

2022 LiveLaw (SC) 750

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

M.R. SHAH; J., KRISHNA MURARI; J.

CIVIL APPEAL NO. 5928 of 2022; September 8, 2022

Rajiv Shukla versus Gold Rush Sales and Services Ltd. & Anr.

Consumer Protection Act, 1986 - Delivering a defective and old model car against a booking for a new car made by a customer who has paid full sale consideration is an "unfair trade practice" - Non delivery of a new car can be said to be an unfair trade practice and even it can be said to be dishonesty on the part of the dealer and against the morality and ethics - Once the new car was booked and the full sale consideration was paid, a duty was cast upon the dealer to deliver a new car which is not defective. (Para 7.2)

Consumer Protection Act 1986 - In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record (Para 7.1)

For Appellant(s) Mr. Praveen Agrawal, AOR

For Respondent(s) Mr. Abhinav Ramkrishna, AOR M/s. Karanjawala & Co., AOR

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 04.01.2016 passed by the National Disputes Redressal Commission, New Delhi (hereinafter referred to as the 'National Commission') in Revision Petition No.2082 of 2015 by which the National Commission in exercise of revisional jurisdiction has set aside the concurrent findings recorded by the District Forum as well as the State Commission, the original complainant has preferred the present appeal.

2. That the appellant herein – original complainant purchased a Tata Victa GX TC Car. He deposited the booking amount with the dealer – M/s. Gold Rush Sales and Services Ltd. – respondent no.1 herein against which a receipt was issued. That thereafter the complainant deposited a further sum of Rs.5,30,000/- towards purchase amount of the said vehicle. That the booked car was not delivered to the complainant till 26.05.2006. However, the delivery of the car was given to the complainant after a period of one year of deposit of the total amount, which as such was an old one and was of 2005 model and in fact was a used car. It was also having various other defects. That according to the original complainant the car was old and it had already run upto 10,000 kms. The car which was delivered was used by the dealer as "Demo-Test Drive Vehicle". The original complainant lodged the FIR with the police. However, the matter could not be settled and therefore, the complainant filed a complaint before the District Forum with the following prayers:

- "i) pass the order to opposite party to replace aforesaid delivered used car Tata Victa GX TC Model no. 2005, Chasis No. 446370702-938757, Registration No. U.P. BS8084 and delivered new car/vehicle to the applicant/ consumer.
- ii) pass an order for refund all such amounts with interest to which the opposite parties has taken to the applicant/consumer.
- iii) pass an order against the opposite parties to pay five, compensation, damages, expenditure, claims and all such amounts with due interest to the applicant/ consumer accordingly as calculated and claimed in the paras 24 of the application.
- iv) to pass such order appropriate or direction which the Hon'ble Court may deem just in the interest of justice and as well as according to the circumstances of the case".

2.1 The District Forum allowed the complaint and directed the respondent no.1 – dealer to take back the delivered vehicle and in lieu thereof to deliver a new car to the complainant against the previously deposited amount. The District Forum also awarded a sum of Rs.5,000/- towards the mental agony besides a sum of Rs.2500/- towards litigation costs. The District Forum specifically gave a finding that the delivered car was used car and was being used as “Demo-Test Drive Vehicle”.

2.2 The order passed by the District Forum came to be confirmed by the State Commission. However, by the impugned judgment and order and while exercising the revisional jurisdiction, the National Commission has set aside the findings of facts recorded by the District Forum as well as the State Commission that the car delivered was used car. However, having given the findings that the complainant got a defective car, the National Commission modified the orders passed by the District Forum confirmed by the State Commission and directed to pay compensation in the sum of Rs.1 lakh to be paid to the complainant.

2.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the NCDRC - National Commission, the complainant has preferred the present appeal.

3. Shri Praveen Agrawal, learned counsel appearing on behalf of the appellant – original complainant has vehemently submitted that the National Commission has materially erred in upsetting the findings of facts recorded by the District Forum and the State Commission that the car delivered was a used car. It is submitted that on appreciation of evidence on record, both, the District Forum as well as the State Commission gave specific findings that the car delivered was used car. It is submitted that therefore the findings of facts recorded by the District Forum and the State Commission which were on appreciation of entire evidence could not have been set aside and/or interfered with by the National Commission in exercise of the revisional jurisdiction. It is submitted that therefore the National Commission while interfering with the findings of facts recorded by the District Forum and the State Commission has exercised the powers beyond the scope and ambit of revisional jurisdiction under Section 21 of the Consumer Protection Act, 1986.

