

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1876 OF 2017

(Against the Order dated 11/08/2017 in Complaint No. 60/2014 of the State Commission
Rajasthan)

1. KAMALJEET SINGH SHEKHAWAT

S/O. KARANJEET SINGH SHEKHAWA. R/O. MADHAV
VIHAR COLONY, NEAR T.V. TOWER, KOTPUTLI.

JAIPUR.

RAJASTHAN.

.....Appellant(s)

Versus

1. KOMATSU INDIA PVT. LTD. L & ANR.

THROUGH ITS MANAGING
DIRECTOR/DIRECTOR/MANAGER. MONARK BUILDING,
1ST FLOOR, D-236-37, AMARAPALI ROAD, VAISHALI
NAGAR.

JAIPUR

RAJASTHAN.

2. ABHINAV SALES INDUSTRIAL PRODUCT (A UNIT OF
L & T).

THROUGH ITS BRANCH MANAGER, 69/13, NEW
SANGANER ROAD, NEAR DHANWANTARI HOSPITAL,
MANSAROVAR SECTOR-6,

JAIPUR-302020

RAJASTHAN.

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), MEMBER**

FOR THE APPELLANT :

Dated : 02 September 2024

ORDER

For the Appellant

Mr Maitreya Proxy Counsel with Authority for

Mr Naveen Kumar, Advocate

For the Respondents

Ms Priyanshi Varshney, Proxy Counsel with

Authority letter for Mr Kamal Chamaria,

Advocate for R 1

R 2 is already *ex parte*

ORDER

PER SUBHASH CHANDRA

1. This appeal under Section 19 of the Consumer Protection Act, 1986 (in short, the 'Act') challenges the order dated 11.08.2017 of the State Consumer Dispute Redressal Commission, Rajasthan, Jaipur (in short, the 'State Commission') in Consumer Complaint no. 60 of 2014 dismissing the complaint filed by the respondent on the ground that the complainant was not a 'consumer' under the Act.
2. We have heard the learned counsel for the parties and given thoughtful and careful consideration to the material on the record.
3. The relevant facts of the case, in brief, are that the appellant had purchased a Poclain (L&T machine) also known as L&T Komatsu Hydraulic Excavator (in short, "Excavator") on 29.06.2013 for Rs 59,11,000/- which started to breakdown with some mechanical problem or another soon after. The respondent attended to the mechanical faults on payment basis. According to the appellant, the excavator needed repairs on 02.08.2013, 22.10.2013, 17.12.2013, 11.01.2014, 31.01.2014, 05.03.2014, 01.04.2014, 08.04.2014, 10.04.2-14 and 21.04.2014 when various amounts were charged by the respondent from the appellant. The defects ranged from change of oil, filters and mechanical issues. All the repairs were admittedly paid for by the appellant. On 26.04.2014 the machine stopped functioning and the respondents diagnosed the defect to be with the hydraulic pump and swing motor for which an estimate of Rs 9,00,000/- was prepared. On 15.05.2014 the appellants requested the respondents to return the hydraulic pump and swing motor and other parts which was not done. Thereafter, CC 60 of 2014 was filed with the State Commission alleging deficiency in service which was dismissed by the State Commission on contest on the ground that the appellant was not a 'consumer' under Section 2(1)(d) of the Act.
4. The finding and the order of the State Commission that is impugned before us reads as under:

“Opposite parties objected to the facts of the complaint. According to them, there was no manufacturing error in the machine. In the beginning when this machine was brought to the workshop then each time its oil and filter etc. were changed and cost was received from the complainant because the cost of changing of oil and filter is to be paid by the customer only. According to them, the defect which is found in hydraulic pump and swing function was outside the warranty. It was also the statement of opposite parties that the machine is used a lot and because of running of the same generally there is wear and tear in the machine. Apart from that, objection is raised generally that this complaint is not maintainable because complainant purchased the machine for commercial purpose. Complainant used this machine not for earning his livelihood. Complainant is a trader of mines which are allotted in his name. Due to

this reason whether he runs the machine on his own or has purchased for earning his livelihood, there is no such fact.

