

## Maruti Udyog Ltd Vs Fakir Chand

**Court:** NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

**Date of Decision:** Dec. 5, 1993

**Citation:** 1994 2 CPJ 31

**Hon'ble Judges:** V.S.Kokje , M.L.Tiwari J.

**Final Decision:** Appeal allowed

### Judgement

1. THESE appeals arise out of the same decision of the District Forum and hence were heard together and are being decided by this common

order.

2. THE complainant had booked a Maruti Car with the Opposite Parties on 23.10.1986 by depositing a demand draft for Rs. 10,000/-.

According to the Complainant there was no term in the agreement to pay full price of the car in advance before delivery of the car. But despite this,

when his turn came according to the waiting list, the Opposite Parties asked him to pay a sum of Rs. 70,314.61 paise by draft which after adjusting

Rs. 10,000/- already paid at the time of booking would complete the payment of Rs. 80,314.61 paise which was the price of the car at that time.

THE Complainant was also told that the car will be delivered within 4 to 6 weeks after receiving payment. A letter to this effect was received by

the Complainant on 26.11.1987. THE Complainant did not agree to deposit full price before the car was delivered to him and corresponded with

the Opposite Parties about this showing his willingness to make the payment against delivery of the car. According to the Complainant the

Opposite Parties were effecting a unilateral change in the terms of the agreement to sell the car by insisting on full payment four to six weeks prior

to delivery of the vehicle. THE Complainant contended that in absence of any such specific term in the agreement, he was expected to pay the

price only against delivery of the car. THE Complainant approached the Forum for a direction against payment of the current price to sell the car at

the price that was ruling in November-December, 1987 without asking him to furnish an affidavit and proof of residence. Damages to the extent of

Rs. 10,000/- were also prayed for. This complaint was filed before the Forum on 22.2.1992. 2. THE Opposite Parties M/s. Maruti Udyog Ltd.

the manufacturers of Maruti Cars and Fairdeal Marwar Garrages Pvt. Ltd. the dealer through whom the booking for the car was made by the

Complainant contested the complaint and contended that the Complainant was not a consumer within the meaning of the Consumer Protection

Act, 1986 (hereinafter referred to as the "Act") as he had hired no services and has not purchased any goods so far. It was also contended that

the reliefs claimed could not be granted under the Act as the reliefs were not covered by Section 14(1) of the Act. It was also contended that the

complaint was hopelessly belated and deserved to be dismissed as barred by limitation. It was also contended that subject matter of the dispute

being of the value of more than Rs. 1,00,000/- the District Forum had no jurisdiction to entertain. It was also contended that the demand of

deposit of entire price four to six weeks in advance was followed as a uniform practice and could not be said to be an unfair trade practice.

The District Forum held that in view of the correspondence exchanged between the parties, the complaint was not belated, that the Complainant

was a "consumer" as he had hired the services of the Opposite Parties for supply of the car by depositing Rs. 10,000/-, that the complaint fell

within the definition of "complaint" under the Act, that the Complainant could claim relief under Section 14(1) (d) of the Act as he had hired the

service and was complaining of deficiency in service, that the Forum had pecuniary and territorial jurisdiction over the subject matter of the

complaint and that asking for full price of the car four to six weeks prior to delivery of the car amounted to unfair trade practice and deficiency of

service. On these findings Rs. 2000/- was awarded as compensation. Both the parties have come up in appeal against the aforesaid order of the

District Forum.

We have heard the Complainant and the Opposite Parties and have perused the record. The Complainant is aggrieved by inadequacy of

compensation and failure of the District Forum to grant relief's as prayed for by him in the Complaint. The Opposite Parties on the contrary have

contended that the complaint should have been dismissed on the objections raised in their reply before the Forum. We will deal with the points

involved in the case one-by-one.

3. (I) Limitation : From the perusal of the record It is clear that the booking for the Maruti Car was made by the complainant on 23.10.1986.

His waiting list number matured for delivery of the car in the year 1987 and the letter in this respect was received by the complainant on

26.11.1987. The demand of full price was also through this letter received by the Complainant on 26.11.1987. The Complainant has produced

this letter as "C/2". He had written a letter dated 12.12.1987 in which he had raised the point of demand of full price in advance before delivery.

C/3 is the letter written by Fairdeal Marwar Garages Pvt. Ltd. to the complainant which is produced by the complainant. This letter dated

16.12.1987 sent in response to the complainant's letter dated 12.12.1987 states in Paragraph 2 categorically that the money was being asked

in advance as per the terms laid down by M/s Maruti Udyog Ltd. and interest at the rate of 12% will be paid on the amount if the delivery is

delayed beyond 21 days. It appears that the complainant had written several letters thereafter at intervals of several months to the opposite

parties. Not a single document has been put on record by the complainant to show that the opposite parties had either agreed to supply the

vehicle against payment of price without insisting on payment in advance by four to six weeks or that, they had agreed to consider the objection

or request of the complainant. It cannot therefore be said that the complainant had any excuse for waiting for the reply of the opposite parties.