3.1 It is further submitted by learned counsel for the appellant that even otherwise the findings recorded by the National Commission on the delivered car is contrary to the findings on record. It is submitted that considering the test drive/demo slip of the delivered

car having Chassis No. 939353, it was established and proved that the delivered car was used as demo/test drive car.

3.2 It is submitted that when the complainant paid the full sale consideration for a new car, the duty was cast upon the dealer to supply the new car which was booked. It is submitted that non-supply of the new car which was booked even on payment of the sale consideration would tantamount to dishonesty and unfair trade practice. It is submitted that therefore the District Forum and the State Commission were justified in directing the respondent no.1 – dealer to deliver a new car against the previously deposited amount.

3.3 Making the above submissions, it is prayed to allow the present appeal and restore the judgment and order passed by the District Forum and confirmed by the State Commission.

4. Mr. Abhinav Ramkrishna, learned counsel appearing on behalf of respondent no.1 has supported the impugned judgment and order passed by the National Commission.

4.1 It is submitted that the cogent reasons have been given by the National Commission interfering with the findings recorded by the District Forum and the State Commission that the car delivered was a used car.

4.2 It is submitted that on reappraisal of the entire evidence on record, the National Commission has rightly observed that no evidence has been led to show that the car delivered was an old car. It is submitted that therefore no case is made out to interfere with the impugned judgment and order passed by the National Commission.

5. Shri Sidharth Bhatnagar, learned Senior Advocate appearing on behalf of the Tata Motors Limited has submitted that as such Respondent no.2 – Tata Motors Limited is a proforma respondent as no order has been passed against the respondent no.2 – Tata Motors Limited.

6. We have heard learned counsel for the respective parties at length.

7. At the outset, it is required to be noted that the appellant herein - original complainant booked a new car and as such paid the entire sale consideration. Therefore, when the complainant – customer booked a new car and paid the sale consideration of a new car, the dealer was supposed to and/or bound to deliver the new car. Instead, the respondent no.1 – dealer delivered the used car which was used as “Demo-Test Drive Vehicle”. Even as per the findings recorded by the National Commission the car which was delivered was a defective car. Even to deliver the defective car against the new car was also not permissible. Not to deliver the new car despite the full sale consideration paid and/or to deliver the defective car can be said to be unfair trade practice. Therefore, as such the District Forum and the State Commission were absolutely justified in directing the respondent no.1 – dealer to replace the delivered car and to deliver a new car.

7.1 At this stage, it is required to be noted that on appreciation of evidence on record the District Forum as well as the State Commission concurrently found that the car delivered was used car. Such findings of facts recorded by the District Forum and the State Commission were not required to be interfered by the National Commission in exercise of the revisional jurisdiction. It is required to be noted that while passing the

impugned judgment and order the National Commission was exercising the revisional jurisdiction vested under Section 21 of the Consumer Protection Act, 1986. As per Section 21(b) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record. Therefore, while passing the impugned judgment and order the National Commission has acted beyond the scope and ambit of the revisional jurisdiction conferred under Section 21(b) of the Consumer Protection Act.

7.2 As observed hereinabove, both, the District Forum as well as the State Commission specifically gave the findings that the vehicle delivered was used car which was used as “Demo-Test Drive Vehicle”. As observed hereinabove even the National Commission has also observed and held that the vehicle delivered was defective and therefore even the National Commission has directed that the compensation in the sum of Rs.1 lakh be paid to the complainant for the delivery of the defective car. Non delivery of a new car can be said to be an unfair trade practice and even it can be said to be dishonesty on the part of the dealer and against the morality and ethics. As observed hereinabove, once the new car was booked and the full sale consideration was paid, a duty was cast upon the dealer to deliver a new car which is not defective therefore the District Forum as well as the State Commission were justified in directing the dealer to give delivery of a new car.

8. In view of the above and for the reason stated above, the impugned judgment and order dated 04.01.2016 passed by the National Commission in Revision Petition No.2082 of 2015 is hereby quashed and set aside. The judgment and order passed by the District Forum dated 29.04.2011 passed in Consumer Case No.397 of 2007 confirmed by the State Commission vide judgment and order dated 19.09.2014 in Appeal No.910 of 2011 are hereby restored. The Respondent no.1 is hereby directed to comply with the judgment and order passed by the District Forum. The present appeal is accordingly allowed to the aforesaid extent with costs which is quantified at Rs.1 lakh to be deposited by Respondent No.1 within a period of six weeks from today with the Registry of this Court. On such deposit Rs.50,000/- be paid to the appellant herein towards the costs/litigation cost etc. and Rs.50,000/- be transferred to the Mediation and Conciliation Project Committee (MCPC), Supreme Court of India, New Delhi.