

OM PRAKASH

A

v.

ASSISTANT ENGINEER, HARYANA AGRO INDUSTRIES
CORPORATION AND ORS.

APRIL 12, 1994

B

[KULDIP SINGH, N.P. SINGH AND B.L. HANSARIA, JJ.]

Consumer Protection Act, 1986 and MRTP Act, 1969—Complaint as regards "unfair trade practice" resulting in loss and damages—Whether intentionally delayed delivery of tractor by the respondent to the appellant constitutes "unfair trade practice" under Section 36-A (amended by Act 58 of 1991 w.e.f. 27.9.1991) of MRTP Act, 1969, read with section 2(r) of the Consumer Protection Act 1986—Whether stipulation in the agreement that consumer shall pay to the respondent the price prevailing at the time of delivery is material.

C

D

Consumer Protection Act, 1986 : Section 2(i)(c)(iii), 2(i)(g) and 2(1)(o)—Complaint in regard to delivery of tractor intentionally delayed by the respondent—Whether constitutes "deficiency in service".

The appellant booked a tractor with the respondent on 12.12.90. The price of the tractor was quoted at Rs. 1,86,975. Although the appellant was placed first in the list of persons who had booked tractors, the respondent postponed the delivery to the appellant while went on supplying to others, who were below the appellant in the said list. In the meanwhile, there was a rise in the price of tractor and ultimately when the tractor was supplied to the appellant on 21.9.91 the appellant had to pay a higher price, that is, Rs.2,27,664. In this process, the appellant had suffered a loss of Rs.40,690.

E

F

On a complaint filed by the appellant under the Consumer Protection Act, 1986, the District Forum held that the respondent intentionally did not deliver the tractor to the appellant which amounts to "unfair trade practice". Hence a direction was given to the respondent to refund Rs. 40,690 along with interest thereon at the rate of 18% per annum with effect from 21.9.91. Compensation of Rs. 2,000 was also directed to be paid to the appellant by the respondent. An appeal by the respondent was dismissed by the State Commission but a second appeal by the respondent before the National Commission was allowed on the ground that the mere

G

H

A fact that there has been delay in the delivery of tractor will not constitute "unfair trade practice" under the definition of the said expression contained in the Consumer Protection Act. The statutory appeal has been preferred by the consumer.

B Allowing the appeal, this Court

C HELD : 1.1. Amended Section 36-A of the MRTP Act 1969, which included within the definition of "unfair trade practice" even unfair method or unfair or deceptive practice adopted while promoting sales and supplying goods, came into force with effect from 27.7.91. Before the said amendment in Section 36-A, *prima facie* none of the practices specified in sub-section (1) to sub-section (5) of Section 36-A, would have covered a case like the present one, that is, intentionally delaying the supply of goods or articles booked by the consumer, according to the turn fixed, because of which the consumer suffered loss or damage by a rise of the price in the mean time. The conduct and the practice adopted by the respondent, D that is, making delivery of tractors on pick and choose basis ignoring the appellant though he was at the top in the list of persons who had booked tractors with the respondent, shall not fall under sub-section (5) of Section 36-A of the MRTP Act. [468-D-E, 469-A]

E 1.2. 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 because of which he had suffered loss, shall certainly deem to be an "unfair trade practice" F within the meaning of Section 36-A of the MRTP Act. [p.469-B]

G 1.3. The appellant booked with the respondent for the supply of tractor on 12.12.90. The respondent supplied the said tractor 21.9.91, that is, prior to the introduction of the amendment in Section 36-A, whereby the expression "adopts any unfair methods or unfair or deceptive practice" were introduced which came into force with effect from 27.9.91. Therefore, the unfair method or unfair practice adopted by the respondent between 12.12.90 and 21.9.91 shall not be deemed to be "unfair trade practice" within the meaning of Section 36-A of the MRTP Act 1969 read with Section 2(r) of the CP Act, 1986. [469-F-H, 470-A]

H 2. Once it is established that the respondent intentionally postponed

the delivery of the tractor to the appellant, the stipulation in the agreement that the appellant shall pay the price prevailing at the time of delivery, is inconsequential. [469-D-E]

3. However, in view of Section 2(1)(c)(iii) of the Consumer Protection Act, 1986 "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), it shall amount to deficiency in services by the respondent. The definitions of "deficiency" and "service" under Section 2(i)(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, the service which was made available to the appellant by the respondent, suffered from deficiency. [470-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 373 of 1994.

From the Judgment and Order dated 3.8.93 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 42 of 1993.

Anil Mittar and Manoj Swarup for the Appellant.

Bhal Singh Malik, Vishal Malik and P.S. Chauhan for the Respondents.

The Judgment of the Court was delivered by

N.P. SINGH, J. 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').

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

- A 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.

- B Although in the list of the persons of 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.

- D 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.

- G 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'.

- H 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.

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 complaint 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)....."

In the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as 'the MRTP 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-clause 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

A relevant part of Section 36-A is as follows :

B "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 :

C (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."

D (Emphasis supplied)

E 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, *prime facie* none of the practices specified in sub-section (1) to sub-section (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 F (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 G (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 H 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 MRTP Act.

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.

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'

- A to mean the definition given in Section 36-A of the MRTP Act, it is not open to this Court to interpret the said expression without reference to Section 36-A of the MRTP 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 MRTP 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 MRTP 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'.

- 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.

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.

S.S.H.R.

Appeal allowed.