

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 324 OF 2021**

(Against the Order dated 07/01/2021 in Complaint No. 255/2018 of the State Commission  
Uttar Pradesh)

1. M/S. R.K. ENGINEERING CO.

THROUGH ITS PROPRIETOR, AMAR KASHYAP REGD  
OFFICE AT:- 186/B, G.I.D.C., MAKERPUR, VADODARA,  
GUJARAT

.....Appellant(s)

Versus

1. M/S. JAIN AGROFOOD INDUSTRIES & ANR.

THROUGH ITS PROPRIETOR, OFFICE AT:- 1501,  
INDUSTRIAL AREA, PATHARIYA CITY, MIRJHAPUR,  
UTTAR PRADESH

2. SIDHARTH JAIN

S/O. RAJIV JAIN, PROP. M/S. JAIN AGROFOOD  
INDUSTRIES, R/O. BAJIRAO MOHALLA, KATTRA, R/O.  
BAJIRAO MOHALLA, KATTRA,  
MIRJAHAPUR,  
UTTRA PRADESH

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER  
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT : MS. ANITA BANSAL, ADVOCATE WITH  
MS. SONI JHA, ADVOCATE

FOR THE RESPONDENT : MR. SUDHANSH SUMAN, ADVOCATE WITH  
MR. RAHUL GOYAL, ADVOCATE  
(BOTH APPEARED THROUGH VIDEO CONFERENCING)

**Dated : 06 November 2024**

**ORDER**

**DR. SADHNA SHANKER, MEMBER**

1. This appeal has been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 07.01.2021 of the State Commission in complaint no. 255 of 2018, whereby the complaint was allowed in part.

2. We have heard the learned counsel for the appellant (hereinafter referred to as the 'engineering company') and learned counsel for the respondent (hereinafter referred to as the 'complainant company') and have perused the record including *inter alia* the Order dated 07.01.2021 of the State Commission and the memorandum of appeal.

3. There is a delay of 85 days in filing the present appeal.

In the interest of justice and for the reasons mentioned in the application for condonation of delay, the delay in filing the appeal is condoned.

4. The facts, in brief, of the case are that on 20.12.2017 the complainant company bought a pasta machine for a total consideration of Rs.8,02,000/- from the engineering company. The complainant company paid the entire amount of the machine and the machine was delivered on 20.12.2017 and the employees of the engineering company installed the pasta machine on 22.01.2018 in a rented accommodation. It is alleged that on 28.01.2018 when complainant company started the machine, the mixing shaft was broken but after some repair, the machine was started. It is further alleged that the machine did not work properly, sometimes, the bolt was broken and sometime, difficulty was found in wiring and the material (pasta and macroni) was not properly making and all the material came out in damage shape. It is further alleged that the engineering company had stated that the capacity of this machine is to prepare 150 kg. per hour but the capacity to prepare or manufacture is about 100 or 105 kg. per hour. In this regard, the complainant company made complaint to the engineering company and the employees of the engineering company made their efforts to make it workable, but the machine could not run completely. It is further alleged that the engineering company did neither mend the machine nor got the same repaired properly despite various complaints of the complainant company. It is further alleged that the complainant company obtained a loan under self employment scheme for installation of Pasta Machine under the Prime Minister Employment Scheme and to run the machine got electricity connection with a sanctioned load of 26 KW in the month of January, 2018 for which it spent an amount of Rs. 1,06,000/-.

5. Alleging deficiency in service on the part of the engineering company stating that the engineering company had supplied the defective machine, the complainant company filed a complaint before the State Commission with the following prayer:

“(a) That the after changing the Pasta Machine be delivered to the complainant from the respondent.

(b) That the expenses of Rs. 28,53,052/- on the construction of factory be paid by the respondent to the complainant.

(c) That Rs. 1,00,000/- be paid to the complainant from the respondent for mental agony and legal expenses of Rs. 50,000/- be also paid by the respondent to the complainant.

(d) Any other order or relief be allowed to be given to the complainant which this Hon'ble forum deem fit and proper on the facts and circumstances of the case.

6. The engineering company contested the complaint by filing written statement stating that the production capability of the machine is 150 kgs. per hour of the pasta machine and only after satisfaction, the complainant placed order for purchase of the machine, therefore, the statement of the complainant company that the machine delivered to the complainant company is of less capacity is not correct. It is further alleged that due to non-efficiency of

the machine operator, the machine was not functioning properly. It is further alleged that as and when the complainant company complained about the problem in the machine, the same was immediately rectified by providing the service of his mechanics and engineers. It is further alleged that due to non-efficiency of machine operator and his own deficiency of his knowledge, the engineering company is not liable. It is further alleged that the State Commission did not have pecuniary jurisdiction to deal with the present case. It is further stated that the complainant purchased the machine for commercial use, therefore, the complainant company is not entitled for any relief and there is no deficiency in service on the part of the engineering company.

7. The State Commission, vide its Order dated 07.01.2021, admitted the complaint in part and directed the engineering company to exchange the old pasta machine with a new one pasta machine without defect and also directed the engineering company to pay a sum of Rs. 3,00,000/- for causing financial loss and cost of complaint.

8. Aggrieved by the order dated 07.01.2021 of the State Commission, the engineering company filed the instant appeal before this Commission.

9. Learned counsel for the engineering company has argued that the workers of the engineering company stayed at the place of the complainant company to check if any problem persists in making but there was no defect and discrepancy in the machinery. He further argued that the material which was used to make pasta and macroni by the complainant company was of lower quality, which effected efficiency of the machine. He further argued that the engineering company suggested the complainant company to improve the quality of the material to make the products but the complainant company ignored the same. He further argued that the machine operator had no experience to operate the machine, which resulted in damage in the machinery. However, each and every time, whenever machine got broken and problem persisted, the engineering company provided the parts of the machine free of cost to the complainant company. Additionally, it is submitted that when the machinery got damaged, the workers of the engineering company stayed there in a week to confirm the machinery was working properly. He further argued that there is no deficiency in service on the part of the engineering company.

