(2024) 11 NCDRC CK 0067

National Consumer Disputes Redressal Commission

Case No: Revision Petition No.1596 Of 2019

Tapas Kanti Sengupta	APPELLANT
Vs	
Tata Motors Ltd. & 2 Ors	RESPONDENT

Date of Decision: Nov. 25, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 13(1)(c), 21(b)
- Consumer Protection Act, 2019 - Section 58(1)(b)

Hon'ble Judges: Avm J. Rajendra, Avsm Vsm (Retd.),Presiding Member

Bench: Single Bench

Advocate: Souvik Chatterjee, Arpan Shukla

Final Decision: Dismissed

Judgement

Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

1. This Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 (the “Act”) against the learned State Consumer Disputes Redressal Commission, West Bengal (‘State Commission’) order dated 08.05.2019 in FA No.1025/ 2017. In this the Appeal by the Petitioner/Complainant was dismissed, affirming the District Consumer Disputes Redressal Forum, Kolkata-I (“District Forum”) Order dated 22.08.2017 in CC No. 488 of 2012.

2. For the convenience, the parties are referred to as placed in the original Complaint filed before the District Forum.

3. Brief facts of the case, as per the Complainant, are that he purchased a car Registration No.WB-26-R8745 Tata Nano for ■2,29,442 from Opposite Party (O.P.) No. 3, and it was delivered on 06.04.2012. However, after running about 800 KM he observed the vehicle's

mileage was unsatisfactory (10.33 km/l). He reported the issue vide email to OP- 1 & 2, who suggested the problem would resolve after the first servicing. However, no improvement occurred after servicing. Despite several attempts by him to resolve the issue with the OPs, the problem persisted. The mileage performance was contrary to the claims in the vehicle's advertisement. Being aggrieved, the complainant filed a consumer complaint before the District Forum seeking Refund of ■2,29,442 (vehicle cost), Compensation of ■5 lakhs and Litigation costs of ■20,000.

4. In the written version filed before the District Forum, OP-1 & 2 denied the claims and stated that their vehicles undergo rigorous quality checks and road trials before commercial production. Products are independently tested and certified by the Automotive Research Association of India (ARAI). Vehicles are inspected for quality and control before dispatch to authorized dealers. The complainant failed to adhere to the vehicle's scheduled maintenance as outlined in the service manual. When the vehicle was brought in, necessary steps were taken during service. It had a warranty valid for four years or 60,000 km (whichever occurred earlier). The car had met with an accident and was brought to their workshop for repairs, a fact allegedly suppressed by the complainant. He failed to provide any expert report or documentary evidence substantiating claims of a manufacturing defect or unsatisfactory mileage. Based on these, the OPs sought the case be dismissed. OP-3 did not contest the case, and proceedings were held ex parte against them.

5. The learned District Forum vide order dated 22.08.2017, dismissed the complaint with the following observations:

"On the basis of the pleadings of parties the following points are to be decided:

1. Whether the complainant purchased the Nano car from o.p. no.3?

2. Whether the complainant was misled by o.p. nos. 1 and 2 regarding the fuel consumption of the car?

3. Whether there was any deficiency in service on the part of o.ps.?

4. Whether the complainant will be entitled to get the relief as prayed for?

<u>Decision with reasons:</u>

All the points are taken up together for the sake of brevity and avoidance of repetition of facts.

Ld. lawyer for the complainant argued that the complainant after purchase of the car from o.p. no.3 noticed that the fuel consumption as it was advertised by o.p. nos.1 and 2 that the vehicle would run for 25 km / liter of fuel. The complainant after running the vehicle 800 km found that the consumption of fuel was 16.33 km which is far away from 25 km as per the promise. The complainant stated that with the driving of the

vehicle for some period it was found that the consumption of fuel was found 10.33 km /liter. After coming to know of the said fact the complainant made several correspondences with o.ps. but no action was taken, as such, the complainant filed this case praying for refund of the price of the vehicle as well as other reliefs.

Ld. lawyer for the o.p. nos.1 and 2 argued that in order to get the permission for manufacturing the vehicle several stringent quality checks and road trials are required to be faced by the manufacturer, after compliance of those checks and qualities the manufacturer are permitted to manufacture the vehicle. In order to pass through various tests ARAI approves the suitability of the manufacturing of the vehicle. After compliance of all the necessary formalities the vehicle are dispatched to the dealers. It was also stated that at the time of delivering the vehicles the complainant was provided with the free services, but the complainant failed to carry out the scheduled services of the vehicle. The complainant by suppressing the fact that he met with an accident and in order to repair the said accidental loss went to the garage and the repairing was made without taking any charge from the complainant. The complainant in order to prove the manufacturing defect failed to produce any expert's opinion to that effect and Hon'ble National Commission in various judgments held that in case of allegation regarding the manufacturing defect the complainant must prove by cogent evidence that actually there was any manufacturing defect in respect of the product against which the complainant has claimed the manufacturing defect was there. But here in this case, the complainant failed to produce any expert's opinion in support of his contention. Moreover, the complainant failed to comply the mandatory services immediately after purchase upto the running of 60,000 km. In view of the said fact o.ps. prayed for dismissal of the case.

