

GOVERNMENT OF JAMMU & KASHMIR
DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
KUPWARA

Geerhati Lolab Bypass Kupwara

Coram: -

- | | |
|----------------------------|-----------------|
| 1. Peerzada Qousar Hussian | President |
| 2. Ms Nyla Yaseen | Member |

Consumer Complainant No: 01/2023

1. Abdul Khaliq Mir S/o Khazir Mohammad Mir R/o Punzwa,
Villigam, Kupwara.
Proprietor Star Scan Point Villigam.

.....(Complainant)

Versus

1. Cyclops Techno Med Pharmaceutical Distributors, 1st Floor
Building, 234 Nursing Garh, Balgardan, Karan Nagar,
Srinagar through its proprietors.
A. Mohammad Sadiq Wani S/o Abdul Gaffar Wani R/o Unit
234, Nursing Ghar, Srinagar.
B. Shabir Ahmad Bhat S/o Mohammad Jabbar Bhat R/o
Wahab Pora, Budgam near Masjid Shareef.
2. Phillips India Limited, 8th floor, 9B Cyber city DLF Phase
3, Gurgaon, 122002, Haryana.

.....(Opposite parties)

Date of Institution: 17-07-2023

Date of Decision: 06-02-2025

Appearing Counsel:

Adv. Zubair Ahmad Khan and Associates for the complainant

Adv. Irshad Ahmad Malik for the O.P 1st (a&b)



ORDER

The present complaint has been filed by the complainant on 17-07-2023, alleging therein deficiency in service on the part of O.Ps with prayer to grant the following relief:

1. The O.P be directed to refund the cost of the machine.
2. The O.P may be directed to pay an amount of Rs.1 Lac for deficiency in service.
3. The O.P may be directed to pay an amount of Rs.3 Lacs for causing mental agony to the complainant and Rs.1 Lac as litigation charges.

Brief facts about the case are as under:

The complainant is a resident of Villigam Handwara District Kupwara who established a diagnostic centre at Villigam to engage the doctors for conducting the USG tests under the name and style of Star Scan Point. The complainant purchased a USG machine from O.P.No.1 who is stated to be

the registered dealer and distributor of medical equipments against the consideration amount of Rs.15 Lacs. The USG machine was delivered to the complainant on 21-04-2021 against which an amount of Rs.15 Lacs was paid by the complainant and the USG machine was accordingly installed at the diagnostic centre of the complainant. However, the said USG machine developed some technical problems related to the quality and resolution of images and other faults, within the warranty period. Subsequently, the complainant approached the O.Ps for providing the due service or to refund the payments paid as cost of the USG machine, however the O.Ps turned a deaf ear towards the requests of the complainant, although the complainant made several requests to the O.Ps through email and WhatsApp for rectification of the defects of the machine but nothing was done. The complainant was dragged from pillar to post for none of his faults.

The complainant's contention is that due to malfunctioning of the USG machine, he has suffered prejudice to his profession, besides the malfunctioning of the machine has caused huge loss and mental agony and the O.Ps have deliberately caused mental crises to the complainant. The said machine started malfunctioning soon after its purchase and installation. The unusual bad resolution and images indicated the internal defect of the machine which immediately interfered with its proper functioning. The complainant states to have been in constant touch with the O.Ps and has made every effort to communicate with the O.Ps and to get the said machine repaired but the O.Ps refused to do the needful. The machine developed defects within warranty period from the inception of its purchase. The non-functioning of the said machine broke the expectations of the complainant with regard to the working of the product from the O.P's company, having standing and repute within the medical and diagnostic field. Although, the complainant served a legal notice to O.Ps on 12-04-2023 but nothing was done, which constrained the complainant to approach the District Consumer Disputes Redressal Commission Kupwara for redressal of his grievances.

Notices were served to the O.Ps.

