

(1997) 01 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

AVALON DESIGN PVT. LTD.

APPELLANT

Vs

HAWK INTELLIGENCE SERVICE PVT. LTD.

RESPONDENT

Date of Decision : 24-01-1997

Acts Referred:

Citation : 1997 0 ACJ 176 : 1997 0 NCDRC 48 : 1997 1 CPC 427 : 1997 1 CPJ 35 : 1997 1 CPR 38 : 1997 5 CTJ 922

Hon'ble Judges : C.L.CHAUDHRY , R.THAMARAJAKSHI , S.S.CHADHA J.

Advocate : R.K.VIRMANI , SANJAY GHOSH , D.BASU MALLICK , NALIN TRIPATHI

Judgement

1. FIRST Appeal No. 339 of 1996 is filed against the order dated 16.7.1996 of the West Bengal State Consumer Disputes Redressal Commission in Case No. 400/0/95.

2. THE Complainant (Respondent before us in the Appeal) had purchased a computer on 13.6.1990 from M/s. Hinditron Computer Manufacturing Co. Ltd., and got it installed by M/s. Vedika Software with an accounting system, Fact S.O. purchased from the latter. A service contract with Opposite Party (Appellant herein) was entered into for the period 19.6.1992 to 18.6.1993. In September, 1992, on a complaint about defects in the printer, an engineer of the OP replaced a part and allegedly gave an estimate of Rs. 200/- towards the value of the same. However, according to the Complainant, the OP subsequently sent a bill for Rs. 1,500/- for the said part which the former refused to pay in the context of the earlier estimate of Rs. 200/- for the same. In the meantime, the engineer of the OP came to check the computer and while doing so, allegedly removed certain parts due to which the computer became inoperative. Though this engineer assured that he would repair the computer the next day, he did not turn up and no steps were taken by the OP in this regard. In the meantime, a revised bill for Rs. 1,250/- was sent by the OP which was also not accepted by the Complainant as being on the higher side. In March, 1993, the OP sent a "stop service" notice for non-payment of Rs. 1,250/-. In April, 1993, the Complainant lodged a complaint through a lawyer to the OP about deficiency in service.

However, one Mr. Mukherjee reportedly contacted the Complainant on behalf of the OP requesting not to take any legal proceedings and assured that immediate steps would be taken to repair the computer. However, no action was taken by the OP for nearly a year. In March, 1994 the OP took the computer for necessary repairs but the repairs were not properly done. It is alleged that in May, 1994, when the computer was again installed, it was not working and all the accounts data of the Complainant-Company were wiped out and the software was also missing. The OP again took back the computer as desired by the Complainant. By its letter of 3.10.1994, the Complainant wrote to the OP to return the computer after necessary repairs. When no reply was received, the Complainant sent a lawyer's notice which was replied to by the OP making various allegations. The Complainant thereafter lodged a complaint before the State Commission for a claim of Rs. 5,07,555.85 on various heads i.e. cost of computer, cost of manual works for 36 months, loss suffered by the removal of data and accounts for 3 years, loss of software and mental agony, alongwith interest for 3 years. The OP contended before the State Commission that (i) it was the Complainant who declined to accept the computer making false allegations even after repairing was done by the OP in May, 1994, (ii) the allegations are baseless and unsustainable and (iii) Clause 1(f) of the maintenance agreement clearly absolved the OP from any loss of data. The State Commission observed, inter alia, that the breakdown of the machine took place well within the contract period i.e. somewhere in January, 1993 and the OP having charged full money was obliged to keep the machine in working order throughout the year and there is no evidence on record that the OP have tried to return the repaired computer to the complainant. The State Commission, therefore, held that there was deficiency of service on the part of the OP and directed it to pay to the Complainant a sum of Rs. 2,10,249/-.

3. IN this appeal filed against this order, the main points raised are that (i) there is no proof of the allegation of the Respondent-Complainant that initially the price of the replaced part was reported at Rs. 200/- by the engineer of the Appellant (ii) all allegations made by the Respondent-Complainant were after the "stop services notice" dated 10.3.1993 which was almost 7 months from the time of replacement of parts and (iii) the allegation that an engineer of the Appellant took away some parts is uncorroborated by any documentary evidence. It has been further pointed that after the termination of the service contract, there was no reason for the Appellant to continue with the servicing of the computer; however on a specific request made by the Respondent on 22.3.1994 the said computer was taken only for repairing but the Respondent refused to take delivery of the same on the plea that the data have been wiped out. According to the provisions of the contract, the printer-head, printer-band and print wheel were outside the contract; the defect which was pointed out was with regard to the printer and not with regard to the computer. The respondent filed its counter-affidavit and the Appellant its rejoinder.

4. WE have heard the counsel on both sides and gone through the records before

us. The service contract covered the period 19.6.1992 to 18.6.1993. There was a dispute about the charges demanded for the part replaced in the machine in September, 1992. The Appellant had sent a bill for Rs. 1,500/- in October, 1992 which the Respondent-Complainant protested and did not pay. Though this bill was subsequently reduced to Rs. 1,250/- the same was also not settled by the Respondent. For non-payment of the same, the Appellant sent a "stop service" notice to the Respondent. Even irrespective of this action on the part of the Appellant, the service contract for which payment was earlier made had expired in June, 1993. The computer allegedly broke down, data got wiped out and software removed in May, 1994. Whatever happened between the Appellant and the Respondent in regard to the computer after June, 1993 is not covered by any agreement. In the light of this, no case of deficiency of service can be made out under the Consumer Protection Act. The appeal is, therefore, allowed, the order of the State Commission set aside, and the complaint dismissed. There is no order as to costs.