

(1994) 04 NCDRC CK 0032

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

AKHIL BHARTIYA GRAHAK
PANCHAYAT

APPELLANT

Vs

SIMPSON And CO. LTD

RESPONDENT

Date of Decision: April 8, 1994

Citation: 1998 2 CPJ 176

Hon'ble Judges: V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

Advocate: S.K.Mehta , Rama Subramaniam , Prerana , M.N.Tandon , R.K.Gupta

Judgement

1. COMPLAINANT No. 1 is a Voluntary Consumer Organisation while COMPLAINANT No. 2 is an Association registered with the Registrar of Factories. Members of the Association (hereinafter referred to as Members) are the purchasers/- owners of Ford vehicles manufactured by Opposite Party No. 1 Simpson & Co. Ltd. (for short the Company). The Company has its Head Office in Anna Salai, Madras and is engaged in the manufacture of the above mentioned vehicles and their spare parts. Opposite Party No. 2 is the Dealer Reappointed by the Company for the sale of vehicles manufactured by it in the territory of Goa. Opposite Party No. 3 is Central Bank of India (for short the Bank).

2. ACCORDING to the allegations contained in the complaint, in 1983 there appeared an advertisement, in the local newspapers published at Panaji, Goa issued by Opposite Party No. 2 on behalf of the Company. The said advertisement appealed to the public to purchase trucks manufactured by the Company with easily available finance offered by the Bank with initial investment of Rs. 36,000/- only from the purchaser. The said advertise mental so emphasized various characteristics of the

said trucks. The brand of the truck as per the advertisement issued was "Ford" and the advertisement used the insignia of "Ford". Attracted by the scheme and the features of the truck, brought out in the advertisement, the Members visited the show-room of the Dealer at Vasco de Gama. The Members were informed that apart from the Tipper Trucks, Ford Super Truck Chassis meant for transportation of goods or passengers were also available under the above mentioned scheme which was promoted by the Company in collaboration with the Bank. The Members were given pamphlets and brochures indicating that the said vehicles by the Company were superior to other goods vehicles, with respect to mileage, load bearing capacity, fuel consumption and merchantability in general. However, as the costs of the said trucks was found to be higher than the trucks of similar type like Tata and Ashok Leyland available in the market, the Members gave up the idea of purchasing the said vehicle manufactured by the Company.

The officers of the Company, thereafter started approaching each of the Members to purchase the said truck by taking benefit of the finance offered by the Bank. The following services were promised by the Opposite Parties No. 1 & 2 :

(a) Free after sales service for warranty period of one year; (b) free replacement of defective parts within a period of one year; (c) efficient after sale service beyond warranty period; (d) easy availability of spare parts.

It was represented by the Officers of the Opposite Party No. 2 that although the cost of the vehicles was higher than that of other manufacturers, the said vehicles were far superior in all respects compared to the other vehicles. The Members were represented that the vehicles were high roadworthy as the Company was having collaboration with the Ford Company of England, a leading Manufacturer of trucks. It was also represented that the vehicle had undergone successful and extensive trials. The Dealer presented hand bill to the Complainants giving the said features of the truck. The Dealer also represented that they being the agent of the Company were having a fully equipped and sophisticated workshop at Ponda and would have all the spare parts of the said vehicles readily available. Each of the Members was also informed that a deal had been struck by the Head Office of the Bank with the Company to promote the sales of the trucks manufactured by the company by virtue of which the Bank would offer loans at lower interest at the rate of twelve and half percent with low margin money of twelve and half percent and long repayment period of six years for the purchase of the said vehicles. The Members were also assured that they would not feel the excess cost of the said trucks as the initial investment would be only Rs. 35,000/- to Rs. 36,000/- approximately. The Members honestly and bonafidely believed the representations of the officers of the Company and the Dealer coupled with the hand bills and advertisements. Each of the Members (17 in all) decided to purchase one Ford vehicle availing the ready finance offered by the Bank and purchased the vehicles on different dates as shown in Schedule "A" annexed to the complaint (according to the Schedule two Members

purchased Tipper Trucks in 1983,9 in 1984,5 in 1985 and 1 in 1986; one Member had purchased chassis in 1985).

