
(2012) 02 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

Shyamal Ghosh

APPELLANT

Vs

Khokan Auto Distributors (P) Ltd.

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Citation : 2012 0 NCDRC 69 : 2012 1 CPR 388 : 2012 2 CPJ 61

Hon'ble Judges : Suresh Chandra J.

Advocate : S.K.Ghosh , Barun Prasad , Rupali S.Ghosh , S.R.Bansal

Judgement

1. THIS revision petition has been filed by the complainant against the order dated 20.4.2010 passed by the State Consumer Disputes Redressal Commission, West Bengal (?State Commission? for short).

2. BRIEFLY stated, the facts as stated in the complaint are that the petitioner purchased the chasis of a bus from respondent No.1/OP-1 which is the authorized distributor of respondent Nos. 2 & 3 /OPs-2 & 3 with financial assistance of HDFC Bank and paid Rs.6,18,000/-. Thereafter, the body was built incurring a further expenditure of Rs.2,30,000/-. When the petitioner started plying the vehicle on road, it was noticed that there were some problems and defects in the chasis. On several occasions, the petitioner took the bus to the authorized service centre of OP-1 but the problems cropped up again. Alleging manufacturing defect, which could not be removed in spite of repairing during the warranty period, the petitioner filed present consumer complaint seeking refund of the purchase price, compensation, cost and other reliefs. The OPs/ respondents resisted the complaint and took objection that the complainant does not come under the definition of consumer because the complainant stated that he had plied the vehicle on road as per road permit granted by the RTA, Darjeeling and that he suffered loss for not doing business. The question of maintainability of the complaint was considered by the District Forum initially and by its order dated 16.1.2007, the District Forum held the complaint as maintainable and rejecting the objection taken by the OPs in this regard proceeded further with the matter. In the final judgement dated 30.10.2009

although the District Forum recorded that the defect in the vehicle having arisen within the warranty period the dispute involved in the case does not relate to any commercial purpose, however, on appraisal of the issues and evidence adduced by the parties, the District Forum dismissed the complaint for want of proof in regard to the alleged manufacturing defects.

The OPs/respondents herein did not challenge the aforesaid order of the District Forum but the petitioner filed an appeal before the State Commission against it. Regarding the question of maintainability of the dispute under the Consumer Protection Act, it was contended on behalf of the petitioner before the State Commission that the maintainability question having been decided earlier by the District Forum and there being no challenge by the OPs to the aforesaid order, the question attained finality and could not be urged any further. The State Commission after hearing the parties vide its impugned order held that since in the present case the vehicle was purchased on 14.2.2005, i.e., long after the amendment to the Consumer Protection Act was made effective from 15.3.2003, the petitioner is not a consumer in terms of the provisions of law and hence held that the complaint is liable to be dismissed as not maintainable. The State Commission while setting aside the order of the District Forum on the question of maintainability did not consider the other contentions of the appellant/petitioner herein on merits and dismissed the complaint as such. It is in these circumstances that the petitioner/complainant has approached this Commission challenging the aforesaid order of the State Commission.

3. WE have heard Mr. S.K. Ghosh, Advocate, learned counsel for the petitioner and Mr. S.R. Bansal, Advocate, learned counsel for the respondents. It was contended by counsel for the petitioner that in spite of the question of maintainability having been duly considered by the District Forum and decided in favour of the petitioner and without there being any appeal against such finding of the District Forum by the OPs before the State Commission, the State Commission went into the question of maintainability and dismissed the appeal holding that the complaint is not maintainable. Since the impugned order was passed in his appeal which he had filed against the order of the District Forum dismissing his complaint on merits, the impugned order on the question of maintainability of the dispute cannot be sustained in the eye of law. Besides this, learned counsel argued that the State Commission while holding that the complaint of the petitioner is not maintainable in the light of the amendment to the Consumer Protection Act in the year 2003, gravely erred in ignoring the fact that the vehicle in question was source of earning the livelihood for the petitioner. He pointed out that there is a specific mention about it in para 11 (c) of the complaint filed by the petitioner which read as under:- "That the complainant is an unemployed youth and he meets his day-to-day expenses by plying the said vehicle and due to the aforesaid illegal acts and omission, the complainant has suffered a huge mental pain and agony and for which the O.P. No.1 is liable to pay the amount in addition to the prayer which has/had already mentioned in the complaint on account of mental pain and agony which this Ld.

Forum shall think fit and proper."

In view of this, if the State Commission somehow decided to reopen the question of maintainability albeit wrongly in the appeal filed by the petitioner, the State Commission ought to have kept this very important aspect of the complaint while considering the question in the light of the amendment effective from 15.3.2003 to the C.P. Act. Learned counsel argued that there is no discussion about this aspect in the impugned order since the State Commission overlooked it and got carried away merely by the date of purchase of the vehicle, i.e., 14.2.2005 which was obviously long after the effective date to the amendment. In view of both these aspects which are apparent from record, the impugned order cannot be sustained in the eye of law and is liable to be set aside. He further pleaded that since the appeal of the petitioner has not been considered by the State Commission on merits and the complaint was dismissed on the question of maintainability alone, the matter needs be remanded back to the State Commission for fresh decision on merits after affording due opportunity of hearing to the parties in accordance with law.

4. AFTER considering the aforesaid submissions and perusing the record including the orders of the Fora below, we are of the considered view that the question of maintainability having been duly considered and decided by the District Forum against which there was no challenge by the respondents, it should not have been reopened. In any case, the State Commission apparently has overlooked an important submission of the petitioner in his complaint where he has specifically stated that he is an unemployed youth and the vehicle in question is being plied by him to meet his day-to-day expenses. The impugned order is, therefore, set aside and the matter is remitted back to the State Commission for fresh decision on merits in accordance with law after affording due opportunity of hearing to the parties. Since it is a consumer complaint of the year 2006, it is expected that it would be taken up on priority by the State Commission and disposed of within a period of six months from the date of first appearance of the parties before it and the parties are directed to appear before the State Commission on 21.3.2012. The revision petition stands disposed of in terms of these directions.