

(2013) 09 NCDRC CK 0061

In the National Consumer Disputes Redressal Commission

TATA MOTORS LTD

APPELLANT

Vs

Hazoor Maharaj Baba Des Rajji

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : 2013 0 NCDRC 665 : 2013 4 CPR 272 : 2014 4 CPJ 444

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : ADITYA NARAIN , Davesb Bhatia , Shashank Bhushan , SOUMYA CHAKRABORTY , H.S.BHATIA , ANISH VERMA , MAMTA PAL

Judgement

1. THIS revision petition has been filed by the petitioners/OPs against the order dated 2.3.2012 passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh (in short, "the State Commission ") in Appeal No. 917/2009 - Tata Motors Ltd. & Anr. Vs. Hazoor Maharaj Baba Des Raj & Anr. by which, while allowing appeal partly, order of District Forum allowing complaint partly was modified.

2. BRIEF facts of the case are that complainant/Respondent No. 1 purchased Tata LP 410 Ex Model Euro III from OP Nos. 1 & 2-Petitioners on 26.12.2006 for a sum of Rs.5,41,855/-. After purchase of the vehicle while returning back, engine of the vehicle became very hot and vehicle stopped in the way. Vehicle was handed over to the nearest dealer of OPs and dealing person at the workshop told that there was a fault in the fuel pump and fuel pump has to be changed. Later on, from time to time, vehicle started giving trouble and was again and again taken to the workshop of OPs. Lastly, it was taken to the workshop of OP-4/ Respondent no. 2 who changed fuel filter, air cleaner and delivered back the vehicle to the complainant, but again it stopped in the way. Ultimately, it was sent to Shahdara Engineering, New Delhi for checking and looking the defects under warranty where it was checked and it was revealed that there was no fault in the nozzles and FIP, but there were some manufacturing defects which led to low pick up and engine heat up. Alleging deficiency on the part of OPs, complainant filed complaint before District Forum and claimed refund of price of

the vehicle along with fabrication charges of Rs.2,50,000/- and compensation. OPs resisted complaint and submitted that complainant got the body of the vehicle fabricated and was being used as Bus for transportation. As vehicle had been purchased for commercial purposes and not for earning livelihood, complainant does not fall within the purview of consumer. It was further alleged that no documentary proof regarding manufacturing defects has been filed. It was further submitted that problem of throwing of coolant arose due to engine radiator fan which was fitted by body builder in opposite direction and also due to coolant pipe leakage from additional tapping of engine coolant line taken for air blower in A.C. system and prayed for dismissal of complaint. OP No. 4/ Respondent No. 2 submitted that there was no manufacturing defect, but trouble, if any, was due to bad driving habit, mishandling and poor maintenance and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed OPs to replace complete engine of the vehicle and further directed to pay Rs.20,000/- as compensation and Rs.1,000/- as litigation expenses. Appeal was filed by the petitioners before State Commission and learned State Commission vide impugned order modified order of District Forum and directed petitioners to pay consolidated compensation of Rs.2,50,000/- to complainants, as vehicle was sold during pendency of appeal against which, this revision petition has been filed. Heard learned Counsel for the parties and perused record.

3. LEARNED Counsel for the petitioners submitted that as vehicle had already been sold during pendency of the complaint before District Forum, as such, complainant does not remain consumer for the purpose of Consumer Protection Act and further submitted that complainant has suppressed fact of sale of vehicle during pendency of complaint before District forum and has not come with clean hands, revision petition be allowed and impugned order be set aside. On the other hand, learned Counsel for the Respondent No. 1 submitted that order passed by learned State Commission is in accordance with law, which does not call for any interference; hence, revision petition be dismissed. Learned Counsel for the Respondent No. 2 supported cause of the petitioners and prayed for dismissal of complaint.

4. LEARNED District Forum and learned State Commission both have held that there was inherent manufacturing defect in the engine of the vehicle which could not be rectified and replacement of engine was absolutely necessary. Learned State Commission further observed that during course of arguments it was brought to the notice of the Commission that complainant has during pendency of appeal sold vehicle to the third party and in such circumstances, instead of replacing the engine, order for consolidated compensation of Rs.2,50,000/- was passed. Learned Counsel for the petitioner submitted that as vehicle had already been sold during pendency of the complaint before District Forum, complainant does not remain consumer for the purpose of Consumer Protection Act and impugned order is liable to be set aside. He has placed reliance on I (2008) CPJ 249 (NC) - Hoshiarpur Improvement Trust Vs. Major Amrit Lal Saini in which it

was held : "12. Another issue which has been agitated before us is that the plot in question has since been sold for a consideration of Rs. 10 lakh out of which way back in 2001, the complainant has received Rs. 6 lakh and the balance Rs. 4 lakh later on having transferred his right during the pendency of the complaint. In these circumstances whether the complainant would still remain a consumer or not? We have our serious reservation on this point. Having disposed of the property during the pendency of the complaint, in our view, the complainant would cease to be a consumer.

