

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

Date of Admission: 26.07.2024
Date of Final Hearing: 22.11.2024
Date of Pronouncement: 26.11.2024

FIRST APPEAL NO. 172 / 2019

1. LG Electronics Pvt. Ltd.
D-3, 3rd Floor, District Centre
A-Wing, Saket, Delhi

2. LG Service Centre
Ambey Enterprises, Flat No. G-1
Arya Sadan, Meena Enclave, Near Shankar Ashram Chowk
Haridwar – 249403
through their Authorised Representative
Sh. Rajendra Singh Rautela S/o Sh. Bahadur Singh Rautela
R/o 114, Dharampur Chowk, 2nd Floor
Haridwar Road, Dehradun
(Through: Sh. Arun Uniyal, Advocate)
..... Appellants

Versus

1. Sh. Bhushan Malhotra S/o late Ram Narayan
“Malhotra Jewellers”, Pahadi Bazar
Kankhal, District Haridwar
(Through: Himself via video conferencing)

2. BEHL Agencies
Opposite Railway Station, Railway Road
Jwalapur, District Haridwar
(Through: Sh. Saurabh Devlal, Advocate)
..... Respondents

Coram:
Ms. Kumkum Rani,
Mr. B.S. Manral,

President
Member

ORDER

(Per: Ms. Kumkum Rani, President):

This appeal under Section 15 of the Consumer Protection Act, 1986 has been directed against the impugned judgment and order dated 09.05.2017 and 05.09.2018 passed by learned District Consumer Disputes Redressal Forum, Haridwar (hereinafter to be referred as “The District Commission”) in consumer complaint No. 263 of 2016, styled as Sh. Bhushan Malhotra Vs. BEHL Agencies and others, wherein and whereby the consumer complaint was allowed.

2. The facts giving rise to the present appeal, in brief, are, as such that on dated 30.10.2014, the respondent No. 1 / complainant had purchased one LG washing machine of 8 kg weight from respondent No. 2 / opposite party No. 1 for Rs. 50,000/-, but the said machine was not working properly since the date of purchase. A complaint to this effect was lodged with respondent No. 2, who advised to contact the service centre – appellant No. 2 / opposite party No. 2. The complainant approached the service centre on several occasions. In the month of February, 2016, a mechanic visited to repair the subject machine and after repairing, he stated that he has removed the defect in the machine, but the next date, the machine started making loud noise. The complainant again approached the service centre, stating that inspite of repair, the machine is not working properly, but the service centre did not pay attention to the complaint of the complainant. The complainant several times contacted the service centre through telephone, but in vain. The complainant also contacted Sh. Vishal, an official of the service centre at Dehradun, but he also avoided the request of the complainant. The subject machine is under warranty and it is the duty of the appellants and respondent No. 2 – opposite parties either to repair the washing machine or to replace the same. A legal notice was also sent by the complainant through his counsel to the

opposite parties, but no action was taken by them. Therefore, the consumer complaint was submitted before the District Commission.

3. The appellants and respondent No. 2 did not submit any written statement before the District Commission and vide order dated 27.01.2017, their opportunity of filing the written statement was closed by the District Commission and the consumer complaint was proceeded ex-parte against them.

4. The consumer complaint was heard by the Members of the District Commission and vide judgment and order dated 09.05.2017, the consumer complaint was dismissed by the Female Member of the District Commission, whereas by impugned judgment and order of the same date, i.e., 09.05.2017, the consumer complaint was ex-parte allowed by the Male Member, thereby directing the appellants and respondent No. 2 – opposite parties to refund the price of the washing machine amounting to Rs. 50,000/- to respondent No. 1 / complainant and also to pay Rs. 5,000/- towards mental and financial agony as well as litigation charges etc. Thereafter, the file was put up before learned President of the District Commission, who per his order dated 05.09.2018, accorded his consent to the impugned judgment and order dated 09.05.2017 passed by the Male Member of the District Commission, whereby he also allowed the consumer complaint and granted the aforesaid relief in favour of the complainant.

5. On having been aggrieved by the impugned judgment and order dated 09.05.2017 and 05.09.2018, this appeal has been submitted by the appellants, impleading complainant and the dealer as respondents, alleging that the impugned judgment and order have been passed

against law. Learned District Commission has decided the consumer complaint without hearing the appellants and passed the impugned judgment and order by exceeding its jurisdiction. It was also stated that the complainant had submitted the purchase bill for sum of Rs. 43,000/-, whereas in the consumer complaint, it was alleged that the subject machine was purchased for Rs. 50,000/- and the bill was also corrected and date of the bill was also changed, which creates doubt about the genuineness of the bill. There was no deficiency in service on the part of the appellants, but the above facts were overlooked by the District Commission, therefore, the appeal is fit to be allowed and consumer complaint should be dismissed.

6. We have heard Sh. Arun Uniyal, learned counsel for the appellants and Sh. Saurabh Devlal, learned counsel for respondent No. 2, who have appeared before the Commission as well as Sh. Bhushan Malhotra – respondent No. 1, who has appeared through video conferencing. We have also perused the material available before us.

7. Respondent No. 1 / complainant has admitted the factum that he has filed the consumer complaint showing the cost of the subject washing machine as Rs. 50,000/-, whereas he had submitted the bill, wherein Rs. 50,000/- has been mentioned after cutting Rs. 43,000/- and the date has also been changed. The complainant has failed to clarify as to why the cutting was made in the bill and why he has averred in the consumer complaint that the cost of the washing machine was Rs. 50,000/-. Thus, it is established that the documentary evidence on record does not support that the subject washing machine was actually purchased by the complainant by the same bill in regard to which the

consumer complaint was brought before the District Commission. This fact creates a doubt as to the genuineness of the bill.

8. In addition to above, the complainant has also not filed any expert report to prove that there was any inherent manufacturing defect in the machine incapable of being cured. He has also not filed the job card regarding the alleged repair of the washing machine by the mechanic of the service centre. In such circumstances, there was no justification for allowing the consumer complaint and direct for refund of the price of the washing machine.

9. For the reasons aforesaid, we are of the view that the impugned judgment and order has been passed by the District Commission without application of mind. We are also of the considered opinion that the complainant has failed to prove any deficiency in service on the part of the appellants. Hence, the impugned judgment and order passed by the District Commission is totally unjustified and the District Commission has exercised the jurisdiction not vested in it by law and has acted with material illegality and infirmity, while passing the impugned judgment and order. Thus, we are inclined to interfere with the finding recorded by the District Commission. Therefore, the appeal is liable to be allowed.

10. Appeal is allowed. Impugned judgment and order dated 09.05.2017 and 05.09.2018 passed by the District Commission are set aside and consumer complaint No. 263 of 2016 is hereby dismissed. No order as to costs of the appeal. The amount deposited by the appellants with this Commission, be released in their favour.

11. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. A copy of this Order be sent to the concerned District Commission for record and necessary information.

12. File be consigned to record room along with a copy of this Order.

(Ms. Kumkum Rani)
President

(Mr. B.S. Manral)
Member

Pronounced on: 26.11.2024