

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAMDated this the **30th** day of November, 2023.Filed on: **15/02/2022****PRESENT**

Shri.D.B.Binu

Shri.V.Ramachandran

Smt.Sreevidhia.T.N

President

Member

Member

C.C. No. 97/2022**COMPLAINANT**

Jayan P. Ramachandran, S/o Ramachandran, Parayellippalam, Kottayil
Kovilakam, Chendamangalam, N.Paravur, Ernakulam, Kerala 683512.

(By Adv.Rakhee S., Namitha Naveen, II Floor, Ezhava Samajan
Buildig, Main Road, N.Paravur, Pin-683 513)

VS.**OPPOSITE PARTIIES**

1. M/s TCL, TTE Technology India Pvt. Ltd., A-202, Boomerang Building, Chandivali Farm Road, Andheri (E), Mumbai, represented by authorized officer Maharastra- 400 072
2. M/s. MyG Paravur, 5/485 A1, Azure Arcade, N. Paravur, Ernakulam, Kerala -683513 represented by an authorized officer , Samajam Building, Main Road, N.Paravur -683 513.

(O.p Adv.Sruthi Das)**FINAL ORDER****D.B. Binu, President:**

1. **A brief statement of facts of this complaint is as stated below:**

The complaint was filed under Section 35 of the Consumer Protection Act. 2019. The complainant purchased a 32-inch TCL television worth Rs. 10.490 from the first opposite party, attracted by advertisements from both the first and second opposite parties. The product came with a 36-month warranty from the purchase date, 30.09.2019. However, by May 2020, the television became faulty. The complainant contacted the second opposite party and the customer care of the first opposite party. A technician inspected the TV and suggested replacing the display board within two weeks.

After no response post the two-week period, the complainant was informed of the unavailability of the replacement part and was promised a new product instead. Despite repeated contact, there was no response from either opposite party. The complainant stated that this constitutes a deficiency in service and unfair trade practice. A legal notice was sent to both parties on 05.12.2021 demanding repair, replacement, or refund, along with compensation for damages. The notice was received by the first opposite party on 27.12.2021 and the second on 22.12.2021, but there was no reply.

The complaint highlights the mental agony and hardship caused by the lack of service, especially as the complainant's children missed online classes during the COVID-19 lockdown. The complainant seeks replacement or refund of the TV's price with interest, compensation for mental pain, waste of time, money, and deficiency in service, and the cost of proceedings. The case falls under the Consumer Protection Act. The causes of action include the purchase date, the TV becoming faulty, the technician's inspection and opinion, and the issuance of the legal notice. The complainant requests the commission to direct the opposite parties to replace the product or refund its cost with interest, compensate for mental agony, deficiency in service, and unfair trade practices, and cover the cost of proceedings.

2) Notice

The commission sent notices to the opposite parties, which were acknowledged by them, but they did not file their versions. Therefore, they have been set as ex-parte.

3) Evidence

The complainant had filed an ex-parte proof affidavit and 4 documents that were marked as Exhibits-A-1 to A 4.

Exhibit-A-1: Invoice No. I/PAR/4544 dated 30.09.2019 issued by the 2nd opposite party to the complainant

Exhibit-A-2: Lawyer notice dated 05.12.2021 issued by the complainant to the opposite parties.

Exhibit-A-3: A/D card evidencing receipt of lawyer notice

Exhibit-A-4: A/D card evidencing receipt of lawyer notice

4) The main points to be analysed in this case are as follows:

- i) Whether the complaint maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iv) Costs of the proceedings if any?

5) The issues mentioned above are considered together and are answered as follows:

In the present case in hand, as per Section 2(7) of the Consumer Protection Act, 2019, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. Invoice No I/PAR/4544 dated 30.09.2019 issued by the 2nd opposite party to the complainant. The receipt evidencing payment to the opposite party (**Exhibits A-1**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019.

The complainant is seeking redress for a defective product and the associated mental distress, alleging unfair trade practices and a deficiency in service by the opposite parties. They are requesting specific compensation and a resolution to their complaint through legal proceedings.

We have heard Namitha Naveen the learned counsel appearing for the complainant, submitted that the complainant purchased a 32-inch HD ready TCL Television on 30.09.2019, worth Rs. 10,490, based on advertisements by the 1st and 2nd opposite parties. At the time of purchase, they were promised a 36-month warranty.

The TV became faulty in May 2020, and after numerous attempts to contact customer service, a technician visited but suggested a replacement of the display board, which never happened.

Despite promises from the opposite parties, there has been no resolution to the issue. The complainant feels that they have not received the service they were promised.

The complainant claims that the actions of the opposite party's amount to unfair trade practices, cheating, and a deficiency in service, causing mental distress.

The complainant seeks compensation of Rs. 10,490 (the value of the product) with 12% interest, Rs. 25,000 for mental pain and waste of time and money, and another Rs. 25,000 for the deficiency in service. Additionally, they request the cost of the proceedings.

The complainant believes that their case falls under the Consumer Protection Act and requests the defective product's replacement or the specified compensation. Arguing that this constitutes a deficiency in service and unfair trade practice, the complainant sent a lawyer's notice on 05.12.2021 (**Ext. A2**), received by the first opposite party on 27.12.2021 and by the second on 22.12.2021 (**Ext. A3 and A4**), demanding product defect removal, replacement, or refund, plus compensation for damages. However, no reply was provided to the notice.

The complainant emphasizes the mental agony and hardship faced due to this service deficiency and unfair trade practice, especially as their children missed online classes during the COVID-19 lockdown. The complainant asserts joint and several liabilities of the opposite parties for the mental agony, loss, and hardship endured. They argue that selling a product with no available replacement parts constitutes cheating and unfair trade practices.

