

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION KANGRA AT DHARAMSHALA, H.P.**

Date of Institution: 26.11.2022
Date of final hearing: 27.07.2023
Date of Pronouncement: 29.08.2023

Consumer Complaint No.- 458/2022

IN THE MATTER OF

Sh. Pankaj son of Darshnu at present care of BDO Bhedu Mahadev
Tehsil Palampur Distt. Kangra HP.

(Through: Ms. Seema Rana, Advocate)

.....Complainant

Versus

Apple India Private Limited. The Manager, 19th Floor Concorde, Tower C
UB City, No.24 Vittal Mallya Road Banglore 560001.

(Through: Ms. Kirti Sharma, Advocate)

.....Opposite Parties

CORAM:

President: Mr. Hemanshu Mishra

Members: Ms. Arti Sood & Sh. Narayan Thakur

Present:- Ms. Seema Rana, Advocate for complainant.
Ms. Kirti Sharma, Advocate for opposite party.

PER: Mr. Hemanshu Mishra, President:-

ORDER

The complainant has filed instant complaint seeking
direction to the opposite party(s) as under:-

(i) That the opposite party be directed to replace the iphone of the
complainant by giving a new iphone.

(ii) Any other relief which Hon'ble commission deem fit and the sum of Rs.20,000/- be awarded as cost and expenses of litigation as well as lawyer fees etc.

2. Facts giving rise to filing of this complaint are that the Complainant's brother named Krishan son of Darshnu purchased a iphone for a sum of 4200 Riyal in Saudi Arabia from iphone authorized franchise on 27-03-2022 of Apple brand model no. iPhone 12 Pro Max, ROM 128 GB, Pacific Blue. Thereafter Complainant's brother came to India on 17-04-2022 and gifted the same to the complainant on 18-04-2022. When Complainant started to use the iphone then he came to know that iphone was not working properly & there is network issue in this phone and also its camera is not working. The Complainant called in customer care and then they told him that he can get it repaired by their authorized service centre the complainant deposited the same at ODIGI Service limited City centre Mall Pathankot. But after sometime they told Complainant that this iphone cannot be repaired there and it is to be send to Banglore in Apple care service repair centre. Thereafter, they told Complainant that there is internal damage in this iphone, so it cannot be repaired which needs only replacement and the iphone remained in the said Apple care service centre. The iphone was returned to the complainant only after the legal notice was served upon the opposite party on 26-09-2022 by the complainant. Alleging deficiency in the service on the part of opposite party, the complainant has filed the present complaint.

3. Upon notice, opposite party(s) appeared through counsel and contested the complaint. It is submitted that Apple warranty does not apply to either (i) any damage caused by service performed by anyone who is not a representative of OP or an Apple Authorized Service Provider ("AASP) or (ii) any unauthorized modifications carried out on the Apple products to alter functionality or capability without the written permission of Apple. It is stated that after having conducted an inspection into the iPhone, it was found that the iPhone had been tampered with prior to being submitted with the AASP. It was clearly mentioned in the service report dated 22.07.2022 that some 'internal damage was found in the iPhone by the Apple Repair Centre and thus the device is rendered out of the Apple Warranty. Since the iPhone was subjected to unauthorized modification, it was rendered out of warranty and therefore free of cost service under warranty was not available to the Complainant. It is further submitted that the OP offered to complete the request for repair of the subject iPhone as an out-of-warranty repair, but the Complainant chose not to respond to the said offer.

4. The complainant has filed rejoinder denying the contents of the reply filed by opposite party(s) and reiterating those of complaint.

5. The parties were called upon to produce their evidence in support of their contentions. Complainant in order to prove his case has filed affidavit Ext.CW-1 in evidence along with documents

Annexures C-1 to C-7. On the other hand, opposite party(s) has filed affidavit Ext.OPW-1 along with documents annexures OP-1 & OP-2.

6. We have heard learned counsel for the parties and also gone through the case file carefully.

7. Opposite party in their defence has stated that Apple warranty does not apply to any damage caused by service performed by anyone who is not a representative of OP or an Apple Authorized Service Provider or any unauthorized modifications carried out on the Apple products to alter functionality without the written permission of Apple. In the present case, opposite party found that the said iPhone had been tampered with prior to being submitted with the Apple authorized service provider. It was clearly mentioned in the service report dated 22.07.2022 that some 'internal damage was found in the iPhone by the Apple Repair Centre and thus the device is rendered out of the Apple Warranty. We have perused annexure C-1 repair acceptance form dated 22.07.2022 issued by QDIGI Service Ltd. wherein no unauthorized modification has been mentioned. The service report dated 01.11.2022 annexure C-2 reveals that QDIGI Service Ltd. sent the device to Apple repair Centre for resolution, but they found internal damage and due to internal damage RC team unable to provide warranty services and returned the device. Had there been any unauthorized modification then at the first instance on 22.07.2022 such observation was required to be made in the repair acceptance form. The repair acceptance form is totally silent about any such

observation. The complainant in his affidavit Ext.CW-1 has specifically mentioned that complainant has done no such modification nor the same are possible by ordinary man. The opposite parties had not filed any affidavit of service engineer, technician or technical person of QDIGI Service Ltd. So the affidavit regarding no modification authorized or unauthorized on his instruction or in his behalf has not been rebutted by the opposite party. Once the opposite party has alleged unauthorized modification prior to same being brought to Apple Service Provider, Pathankot, then the onus also lies upon the opposite party to prove the same. The opposite party has failed to prove that there was any prior unauthorized or authorized modification. The opposite party has placed reliance upon judgment passed by Hon'ble Supreme Court of India in case titled Ravneet Singh Bagga Versus KLM Royal Dutch Airlines & Ors. (2000) 1 SCC 66. The facts of this case are entirely different from that of present complaint. Hence we feel that there is deficiency in service on the part of opposite party.

8. Accordingly, the complaint is allowed and opposite party is directed to replace the said iphone with new one of the same model and make within 45 days from the date of receipt of copy of this order, failing which opposite party shall pay the entire amount of mobile phone so purchased in Indian currency on relevant day along with interest @ 9% per annum from the date of complaint i.e. 26.11.2022 till its realization. Apart from this, opposite party is also

directed to pay compensation to the complainant to the tune of Rs.10,000/-, besides litigation cost quantified as Rs.15,000/-.

9. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

10. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986/2019. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.

11. File be consigned to record room along with a copy of this Judgment.

(Hemanshu Mishra)
President

(Narayan Thakur)
Member

(Arti Sood)
Member