

(1991) 01 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

NATIONAL CONSUMERS PROTECTION SAMITI

APPELLANT

Vs

CHIEF ELECTRICAL SUPERVISOR

RESPONDENT

Date of Decision : 07-01-1991

Acts Referred:

Citation : 1991 2 CPR 191 : 1992 1 CPJ 398

Hon'ble Judges : S.A.Shah , Leelaben Trivedi , R.K.Shah J.

Final Decision : Complaint disposed of

Judgement

1. THE complainant is a voluntary Consumer Association, registered under the Bombay Public Trusts Act, 1950. Opposite Party No. 1 is the Chief Electrical Supervisor, Government of Gujarat. Opposite Party Nos. 2 and 3 are the manufacturer of electrical appliances.

2. THE complainant has alleged that Opposite Party No. 2 is a manufacturer of electrical appliance, namely, domestic electrical food mixture (liquidiser) and Opposite Part No. 3 is a manufacturer of portable low-speed food grinding machine (popularly known as GHAR GHANTI), without obtaining any licence under the House-hold Electrical Appliances (Quality Control) Order, 1981; or, without obtaining ISI Mark under a valid licence issued under Indian Standard Institute (Certificate of Marks) Act, 1952. In compliance with the summones issued by the Commission, the Chief Electrical Supervisor as well as Opposite Parties No. 2 and 3 appeared and filed their version.

In order to consider the defence of the opposite party, it shall be necessary to refer to the provisions of the House-hold Electrical Appliances (Quality & Control) Order, (to be referred for short as the Control Order). The Control Order has been issued by the Central Government in exercise of the power under Section 3 of the Essential Commodities Act, 1955, to regulate the manufacture, store and sale and distribution of the house-hold electrical appliances. Clause (4) of the said Order prohibits manufacture, sale, etc., of any house-bold electrical appliances. Clause (4) of the said order prohibits manufacture, sale, etc., of any house-hold electrical appliances which are not of the specified standard and the

specified standard is defined in Clause 3(g) as under: - 3(g) "Specified Standard" in relation to a house-hold Electrical Appliance mentioned in Column (2) of the Schedule in the corresponding entry in Column (2) of the said Schedule and included the standard published by the Indian Standard Institution from time to time in relation to that appliance. We are concerned with Item Nos. 11 to 24 of the Schedule of house-hold electrical appliances which reads as under: - Sr. No. House-hold Electrical appliance Standard 11. Domestic electrical food mixture (Liquidizers, Blanders and grinders) IS: 4250-1980 24. Portable low-speed Food grinding machine. IS: 7603-1975

3. THE Scheme of the Control Order as is disclosed, is to control the manufacture of domestic electrical appliances so as to ensure personal safety against any electric shock, to eliminate risk of accident or fire. Since the appliances are used by the house-wives and servants in the houses, they should be of standard quality which may ensure total safety of the ultimate consumers. It appears from the Scheme of the Order that the Central Government has prescribed the same standard (quality) which is prescribed under the Indian Standard Institution (Certificate Marks) Act, (for short Certification Act), for manufacture of household electrical appliances. In other words, if the electrical appliance does not satisfy such standard as prescribed under the aforesaid Certification Act, the manufacture, store, sale and distribution of such appliances are prohibited. Penalty is also prescribed under Clause (15) for the breach mentioned therein. If a manufacturer has obtained a valid licence under the Certification Act, the Control Order is not applicable.

