

Om Prakash vs Assistant Engineer, Haryana Agro ... on 12 April, 1994

Equivalent citations: [1994]81COMPCAS371(SC), (1994)2COMPLJ43(SC), JT1994(3)SC623, 1994(2)SCALE530, (1994)3SCC504, [1994]3SCR463, 1994(2)UJ176(SC), AIRONLINE 1994 SC 327, AIRONLINE 1994 SC 173, (1994) 2 SCJ 367, (1994) 2 CPR 9, 1994 (3) SCC 504, (1994) 2 CIV LJ 504, (1995) 1 MAD LJ 12, (1994) 14 COR LA 145, (1994) 81 COM CAS 371, (1994) 3 SCR 463, (1994) 2 ANDH WR 20, (1994) 3 JT 623, (1994) 3 COM LJ 6, (1994) 2 CUR LJ (CIV&CRI) 16, (1994) SC CR R 419, 1994 UJ(SC) 176

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Bench: Kuldip Singh, N.P. Singh, B.L. Hansaria

JUDGMENT

N.P. Singh, J.

1. This appeal has been filed, against an order passed by the 'National Commission', established under the Consumer Protection Act, 1986, setting aside the orders passed by the State Commission and the District Forum, and dismissing the petition of complaint filed on behalf of the appellant against the respondent No. 1 (hereinafter referred to as 'the respondent').

2. The appellant booked a tractor with the respondent and deposited an amount of Rs. 2,500/- as an advance on 12.12.1990. The price of the tractor was quoted at Rs. 1,86,975/-. The appellant was first to receive the tractor from the said respondent according to the list of booking. On an application made on behalf of the appellant, Allahabad Bank, Shahpur, sanctioned loan to the appellant, which decision was communicated by a letter dated 5.2.1991.

3. Although in the list of the persons to whom the tractors were to be supplied, the position of the appellant was against Serial No. 1, the said respondent, according to the appellant, went on supplying tractors to others, who were below the appellant in the said list. In the meantime, there was a rise in the price of the tractor and ultimately when the tractor was supplied to the appellant on 21.9.1991, the appellant had to pay Rs. 2,27,664/-. In this process, the appellant suffered a loss of Rs. 40,690/- for no fault of his and due to the conduct and practice adopted by the respondent.

4. A complaint under the Consumer Protection Act was filed on behalf of the appellant, before the District Forum. The District Forum, on consideration of the materials produced on behalf of the parties, came to the conclusion that the respondent intentionally did not deliver the tractor to the appellant, although the appellant was prepared to purchase the same. It was also held that the respondent supplied the tractors to others who were below the appellant in the list of booking and because of the delay, the appellant had to pay an extra amount of Rs. 40,690/-. A direction was given to the respondent to refund Rs. 40,690/- along with the interest at the rate of 18% per annum with effect from 21.9.1991. A compensation of Rs. 2,000/- was also directed to be paid to the appellant for the harassment and mental agony caused to him due to the unfair trade practice indulged by the respondent. The appeal filed on behalf of the respondent before the State Commission was dismissed, affirming the finding that because of the unfair trade practice adopted by the respondent, by delaying the delivery of the tractor to the appellant, the appellant had to pay an extra amount of Rs. 40,690/-.

5. The National Commission, however, held that the mere fact "that there has been delay in the delivery of the tractor, will not constitute 'unfair trade practice' under the definition of the said expression contained in the Consumer Protection Act." The petition of complaint filed on behalf of the appellant was dismissed. The National Commission did not point out in its order, as to why in the facts and circumstances of the case it shall not constitute 'unfair trade practice'.

6. The laws intended to protect consumers, as opposed to traders, are comparatively of recent developments. Because of general lack of information on the part of consumers, many trade practices may result in causing loss or damage to the consumers. It is well-known that many of the traders having advance information, or on speculation regarding the rise in the price of different articles, in order to avail the increase in the price, withhold the supply of different goods or articles to the consumers. In this process they cause loss or damage to consumers by making them to pay the excess price which they would not have been compelled to pay, if the goods or articles had been supplied in time. The object and purpose of the Consumer Protection Act is to save the consumer from such unfair conduct and practice of the traders also. On the materials produced, the District Forum, the State Commission and the National Commission have to examine the grievance of a consumer that by adopting an unfair conduct or practice, a trader has wronged him and has compelled him to pay an excess amount. But, at the same time, it need not be impressed that any intervention, by such Consumer Forums, should be only when they are satisfied that the loss or damage has been caused to the consumer by the unfair conduct or practice, adopted by the trader.

7. From the Statement of Objects and Reasons of the Act, it appears that the purpose of the Act is to protect the interest of the consumer and to provide 'the right, to seek redressal against unfair trade practices or unscrupulous exploitation of consumers'. Section 2(1)(c)(i) defines the 'complaint' to mean any allegation in writing made by a complainant that "as a result of any unfair trade practice adopted by any trader, the complainant has suffered loss or damage". Section 2(r) says -the expression 'unfair trade practice' shall have the same meaning as "in Sec. 36-A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969)....

8. In the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as 'the Monopolies & Restrictive Trade Practices Act'), several amendments have been introduced in Chapter-V of the said Act, including Part-B which contains Section 36-A. by Act No. 30 of 1984 with effect from 1.8.1984. Section 36-A purported to define 'unfair trade practice' and in different sub-clauses of the said Section, many 'unfair trade practices' have been specified. However, by Act No. 58 of 1991, amendment was introduced in Section 36-A, to make it more comprehensive, so as to cover within the definition of 'unfair trade practice' even unfair method or unfair or deceptive practice adopted while promoting sales and supplying goods. The relevant part of Section 36-A is as follows:-

36-A. Definition of unfair trade practice.- In this Part, unless the context otherwise requires, 'unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provisions of any services, [adopts any unfair method or unfair or deceptive practice including any of the following practices], namely:-

... ..

