

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1854 OF 2011

(Against the Order dated 14/02/2011 in Appeal No. 244/2007 of the State Commission Haryana)

1. GOPAL AGGARWAL

AGGARWAL JEWELLERS, OPPOSITE ANAD
MARKET, 1ST FLOOR, JAGDISH ROAD, YAMUNA
NAGAR, TEHSIL

JAGADRI

YAMUNA NAGAR, HARYANA

.....Petitioner(s)

Versus

1. M/S. METRO MOTORS & ANR.

106, RAILWAY ROAD,

ANBAL CANT,

HARYANA

2. M/S MRETRO MOTRS.

TEHSIL GATE, NEAR LIC OFFICE, BRANCH

JAGADHRI

.....Respondent(s)

REVISION PETITION NO. 1855 OF 2011

(Against the Order dated 14/02/2011 in Appeal No. 240/2007 of the State Commission Haryana)

1. GOPAL AGGARWAL

AGGARWAL JEWELLERS OPPOSITE ANAND
MARKET 1ST FLOOR, JAGAHARI ROAD, YAMUNA
NAGAR

JAGFHDRI, YAMUNA NAGAR

HARYANA

.....Petitioner(s)

Versus

1. M/S. TATA MOTORS

THROUGH ITS GENERAL MANAGER, SCO NO

364-366, 2ND FLOOR, SECTOR:34-A

CHANDIGARH

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT

HON'BLE MR. DINESH SINGH, MEMBER

For the Petitioner : Mr. Tarun Jindal, Advocate

For the Respondent : For the Respondent M/s Tata Motors : Mr. Ivan Singh Khosa, Advocate

Dated : 17 Dec 2019

ORDER

HON'BLE MR. DINESH SINGH, MEMBER

1. These two Revision Petitions have been filed under Section 21(b) of The Consumer Protection Act, 1986, hereinafter referred to as the 'Act', challenging the Order dated 14.02.2011 passed by The State Consumer Disputes Redressal Commission, Haryana, hereinafter referred to as the 'State Commission', in Appeals No. 240 of 2007 and No. 244 of 2007 arising from the Order dated 05.12.2006 in Consumer Complaint No. 424 of 2005 passed by The District Consumer Disputes Redressal Forum, Yamunanagar, hereinafter referred to as the 'District Forum'.

2. Mr. Gopal Aggarwal, Proprietor, M/s Aggarwal Jewellers, the Petitioner herein, was the Complainant before the District Forum, and is hereinafter being referred to as the 'Complainant'.

M/s Tata Motors, the Respondent herein in Revision Petition No. 1855 of 2011, was the Opposite Party No. 1 before the District Forum, and is hereinafter being referred to as the 'Manufacturer'.

M/s Metro Motors, the Respondents No. 1 and No. 2 herein in Revision Petition No. 1854 of 2011, were the Opposite Parties No. 2 and No. 3 before the District Forum, and are hereinafter being referred to as the 'Dealer'.

3. We heard the learned Counsel for the Complainant and the learned Counsel for the Manufacturer, and perused the material on record including *inter alia* the Order dated 05.12.2006 of the District Forum and the impugned Order dated 14.02.2011 of the State Commission.

4. The Complainant filed a Complaint against the Manufacturer and the Dealer before the District Forum on 28.04.2005, principally alleging "manufacturing defects" in a Car bought by him on 15.11.2003.

The relevant extract from the Complaint is reproduced below:

That the facts mentioned above clearly show that the said car inherits various manufacturing defects including starting problem poor pickup, Bear lever Noise, Stg Noise Engine oil consumption, Gear Lever Vibration, poor average, excessive black smoke, Vehicle jerking, FRT under body noise, water comes inside cabin etc. and there is great negligence carelessness, ignorance and extreme deficiency in services rendered by the respondents to the complainant for which all the respondents are liable jointly and severally.

(emphasis supplied)

5. The District Forum vide its Order dated 05.12.2006 allowed the Complaint.

The Award made by the District Forum is reproduced below:

“ Resultantly we allow the complaint of complainant and direct the respondents to replace the car with new one after taking the old car from the complainant. If the respondents are not in a position to replace the same then the respondents are directed to pay refund the amount of Car i.e. 4, 65,250/- Plus Rs. 3350/- for getting the extending warranty along with interest at the rater of 12% per annum from the date of purchase till realization and pay Rs. 50,000/- as compensation for causing mental agony harassment financial loss as well as litigation expenses order be complied within one month.”

