

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

APPEAL NO. 731 OF 2007

(Against the Order dated 06/08/2007 in Complaint No. C-168/2000 of the State Commission
Delhi)

1. Z. AHMED

C/O NATIONAL ENTERPRISES, 3605, BARA HINDU RAO,
DELHI - 110006

.....Appellant(s)

Versus

1. M/S. COCO COLA INDIA

POST BOX NO. 4396, KALKAJI,
NEW DELHI - 110006

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

FOR THE APPELLANT :

Dated : 08 May 2024

ORDER

For the Appellant Mr P S Rana, Advocate

For the Respondent Mr Siddharth Banthia and Mr Ishan Narain,

Advocates

ORDER

1. This appeal under the Consumer Protection Act, 1986 (in short, the 'Act') seeks a review of the order dated 06.08.2007 of the State Consumer Dispute Redressal Commission, Delhi (in short, the 'State Commission') in complaint case no C-168/2000 allowing the complaint in part and directing the opposite party/respondent herein to (i) pay compensation of Rs 25,000/- to the complainant/appellant herein for having duped him and having offered prizes or other items which were neither partly nor fully covered by the amount charged for the transaction as a whole and creating an impression that something was given or offered free of charge; and (ii) make the payment and deposit within one month from the date of receipt of the order. This order is impugned before this Commission with the prayer that the respondent be directed to deliver the Honda-City car or the price thereof along with interest

@ 24% p.a. and to direct the respondent to pay Rs 2,00,000/- as damages for mental agony as well as costs and any other order deemed fit and proper.

2. Briefly put, the facts of the case are that the appellant had participated in a sale promotional scheme of the respondent, "Diwali Karishma" under which prizes were offered on sale of bottles of Coca Cola sold as per pictures printed on the inside of the crowns of the bottles. The scheme required those with crowns that had pictures were required to post the liner of the crown to the respondent at the address notified. Appellant contends that it had sent a liner with the picture of a Honda-City car by mail 'Under Certificate of Posting' but had not been awarded the prize though 5 cars were given as prizes. As efforts with the respondent to resolve the issue did not yield results, he filed the Consumer Complaint which came to be disposed by the impugned order.

3. I have heard the learned counsel for both the parties and perused the records.

4. The case of the appellant is that the prize scheme launched in September 1998, coca cola bottles with crowns that had a yellow band offered various categories of prizes including 5 Honda City cars. As per condition 6 of the scheme the appellant was entitled to one such car as per the printed lined in the crown of a bottle purchased by him. The appellant had mailed the liner to the given address on 07.10.1998 under postal certificate. As per condition 9, all entries had to be submitted before 28.10.1998 by ordinary post. However, as per the appellant, entries by way of other means of post were also accepted by the respondent through the agency appointed for the purpose, M/s Bansal & Co., Chartered Accountants. Appellant issued a legal notice on 24.02.2000 after failing to receive a clear reply and therefore a complaint was filed alleging that the denial of the Honda City car as prize amounted to fraud and cheating of the appellant and the general public and therefore an unfair trade practice. The State Commission held as under:

"12. ... There cannot be a worst unfair trade practice than this that out of crores of people who might have purchased their product only 10 or 15 were given the prizes. The allurements were of such high magnitude that even those who do not drink coca cola or any other product started purchasing Coca Cola for getting Honda City car or some other prize. This practice is uncouth practice played upon the gullible people.

13. It is beyond comprehension that the cost of Honda City car which at that time was more than Rs 8 lakhs was partly or fully covered by the amount charged by them for the sale of Coca Cola bottle.

14. Here is a practice which is highly abominable because rich and mighty traders shell out few lakhs whereas they earn hundreds of crores of rupees by selling their products under the garb of such a practice.

15. As is apparent from the definition itself offering of goods, prizes and other items or creating an impression that something is given or is offered free of charge when it is fully or partly covered in the charge of the transaction as a whole. There was no such transaction between the parties giving an impression that something was being given or offered free of charge whereas it was fully or partly covered by the charge

for the transaction. However, to offer such gifts of such huge value running into lakhs against a sale price of only Rs 10/- per bottle having a particular crown say a yellow band itself is unfair trade practice as it lures lakhs of consumers and promotes sale of goods in illegal manner.