10. On the other hand, learned counsel for the complainant company has argued that as per the terms and conditions provided in the quotation, the machine would be provided within 30 days on payment of 60% as advance but the engineering company provided the machine only after receiving the complete payment and after expiry of prescribed period, which amounts to deficiency in service and unfair trade practice. He further argued that even after delivery of machine on 20.12.2017, the same was installed on 22.01.2018 i.e. after a delay of 1 month and the complainant company suffered loss. He further argued that the machine provided less production output i.e. 90-100 kgs per hour than the advertised 150 kgs. per hour of pasta. It was further stated that even after check, the output provided by the machine still remained lower than advertised and the engineering company failed to replace the machine even within warranty period. He further argued that the engineering company, in reply to the legal notice dated 23.05.2013, had stated that they were ready to replace the machinery if the complainant company are not satisfied but thereafter went back on his own words. He further argued that Mr. Chander Mohan Vishwakarma, the operator of the machine, stated on affidavit that he had complete knowledge of the working of the machine and that the machine was producing

an output of 95 to 100 kgs. Per hour, which is less than as advertised and assured by the engineering company. He further argued that there is clear deficiency in service on the part of the engineering company.

11. The question for our consideration is as to whether there is deficiency in service on the part of the engineering company.

12. It is not in dispute that the complainant company purchased the machine under the Prime Minister Employment Scheme obtained the loan of Rs. 20 lakh for self-employment. Therefore, it cannot be said that the complainant company purchased the machine for commercial purpose. Hence, the complainant falls within the definition of 'consumer' under Section 2(1)(d) of the Consumer Protection Act, 1986.

As regards, pecuniary jurisdiction of the State Commission is concerned, Section 17(1) of the Consumer Protection Act, 1986 reads as under:

**“17(1). Jurisdiction of the State Commission-(1)** Subject to the other provisions of this Act, the State Commission shall have jurisdiction-

a. to entertain-

- i. complaints where the value of the goods or services and and compensation, if any, claimed [exceeds rupees twenty lakhs but does not exceed rupees one crore]; and
- ii. Appeals against the orders of any District Forum within the State; and

13. In the instant case, the complainant company has claimed more than Rs.20 lakh under different heads. Therefore, the complaint is within the pecuniary jurisdiction of the State Commission.

14. It is not in dispute that the quotation for the Pasta machine was issued on 02.10.2017 with the terms and conditions that the machinery will be delivered within 25-30 days on payment of 60% advance along with Purchase Order and balance payment against delivery. It is not in dispute that the complainant company placed order for purchase in October 2017 and made the part payments of Rs. 2,00,000/- and Rs. 4,00,000/- on 12.10.2017 and 03.11.2017, respectively. It is not in dispute that the machine was delivered on 20.12.2017 i.e. beyond the period of 30 days as provided in the engineering company's quotation and the same was installed on 22.01.2018.

15. In so far as the point of manufacturing defect is concerned, the engineering company admitted that the machine got broken and when the problem occurred in the machine, the parts of the same were given and the problem was resolved free of cost. It is not in dispute that the machine had persistent problems since installation. It is also admitted by the engineering company that workers of the engineering company visited the complainant company and stayed there. It is to be noted that in the reply to the legal notice, it has been stated that “if you are not satisfied with the machinery my client is ready to replace the pasta machinery and provide you new pasta machinery” but the engineering company never come forward to replace the same. From the record, it is clear that the machine malfunctioned from the start and underwent numerous repairs but was not fixed. It is clear that the machine had a manufacturing defect from the fact itself and the principle of *res ipsa loquitur* applies.

**16.** As regards the contention of learned counsel that the machine operator had no experience to operate the machine, the complainant company had filed an affidavit of Chander Mohan Vishwakarma, operator of the machine, in which he had clearly stated that “he had complete knowledge to operate the machine in question and he is working in Jain Agro Food Industries 1501, Industrial Area Patharhiya Mirzapur from 25<sup>th</sup> January, 2018 and making pasta through machines and the machine is making material about 95 to 100 kgs. per hour and that there was technical defect in the machine and during preparation of pasta due to said defect the machine cause difficulties.....” but the engineering company had not controverted the affidavit of the machine operator and he had not been able to produce any documentary evidence to prove that the machine operator was not a qualified one to operate the machine. In the absence of any concrete evidence, merely bald statement by the engineering company is not sufficient to avoid liability. Therefore, the contention of the learned counsel for the engineering company is rejected.

Additionally, the engineering company had got the machine in question inspected by his authorized Engineer or agent but no report of any engineer to show the capacity of the preparation of pasta material, had been filed, either before the State Commission or this Commission. There is no reason for the engineering company to not file report of its own engineer. The engineering company has not been able to produce any documentary evidence that the engineering company suggested the complainant company to improve the quality of the material to be used for making pasta. Neither had the engineering company been able to prove that its machine did not have a manufacturing defect nor has it been able to prove that the fault lies with the complainant company in operating the machine.

**17.** In view of the above, we are of the opinion there is clear deficiency in service on the part of the engineering company and the State Commission has passed a well-reasoned order.

**18.** The appeal being without merit is dismissed. All pending I.A.s, if any, stand disposed of.

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**SUBHASH CHANDRA**  
**PRESIDING MEMBER**

.....  
**DR. SADHNA SHANKER**  
**MEMBER**