

(1996) 11 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

PROPRIETOR, UNITED BISCUITS (P) LTD.

APPELLANT

Vs

RAMANANDA PANDA

RESPONDENT

Date of Decision : 20-11-1996

Acts Referred:

Citation : 1997 1 CPJ 294 : 1997 3 CPR 38

Hon'ble Judges : P.C.Misra , Biswanath Rath , Mrinalini Padhi J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the final order passed by the District Forum, Sambalpur in B.D. Case No. 195 of 1994. The appeal is at the instance of the opposite party in the said case. The respondent as complainant filed the aforesaid case alleging that he had purchased a packet of biscuits on 6.9.94 manufactured by the present appellant. According to him, it was printed on the packet that it weighs 200 grams, but actual weight was found to be 180 grams. He filed this case alleging that there has been unfair and deceptive trade practice by the present appellant for which the complainant is entitled to compensation. The present appellant entered appearance in the said case and filed its showcause. Apart from saying that there was no privity of contract between the complainant and the manufacturer, he also denied that the averments made in the complaint/petition and said that no compensation is payable.

2. THE District Forum after examination of the matter in detail, came to a conclusion that the present appellant is guilty of unfair trade practice and awarded a compensation of Rs. 1000/- and cost of Rs. 250/- against the present appellant. Hence this appeal. In appeal, the main contention of the appellant as stated in the grounds of appeal is that the proceeding was not maintainable in absence of the dealer from whom the complainant had purchased the biscuit packet. It has also been urged that the manufacturer is not liable for the alleged under-weight of the packet inasmuch as there has been no privity of contract between the dealer and the manufacturer of biscuits. It has also been urged that

the packet of biscuits which was purchased and found to be underweight by the complainant was never produced before the District Forum and, therefore, the finding of the District Forum is based on surmises and conjectures.

We have carefully gone through the papers available in the records of the District Forum as well as the judgment passed by it. It has been mentioned in the judgment that the biscuit packet manufactured by the present appellant which was found to be underweight was produced before the District Forum and the same was sent to the Assistant Controller of Legal Metrology, Sambalpur who found the said packet to be weighing 172 grams though on the packet it was printed that it contains 100 grams of biscuits. On these grounds it was contended that the complaint/petition should be outright rejected.

3. IT is well-known that the weighing machine used with the Assistant Controller of Legal Metrology is expected to be much more scientific and accurate than ordinary weighment made by scales available in the market. The discrepancy in the weight is eight grams. But the fact remains that at both the places the packet was less than 200 grams. We are, therefore, one with the District Forum that the biscuit packet manufactured and marketed by the present appellant is less than 200 grams as printed on the cover of the packet and this amounts to unfair trade practice. The other point which has been urged with some vehemence is that there has been no privity of contract between the manufacturer and the purchaser and therefore in the absence of the seller, the proceeding cannot be maintained against the manufacturer alone. This argument in our opinion is thoroughly misconceived. The manufacturer is as much responsible as the seller for selling his goods which is underweight. The Packaged Commodities Rules require that any commodity which is sold in packets must on the outer cover of the package contain certain particulars of which weight is one. The manufacturer has, therefore, to give the correct weight of the packet so that a customer shall not be misled. There is no dispute that the biscuit was manufactured by the present appellant and had been marketed in packets one of which was purchased by the complainant. In the aforesaid circumstances, the present appellant was liable and the proceeding could be maintained against the present appellant alone. Had the dealer been impleaded as a party, the liability might be held to be joint and several and absence of the seller does not exonerate the manufacturer from its liability. In a sense, the manufacturer is more liable than the seller. We, therefore, find no merits in this appeal and hence dismissed. Appeal dismissed.