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DR. D.J. DE SOUZA

v.

MANAGING DIRECTOR CPC DIAGNOSTICS PVT. LTD.

(Civil Appeal Nos. 3351-3352 of 2019)

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APRIL 01, 2019

**[DR. DHANANJAYA Y. CHANDRACHUD AND  
HEMANT GUPTA, JJ.]**

- Consumer Protection Act, 1986: Deficiency in service –*
- C *Appellant placed an order for purchase of TurboChem 100 Unit from respondent – On delivery, the service engineer pointed out that 1000 mv/650 Watt UPS was not suitable and advised appellant to purchase 1KVA Online UPS for usage during power failure – Stand of appellant was that he got a confirmation from the manufacturer of the equipment that UPS which the appellant had*
  - D *was suitable – However, respondent insisted on installation of 1 KVA Online UPS – Appellant also raised grievance that there was no on-board laundry facility present on the instrument and, therefore, such instrument was of no use to him – Complaint before Consumer Forum by appellant claiming the purchase amount and damages of Rs.50,000 – Held: The pre-installation requisite clearly stipulated that the appellant had to provide efficiently air-conditioned room, 1KVA Online UPS for running of the equipment and broadband connection for “i-track” (Remote Diagnostics Tool) – In the brochure supplied to the appellant, there was no commitment of supply of instrument with on-board laundry facility – Thus, the on-board laundry facility was never committed to be delivered to the appellant along with the instrument nor there could be any installation of the equipment without installation of 1KVA Online UPS being part of pre-installation requirements – The e-mail from the manufacturer would not override the pre-conditions of installation which were in view of electricity supply conditions in the country – All the authorities under the Consumer Protection Act correctly found that there was no deficiency in service or restrictive trade practice – No interference with the orders passed by Forums called for – Appeals dismissed.*

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.3351- A  
3352 of 2019

From the final Judgment and Order dated 14.12.2017 and 04.10.2018 of the National Consumers Disputes Redressal Commission, New Delhi in Revision Petition No.2219 of 2016 and RA No.295 of 2018 in Revision Petition No.2219 of 2016 respectively.

Dr. D.J. De Souza, Appellant-in-person.

The Judgment of the Court was delivered by

HEMANT GUPTA, J.

1. Leave granted. C

2. The challenge in the present appeals is to a judgment and order passed by the National Consumer Disputes Redressal Commission<sup>1</sup> on 14.12.2017 and also an order in Review Petition passed on 04.10.2018.

3. The appellant placed an order for purchase of TurboChem 100 Unit in response to quotation submitted by the respondent in the second week of August 2015. The appellant remitted a sum of Rs. 3, 50, 000/- towards 50 per cent cost of the instrument. The pre-installation requisite contemplated the following conditions:

“1. Pre-installation Requisite	Customer has to provide the following:	E
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Efficiently air-conditioned room

1 KVA online UPS for running of the equipment.

Broadband connection for  
“i-track”(Remote  
diagnostics Tool)

The equipment will be provided with “i-track” Remote, facility at the time of installation.”

4. The equipment was delivered on 30.09.2015. The service engineer pointed out that 1000 mv/650 Watt UPS of APC Company

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- A was not suitable and the appellant was advised to purchase 1KVA Online UPS for usage during power failure. The stand of the appellant is that he has got a confirmation from M/s. Awareness Technologies USA, the manufacturer of the equipment that UPS which the appellant had is suitable but the respondent insisted on installation of 1KVA Online UPS.
- B The appellant also raised a grievance that there is no on-board laundry facility present on the instrument, therefore, such instrument is of no use to him. Therefore, the appellant sought payment of Rs. 3, 50, 000/- along with 9 per cent interest as well as damages of Rs. 50, 000/-.

5. The District Consumer Disputes Redressal Forum, South Goa at Margao<sup>2</sup> dismissed the complaint *inter alia* on the ground that the appellant has not placed copy of the order in support of his plea that on-board laundry was a part of the equipment. Since, there was no commitment on the part of the respondent to supply on-board laundry facility, the complaint was dismissed. Aggrieved against the order passed by the District Forum, the appellant filed an appeal before the Goa State Consumer Disputes Redressal Commission<sup>3</sup>. The said appeal was dismissed on 08.07.2016 when his argument that the respondent has indulged in restrictive unfair trade practice, was not accepted. It was argued that the appellant had one 1KVA UPS purchased on 19.10.2015 but the respondent insisted on installation of Online UPS. The appellant referred to his correspondence with the manufacturer in USA that UPS purchased by the appellant is good provided that the instrument is the only item hooked up to the UPS.

6. The State Commission found that the appellant placed an order when the respondent communicated their best offer for Turbochem 100 fully Automated Random-Access Biochemistry Analyser and also enclosed brochure for reference. It is thereafter, the 50 per cent of the price was paid. In the brochure there is mention of on-board cooling facility as one of the features but there is no feature of on-board laundry facility. There is a specific mention of requirement of 1 KVA Online UPS for running of the equipment. In view of said facts, the learned State Commission dismissed the appeal. The further challenge by way of a Revision before the NCDRC remained unsuccessful. The NCDRC found that there is no commitment from the respondent about the supply of instrument with on-board laundry facility and that the appellant has

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H <sup>2</sup>District Forum

H <sup>3</sup>State Commission

failed to establish that there was any malfunctioning or manufacturing defect in the instrument. A

7. It was also mentioned that the performance of the instrument depends upon the continuous uninterrupted electricity supply which could be made available through Online UPS. It was advisable to install best quality Online UPS keeping in view the fluctuation in electricity supply in the country. B

8. Before this Court, the appellant argued that the manufacturer of the instrument in USA vide an email as Annexure P-10, has communicated that the UPS purchased by the appellant will be good, provided the TurboChem 100 is the only item hooked up to the UPS. Therefore, the insistence of the respondent for installation of 1KVA Online UPS is arbitrary and is restrictive trade practice.

9. We have heard the appellant and find no merit in the present appeals. The pre-installation requisite as reproduced above clearly stipulates that the appellant has to provide: (i) Efficiently air-conditioned room (ii) 1KVA Online UPS for running of the equipment (iii) Broadband connection for “i-track” (Remote Diagnostics Tool). The equipment will be provided with “i-track” remote facility at the time of installation.

10. In the brochure supplied to the appellant, there is no commitment of supply of instrument with on-board laundry facility. Thus, the appellant could not insist on on-board laundry facility which was never committed to be delivered to the appellant along with the instrument nor there could be any installation of the equipment without installation of 1KVA Online UPS as part of pre-installation requirements. The email from the manufacturer will not override the pre-conditions of installation which are in view of electricity supply conditions in the country. All the authorities under the Consumer Protection Act, 1986<sup>4</sup> have found that there is no deficiency in service or restrictive trade practice.

11. In view of the above, we do not find any error in the orders passed by the Forums constituted under the Act which warrant interference in the present appeals. The present appeals are thus dismissed.

Devika Gujral

**Appeals dismissed.**

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