AARTI DRUGS LIMITED Vs NUCHEM LIMITED

None

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Jan. 5, 1999

Citation: 1999 1 CPR 415 : 1999 2 CPJ 182 : 2000 1 CPC 296

Hon'ble Judges: A.A.Halbe , G.R.Bedge , Rajyalakshmi Rao J.

Final Decision: Complaint disposed of

Judgement

1. THE complainant Aarti Drugs Limited has filed this complaint against M/s. Nuchem Limited, Worli, Mumbai and 3 others for recovering

compensation of Rs. 9,50,000/- plus cost of Rs. 10,000/- on account of the faulty and defective Nuwud MDF Panels in the internal decoration of

the office of the complainant. As a result of use of this MDF Panels, great nuisance was caused to the occupants and the staff of the complainant

Company on account of eye burning, eye watering, difficulty in breathing soon after the work of decoaration was over. THE complainant is

engaged in marketing of Bulk Drugs and its administrative office located at Mahindra Industrial Estate, 3rd Floor, Road No. 29, Sion (East),

Mumbai. With a view to furnish the said Administrative Office, the complainant hired the service of O.P. No. 3 Architect Shri Ramesh Sharma and

sought his professional advise about the material, design and specification of the furniture. 10% cost was to be the professional fees of the said

Architect. THE said Architect recommended the MDF Panels from O.P. No. 2 M/s. B.P. Techno Products (Private) Limited totally costing Rs.

1,79,021/-.This Nuwud MDF Panels manufactured by the O.P. No. 1 were used for making furniture w''z., Tables, Partitions, Cabins and

Cupboards etc. for the same Administrative Office. THE cost of interior work came to Rs. 9,50,000/-. This is supported by various invoices

tendered on record. THE said work started somewhere in December, 1992 and was finished in April, 1993. However, it was soon discovered

that the furniture and cabins were giving foul smell and causing eye watering. THE matter was taken up with the Architect who also agreed that

Nuwud Panels were emitting foul gas and causing the problems to the eyes of the office staff. THE complainant, therefore, gave Notice dated

13.7.1993 to O.P. No. 1 through its Managing Director O.P. No. 4 and also O.P. No. 2 the Supplier of O.P. No. 3 Architect. THEre Was the

positive defect in the service rendered by all of them and by Notice, the O.Ps. were called upon to reimburse the entire furniture cost of Rs.

9,50,000/- to the complainant. It seems that O.P. No. 2 deputed one Vinod Gupta alongwith one Shri H.V. Suvarna of O.P. No. 1 and they

visited the office on 9.8.1993 and felt the actual truth of the problem. THEy advised that all the surfaces where melamine polish was used should

be painted so that the emission could be reduced considerably. Shri Suvarna felt that this problem could be reduced to a large extent if not totally

eliminated and this was confirmed by their letter dated 16.8.1993. According to the Expert, coat of paint was applied but the seriousness of the

problem did not diminish. THErefore, one Shri S.C. Vajpey of the Company visited the premises on 20.9.1993 and again on 22.3.1993 and lastly

on 29.9.1993. His advise is contained in the letter dated 4.10;1993 and the advise was to the following effect :

(i) Unscrew the false ceiling and paint the under surface of the loft as also the upper surface of the false ceiling with at least two coats of primer and

re-install the same. (ii) Provide ventilation for the cabins either individually or collectively by installing exhaust fans at appropriate places, which may

be operated before entering the cabins. A similar arrangement was also advised to be provided in the hall.

2. WITH these directions it was felt that the emission of foul smell will cease. This letter as indicated is dated 4.10.1993. The manufacturing

Company O.P. No. 1 agreed to do the above rectification at their cost and the complainant addressed the letter dated 12.3.1992 indicating the

manner in which the rectification should be done on the basis of drawings. There was a follow-up action on the part of the complainant. But it was

found that all this fell on deaf ears. One Shri Narendra s/o Gajanan Wagle, Chartered Chemist and Consulting Technologist inspected the site on

14.3.1994 and he confirmed in his report that there was distinct emission of irritant gas which has been identified as Formaldehyde in the Nuwud

MDF Panels and that the same was continuously decaying. The slow release might have long term toxic effect on the occupants. Shri Waglefelt

that this was a hazardous product and the sale thereof should be stopped. The complainant, therefore, felt that he is entitled to the compensation

for the defective supply of goods and for the deficiency in service and they claimed the above amount under various heads. It is contended that the

0;P. No. 1 the manufacturer has admitted in clear terms that the foul gas was emitted through Nuwud MDF Panels and that this emission was

causing eye burning and eye watering. So the rectification procedure was recommended. Since this was not done, the above claim has been filed.

