(1992) 11 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

SWASTIK AUTO STORES — APPELLANT

Vs

SHYAM BABU — RESPONDENT

Date of Decision : 28-11-1992

Acts Referred:

Citation : 1993 2 CPJ 862 : 1993 3 CPR 168

Hon'ble Judges : V.S.Kokje , M.L.Tiwari J.

Final Decision : Appeal allowed with costs

Judgement

1. THE appellant Swastik Auto Stores has filed this appeal against, an order dated 16-12-1991 passed by the District Forum, Gwalior directing the appellant to refund Rs. 20/- the excess price of auto bulb charged from the complainant, with Rs. 300/- as lawyer''s fee and Rs. 150/- as expenses. THE peculiar circumstances of the case are that the complainant is a driver of a jeep which, he says, belongs to Shri Murarilai Dube one of the Members of the District Forum, Gwalior. He purchased two Halonix Tungsten bulbs for Halogen Head Lights from the appellant. According to the complainant price in excess of what was printed on the carton was charged by the appellant. THE complainant therefore filed the complaint, of course, without showing that he was only a driver and the vehicle belongs to Shri Murarilal Dube, Member, District Forum, Gwalior. THE name of Shri Murarilal Dube came to light at the time of the evidence when in cross-examination the complainant admitted that the vehicle belonged to Shri Murarilal Dube and the complainant was only a driver of that vehicle. Shri Murarilal Dube disassociated himself with the proceedings only after his name was taken by the complainant in his cross examination. However, the District Forum upheld the complaint and directed refund of the amount charged in excess as also expenses.

2. IN the memorandum of appeal before us complaint against the conduct of Shri Murarilal Dube as Member of the District Forum is made but we do not desire to go into that here. The appellant if he has any grievance should address his complaint on that count either to the Government or to the President of the Commission of administrative side. We are here considering only the legal pleas

which strictly arise for our reconsideration. Since Shri Murarilal Dube has not been impleaded it would also not be proper for us to say anything about his role in the case. It was contended on behalf of the appellant that the complainant does not fall in the definition of ''complainant'' under the Consumer Protection Act, 1986 (hereinafter called the ''Act''). He cannot be said to have purchased the goods as he was only acting as an agent or servant of the owner while purchasing the goods. Definition of ''complainant'' contained in Section 2(1)(b) of the Act is as under : - "2. Definitions. - (1) In this Act, unless the context otherwise requires,- (a) ----- (b) "complainant" means, - (i) a consumer; or (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or (iii) the Central Government or any State Government, who or which makes a complainant." The term "consumer" has also been defined ill Section 2(1)(d) of the Act. The relevant portion is reproduced hereunder : - "2. Definitions. - (1) In this Act, unless the context otherwise requires, - (d) "consumer" means any person who, - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised, or/under any system of deferred payment, when such services are availed of with the approval of the first mentioned person."

In the present case, the statement of the complainant himself shows that he is not the buyer of the goods. He has not stated on oath that he bought the bulbs as buyer for himself. He has stated that he had bought the bulbs for a jeep which belongs to Shri Murarilal Dube and he was only a driver of the vehicle. Obviously, the complainant has bought the bulbs as an agent of Shri Murarilal Dube for being used for jeep of Shri Murarilal Dube. Clearly, therefore, Shri Murarilal Dube is the Principal in the transaction and the complainant Shyam babu is only an agent or servant. When a servant is sent in the market to buy something for his master he only acts as an agent for his master and he does not become the buyer or the purchaser himself. The master is the purchaser or buyer in the transaction and the servant is only an agent having no independent rights in the transaction. It is therefore clear that in the transac-. tion in question Shyambabu was not the buyer of goods though actually he physically purchased goods for his master Shri Murarilal Dube as his agent or servant.

3. SECTION 230 of the Indian Contract Act, 1872 provides that an agent cannot personally enforce a contract on behalf of Principal. SECTION 230 reads as under : - "230. In the absence of any contract to that effect, an agent cannot

personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. Such a contract shall be presumed to exist in the following cases : - (1) Where the contract is made by an agent for sale or purchase of goods for a merchant resident abroad; (2) Where the agent does not disclose the name of his principal; (3) Where the principal, though disclosed, cannot be sued."