5. HE has also placed reliance on judgment dated 23.4.2013 passed by this Commission in Appeal No. 466 of 2008 - Mr. Rajiv Gulati Vs. Authorised Signatory M/s. Tata Engineering & Locomotive Co. Ltd. & Ors. in which it was observed as under: "We find substance in the submissions made by the Ld. Counsel for the Appellant. Admittedly, during the pendency of the complaint, the vehicle was sold by the Respondent on 26th August, 2002 for Rs.5,05,000/- without taking permission of the State Commission. Since the vehicle was sold, it was never produced as an evidence before the State Commission. Had the vehicle been produced before the State Commission it could have been sent to an expert to submit a report to examine whether there was any manufacturing defect in the vehicle. The vehicle was not examined by any expert. In the absence of any expert report and the laboratory test, the State Commission erred in recording the finding that there was any defect in the vehicle. Onus was on the complainant to prove that there was any manufacturing defect in the vehicle which he failed to discharge. "

6. AS complainant had already sold the vehicle during pendency of complaint without permission from District Forum, he ceases to be a consumer under the Consumer Protection Act. In the present case, admittedly, vehicle was sold by complainant on 30.9.2008 to Amit Ahuja meaning thereby, this vehicle was sold during pendency of complaint before District Forum, as District Forum decided complaint on 15.5.2009. Complainant ought to have disclosed fact of sale of the vehicle to the District Forum or should have sold the vehicle after seeking permission from District Forum. Admittedly, complainant has sold the vehicle without seeking permission from District Forum. Not only this, as per impugned order of the State Commission, complainant disclosed before State Commission that during pendency of appeal vehicle has been sold to a third party which is also a wrong statement because vehicle had already been sold before decision of complaint by District Forum. Not only this, Respondent No.1/complainant filed counter affidavit on 9.9.2013 before this Commission and in paragraph 4 of the affidavit, he has stated as under: "4. xxxxx It is still further denied that the vehicle in question was sold by the Respondent No. 1 either clandestinely or discreetly or without the leave of the Hon "ble State Commission as alleged or at all ".xxxxx.

7. AS per statement in the counter affidavit, complainant sold the vehicle with leave of the State Commission which is apparently wrong statement.

Complainant has not placed on record any permission by State Commission for selling the vehicle and it could not have been, as vehicle had already been sold during pendency of complaint. Thus, it becomes clear that complainant has suppressed fact of selling vehicle to third party during pendency of complaint without permission from the District Forum and has given wrong statement before the State Commission as well as before this Commission and in such circumstances, complaint is liable to be dismissed, as complainant is not pursuing the complaint with clean hands. Learned Counsel for the petitioner has placed reliance on (2011) 7 SCC 69 - Amar Singh Vs. Union of India (UOI) and Ors. and paragraph 53 runs as under: "53. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with "unclear hands " and are not entitled to be heard on the merits of their case ".

8. HE has placed reliance on (2010) 2 SCC 114 - Dalip Singh Vs. State of Uttar Pradesh and Ors. and paragraphs 1, 2 & 6 run as under: "1. For many centuries, Indian society cherished two basic values of life i.e., "Satya (truth) and "Ahimsa (non-violence).Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre- independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post- independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. 2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to relief, interim or final. 6. In S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others JT 1993 (6) SC 331, the Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation. "

He has also placed reliance on (1994) 1 SCC 1 - S.P. Chengalvaraya Naidu (Dead) Vs. Jagannath (Dead) & Ors. and paragraph 5 runs as under: 5. xxxx One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

9. PERUSAL of aforesaid judgment clearly reveals that one who does not come to the Court with clean hands and withholds vital documents in order to get advantage on the other side, he would be guilty of playing fraud on the Court and has no right to approach the Court and he should be summarily thrown out at any stage of the litigation. As complainant has suppressed fact of sale of vehicle during pendency of complaint and has misled District forum, State Commission as well as this Commission regarding sale of vehicle, his complaint is liable to be dismissed on this count alone.

10. AS far as defect in the vehicle is concerned, learned District forum and State Commission have observed that there was inherent manufacturing defect in the engine of the vehicle and has placed reliance on Approved Valuer report dated 30.4.2008. Strictly speaking, this is not a report made by an expert, but this report has been given by Surveyor/Loss Assessor. In this report the surveyor has not mentioned that he has driven the vehicle and after driving he is giving report. He has given report only on the basis of inspection and on the basis of mere inspection, no manufacturing defect can be found in the engine of the vehicle. Vehicle is also not available before us for getting expert report regarding manufacturing defect in engine. On the contrary, delivery receipt given by the complainant to the purchaser Amit Ahuja reveals that purchaser checked the vehicle thoroughly and he was fully satisfied meaning thereby, engine was not having any inherent manufacturing defect, otherwise, he would not have purchased the vehicle for Rs.4,00,000/- which was purchased by complainant for Rs.5,41,855/-. In the light of above observations, we find that as complainant did not remain consumer after sale of vehicle and he has sold the vehicle without permission of the District Forum and has suppressed this fact and has not approached the courts with clean hands, complaint is liable to be dismissed and revision petition is to be allowed.

11. CONSEQUENTLY , revision petition filed by the petitioner is allowed and impugned order dated 2.3.2012 passed by learned State Commission in Appeal No. 917 of 2009 - Tata Motors Ltd. & Anr. Vs. Hazoor Maharaj Baba Des Raj & Anr. is set aside and complaint stands dismissed. There shall be no order as to costs.