(as per the translated copy furnished by the Complainant)

(Rs. 3350/- above is, evidently, a typographical error;

the correct figure is Rs. 3,335/-)

(emphasis supplied)

The District Forum, in effect, directed the Manufacturer and the Dealer to replace the Car with a new one, and, if not in a position to replace the Car, to refund the sale price of the Car i.e. Rs. 4,65,250/- plus Rs. 3,335/- for getting the extended warranty along with interest at the rate of 12% per annum from the date of purchase till realisation and compensation of Rs. 50,000/- for mental agony, harassment and financial loss as well as litigation expenses.

6. The Manufacturer filed Appeal No. 240 of 2007 and the Dealer filed Appeal No. 244 of 2007 before the State Commission. The State Commission allowed both Appeals vide a common Order dated 14.02.2011, set aside the Order dated 05.12.2006 of the District Forum and made an Award different from that of the District Forum.

The operative paragraph of the State Commission’s Order is reproduced below:

“ Hence , these appeals are accepted , the impugned order passed by the District Consumer Forum under challenge in these appeals is set aside . It is directed that the Motors, Tejli Gate, near L.I.C. Office, Branch Jagadhri on 31.03.2011 and the opposite parties shall manage their mechanics/engineers to remove the defect, if any, in the vehicle and make it road worthy . After its repairs, the vehicle will be delivered to the complainant in the presence of an independent Expert Automobile Engineer mutually agreed upon by the complainant and the opposite parties and would share his fee in the ratio of 50:50. The Expert Engineer shall issue a certificate with respect to rectification of the defects in the vehicle. The vehicle shall be delivered to the complainant within a period of ten days from the date it is brought to the workshop of the opposite party No. 3.”

(emphasis supplied)

The State Commission, in effect, first allowed the Appeals and set aside the Order of the District Forum, and then directed the Manufacturer and the Dealer to remove the “defect, if any”, in the Car and make it “road worthy” and to deliver it to the Complainant in the presence of an independent “Expert Automobile Engineer” mutually agreed to by the two sides with the said “Expert Engineer” issuing a certificate with respect to rectification of the “defects” in the Car.

7. These Revision Petitions have been filed by the Complainant seeking to set aside the Order dated 14.02.2011 of the State Commission (and to thereby, in effect, restore the Order dated 05.12.2006 of the District Forum).

8. We, first, note that in the Written Version filed by the Manufacturer and the Dealer a preliminary objection was raised that the Complainant was not a 'Consumer'.

The said preliminary objection is reproduced below:

Preliminary objections:

1. That the present complaint is not maintainable for want of commercial purpose because the vehicle was purchased in the name of M/s Aggarwal Jewelers under the higher purchase tenancy agreement , so that complainant is not a consumer and complaint deserves dismissal and be dismissed with cost in view of the judgment of Supreme Court titled as Luxmi Engg. V/s PSG Industries.

2. That there is no deficiency in service on the part of the respondents, as there is no defect in the vehicle and if there was any defect then the vehicle could not have covered a mileage of about 61000 Km as per last job card maintained by the respondents (photo copy attached) and the vehicle was properly attended with some minor job . So much so not even a single penny was charged from the driver of the complainant , hence it be dismissed with cost.

3. That the present complaint is not maintainable to the extent that the vehicle is being given by so many persons for commercial purpose engaged by the complainant firm who is reported to be a known jeweler as admitted by them for minting a huge amount out of the business proceed by visiting at so many places for upgradation of their business .

4. That the present complaint is also not maintainable, since one driver had been insisting to the Works Manager of the respondents to have extra money from the job proceed as he had been visiting with the vehicle as per business routine, but the representatives of the respondents could not go according to nefarious acts and designs and this matter was also reported to the owner of the firm about the misdeeds of the driver, but of no use and had been complaining the defect in the vehicle without any reason and fault therein, hence the present complaint deserves dismissal and be dismissed with cost, as it requires voluminous evidence and it can not be summed up in summary proceedings framed under the Consumer Protection Act amended up-to-date.

