
(1997) 07 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

Procter and Gamble Home Products Ltd. APPELLANT
Vs
RAJ DEV BHARDWAJ RESPONDENT

Date of Decision : 10-07-1997

Acts Referred:

Citation : 1997 3 CPJ 251 : 1998 1 CPC 202

Hon'ble Judges : P.N.Nag , I.D.Bali , Krishana Tandon J.

Final Decision : Appeal dismissed

Judgement

1. THE appellant being aggrieved by the order of the District Forum, Kangra at Dharamshala, dated 27.12.1996 has filed the present appeal. Shri Dev Raj Bhardwaj, respondent No. 1 in the appeal was the complainant in the case before the District Forum and shall be referred to as the complainant hereinafter. THE appellant, Procter & Gamble Home Products Ltd. was the opposite party No. 1 and respondent No. 2, M/s. Parbeen Kumar Karyana Store was the opposite party No. 2 and shall hereinafter be referred to as the opposite party Nos. 1 and 2 respectively. THE opposite parties have been directed to pay to the complainant an amount of Rs. 2,000/- as compensation within six weeks from the date of communication of the order, failing which the complainant has been further allowed interest on the amount with effect from 13.9.1995 and also costs of Rs. 400/-. THE packet of Ariel Super Soaker was also ordered to be preserved and to be formed as part of the record.

2. THE case set up by the complainant, in substance, is that on 10.6.1995, he purchased one packet of Ariel Super Soaker detergent powder from the shop of opposite party No. 2. Through this packet, according to the complainant, the opposite party No. 1 has represented that the weight of the detergent powder is 1 kg plus Ariel Bar of 125 grams added to the packet. In other words, the total weight of the packet should be 1125 grams. However, it was discovered by the complainant that the actual weight of the packet was only 1055 grams instead of 1125 grams. THE complainant enquired from the opposite party No. 2 about the underweight of the packet, but no satisfactory explanation came forth from the

opposite party No. 2. Hence the complainant was constrained to file the complaint. The opposite party No. 1 has taken various objections to such complaint inasmuch as no proof has been produced by the complainant to the effect that he purchased the packet of Ariel Super Soaker from the opposite party No. 2; that no report has been obtained by the complainant regarding the alleged defects in the packet as required under the law and that the packet is not underweight, as being alleged. The opposite party No. 1 is well known for its quality products and the complaint has been filed with a view to malign their image. Further, they are ready to replace the packet purchased by the complainant. The complainant, according to the opposite party, should be ordered to pay Rs. 10,000/- as costs under Section 26 of the Consumer Protection Act (hereinafter to be referred to as the Act). According to the opposite party No. 2 the packet was purchased from M/s. Balak Ram Bhagat Ram, Chintpurni and the same was sold in the same condition without weighing the weight of the same.

Mr. Y.S. Thakur, learned Counsel for the appellant has reinforced the same contention which has been raised in the reply of opposite party No. 1 (appellant). At the very outset, he submitted that a proper procedure has been prescribed under Section 13(1)(c) of the Act. The District Forum in case of allegations of defect in the goods should have obtained a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory makes an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect.

3. THIS submission is wholly devoid of force. Section 13(1)(c) of the Act clearly provides that only in case of defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain such sample of such goods from the complainant. The allegation in the present complaint is of underweight of the goods. When the allegation is of underweight of the goods, this can be neither called a defect in the goods nor can it be said that it cannot be determined without proper analysis or test of the goods. Section 13(1)(c) of the Act clearly provides for a reference to an appropriate laboratory in respect of the goods which are amenable to proper analysis or test in the laboratory. By any stretch of imagination, if the goods are underweight, it cannot be said that such goods are amenable to proper analysis or test in the laboratory. At a matter of fact. Subsections (1) and (2) of Section 13 of the Act clearly contemplates two kinds of goods; namely those which are amenable to proper analysis or test in laboratory and others which are not so. As regards the first the procedure prescribed is under Sub-section (1) mandating a reference to an appropriate laboratory. The other class is governed by Sub-section (2) for which a different procedure is prescribed without any reference to such a laboratory. Consequently, Clauses (c) to (g) of Sub-section (1) are attracted only in cases which cannot be determined except by a proper analysis or test thereof

in a laboratory. They have no relevance to goods with regard to which such a procedure cannot be followed and consequently come under the ambit of Sub-section (2). In such circumstances, there was no necessity at all for the District Forum to have referred the matter to the laboratory. The next contention of the Counsel for the appellant is that the appellant has neither represented that the weight of this packet shall be 1125 grams as made out by the complainant nor is such a packet underweight.

4. SUCH a contention has been made by the appellant's Counsel merely to be rejected. The packet of Ariel Super Soaker has been made a part of the record under the directions of the District Forum and we have seen the packet and on the packet it is clearly represented that the packet is of 1kg. and there is also an Ariel Bar free weighing 125 grams inside the packet. There is no manner of doubt that there is clearly a representation given out on the packet itself by the appellant that the weight of the packet should be 1 kg. plus 125 grams Ariel Bar=1125 grams. In this context at this stage, it may also be noticed that the packet was subjected to weighment by the Assistant Controller, Weights and Measures, who has issued a certificate dated 18.6.1996 to the effect that the gross weight of the Ariel Super Soaker detergent powder, produced by the complainant inclusive of Bar Cake is 1 kg. and 75 grams. There is further no dispute that the Assistant Controller of Weights & Measures, who has issued such a certificate, is under legal obligation to measure the weight of the goods. There is no reason why we should not accept the certificate of the Assistant Controller of weights & Measures. It is, therefore, necessary to follow that when it was given out that proper weight of the packet should be 1125 grams and it is found to be only 1075 grams, the appellant is guilty of unfair trade practice as defined under Section 2(1)(r) of the Act. It was next contended that the compensation of Rs. 2,000/- awarded by the District Forum has no nexus to the extent of injury caused to the consumer. The complainant has not been able to show any negligence on the part of the opposite parties. Such a contention again is wholly unacceptable. We have already held that the weight of the packet was found underweight and that the appellant has indulged in unfair trade practice and consequently has been negligent. The compensation awarded by the District Forum for Rs. 2,000/- can neither be termed as unreasonable nor excessive. To our mind, on the other hand, it seems to be on lower side.

5. FAINT attempt was again made by the Counsel for the appellant that such a packet was not purchased by the complainant from the opposite party No. 2. However, from the version given by the opposite party No. 2, there is no doubt that the packet of Ariel Super Soaker was purchased by the complainant and the same was sold by the opposite party No. 2 to the complainant. At any rate, this point was not pressed.

6. IN view of what is discussed above, there is no force in this appeal and the appeal is accordingly dismissed with no orders as to costs. Appeal dismissed.