

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

MA No. 104/2015

IA No. 01/2015

Reserved on: 13.07.2023.

Pronounced on: 11.08.2023.

Mohammad Akbar Bhat

...Appellant(s)/Petitioner(s)

Through: Mr Manzoor A. Dar, Advocate with
Mr Javaid Ahmad, Advocate

Vs.

Goutum Engineering Company and Anr.

...Respondent(s)

Through: Mr A. Chesti, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE.

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGEMENT

Per Javed Iqbal J'

1. The instant appeal is directed against award dated 25.08.2014 (hereinafter for short “*the impugned award*”) passed by the J&K State Consumer Disputes Redressal Commission, Srinagar, (hereinafter for short “*The Commission*”) in consumer complaint bearing File No. 29/2009 titled “*Mohammad Akbar Bhat Vs. Gautam Engineering Company and Anr.*” (hereinafter for short “*the complaint*”).

Facts:

- The appellant herein filed a complaint under the provisions of the Jammu and Kashmir Consumer Protection Act, 1987 (for short “the Act of 1987”) initially against the respondent 1 herein stating therein that in order to earn his livelihood, he purchased a JCB Hydraulic Excavator of 3-DX Model on 01.10.2008 for an amount of Rs. 22,22,153/- acknowledged by the respondent 1 by a bill/invoice.
- It came to be further pleaded in the complaint by the complainant/appellant herein that when the said JCB was put to work on 10.10.2008, within few hours it developed mechanical snag and became dysfunctional which came to be conveyed to the respondent 1 herein on the very same day telephonically who got it

inspected and checked by a mechanic at site, whereafter the respondent 1 herein informed the complainant/appellant herein that the engine of the JCB has developed major defects and needs to be replaced. For inspecting and repairing the JCB on the said day, the respondent 1 herein is stated to have charged the complainant appellant herein an amount of Rs. 27,430/- despite the fact that the JCB was within its warranty period.

- It came to be further stated in the complaint by the complainant/appellant herein that he sent a letter to the respondent 1 herein through fax on 12.10.2008 requesting for replacing the defective JCB immediately as otherwise the complainant appellant herein would suffer a heavy financial loss owing to the reason that the complainant appellant herein has purchased the JCB after availing a huge amount of loan from the J&K Bank branch office Namblabal Pampore against a huge rate of interest and also that the complainant appellant has entertained number of contract works with various contractors which complainant appellant would lose in case the JCB is not replaced.
- It came to be next pleaded in the complaint by the complainant appellant herein that the respondent 1 herein assured the complainant appellant herein that the defective engine of the JCB would be replaced within a few days and that though the engine was repaired, the JCB Excavator again developed problems and again for its temporary repair, respondent 1 herein charged an amount of Rs. 16,931/- from the complainant appellant herein.
- It came to be further averred in the complaint by the complainant appellant herein that the respondent 1 herein thereafter informed him that a new engine has arrived from respondent 2 herein to be fitted in the JCB and as such the defective JCB was taken by the complainant appellant herein to the work place of respondent 1 herein at his own cost and labour however, surprisingly found the so called new engine to be fitted in the JCB as an old one against which the complainant appellant herein objected and demanded that the defective JCB be either replaced with a new one or a new engine be fitted therein or in the alternative he be paid back his

money to which the respondent 1 herein did not accede to, resulting into rendering the complainant appellant herein unemployed and jobless being the only source of earning livelihood of the for himself and his family owing to the unfair trade practices resorted to by the respondents besides causing tremendous mental pain and agony to the complainant appellant herein as also wastage of precious time and money.

2. Upon entertaining the compliant, the Commission summoned the respondent 1 herein and though initially complainant appellant herein had impleaded respondent 1 herein only as party respondent, yet, the Commission impleaded respondent 2 herein as party respondent during the pendency of the complaint before it after the respondent 1 herein pleaded in its reply that it is the only dealer and not the manufacturer of the JCB, which being respondent 2.
3. The Commission after dealing with the preliminary objection raised by the respondents qua its territorial jurisdiction and upon rejecting the same, proceeded to adjudicate upon the complaint.
4. The complainant appellant herein during the adjudication of the complaint filed affidavits of 3 of his witnesses besides himself appearing as his own witness, whereas respondent 1 filed evidence affidavit of 2 of its employees. No evidence came to be led by the respondent 2 herein.
5. The Commission after conclusion of the adjudication of the complaint passed the impugned award whereby the respondents herein came to be directed to effect all requisite repairs and replacing of whatsoever parts required in the JCB make it fully functional to the satisfaction of the complainant within a period of 3 weeks inasmuch as directed the respondents to pay a cumulative compensation of 3 lacs to the complainant as loss suffered by him qua the payment of interest payable by him upon the money borrowed inasmuch as for loss of earning/profit as also decrease in re-sale value of machine besides directing the respondents to undertake to offer free services to the machine for 6 months from the date of delivery together with a litigation costs of Rs. 10,000/- bringing total cash liability to Rs. 3.10 lacs to be shared by the respondents herein equally payable to the complainant or to be deposited in the Commission within 6 weeks from the date of passing of the award.