4. THE reasons appearing to us are that if a manufacturer gets licence under the ISI Certification Act, it ensures the ISI Standard (quality). But ISI marks are not compulsory. THE Central Government has, therefore, by this Control Order, made it compulsory for a manufacturer to obtain licence under the Control Order so as to ensure proper safe quality of any electrical appliance for being used as house-hold electrical appliances. Now, the contention raised on behalf of opposite parties Nos. 2 and 3 in para 4 of the written statement is to the effect that they had applied to Opposite Party No. 1 for guidance and Opposite Party No. 1 in reply, directed them to send their mixtures (liquidizer) to Baroda Electronic Testing and Development Centre for testing, and on sending the said mixture to the said authority, the Testing Centre replied that the testing of the machine was not covered under IS: 4250-1967. Similarly, Opposite Party No. 3 had sent it's grinding mill (Ghar Ghanti) for testing and they received a reply from the Chief Electrical Inspector that the grinding mill having 1440RPM, the same was not included under the Control Order and, therefore, Opposite Parties Nos. 2 and 3 had not applied for the licence under the Control Order. In his reply filed by the Chief Electrical Inspector who is the appropriate authority for the enforcement of the Control Order, it has been stated that the IS: 7603-1975, is applicable to only low speed food grinding machines and with respect to curd-breaker mixtures, he is now of the opinion that the same required licence and he will take appropriate steps.

5. WITH regard to the curd-breaker machine (known as styled in this complaint as the " Valona machine) the Electrical Inspector is now of the opinion that it required licence. It is not disputed that it is not a domestic electrical food appliance. If it is a household electrical appliance and is used as a food mixture or a liquidizer, it would fall under Serial No. 11 of the Schedule and is required to maintain the standards IS: 4250-1980. The Booklet IS 4250 under the caption "Scope at 1.1, reads as under: - This standard covers electrical motor-driven food mixtures (grinders and liquidizers) intended for domestic use and designed for operation not exceeding 250-V. Multiple machineries which are used together with certain accessories are also covered by this standard, as far as appliances are concerned. There are various safety measures provided in the standard. If the curd-breaking machine is not in accordance with the standard prescribed under IS : 4250-1980, then it is not of that standard quality nor safe to be permitted to be used as house-hold appliance.

6. SIMILARLY, with regard to portable food grinding machine manufactured by Opposite Party No. 3, the same is also a portable grinding machine and a household electrical appliance and the same will, therefore, fall within the purview of Item No. 24. By merely increasing the speed over the speed-prescribed in IS: 7603-1975, the same will not take away the machine from the purview of the Control order. If the portable domestic grinding machine has a rated speed exceeding the speed prescribed under the IS standard requirement, it will automatically become not a standard item and cannot be permitted to be utilized as a household electrical appliance. The argument of the opponents manufacturers that because it is a higher speed appliance than the prescribed speed, it will not fall within the purview of the Control Order, is totally misconceived and liable to be rejected. If the said house-hold electrical appliance is not in accordance with the standard prescribed by IS: 7603- 1975, it contravenes the provision of the Control Order because if it is not according to the standard, it cannot get licence and being unsafe and having an electrical hazard, cannot be permitted to be manufactured and allowed to be used for domestic purpose. In the aforesaid view of the matter, we are of the opinion that if Opposite Parties, Nos. 2 and 3 are selling defective non-standardised item which would be "defective" within the meaning of Section 2(1)(f) and if they are permitting the same for supply of goods intended to be used or, are of the kind likely to be used by consumers, knowing or having reasons to believe that the goods do not comply with the standards prescribed by the competent authority would be an "unfair trade practice" within the meaning of Section 36-A, sub-Clause (4) of MRTP Act, read with Section 2(1)(r) of the Consumer Protection Act, 1986.

Since the Electrical Inspector has assured us that he will take appropriate steps, we are not inclined to pass any order for damages for two reasons, namely: - (i) that, rightly or wrongly, the opposite parties were under a false impression that the product does not require any licence; and (ii) Mr. Rajeev Mehta, representing the complainant has also not pressed for any compensation. We may, however,

make it clear that the Chief Electrical Inspector, if he is so satisfied, may take action in accordance with law if he so desires, both for the past breach as also for future compliance.

7. THOUGH we have not awarded any compensation on the grounds stated above, there is no reason why Opposite Parties Nos. 2 and 3 should not pay costs. We assess the costs at Rs. 500/- (Five hundred). Opponent No. 2 will pay Rs. 250/- and Opponent No. 3 will pay Rs. 250/- to the complainant. The complaint shall accordingly stand disposed of. Opponent No. 1 to bear his own costs. Pronounced on this 7th day of January, 1991. Complaint disposed of.