
(1990) 12 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

JASHVANTSINGH LAXMANSINGH GOHEL

APPELLANT

Vs

GUJARAT AGRO INDUSTRIES CORPN.

RESPONDENT

Date of Decision : 20-12-1990

Acts Referred:

Citation : 1991 2 CPJ 237 : 1991 2 CPR 198

Hon'ble Judges : S.A.Shah , Leelaben Trivedi , R.K.Shah J.

Final Decision : Complaint dismissed

Judgement

1. HE had purchased a Tractor manufactured by Hindustan Machines Ltd., (Opposite Party No. 2) for Rs. 30,377/- on April 22,1985. The complainant has produced the Bill showing the purchase of the disputed tractor bearing No. 26780.

2. AS has been averred in the complaint the complainant had procured a loan of Rs. 60,000/- from the State Bank of India and the balance amount of Rs. 20,000/- was borrowed by him from his relatives. According to the complainant, the tractor was defective from the very beginning and that he had to get it repaired twice or thrice The allegations regarding the defect are that the mounting bolt was fitted inserted and that though it was got repaired again and again, it could not give proper service and that the technician of the company had accepted the position that it had so many defects. He has further alleged that the said Tractor had remained in the work shop of Opposite party for about eight to ten months. Further, as averred by the complainant, he had requested the opposite party to replace the said Tractor but his request was not accepted to. According to the complainant, he had given notice through Advocate but he could not file the suit on account of his worst financial position, which, according to him, was on account of continuous Famine position for over last three years.

On these premises, the complainant has prayed for an order for replacing the tractor and has also claimed for award of Rs. 50,000/- by way of damages, and costs as also a further order for release of amount of Rs. 6,197/- payable under the Crop Insurance Scheme.

3. OPPOSITE Party No. 1 is the Gujarat Agro Industries Corporation which was the contracting party. OPPOSITE party No. 2 is the Hindustan Machine Tools, manufacturer of the tractors; and OPPOSITE party No. 3 is the State of Gujarat. In response to the notices issued to all the parties Gujarat Agro Industries and Hindustan Machine Tools Ltd., have appeared and contested the complaint. State of Gujarat, though served, has not appeared. The first Opposite Party has filed its written statement, denying the allegations made in the complaint and its liability. The said party has, however, admitted that the Gujarat Agro Industries Corporation have been working as dealers of the Opposite Party No. 2 and that they had delivered the disputed tractor on April 23, 1985, alongwith the Warranty Card and other documents, to the complainant. It is the case and contention of the Opposite Party No. 1 that according to the terms of the Warranty, the complainant was entitled to free service for the period of warranty and that from time to time, such services were made available and the spare parts if found to be defective, had been replaced without any costs, to the satisfaction of the complainant. It is contended that the real purpose for filing this complaint is that the complainant who had obtained loan from that Bank of India, had made default in repayment of the loan instalments for which the Bank has taken steps to recover the loan amount and hence this complaint, on false grounds. It is further contended that since the warranty period is extinguished, the company is now no more responsible to repair the tractor. The allegation that the tractor has been lying for last ten months, is denied by the opposite party. According to the opposite party, the complainant who had sent the tractor for service and repairs, had not taken the same back though he was informed time and again to take it back. The opposite party had denied that there were any defects in the Tractor as alleged.

4. THE Complainant had produced some documents including a copy of the Application for attachment before Judgment made by State Bank of India. Both the parties filed several documents and affidavits in support of their respective pleadings. One Akbar Singh has filed his affidavit on behalf of Hindustan Machine Tools in the present proceedings, stating that at the time of delivery, there was no manufacture defect as alleged by the complainant. He has further stated that the warranty period of one year is already over and hence the company was not liable to repair the tractor. He has also stated that there were some minor complaints, but the same were satisfactorily attended to by their technicians and that some spare parts were also replaced. He has further stated that the complainant had already declared that he had taken delivery of the tractor free from any defect and that, now, the complainant can not make any grievances about the defects or spare parts, as alleged by him after a lapse of five years. In so far as the defect in the hydraulic system is concerned, according to the deponent, this defect may be due to the factors like filling additional load which may result in damaging the said system, or because of applying gears while ploughing and filling or while running the tractor on road and due to such other factors, for which the complainant alone would be responsible if he outs the

