

(2012) 08 NCDRC CK 0089

In the National Consumer Disputes Redressal Commission

Raj Guru Tractors

APPELLANT

Vs

MAHINDRA and MAHINDRA LTD. , Sat Nam Singh

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 435 : 2012 3 CPJ 682 : 2012 3 CPR 554

Hon'ble Judges : Anupam Dasgupta , Suresh Chandra J.

Advocate : Sukumar Pattjoshi , Snehal Kakrania , Mahaling Pandarge

Judgement

1. DELAY of one day in filing revision petitions No.3969/2006 and 3970/2006 is condoned.

2. SINCE all the three petitions are against the same order dated 8.9.2006 passed by the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal ("State Commission" for short) and are in respect of the same complaint bearing No.47/2005, the three revision petitions have been considered together and shall stand disposed of by this common order.

3. SRI Sat Nam Singh is the original complainant who has been impleaded as respondent No.1 in Revision Petition No.3843/2006 and 3949/2006 and as respondent No.2 in Revision Petition No. 3970/2006. Raj Guru Tractors, petitioner of RP No.3843/2006 was opposite party No.1 before the District Forum, Mahindra and Mahindra Ltd., petitioners of RP No.3969/2006 and 3970/2006 were opposite party No.2, State Bank of Indore was opposite party No.3 and M/s Singhakhedi Tractors were opposite party No.4 before the District Forum. In RP No.3843/2006, the petitioner/OP No.1 has impleaded only the complainant and OP No.2 as respondent No.1 and respondent No.2 respectively in the array of respondents. For the sake of convenience of reference, the parties have been referred to according to their status before the District Forum.

4. THE factual matrix of these petitions are that the complainant had purchased a Mahindra and Mahindra tractor with financing from OP No.3 Bank on 29.9.2004 with chassis No. B.N. 1838 (model 2004) and registration No. MP-08/8929 for a

price of Rs.2,81,000/- from OP No.1 who was the authorized dealer of OP No.2 who are the manufacturers of the tractor in question. After purchase, the complainant found that the tractor was of defective quality and many parts therein were not of 2004 make but old ones whereas the dealer had charged price of a new tractor from the complainant. Defects noted by the complainant were as under: - (A) There is no year and serial number embossed on the engine and chassis of the tractor. Similarly the date of manufacture tractor's pump is year 1999 and tractor's dynamo's manufacture year is printed 1998. (B) There are tapes placed at many places over the wiring of the tractor and in many places joints and the wiring in the dynamo is of many colours and the dynamo is of blue, black and red colour whereas it should be red and the rear light of the tractor is not functioning since the date of purchase. (C) The tractor is consuming more than 4 litres of diesel in one hour and in the front side below the bonnet, there are two holes which have been filled by something and coloured. Meter is running in opposite direction and the tractor runs free when its clutch is pressed and once the clutch is left, it runs as if it is carrying heavy load. (D) The center pins in of the wheels of the tractor are old and when it runs, the wheels start bubbling and bushes are cut from the centres, the engine is leaking oil, diesel and steering oil is also leaking. Similarly there are many things which show that the tractor is used and old one which is given to the plaintiff after painting.

5. ACCORDING to the complainant, the OP No.1 assured him to provide a new tractor shortly and in the meanwhile he could use the tractor already in his possession but when OP No.1 did not replace the tractor and since the tractor had many serious defects and the complainant was not able to use it for his agriculture work and had to manage by hiring outside tractors, he lodged a complaint with the District Forum alleging deficiency on the part of the opposite parties. Later on, the complainant amended his complaint by including the plea given by OP No.2 that the said tractor was sold by OP No.2 to OP No.1 by giving reduction of Rs.70,000/- in the price and hence the tractor should have been sold by OP No.1 to the complainant by reducing the price of Rs.70,000/-. In view of this further information included in the complaint through amendment, the complainant prayed that since he had been charged Rs.70,000/- which was not supposed to have been taken from him, the complainant should be granted refund of Rs.70,000/- back from opposite party No.1 and also prayed for replacement of the tractor by a new tractor as well as compensation for mental agony.