16. Since the OP has committed an offence of unfair trade practice it has to be punished for that and given the direction to discontinue such a practice and not repeat it in future. We impose punitive damage of Rs 1 lakh which shall be deposited in favour of "State Consumer Welfare Fund (Legal Aid)".

As regards the issue of whether the appellant was a 'consumer' under the Act, the State Commission held that as he had purchased the bottle with the cap with a yellow band, he was a 'consumer'.

5. On the other hand, the respondent's argued that the impugned order has held that the State Commission's finding that the scheme was an unfair trade practice had been challenged before the Delhi High Court in WP (Civil) 6771/2207 by the respondent and that it had been conceded by the appellant that he had no objection to the setting aside of the findings of the State Commission with regard to the genuineness of the scheme. It was accordingly submitted that the only issue remaining was whether the appellant was a 'consumer' and the award of the compensation of Rs 25,000/-. It was argued that no proof of the purchase of the bottle had been placed on the record to establish a sale transaction by the appellant and therefore he could not be considered a 'consumer'. Reliance was placed on this Commission's judgment in **Coca Cola India Pvt. Ltd. Vs. Sachidanandan G & Ors.** in FA No. 342 of 2009 dated 08.09.2019. As regards the award of compensation, it was contended that the appellant had not been able to establish that the liner had been submitted to the respondent and that no proof of the purported certificate of posting had been brought on the record except a photograph of the envelope which merely stated "UPC" which could not be accepted as evidence of proof of posting. It was contended that the scheme itself mentioned that the prize winners would be selected on a 'first come' basis and that in case of many claimants there was to be a draw of lots. Therefore, the contention of the appellant that he was entitled to a prize could not be accepted. Reliance was placed on **Godfrey Phillips India Ltd. Vs. Ajay Kumar** in CA No. 2339 of 2008 decided on 01.04.2008.

6. The only issue in this case is whether the compensation awarded to the appellant by the State Commission is in order since the issue of unfair trade practice stands settled in view of the order of the High Court.

7. From the foregoing it is evident that the order of the State Commission awarding compensation to the appellant is based on the basis that the respondent's scheme of awarding prizes was an unfair trade practice in that it duped gullible customers to purchase the product of the respondent company. A promotional scheme intended to promote sales is designed to promote sales through marketing schemes and is therefore cannot be concluded to be fraudulent. In any case the appellant has admitted that Honda City cars were awarded as prizes. It cannot, therefore, be said that the scheme was designed in a manner to defraud. As this finding of the State Commission has been settled by the Delhi High Court with the appellant not contesting it, it is moot whether compensation on this basis is valid. From the facts of this case, it is apparent that the appellant had found a 'lucky' liner and was

legitimately pursuing his case in view of the fact his queries with the respondent had not yielded clear replies. His desire to get a Honda City car cannot be faulted. He has pursued his case against a large multinational company in the belief that he had 'won' a car under the scheme since he had, admittedly, come in possession of a liner under the scheme. His anxiety to claim the prize and to feel cheated in not winning a car, which was an attractive prize, cannot be disregarded. Similarly, his perseverance against a large multinational corporation cannot be discounted. For a man of ordinary means the attractiveness of winning a car in a prize can rightly be a motivation for pursuing the case legally. The appellant cannot be non-suited at this stage on the ground that he had not produced any receipt for the purchase of a bottle of coca cola as it is well known that bills for transactions involving small amounts such as sale of a bottle or two of cold drinks are not usually issued or insisted upon. The contention that a relationship of a 'consumer' based upon a sale consideration in the matter would tantamount to a hyper technical interpretation and in our view must be held to be not material since it is not in dispute that the appellant was in possession of a crown cap and liner with the Honda City car. It is also not the respondent's case that there was any foul play in the appellant coming into possession of the crown cap. Hence, while the State Commission's order of awarding compensation for unfair trade practice cannot be sustained, it is considered necessary to award the appellant costs since he was under a legitimate belief that his liner was entitled to a prize. The Consumer Protection Act is a beneficial legislation intended to benefit the consumer; *bona fide* consumers who invoke its provisions help keep the cause of consumer interest and protection alive.

8. In view of the foregoing discussion, the appeal is allowed and the impugned order of the State Commission is set aside. Respondent is, however, directed to pay the appellant litigation cost of Rs.25,000/- within a period of 6 weeks of this order, failing which it shall be paid with interest @ 6% p.a. till realization.

9. Pending IAs, if any, stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER