

(1996) 03 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

PRATIMABEN KUNDANSINH PARMAR

APPELLANT

Vs

INDCHEM ATL LTD.,MADRAS

RESPONDENT

Date of Decision : 26-03-1996

Acts Referred:

Citation : 1996 3 CPR 348 : 1997 2 CPJ 241

Hon'ble Judges : R.C.Mankad , Jatin P.Vaidya J.

Final Decision : Complaint dismissed

Judgement

1. COMPLAINANT No. 1 is a Gynecologist and her husband, complainant No. 2 is an orthopedic surgeon. They are engaged in medical practice in their respective branches. They are having a hospital known as "Gold moon Hospital" at Veraval. They purchased Ultrasound Scanner with multi-format camera (equipment for short) from opponent Indchem ATL Limited for Rs. 6,56,45/-. It is the case of the complainants that the equipment was not functioning or working satisfactorily and, therefore, number of complaints were lodged with the opponents. Opponents repaired the equipment but even then it did not perform well. At one time the opponent had also supplied stand-by unit for some period. It is the case of the complainants that inspite of the equipment heaving been repaired a number of times by the opponents, it is not working satisfactorily. "The complainants have, therefore, suffered monetary loss to the extent of Rs. 8,39,357.92/- as per the details stated in para 12 of, the complaint. This loss, includes Rs. 1,37,500/- for loss of earning for a period of 275 days. The complainants have, therefore, filed this complaint against the opponent for recovery of Rs. 8,39,357.92 or in the alternative prayed for replacement of the equipment and compensation of Rs. 2,77,899.92. The complainants have also claimed Rs. 50,000/- as compensation for mental torture and agony; interest @ 24% compensation @ Rs. 500/- per day for the loss of earning and cost.

2. THE opponents have filed written statement denying the allegations made by the complainants and contended that the complainants are not consumers within the meaning of Section 2(1)(d) of Consumer Protection Act. THE opponent has,

therefore, prayed for dismissal of the complaint. We did not consider it necessary to set out various contentions raised by the opponent in detail since, in our opinion, this complaint must fail on the ground that the equipment was purchased for commercial purpose and, therefore, the complainants are not consumers as defined under Section 2(1)(d) of the Act. As stated in the complaint, the complainants are alleged to have suffered loss of earning at the rate of Rs. 500/- per day or in other words, about Rs. 15,000/- per month. THEY have claimed compensation of Rs. 1,37,000/- for loss of earning. Complainant No. 1 who is examined on behalf of the complainants has also stated in her deposition that they suffered loss of Rs. 500/- per day because they are not able to use Ultrasound machine. It may be recalled that complainant No. 1 is practising as Gynecologist and complainant No. 2 is an Orthopedic and general surgeon. THEY both use the equipment for their profession and they also charge fee of about Rs. 100/- per patient who were sent to them by other doctors for sonography. It is in the background of above facts that we have to consider whether the equipment could be said to have been purchased by the complainants for commercial purpose. In the case of *Rev. Fr. Faridanand Kayavil v. Mahavir Gupta*, Original petition No. 37 of 1992 decided on April 27, 1994=II (1994) CPJ 30 (NC), the National Commission was dealing with a case of a complainant running an eye centre. The eye centre provided treatment for eye patients for which purpose free eye camps were regularly conducted and poor patients were given medical and surgical care totally free. The complainant had purchased an Argon Lazer Unit (Photo Coagulator) with accessories (unit for short). The unit stopped functioning due to short circuit which was rectified. Again it did not function in June, 1991 and this was found to be due to some fault in transistor and indicators. Thereafter, also the unit did not function properly. It was, therefore, that the complainant approached the National Commission for recovery of Rs. 16.61 lakhs including refund of the cost of the unit, interest etc. from the opposite party. The question which was raised for consideration before the National Commission was whether the unit was purchased for commercial purpose. The National Commission, after considering the evidence on record came to the conclusion that the eye centre was a profit generating centre and run on commercial basis. The fact that free treatment was also being provided to some patients did not alter the fact that eye centre was a medical service activity being conducted on commercial basis. As such the unit was acquired for commercial purpose and hence the complaint having regard to such purchase was not maintainable before the Consumer Forum constituted under the Consumer Protection Act. In this view of the matter, the National Commission dismissed the complaint. In the case of *S. Pattabhiraman v. S.P. St. Palaniappan*, F.A. 436/92 decided on May 3, 1994=II (1994) CPJ 40 (NC), the National Commission held to the effect that complainant-respondent, a Chartered Accountant who had purchased computer for the purpose of his profession could not seek relief under the Consumer Protection Act, for the defect in the computer since the computer was purchased for commercial purpose.

The facts stated above clearly reveal that the complainants had purchased the equipment for carrying on activity on large scale for the purpose of earning profits. The daily earning from equipment was at least Rs. 500/- per day or about Rs. 15,000/- per month. It is, therefore, obvious that profit earned from the equipment was on large scale. This earning was besides the fees earned by the complainants for surgical and gynecological treatment which was given in their hospital. We are, therefore, inclined to uphold the opponent's contention that the equipment was purchased by the complainants for commercial purpose and, therefore, they are not consumers, as defined under Section 2(1)(d) of the Act.

3. IN the result, this complaint is dismissed. However, there will be no order as to costs. Complaint dismissed.