In this regard, it is further stated that the Nuwud gave some eye catching slogans highlighted in the advertisements and promotional literature

without hinting even remotely about the emission of foul smell which was a health hazard. This was a glaring instance of unfair trade practice.

This has been resisted by the O.P. No. 1 and O.P. No. 4 and it is contended that in the correspondence, the O.Ps. offered on several occasions

to help remove the cause of the complainant"s problem by offering to re-design some of the interior decor. There was indeed emission but it could

not be examined scientifically and on any technical data. It is further stated that the complainant did purchase MDF Panels of Nuwud for Rs.

1,79,021/-. But the figure of interior decoration of Rs. 7,70,979/- is not admitted. The Company denies that there was any problem of foul smell

causing eye watering and eye burning to the occupants of the office of the complainant. They deny that the letters sent by them were in fact

admission of the defective product and the defective service. Shri Vajpey suggested rectification in the interior decor but this was not the admission

of defective material or defective service. The suggested rectification was not to be carried out at the cost of O.Ps. The opinion of Mr. Wagle is

not correct and the right to cross examine him was reserved. There was also no question of unfair trade practice in promoting the sales of Nuwud

MDF Panels. It is also stated that in the premises, the drugs were stored which could have also emitted foul gas. Briefly stated, O.P. Nos. 1 and 4

have denied the claim.

The O.P. No. 3 has contend ed that he was merely the Architect employed for suggesting the interior design and decor and that the use of Nuwud

MDF Panel was insisted upon by the complainant in order to effect savings on the cost. He has also contended that he is not responsible for the

quality of MDF Panels.

3. THE parties have submitted written arguments in support of their respective say. From the aforesaid pleadings, it is fairly clear that the Nuwud

MDF Panels were used in the interior decor. THE Company has not challenged that the Nuwud MDF Panels were not supplied. Now, it is to be

seen whether the case of emission of foul gas is made out by the complainant. For this purpose, the complainant relies upon the letters and we find

on examination of those letters that even the O.P. has unequivocally admitted that there was emission of foul smell soon after the work of interior

decor was completed. In the Notice dated 30.7.1993, it is clearly made out that Nuchem Limited supplied Nuwud MDF Panels and that the O.P.

No. 2 B.P. Techno Products Private Limited is the dealer in Nuwud MDF Panels. THE total cost of these Panels was Rs. 1,79,021/-. It was also

stated in the said Notice that the total cost for putting up the interior decoration work was Rs. 9,50,000/-. It is also stated that it was represented

by the Manufacturer as also by the Architect that the MDF Panels were substitute to the natural wood. It would be as good as natural wood and

on that representation, MDF Panels were al lowed to be used. But soon after the completion of the work, the persons working in the office felt

considerable discomfort in the said Administrative Office. THE continuous emission of smell was the hazard to the health of the workers and it was

felt that the entire furnishing work will have to be redone and that the same should be done on the reimbursement of the amount spent by the

complainant.

We then travel to the letter of O.P. No. 1 dated 16.8.1993, which is sequel to the Notice. It was stated in the said letter that where the melamine

polish was used, the emission was high and, therefore, painting of those areas where melamine polish was used was advisable. The emission could

be reduced considerably. There may not be total elimination of the problem but it can be substantially reduced. This would clearly show that even

the O.P. has admitted that there was emission of foul gas. It cannot lie in the mouth of the manufacturers that no such smell was emitted. As a

matter of fact, the higher degree of emission was found from those places where melamine polish was used. The second letter dated 4.10.1993 by

the said Company also shows that the foul smell continues to cause nausea and irritant to the staff and the following rectification work was advised

to be implemented immediately. We have reproduced that advice in the foregoing paragraph about the unscrewing the false ceiling, painting the

same and reinstalling the same and provision of ventilation by putting up Exhaust Fans at appropriate places. We feel that with this letter, the claim

of the complainant is very much strengthened. The entire operation of refurnishing is found to be defective and that this could be reduced to some

extent by painting the false ceiling and further providing exhaust fans for proper ventilation. In another letter dated 16.6.1994, it is unequivocally

admitted by the O.P. No. 1 that negotiations were going on with the contractors for the rectification. Similarly, in the letter dated 19.4.1994, it was

indicated that the problem of eye burning persisted in the office and that time was sought for doing rectification. In the letter dated 12.4.1994, me

reference is made to the drawings prepared for rectification work and it is observed that the ceiling tiles shall have to be removed carefully. The

