(2015) 12 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

Case No : 2192 of 2011

STATE BANK OF INDIA — APPELLANT

Vs

EID MOHAMMAD KHAN & ORS — RESPONDENT

Date of Decision : 03-12-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : 2016 1 CPJ 277 : 2016 1 CPR 309

Hon'ble Judges : V.B. Gupta, Prem Narain

Advocate : S.L. Gupta

Judgement

1. Petitioner/Opposite Party No.1 being aggrieved by impugned order dated 22.3.2011, passed by M.P. State Consumer Disputes Redressal Commission, Bhopal (for short, ''State Commission'') in (First Appeal No.1764 of 2009) has filed present revision.

2. Brief facts are, that petitioner auctioned a seized bus and Respondent No.1/ Complainant was the successful bidder, as his bid for Rs.2,21,000/- was the highest. The vehicle was given to respondent no.1 but no papers were given. While respondent no.1 was taking the bus to Indore, it was seized by Regional Transport office''s personnel for past dues. At the time of auction, petitioner had not informed respondent no.1, that any arrears of taxes are due. Had he been informed about the same, respondent no.1 would not have purchased the bus in auction. Thus, alleging deficiency on the part of petitioner, consumer complaint was filed by respondent no.1 before District Consumer Forum, East Nimad, Khandwa, (MP) (for short, ''District Forum'') seeking refund of the amount paid by him.

3. In reply petitioner has stated, that auction was conducted as per rules and it is the duty of the auction purchaser to pay all the dues and as such consumer complaint is not maintainable.

4. District Forum vide order dated 31.08.2009, dismissed the complaint on the

ground, that since respondent no.1 had purchased the vehicle in auction he is not a ''Consumer''.

5. Being aggrieved respondent no.1 filed appeal before the State Commission, which allowed the same vide impugned order.

6. Notice of present petition was issued to the respondents. Initially, counsel for respondent no.1 appeared but later on he absented. Therefore, vide order dated 17.11.2015 respondent no.1 was proceeded ex parte.

7. We have heard learned counsel for petitioner and gone through the record.

8. It is submitted by learned counsel for petitioner, that respondent no.1 had participated in the auction on the basis of advertisement published by the petitioner. At the top of the said advertisement, it was specifically mentioned, that vehicle will be sold on ''as is where is'' . It means, that respondent no.1 participated in the auction and gave the bid, only after accepting the preconditions. It is also contended, that since respondent no.1 had purchased the vehicle in a public auction, he is not a ''Consumer'' as per the Act. In support, learned counsel has relied upon following judgments; " (i) United Bank of India Vs. official Liquidator and others, (1994) 1 Supreme Court Cases 575 and

(ii) U.T. Chandigarh Administration and Anr. Vs. Amarjeet Singh and Ors, Civil Appeal No. 1994 of 2006 Decided on 17.3.2009 by Hon''ble Supreme Court."

9. State Commission, while allowing complainant''s appeal observed; " 3. Learned counsel for the appellant submits that the auction on the basis of as is where is does not imply that the past taxes will also be paid by the auction purchaser. He submits that as matter of fact, no disclosure was made with regard to the past taxes and since the bus was in the custody of the Bank from 2005 till 2008, it was the bank who should have cleared the dues before putting the bus to auction.

4. The appellant has paid Rs.2,21,000/- for the bus, the bank can be granted only two option:-

(i) Further to pay the taxes of the bus which were in arrears till the date of the auction; or

(ii) to refund the amount for Rs.2,21,000/- to the auction purchaser and take back the bus.

5. Accordingly, it is directed that the respondent no.1-State Bank of India shall pay the tax dues on the bus upto the date of the auction or to pay the amount back to the auction purchaser and take back the bus ."

10. The mere fact, that bus was sold in auction on ''a s is where is'' basis would not mean, that complainant would be liable to make payment of all outstanding dues. When a bus or vehicle is sold in auction on ''a s is where is'' basis, it would imply, that it relates to the condition and functioning of the vehicle and not with

regard to the outstanding statutory dues or taxes, if any. Admittedly, petitioner had not informed respondent no.1 regarding the outstanding dues/taxes against the vehicle in question, before the auction.

11. The case of respondent no.1 is that, if he had been informed about the amount of previous taxes, then he certainly would not have purchased the bus in the auction. Therefore, it was the bounden duty of the petitioner, before selling the bus in auction, to have brought to the notice of all the prospective auction purchasers, that there are statutory dues/taxes in respect of vehicle in question. However, petitioner never brought this material fact to the notice of auction purchasers. Thus, petitioner concealed the material facts from the prospective buyers in the auction. This act of petitioner, falls within the meaning of ''Unfair Trade Practice'' and it certainly amount to deficiency in service.

12. Therefore we have no hesitation in holding, that impugned order does not suffer from any illegality, material irregularity or jurisdictional error which could justify intervention in exercise of powers under Section 21(b) of the Act. Thus, present revision petition having no legal force, is hereby dismissed with cost of Rs.10,000/-(Rupees Ten Thousand only).

13. Petitioner is directed to deposit the cost by way of demand draft in the name of ''Consumer Legal Aid Account'' of this Commission, within four weeks from today. In case, petitioner fails to deposit the cost within prescribed period, then it shall also be liable to pay interest @ 9% p.a. till realization.

14. List for compliance on 8 th January, 2016 at 2.00 P.M.