

Case No. 88

III (1995) CPJ 58 (NC)

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

Present: Hon'ble Mr. Justice V.Balakrishna Eradi, President; Mr. Justice S.S.Chadha
& Mr. S.P. Bagla, Members

MANAGER, ST.MARY'S HIRE PURCHASE (P) LTD -Appellant

vs

N.A.JOSE -Respondent

F.A.No.315 of 1993 - Decided on 30.8.1995

Hire Purchase agreement - default in payment of instalments - Financier is entitled to repossess the vehicle without any prior notice - No deficiency in service

Held : The Complainant committed defaults in the payment of monthly hire giving a right to the Opposite Party to terminate the agreement without notice and to forthwith retake and recover possession of the said vehicle. The exercise of right under the Hire purchase Agreement cannot be construed as a deficiency in services.

Held : The exercise of right by the appellant herein in accordance with the terms and conditions of the hire purchase agreement cannot be considered as any negligence on the part of the opposite party and the appellant cannot also be branded as being guilty of any deficiency in service.

Result : Appeal allowed

Counsel for the parties :

For the Appellant : Mr . M.P.R. Nair, Advocate.

For the Respondent : Mr. B. Vijay Kumar, Advocate.

ORDER

Mr. Justice S.S. Chadha, Member - This First Appeal is directed against the order dated 5.4.93 passed by the Kerala State Commission at Thiruvananthapuram allowing the complaint and directing the Opposite Party-Appellant herein to pay a

total sum of Rs. 1,02,919/- to the Complainant due to deficiency in service rendered by the Opposite Party.

2. The Complainant alleged in his complaint that he had requested Opposite Party which is a financing institution giving credit facilities to the customers, for a cash credit facility for a Swaraj Mazda - Mini Lorry, the total price of which was Rs. 2,25,000/- at that time. The Complainant in September, 1988 sent a demand draft for Rs. 30,000/- and in the second week of November, 1988 another amount of Rs.37,363/- was paid directly to supplier of vehicle M/s. P.J. Motors. The Complainant then requested the Opposite Party to pay Rs. 1,60,000/- towards the balance price of the vehicle, since the Complainant had already made arrangements for getting Hire Purchase through them for the vehicle. The parties entered into a Hire Purchase Agreement on 1.12.88 with respect to a new Swaraj Mazda Vehicle, later registered as No. KRU 6995, the total amount of hire of Rs. 2,38,400/- was payable from 1.1.89 onwards in 42 equated monthly installments (E.M.I) of Rs. 5,926/- The vehicle was delivered to the Complainant on the execution of said Hire Purchase Agreement by the Complainant with two guarantors. There is no dispute as to these facts.

3. The Complainant further says in his complaint that he paid six installments of Rs. 5,926/- totaling Rs. 35,556/-. The Complainant further says that the Opposite Party took the possession of the Registration Book which created Problems in plying of the vehicle on Inter State Routes and the vehicle was detained by the Police as well as Regional Transport Authority for want of registration certificate thus forcing the Complainant to garage the vehicle resulting in the non-payment of the installment of July, 1989. It is further alleged that the Opposite Party without notice or any warning repossessed the vehicle in July, 1989 and got the vehicle transferred in their name and ultimately attempted to sell the vehicle when the Complainant filed O.S. No. 13 of 1990 before the Munsiff's Court, Punalur which was later dismissed in default. The Complainant alleging deficiency in service claimed to get back the advance of Rs. 30,000/- + Rs. 37,363/- in all Rs. 67,363/- as also to get back the installments amount of Rs. 35,556/- together with interest at the rate of 18% per annum besides compensation of Rs. 50,000/- due to financial loss allegedly sustained by the Complainant due to the illegal acts of the Opposite Party.

4. The Opposite Party filed detailed version denying the allegations of deficiency in service or of any illegal acts. The Opposite Party took two preliminary objections namely that the Complainant had entered into the hire purchase arrange-

ment for commercial purpose and is thus not a consumer within the meaning of the Consumer Protection Act, 1986 and that the Complainant had instituted O.S.No.13/90 which was dismissed and thus the complaint filed by the Complainant is bad on the principles of *resjudicata*. On merits it is pleaded that as per the terms and conditions of the Hire Purchase Agreement the Complainant had to pay Rs. 2,38,400/- including the initial payment of Rs. 8/- in 42 monthly installments of Rs. 5,676/- each. It is further pleaded that the Complainant was to hold the vehicle during the currency of the agreement as bailee of the Opposite Party vide Clause 3 of terms and conditions of the Opposite Party vide clause 3 of terms and conditions of the said Hire purchase Agreement, that as per Clause IV of the said agreement, the Complainant retained the option to purchase the said vehicle on payment of the aforesaid total hire, that as per Clause 1 of the terms and conditions for the said agreement the Complainant was given a further option to return the said vehicle at any time and to terminate the hiring, and that it was further stipulated that in the event of any monthly hire remaining unpaid for a period of seven days after its due date of payment the owner may terminate the agreement without notice and to forthwith retake and recover possession of the said vehicle. It is pleaded that the Complainant committed default in payment of the 7th, 8th and 9th installment and the Opposite Party wrote to the Complainant in mid-September, 1989 that in the event of failure on the latter's part to clear the dues within three days from the receipt, the Opposite Party would be constrained to take possession of the said vehicle. As the Complainant failed to clear the dues, the Opposite Party therefore caused the said vehicle to be taken possession of in the end of September, 1989 and got the vehicle transferred in their favour and ultimately disposed of. The Opposite Party denied that there was any deficiency in service on their part in the exercise of the contractual right under the said Hire Purchase Agreement.