PVC pipe ducting shall have to be provided at the center of the concerned areas. The ducting shall be routed to a central point and a suitable

exhaust fan of predetermined CFM shall have to be provided. The ceiling has to be refitted after providing requisite slots for exhaust pipes and the

entire operation would take 10 days. The same position is accepted in subsequent communication. Now with such correspondence on record, we

are unable to support the arguments advanced on behalf of O.P. Nos. 1 and 4 that no nuisance was existing in the office premises of the

complainant.

4. THE report of Shri N.G. Wagle is also an eye opener to the entire episode. THE opinion of Shri Wagle has become relevant because it is based

on the inspection of the premises soon after the interior decor work was over. He visited the office on 14.3.1994, which appears to be one year

after the completion of the work, and still he found that there wasa distinct emission of irritant gas from the said furniture, which he identified as

Formaldehyde. According to him, the said emission evolves from the thermosetting resin (Urea Formaldehyde) used it the Nuwud MDF panels

and boards and that the same was decomposing continuously. He has also given a signal that the slow release of Formaldehyde from Nuwud

boards and panels will have a long term toxic effect on the occupants. He has designated these panels as hazardous products, the sales of which

should be prohibited.

Now, in the affidavit of Dr. N. Sriram s/o Sh. T.R. Narain Swami on behalf of O.P. No. 1, he has stated that Nuwud MDF is only the brand name

for Medium Density Fibre Boards manufactured by the Company and the same is covered under Bureau of Indian Standards No. 12406. He has

also admitted that use of Urea Formaldehyde based binders have been in use as binders in many wood substitutes such as plywood etc. The same

is widely used. He has also stated that melamine polish is also based upon Formaldehyde and if used in cabins or on any furniture, it may also

become a source of emission of Formaldehyde. It is in use for over 3 decades all over the world and that it is a solution commonly known as

Formal in which is used as bactericide in oral dental formulations. The late toxicity effect is known. The literature tendered by him shows that the

exposure of Formaldehyde inhalation causing chest pain, nausea and vomiting. Late toxicity was none. It cannot be hazardous. On behalf of the

complainant, the latest literature appearing in ""The Pesticide Handbook"" shows that Formaldehyde is hazardous in as much as even moderate high

vapours cause eye, nose and throat irritation, bleeding from mouth, sneezing, coughing, sinus inflammation, headache, dizziness, nausea and skin

irritation. In chronic stage, it may cause respiratory problems and chronic loss of pulmonary function. It is found to be carcinogenic in animal

studies. It seems that various countries have restrained the use of Formaldehyde and amongst them are Czechoslovakia, European Countries,

Japan, New Zealand, Poland, Sweden, America. In the literature relating to American prohibition since 1988, it is stated that the use of urea

Formaldehyde foam for insulation in schools and residences is banned because it presents an unreasonable risk of injury from irritation, sensitization

and cancer. It is also identified as a chemical, which could cause cancer. Now, with this literature on record, it is difficult to say that use of

formaldehyde in the furniture work could not be hazardous to the health.

A new study in the US shows that many commonly used home products give off substantial amounts of Formaldehyde, a possible carcinogen.

