

(2001) 03 NCDRC CK 0030

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

UNITED PUBLISHERS

APPELLANT

Vs

EXECUTIVE DIRECTOR,
Burlington's home shopping pvt.
Ltd.

RESPONDENT

Date of Decision: March 26, 2001

Citation: 2001 2 CPC 213 : 2001 3 CPJ 10

Hon'ble Judges: R.K.Anand , Moksh Mahajan J.

Final Decision: Complaint disposed of

Judgement

1. THE case of the applicant is that its firm M/s. United Publishers, Gauhati which is engaged in the business of book selling and publishing was appointed as a distributor for sale of mail order catalogues of Burlington's Home Shopping Pvt. Ltd., NOIDA i.e., respondent No. 1. THE applicant was to pick up 1,000 catalogues for sale in terms of agreement executed between the parties on 2.12.1992. THE applicant was to be allowed discount at 30% on the published price. THE applicant paid a sum of Rs. 16,625/- as an advance towards 25% of the value of the first lot of catalogues. THE remaining amount had to be paid on receipt of goods as agreed to by M/s. Carolene Redden - respondent No. 3. As ordered, 500 catalogues were despatched on 23.12.1992 through United Bank of India, Gauhati. However, only 50% of the advance was adjusted against the consignment of the catalogues. In the month of January, 1993, the applicant was informed that shelf life of catalogues in question was extended till June, 1993. However, stickers indicating the extension of shelf life to be placed on the catalogues were not supplied to the applicant. While on 18.5.1993, a promise was made to adjust the full amount of advance against the price of the catalogues, dispute arose between the parties in regard to payment of freight and demurrage. After negotiations, the applicant was required to pay Rs. 650/- out of a total amount of Rs. 1,436/- towards freight. THE delivery of goods was taken in June, 1993 by which time the shelf life of the catalogues was practically over. As a remedy, the respondents agreed to replace 50% of the defective goods

with new stock provided the applicant agreed to take delivery of 1000 copies of the new catalogue i.e., Volume V. For having misled the applicant in buying the catalogues on terms which were not adhered to by the respondents, the latter have, therefore, indulged in unfair trade practices covered under Section 36A of Monopolies and Restrictive Trade Practices Act (the Act in short). Further imposition of unfair terms on the applicant by the respondent resulted in loss to the applicant for which it is to be suitably compensated by awarding the cost of the catalogues amounting to Rs. 32,195/- as well Rs. 1,00,000/- for mental torture suffered by it. In addition, an amount of Rs. 15,000/- has also been claimed towards the cost of litigation as incurred.

2. IN response to the notice issued by the Commission, the respondents contended that the application filed is frivolous and vexatious and requires to be dismissed with exemplary cost. It is stated that the applicant was not appointed as the sole distributor or mail order catalogues as falsely represented. The discount was fixed slab-wise and on the number of catalogues purchased by the distributor. IN case of less purchases than the minimum requirement as indicated in the agreement, the discount was to be reduced. As the order was for 500 catalogues, the discount was accordingly reduced. A timely information regarding the extension of shelf life of the catalogues already despatched to the applicant was given and the stickers in support of the same were also despatched. Due to the fire in the Company's premises on 12.6.1994, the necessary supporting evidence could not be filed. The advance amount payable by the applicant was as per the terms of the agreement arrived at between the parties. Any loss if suffered by the applicant, is due to its own inaction in lifting the goods and as such no case has been made out for compensation on the part of the applicant.

After the pleadings were complete, the following issues were framed :

(1) Whether the respondent has indulged in unfair trade practices as alleged by the applicant in his compensation application ? (2) Whether the applicant is entitled for any compensation or relief ?

Evidence in the form of affidavit/counter affidavit along with supporting documents was filed on both sides. Shri Nakul Kapoor, Executive Director of the respondent Company in his deposition clarified that the applicant was duly informed about the payment of 25% of the total cost in advance. He also denied having offered higher discounts to other distributors as alleged.

3. RIVAL submissions have been carefully considered and the supporting documents perused. Both the parties have tried to prove their stand through their respective documents relied upon by them. The latter is mainly in the form of letters exchanged between them. The letters in turn read like allegations and counter allegations levelled against each other. The agreement executed between the parties which is dated 21.11.1992 is silent on the terms of payment. The statement of Shri Nakul Kapoor regarding the payment of advance of 25% of the contract value of the catalogues finds its support in the payment made by the applicant. "Commercial terms of payment" as referred to in the reply of the respondents on the other hand as specified in the "Distribution Plan" annexed with the reply of the respondent (marked as Annexure "A") has not been specifically relied upon by the respondent. This has also not been accepted by the applicant. Therefore, the same cannot be referred to while deciding the issue in question. The letter dated 3.12.1992 addressed to the applicant by the respondent on the other hand, only refers to the contract signed by both the parties. Therefore, the "Distribution Plan" does not appear to have been sent to the applicant as a part of the contract, otherwise there would have been no reason for long drawn out dispute between them.

After having accepted non-refundable advance, insistence on the entire payment, in the absence of any agreement thereto, is not fair. Linked with the question of payment is the allowance of discount. There are apparent contradictions in Clauses 1 and 26 of the agreement which respectively speak of maximum and minimum off take of 1000 catalogues. However, relevant in this context is the fact that ultimately the respondent agreed to the lifting of 500 catalogues by the applicant and for allowing discount at 30%. In the meantime, the price was increased. Whatever be the reason, timely agreement could have prevented the avoidable loss suffered by the applicant. Goods lifted at late stage could also not be disposed of for non-availability of stickers by the respondents. It appears that even the agreement to lift 50% of defective stock could not materialise due to imposition of condition of off take of minimum catalogues of 1000. Thus the inevitable conclusion is that the applicant was misled to enter into an agreement on the representation which was not adhered to later on. Accordingly the respondent has indulged in unfair trade practices within the meaning of Section 36A of the MRTP Act.

4. AS regard appointment of the applicant as a sole distributor, the charge has not been established on the part of the applicant.

In view of above, the applicant is entitled to compensation for the amount paid towards the catalogues lifted including advance along with the cost of litigation which is quantified at Rs. 5,000/-. Applicant's claim for interest is not allowed for having not shown that the loss incurred on account of delay in lifting goods was wholly and exclusively due to delay on the part of the respondent. The compensation claimed at Rs. 1,00,000/- in respect of mental torture and harassment is also not allowed in view of the decision of the Hon'ble Supreme Court in case of GDA v. Union of India, vide Civil Appeal No. 5329 of 1996 reported in II (2000) CPJ 1 (SC)=IV (2000) SLT 654= JT 2000 (7) SC 256.

The respondent is directed to comply with the order within eight weeks from the receipt of the order and submit an affidavit of compliance within two weeks thereafter. Complaint disposed of.