After operating the vehicles for some time, the Members began to feel that the service given by the vehicles was unsatisfactory. All the vehicles had frequent break-downs and had to be grounded for several days resulting in loss of income. Several defects, both major and minor, were noticed in the vehicles (which have been enumerated in sub-para XIV of para 3 of the complaint). It was found that no proper service was offered by the Dealer at the Service Station at Ponda. Though the replacement of the parts was free during the warranty period, the Members had to spend time, energy and money in transporting the vehicles to the Service Station and keeping them idle as the repairs were frequent. The Members had spent considerable amount to replace the electrical and rubber parts as the Company refused to replace them during the warranty period. Whatever income was earned from the operation of the vehicles used to be spent on the repairs of the vehicles. As a result the Members were unable to pay the instalments regularly to the concerned Branch of the Bank. The Company also realised that the said vehicles were of sub-standard quality and, therefore, continued replacement of certain spare parts, even after the warranty period, till April, 1988. In May, 1988 the Dealer informed each of the Members that further requirements of spare parts shall be met by M/s. Konkan Trading at Margao, Goa. The Service Station at Ponda was closed down. Essential spare parts thereafter totally disappeared from the market. With a view to ventilate their grievances collectively, the Members formed the Association. The Members were convinced that all the said vehicles purchased by them were of defective workmanship, of non-merchantable quality, sub-standard and reasonably unfit for the purpose for which those were manufactured and they were victims of misrepresentation and unfair trade practice adopted by the Opposite Parties. From certain news items published in some newspapers in April, 1989, the Members came to know that the Head Office of the Bank had advanced a huge loan to the Company which could not be repaid by the Company and hence to enable the Company to repay the said loan, the Head Office of the Bank had entered into a deal with the Company to enable it to sell its trucks knowing fully well that those were substandard, of defective workmanship and un-merchantable quality and hence loans were offered at low interests with low margin and long repayment schedule. The Members are, therefore, entitled for the refund of the price paid by them for acquisition of the trucks and the trucks were to be returned to the Opposite Parties. The Members had to spend huge amounts, enumerated in Scheduled "B", on the repairs and each of them was entitled to receive compensation towards the amount spent by them on the spare parts.

3. IT was further stated in the complaint that none of the Members would have purchased the vehicles, if it was not for the scheme advanced by the Bank; The Bank did not raise any objection to the representations made by the Company and the Dealer involving its name whereby attractive bank scheme was offered to the public. The Bank is thus responsible for enticing the members for the purchase of vehicles.

It was also alleged that the Company and the Dealer owed duty to the Members of providing efficient after sales services and essential spare parts even after warranty period at least for not less than a period of 6 years in which period of the repayment of the loans was to be made. On account of the inherent manufacturing defects in the vehicles the Members have been unable to clear the loans advanced by the different branches of the Bank now outstanding against the Members. Members are, therefore, entitled to compensation arising out of the negligence corresponding to the balance which was advanced to the Members by the Bank together with the interest charged by the Banks at the rate and in the manner levied by the Bank. As the Members were subjected to great inconvenience and hardship on account of the negligence of Company and the Dealer, each of the Member is entitled for a compensation of Rs. 1.00 lakh.

4. THE Opposite Parties contested the claim by filings separate counters THE Company averred that each of the Members of the Association had purchased the goods viz., the vehicles and chassis in the years 1983, 1984 and 1985 and one in 1986 for the specific purpose of commercial use and, therefore, they were not "Consumer" as defined in Section 2(1)(d)(i) of the Consumer Protection Act, 1986 (for short the Act). THE advertisement had appeared in the newspaper on 9.1.1985 and not in 1983 as alleged by the Complainants. No officer of Company or Dealer approached the so called Members but they themselves made enquiries about the vehicles and those were replied. THE claim for damages and compensation for the alleged injury arising out of the said purchase transactions is barred by limitation as the cause of action had arisen long prior to the institution of the complaint in September, 1991. THE quality of the vehicles manufactured by the Company was of a very high order in keeping with the international brand name "Ford". M/s. Ford had no objection to the vehicles marketed in India under the name of "Ford" as the Company had entered into an agreement with them. THE manufacture of the vehicles was commenced in 1980. THERE was a good demand for the vehicles in the first instance not with standing that the costs were higher than the other vehicles. THE vehicles were found to give excellent services consistent with their reputation and even today hundreds of such vehicles running all over India are giving due satisfaction to the owners of such vehicles. Dealers were appointed throughout