6. The complainant appellant herein dissatisfied with the impugned award has chosen to maintain the instant appeal on the ground urged in the appeal.

Heard counsel for the parties and perused the record.

7. Before proceeding to deal with the appeal in hand it is significant to mention here that the respondents herein have not objected to or called in question the validity and legality of the impugned award, as such, the findings recorded by the Commission in the impugned award qua **deficient service** and **wrongful practices** resorted to by them have assumed finality.

8. Reverting back to the case in hand it is not in dispute that the Commission noticing the fact that the JCB was defective and same was retained by respondent 1 herein in its workshop from May 2009 till the same was delivered in the repaired condition to the complainant appellant herein after passing of the award by the Commission, allowed payment of Rs. 3 lacs to the complainant appellant herein payable by the respondents herein on account of non-user of the JCB.

Perusal of the record tends to show that the Commission has overlooked day to day loss suffered by the complainant appellant herein on account of non-user of the JCB for the said period and consequently did not determine any compensation payable to the complainant appellant herein. The Commission has also failed to award compensation to the complainant appellant herein on account of deficient services and wrongful practice resorted to by the respondents while concealing the defect in the JCB.

Besides the Commission seemingly, as well, has not compensated the complainant appellant herein for the decrease in the resale value of the JCB after it remained dysfunctional for approximately 5 years while lying in the workshop of respondent 1 herein. Though the Commission as against the said period of 5 years has taken into account the period of 2 ½ years for the purposes of working out the compensation payable to the complainant appellant herein while holding both the complainant appellant herein and respondent 1 herein responsible for

such act of retention of JCB and in view of above rightly scaled down the said period 5 years to 2 ½ years.

Therefore, in view of above the Commission has not appropriately worked out the compensation payable to the complainant appellant herein in respect of aforesaid **non-user of the machine for 2 ½ years, day to day loss suffered by such non-user inasmuch as on account of deficient services and wrongful practices.**

9. Having regard to facts and circumstances of the case, the material on record and the aforesaid analysis, the impugned award dated 25.08.2014 passed by the Commission, is liable to be interfered with and the compensation worked out by the Commission and awarded by it to the complainant appellant herein requires to be re-assessed as follows:-

- (i) Considering 50% of the total number of days out of Five years the machinery remained in custody of respondent 1, the total period works out to 365 days x 2.5 years = 912 days.
- (ii) Average number of working days in a month for non-user of the machinery = 15 days i.e. 456 days in 2.5 years (30 months).
- (iii) Average working hour per day = 04 Hours.
- (iv) Total working Hrs. = 456 days x 4 Hrs = 1824 Hrs
- (v) User Charges of the machinery @ average rate per hour = Rs. 800/-
- (vi) Total income which could be generated for user of the machinery 1824 Hrs x Rs. 800 = Rs. **14,59,200/-**
- (vii) Deduct cost of fuel per day for 04 hours = Rs. 200/- and total cost of fuel for 1824 hours would be 1824 Hrs x Rs. 200 = **Rs. 3,64,800/-**
- (viii) Deduct expenses towards salary of operator @ Rs. 8000/- per month total period of 30 months = Rs. **2,40,000/-**

a) Total income generated as above	Rs. 14,59,200/-
b) Cost of Fuel deducted as above	Rs. 3,64,800/-
c) Salary of operator deducted as above	<u>Rs. 2,40,000/-</u>

Total **Rs. 8,54,400/-**

Less by the amount already paid by order of the State Commission Rs. 3,10,000/-

Total **Rs. 5,44,400/-**

10.For the foregoing reasons the impugned award shall stand modified as detailed out above and consequently the appeal accordingly shall stand disposed of holding the complainant appellant herein entitled to the amount of Rs. 5,44,400/- payable to the complainant herein and to be shared equally by respondents, within 8 weeks from the date of passing of this order.

11.Disposed of.

(JAVED IQBAL WANI) (N. KOTISHWAR SINGH)
JUDGE CHIEF JUSTICE

SRINAGAR

11.08.2023

Ishaq