Since, the O.P.No.1 A & B, submitted the objections in the matter, however, the O.P.No.2 remained consecutively unrepresented, consequently the O.P.No.2 was set to Ex-Parte.

The O.P.No.1 A & B in the written version contended that he is the authorised distributor of Philips Company. The complainant admittedly purchased the USG machine Clear VUE550 Ultrasound system 3P serial No.SZ32190440 along with the allied equipments on 21-04-2021 from the answering respondent, which was installed in presence of the complainant at his business unit and after the installation, the said machine was working satisfactorily. The contention of the answering respondent is further that the complainant paid an amount of Rs.13 Lacs in instalments and there is still 2 Lacs outstanding against the complainant.

Besides, the complainant has never registered a complaint before the respondent No.2 and in case there had been any problem in the USG machine, the complainant would have stopped the payment towards the outstanding amount. The answering respondent is a dealer, not a service provider. The complainant lodged a false complaint to grab the outstanding amount of Rs.2 Lacs. The contention of the answering respondent is further that the machine after installation does not suffer any malfunctioning and there was no defect in the machine. The warranty period stands expired as the warranty is of one year only.

The complainant adduced four witnesses in support of his claim namely Showqat Ahmad Naikoo S/o Ali Mohammad Naikoo R/o Gundgushi, Kupwara, Mohammad Shafi Lone S/o Mohammad Shabaan Lone R/o Langate, Reyaz Ahmad Mir S/o Abdul Khaliq Mir R/o Punzwa Kupwara and

Abdul Khaliq Mir S/o Khazir Mohammad Mir R/o Punzwa Kupwara the complainant as witness in his own case.

The witness, Showqat Ahmad Naikoo on cross examination stated that he is working as a computer operator at Star Scan Point Handwara since June, 2021. The machine was installed at the business unit of the complainant probably a weeks' time prior to his joining there. The complainant approached the company several times, but they didn't provide the service to the complainant.

Another witness Mohammad Shafi Lone on cross examination stated that he is working at Star Scan Point Villigam as receptionist. The witness further stated that many USG reports done on the machine in question were returned by the patients as being not clear and the quality of the image remained broken. The complainant approached the company several times, but they didn't provide any service.

Another witness namely Reyaz Ahmad Mir on cross examination stated that he is working as a radiologist at the clinic of the complainant since 2021. The complainant is father of the witness, who purchased the disputed machine on 20th to 25th April. The machine was installed and was properly working, however, it started malfunctioning within few days of installation. The said machine carries warranty of 5 years and the defects were developed in the machine within the warranty period. Although they contacted the dealer for rectification or replacement of the machine but they only assured the rectification or replacement.

The complainant, Abdul Khaliq Mir, as witness in his own case on cross examination stated that he purchased the said disputed machine in 2021 which was having 5 years' warranty. We called the company about the grievance several times. The said machine started malfunctioning only after five to six months after its installation, despite approaching the company, nobody turned up to provide the service and to rectify the defects of the machine in question.

On the other hand, the O.P. 1 also adduced 1 witness in his defence, namely Shabir Hussain Bhat S/o Mohammad Jaafar Bhat R/o Budgam. The witness on cross examination by the complainant's counsel deposed that the machine in question has been sold to the complainant in the year 2021. We have been dealing with the said machines of Phillips India Pvt. Ltd. since the year 2020, but we are not presently working with the said company due to the reason that they are not providing the adequate services to the customers. Besides, we being dealer of the said machines are concerned with its sale only and the service is being provided by the company only. Admittedly, we received the call from the complainant regarding the service which was communicated to the company.