(5) Permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale, or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

[Emphasis supplied]

9. The words "adopts any unfair method or unfair or deceptive practice including any of the following practices" were introduced in Section 36-A by aforesaid Act No. 58 of 1991 with effect from 27.9.1991. It appears that before the words "adopts any unfair method or unfair or deceptive practice" were, introduced in Section 36-A prima facie none of the practices specified in Sub-section (1) to subsection (5) of Section 36-A, would have covered a case with which we are concerned i.e. intentionally delaying the supply of articles or goods booked by the consumer, according to the turn fixed, because of which the consumer suffers loss or damage. Sub-section (5) was there, but it shall not apply to a case where the trader delays the supply of the goods or the articles to a consumer, because of which the consumer suffers an injury by rise of the price in the meantime. Sub-section (5) of Section 36-A, will be attracted, where the trader permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale, and because of such hoarding or destruction or refusal to sell, raises or tends to raise the cost of those goods. Here it is not the case of the appellant that the respondent was hoarding the tractors or was refusing to sell them to anyone, and by this process was tending to raise the price of the said tractor. The case of the appellant is that the respondent was making delivery of the tractors on pick and choose basis, ignoring the appellant whose turn was first on the list of persons, who had booked the tractors with the respondent. The rise in the price of the tractor is not connected with any hoarding or refusal to sell the tractors on the part of the respondent. As such the conduct and the practice adopted by the respondent in respect of the sale of the tractor to the appellant, shall not fall under Sub-section (5) of Section 36-A of the

Monopolies & Restrictive Trade Practices Act.

10. But after the introduction of the aforesaid amendment, which provides that the 'unfair trade practice', shall cover any unfair method or unfair or deceptive practice adopted by a trader vis-a-vis the consumer, the conduct and practice intentionally adopted by the respondent, in not making delivery of the tractor to the appellant, shall certainly be deemed to be an 'unfair trade practice' within the meaning of Section 36-A. It cannot be disputed that if a trader intentionally delays the delivery of any goods to the consumer, because of which the consumer suffers, it shall amount to an unfair method or unfair practice adopted by the trader. As such after the introduction of the amendment by the Act No. 58 of 1991 in Section 36-A, there should not be any difficulty in holding, that because of the unfair trade practice adopted by the respondent, the appellant has suffered a loss and damage, within the meaning of Section 2(1)(c)(i) of the Consumer Protection Act, in respect of which he can file a complaint. The National Commission has pointed out that in the agreement, it had been stipulated that appellant shall pay the price prevailing at the time of the delivery. According to us, it is not of much consequence, once it is established that respondent intentionally postponed the delivery of the tractor to the appellant, although he was not only entitled to the delivery much earlier but, according to the findings of the District Forum and the State Commission, he was through out willing to take delivery of the tractor according to the list of booking.

11. But there is another aspect of the dispute. The appellant booked with the respondent for the supply of the tractor on 12.12.1990 and deposited an advance of Rs. 2,500. The respondent supplied the said tractor on 21.9.1991. But till 21.9.1991 i.e. the date of the supply of the tractor by the respondent, the expression "adopts any unfair method or unfair or deceptive practice" had not been introduced in Section 36-A. The Amending Act 58 of 1991 introducing 'unfair method or unfair or deceptive practice' in the definition of 'unfair trade practice', came into force with effect from 27.9.1991 i.e. after the tractor had been supplied by the respondent. As Section 2(r) of the Consumer Protection Act defines 'unfair trade practice' to mean the definition given in Section 36-A of the Monopolies & Restrictive Trade Practices Act, it is not open to this Court to interpret the said expression without reference to Section 36-A of the Monopolies & Restrictive Trade Practices Act. As such it has to be held that the unfair method or unfair practice adopted by the respondent between 12.12.1990 and 21.9.1991, shall not be deemed to be 'unfair trade practice' within the meaning of Section 36-A of the Monopolies & Restrictive Trade Practices Act read with Section 2(r) of the Consumer Protection Act. If the amendment introduced by Act No. 58 of 1991 in Section 36-A of the Monopolies & Restrictive Trade Practices Act had come into force on any date prior to the date of the delivery of the tractor, then there would have been no difficulty in holding that by intentionally delaying the delivery of the tractor to the appellant, the respondent had adopted an 'unfair trade practice'.

12. However, in view of Section 2(1)(c)(iii), 'complaint' will include any allegation in writing made by a complainant that "the services mentioned in the complaint suffer from deficiency in any respect." As such, even if the complaint regarding the delayed supply of tractor, in the facts and circumstances of the present case, may not be covered by Section 2(1)(c)(i) aforesaid, it shall amount to deficiency in service by the respondent. The definitions of 'deficiency' and 'service' given under Section 2(1)(g) and (o), will cover the action of the respondent, in intentionally delaying the

supply of the tractor. In the facts and circumstances of the case, there should not be any difficulty in holding that the service which was made available to the appellant by the respondent, suffered from deficiency.

13. Accordingly, the appeal is allowed. The order of the National Commission is set aside and that of State Commission is restored. However, in the facts and circumstances of the case, there shall be no order as to costs.