(emphasis supplied)

9. It was categorically averred in the Written Version that [a] "the vehicle was purchased in the name of M/s Aggarwal Jewelers" and [b] "the present complaint is not maintainable to the extent that the vehicle is being given by so many persons for commercial purpose engaged by the complainant firm who is reported to be a known jeweler as admitted by them for minting a huge amount out of the business proceed by visiting at so many places for upgradation of their business."

10. Both the fora below ignored the preliminary issue of maintainability, and did not record any findings thereon, though it was required and expected that clear findings should have first been recorded as to whether the Complainant was a 'Consumer' within the meaning of Section 2(1)(d) of the Act 1986.

11. It is unclear from the Orders dated 05.12.2006 of the District Forum and dated 14.02.2011 of the State Commission, as also from the entire material filed by the Complainant with its Revision Petitions, whether the Complainant filed its Rejoinder to the Written Version, and whether either or both sides adduced evidence on this issue.

12. That being as it is, we may categorically observe that a preliminary issue, like whether the Complainant is a 'Consumer' under the Act, as was inherent in this case, should have been first decided, with clear findings and reasons recorded.

13. We note that "manufacturing defect" in the Car was determined by the District Forum.

The conclusion arrived at by the District Forum in its appraisal is reproduced below:

From the perusal of the documents as well as the report submitted by the expert this fact is proved that defect arises in the car from the very beginning i.e. within warranty period and if the defect could not be removed inspite of various visits and inspite of change of parts several time vide which this fact is proved that the car is having manufacturing defect .

(emphasis supplied)

14. The phrase "manufacturing defect" as such is nowhere defined in the Act.

'defect' is defined in Section 2(1)(f) of the Act.

In respect of an allegation of 'defect', the procedure to be adopted is laid down in Section 13 (1) (c) to (g) of the Act:

Section 13 (1) (c) to (g) of the Act:

Procedure on admission of complaint. — (1) The District Forum shall, on admission of a complaint, if it relates to any goods,—

(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;

(d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carry-ing out the necessary analysis or test in relation to the goods in question;

(e) the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;

(g) the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 14.

15. ‘defect’ has to be determined as per the procedure prescribed, that is, the goods concerned have to be referred to an appropriate laboratory, the report from the appropriate laboratory has to be provided to the Opposite Party, if any side disputes the correctness of the findings or the methods of analysis or tests adopted by the appropriate laboratory, objections in writing in regard to the report of the appropriate laboratory have to be invited, and opportunity has to be afforded to both sides of being heard as to the correctness or otherwise of the report, before passing an appropriate order under Section 14.

16. The procedure prescribed cannot be circumvented as being, say, a ‘mere technicality’ etc. A bare reading of the procedure prescribed in Section 13 (1) (c) to (g) shows that its objective is to ensure that ‘defect’ is determined after obtaining impartial expert technical analysis or tests and after hearing both sides on the report, and the findings so arrived at pass credence in scrutiny. That being so, non-adherence to the procedure prescribed vitiates the findings.

17. ‘appropriate laboratory’ is defined under Section 2 (1) (a) of the Act:

Section 2 (1) (a):

(a) “appropriate laboratory” means a laboratory or organisation—

(i) recognised by the Central Government;

(ii) recognised by a State Government, subject to such guide-lines as may be prescribed by the Central Government in this behalf; or

(iii) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;

18. When 'defect' in the Car, in its manufacture, was alleged, the District Forum was required to refer the Car to a laboratory or organization as defined under Section 2 (1) (a) (i) or (ii) or (iii) .

Here we may add that, if, due to any reason, it was not feasible for the District Forum to refer the Car to a laboratory or organization recognized by the Central or the State Government under Section 2 (1) (a) (i) or (ii) , it was still feasible for it to take recourse to Section 2 (1) (a) (iii) and refer the vehicle to a government financed or aided laboratory or organization having the requisite expertise and technical wherewithal for the purpose, as, for example, a government financed or aided Institute or College of Engineering or Technology, whose repute & expertise speaks for itself, and whose report would pass credence in scrutiny.

That is to say, the (non) proximal availability etc. of a Central or State Government recognized laboratory or organization under Section 2 (1) (a) (i) or (ii) should not be (and can not be) an excuse for not putting the Car to test. Recourse to Section 2 (1) (a) (iii) , with the due awareness and the due application of mind, was always feasible.