Considering the submissions of the respective parties it is an admitted fact that the complainant purchased the Nano car from o.p. no.3 at a price of Rs.2,29,442/-. It is also an admitted fact that the complainant was provided with the warranty for four years and during the said period the complainant was also given the benefit of free services at their approved service centres. It appears from the materials on record that the complainant did not avail of those services, on the contrary, the complainant claimed that he consumption of fuel as claimed by o.p. nos. 1 and 2 was much lesser that that of the actual consumption, the complainant had to face problem for running the said vehicle. In order to prove the said fact the complainant though claimed that there was manufacturing defect but it appea5rs from the materials on record that before obtaining permission for manufacturing of vehicle the govt. authority viz. ARM clears the proposal of the company regarding the manufacturing of the vehicle after examining the technicalities of the vehicle proposed to be manufactured by the said company. All such tests are to be cleared by the manufacturer before getting sanction for manufacturing of the vehicle. The o.p. nos.1 and 2 after obtaining the necessary

clearance from the competent authority manufactured the vehicle. The complainant though claimed that there was manufacturing defect but he has failed to produce any cogent evidence in support of his contention that the vehicle had the manufacturing defect at the relevant point of time or subsequent thereto. Therefore, in absence of the evidence it is hardly possible for this Forum to hold that the vehicle had the manufacturing defect for which consumption of fuel was much more than that of the claim made by the manufacturer. The complainant failed to produce any documentary evidence to show that he availed of the free services from the approved service centre of o.p. nos.1 and 2. Since there is no substantive materials against the o.ps. to hold that there was no deficiency in service or unfair trade practice adopted by o.ps. therefore we hold that the case filed by the complainant has got no merit and the complainant will not be entitled to get any relief as prayed for. Thus all the points arc disposed of accordingly.

Hence, ordered.

That the CC No.488/2012 is dismissed on contest against the o.p. nos. 1 and 2 and dismissed ex parte against the o.p. no.3 without cost.

Supply certified copy of this order to the parties free of cost."

6. Being aggrieved by the impugned order, the Petitioner filed an Appeal and the learned State Commission, vide order dated 08.05.2019 dismissed the Appeal with the following observations:

"Perused the papers on record and considered submissions of the Ld. Advocates of the participating sides. It appeared that the complaint was limited to unsatisfactory oil service of the car which, as contended, was less than the run per litre of oil as was assured in the advertisement. It is always true that the oil service of a car may vary with different factors like the condition of the road on which the car was being plied, efficiency of the driver running the car, the age of the car, the coverage in kilometer it had already made etc.

It is needless to say that the roadworthiness of the car is normally certified by concerned authorities after all aspects of the vehicular efficiency are ascertained through a series of vigorous tests. Therefore, question of manufacturing defect does not arise unless allegation to that aspect is certified to be true by any competent technical expert after examining the car. The Respondent/OP Nos. 1 and 2, out of their own accord, intended to appoint a technical expert for ascertaining the manufacturing defect, if any, in the said car and a petition was placed before the Ld. District Forum seeking clearance to that effect. The petition was rejected by this Commission in Execution Case No. RP/47/2014 affirming the rejection order of the petition passed by the Ld. District Forum.

Further, the tests substantiating run lesser than that as advertised, as appeared, were conducted not in presence of the manufacturer or his representative which left reasons against acceptability of the said report.

We had an uncontroverted submission to the effect that the Respondent/Complainant did not even go to obtain in time the free services as offered by the Appellant/OP manufacturer to enable it to have a preliminary idea about the condition of the subject car. The reports submitted along with BNA revealed no complaint against oil service of the car. The complaint against the oil service came to the knowledge of the Appellant/OP when the car had already run 50,000 Kilometer.

In view of the facts and circumstances narrated above, we do not find any reason to consider that the car was having any manufacturing defect. It goes without saying that the manufacturer is only liable for any manufacturing defect. So, where there was no manufacturing defect, there was no liability for the manufacturer. The absence of manufacturer's liability became more apparent when it revealed that the car had met with an accident invoking the reason for warranty of the car being considered to be ceased.

