## I. Case Reference

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| Case Citation | : | (2021) ibclaw.in 32 SC |
| Case Name | : | Tata Motors Ltd. Vs. Antonio Paulo Vaz and Anr. |
| Appeal No. | : | Civil Appeal No. 574/ 2021 (Arising out of SLP (C) No. 10220 of 2020) |
| Judgment Date | : | 18-Feb-21 |
| Court/Bench | : | Supreme Court of India |
| Act | : | The Consumer Protection Act, 1986 |
| Justice | : | Mr. Justice Uday Umesh Lalit |
| Justice | : | Mr. Justice Hemant Gupta |
| Justice | : | Mr. Justice Ravindra Bhat |

## II. Full text of the judgment

**ORDER**

**S. RAVINDRA BHAT, J.**

1. This special leave petition was heard finally; Leave granted, it impugns an order of the National Consumer Disputes Redressal Commission[1] (hereafter "Commission") which affirmed the order of the Goa State Consumer Disputes Redressal Commission (hereafter "State Commission").

2. The relevant facts are that that the first respondent, Antonio Paulo Vaz (hereafter "Vaz") bought a car after paying the agreed total consideration price in 2011 to the second respondent, Vistar Goa (P) Ltd, a dealer in cars (hereafter "the dealer"). At the time of purchase, Vaz availed bank credit. A 2009 model car which had run 622 kilometres was sold to him in place of a new car of 2011 make. Vaz, therefore, requested for refund of the price paid or replacement of the car with one of 2011. The price was however not refunded; neither was the car replaced. Vaz refused to take delivery of the 2009 model car. He attempted a resolution of his concern and thereafter, caused a legal notice to be issued to the dealer, as well as the appellant. 1Dated 09 January, 2020 in Revision Petition No. 1809 of 2014 Upon his grievance remaining unaddressed, he preferred a complaint before the Goa District Consumer Redressal Forum (hereafter "the district forum").

3. The district forum heard the appellant, which was represented, and Vaz. Despite service of notice (of the complaint) the dealer was absent and was unrepresented; it was therefore proceeded against ex parte. The district forum determined 'deficiency in service' and held the dealer and the appellant (i.e. manufacturer of the car) to be jointly and severally liable. The district forum's order, (made on 27.09.2013) noted that the car had some defects; the undercarriage of the car was *"fully corrugated and had scratch marks on the body. The alloy wheels were also corrugated inside and the car also travelled almost 622 km. Also some parts such as music system was not provided although agreed."* The appellant denied the facts and alleged that Vaz, the customer had been informed that the car

purchased by him was a 2009 model. The district forum observed that this averment (by the appellant) was apparently incorrect because if Vaz had agreed to such an offer, he would not have refused to take the delivery of the car which was even then with the dealer; he also urged that the music system was not provided. The district forum further stated that:

> *"the customer when he buys new vehicle, he is under the impression that a new vehicle would be defect free. And in the said case it is admitted that the said car is used vehicle, and make of 2009 but the registration was done for the 1st time in the name of the Complainant in 2011. Also the car had travelled almost 622 kms. The O.P. 2 stated that there was pre delivery test. But for this test the car travelled 622 kms?"*

4. In the light of these facts and observations, the district forum held that there was deficiency in the service committed by the dealer and the appellant, and allowed Vaz's complaint, holding the dealer and the appellant jointly and severally liable to replace the car with a new one of the same model or to refund the entire amount of the car with interest @10% from the date given of delivery. Both were also jointly and severally directed to pay 20,000/- to Vaz towards ₹ mental stress and agony in addition to costs of ₹ 5,000/-.

5. Aggrieved, the manufacturer preferred an appeal to the State Commission under Section 15 of the Consumer Protection Act (hereafter "the Act"). The state commission dismissed the appeal with costs of ₹ 5,000/-. It held that Vaz was a consumer as defined under Section 2 (d) (i) of the Act; and that he was awaiting delivery of the car. It also ruled that an expert report was not necessary for cases where the facts speak for themselves, and the present case was one such. The appellant's plea that its relation with the dealer was on a principal-to-principal basis was unsubstantiated according to the state commission, by any material or evidence. The appellant had not produced any documentary evidence in support of its allegation; nor did it produce the invoice No. 9010016851 dated 28.02.2009. The state commission also rejected the plea that no direct sale was undertaken by the appellant; it concluded that the appellant sold to Vaz, the defective car manufactured by it, and the dealer and the appellant were liable for sale of the defective car.