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*Complainant stated that he purchased this machine for an amount of Rs 69,11,000/- for his own livelihood. Complainant stated that compliment is doing the work of minds from past many years and stone mines are allotted in the name of his brother. In this manner he is using this machine on joint family basis to do the work of crushing and taking out of stone from the mines. **Complainant in para no. 1 of his complaint has mentioned that he has not taken this machine for doing commercial work or running on rent basis and has used it for his self-employment. The submissions which are made in para no. 1 of the complaint do not appear to be correct. Complainant himself stated that he is doing the work of mines from years and mines of stone are allotted in the name of his brother and for the purpose of doing the work on the family basis this machine is used. From these statements it is clear that this machine is not purchased by the complainant for earning his own livelihood whereas it was purchased for increasing the business and income of his family. Along with the same complainant himself stated that he is doing the work of mines from years. It is not possible to believe the same primarily that this machine is purchased by him for earning his livelihood and he himself is running this machine. Ld. advocate of the opposite party on taking one copy of profile of the complaint from internet has presented the same according to which complainant is working at the post of director in many institutes and managing director of Maha Bhagwati Enterprises. From the case laws presented by both the parties before me commercial purpose is made clear, in that it is held that where any service or article is taken for earning his own livelihood or service, he can come in the category of 'consumer' but if the article or service is taken for commercial purpose then that dispute will not be consumer dispute. From the facts presented in the complaint and during the course of the arguments, it cannot be imagined that complainant is running the machine on his own earning for earning his livelihood. He himself stated that he is using this machine for doing his business as family business. Clearly, this is commercial use. Therefore, the complaint is not maintainable. There is no need to discuss about merits and demerits of the case. Therefore complaint is dismissed on this basis."***

[Emphasis supplied]

5. The contention of the appellant is that the impugned order has erred in not appreciating that he has been earning his livelihood from working in the mines granted to his brother where his excavator was used exclusively. It was also stated that it was not the respondent's case that the excavator had been rented or provided otherwise to any other entity. It had also not been appreciated that the excavator had been purchased through a personal loan of Rs 1,29,00,000/- for the excavator and accessories for the purpose of self-employment. It was admitted that it was operated at times by family members but stated that it was never rented out. It was contended that while the excavator came with a warranty of 5000 hours, there were inherent manufacturing defects which were noticed from the very beginning. Respondents had only provided tax invoice and delivery challans despite receiving the full consideration of Rs 59,11,000/- and withheld the warranty card which was an unfair trade

practice. The repairs during warranty on cash basis amounting to approximately Rs 3,76,780/- was also, in addition, exploitative, arbitrary and *mala fide*. It was also deficiency in service. The State Commission's order dismissing the complaint on the ground that the appellant was not a 'consumer' under the Act was stated to be completely erroneous as it was based on conjectures and surmises. It was contended that the evidence stated to have been provided by the counsel for the respondent before the State Commission had not been provided to the appellant to contest the same. Reliance was placed on the judgment of the Hon'ble Supreme Court in *Madan Kumar Singh (Dead) through LRs Vs. District Magistrate, Sultanpur & Ors.* and *Laxmi Engineering Works Vs. P.S.G. Industrial Institute* to argue that the explanation to Section 2(1)(d)(i) by the Amendment Act, 1993 defined "commercial purpose" to have a broad ambit and to be considered in the facts of each case which had not been done as the impugned order was cryptic and without reasoning. It was therefore contended that the order was devoid of merit and it was prayed that the matter be remanded to the State Commission for consideration on merits.

6. On behalf of the respondent, learned counsel submitted that the State Commission's order was well reasoned and did not merit interference. It was argued that the appellant/complainant had himself stated that he was using the machine in his family business which clearly amounted to commercial use. It was argued that the appellant had performed the work of a stone crusher while taking out stones and therefore it was evident that he had taken the mine and had appointed a driver to operate the excavator. It was also submitted that since a loan of Rs 1,29,00,000/- had been taken by the appellant, it may be assumed that the loan was taken for commercial needs. It was submitted that the respondent was not liable for the reckless use of the excavator as was stated in the warranty card as well. Reliance was placed on the judgments of the Hon'ble Supreme Court in *Laxmi Engineering Works Vs. P.S.G. Industrial Institute*, Civil Appeal No. 4193/2015 and in *JCB India Ltd. Vs. Nallappa Sangappa Munshi & Ors.*, 2012 (4) CPJ 220.