India for selling the vehicles in the local areas and also to undertake the services connected with the vehicles. Some of the purchasers used the vehicles in an abusive manner and totally inconsistent with the normal use of the vehicle and also contrary to the design. For example's sake certain people appeared to have used the vehicle grossly overloading it. Certain persons who had drawn money from the Banks for purchase of the vehicles conceived the idea of denying the repayments of the loans on one or other pretext. Further in the advertisement it was not mentioned that the finance was easily available from the Bank. It was asserted that the vehicles were of very good quality and were fuel efficient as compared to other similar vehicles. THE Dealer had a fully equipped and functioning workshop at Ponda and the Company had deputed service engineers from Madras to direct and guide the staff of the Dealer on the purpose of various related services. THE scheme floated by the Bank was in force in all the nationalized Banks with a view to assist self-employed persons who wanted to run commercial vehicles. Such schemes were not to promote the sales of the Company but those are part of the policy of the Government to generate self-employment by way of various schemes. Various persons who wanted to buy heavy duty commercial vehicles for their commercial purposes approached the various Banks, including the Bank and obtained loans in the usual manner in accordance with the procedure and formalities laid down by the Banks. THE Company and the Dealer had no part to pay in regard to the advance of the loans by the Banks. THE Company or the Dealer never instructed any of the Members to approach the Banks. THE alleged defects are completely vague. No such common defects existed in the vehicles as alleged. THE defects enumerated in the complaint would occur in routine manner in all the vehicles which are being used regularly and could be described, as a result of normal wear and tear. On several occasions the Dealer found the use of tipper trucks carrying loads in excess of 14 tonnes and they had also cautioned such persons. Proper service was offered by the Dealer at the Service Station at Ponda. THE Members wanted to earn maximum possible revenues in the shortest possible time in total disregard of requirements regarding proper running of the sophisticated machinery. It is thus their own faults and abuse of the machinery that have contributed to their situation and not due to any manufacturing defect or lack of service by the Company or the Dealer. THE vehicles were not of sub-standard quality. THE replacement of certain spare parts in certain special cases even after the period of warranty was only to keep goodwill and not on any account of admission of any liability. Spare parts are available and the Members are even now buying them from the service stations or workshops and the sales office at Vasco De Gama belonging to the Dealer which is open for business. All the remaining allegations of the complaint were also denied.

Opposite Party No. 2 also denied the allegations of the Complainant. It is not necessary to reproduce their averments contained in the counter as most of them are similar to the ones taken by Opposite Party No. 1.

In the counter filed by the Bank it was averred that in normal course of banking business and at the proposal of the Company, the Central Office of the Bank had introduced a scheme for financing of Ford Trucks and Super Buses for small investors. The Bank received representations from the borrowing Members and they explained their difficulties and hardships in repaying their loans. The Bank considered their difficulties and decided to extend some concessions. The borrowing Members again called on the Bank and expressed their inability to comply with the said concessions and the bank granted further reliefs and concessions. In spite of all these concessions, the dues were not paid by the borrowers. The borrowers are unnecessarily delaying the payments.

5. THE parties were heard at length. THE parties were also given liberty to file written submissions. THE Complainants filed written submissions on 2nd March, 1993. THE Respondents have not filed any written submissions upto this date. After going through the written submissions filed by the complainant and considering oral submissions advanced before us we are of the opinion that the present complaint petition is liable to be dismissed on the ground of limitation.

6. IN view of the above it is not necessary to discuss in detail the allegations of the complainants that they were allured by the advertisement and the hand bill issued by the Company and the Dealer respectively in respect of the vehicles which are allegedly defective. It may be mentioned that the advertisement by the Company was issued in January, 1985 while the hand bill by the dealer was issued in 1984. As noticed earlier even before the advertisement and the hand bill some Members had purchased the truck in 1983. Therefore, it is futile to argue that the Members were misled about the quality of the vehicles by the said advertisements and the hand bill. Of course, in these documents the financing scheme offered by the Bank was also stated. The financing institutions always advance loan to purchase vehicles. It is not the case of the complainants that in the present case only the Bank had advanced loans for the purchase of the vehicles manufactured by the Company and not other banks.

