

(1998) 07 NCDRC CK 0070

In the National Consumer Disputes Redressal Commission

PROPRIETOR, HOTEL MANASA

APPELLANT

Vs

A.V. SARATH CHANDRA REDDY

RESPONDENT

Date of Decision : 08-07-1998

Acts Referred:

Citation : 1998 3 CPJ 505 : 1999 1 CPR 311

Hon'ble Judges : S.Parvatha Rao , T.Ranga Rao , Mamata Lakshmanna J.

Final Decision : Appeal allowed

Judgement

1. THE respondents were served. Heard the learned Counsel for the appellant. Counsel for the 1st respondent not present. THE 2nd respondent is not present nor represented by Counsel.

2. THE 1st respondent in this appeal was the complainant before the District Forum. His case is that he alongwith six others went to the appellant's Hotel Manasa in Cuddapah on the evening of 21.6.1996 and ordered for seven meals and seven plates of mutton boneless and one chicken curry and that the hotel supplied only three small pieces of mutton per plate though charging Rs. 34/- per plate. THEy complained about me quantity of the mutton supplied per plate and did not receive a proper reply from the server. He only stated that the hotel supplied fixed quantity of mutton per plate. THEy wanted to pay less, but the manager of the hotel who was present on that day refused to take any amount less than what was charged in the bill i.e. at Rs. 34/- per plate. Upon that they approached the Cuddapah District Forum by way of O.P. No. 238/1996 seeking directions to the appellant to pay back Rs. 158/- being the excess amount collected towards seven plates of mutton and also compensation of Rs. 500 /- . The appellant in his version denied the entire incident including the visit of the complainant and his friends to the hotel on 21.6.1996. The appellants also denied that each plate of mutton bone-less contained only 3 small pieces of mutton. He also submitted that the Weights and Measures Department never sent any instructions or guidelines regarding the quantity of items to be supplied in his hotel. The second respondent in this appeal (2nd opposite party in the

O.P.) filed a Memo stating that his Department was not empowered to fix the weight or quantity that shall be supplied by the Hotels for a plate of mutton or the rates for mutton supplied in plates.

The complainant produced cash bill dated 21.6.1996 marked as Ex. A-1. Rightly relying on the said bill, the District Forum held that the complainant and six others visited Hotel Manasa on 21.6.1996. The District Forum also held that the orders regarding seven meals and seven plates of mutton boneless and one chicken curry were also proved by Ex. A-1 bill. The 1st respondent/complainant filed his affidavit evidence. He was not cross-examined. In his affidavit he stated that the quantity and quality of mutton supplied was "very less than the price tendered" and that the mutton supplied was not even the value of Rs. 10/- which was "nothing but robbing the hotel going people. He did not state that each plate contained only 3 pieces. No other evidence was adduced by him. Affidavit evidence was also filed on behalf of the appellant. The District Forum accepted the case of the complainant and held that the appellant charged exorbitant amount by supplying low quantity of mutton and that it was a clear "case of fault or imperfection or short-coming in the nature and manner of performance of the service" by the appellant. The District Forum directed the appellant to pay to the 1st respondent/ complainant a sum of Rs. 168/- towards the excess amount collected by the appellant, in effect accepting the price fixed by the 1st respondent that Rs. 10/- only should have been charged for each plate of boneless mutton. The District Forum also awarded compensation of Rs. 500/- to the complainant and costs of Rs. 200/-.

3. THE appellant, who was the 1st respondent before the District Forum, questions the order of the District Forum on the ground that the District Forum erred in interfering with the price charged by the appellant for the bone- less mutton plates in question. He submits that it was not the case of the complainant that any representation was made or assurance was given by him as regards the number of pieces that were to be provided per plate of boneless mutton. He also submits that the Tribunals under the Consumer Protection Act, 1986 cannot enquire into the pricing pattern and the prices charged by the supplier of goods. One of the allegations that can be made in a complaint as per Section 2(1)(c) is as regards the price charged and it is in the following terms: "(iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods".

In the present case Counsel for the appellant contends that the first respondent a consumer cannot fix the prices for the food supplied to him in hotel and that the District Forum exceeded its jurisdiction in doing so. We are inclined to agree with this submission of the learned Counsel for the appellant. It is not the case of the complainant that the quantity to be supplied was indicated anywhere or that any representation was made in that regard by the appellant. Under the circumstances, on the facts of the present case, we are satisfied that no

consumer dispute was made out because the subject matter of the dispute related to the pricing of the boneless mutton plate or the number of mutton pieces to be supplied per plate. There is no clear evidence on record to establish that only three pieces per plate were supplied. The first respondent in his affidavit in evidence only stated that the quantity supplied was meagre. The District Forum was not right in assuming that the quantity of mutton supplied had relation to the service to be rendered by the appellant and in holding that because the quantity supplied was less there was deficiency in service. There was no allegation whatsoever about the quality of the food or of service or that there was lack of cleanliness or that hygienic conditions were lacking. The District Forum therefore erred in taking upon itself to fix the price of the boneless mutton per plate supplied by the appellant on the erroneous premise that there was deficiency in service. In *Manager, Milk Chilling Centre v. Mahaboobnagar Citizen Council*, I (1991) CPJ 219 (NC)=1986-95 Consumer 210 (NS), the National Commission held as follows: "As per the definition of the expression "complaint" incorporated in Clause (c) of Section 2(1) of the Act, a complaint regarding the price at which an article has been sold can be maintained under the Act only if "a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods". No reference has been made by the State Commission to any law in force in the State of Andhra Pradesh fixing the price at which the different varieties of milk are to be sold; nor has our attention been drawn to any provision of law in force in Andhra Pradesh fixing the price of different varieties of milk. Admittedly, there was no mention of the price on the sachets containing the milk sold to the customers in Mahaboobnagar. The State Commission itself has mentioned that this was so because of the exemption granted from the operation of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977. When there has not been any fixing of the price of an article by law nor a display of the price on the package containing the goods or on the goods themselves, the Act does not contemplate any complaint being instituted in respect of the price charged for the article on the ground that the price charged for the article is excessive. In the absence of any law requiring an article to be sold at or below a particular price fixed thereunder and when there is no declaration of price on the packet containing the goods or on the goods themselves, the Act does not contemplate that a Redressal Forum constituted under its provisions should undertake an investigation of the reasonableness of the price fixation made by a manufacturer, producer or dealer. The provisions of Section 14 of the Act do not contemplate any such relief being granted by a Redressal Forum".

This was reiterated by the National Commission in *Maruti Udyog Limited v. Kodaikkanal Township*, III (1993) CPJ 294 (NC)=1986-95 Consumer 385 (NS), as follows: "At the most the present complaint can be said to have been filed under Sub-clause (iv) of Clause (c). It is not the case of the complainant that the price of the Maruti Car has been fixed by or under any law. Standards of Weights and

Measures (Packaged Commodities) Rules, 1977 also do not apply. Therefore, even if the dealer has charged allegedly excess price the complaint is not maintainable under the Act".

These decisions clearly support the appellant. We, therefore, set aside the order of the District Forum and dismiss the complaint. The appeal is accordingly allowed. No costs. Appeal allowed.