Formaldehyde, which is often used in the production of building materials, cosmetics, home furnishings and textiles, is a colorless gas that could

cause burning or itching of the eyes or nose and wheezing. Some scientists believe that repeated exposure may increase a person''s risk of

developing cancer. We feel that before using this material, no caution is signaled by the Manufacturer that the material involving Formaldehyde will

cause such irritation problems. The Manufacturer was duty bound to inform the complainant that the precaution had to be observed. It is only after

the completion of the decor work that this has been realised and that for Manufacturer it was his duty to study the side effects of the use of such

material and caution the user of that material. None of this has been done by the O.P. Now, so far as the role of the Architect and the supplier is

concerned, we feel that they can not be held liable when the Manufacturer does not give caution to the dealer and the architect. It is the

appearance of the material, which attracts the unwary customer. But the duty is cast upon the Manufacturer to see that the effects are being

brought to notice while selling the article. They must be focussed with all emphasis. We find that in Cigarette Advertisements, it is clearly written

that ""Smoking is Hazardous To Health"" and so also in case of Wines and Spirits. Since with the advancement in the Scientific Study of these

materials, the dangers are coming forth. We do feel deficiency in the supply of materials on the part of the O.P. Nos. 1 and 4.

5. WE may now turn to the Report of Dr. Bhargava, which is dated 1.12.1997. He was appointed as a Commissioner to examine this problem.

He undertook that work on 9.5.1997 and observed that there was no smell in the office when he inspected the same. The representative of the

complainant has rightly suggested that about 4 years had elapsed and that the intensity of the smell may have disappeared. So the story of the

complainant cannot be termed as fictitious and ridiculous. As stated earlier, it is admitted even by the O.P. soon after the attention was drawn to

that effect. Dr. Bhargava has stated that the said material being used even in America and in 1984 1.1 million m3 of MDF was produced in USA.

However, he admits that Formaldehyde even in trace amounts is sufficient to cause noticeable indoor concentration in closed premises. Because of

its pungent odour, and its highly irritating effect to the mucous membranes of the eyes, nose and upper respiratory tracts, it is perceptible even at

concentrations lower than a fraction of ppm, odour threshold of Formaldehyde is 0.8 ppm. The sensitive people believe feel the impact more. He

has opined that Formaldehyde is not toxic. The irritation to nose and eyes could disappear without causing further damage. The melamine polish

also contains Formaldehyde. But the same is curable. From the report of Dr. Bhargava, we do not conclude that no irritant smell was coming out

after the decoration work was over. WE have referred to the various letters by the Manufacturer and we feel that for a long time after the

decoration work, the odourous smell was felt causing discomfort to the office staff. Of course, we do not have any evidence about the quantitative

damage caused to the occupants. But we can certainly hold that the use of the material did cause the irritation problems for a fairly long time. Dr.

Wagle after one year of completion of the work felt that the Formaldehyde was causing problems of eye watering and breathing. The above

referred material tendered by the complainant shows that the repeated exposures may cause even the cancer. Since the O.P. has not taken

precaution to acquaint the user of these hazards, we feel that compensation should be awarded. WE also feel that for the rectification, which has

not been completed by the O.P., the complainants are entitled to the compensation, it could not have lasted for 10 days and which is quantified at

Rs. 2 lakhs by the complainant. WE feel that Rs. 1,00,000/- for rectification will meet the ends of justice; for physical discomfort for a period of 2-

3 years, the quantum is to be fixed at Rs. 1,00,000/-. Rs. 10,000/- should be awarded as cost. However, we do not wish to award any amount on

the material purchased and the cost of internal decor. In the year 1997, Dr. Bhargava found that there was no irritation causing discomfort. With

the passage of time, the pungent smell would disappear and hence we do not feel that any compensation should be awarded for reimbursement of

interior decor cost.

6. REGARDING the point of commercial use, we find that the complainant had obtained services for internal decoration to the office premises

under Section 2(1)(d)(ii) of the Consumer Protection Act, such service to commercial premises does not come within the mischief of concept of

goods for sale or for any commercial purpose as contemplated in Section 2(1)(d)(i) of the Act. Commercial purpose can not be extended to cover

services to commercial premises. The argument on behalf of the opposite party must fail on that count. Before parting with this matter, we feel that

the Consumer Organisations should take up the matter with Bureau of Indian Standard; to have some Formaldehyde emissions standards vis-a- vis

MDF Panels. We, therefore, pass the following order : ORDER

The complainant to recover Rs. 2,00,000/- plus Rs. 10,000/- by way of cost from the O.P. No. 1. The claim against the O.P. Nos. 2, 3 and 4 is

dismissed. The O.P. No. 1 should pay this amount within eight weeks from the receipt of this order; failing which the said amount shall be

recoverable alongwith 18% interest thereon from the date of this order till actual payment.

Complaint disposed of.