
(1998) 03 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

TELEPHONE SERVICES SOCIETY

APPELLANT

Vs

MODI TELSTRA PVT. LTD.

RESPONDENT

Date of Decision : 10-03-1998

Acts Referred:

Citation : 1998 2 CPJ 455 : 1998 3 CPR 74

Hon'ble Judges : A.K.Bhattacharjee , Monoranjan Ghosh , S.Dutta J.

Final Decision : Complaint dismissed

Judgement

1. THIS is a complaint under Section 17 of the Consumer Protection Act, 1986 filed by the Telephone Services Society through its Secretary, Mr. T.S. Srinivasan to restrain the respondents from marketing and /or selling cellular telephones on the grounds that such telephones are health hazard to the public. It has also been alleged that the terms of sale of those telephones to the prospective users are of unconscionable nature and tantamount to unfair trade practice. The petitioner Association is a registered one having its Registered Office at 20, Netaji Subhas Road, Calcutta-1 and it is devoted to redress the grievances of its members, supporters, well- wishers and consumers in general. It has been alleged that the members of the Association had purchased mobile telephone network popularly known as cellular phone in West Bengal from the opposite parties.

2. THE petitioner has been given to understand that the opposite parties Companies have sold their cellular phones on condition that both the incoming calls and the outgoing calls will be charged from the subscribers which according to the petitioner is a conscionable bargain. THE petitioner has further stated that its members have received complaints that the use of cellular phones is a health hazard. In the G.S.M. system in which such phones are working the frequency range is about 800 to 900 MHZ and the use of such phones is injurious for heart and nerve patients. It has been alleged that such an opinion has been passed by the specialists and it has been published in the newspaper also. THE petitioner has further alleged that its members who purchased cellular phones are suffering

from heart problems and also different health hazard for which compensation should be payable by the opposite parties. Accordingly, this complaint has been filed for an order restraining the opposite parties from marketing and/or selling cellular phones before the public. A compensation of Rs. 10 lakhs has also been demanded from the opposite parties. The matter is contested by both the opposite parties 1 and 2. They raised a preliminary objection that the case is not maintainable. The point of maintainability was heard on the basis of detailed argument made by both the parties and it was held in favour of the petitioner by an order dated 2.1.1996. The matter was, therefore, heard on merits.

The Union of India through the Secretary Ministry of Communications was also made a party but it did not appear to contest the case.

3. THE point for determination is, if the petitioner is entitled to a restraining order and compensation as prayed for. Although the point of maintainability has already been decided by the Commission on a prima facie assessment of the allegations made by the parties it is necessary to examine the merits of the case on the basis of the detailed arguments as advanced by both the parties. THE first question raised is whether it is a complaint within the meaning of the Consumer Protection Act, 1986. On an examination of the petition of complainant it is found that the petitioner has based two grounds for filing this case. Firstly, the cellular phones if offer to sell to the public it will create a health hazard and secondly, conditions imposed by the Companies who are marketing the phones tantamount to unfair tradepractice. In other words the petitioner relies on Sub-clauses (i) & (v) of Clause (c) of Sub- section (1) of Section 2 of the Consumer Protection Act. Indeed the allegations may be covered, if at all, only by those sub-clauses. So far as the allegation of health hazard is concerned, the relevant Sub-clause (v) reads as follows : "(v) goods which may be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods".

It will be seen from the above sub-clause that the goods about which a complainant makes allegation are hazardous to life and safety when used and they are being offered for sale to the public in contravention of the provision of any law requiring the traders to display information in regard to the contents, manner and effect of such goods. In this case, the petitioner has not been able to cite any provision of any law requiring the opposite parties to display information as stated in the aforesaid Sub-clause (v). As a matter of fact, it requires an expert opinion on the basis of scientific test that the cellular phones are such a health hazard. Mere apprehension in this regard will not do. The opposite parties have produced the agreement between the Companies and the Central Government permitting the use of cellular phones by the public subject to certain conditions. It has not been proved by any cogent evidence that really the use of such phones affects heart or any other limbs of the body. Had it been so, Central Government would not have encouraged the trading of such phones.

Mere report in the newspapers does not prove the veracity of the allegation made by the petitioner. It should be noted that it is not enough to allege that some particular goods are hazardous to life and safety when used by the public, it will have to be shown simultaneously that the offer for sale to the public is in contravention of any provision of any law requiring the traders to give caution regarding the use of the goods. The Consumer Protection Act is a special social welfare statute and it can be availed of only under the circumstances mentioned in the Act. The Act provides an additional relief in a summary proceeding. So if any allegation is made that there will be health hazard inspite of the provisions of this Act the party is to approach a Civil Court for appropriate relief.

4. AS regards the allegation that the agreement for the use of the cellular telephones is actually an unfair trade practice, the contention of the opposite parties is that the phone is purchased by a customer with full knowledge of the tariffs and the onerous obligations imposed on them. Thus it is argued that if a particular customer is ready to pay the higher charges imposed by a seller for the use of a cellular telephone it does not lie on the part of a third party, far less by a voluntary organisation, to protest against the condition which has been mutually agreed to. An unfair trade practice has been defined in the Consumer Protection Act in Section 2(l)(r). The provisions mentioned in the said definition actually are not consistent with the allegations made here. Moreover, if a person dealing with the conditions of sale of certain goods does not protest against the condition of sale and voluntarily accepts it, it cannot be said that there is an unfair trade practice. For all the above reasons we do not see any merit in this petition of complaint and the same is accordingly dismissed. There will be no order for costs. Complaint dismissed.