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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3295/2014, CM APPL. 6814/2014, CM APPL. 43130/2017**
& CM APPL. 43131/2017
SNACK BARPetitioner

Through: Mr. J. K. Mittal, Mr. Mukesh
Chaudhary and Ms. Vandana Mittal,
Advocates

versus

D.K. CHOPRARespondent

Through:

CORAM:
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

ORDER

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05.08.2024

1. The present petition is filed under Articles 226 and 227 of the Constitution for quashing of the order dated 04.03.2014 passed in revision petition bearing no. 4090/2012 and the order dated 23.04.2014 passed in review petition bearing no. 70/2014 by the National Consumer Disputes Redressal Commission, New Delhi/(NCDRC).
2. The respondent, Mr. D. K. Chopra filed a complaint under section 12 of the Consumer Protection Act, 1986 wherein, it is mentioned that the petitioner has sold Red Bull (Energy Drink) more than the Maximum Retail Price (MRP) twice on the same day and at a different price to the respondent. The respondent also annexed the bills dated 16.11.2009 and 01.11.2009.
3. The District Consumer Dispute Redressal Forum, Chengalpattu vide order dated 18.01.2011 dismissed the complaint by observing that the respondent has failed to prove the deficiency in the service or unfair trade practice relating to the sale of Red Bull (Energy Drink) in question through clinching evidence. It was further observed that the respondent was not



entitled to claim any relief. The respondent being aggrieved by the order dated 18.01.2011 filed an appeal bearing FA no. 118/2011 titled as **D K Chopra V Snack Bar** before the State Consumer Disputes Redressal Commission, Chennai which was order to be dismissed vide order dated 10.04.2012 wherein it was observed as:-

4. First it is pertinent to note that the appellant/complainant has not adduced any evidence to establish the MRP (Maximum Retail Price) of the product and there is no evidence on record to ascertain the MRP of the product in question. No materials are placed before us to ascertain the MRP and to substantiate that it was sold for a price over and above the MRP and therefore, without ascertaining the MRP, we cannot decide whether it was sold for a higher price.

5. Further, according to the complainant, the product was sold at Rs.300/- for two cans at the rate of Rs,150/- per can and another can was sold for Rs.140/-on the same day, and the receipt is Ex.A1 where we find that Ex.A1 is dated 16-11-2009 for Rs. 300/- for two cans, without any signature / initial of the Cashier; and Ex.A2 is another receipt dated 1-11-2009 for Rs. 140/- for one can, with the initial of the Cashier and it shows that the products were not purchased on the same day as alleged by the complainant.

6. Further it is relevant to note that according to the complainant, he sent legal notice to the opposite party dated 20-12-2009 i.e. after more than one month of purchasing the product; but copy of the legal notice said to have been sent by the complainant is not filed before the Forum for reasons not known to us; and we have to draw adverse inference in this regard.

7. Further, we have to note that the complainant himself has stated in the Memorandum of Appeal that in an



earlier case CC No.5/2008, the District forum accepted that the opposite party charged Rs.65/- extra and ordered refund of the excess amount and awarded compensation of Rs.10,000/- and we have to note that in the instant complaint, the complainant has prayed for refund of the excess amount and for award of full compensation amount demanded by him i.e. refund of the excess amount of Rs.215/- charged by the opposite party and award of compensation of Rs.2 Lac.

8. It is further significant to note, that according to the opposite party for the same cause of action, the complainant had filed CC 5/2009 before the District Forum claiming refund of Rs.65/- as excess amount and compensation of Rs. 50,000/- for harassment and mental agony and Rs.2,000/- as legal expenses and to pay travel expenses and the present complaint has been filed praying for direction to the opposite party to refund the excess amount of Rs.65/- and to pay compensation of Rs.2 Lac. It is also stated by the opposite party that another complaint in CC. 7/2012 has been filed by the complainant before the District Forum and the same is pending. So, it is clear that the complainant, having obtained a receipt from the opposite party, goes on filing different complaints suppressing earlier complaints and that he has been filing complaint after complaint attempting to get compensation and to earn money abusing the process of law viz. the Consumer Protection Act.

9. For the aforesaid reasons, we hold that there is no deficiency in service on the part of the opposite party and that the opposite party has not indulged in unfair trade practice.