19. The State Commission has rightly concluded that 'defect' in manufacture cannot be made out.

The conclusion arrived at by the State Commission in its appraisal is reproduced below:

“The facts of the instant case are fully attracted to the case cited above being on similar footings. Admittedly, till the date the vehicle was last attended by the engineers of the opposite parties, it had covered about 61000 Kms as per the last job card maintained by the opposite parties. Had there been any manufacturing defect in the vehicle, it could not have run 61000 Kms. Thus , it cannot be said that there is any manufacturing defect in the vehicle . The reports of Rakesh Kumar, Automobile Engineering Diploma Holder and Krishan Lal, Mechanic (having no diploma or degree in Automobile Engineering) are not the conclusive proof of manufacturing defects because both these witnesses are interested persons as they were engaged by the complainant without the consent of the opposite parties and without any orders by the District Consumer Forum, though the reports were given after filing of the complaint without associating the appellants-opposite parties. Thus these reports are of no significance.”

(emphasis supplied)

20. The State Commission made its appraisal and recorded its reasons only in respect of 'defect'. It determined that 'defect' was not made out, and, accordingly, allowed the Appeals and set aside the Order of the District Forum. However, without making any further appraisal or recording any further reasons, the State Commission then also passed an Award in favour of the Complainant.

The operative portion of its Order is reproduced below:

“As a sequel to our aforesaid discussions, we feel that it would be in the interest of justice if these appeals are disposed of in view of the latest pronouncement of the Hon’ble National Commission upheld by the Hon’ble Supreme Court in C. N. Anantharam’s case (Supra).

“Hence, these appeals are accepted , the impugned order passed by the District Consumer Forum under challenge in these appeals is set aside . It is directed that the Motors, Tejli Gate, near L.I.C. Office, Branch Jagadhri on 31.03.2011 and the opposite parties shall manage their mechanics/engineers to remove the defect, if any, in the vehicle and make it road worthy. After its repairs, the vehicle will be delivered to the complainant in the presence of an independent Expert Automobile Engineer mutually agreed upon by the complainant and the opposite parties and would share his fee in the ratio of 50:50. The Expert Engineer shall issue a certificate with respect to rectification of the defects in the vehicle. The vehicle shall be delivered to the complainant within a period of ten days from the date it is brought to the workshop of the opposite party No. 3.”

(emphasis supplied)

21. The State Commission was right in differing with the District Forum in respect of the latter’s erroneous findings of “manufacturing defect”, since, as discussed hereinabove, the procedure prescribed under the Act was not adopted by the District Forum.

22. However, the State Commission erred in not remanding the case back to the District Forum for decision afresh, to decide the question of ‘defect’ in manufacture after duly adopting the procedure prescribed in Section 13 (1) (c) to (g) of the Act.

23. The State Commission also erred in making an Order which, on the face of it itself, is unreasoned, and suffers from incongruity and inner-inconsistency.

On the one hand, it allowed the Appeals and set aside the Order of the District Forum.

On the other hand, it then went on to make an Award, without making any appraisal or recording any reasons, and directed the Manufacturer and the Dealer to remove the “defect” “if any” in the Car and make it “road worthy” and deliver it to the Complainant with an “Expert Engineer” issuing a certificate with respect to rectification of the “defects” in the Car.

24. ‘defect’ has to be determined as per the procedure prescribed. After giving a finding that the District Forum erred in determining “manufacturing defects”, the State Commission made an Award in which it itself directed for removal of “defect” “if any”.

25. An unreasoned Award, suffering from incongruity and inner-inconsistency, as made by the State Commission, cannot sustain.

26. As evinced from the job cards and related documents placed in evidence before the District Forum, it is noted that the Car was subject to multiple servicing / repairs, undertaken over a period of about 16 months, between 2003 to 2005, from 15.11.2003 (date of the purchase of the Car) to 01.04.2005 (date of the last job card placed in evidence before the District Forum), with the Car having covered a kilometrage of about 61,000 km.

27. Both the Fora below ignored the factum that the Dealer continuously kept on servicing / repairing the Car from time to time, for about 16 months, without demur. It honored its warranty, it did not charge for the servicing / repairs as were covered under the warranty.

28. The principal contention of the Dealer and the Manufacturer is that 'defect' in manufacture of the subject Car is not borne out, and that it dutifully honored its warranty.

29. Here we may note that, on these Revision Petitions being filed before this Commission in 2011, the operation of the impugned Order dated 14.02.2011 of the State Commission was not stayed.