6. Before the National Commission, the appellant urged two contentions: one that Vaz was not a "consumer" since he did not accept delivery of the car from the dealer, and two that its relationship with the dealer was on principal-to-principal basis and that therefore, no liability could be fastened upon it. The impugned order negatived both arguments. For rejecting the second submission, the impugned order noticed that the manufacturer (i.e. appellant) appointed dealers after its due diligence, and that *"the sale of its goods is undertaken by the Manufacturer through its dealers, the Manufacturer exercises superintendence over its dealers including the right to terminate their dealerships."* The appellant's subsequent conduct, i.e., termination of the dealership, weighed with the National Commission, which relied on a letter dated 04.12.2012 issued to the dealer, which stated that it was informed by the appellant about:

> *"the serious short comings in the fulfilment of the obligations cast upon you under the said agreement. In spite of repeated follow ups, 4 meetings, telecons and correspondence vide emails (copies enclosed) dated 18/5/12, 5/11/12, 8/11/12, 9/11/12, 15/11/12, 16/11/12, 19/11/12 and 21/11/12 by Area Manager, RCSM and others in the region explaining you the continuous drop in sales volume for last 18 months across all categories of products, nonavailability of vehicle stocks, inadequate manpower for Sales & After Sales, not adhering to the standard operating procedures on processes, non-availability of Test Drive Vehicles,*

*increasing number of customer complaints & inability/lack of effort in resolving them. There is no improvement in overall operations of the dealerships nor have we seen any efforts put by you for the same.*

*We, on a review, find that due to the aforesaid reasons you are in serious breach of the terms of the dealership agreement and are unable to continue business operations with Tata Motors Ltd., and there remains no chance to improve your performance and therefore the state of affairs does not justify continuance of dealership.*

*We are therefore constrained to issue you this 90 day notice of termination of your dealership. You shall cease to be the Tata Motors Passenger Cars dealer after 90 days from the receipt of this letter and all business pertaining to Tata Motors Passenger Vehicles, parts and accessories shall stand withdrawn."*

The National Commission was also influenced by the fact that the appellant had, before the district forum, filed its written version in which it *inter alia* explicitly stated that the relationship between the Manufacturer and its dealer was on 'principal to principal' basis; nevertheless, it did not file a copy of the dealership agreement in support of its argument. The National Commission was also crucially impressed with the fact that despite this lacuna, the appellant further did not *"make any categorical averment that the deficiency and (mis)acts were only on the part of the Dealer alone. On the contrary, it inter alia also defended its Dealer."* It was further observed in the impugned order, that the appellant averred that it had the support of excellent dealerships/authorized service centres, with excellent workshop setup for after-sales servicing of the cars, and its products were, according to it, well known in the market over a period of time.

7. The National Commission closely scrutinized the reply of the appellant before the district forum, and concluded that other than extolling its product and its aftersales services, no material to substantiate its relationship between the dealer being one of principal-to-principal basis had been adduced. It further went on to notice the averments in the appeal before the state commission and highlighted that the dealer's fault was not put forward as a defence. After considering all these averments and the submissions made before it, the National Commission held that the relationship of the dealer and the appellant in the facts appearing from the record, did not absolve it of liability. It therefore, issued several directions- firstly upholding the orders of the fora below it and further declaring that the appellant had indulged in unfair trade practice, for which it was imposed with costs of 2,00,000/- ₹ of which ₹ 1,00,000/- was to be made over to Vaz and the balance to the Consumer Legal Aid Account of the District Forum within four weeks. The appellant was also ordered, through its Chief Executive under Section 14 (1) (f) of the Act to immediately pass appropriate directions to all its dealers to discontinue such unfair and deceptive acts, and not to put 'consumer'(s) to such loss and injury and to imbibe accountability and systemic improvements for the future. Further, the Chief Executive was directed to furnish a report-in-compliance to the District Forum within four weeks. In addition, the amount deposited with the District Forum in compliance of the National Commission's Order dated 01.05.2014, along with interest accrued on it, was to be utilized by the District Forum towards satisfaction of the Award.