5. The State Commission in the impugned order held that the complaint was filed in respect of deficiency in service rendered by the Opposite Party to the complainant and, therefore, bar under Section 2(1)(d)(ii) of the Act does not apply and the complainant is a consumer for the purpose of the Act. The State commission further held that the earlier suit for perpetual injunction restraining the Opposite Party from selling the vehicle to third parties is entirely different from the reliefs sought in the complaint filed before the State Commission and therefore, the complaint is maintainable. The conduct of the Opposite Party in retaining the registration certificate of the vehicle causing difficulties to the Complainant amounted to deficiency in service rendered by the Opposite Party. On merits, the State Commission found that the Complainant had made only one default in the payment of 7th install-

ment due on July 1, 1989 and the vehicle was seized in the month of July itself without giving any prior notice to the Complainant and thus seizure of the vehicle without giving sufficient notice amounts to deficiency in service. The State commission held that the Opposite Party was liable to compensate the Complainant for the loss caused to the latter due to negligent attitude and deficient service by the Opposite Party. The State Commission granted relief of Rs. 1,02,990/- being the aggregate amount paid by the complainant besides a compensation of Rs.25,000/- for mental agony suffered by the Complainant.

6. We have heard the learned Counsel for the parties and have gone through the record. The State Commission seems to have been oblivious of the conditions contained in the Hire Purchase Agreement dated 1.12.88 admittedly executed between the parties. There are two essential elements therein one of bailment and second an element of sale, when the option to purchase is exercised by the hirer after fulfilling the terms of the agreement the. It bears repetition that under Clause IV of the said Hire Purchase Agreement the Complainant retained option to purchase the said vehicle on payment of the aforesaid amount. As per Clause 1 of the terms and conditions forming part of the said agreement, the Complainant was given a further option to return the said vehicle at any time and to terminate the hiring. It was further stipulated that in the event of any monthly hire remaining unpaid for a period of seven days after its due date of payment the owners may terminate the agreement without notice and to forthwith retake and recover possession of the said vehicle.

7. The State Commission's finding that the vehicle was seized by the Opposite Party without sufficient cause and without giving advance notice amounts to deficiency in service is both factually and legally wrong. In para 6 of the Suit No.13 of 1990 in the Court of Munsiff Punalur the Complainant had alleged that he had promptly remitted six installments towards the loan amount due from 1.1.89 to 1.6.89, that he had to satisfy the conditions of Trivandrum Regional Co-operative Milk Producers Union Ltd, whose milk he was transporting and he was in extensive unforeseen financial stringency, the Complainant could not remit the installments falling due on 1.7.89 and 1.8.89 and that the fact of the delay in remitting the two installments was conveyed to the Opposite Party and the same was orally ratified by the Opposite Party. It is further mentioned in that plaint that on 25.8.89 in the night, with the aid of some persons unknown to the Complainant, the Opposite Party seized vehicle No. KRU 6995 with ulterior motive. It is manifest that in the pleadings of the earlier suit

the Complainant admitted two defaults, though three defaults are alleged by the Opposite Party and the possession taken on 25.8.89 by the Opposite Party, which alleges possession was taken in September 1989. The Complainant committed defaults in the payment of monthly hire giving a right to the Opposite Party to terminate the agreement without notice and to forthwith take and recover possession of the said vehicle. The exercise of right under the Hire Purchase Agreement cannot be construed as a deficiency in service. The Opposite Party had sent a notice in mid-September, 1989 calling upon the Complainant to clear dues within three days from the date of receipt failing which the Opposite Party would be constrained to take possession of the said vehicle. The Complainant failed to clear the arrears of three installments and therefore the Opposite Party took possession of the vehicle in the end of September 1989. The State Commission was thus not factually correct in holding that Complainant had made fault only in the payment of seventh installment which was due on 1st July, 1989 and the vehicle was seized in the month of July itself without any notice before the seizure. There is no reason to disbelieve the version of the Opposite Party that the Complainant committed default in payment of three installments and a notice was given in 1989 on the expiry of which alone possession of the vehicle was taken. The version of the Complainant cannot be believed as he has given two conflicting versions one in the complaint and the other in the earlier suit filed wherein the installments and the possession of the vehicle had been taken on 25th August, 1989.

8. The State Commission further recorded that they were convinced that the Complainant could not ply the vehicle as the registration certificate book was taken into custody by the opposite party soon after the registration and thus conduct of the Opposite Party caused difficulty to the Complainant amounting to deficient service. In para 8 of the plaint of the suit the Complainant stated that after the execution of the Hire Purchase Agreement on 1.12.88 all the records such as Registration Book, Insurance Policy, Permit relating to Vehicle No. KRU 6995 had been taken to the custody by the Opposite Party and a certificate showing the same fact of its custody as security against the loan on the above vehicle was issued to the Complainant and that the Complainant is keeping only Photostat copy of the R.C. Book, Insurance Policy, etc. relating to the said vehicle. It was nowhere mentioned in the plaint of the suit that the vehicle was detained by the police or Regional Transport Authority. No documentary evidence has been produced of any such detention by the Police or Regional Transport Authority or any challans or payment of any fines. The Complainant merely improved his version in the Complainant's finding that the Complainant was forced to garage his vehicle because material on the record is against the version given by the Complainant in the plaint of the said suit.

9. The exercise of right by the Appellant herein in accordance with the terms and conditions of the Hire Purchase Agreement cannot be considered as any negligence on the party of the Opposite Party and the Appellant cannot also be branded as being guilty of any deficiency in service. In the result the appeal is allowed, the impugned order of the State Commission dated 5.4.93 is set aside and the complaint dismissed leaving the parties to bear their own costs. This order will however, not prejudice the right of the Complainant to pursue his remedy by way of suit or any other processing available to him in law.

Appeal Allowed