6. THE dealer i.e. OP No.1 in its reply accepted that the tractor in question had been sold on 29.9.2004 for Rs.2,81,000/- to the complainant but he denied all other allegations and further submitted that OP No.1 is no longer the dealer of OP No.2. So now, it is not its responsibility. It was further submitted by OP No.1 that the plaintiff had fully checked the tractor at the time of the purchase and being satisfied he had taken the tractor and also gave a certificate to this effect and hence it is no longer his responsibility now. Regarding the anomalies in respect of the engine and chassis numbers as also the year of manufacture of

other parts, OP No.1 stated that this information would be available with the manufacturer i.e. OP No.2. Regarding the other minor defects pointed out by the complainant, it was submitted that the same could occur on account of misuse of the tractor by the complainant and since he never made any complaint to OP No.1 at the time of purchase when the tractor was alright, the allegations being made now are baseless and requested for dismissal of the complaint. Regarding the later amendment carried out by the complainant in respect of the charging of more price from the complainant without giving reduction of Rs.70,000/- in the price, OP No.1 denied having been allowed the reduction of Rs.70,000/- by OP No.2 and submitted that the billing of the tractor was done for full amount. In view of this, the dealer could not accept the request for reduction in the price by Rs.70,000/- or by giving any refund for the amount. OP No.2 i.e. Mahindra and Mahindra Ltd. also filed its reply and accepted that the tractor in question was sold by OP No.1 being the authorized dealer of OP No.2 but refused to accept other facts. It also pointed out that the tractor in question was kept at the place of OP No.1 for more than 200 days. So for selling it, OP No.1 was given a reduction of Rs.70,000/- in the price and hence it was the duty of OP No.1 to sell the tractor at a price after reducing it by Rs.70,000/- from the actual price of Rs.2,81,859/-. OP No.2 also stated that the tractor was completely new and without any fault. It also took the plea that OP No.2 had given the tractor to OP No.1 under an agreement on "Principal to Principal basis". It also denied any manufacturing defect in the tractor. The State Bank of Indore i.e. OP No.3 in its reply accepted the fact that the tractor was financed by it and the complainant had taken the tractor with full satisfaction and denied any deficiency on its part in the matter. It was further requested that OP No.3 has been made party without any reason and hence the complaint against it is baseless and be dismissed. OP No.4 was made party in the complaint later on because it became the authorized dealer of the OP No.2 subsequently but in spite of service of notice, OP No.4 chose to remain absent and hence was proceeded ex-parte by the District Forum.

7. ON appraisal of the pleadings of the parties and the evidence adduced by them, the District Forum accepted the complaint vide its order dated 11.11.2005 in terms of the following directions: - "So, accordingly the plaint is accepted and the Opposite Party No.1 is directed that he should refund excess amount of Rs.70,000/- received from the plaintiff and Opposite party No.2 Mahindra Company is directed that the tractor sold to the plaintiff being Tractor No. B.M.1838 be got set right free of cost and all the defects be rectified and the satisfaction certificate of the plaintiff be produced at Forum. This order be implemented within one month otherwise after one month an interest @ 9% per annum will be given on the amount to both the O.P. No.1 and O.P. No.2 have also been directed to pay compensation of Rs.5000/- and cost Rs.600/- to the complainant."

8. AGGRIEVED by the aforesaid order of the District Forum, the then dealer M/s Raj Guru Tractors, who was OP No.1 filed an appeal before the State Commission

vide appeal No.2309/2005 for setting aside the order of the District Forum. Not satisfied with the order of the District Forum, the complainant Sat Nam Singh also preferred an appeal against this order before the State Commission. OP No.2 i.e. the manufacturer of the tractor Mahindra and Mahindra Ltd. did not challenge the order of the District Forum and as such the same became final against it. There is no direction in the District Forum's order against OPs No.3 and 4. The State Commission vide its impugned order dated 8.9.2006 disposed of the two appeals in terms of the following directions: - "We thus dispose of both the appeals with direction to opposite parties no.1 and 2 to replace the said tractor and provide the complainants with a new tractor on his returning the old one without charging any further price from the latter or in alternative pay to him Rs.2,81,000/- with interest @ 9% p.a. from the date of purchase i.e. 29.9.2004 till payment. They shall also bear complainant's cost of both the fora and the same is quantified at Rs.5,000/-. The order passed by the Forum below shall stand substituted by this order. Even while disposing of these appeals as aforesaid, we leave both the parties free to take recourse to such remedy as may be available to them in law against each other."

9. AGGRIEVED by the aforesaid impugned order of the State Commission, OP No.1 has filed revision No.3843/2006 and OP No.2 has filed revision petitions No.3969/2006 and 3970/2006.

10. WE have heard Mr. Sukumar Pattjoshi, Advocate for OP No.2, who are petitioners in RP No.3969 and RP No.3970/2006 and respondent No.2 in RP No.3843/2006 and Mr. Mahaling Pandarge, Advocate for OP No.4 who is respondent No.4 in all the three petitions. None has appeared for OP No.1 who is petitioner in RP No.3843 of 2006 and respondent in all the other two petitions and OP No.3 who is respondent No.3 in all the three revision petitions. None has appeared for the complainant who is respondent in all the cases but written arguments have been filed on his behalf which are placed on the paper book. We have also perused the record placed before us by the parties.

11. AT the outset, the learned counsel for the petitioners in RPs 3969/2006 and 3970/2006 submitted that since no appeal was filed by the petitioner against the order of the District Forum, the order of the District Forum to the extent that it directs the petitioner company to rectify the defects of the tractor in question to the satisfaction of the complainant became final against the company and hence it accepts that part of the order to carry out the repairs free of charge as per the directions of the District Forum. He contended that besides this part of the order of the District Forum the petitioner company should not have been directed to accept joint and several liability with OP No.1 to replace the said tractor and provide the complainant with a new tractor or in the alternative to pay him Rs.2,81,000/- with interest as per the impugned order. In support of his contention, the counsel submitted that dealer's agreement dated 15.6.2003 which governed the relationship between the petitioner company and OP No.1 specifically provided that their relationship was on "Principal to Principal basis"

and OP No.1 was not the agent or employee of OP No.2 for any purpose whatsoever. In this context, he drew our attention to the contents of para-24 of the agreement a copy of which is placed on the paper book by the petitioner, which reads thus: - "LEGAL RELATIONSHIP: The relationship between THE DEALER and the COMPANY is on Principal to Principal basis and THE DEALER is not and shall not be the agent or employee of the COMPANY for any purpose and they shall have no right or authority to assign or create any obligation of any kind, express or implied, on behalf of the COMPANY to bind the COMPANY in any way, to accept any service or process upon the COMPANY or to receive any notice of any nature whatsoever."

12. HE relied on the authority of the ruling of the Apex Court in the case of Indian Oil Corporation vs. Consumer Protection Council, Kerala and Anr. [(1994) 1 Supreme Court Cases 397] and the judgment of the National Commission in the case of Maruti Udyog Ltd. vs. Nagender Prasad Sinha [II (2009) CPJ 295 (NC)]. In view of the authority of these judgments and the contents of para-24 of the dealership agreement, the counsel submitted that the impugned order of the State Commission cannot be sustained in the eye of law and the liability of the petitioner company will have to be limited to carrying out only the repairs free of cost with reference to the defects pointed out by the complainant before the District Forum as reproduced above. In any case, he submitted that as rightly held by the District Forum, the defects in question were not manufacturing defects but defects after the use of the tractor and hence there was no case for replacing the tractor by a new tractor and hence the question of refund of the price could also not arise. The State Commission gravely erred in directing replacement of the tractor or in the alternative refund of the amount paid by the complainant without any basis for such a direction. He, therefore, strongly pleaded that the impugned order be set aside and suitable directions for repairs of the tractor in question insofar as the liability of the petitioner company is concerned, be issued.