***Arguments of parties***

8. The appellant contested the findings in the impugned order, and mainly focused its submissions on the conclusions drawn by the National Commission regarding the absence of a principal-to-

principal relationship. It was highlighted that besides impleading the appellant and seeking relief, no allegations against it were made in the complaint by Vaz before the District Forum. The appellant highlighted that the entire drift of the complaint was that the 2009 make car manufactured by it, which had been sold by the dealer, was an old one, and that Vaz was misled into agreeing to purchase it, without being aware of the model, or that the particular car had already been used. The appellant therefore, urged that there was neither averment, nor allegation by Vaz, on the basis of which any liability could be pinned upon it, a third party to the entire transaction, merely because it was the manufacturer. It was submitted that the complainant never alleged or proved that any one of its employees was privy to the transaction in question, or had led Vaz to purchase the car in question from the dealer.

9. It was urged that unless Vaz, the complainant, could establish that there was a defect in the product, i.e. the car, the manufacturer could not be fastened with liability. Reliance was placed upon the decisions of this court in *Maruti Udyog Ltd. v. Susheel Kumar Gabgotra* [2]*and Indian Oil Corporation v. Consumer Protection Council*[3].

10. It was argued on behalf of the appellant that the invoice by which the car was sold to the dealer was a part of the record. Reliance was placed on that invoice, which is dated 28th of February 2009 to contend that the title to the property, i.e. the car in question had passed to the dealer. In the circumstances, urged the appellant, the onus squarely lay upon Vaz to prove the alleged defect or deficiency in the car, (for which the dealer made a misleading representation that it was of 2011 make and further that it was new). Since no evidence was led in this regard, it was contended that the district forum as well as the State and National Commission fell into a fundamental error in holding that there was a deficiency in service on the part of the appellant manufacturer.

11. Stressing that the manufacturer had no relationship with the consumer, i.e. Vaz, it was urged further that neither was any special knowledge on the part of the appellant attributed to it, nor proved during the proceedings, nor was in any fact a word in any of the pleadings in this regard. Learned counsel further argued that the materials placed on record, such as the invoice or purchase of the car, as well as a registration certificate clearly showed that the model and make of the car was of 2009; this was apparent and well known to Vaz. It was also highlighted that the complaint stated that the car was an old one and had already run 622 km; however, the legal notice issued to the dealer, on behalf of Vaz had, to the contrary, claimed that the car had done 1448 kilometres. It was submitted that in these circumstances, it was essential that special knowledge on the part of the manufacturer about the fact that the make of the car was represented to be 2011, and that someone on its behalf had made that representation, had to be both pleaded and proved. In the absence of such proof, the manufacturer-appellant could not be held liable. During the period of warranty, the appellant could have notified the manufacturer of any latent or obvious defect in the product. In such an event, if the manufacturer, i.e. the appellant, were to not take adequate action to repair the car or replace it, then, it could have been held liable.

12. The learned counsel appearing on behalf of the appellant relied upon documents that were produced with the leave of this court, along with an application. Two documents especially were relied upon. The first was the invoice by which the dealer purchased the vehicle. Learned counsel stressed that the vehicle was purchased and delivered in February 2009 itself. The second document relied upon, which concededly had not been produced in the fora below, was the dealership agreement between the appellant and the second respondent. Reliance was placed upon clause 29 of this dealership agreement, which reads as follows:

> *"29. In case of termination or expiry of this Agreement, all orders, which may have been received from the Dealer previous to such termination or expiry, shall, without any liability to the Company for the Spare Parts, be cancelled unless expressly otherwise agreed in writing by the Parties, but in such a case, no obligation of the Dealer arising out of the previous supplies shall cease. On termination of the Agreement, the Company may, at its option, require the Dealer to sell and the Dealer shall thereupon sell to the Company all unsold or unused units of Spare Parts as the Dealer may have in hand. It shall be entirely at the Company's discretion as to how many or how much, if at all, of the Spare Parts previously sold to the Dealer shall be bought from him in terms of this Clause. Such Spare Parts as are bought by the Company under this Clause shall be paid for by the Company at the actual Net Dealer price paid by the Dealer to the Company for the purchase of the Spare Parts. The Company shall also pay to the Dealer all expenses incurred by him of taking delivery of the Spare Parts front the Company."*

