

(1990) 09 NCDRC CK 0013

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

L.M.L LTD.

APPELLANT

Vs

GRAHAK PARISHAD, SURAT

RESPONDENT

Date of Decision: Sept. 24, 1990

Citation: 1991 2 CPJ 269

Hon'ble Judges: S.A.Shah , Leelaben Trivedi , R.K.Shah J.

Final Decision: Appeal partly allowed

Judgement

1. THE appellant L.M.L. Limited (Known as Lohia Machines Limited of Kanpur), being aggrieved by Judgment and order dtd. 21.5.90 of the Sural District Forum in complaint No. 29 of 1989, filed this appeal, challenging the judgment and order of the District Forum Surat.

2. THE appellant has also filed an application to stay the operation of the impugned order of the District Forum, Surat and after hearing the learned Counsel Mr. Mehta, this Commission has stayed the operation of the order of the District Forum, Surat, after taking an affidavit in which the appellant assured this Commission that 21 persons whose refund against the booking is pending, will be paid Rs. 500/-, the booking amount together with interest accrued thereon, within thirty days from today.

The compensation of Rs. 500/- per applicant awarded by the District Forum, Surat will be deposited with the Commission within 14 days and the said amount will be kept till the date of final hearing and order of the Commission.

That the notices of hearing of appeal was served to the respondents, namely, Grahak Parisad Shri Virendra Desai and Shri Shreyas Subodhchandra Desai, the Principal Secretary thereof, but on that date appellant appeared but the respondents, the appeal was adjourned to 21.8.90 and fresh notices were sent to both The President and Secretary by Registered Post. Unfortunately on this date also, appellant only appeared but none of the respondents appeared nor they had sent any communication for showing reasons for nonappearance. We, therefore, adjourned the matter to 13th September, 1990. On that date also only officer of the appellant appeared and we therefore heard the arguments of Mr. Dharmendra Misra, the local officer of the appellant, has produced a statement, stating that they have deposited Rs. 10,500/- (Rupees Ten thousand Five hundred only), the alleged amount of compensation with the Commission and have paid Rs. 500/- with accrued interest of 10% to 17 consumers, enclosing the copies of the refund orders.

3. WITH regard to 8 consumers whose names are given, he has stated that they could not be paid immediately because their reference numbers were not correct. However, on the date of hearing Mr. Dharmendra Misra, Regional Manager, stated that the Company could locate these persons and correcting reference numbers, have paid Rs. 500/- alongwith 10% interest and in this way 25 consumers for whom the District Forum has passed the decree have been paid in accordance with the judgment and order of the District Forum.

On merits Mr. Misra admitted that the appellant could not pay the deposit amount with stipulated interest for a long time on account of several difficulties. Mr. Misra further states that the Consumer cannot get both the interest and the compensation. He, therefore, prayed that taking into consideration that the appellant has paid the deposit amount with 10% interest, by finding out the consumers and thereby has fully co-operated with the Commission, the order of payment of compensation is set aside. Otherwise, the company which has collected a huge deposit might be put to a great financial loss if a judgment is taken as a precedent.

4. UNFORTUNATELY, nobody appears on behalf of the respondents. We have therefore, carefully perused the case papers and we find from the complaint that

the complainant, namely, Grahak Parishad, Surat has demanded the refund of deposit amount of Rs. 500/- with 16% interest and cost of the application only and has not demanded any compensation in its complaint.

That there is no evidence regarding compensation oral or documentary except the evidence regarding booking of scooters making the demand for the money, etc.

However, the facts as stated by the complainant and observed by the District Forum Surat, that the appellant has collected huge amount from the prospective purchasers by inviting applications with deposit through media, the complainant has stated in para 5 as under :

"Large number of bookings were cancelled by the consumers and the company had to refund Rs. 32 crores, the newspaper report in Financial Express did. 9th August, 1988 to this effect is at Annexure-"B". It is evident that the respondent company enjoyed the benefits accruing out of such huge amount collected from the public by way of advance against bookings for its own purposes. That the company is liable to refund the advance with 7% interest thereon, if the booking is cancelled within 60 days and on receipt of the cancellation advice."

5. MANY of the consumers who have booked the scooters and paid the deposits in Jan., 1983 and having realised that the company has received the orders for lakhs and lakhs of scooters, it was not possible to get the scooter within reasonable time considering the capacity of the appellant and therefore many of them have cancelled the booking right from 1985 to 1988 as shown in their application but the appellant did not care to return the deposit with 7% interest as promised.

6. WHEN the company is not in position to deliver the scooters within the reasonable time, they ought to have stopped the bookings were cancelled and money and deposits were demanded, the company has refrained from making payment for number of years with the result that the consumers have suffered great hardship, in entering into correspondence and ultimately moving the consumer association and through them the consumer forum.

This, to our opinion is not a very happy situation for such a big company and service rendered by them is obviously defective. They ought to have returned the deposit

amounts forthwith.

It is a matter of common knowledge that the Bank has increased the rate of interest which varies from 15% to 18%. It can therefore be assumed that the company intended to keep the money at the lower rate of interest (7% in this case) and refrain from making payment of deposits to hundreds of applicants. It is true that the appellant before this Commission has fully co-operated with the Commission but that is because the local officers were wise; but that would not absolve the company from not returning the deposit amount on making demand. They have retained the deposit amount of the consumers with an intention to get benefit which, to our opinion, the company should return to the consumers.

7. SINCE the District Forum Surat has awarded only 10% interest because they wanted to award compensation also, we do not disturb the award of interest of 10%.

That as we have stated earlier, there is neither the demand nor the evidence of award of compensation, that portion of the order shall have to be set aside. However, the respondent has demanded cost of the application which we think would be proper to accept. We therefore direct that the appellant shall pay the cost of Rs. 100/- to each consumer, which will compensate them to some extent in the hardship, cost and litigation.

8. WE, therefore, upheld the order of the District Forum, Surat directing to pay Rs. 500/- together with interest @ 10% per annum to the complainants whose names are shown at Annexure-"A".

That the order of the District Forum, Surat, directing the appellant to pay Rs. 500/- to each of the consumers as shown at Annexure "A" attached to the complaint, is set aside. That the appellant shall pay the cost of Rs. 100/- to each consumer whose names are shown at Annexure-"A" to the complaint and the same will be paid to them from the deposit lying with the Commission. That the last portion of the order of the District Forum is also set aside being not necessary because the complaint is filed by the consumer association and for want of production of the evidence, cannot nullify the claims of the other consumers. That portion of the order is required to be set aside. Order accordingly. This dated 24th September, 1990. Appeal partly

allowed.