

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/22/417
(Date of Filing : 16 Sep 2022)**

1. N.R SURENDRAN

NDUVILPAD HOUSE 17/89B, VIP NAGAR,VARAPUZHA ,
ERNAKULAM 683517

.....Complainant(s)

Versus

1. TCL INDIA SERVICE LTD

2ND FLOOR,1564, 27 TH MAIN ROAD 2ND SECTOR, HSR
LAY OUT, BENGALURU 560102

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. D.B BINU PRESIDENT
HON'BLE MR. RAMACHANDRAN .V MEMBER
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

PRESENT:

Dated : 16 Aug 2024

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM

Dated this the 16th day of August, 2024.

Filed on: 16/09/2022

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member Smt.Sreevidhia.T.N

Member _____

C.C. NO. 417/2022

COMPLAINANT

N.R. Surendran, S/o. Raghavan, Naduvilpad House, 17/89B, VIP Nagar, Varapuzha P.O.,
Ernakulam 683517.

Vs

OPPOSITE PARTIES

1. The Manager, TCL India Business Centre, 2nd Floor, 1546, 27th Main Road-2nd Sector, HSR Lay Out Bangaluru, Karnataka 560102.
2. Krishna Shekhar (Service Coordinator TCL Brand Kerala) Ultimate TCL Service, Room No. 1, Sevenseas-Shop and Building 1, Vishnupuram, Cheranallore, Ernakulam 683544.
3. Bineesh (Service Engineer TCL), Ultimate TCL Service, Room No. 1, Sevenseas-Shop and Building 1, Vishnupuram, Cheranallore, Ernakulam 683544.

FINAL ORDER**D.B. Binu, President.****1). A brief statement of facts of this complaint is as stated below:**

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The brief facts, as averred in the complaint, are that the complainant purchased a TCL LED TV from an exclusive showroom named QT Ventures at Edappally Tollgate on September 15, 2019. The TV was offered an Onam special discount, with a bill value of Rs. 16,990.00 and a three-year warranty. The TV experienced a complaint in March 2022, leading to a repair process that took 21 days and caused dissatisfaction. On July 27, 2022, the TV faced another issue, and despite multiple follow-ups, the TV has not been repaired or the complaint rectified. The customer care indicated that spare parts were unavailable, suggesting a replacement with a new TV, which has not occurred within 45 days.

The exclusive TCL dealer, QT Ventures, stopped operations, leaving the complainant feeling frustrated and disappointed. The complainant expressed a loss of faith in TCL due to poor customer service, unreliable information, and lack of proper addresses for service centers. The complainant's requests for assistance and information have gone unanswered or resulted in pre-recorded replies. The complainant, a 66-year-old unemployed individual, relies on the TV for entertainment, and the situation has caused distress.

The complainant seeks a new TV, as promised with a three-year warranty, without additional charges, along with compensation and alternatively, the complainant demands Rs. 1,00,000.00 as penalty and compensation from TCL due to delayed service, false promises, and perceived dishonest dealings. The complainant hopes for swift and appropriate action from TCL to address their grievances and restore their faith in the company's services.

2). Notice

The Commission has issued notices to the opposite parties, with the first opposite party receiving the notice but failing to file their version in response. The notices were sent to the second and third opposite parties not seen served.

3) Evidence

The complainant submitted six documents; however, they did not file a proof affidavit before the commission.

1. BILL COPY for TCL TV.
2. Voter ID card copy.
3. Mail sent to their head office of the opposite party.
4. The replay of the opposite party
5. The Copy of screenshots
6. Voice clips

4) The main points to be analysed in this case are as follows:

- i) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- ii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iii) Costs of the proceedings if any?

5) The issues mentioned above are considered together and are answered as follows:

In the present case in hand, The complainant purchased a TCL LED TV with a discount and three-year warranty, facing multiple unresolved issues and poor customer service, leading to a loss of faith, and seeks either a replacement TV with compensation or a penalty of Rs. 1,00,000.00 due to delayed service and broken promises.

After filing the complaint, the complainant did not attend any hearings before the commission nor submit an affidavit of evidence. The commission issued a notice to the complainant on 15.05.2023, which was duly served by the Postal Department. Despite multiple opportunities, the complainant has not appeared or presented any evidence in support of their claim regarding the opposite party's deficiency in service or unfair trade practices. There is a complete absence of written or oral evidence and supporting affidavits to substantiate the complainant's allegations against the opposite parties.

In the catena of decisions, it has been established that the burden of proof lies with the complainant to demonstrate negligence or deficiency in service by presenting evidence before the commission. Mere allegations of negligence are insufficient to support the complainant's case. Consequently, the complainant has failed to prove any deficiency in service or negligence on the part of the opposite parties.

In the case of SGS India Ltd Vs. Dolphin International Ltd 2021 AIR SC 4849 held that:

“19. The onus of proof of deficiency in service is on the complainant in the complaints under the Consumer Protection Act, 1986. It is the complainant who had approached the

Commission, therefore, without any proof of deficiency, the opposite party cannot be held responsible for deficiency in service. In a Judgement of this Court reported as Ravneet Singh Bagga v. KLM Royal Dutch Airlines & Anr. 4 , this court held that the burden of proving the deficiency in service is upon the person who alleges it. “6. The deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The burden of proving the deficiency in service is upon the person who alleges it. The complainant has, on facts, been found to have not established any wilful fault, imperfection, shortcoming or inadequacy in the service of the respondent...” 20. This Court in a Judgment reported as Indigo Airlines v. Kalpana Rani Debbarma & Ors. 5, held the initial onus to substantiate the factum of deficiency in service committed by the opposite party was primarily on the complaint. This Court held as under: - “28. In our opinion, the approach of the Consumer Fora is in complete disregard the principles of pleadings and burden of proof. First, the material facts constituting deficiency in service are blissfully absent in the complaint as filed. Second, the initial onus to substantiate the factum of deficiency in service committed by the ground staff of the Airlines at the airport after issuing boarding passes was primarily on the respondents. That has not been discharged by them. The Consumer Fora, however, went on to unjustly shift the onus on the appellants because of their failure to produce any evidence. In law, the burden of proof would shift on the appellants only after the respondents/complainants had discharged their initial burden in establishing the factum of deficiency in service.”

The legal maxim "**vigilantibus non dormientibus jura subveniunt**" (The law assists those who are vigilant, not those who sleep.) is highly significant in consumer cases. It stresses the importance of being proactive and diligent in protecting one's rights and interests in legal matters. By actively safeguarding their rights, individuals are more likely to receive legal support compared to those who neglect their responsibilities. In consumer cases, this maxim emphasizes the need for consumers to be vigilant and attentive when facing potential legal issues, ensuring they protect their rights as buyers. However, it is essential to mention that in this specific case, the complainant did not submit an affidavit of evidence after filing the complaint.

After careful consideration, the above issues {(i) to iii)} have been found to be unfavorable to the complainant. The case presented by the complainant is considered to be without merit. As a result, the following orders have been issued.

ORDER

Based on the aforementioned circumstances, the Commission has determined that the contentions raised by the complainant lack merit. As a result, the complaint is dismissed. No cost.

Pronounced in the Open Commission on this the 16th day of August, 2024.

Sd/-

D.B.Binu, President

Sd/-

V.Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded by Order

Assistant Registrar

Despatch date:

By hand: By post

kp/

CC No. 417/2022

Order Date: 16/08/2023

**[HON'BLE MR. D.B BINU]
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]
MEMBER**