4. The respondent thereafter filed a revision petition bearing no. 4090/2012 before the National Consumer Disputes Redressal Commission,



New Delhi (NCDRC) titled as **D K Chopra V Snack Bar** which was ordered to be allowed by the NCDRC vide order dated 04.03.2014 as under:-

12. There has been a large number of incidents of exploitation of 'consumers', leading to a constant urge of a panacea. To protect the 'consumers' from the excessive prices charged by the Traders, it is provided that the State declared the rates for the purchase and sale of all marketable commodities, in order to protect the 'consumers', from arbitrary exploitation by the Traders. It is clear that the respondent has been charging 'double' amount. Since the year 2009, and even before it, it must have earned crores of rupees. It led the customers up the garden path. The 'can' does not mention that the OP can charge 'double' of the MRP.

13. From the arguments, it appears that the Airport Authorities are working in cahoots, with the Stall Owners, so that they pay them higher rate of the licence, which is not permissible, in law. Such like evidence, as the price list, produced by OP, can be created, at any time, which has got exiguous value.

14. MRP itself, includes the commission/profit, for a 'shop-keeper'. Under these circumstances, we accept the revision petition, set aside the orders of the for a below and allow the complaint. The OP is directed to pay compensation in the sum of Rs.10,000/- to the complainant, within 90 days, from the receipt of this order, it will carry interest at the rate of 9% p.a., till realization. However, it is not the end of the road. The OP has exploited the public, prior to, and after the incident. The public was taken for a ride, under the very nose of the Airport authority. The OP has no right to keep and misappropriate the public money. It must go back to the public. We, therefore, order that the OP will deposit a sum of Rs,50,00,000/-, the estimated rough



amount, with the Consumer Welfare Fund, by means of a demand draft drawn in favour of 'Pay and Accounts Officer - Ministry of Consumer Affairs, New Delhi', within 90 days, from the receipt of this order, otherwise, it will carry interest @9% p.a., till realization. Thereafter, the Registrar of this Commission shall report.

5. The petitioner also filed a review titled as **D. K. Chopra V Snack Bar** which was ordered to be dismissed vide order dated 23.04.2014 by observing that all the issues placed in the review petition have already been answered in the impugned judgment and accordingly, no ground of review was made out as per section 22(2) of the Consumer Protection Act, 1956.

6. Mr. J. K. Mittal, Advocate for the petitioner argued that the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has exceeded the jurisdiction by deciding the revision petition as well as the review petition of the respondent. It is further argued that the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has not considered the observations made by the district forum as well as State Consumer Disputes Redressal Commission.

7. The District Consumer Disputes Redressal Forum in order dated 02.09.2010 observed that the complainant i.e. the respondent has failed to explain how the two Red Bull (Energy Drink) were sold for excess price of the double rate as compared with the price of the same Red Bull (Energy Drink) sold at some other shops in the same campus. The State Commission in the order dated 10.04.2012 observed that the respondent has not adduced any evidence to establish the MRP of the product in question. The State



Commission was also convinced that there was no material to substantiate that the Red Bull (Energy Drink) was sold for a price over and above the MRP.

8. Mr. J. K. Mittal, Advocate for the petitioner referred the para no. 5 of the written submissions wherein it was mentioned that the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has exceeded jurisdiction while exercising revisionary power under section 21(b) of the Consumer Protection Act, 1986 and also relied on the judgment of the Supreme Court in **Rubi Chandra Dutta V United Insurance Company** (2011) 11 SCC 269, which was also followed by the National Consumer Disputes Redressal Commission, (NCDRC) in other cases.

9. It appears that there was no evidence led by the respondent regarding the MRP of Red Bull (Energy Drink) as well as regarding charging of price over the MRP by the petitioner on the date as complained of by the respondent.

10. After considering all the facts, the impugned order dated 04.03.2014 passed in revision petition bearing no. 4090/2012 and the impugned order dated 23.04.2014 passed in review petition bearing no. 70/2014 by the National Consumer Disputes Redressal Commission, New Delhi/(NCDRC) are set aside.

11. Accordingly, the present petition along with pending applications stands disposed of.

DR. SUDHIR KUMAR JAIN, J

AUGUST 5, 2024

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