Though in the complaint it has been alleged that there were frequent break-downs while using the vehicles manufactured by the Company but no expert evidence has

been produced to show that the alleged break-downs were due to any manufacturing defect. The complaint has been filed under the Act. Defect has been defined in Clause (f) of Section 2(1) of the Act as follows : "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or as is claimed by the trader in any manner whatsoever in relation to any goods;" It was for the Complainant to prove by positive evidence that the vehicle suffered with such "defect".

According to the Opposite Party Nos. 1 & 2 the Members used the vehicle in an abusive manner and totally inconsistent with the normal use of the vehicles and also contrary to the design. It is also alleged that certain Members misused the vehicle by overloading it. The Dealer has produced copy of a letter dated 19th October, 1984 written to one of the Members asking him not to overload the vehicle. The vehicles in question were commercial vehicles meant for carrying iron ore. Most of the vehicles were purchased in the years 1983 to 1985. According to the versions of the company and the Dealer, upto this date the Members are purchasing spare parts for the vehicles. This fact shows that neither there were any mechanical defect in the vehicles nor there were any shortcoming in the supply of spare parts. Hence we are not convinced with the allegation that there was manufacturing defect in the vehicles or the Tipper-trucks were not of the standard and quality as claimed by the Company and the Dealer.

7. THE main question that arise in the present, complaint is that whether it has been filed within limitation. Though Law of Limitation has not been made applicable to the proceedings under the Act but there is a catena of orders of this Commission according to which the principles of the Limitation Act have been applied to complaints filed under the Act. THE present complaint was earlier filed with the State Consumer Disputes Redressal Commission, Goa in April, 1991. When the Opposite Parties took objection to the pecuniary jurisdiction of the Commission on the ground that the total claim of the Members exceeded Rs. 10.00 la khs, the Complainant prayed for return of the complaint for presentation before this Commission. THE said prayer was allowed by the State Commission on 13th August, 1991 and the complaint was presented before this Commission on 18th September, 1991. Even if we take the earlier date when the complaint was presented before the State Commission it was filed after about 5 years of the last purchase made by one of the Members in 1986. THE complainants have filed Schedule "B" which represents the approximately total amount spent on spare parts by each of the Members. THERE are no details about the dates on which the repairs were got effected and

whether the replacement of the spare parts became necessary due to the manufacturing defect in the vehicles. If there was any manufacturing defect in the vehicles the Members should have gone to the Court (as the Act was enacted in 1986 and came into force on 15.4.1987) after the expiry of reasonable time from the date of purchase to claim compensation from the Company about the defective vehicle. It is futile to argue that in 1988-89 only when, according to the Complainant there was non-availability of spare parts, the Members came to know that they have been deceived in purchasing defective vehicles.

The arguments of the Complainants that the Tripper Trucks purchased by the Members should have functioned at least for six years within which period the advances made by the Bank were to be repaid and, therefore, period of limitation should be reckoned accordingly hardly requires any consideration.

8. THE case of the Complainant is that the vehicles were defective and the supply of spare parts was stopped in 1988-89. As noticed earlier according to the Company and the Dealer the spare parts are even now available though at a different office of the Company and the Dealer. Under Article 113 and 137 of the Limitation Act the period of limitation commences when the right to sue accrues. In the present case the cause of action accrued to the Complainants in 1983, 1984, 1985 and 1986 when they purchased the vehicles which according to them were defective. THE vehicles must have developed defects after the first few months. On the date when the present complaint was filed the Complainant could not have filed any suit or any application for their claim as three years period had long expired.

It may be mentioned here that the complainants have filed some bills about the last repairs said to have been effected in respect of some of the vehicles. Some repairs were effected in 1987, some in 1988 and one in 1989. These bills show about repairs which might be necessitated on account of normal wear and tear. These bills do not show that the vehicles in question were defective.

According to the complainant the grievances arose on the failure of the opponents to provide maintenance services in 1989 when the last repair was effected. The limitation cannot run from the date of last repair because there is no evidence to show that the spare parts are not available upto this date nor there is any evidence to show that the dealer is unable to service the vehicles. It may be mentioned that even if these facts are established it cannot be said that the vehicles were defective and these facts will not give rise to a fresh cause of action for purposes of limitation.

9. AFTER consideration of all the facts of the case, we are of the opinion that the present complaint is too belated. Hence we dismiss the present complaint. However, in the circumstances of the case we make no order as to costs. Complaint dismissed.