The Respondent/OP No. 3, in fact, had no liability for the defect of the car as he was only the dealer and distributer of the car and was never responsible for any type of defect of the car as alleged in the complaint.

Above being our observation, we are of the considered view that the impugned judgment and order was rightly delivered and did not deserve any intervention from this end.

Hence,

ORDERED

that the Appeal be and the same is dismissed. Impugned judgment and order stands affirmed. No order as to costs."

7. The learned Counsel for the Petitioner/Complainant reiterated the grounds in the Revision Petition and asserted that the vehicle performance test conducted by the authorized dealer proved that the mileage was unsatisfactory, contrary to the claim of 25 km/l in the advertisement. Both fora overlooked this crucial evidence that demonstrated a manufacturing defect and misrepresentation. He reported the mileage issue to the OPs before the car met with an accident, with supporting email evidence. Both commissions failed to acknowledge that the complainant raised concerns about the mileage prior to the accident, which proves that the issue was not accident-related. He argued that an expert report is only advisory in nature and that the available documents on record (such as the test report and correspondence) sufficiently prove the deficiency in service. Both the fora erred in

disregarding documentary evidence and placing undue reliance on the absence of an expert report. He repeatedly raised concerns regarding the mileage issue through emails. The OP tacitly admitted the defect by staying silent and sending their authorized dealer to conduct tests. Both the fora failed to consider that the OPs silence and subsequent actions implied acknowledgment of the defect. He eventually exchanged the car on 12.09.2019 due to its non-performance, further demonstrating that the vehicle suffered from inherent issues. The advertisement of OPs claiming 25 Km/L was misleading, constituting unfair trade practice. The commissions failed to recognize the test reports and circumstances as conclusive evidence of both a manufacturing defect and a deficiency in service. He sought the impugned orders of the lower fora be set aside.

8. The learned Counsel for OPs-1&2 argued in support of the impugned orders passed by the learned District Forum and the State Commission. He sought to dismiss the present Revision Petition with costs. He relied upon the following judgments:

A. Indian Oil Corporation vs. Consumer Protection Council Kerala & Anr.;

B. Maruti Udyog Ltd vs. Nagender Prasad Sinha & Anr., II (2009) CPJ 295 (NC);

C. Sukhvinder Singh v. Classic Automobile and Anr., (2013) CPJ 47 (NC);

D. Maruti Udyog vs. Dr. AS Narayana Rao & Anr I (2010) CPJ 19 (NC);

E. Swaraj Mazda v. P.K. Chakkappore and Anr., II (2005) CPJ 72 NC;

F. Classic Automobiles v Lila Nand Mishra and Anr. I (2010) CPJ (NC).

9. The Respondent No.3/OP-3 did not appear despite service and therefore, it was placed ex-parte vide order dated 23.09.2021.

10. I have examined the pleadings and associated records, including the orders of the learned District Forum and the learned State Commission and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

11. The District Forum issued a well-reasoned order based on evidence and arguments advanced before it. The State Commission after due consideration of the pleadings and arguments, determined that no intervention is warranted on the District Forum's order. This was primarily because on the grounds that the vehicle has run more than 50,000 km from the date of purchased and the Petitioner failed to provide any expert report on the allegations. The manufacturing defect', if any, has not been established under Section 13(1)(c) of the Act,1986. This order is now under challenge at revision stage.

12. It is a well settled position in law that the scope for Revision under Section 21(b) of the Consumer Protection Act, 1986 and now under Section 58(1)(b) of the Consumer Protection Act, 2019 confers very limited jurisdiction on this Commission. In the present case, there are

concurrent findings of the facts and the revisional jurisdiction of this Commission is limited. After due consideration of the entire material, I do not find any illegality, material irregularity or jurisdictional error in the impugned Order passed by the learned State Commission warranting our interference in revisional jurisdiction under the Act. I place reliance on the decision of the Hon'ble Supreme Court in the case of '*Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd., (2011) 11 SCC 269.*

13. In addition, Hon'ble Supreme Court in '*Sunil Kumar Maity vs. SBI & Anr.* Civil Appeal No. 432 OF 2022 Order dated 21.01.2022 observed as follows:-

"9. It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required. ....."

14. Similarly, in a recent order the Hon'ble Supreme Court in Rajiv Shukla Vs. Gold Rush Sales and Services Ltd. (2022) 9 SCC 31 has held that:-

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.

15. Based on the deliberations above, I do not find any merit in the present Revision Petition and the same is, therefore, dismissed.

16. Keeping in view the facts and circumstances of the present case, there shall be no order as to costs.

17. All pending Applications, if any, also stand disposed of accordingly.