13. Refuting the appellant's arguments, it is urged on behalf of Vaz that the impugned order has no error calling for interference, and that this Court should not exercise its discretion to upset the findings conferred by it in exercise of its powers under Article 136 of the Constitution of India. It is reiterated that the consumer, i.e., Vaz was informed at the time of the vehicle's booking that it was fitted in accordance with the specifications required by him. At that time, he was never informed that the vehicle (the car) in question had been used and had been manufactured in 2009 and, was therefore old. After registering the vehicle, the complainant returned to the showroom and then discovered that the car had several defects, including that the undercarriage was fully corrugated and the body had several scratch marks. These flaws were immediately pointed out to the dealer; the dealer was also requested to replace the vehicle. However, they refused to do that.

14. It is urged that the purchaser of the car always expects that the product would be free from all defects. In this case, however, the consumer/Vaz consistently refused to take delivery because the car was old; it was not in accordance with the representations made, had several drawbacks and to top it all, had been used previously. It was also argued on behalf of Vaz that the dealer nowhere stated that an old car was being sold to him, but in fact held out that it was brand new, and furthermore in the reply to the letter dated 18.02.2011, the appellant insisted that the vehicle had no defects and was manufactured in 2009. Learned counsel for Vaz highlighted that in the written statement before the District Forum as well as in the appeal to the State Commission, the present appellant, despite highlighting the absence of any direct relationship or dealing with customers regarding sale and purchase of vehicles, pointedly alleged that a cash discount of Rs.80,000/- was offered to Vaz.

15. Learned counsel for Vaz relied upon the following written submission of the present appellant before the District Form, *"the opposite party No.1 also informed him about the old Tata Xenon car of 2009 bearing a cash discount of Rs.80,000/- along with a free music system, mud flap and matting was offered."* This deliberate misrepresentation, emphasised learned counsel for Vaz, was squarely attributable to the appellant, i.e. the manufacturer as well as its dealer, and this amounted to unfair trade practice and deficiency in service within the meaning of the expression under Section 2(1)(g) read with Section 2(1)(o) and Section 2(1)(r) of the Consumer Protection Act. Learned counsel for Vaz relied upon the decision in Jos Philip Mampillil v. Premier Automobiles Limited and Anr. [4] where it was observed that:

> *"It is shameful that a defective car was sought to be sold as a brand new car and instead of acknowledging the defects, the manufacturer chose to deny its liability."*

16. It is submitted that though the appellant was provided sufficient opportunity, it chose not to produce the dealership agreement. Having repeatedly failed to place the material before the adjudicatory forums, the appellant should not be granted further opportunity to rely upon a document which was always available with it.

17. Learned counsel submitted that arguendo, even if the dealership agreement were to be taken into account, it is apparent that the commercial relationship between the appellant and its dealer remains that of a principal and agent. It is urged that nomenclature apart, three factors portray the relationship between the two parties. Firstly, customers cannot purchase vehicles manufactured by the appellant directly and have to purchase them through an authorised dealer like the one in the present case. Secondly, the dealer exclusively sells cars manufactured by the appellant in the designated territories. Its sales policy, pricing etc. are entirely dictated by the appellant and consideration paid towards the product/car is remitted to the appellant by the dealer.

18. Learned counsel for Vaz also relied upon the appellant's letter terminating the dealership in the present case, dated 04.12.2012 and stated that it clearly established that there was a direct and substantial cost borne by the appellant as a consequence of the dealer's misconduct in respect of the sales and customers' dissatisfaction and (2) that there was a commercial relationship between the appellant and the dealer which was liable to be terminated on account of the latter's failure to render satisfactory service to customers. It is underlined that both these factors can only be comprehended in the context of a principal-agent relationship. Learned counsel relied upon the judgment of this court reported as *Vivek Automobiles Ltd. v. Indian Inc.*[5] and argued that the decision establishes that in law, a car dealer acts as the agent of the manufacturer, in India.