As is clear from the evidence now, that the complainant was acting only as an agent the question of presuming contract to the contrary because of non-disclosure of name of the Principal by the agent does not arise. The definition of "complainant" and "consumer" in the Act will have to be construed in the light of this provision. So construed it would be clear that the legislature never meant the physical purchaser, of the goods to be a ''consumer'' even though the goods were really purchased by such person as an agent for someone else. If, it is accepted that any person who physically purchases goods is a "consumer", it would lead to absurd results. In that case, servants or agents can file complaints before the Consumer Forums without even the knowledge of their master or principal. Even incases in which the master or the principal, the real buyer of the goods, is satisfied about the purchase, without their knowledge traders could be harassed by servants and agents by filing cases independently, without knowledge of their masters/principals or in some cases even despite the reluctance or unwillingness of their masters/ principals for filing such cases. It may also give rise to a situation in which ex-agents and ex-servants would be able to file complaints regarding goods purchased by them on behalf of their masters/principals even after the contract of service or agency is terminated. The legislature surely did not visualized such an absurd scope of the definition of the "consumer" and the "complainant".

4. IN the light of aforesaid discussion therefore, it is quite clear that respondent Shyambabu does not fall in the definition of "consumer" and consequently, could not have been a "complainant" under the Act. Therefore, complaint made by him could not have been entertained by the Forum, as in view of Section 12 of the Act, only a "consumer" or any recognised consumer association or the Central or the State Government could file a complaint before a Forum. Though it is not strictly necessary to go into the other question, but since that question also has all importance and it is likely, to crop-up in many cases, we are going into that also. The question is whether when a trader charges price in excess of the price delayed on the goods or any package containing such goods automatically becomes liable for refund of amount and other consequences. In the present day situation, frequent change of prices is not unknown. Rather, it has become the usual feature of ourday-to-day life. In such a situation it is not unlikely that the prices displayed on the goods or the package become obsolete very fast. If a trader is not able to change price displayed on the goods or on the package before selling the goods can he be penalised even though the price he had charged was perfectly lawful on the day of sell? The provision on which the view taken by the Forum is based is Clause (iv) of the definition of "complaint"

contained in Clause (c) of Sub-section (1) of Section 2 of the Act. The provision is reproduced hereunder : - "2. Definitions.-(1) In this Act, unless the context otherwise requires,- (c) "complaint" means any allegation in writing made by a complainant that, - (i) - (ii) - (iii) - (iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods, with a view of obtaining any relief provided by or under this Act."

It is pertinent to note that there is no specific provision in the Act declaring charging of a price in excess of what is displayed on goods or package to be an offence or to be a defect or deficiency for which compensation was liable to be paid. Only from the definition of "complaint" aforesaid, it cannot be presumed that for charging price in excess of the price displayed on the goods or the package containing it, compensation has to be awarded invariably without looking into the position in law as to the price of goods on the date of sale. In the present case, the appellant had put on record circulars showing that the price on the date of the sale was itself in excess of what was displayed on the carton. It has also not been proved or shown that the price of the goods was controlled by law and there was a prohibition for charging price in excess of the price displayed on the packing. It is also not on record as to whether the price of the goods was regulated by law at all. In such circumstances, the appellant could not have been penalised for having sold goods at a price in excess of the price displayed on the package.

5. THUS, even without going into the plea taken by the appellant before the Forum that actually a fraud has been played by the complainant on the Forum by showing old wrapper displaying old price when actually the appellant had sold the goods in a package which displayed the correct price at which the goods could be and were sold on that day. For the aforesaid reasons we allow this appeal and set-aside the order passed by the District Forum. The original complainant shall pay the costs of the proceedings before the Forum as well as before the Commission to the appellant. The costs quantified at Rs.500/- for both the Courts taken together. Appeal allowed with costs.