

(2003) 01 NCDRC CK 0034

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

DIWAKAR SINGH

APPELLANT

Vs

TRANSPORT FINANCE CO. LTD.
SHETRIYA PRABANDHAK, SHREE
RAM

RESPONDENT

Date of Decision: Jan. 29, 2003

Citation: 2005 1 CPJ 348

Hon'ble Judges: S.K.Dubey , B.L.Khare , Pramila S.Kumar J.

Final Decision: Appeal allowed

Judgement

1. THIS appeal is directed against the order dated 20.2.2002 passed in Case No. 131/2001 by the District Consumer Disputes Redressal Forum, Rewa (for short the "District Forum") whereby the complaint for deficiency in service of the Financier, whereby the truck was repossessed for the alleged defaults in monthly instalments, was dismissed holding that the District Forum had no jurisdiction to entertain the dispute, for that the appropriate remedy for the appellant is to institute the civil suit.

2. AFTER hearing learned Counsel for the parties, we are of the opinion that the order of the District Forum cannot be sustained.

The question was considered by this Commission in Appeal No. 1830/00 decided on 25.6.2002, Pramod Kumar Pandey v. Arvind Finance and Others, wherein following the decision of National Commission it was observed in paras 3 to 5 thus:

"3. In case of National Small Industries Corporation v. Madho Singh and Another, (1999) NCJ (NC) 675, the National Commission considered the question and

observed that the service rendered by the Financier has not been specifically excluded from the ambit of the Act.

In a recent decision in *Royal Automobiles v. Raj Kumar*, (2002) NCJ 227 (NC), the National Commission though has not dealt with question of jurisdiction directly has held that if a Financier refused to return the vehicle without any right to detain after taking the vehicle in its possession on some excuses, the order under Section 14(1)(d) of the Act can be passed.

3. THIS Commission in Original Case No. 24/97 decided on 19.6.2000, *Awadhesh Kumar Dubey v. Shri Ram Transport Finance Co. Ltd.*, following the decision of the National Commission in case of *National Small Industries Corporation v. Madho Singh* (supra), observed that when a vehicle in exercise of the right under the hire purchase agreement is seized or repossessed by giving notice to the complainant for payment of defaults in instalments, no negligence or deficiency on the part of the opposite party can be found. However, if repossession of the equipments or articles in the machine in default of payment of the instalments under the hire purchase agreement in terms of the scheme of repayment, if excessive amount is charged contrary to the contract which supersedes as per agreement, it would be a case of deficiency in service and such a service rendered by the opposite party would not be excluded from the ambit of the Act." 4. The decision of this Commission in case of *Asad Ullah Khan v. M.C. Motors and Others*, II (2000) CPJ 120, is per incuriam as in that case the decision of the National Commission in *National Small Scale Industries* was not brought to our notice, hence, the decision rendered in *Asad Ullah Khan* has no binding effect. 5. In view of the above, we direct the parties to appear before the District Forum on 10.3.2003 of which no notice shall be issued to the parties as they have been noticed here through their Counsel. The District Forum shall decide the complaint afresh on all legal and factual pleas.

In the result, the appeal is allowed. The order of the District Forum is set aside and the case is remitted to the District Forum for deciding the same afresh in accordance with law. In the circumstances, parties to bear their own costs. A copy of this order be conveyed to the parties and a copy be sent to the District Forum along with the record of the case. Appeal allowed.