***Analysis and conclusions***

19. Before proceeding further, it is essential to recapitulate the facts. Vaz approached the dealer to purchase a car; he was informed about the availability. Thereafter, he appears to have been told to have the car registered (after payment of the consideration), which he did. The vehicle delivery note and invoice (issued to Vaz) are both dated 25.1.2011. Then, he discovered in the showroom, that the car was old, a 2009 model and that it had many features (corrugated undercarriage, scratches, etc.) clearly pointing to its being used and old. The vehicle registration document, hypothecation, invoice and gate pass issued, as well as the vehicle delivery document, all show that the car was of 2009 make. Vaz refused to take delivery, and insisted upon delivery of a new car. The dealer refused. The matter stood thus. On 08.02.2011, Vaz wrote a letter to the dealer. In this, he claimed that the vehicle was old, and levelled allegations about it being used and certain features noticed by him, which caused him to refuse to take delivery. On 18.02.2011, the dealer denied Vaz's legal notice and stated that no representation was ever made, that the vehicle was not of 2009 make and that replacement was out of the question. Upon no further response, Vaz caused a legal notice to be issued on 11.11.2011. The consumer complaint was filed on his behalf, on 14.12.2011.

20. Before the district forum, the dealer and the appellant were served with notices; the former never appeared and went unrepresented; it was therefore set down *ex-parte*. The appellant entered appearance, contested its liability and alleged that its relationship with the dealer was not one of agent principal, but rather, principal to principal and that it could not be held liable.

21. The dealership agreement in this case, dated 31.07.2008 as observed earlier, was not produced before the fora below. However, it was produced with an application after seeking this court's leave

in that regard. Clause 4 defines the territorial scope and subject matter of the agreement constituting the second respondent as a dealer. It is extracted below and reads as follows:

> *"Territorial Scope and subject matter of the agreement*
>
> *4 (a) subject to the terms hereof, the Company hereby appoints the Dealer as its Authorised Dealers to sell and service on a principal to-principal basis the following products manufactured by the Company:*
>
> *Tata Indica, Tata Indigo, Tata Safari, Tata Sumo, Tata Carrier, Tata Spacio, Tata Tourin (hereinafter referred to as the 'Products' which expression shall also mean and include, wherever the context so permits, such other products marketed by the Company as may specifically and expressly be included within the scope of this Agreement by mutual consent of the Parties in writing from time to time) and parts and accessories thereof (hereinafter referred to as the 'Spare Parts') presently manufactured and/or marketed by the Company.*
>
> *(b) It is agreed that the Products and Spare Parts specified in Clause (a) above shall be sold to the Dealer by the Logistics Provider and/or the Company as the case may be for resale by the Dealer within the territory described hereunder (hereinafter called the 'Territory') in accordance with the provisions of this Agreement.*
>
> *(i) The city of PANJIM for Tata Indica, Tata Indigo, Tata Safari and their variants, where the Dealer is entitled to sell such vehicles to customers dwelling within that city as also to customers outside the city but within the State, provided that (a) such customers are from a 'free territory' i.e. a place which is not allocated by the company to any other Dealer for distribution of such vehicles and (b) all sales, whether they be to the city or the non-city customers, shall take place within the city.*
>
> *(ii) In the State of Goa, districts: ALL for Tata Sumo, Tata Carrier, Tata Spacio, Tata Tourin and their variants, where the Dealer is entitled to sell such vehicles to all customers located within those districts.*
>
> *(c) In the event the areas or the boundaries of the Territory or any parts or parts thereof is/are altered, re-demarcated or reconstituted by Governments or any other authorities for any reason whatsoever, the Company shall be at liberty to redetermine and reallot the territory of the Dealer under this Agreement.*
>
> *(d) The Agreement shall not preclude the Company from entering into or continuing any Dealership Agreement or Agreements with any other person or persons within the Territory for sale of the products and/or the Spare Parts and resale by that person thereof in the Territory on such terms as the Company in its absolute discretion deems fit.*
>
> *(e) It is expressly agreed and declared that notwithstanding anything herein contained, this Agreement does not constitute any form of agency or principal-agent relationship between the Dealer and the Company. The Dealer and the Company shall deal solely on a principal to principal basis in the manner provided in this Agreement.*