7. From the foregoing it is manifest that the complaint before the State Commission was on the ground of alleged manufacturing defect and allegations of deficiency in service and unfair trade practice. It is evident, based on the records brought on record by the appellant, that the excavator was required to go the workshop of the respondent on several occasions soon after being purchased. The same is also not denied by the respondents. However, no explanation for not extending the benefit of warranty is provided despite a specific allegation by the appellant that the respondent had failed to provide the appellant the necessary documentation for the same. Repair on a cost basis has been justified. The contention that the appellant was not a 'consumer' has not been proven through any evidence on affidavit. The use of the excavator bought through a personal loan has been "assumed" by the respondent to be for a commercial purpose. The State Commission has also concluded, on the basis of the fact that the excavator was being used in the stone mine/quarry allotted to the appellant's brother, to be evidence that the appellant was using the excavator for a "commercial purpose" relying on the ratio laid down by the Hon'ble Supreme Court in *Laxmi Engineering* (supra) without any evidence being led to that effect. The State Commission has relied upon the appellant's statement that he used the excavator in the mine owned by his brother to conclude that it was for a commercial purpose without considering his other assertion that the excavator was acquired through a loan for self-employment. No evidence has been cited as the basis for this conclusion. In fact, after noting that the appellant

submitted that the excavator was purchased for self-employment it has been concluded that it was for use in the mines of his brother and therefore for a commercial purpose without the respondent having adduced evidence to this effect or its appreciation by the State Commission. The State Commission's conclusion that the appellant was using the excavator for a commercial purpose in the absence of any documentary evidence that establishes "commercial purpose" makes it apparent that its conclusion is based on conjectures and surmises.

8. Reliance was placed by the appellant on the following case laws:

(a) ***Rohit Choudhary & Anr. Vs Vipul Limited***, (2024) I SCC 8

19. *When there is an assertion in the complaint filed before the Consumer Court or Commission that such goods are purchased for earning livelihood, such complaint cannot be nipped at the bud and dismissed.*

20. *Thus, it would depend on facts and circumstances of each case. There cannot be any defined formula with mathematical precision to examine the claims for non-suiting the complainant on account of such complaint not falling within the definition of the expression 'consumer' as defined under section 2(1) (d).*

(b) ***Lilavati Kirtilal Mehta Medical Trust Vs. M/s Unique Shanti Developers***, (2020) 2 SCC 265

A straight jacket formula cannot be adopted in every case. The following broad principles can be culled out for determining whether an activity or transaction is for a commercial purpose.

9. In light of the discussion above, it is evident that the State Commission has fallen in error in concluding that the appellant was not a 'consumer' and to proceed to dismiss the consumer complaint on that ground. The test for being a 'consumer' has been elaborately laid down in ***Laxmi Engineering Works*** (supra). While relying on the ratio laid down in this judgment by the Hon'ble Supreme Court, the State Commission has passed a cryptic and non-speaking order that does not set out reasons for reaching its conclusion based on evidence to establish that the appellant's dominant purpose for the use of the excavator was not for self-employment but for the purpose of earning profits. In our considered view, such a conclusion cannot be sustained and warrants interference. Accordingly, we find merit in the appeal which is allowed. The impugned order of the State Commission is therefore set aside. The matter is remanded to the State Commission with directions to adjudicate the matter afresh after due notice to both the sides and after consideration of the evidence brought before it through a reasoned and speaking order.

Parties are directed to appear before the State Commission on **08/10/2024**. The State Commission is requested to consider and decide the matter expeditiously, preferably within a period of 4 months.

10. Parties will bear their own costs. Pending IAs, if any, stand disposed of by this order.

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SUBHASH CHANDRA
PRESIDING MEMBER

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AVM J. RAJENDRA, AVSM VSM (Retd.)
MEMBER