30. From the material available on record it is unclear whether the Award made by the State Commission has since been satisfied in the interregnum i.e. from 14.02.2011 to date.

31. This is a piquant situation.

32. In the normal course, the appropriate decision would be to set aside the Orders of both the Fora below, and to remand the case to the District Forum for decision afresh, by duly adopting the procedure prescribed under the Act for arriving at a finding apropos 'defect', which was the principal allegation in the Complaint, after also first recording a clear finding on the preliminary issue of whether the Complainant was a 'Consumer' under the Act.

33. However, the Car was bought in the year 2003, and we are now in the year 2019. It is self-evident that the Car cannot be now put to test before an 'appropriate laboratory', to determine 'defect' at the due time i.e. when the case went before the District Forum on 28.04.2005.

The adjudication itself has taken an unduly and unreasonably protracted period of about 14 years, adjudication afresh does not appear feasible by now adopting the procedure prescribed, it also does not befit that a case of such nature be remanded to the forum of original jurisdiction after about one and a half decades.

It will be inappropriate to mechanically remand the case to the District Forum to decide afresh the question of 'defect', when it is self-evident that it will not be feasible for the District Forum to turn the clock back and adopt the procedure prescribed to arrive at a credible finding apropos 'defect'.

34. We note that the dispute before the District Forum relates to the year 2005, and we are now in the year 2019. The Statement of Objects and Reasons of the Act speaks of "speedy and simple redressal to consumer disputes". The Act is for "better protection of the interests of consumers".

35. A Complainant cannot be put to prejudice for faults in adjudication by Consumer Protection Fora. However, having said that, we, but, also note that on presenting its Complaint alleging "manufacturing defects", no application was filed and no steps were taken by the Complainant for adopting the procedure prescribed in Section 13 (1) (c) to (g), even when it was represented through advocate (who was supposed to know the law) before the District Forum.

36. We further note that in the adjudication of the instant two Revision Petitions before this Commission, as evident from a perusal of the daily Orders from 08.07.2011 onwards, repeated

adjournments etc. were taken by the Complainant, and the Complainant did not show the requisite professionalism for the time-bound disposal of its Petitions, which was especially required considering the specificities of its case.

37. We furthermore note that the Car was purchased for Rs. 4,65,250/- on 15.11.2003. Its warranty was for 18 months, upto 15.05.2005. On 12.02.2004, that is, after about 3 months, the Complainant took an extended warranty for Rs. 3,335/- for additional 18 months. All service / repairs were undertaken during the period when the Car was under warranty. The Dealer honored its warranty, it did not charge for service / repairs as were covered under the warranty. Accordingly, the service / repairs, in the period from 15.11.2003, the date the Car was purchased, to 28.04.2005, the date the Complaint was instituted before the District Forum, with the Car covering a kilometrage of about 61,000 km., were undertaken in the normal wont by the Dealer while honoring its warranty. Deficiency in service, on this count, is, thus, not discernible.

38. In the totality of the matter, we deem it appropriate to pass the following directions:

[a] For not returning a finding on the preliminary issue of whether the Complainant was a 'Consumer', and for not adopting the procedure prescribed for determining 'defect', the Order dated 05.12.2006 of the District Forum cannot sustain.

[b] For not returning a finding on the preliminary issue of whether the Complainant was a 'Consumer', and for making an unreasoned Award, suffering from incongruity and inner-inconsistency, the Order dated 14.02.2011 of the State Commission is set aside.

[c] Since it is not so feasible, at this stage in time, the case is not (mechanically) remanded back to the District Forum for decision afresh on the (principal) question of 'defect' in manufacture.

[d] If, in the interregnum, i.e. between the date of the State Commission's impugned Order and till the date of pronouncement of this Order, the Award made by the State Commission has been satisfied, the same shall not be disturbed.

We are passing the direction contained in sub-para **[d]** on considering that the Manufacturer or the Dealer have not themselves come forth to agitate the Award made by the State Commission, no interim stay on the operation of the impugned Order of the State Commission was granted by this Commission, and it will be somewhat inequitable and result in some miscarriage of justice if, in the contingency that the Award of the State Commission has been complied with in the interregnum, it is now disturbed.

[e] Sub-paras **[c]** and **[d]** shall not be precedent.

39. So disposed.

.....J
R.K. AGRAWAL
PRESIDENT
.....
DINESH SINGH
MEMBER