22. Clause 1(iv) reserves to the appellant an overriding right to "make direct sales of the products and/or the spare parts to any persons within the territory" [6] Clause 18 binds the appellant to

conform to the warranty published by it and all implied warranties under law. It reads as follows:

> *"Warranty*
>
> *18. The Dealer agrees that the only warranty binding on the Company shall be the warranty published by the Company and all implied warranties under law are hereby excluded. The Dealer shall have no authority to give to his purchasers a different warranty binding upon the Company. The Dealer shall meet the Company's warranty obligations to the purchasers of the products and/or the Spare Parts in accordance with the sales procedures and advices issued or to be issued by the Company from time to time."*

By Clause 20, the dealer is under an obligation to advertise, display or demonstrate at its own expense the products, spare parts and service facilities within the territory granted to it as is approved by the appellant. By virtue of Clause 30(a), upon the termination of the agreement, the dealer has to immediately turn over to it its works (i.e. that of the appellant) or original spare parts, warehouse or spare parts centre or bonafide retail parts that he may have in hand for execution which remains unfulfilled together with deposits made by the buyers and also records and complete lists of owners. Clause 30(b) states that on termination or expiry of the agreement the dealer has to return to the company free of costs all technical, sales or other literature, statutory circulars, catalogues, bulletins and folders.

23. It is useful to notice that before the District Forum, no role or wrong-doing was attributed to the appellant; in fact, no allegation was levelled against it. In para 2, the complaint narrates that Vaz was informed about securing delivery; para 3 states that after registering the car, he (Vaz) went to the showroom to take delivery and was shocked to see that the car was not a brand new one, and that it had several defects. Para 3 further describes the nature of the defects. In para 4, Vaz states that he immediately lodged a protest with the dealer and requested for replacement which was denied and that the dealer forced him to take delivery of the car. Vaz alleges that the delivery however, was not taken. Paras 5, 6, 7 and 8 are extracted which contain the subsequent narration of facts:

> *"5. The complainant states that he had already informed the respondent that he had obtained financial assistance from the Syndicate Bank, Agacaim Branch, Agacaim, Goa to purchase the said car and the entire amount of the said car has been fully paid to Vistar Motor, however, till date, the complainant had not received the delivery of the car due to the aforesaid defect also. The respondent has not made any efforts to replace the said car with a new car, on the contrary the respondent has tried carrying repair works of the said car with the said defect. Due to the negligence on the Respondent No.1 part, the complainant has to undergo mental tension, hardship and financial loss.*
>
> *6. The complainant states that he thereafter approached the conciliation forum; however, the same failed as the respondent refused to give him a new car. The complainant has thereafter by way of a legal notice, called upon the respondent no.1 to replace the said car with the new car or refund the entire amount of Rs.9,50,536/- which is the amount spent by him as on date including interest on the loan until final payment within 7 days. However no response has been received by the complainant and he is thus forced to institute a legal proceedings in the Consumer Court to seek compensation against you.*

*7. The complainant states that this complaint is not barred by the limitation.*

*8. The cause of action has arisen in the State of Goa and within the territorial jurisdiction of this Hon'ble Court. As such this Hon'ble Court has the jurisdiction to entertain, hear and decide the present petition."*

24. The liability of a manufacturer, such as the present appellant, was the subject matter of a decision of this court in Indian Oil Corporation v. Consumer Protection Council, Kerala[3]. There, this court observed as follows:

*"14. In order to decide this question it is necessary for us to look at clause 1 (a) of Ex. R-2. That is the memorandum of agreement between Indian Oil Corporation and M/s Karthika Gas Agency. That establishes the relationship between Indian Oil Corporation, the appellant and Karthika Gas Agency as distributor of the Corporation, on principal to principal basis. (emphasis supplied) Clause 17 of the agreement is as under:*