13. LEARNED counsel for OP No.4/respondent No.4 submitted that M/s Singhakhedi Tractors is not in existence since it is closed. He further pointed out that OP No.4 was no longer the dealer of Mahindra and Mahindra Ltd. and in any case, the disputed transaction of the complainant arose prior to the allotment of dealership of the petitioner company to M/s Singhakhedi Tractors and as such OP No.4 has no liability or responsibility to discharge with reference to the present dispute and it has unnecessarily been dragged into litigation by the complainant and hence the revision petition be dismissed against OP No.4.

14. WE have considered the contentions of counsel for the petitioner company and OP No.4. In view of the specific provisions of the dealership agreement entered into between the petitioner company and OP No.1, we have no manner of doubt that the relationship between the two parties was on "Principal to Principal basis". In view of this, applying the ruling in the case of Indian Oil Corporation (supra) given by the Apex Court, the petitioner company cannot be

held liable for the action of OP No.1 in not reducing the price of tractor by Rs.70,000/-. In line with the ruling of the Apex Court, the National Commission in the case of Maruti Udyog Ltd. (supra) has upheld its earlier order in the case of Maruti Udyog Ltd. vs. Arjun Singh and Anr. in RP No.2636/2006 and reiterated the legal position in this regard as under: - "Keeping in view the said limits of authority, the relationship between the Maruti Udyog Ltd. and the dealer is on the basis of principal to principal and as such the Maruti Udyog Ltd. would not be liable for the acts of the dealer. It may also be pointed out at this stage that the State Commission in identical matters in the First Appeals referred to above had come to the conclusion that there was no privity of contract between the Maruti Udyog Ltd. and the customers who had booked the vehicle with the dealer. The State Commission has pointed out that it is settled that in case of relationship between manufacturer and its distributor on principal to principal basis the manufacturer was not liable for acts of its distributor. The State Commission had relied upon the judgment of the Apex Court in Indian Oil Corporation Vs. Consumer Protection Council, Kerala and Anr. II (1994) CPJ 21 (SC) (supra) wherein it is held that once delivery of vehicle is given to the dealer after realizing the price from dealer, the relationship between the manufacturer and dealer was not of principal and agent, but of vendor and purchaser. The State Commission ultimately held in the said cases that the company was not liable to either deliver the vehicle or to refund the deposit amounts or to pay compensation to the complainant. It was further held that the authorized dealer Ashish Automobiles (A division of Somani Swiss Ind. Ltd.) headed by Mr. M.L. Somani was alone liable to comply with the impugned orders. In view of the above position, the impugned order of the State Commission dated 14.6.2006 cannot be sustained wherein it is stated that Maruti Udyog Ltd. is liable to pay 18% interest and it may realize the same from authorized dealer. The liability to pay interest and compensation would, therefore, under the circumstances, be that of respondent No.2 alone. The revision is, accordingly, allowed in aforesaid terms with no order as to cost."

15. IN view of the above settled position of law, we hold that the impugned order of the State Commission cannot be sustained and hence the same is hereby set aside. While on the subject we must also express that keeping in view the nature of defects, we agree with the finding of the District Forum that the same could not be categorized as manufacturing defects and as such in that view of the matter, there was no case for replacement of the tractor by a new one or in the alternative for refund of the amount as such to the complainant. We also hold that OP No.1 had wrongly charged Rs.70,000/- which the District Forum had taken due note of and hence directed OP No.1 to refund the same to the complainant. Consequently, we confirm and uphold the order of the District Forum and set aside the impugned order passed by the State Commission. OP No.1 i.e. M/s Raj Guru Tractors and OP No.2 i.e. Mahindra and Mahindra Ltd. are hereby directed to comply with the order of the District Forum accordingly. There is no liability to be discharged by OPs 3 and 4 and hence no direction is required

to be given to them with reference to the order of the District Forum.

16. THE revision petitions stand disposed of in terms of these directions with no order as to costs.