

TODAY MERCHANDISE PVT LTD & ANOTHER

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v.

ANIL KUMAR LUTHRA

(Civil Appeal No. 80 of 2020)

JANUARY 08, 2020

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**[DR. DHANANJAYA Y CHANDRACHUD  
AND HRISHIKESH ROY, JJ.]**

*Consumer Protection – Respondent purchased three vouchers each of Rs.5998/-, and in total paid Rs.17,994/-, of the holiday scheme vouchers advertised by the appellant – Appellant addressed e-mail dated 18.09.2012 to the respondent specifically advertizing to the referral scheme and informing that by making referrals of his ‘friends and associates’, the respondent could avail the gifts which were on offer – Respondent claimed that he was entitled to three free gifts, viz., (i) a laptop; (ii) a mobile phone; and (iii) a 42" LED television – Allowed by the District Consumer Redressal Forum, Sikar – Confirmed by the State Consumer Disputes Redressal Forum (SCDRC) and the National Consumer Disputes Redressal Commission (NCDRC) – On appeal, held: Under the scheme propagated by the appellant, the “free gifts” were contingent on the subscriber making referrals – Significantly, the e-mail is of 18.09.2012, a day after the respondent is alleged to have received communication from the representative of the appellant – Both from the scheme as well as from the e-mail dtd. 18.09.2012, it is evident that subscriber was not entitled, as a matter of right, to the “free gifts” merely on purchasing the holiday vouchers – Free gifts were contingent upon number of referrals made by the subscriber which, admittedly, were not made by the respondent – Order of the District Forum was manifestly contrary to the terms of the agreement between the parties – SCDRC and NCDRC erred in confirming the same – Impugned judgment of the NCDRC set aside – Complaint filed by the respondent stands dismissed.*

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**Allowing the appeal, the Court**

**HELD: 1. Under the scheme which was propagated by the appellant, the “free gifts” were contingent on the subscriber**

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- A making referrals. Though the counsel appearing on behalf of the respondent submitted that the e-mail dated 18 September 2012 was not part of the record of the District Forum, the counsel appearing on behalf of the appellant controverted this by adverting to the reply filed on behalf of the appellant before the District Forum in which there is a clear reference to the e-mail.
- B Significantly, the e-mail is of 18 September 2012, a day after the respondent is alleged to have received a communication from the representative of the appellant. Both from the scheme as well as from the e-mail dated 18 September 2012, it is evident that a subscriber was not entitled, as a matter of right, to the
- C “free gifts” merely on purchasing the holiday vouchers. The free gifts were contingent upon making referrals which, admittedly, were not made by the respondent. The directions of the District Forum, which were affirmed by the SCDRC and NCDRC will result in a manifestly absurd outcome. The order of the District
- D Forum was manifestly contrary to the terms of the agreement between the parties. Both the SCDRC and the NCDRC have erred in confirming the order of the District Forum. The impugned judgment and order of the NCDRC dated 28 November 2018 is set aside. The complaint filed by the respondent shall accordingly stand dismissed. [Paras 7, 8][474-F-H; 475-A-B]

- E CIVIL APPELLATE JURISDICTION: Civil Appeal No. 80 of 2020.

From the Judgment and Order dated 28.11.2018 of the National Consumer Dispute Redressal Commission, New Delhi in Revision Petition No. 2118 of 2018.

- F Manish Goswami, Rameshwar Prasad Goyal, Advs. for the Appellants.

Shivam Sharma, Rishi Kapoor, Ankur Gogia, Ms. Manju Jetley, Advs. for the Respondent.