> *"In all contracts or engagements entered into by the Distributor with the customers for sale of LPG and/or the sale and/or installation and/or repairs of appliances and/or connections thereof with LPG cylinders (filled or empty) and/or refills and/or pressure regulators and/or attached equipment the Distributor shall act and shall always be deemed to have acted as a principal and not as an agent or on account of the Corporation, and the Corporation shall not in any way be liable in any manner in respect of such contracts and/or engagements and/or in respect of any act or omission on the part of the Distributor, his servants, agents and workmen in regard to such installation, sale, distribution, connections, repairs or otherwise. The Distributor shall be bound to inform the customers in writing of this provision, through correspondence or at the time of enrolment, of the customer."*

*15. Thus, it is clear that the relationship is one of principal-to-principal basis. The reliance by the authorities below that the circumstances, documents and conduct of parties proved the relationship as of principal and agent is difficult to understand. This is a case in which the second respondent Karthika Gas Agency has given an unauthorised connection. If it was a legal connection nothing would have been easier than to produce tile subscription voucher. Such a voucher as rightly pointed out by the learned counsel for the appellant, is important and will bind the appellant-Corporation. The authorities below have not given due importance to the subscription voucher. Section 3(2) of the LPG Control Order reads as under: "No person shall possess or use liquefied petroleum gas filled in cylinder or in bulk form unless he has received supply thereof from a distributor or from an Oil Company."*

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*18. This puts the position beyond doubt. It should have made the consumer aware of his legal rights. Further, in this case for the unauthorised acts of second respondent, its distributorship came to be cancelled. The fact that it was revived is of no consequence if due regard is to be had to clause 17 of the agreement which has been extracted above. Section 2 (g) of the Consumer Protection Act states as follows:*

*"(g) 'deficiency' means any fault, imperfection, shortcoming or inadequacy in the quality,*

*nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;"*

*19. Insofar as there is no privity of contract between the appellant and the consumer no 'deficiency' as defined under Section 2 (g) (quoted above) arises. Therefore, the action itself is not maintainable before the Consumer Forum. For all these reasons, we set aside the judgments of the authorities below. Civil Appeal will stand allowed. However, in the circumstances of the case there shall be no order as to costs."*

25. In *General Motors (I) (P) Ltd. v. Ashok Ramnik Lal Tolat* [7] the concurrent findings of the three forums under the Consumer Protection Act were that the appellant was guilty of unfair trade practice, leading to award of punitive damages. The court took into consideration the fact that there was no pleading in support of such a claim (for punitive damages). This court observed as follows:

*"15. What survives for consideration is the submission of the learned Senior Counsel for the appellant that there was no claim before the National Commission for the punitive damages nor had the appellant an opportunity to meet such claim and that part of the order needs to be set aside. We find merit in this submission....*

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*20. We have already set out the relief sought in the complaint. Neither there is any averment in the complaint about the suffering of punitive damages by the other consumers nor was the appellant aware that any such claim is to be met by it. Normally, punitive damages are awarded against a conscious wrongdoing unrelated to the actual loss suffered. Such a claim has to be specially pleaded. The respondent complainant was satisfied with the order of the District Forum and did not approach the State Commission. He only approached the National Commission after the State Commission set aside the relief granted by the District Forum. The National Commission in exercise of revisional jurisdiction was only concerned about the correctness or otherwise of the order of the State Commission setting aside the relief given by the District Forum and to pass such order as the State Commission ought to have passed. However, the National Commission has gone much beyond its jurisdiction in awarding the relief which was neither sought in the complaint nor before the State Commission. We are thus, of the view that to this extent the order of the National Commission cannot be sustained. We make it clear that we have not gone into the merits of the direction but the aspect that in absence of such a claim being made before the National Commission and the appellant having no notice of such a claim, the said order is contrary to the principles of fair procedure and natural justice. We also make it clear that this order will not stand in the way of any aggrieved party raising a claim before an appropriate forum in accordance with law."*

