(1992) 03 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

PUNJAB TRACTORS LIMITED — APPELLANT

Vs

TARSANGBHAI AMARSANGBHAI SOLANKI — RESPONDENT

Date of Decision : 11-03-1992

Acts Referred:

Citation : 1992 3 CPJ 488

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

Final Decision : Appeal partly allowed

Judgement

1. THE appellant is the original opponent No. 2. the manufacturers of Punjab Tractors Limited, Chandigarh. THE tractor in question is a model Swaraj-720. THE respondent No. 1 is the original complainant and for the sake of convenience we will refer to him as complainant and the appellant as opponent No. 2.

2. THAT the complainant purchased the tractor Model Swaraj-720 from the Opponent No. 1 M/s. Patel & Company, Wadhwan City who are admittedly the dealers of Swaraj Tractors. It is not disputed that prior to the purchase of the tractor the quotations were given by the opponent No. 1 and the price that was prevailing at that time was Rs. 77,798.40. According to the complainant the dealers have assured the complainant that the tractor will be delivered as soon as the payment is made. The complainant is an agriculturist and was badly in need of the tractor. He, therefore, paid full amount of Rs. 77,798.40 on 12.3.91 alongwith the firm order. The tractor was not delivered either immediately or within reasonable time and the same was offered for delivery in June ''91 i.e. after more than three months. Curiously though the dealer offered the delivery at a very late date he demanded a further amount of Rs. 8,166.40 as difference in price on the ground that the manufacturer has increased the price and, therefore, if the complainant wants the delivery the same will only be delivered on payment of difference. The complainant was, therefore, forced to pay Rs. 6,500/- after deducting the interest accrued on the amount already paid since the dealer has delivered the same after a period of more than three months. After the payment of the above amount the tractor was delivered. The actual

date is not shown in the judgment. That both the opponents have filed their written statements before the District Forum and resisted the claim for refund of difference amount. The District Forum after considering the case of both the parties came to the conclusion that the manufacturer, dealer, distributor, agent or trader or sellers cannot set at naught the sanctities of con tract on the ground of pretext that there was a rise in price especially when they had agreed to book and sell the commodity at a fixed price. According to the District Forum even if the prices are increased for whatever reason after full payment in advance has been received the dealer, distributor, manufacturer, agent, trader or seller or any one acting on his behalf cannot charge more price from the customer not enjoying commanding position as the seller is enjoying in this country. The learned Judge has observed that foot-note in the bill which states that the buyer has to pay more or less price prevalent at the time of delivery is a mischievous notion and by delaying the delivery the dealer cannot charge such a price merely on the ground of foot-note clause. The District Forum has considered the arguments of both the parties at length and found both the manufacturer as well as the dealer responsible for over charges and passed the decree to return the said amount with interest @ 9% and cost.

Mr. M.G. Ramachandran, the learned Counsel appearing on behalf of the appellant has raised the following contentions before us : 1. That the dealer is a contracting party and the relationship between the manufacturer (appellant) and the dealer is that of the principal and therefore, the appellant is not liable for return of any amount to the complainant. 2. That the definition of trader given in Section 2(1)(q) include the manufacturer but if the dealer charges higher amount than the contractual amount the trader (manufacturer) is not liable for the same in view of Section 2(1)(c)(iv). - 3. That the quotation issued by the manufacturer in clear terms provides that the price payable by the purchaser will be the price prevailing at the time of delivery. The manufacturer at no point of time agreed to the prices mentioned in the quotation and the manufacturer who do not agree to the quoted price is not responsible to the complainant. 4. That the order of the District Forum is otherwise also not in accordance with the evidence on record.

3. TO the aforesaid submissions of the learned advocate, of the appellant, Mr. Rajiv Mehta submitted that a manufacturer having unlimited capacity and power recovers 100% money at the price prevailing at the date of booking and he is not giving either guarantee of time of delivery or the price and reserves to himself the unilateral change in price is contrary to the accepted principles and notions, such a contract is not only unconscionable but opposed to public policies as defined in Section 23 of the Contract Act, particularly in view of the judgment of the Hon''ble Supreme Court in the case of Central Inland Water Transport v. Brojonath Ganguly reported in AIR 1986 SC 1571. Mr. Ramachandran stated that the Company is not prosecuting the appeal merely to get away from payment of Rs. 8,000/- but it is a matter of principle to them since on account of uncertainty in getting raw materials particularly when there is price rise at a very short interval. The Company is, therefore, not giving any guarantee of price and

charges the price at the time of delivery. Even if the dealers have agreed to a particular price that is a matter between the complainant and the dealer who might be responsible if he has entered into a firm contract but the manufacturer has never agreed to any price as alleged by the complainant and, therefore, he is pressing for the appeal.

4. HOWEVER, during the course of argument it was found that the respondent No. 2 (Opponent No. 1) had already deposited the full amount ordered by the District Forum with cost before the District Forum. The respondent No. 2 has not filed an appeal before the State Commission and, therefore, even if the appeal is either dismissed or allowed, the complainant will not get any further benefit. Mr. Rajiv Mehta realising the position has stated that the submissions which have been made by Mr. Ramachandran should be dealt with in a proper matter and he does not press for any order against the manufacturer which will, according to him, lengthen the litigation and his client who is in need of immediate money will be deprived of that amount if the litigation continues. He therefore, has, prayed that the Commission may permit him to withdraw the complaint against appellant and we may not decide these points and allow the appeal so far the present appellant is concerned. Mr. Mehta has also submitted an application to that effect. Mr. Ramachandran has fairly stated that his client does not press for any cost if the appeal is allowed without entering into merits. In view of the aforesaid submissions of Mr. Rajiv Mehta that since the Opponent No. 1 has not appealed, the order against him has become final, the complainant will be able to receive full amount after this appeal is disposed of and hence he has withdrawn complaint against present appellant. We also feel that it is not necessary to decide these submissions of Mr. Ramachandran and since Mr. Mehta is not pressing for any order against the present appellant Opponent No. 2 in the original complaint, to that extent the appeal shall have to be allowed without disturbing the other findings of the District Forum. The purshish is taken on record. ORDER We, therefore, partly allow this appeal and set aside the order of the District Forum so far it is against the present appellant i.e. Opponent No. 2 in the original complaint. So far the order against Opponent No. 1 M/s. Patel and Co. is concerned, the order of the District Forum is fully confirmed. The amount if deposited by the Respondent No. 2 (Opponent No. 1) will be paid to the complainant by the District Forum. If there is any shortage in the amount so deposited the same shall be paid by the Opponent No. 1 within two weeks from the date of receipt of this order. Appeal partly allowed.