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely : (viii) makes to the public a representation in a form that purport to be- (i) a warranty or guarantee of a product or of any goods or services; or If such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;"

3. IN support of the allegation made in complaint, the petitioner filed his affidavit (copy at pages 19 to 23) before the District Forum. When read with aforesaid map there seems to be no reason to disbelieve para Nos. 2 and 3 of this affidavit that the sales executive of respondent approached for spice connection and assured the petitioner, a practising Advocate at Virajpet that Virajpet will be having a tower by October, 1999 and induced by that representation, he subscribed to the spice connection. Admittedly, respondent has not constructed tower at Virajpet on ground of its not being viable. Case is, thus, fully covered by said Section 2(r)(viii)(i) of the Act. Use of connection for about two years by the petitioner has not relevance whatsoever in the matter. To be only noted that the District Forum did not decide the complaint on merit and appeal against District Forum's order filed by the petitioner was dismissed by the State Commission mainly on the ground of petitioner continuing to use the connection for two years. For foregoing discussions, the orders passed by Fora below cannot be legally sustained. Complaint was filed some time in the year 2001. At this stage, it would not be desirable to remit the case to the District Forum to assess the damage, etc. as claimed by the petitioner. A consolidated amount of Rs. 30,000 is awarded towards damage, etc. to the petitioner. Accordingly, while allowing revision, the orders passed by Fora below are set aside and respondent is directed to pay a sum of Rs. 30,000 to the petitioner with cost of Rs. 10,000. Revision Petition allowed.