26. The record establishes the absolute dearth of pleadings by the complainant with regard to the appellant's role, or special knowledge about the two disputed issues, i.e. that the dealer had represented that the car was new, and in fact sold an old, used one, or that the undercarriage appeared to be worn out. This, in the opinion of this court, was fatal to the complaint. No doubt, the absence of the dealer or any explanation on its part, resulted in a finding of deficiency on its part, because the car was in its possession, was a 2009 model and sold in 2011. The findings against the dealer were, in that sense, justified on demurrer. However, the findings against the appellant, the

manufacturer, which had not sold the car to Vaz, and *was not shown to have made the representations in question,* were not justified. The failure of the complainant to plead or prove the manufacturer's liability could not have been improved upon, through inferential findings, as it were, which the district, state and National Commission rendered. The circumstance that a certain kind of argument was put forward or a defence taken by a party in a given case (like the appellant, in the case) cannot result in the inference that it was involved or culpable, in some manner. Special knowledge of the allegations made by the dealer, and involvement, in an overt or tacit manner, by the appellant, had to be proved to lay the charge of deficiency of service at its door. In these circumstances, having regard to the nature of the dealer's relationship with the appellant, the latter's omissions and acts could not have resulted in the appellant's liability.

27. The consumer, Vaz had relied on Jose Philip Mampillil (supra). The deficiencies found are extracted below:

> *"6. We have heard the parties at great length. We have seen the material on record. From the material on record, it is clear that the car was defective at the time of delivery. There is no doubt that there were defects in the paint and that the piston rings of the engine had gone. The submission that the piston rings got spoiled after the delivery was taken, cannot be accepted. The agent of the 1st respondent i.e. 2nd respondent, had acknowledged that the piston rings were defective. They would not have so acknowledged unless it was a defect at the time of the delivery. Had this defect occurred by virtue of the appellant's misusing the car, the 2nd respondent would never have accepted the responsibility for repair of the piston rings.*
>
> ********** **********
>
> *8. In our view, it is shameful that a defective car was sought to be sold as a brand new car. It is further regrettable that, instead of acknowledging the defects, the 1st respondent chose to deny liability and has contested this matter."*

28. Clearly, the dealer, in the facts of that case, acknowledged the defects in the car. *In the present case, the dealer did not acknowledge any such deficiency*; furthermore, the car had been made over to the dealer on 28.02.2009 (as is evident from an invoice issued to the dealer, a copy of which is on the record). Therefore, it is difficult to expect the appellant, a manufacturer, to be aware of the physical condition of the car, two years after its delivery to the dealer. During that period, a number of eventualities could have occurred; the dealer may have allowed people to use the car for the distance it is alleged to have covered. Also, the use of the car and prolonged idleness without proper upkeep could have resulted in the undercarriage being corrugated. All these are real possibilities. Unless the manufacturer's knowledge is proved, a decision fastening liability upon the manufacturer would be untenable, given that its relationship with the dealer, in the facts of this case, were on principalto- principal basis.

29. For all the above reasons, the findings of the National Commission and the lower forums against the appellant are set aside. This court is conscious that the car, by now would have deteriorated; in these circumstances, it is open to the respondent, Vaz to execute the order for alternative relief (of refund, with interest granted to him, by the district forum, as affirmed by the State and National Commissions) through the district forum concerned. During pendency of this appeal, the court had directed the appellant to deposit certain amounts. It is hereby directed that the amounts so deposited, with interest accrued should be refunded to the appellant. Subject to these observations

and directions, the appeal is allowed; but in the circumstances, without order on costs.

**.....J**
**[UDAY UMESH LALIT]**
**.....J**
**[HEMANT GUPTA]**
**.....J**
**[S. RAVINDRA BHAT]**

**New Delhi,**
**February 18, 2021.**

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References:

1. Dated 09 January, 2020 in Revision Petition No. 1809 of 2014[↩]
2. (2006) 4 SCC 644[↩]
3. (1994) 1 SCC 397[↩][↩]
4. 4(2004) 2 SCC 278[↩]
5. (2009) 17 SCC 657[↩]
6. The relevant parts allow the present appellant to “make direct sales of the products and/or the spare parts to any persons within the territory” for use or resale, including establishment of showrooms, branches, workshops, service centres etc; appoint staff or appropriate trained salesmen and technical personnel in adequate number; establish additional sales officers, showrooms etc. in the territories with the consent of the company.”[↩]
7. (2015) 1 SCC 429[↩]