We have heard the counsel appearing for the parties. Perused the documents placed on the record along with the written arguments advanced by the counsels, which reflects that the complainant purchased a USG machine Clear VUE550 Ultrasound system 3P serial No.SZ32190440 from O.P. 1 a & b which was delivered and installed at the business unit of the complainant on 26-04-2021 against the cost of Rs.15 Lacs. In the meanwhile, the machine developed some technical problems with respect to quality and resolution of the images, consequently the complainant approached the O.P. 1 A & B for providing service of the machine, but the O.P turned deaf ears to his repeated requests. Additionally, the complainant registered his grievance through email and WhatsApp but nothing was done in the matter, instead he was dragged from pillar to post for none of his faults.

since the machine supplied to the complainant was admittedly installed and the contention of the O.P. 1 A & B is that the said machine was successfully installed at the business unit of the complainant. The case of the complainant is that the USG machine supplied to him was defective, the only question which comes up for the consideration of the complaint is that whether the machine supplied to the complainant by the O.P.No.1 A & B was defective or not. The O.P.1 relies upon the installation report dated 26-04-2021, however the said installation report does not bear the name of the Engineer who installed the machine, although the machine was installed successfully but it developed malfunctions within a short span of time and within the warranty period, which fact stands substantiated by the evidence adduced by the complainant. Since the complainant approached the O.P. 1 A & B with the grievance and requested to provide due service and to resolve the issue. The O.Ps after coming to know about the malfunctioning of the machine in question were duty bound to provide the proper service and redress the grievance of the complainant, which has not been done, additionally, the said machine was neither repaired nor put to proper condition.

Since, the machine has to be free from any defects and all the features available in the said machine have to be fully functional without any defects or trouble. Admittedly, the installation report depicts that the said machine was satisfactorily installed, however it developed the defects immediately after its installation, therefore the contention of the O.P. 1 A & B to have satisfactorily installed the machine does not sustain, as the said machine in question has not been working properly which could not have been used by the complainant, for which the same was purchased by him.

The Hon'ble National Commission in the case of "Wipro-GE health care Pvt. Ltd. Versus Dr. Sunil J. Shah, No.3037 of 2014 has upheld the order passed by the Ahmadabad District Commission, by virtue of which, the petitioner (Wipro-GE Company) was directed to pay a sum of Rs.8,50,000/- to the complainant against the return of the machine along with interest @18% and an amount of Rs.30,000/- for compensation and litigation charges.

In view of the aforesaid facts and circumstances of the case, and also relying on the judgement passed by the Hon'ble National Commission, we are of the considered view that the O.Ps were duty bound to deliver the defect free machine to the complainant. Moreover, after coming to know that the machine in question developed malfunctioning, the necessary service was to be provided to redress his grievances, however, the O.Ps have failed to provide the due service to the complainant and the denial of the rectification of the defects of the machine amounts to deficiency in service on the part of the O.Ps in accordance with Section 2 (11) of the Consumer Protection Act, 2019. The O.Ps are jointly and severely held liable for deficiency in service. Therefore, the complaint of the complainant is allowed and disposed off with the following directions:-

- 1. The O.Ps are directed to replace the defective USG machine with a new one of the same description or to refund the amount of Rs.15 Lacs (Thirteen Lac Rupees) paid by the complainant against the cost of the said machine along with the interest @8% from the date of institution of the complaint till its realisation.**
- 2. The O.Ps are further directed to pay an amount of Rs.2 Lacs (Two Lac Rupees) as compensation to the complainant for deficiency in service and causing mental agony to the complainant.**

3. The O.Ps are further directed to pay an amount of Rs.50,000/- (Rupees Fifty Thousand) to the complainant as litigation charges and Rs.10,000/- (Rupees Ten Thousand) towards the Consumer Welfare Fund Kupwara.

The O.Ps will comply with this order within a period of four weeks from the date copy of this order is served upon them.

Order announced
Date: 06-02-2025

Nh 06/02/25
Nyla Yaseen **Member**
District Consumer Disputes
Redressal Commission
Kupwara

Peerzada Damsai Hussain 06/02/25
Peerzada Damsai Hussain
PRESIDENT
District Consumer Disputes
Redressal Commission kupwara

Copy of this order is forwarded to OP 1st (a) for compliance.