tractor to such a use which is not advisable and, in the instant case, according to the deponent, the complainant has put the tractor to such a use. When this matter reached for argument, Mr. Bhatt, the learned Advocate for the complainant stated that the Tractor is not even in working condition and has not been used by the complainant. The opponents have challenged this statement of Mr. Bhatt and requested the Commission to depute the Court's officer to work as Court Commissioner and to inspect the tractor with the aid of technicians so as to clear the position and as Mr. Mahesh Bhatt did not object to the proposal, the Secretary of the Commission was directed to go to the spot where the Tractor was lying and to inspect and make report about the condition of the tractor and also to take trial through mechanics. Accordingly, the Court Commissioner proceeded forthwith to the place where the tractor was lying and inspected the same and submitted his report. The said report which was shown to the learned Advocates for all the parties, has been taken on record since no objection was filed by any of the parties. This Report made by the Commissioner which is an important document on record shows that actual trial, road working condition and road-worthiness of the tractor in question was tested in presence of the complainant, his Advocate Mr. Bhatt, representatives of the opposite parties and the Senior Mechanic of the Hindustan Machine Tools, and when the tractor was put into motion by changing the gear, the Commissioner noticed that at the very first attempt the tractor moved. On inquiry by the Commissioner regarding the defects, the complainant pointed out some of the defects which are enumerated in the Report. The Commissioner, with the assistance of the senior mechanic, on examination observed that : - the tractor had been utilised since last 4 to 5 years; knocking noise may be due to the normal wear and tear; oil was not changed by the complainant and dirty soiled oil was re-used by him. The Commissioner no doubt found some defects. He has however, negated the contention that the tractor was not operated since last so many years. On the contrary, he found that the Tractor was in fact being used and operated by the complainant till now and quite often. We have gone through the Affidavits and various documents filed by both the parties and we have also given anxious consideration to the present dispute, particularly when the matter relates to an agricultural implement and a poor man. We have, therefore, scrutinized the documents and Affidavits as also the Report made by the Court Commissioner against which no objections have been filed and we have found that the story of the Defect is exaggerated. True, the complainant has sent letters about defect; but it also transpires from record that the Opposite Party has also tried their best to satisfy the complainant and solve his genuine complaints. The Tractor has been purchased in the year 1985. We find from the record that the Tractor has been used by the complainant considerably as can be seen from the Commissioner's Report.

5. THE submission of the complainant that the tractor was defective from the very beginning and required replacement, under the circumstances, cannot be accepted after a long span of five years, particularly when the complainant had

accepted the delivery of a new Tractor, had operated and used the same since all this period of over five years; had got the defects also remedied at intervals, through the mechanics of the opposite party; and had also obtained agricultural produce with the help of this tractor. THESE allegations of defect from the very beginning, therefore, seem to be highly exaggerated and cannot be entertained.

6. HOWEVER, on our persuasion, Opposite Party No. 1 Gujarat Agro Industrial Corporation has filed a purshis stating that the opposite party is ready and willing to repair the Tractor at the workshop of Opposite Party No. 1 without charging for such repairs. HOWEVER, the complainant, as the opposite party has stated, will be liable to bear the expenses for replacement of any of the spare parts and such other components which are required to be used. Upon consideration of entire evidence produced by the parties, along with the Commissioner's Report, we are not inclined to hold that the tractor supplied by Opposite Party was defective from the beginning as alleged by the complainant. It is, however, possible that there were some deficiencies which were required to be repaired or set right, particularly the bolt of the hydraulic system, which was fitted inavertly; and for such other defects, the opposite party has agreed to carry out necessary repairs, without charging the complainant for service, but only for the parts which may be replaced.

In the aforesaid view of the matter, we do not find that the complainant is entitled to get any of the relief-either for replacement or for any compensation by way of any damage. Since the Opposite Party has agreed to undertake repair work free of charge as stated in the purshis dated November 22,1990, we order that if the complainant brings the Tractor in question for repairs within two months from the date of this order, Gujarat Agro Industries Corporation will carry out the repairs without any charge. However, the complainant shall purchase and give such parts or components as may become necessary to be replaced to Opposite Party No. 1 or shall pay the value of such spare parts that may be replaced by Opposite Party No. 1. With the aforesaid directions, the Complaint is dismissed with no order as to costs. This 20th day of December, 1990. Complaint dismissed.