In these circumstances, if there was any breach of the terms of the agreement to sell the car to the complainant on the part of the opposite

parties that had clearly taken place in the year 1987 itself. Any further correspondence would be of no help to the complainant and would not

enlarge the period of limitation. Moreover, filing of complaint in the year 1992 for the alleged breach of contract which had occurred in the year

1987 can by no stretch of imagination be justifiable. A civil suit on the same cause of action would obviously be barred by limitation. In these

circumstances, the complaint was hopelessly belated, if not clearly time barred and the District Forum should not have entertained it at all.

(II) Whether the complainant falls in the definition of "consumer": The District Forum has held that complainant had hired the services of the

opposite parties for supply of car by depositing Rs. 10,000/-. This was not even the contention of the complainant in his complaint. It was

clearly an agreement of sale of goods under which the complainant had agreed to purchase the car and the opposite parties had agreed to sell

the car at the terms agreed between the parties. It was clearly not a completed transaction of sale of goods. The title in the car had admittedly not

passed on the complainant. In such a case the complainant having not purchased any goods and having not hired any services did not fall in the

definition of "consumer". Decision of the National Commission in M.N. Narasimha Reddy v. Managing Director Maruti Udyog Ltd. & Ors. in

II (1991) CPJ 346 (NC), First Appeal No. 67 of 1990 decided on 20.12.1990. clearly lays down this proposition in the case of agreement to

purchase a Maruti Car itself. The Complainant therefore did not fall in the category of "consumer" and, therefore, his complaint was not entertain

able. The aforesaid decision also holds that no hiring of services or deficiency in service is involved in the transaction and fixing a mode of

payment cannot be branded as unfair trade practice unless all the relevant facts which go to make out unfairness of practice on the part of the

dealer are specifically set-out in the complaint.

4. (III) The case is not covered by the definition of "complaint"; The District Forum has held that complainant has alleged unfair trade practice on

the part of the Opposite Parties, therefore, it amounts to deficiency in service and, therefore, the complaint is covered by Section 2 (1)(c) of the

Act. As laid down by the National Commission in M.N. Narasimha Reddy's case (supra) there is no question of deficiency in service in the case

and therefore, the case did not fall in the definition of "complaint" as it stood before its amendment by the Ordinance No. 24/93 which came into

force on 18.6.1993, which has since been replaced by an Act of Parliament. In the new definition of complaint of course, in Clause (ii) "goods

agreed to be bought by a Complainant" are also covered but such a complaint has to be in respect of one or more defects in the goods bought or

agreed to be bought by the Complainant. As the complaint is not about the defects in goods, even in the amended definition of "complaint" the

grievance does not fall.

(iv) Relief claimed is not covered by Section 14 (1) of the Act : The District Forum has conceded that relief for direction to deliver the car cannot

be granted under Section 14 but has held that compensation for deficiency in service can be granted under Section 14 (1)(d) of the Act. As we

have already seen there is no question of hiring of any service or deficiency in service in the transaction between the parties, therefore, the relief

was also not covered by Section 14 of the Act. Moreover, even in the transactions of sale of goods on the basis of charging of excess price, no

relief can be granted under Section 14(1) of the Act. Sine qua non for grant of relief under Section 14 (1) of the Act in cases of purchase of goods

by a Complainant is finding of any defect in the goods. The definition of "defect" in the goods contained in Section 2(1)(f) also does not cover

charging of excess price or demanding price in advance in it. The relief's claimed, therefore were not covered by Section 14 (1) of the Act.

(v) Territorial and Pecuniary jurisdiction of the Forum : As the car was booked at Bhopal the District Forum, Bhopal had territorial jurisdiction

over it as the dispute relates to payment of Rs. 70,000/- and odd in advance, the Forum had even the pecuniary jurisdiction. The decision of the

District Forum in this respect cannot be said to be wrong.

5. (VI) The demand of price in advance was an unfair trade practice : The District Forum has held that the demand of price in advance is an unfair

trade practice. In View of the decision of the National Commission in M.N. Narsimha Raddy's case (supra) it was necessary for the complainant

to plead and to give details about the unfair trade practice. That has not been done and this complaint could not have been entertained. Even

assuming that charging of excess price in advance, amounts to unfair trade practice and even taking into consideration the definition of "complaint

and "unfair trade practice" in the Act as amended by the Ordinance No. 24 of 93, in View of the language of Section 14 of the Act no relief could

have been granted by the District Forum in the case. As already stated above, Sub-section (1) of Section 14 of the Act requires as a pre-condition

or grant of a relief that the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or

that any of the allegations contained in the complaint about the services are proved. Thus, when the transaction is of sale of goods no relief under

Section 14(1)(f) to discontinue the unfair trade practice or restrictive trade practice or not to repeat them, can be granted. This may be a loophole

or lacuna in the legislation, but, on the plain construction of language of the Section, no relief on the ground of unfair trade practice can be granted

in the case of a complaint about any goods purchased by a consumer. For the aforesaid reasons the decision of the District Forum cannot be

sustained. It is, therefore, set-aside. Appeal No. 147/93 is allowed and Appeal No. 174/93 is dismissed. The parties shall bear their own costs.

Appeal allowed.