

(1996) 10 NCDRC CK 0073

In the National Consumer Disputes Redressal Commission

VAID GOKLESH PATHAK

APPELLANT

Vs

MODI VANASPATI MANUFACTURING CO.

RESPONDENT

Date of Decision : 08-10-1996

Acts Referred:

Citation : 1997 2 CPJ 286

Hon'ble Judges : V.K.Mehrotra , Banarsi Das , Radha Rastogi J.

Final Decision : Complaint dismissed

Judgement

1. COMPLAINANT Sri Goklesh Pathak, a resident of Meerut Cantt, filed this complaint in the year 1991 impleading therein Managing Director of Modi Vanaspati Manufacturing Company and Chanchal Variety Store, Meerut as opposite parties. The case of the complainant is that he purchased three pouches of Ruchi Vanaspati Ghee manufactured by Modi Vanaspati Company, from the dealer Chanchal Variety Store allegedly weighing one kilogram each on 15 April, 1991 and paid a total sum of Rs. 103.50 as the price of Ghee at the rate of Rs. 34.50 per pouch. According to the complainant the dealer declined to give a receipt saying that no receipt was given by him. Subedar-Major Bhopal Singh, a resident of Meerut as also Sri Rakesh Sharma another resident of the same town were present at that time with the complainant in the shop. The complainant says that he had suspicion about the actual weight of the contents so that he weighed the three pouches and discovered that their weight was only 855, 885 and 900 grams, respectively as against the claim that each contained 1000 grams of Ghee.

2. THE complainant says that he met the dealer on 16 April, 1991 and complained about the deficient quantity of Ghee in the pouches. THE dealer expressed his "inability to do anything about it as he was selling the product in the pouches as were received by him and that if there was any grievance about the matter, a letter should be sent to the Manufacturing Company. THE complainant says that on 19 April, 1991 he personally made a complaint through a letter to the Manufacturing Company about the deficiency in weight in the

contents of the pouches. He sent another letter in May, 1991 but did not hear anything from the Company. Ultimately, he served a legal notice upon the Manufacturing Company and the dealer complaining about the unfair trade practice on their part and when he failed to get any response from them, the present complaint was filed. The complainant has filed his own affidavit in support of the case setup in the complaint. No affidavit of Subedar-Major Bhopal Singh or Sri Rakesh Sharma, who are said to be present at the time of purchase of the pouches from the dealer, have been filed.

In the written statement filed on behalf of the Modi Vanaspati Manufacturing Company various pleas relating to the maintainability of the complaint before the Redressal Agencies under the Consumer Protection Act, 1986 have been raised and on facts it has been denied that any pouch of "Ruchi Ghee" declared to contain 1000 grams of vegetable Ghee was deficient in weight. It has also been denied that any unfair trade practice had been committed by the complainant. The allegations made in the written statement have been supported by an affidavit of the Chief Executive Officer of the Modi Manufacturing Company. In the replication filed on affidavit, the complainant has reiterated the facts stated by him earlier. We may add that it was stated by the complainant on oath in the replication that the pouches purchased by him were still intact and lying with the complainant and could be produced for scrutiny before the Commission.

3. THE matter was heard in part by the Commission on 6 August, 1996 and the preliminary objection relating to the maintainability of the complaint was rejected. THE hearing was adjourned to enable the complainant to produce the pouches before the Commission in view of the statement made in paragraph 13 of the replication on affidavit. However, on the next date it was stated by Mr. Rajesh Chaddha, appearing for the complainant, that the pouches had deteriorated as nearly 5 years had elapsed since the filing of the complaint and were not available for production before the Commission. However, two affidavits sworn by Mr. Pavan Kumar Dheeman, Advocate and Mr. Suresh Chandra Kaushik, Accountant of Maya Credit and Finance Company, Meerut said to have been sworn on 16/17 March, 1992 were filed by the Counsel for the complainant in support of the case. Counter-affidavits to both these affidavits have been filed on behalf of the Manufacturing Company. A crucial question for determination in the case is whether the three pouches purchased by the complainant on 15 April, 1991 from Chanchal Variety Store, Meerut Cantt. contained 855, 885 and 900 grams of "Ruchi" Vegetable Ghee manufactured by Modi Vanaspati Manufacturing Company has against the declared 1000 grams each or not. On this crucial question the only evidence put forward on behalf of the complainant is in the form of his own affidavit, apart from the two affidavits of Sarvsri Pavan Kumar Dheeman and Suresh Chandra Kaushik. The assertion made in the affidavit of the complainant about the weight of the contents of the three pouches has been controverted by the Manufacturing Company in the affidavit of its Chief Executive Mr. Nand Kishore. The two persons, namely Subedar-Major Bhopal Singh and Sri Rakesh Sharma, who are said to have been present at the shop of the dealer on

15 April, 1991 when the pouches are said to have been purchased by the complainant, have not come forward to make any statement on oath in favour of this part of the complainant's case.

4. THE affidavits of Sarvsri Pavan Kumar Dheeman and Suresh Chandra Kaushik recite that on 30 April, 1991 two persons claiming to be representatives of the Manufacturing Company and of a dealer of the Manufacturing Company selling "Ruchi Vanaspati Ghee" acknowledge in their presence that the pouches of Ghee did not contain 1000 grams Ghee each and that temptation was offered to the complainant to withdraw the case on payment of substantial amount of money which was being carried by them in briefcases. THE identity of these persons, apart from saying that they were representatives of the dealer as well as of the Manufacturing Company has not been disclosed any further. THE assertions made in both these affidavits have been denied on behalf of the contesting opposite party by filing affidavits of the General Manager (Commercial) of Modi Vanaspati Manufacturing Company and of Motion Devi, proprietor of M/s. Daulat Ram and Company. In the absence of any definite identification of the persons who are said to have made an admission relating to the alleged unfair trade practice on the part of the Manufacturing Company, it is difficult to say that the admission was made on behalf of the contesting opposite party. Normally in a case where a consumer feels that an article purchased by him is deficient in weight insistence should be made for getting the pouches weighed and the weight found on weighment recorded in the receipt. If, as in the present case, the dealer refuses to do so, complaint should be made to Appropriate Authorities dealing with Weights and Measures and under the provisions of the Essential Commodities Act or other statutory provision which is applicable. Further, some contemporaneous evidence about the actual weight found on weighment should be secured by getting the article weighed and the evidence of the person making the weighment tendered before the Forum either in person or through an affidavit. Besides, the faulty pouches should be produced before the Redressal Forum at the earliest possible opportunity to give credence to the claim made in the complaint. On the facts of the present case and in the state of evidence available to us on the record of these proceedings it is difficult to enter a finding in favour of the complainant that the three pouches said to have been purchased by him on 15 April, 1991 contained Vanaspati Ghee which was deficient in weight in each of the pouches. In this situation we are constrained to dismiss the petition but we leave the parties to bear their own costs in it.

5. LET copies of this order be made available to the learned Counsel for the parties within three weeks. Complaint dismissed.