The complainant seeks replacement of the defective product or a refund of Rs. 10,490 with, compensation of Rs. 25,000 for mental pain, time, and money wasted, and another Rs. 25,000 for service deficiency, along with the cost of the proceedings.

The evidence presented included an ex-parte proof affidavit filed by the complainant, and it was unchallenged by the opposite parties. Therefore, the complainant's claims were considered credible and supported by the evidence. Therefore, the complainant requests the commission to grant the relief sought including compensation for mental agony and unfair trade practices.

The opposite parties' conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the opposite parties. We have no reason to disbelieve the words of the complainant as against the opposite parties. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

Nachiket P. Shirgaonkar v/s Pandit Automotive Ltd. & Another, Revision Petition No. 3519 of 2006 in Appeal No. 1953 of 2005, Decided On, 25 February 2008, At, National Consumer Disputes Redressal Commission. AIR 2008 (NOC)2260(NCC)
<https://www.lawyerservices.in/Nachiket-P-Shirgaonkar-Versus-Pandit-Automotive-Ltd-and-Another-2008-02-25>.

"In this case, from day one onwards the vehicle was found to be defective which was admitted by the dealer himself through his letters. Naturally, encountered with these problems the consumer must have been shell shocked compelling him to knock at the doors of the Consumer Forum. Even before the Consumer Forum in the written submissions filed by OP 1, there is a clear admission of the manufacturing defects. Hence, we are convinced that the vehicle did suffer from manufacturing defects. **This is a clear case of res ipsa loquitur i.e. facts speak themselves hence there is no need to refer the vehicle to a third party for giving an opinion.**"

In the present case, after a short duration of the purchase of the television the problem occurred in it. Though it was rectified yet again the same problem crept up. When the same problem crept up again and again, we were of the view that the television had some manufacturing defect not capable of being removed and the same was not worthy of use.

The Honorable National Consumer Disputes Redressal Commission has further observed that:

“In our opinion, from the admission made by the petitioner, it is clear that the vehicle had gone to them on several occasions for repairs. In our view, there is no necessity for a new car to go to workshop ‘on several occasions’ for repairs within a short span of one year of its purchase.”

The Commission here relied on the ex-parte proof affidavit filed by the complainant that showed persistent problems with the television ever since its purchase. In fact, within just eight months of purchase, the television. Yet, despite repeated repairs, the problems were not resolved.

In the present case, the complainant purchased a 32-inch TCL television with a 36-month warranty, but the television became faulty within months of the purchase. Despite repeated attempts to seek resolution from the opposite parties, the complainant faced mental agony, loss of time and money and hardship, especially during the COVID-19 lockdown when their children missed online classes due to the defective product.

The key issues to be addressed in this judgment are as follows:

Let's address these issues one by one:

- i) The complainant has alleged a deficiency in service and unfair trade practices by the opposite parties. The television became faulty shortly after purchase, and despite promises and assurances, the opposite parties failed to provide a resolution or replace the defective product. The opposite parties' conscious

failure to file their written version and their acknowledgment of the Commission's notices without responding amounts to an admission of the allegations against them. This is in line with the precedent set by **the Hon'ble National Commission in its order dated 2017 (4) CPR page 590 (NC)**. Therefore, there is sufficient evidence to establish a deficiency in service and unfair trade practices by the opposite parties

iii) Considering the deficiencies in service and unfair trade practices established in this case, the complainant is entitled to relief. The complainant seeks compensation of Rs. 10,490, which is the value of the defective product. They also request Rs. 25,000 for mental pain, time, and money wasted, and an additional Rs. 25,000 for the deficiency in service. Furthermore, they seek the cost of the proceedings. Given the mental distress and hardships faced by the complainant, as well as the unfair trade practices and deficiency in service established in this case, it is just and fair to grant the complainant's requested relief.

iv) In terms of the costs of the proceedings, it is well-established that costs should be awarded to the party who succeeds in the case. In this instance, the complainant has successfully proven their case, while the opposite parties have failed to provide a defense or challenge the allegations. Therefore, the costs of the proceedings should be borne by the opposite parties.

We find that issues (I) to (IV) are in favour of the complainant due to the substantial deficiency in service and unfair trade practices exhibited by the opposite parties. Consequently, the complainant has experienced significant inconvenience, mental distress, hardships, and financial losses as a direct result of the negligence of the opposite parties.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite parties are liable to compensate the complainant.

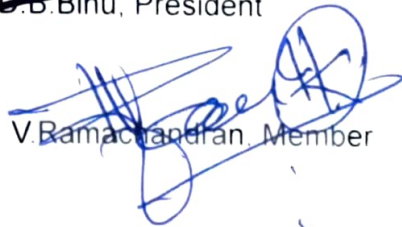
Hence the prayer is partly allowed as follows:

- I. The Opposite Parties shall replace the defective television with a new product of similar description to the complainant. If it is impossible to provide the replacement, the Opposite Parties shall reimburse Rs.10,490 (ten thousand four hundred ninety rupees) towards the cost of the product.
- II. The Opposite Parties shall pay Rs. 25,000/- to the complainant as compensation for the mental pain, waste of time, and money due to the deficiency in service and unfair trade practices.
- III. The Opposite Parties shall also pay the complainant Rs 10,000/- (ten thousand rupees) towards the cost of the proceedings.

The Opposite Party is hereby held liable for the aforementioned directions, which must be complied with within 30 days from the date of receiving a copy of this order. Failure to do so will result in the amounts specified in (i) and (ii) above incurring interest at a rate of 9% from the date of filing the complaint (15.02.2022) until the date of full payment.

Pronounced in the Open Commission on this 30th day of November 2023


D.B. Binu, President


V. Ramachandran, Member

Sreevidhia.T.N, Member