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The Judgment of the Court was delivered by A

**DR. DHANANJAYA Y CHANDRACHUD, J.**

1. Leave granted.

2. This appeal arises from a judgment of the National Consumer Disputes Redressal Commission<sup>1</sup> dated 28 November 2018 in the course of its revisional jurisdiction. The appellant advertised a holiday voucher scheme through its website. In September 2012, an employee of the appellant communicated the scheme to the respondent who expressed his willingness to purchase holiday scheme vouchers. The terms on which the vouchers were available were indicated on the website of the appellant. The scheme envisaged that “free gifts” would be made available to the purchaser against further referrals. The gifts were contingent on the number of referrals made by the subscriber. The relevant part of the scheme is reproduced below: B C

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No of Referral	Gift
2	UCB Wrist Watch
3	UCB Sunglasses
6	I Ball Mobile
8	Kodak Digital Camera
10	Kodak Digital Camera + I-Pod
15	Blackberry Curve 8520
20	HCL/Dell Mini Laptop

”

3. The respondent purchased three vouchers each of Rs. 5998 and thus paid a total sum of Rs. 17,994. On 18 September 2012, the appellant addressed an e-mail to the respondent specifically adverting to the referral scheme. The respondent was informed that, by making referrals of his ‘friends and associates’, he could avail of the gifts which were on offer, in the terms noted above. D E F

4. The respondent moved the District Consumer Redressal Forum<sup>2</sup>, Sikar claiming that he was entitled to three free gifts, namely, (i) a laptop; (ii) a mobile phone; and (iii) a 42” LED television. The District Forum allowed the claim. The order of the District Forum was confirmed by the State Consumer Disputes Redressal Forum<sup>3</sup> and in G

<sup>1</sup> NCDRC

<sup>2</sup> District Forum

<sup>3</sup> SCDRC

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A revision by the NCDRC. Monetary compensation has also been awarded in the amount of Rs 5,000 for mental torture, together with costs of Rs. 2000.

5. Mr Manish Goswami, learned counsel appearing on behalf of the appellant submitted that the offer which was made by the appellant for free gifts to a subscriber was conditional on referrals. The respondent did not make any referrals. Moreover, it was urged that the order of the District Forum would result in a manifest absurdity since in terms of its direction, a subscriber who had paid an amount of Rs. 17,994, would be entitled to a cell phone, a laptop and a television set of a value far in excess of the amount which has been contributed. Learned counsel also urged that the appellant had a serious objection to the jurisdiction of the District Forum.

6. On the other hand, it was urged by Mr. Shivam Sharma, learned counsel on behalf of the respondent that the e-mail dated 18 September 2012 which has been produced in the counter affidavit was not a part of the record of the District Forum. It was urged that an employee of the appellant had, in fact, made a representation to the respondent assuring that free gifts would be handed over. Learned counsel urged that as a consequence of the dispute, the services of the employee were terminated which goes to establish the case of the respondent that such a representation was indeed made.

7. Under the scheme which was propagated by the appellant, the “free gifts” were contingent on the subscriber making referrals. Though the learned counsel appearing on behalf of the respondent submitted that the e-mail dated 18 September 2012 was not a part of the record of the District Forum, learned counsel appearing on behalf of the appellant has controverted this by adverting to the reply filed on behalf of the appellant before the District Forum in which there is a clear reference to the e-mail. Significantly, the e-mail is of 18 September 2012, a day after the respondent is alleged to have received a communication from the representative of the appellant. Both from the scheme as well as from the e-mail dated 18 September 2012, it is evident that a subscriber was not entitled, as a matter of right, to the “free gifts” merely on purchasing the holiday vouchers. The free gifts were contingent upon making referrals which, admittedly, were not made by the respondent. The directions of the District Forum, which were affirmed by the SCDRC and NCDRC will result in a manifestly absurd outcome. The order of

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the District Forum was manifestly contrary to the terms of the agreement A  
between the parties. Both the SCDRC and the NCDRC have erred in  
confirming the order of the District Forum.

8. We accordingly allow the appeal and set aside the impugned  
judgment and order of the NCDRC dated 28 November 2018. The  
complaint filed by the respondent shall accordingly stand dismissed. B  
There shall be no order as to costs.

Divya Pandey

Appeal allowed.