

Date of filing : 23.08.2021.

Date of Order : 12.10.2023.

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION – II:
VIJAYAWADA

Present: Sri Chiranjeevi Nelapudi, M. A., L.L. B., Hon'ble President

Smt. K. Sasi Kala, M. A., L. L. M., Hon'ble Woman Member

Sri A. Venkata Ramana, B. A., B. L., Hon'ble Member

Thursday of October, 2023.

C. C. No.121 of 2021.

Between:

1) Dr.Vikas Pandey, S/o. Late Mohan Pandey, Hindu, aged 41 years, D. No.2-69, Rajeev Nagar, Visakhapatnam-530040, President of the Consumer Rights Organization (CRO), Upbhokta Adhikar Sangthan, Andhra Pradesh State.

... Complainant.

2) U. Durga Harish, S/o. U. Bala Krishna, residing at 39-15-10, Opposite Gateway Hotel, Tentu Gowraiah Street, Labbipet, Vijayawada – 520 010.

... De-Facto Complainant.

And:

1) Daikin Air Conditioning India Pvt. Ltd., 12th Floor, Building No.9, Tower A, DLF Cyber City, DLF Phase III, Gurgaon – 122 002, Haryana, India.

2) Sonovision, D. No.: 28-1-44, Eluru Road, Arundalpet, Vijayawada – 520 002.

3) Daikin Air Conditioning India Pvt. Ltd., The Orchid 4th Floor, Plot No.173, D. No.48-13-6A, 3rd Line, Nagarjuna Nagar, Vijayawada – 520 008, A. P., India.

... Opposite Parties.

Counsel for Complainant : Sri P. Srinivasa Apparao.

Opposite Party No.2 : Called absent.

Counsel for Opposite Party Nos.1 and 3 : Sri J.V. Prasad, Sri J.L.S. Narayana.

This complaint is coming before this District Consumer Commission, for final hearing on 06.10.2023, in the presence of Sri P. Srinivasa Apparao, Counsel for complainant; opposite party No.1 called absent; Sri J.V. Prasad and

Sri J.L.S. Narayana, Counsel for opposite party Nos.1 and 3 and upon perusing the material available on record, this Commission, delivers the following:

ORDER:

(Delivered by Sri A. Venkata Ramana, Honourable Member,
on behalf of the Honourable Bench):

1. This complaint is filed under Section 35 of Consumer Protection Act, 1986, the complainant, therefore, prays the Honourable District Commission, Vijayawada, may be pleased to pass an order in his favour and against the opposite parties directing the opposite parties; (a) to refund Rs.38,000/- (Rupees Thirty Eight Thousand only) to the de facto complainant being the cost of Air Conditioner Inverter along with interest at 24% per annum from 03.09.2019 till the date of realization; (b) to refund the additional amount of Rs.300/- (Rupees Three Hundred only) towards service charges; (c) to pay Rs.3,00,000/- (Rupees Three Lakhs only) towards compensation for mental agony; (d) to pay Rs.3,00,000/- (Rupees Three Lakhs only) towards compensation for deficiency in service; (e) to pay costs of Rs.25,000/- (Rupees Twenty Five Thousand only); (f) such other relief or reliefs which the Honourable District Consumer Commission, deems fit, just and proper, in the circumstances of the case.

2. **Brief facts of the complaint are that** the complainant has received a complaint from U. Durga Harish, Son of U.Bala Krishna, residing at 39-15-10, Opposite Gateway Hotel, Tentu Gowraiah Street, Labbipet, Vijayawada-520010 (hereinafter called as "De Facto Complainant") to file a case against the opposite parties alleging that the Air Conditioner Inverter sold by the opposite parties is a defective one, malfunctioned during the warranty period and the complaint has not been resolved. Therefore, the present complaint is being filed by the complainant organization on behalf of the de facto complainant. It is further averred in the complaint by the complainant that the 1st opposite party (Daikin) is the manufacturer of Air Conditioners and other electronic goods and that the 2nd

opposite party (Sonovision) is the dealer selling various household articles manufacturer by the 1st opposite party and 3rd opposite party is the company own service provider. It is further averred in the complaint by the complainant that the de-facto complainant has purchased Daikin Air Conditioner Inverter (Model Number: CKTL50TV16U/RKL 50TV16U and Serial Number:99209) at Sonovision, Vijayawada on 02.09.2019 for an amount of Rs.38,000/- (Rupees Thirty Eight Thousand only) through an installment scheme wherein the monthly payment is Rs.4,750/- (Rupees Four Thousand Seven Hundred and Fifty only). The de-facto complainant has chosen this Air Conditioner as Daikin is one of the best companies in the market. It is further averred in the complaint by the complainant that the Air Conditioner started malfunctioning during the warranty period and that nearly, after using the Air Conditioner for 9 months, the de-facto complainant noticed that the room was not cooling effectively and thereafter, the Air Conditioner stopped working completely and that the de facto complainant immediately contacted customer care to give a complaint; however, they refused to register the complaint stating that they are not registering any complaints during the lockdown period. It is further averred in the complaint by the complainant that the de-facto complainant, upon 1st opposite party's refusal to register the complaint, asked the 2nd opposite party (Sonovision) to get the technical issue solved temporarily and that the 2nd opposite party arranged for a technician after a week, who instead of properly addressing the problem, have checked the Air Conditioning unit and performed a general service and thereafter, the Air Conditioner functioned well for some time and again stopped functioning within the warranty period and that the complainant purchased the product dated 03.09.2019 and that the de-facto complainant tried a lot to at least register a complaint through online but the first party refused to register his complaint sated pandemic situation. Because of acts of the opposite parties, the de-facto complainant suffered a lot and unable to utilize the service for which, he prays Rs.38,000/- (Rupees Thirty Eight Thousand only). It is further averred in the complaint by the complainant that the de-facto complainant's problem was not

addressed appropriately within the warranty period and the Air Conditioner stopped working. Particularly, the cooling unit and the Fan inside the machine were not working. The de-facto complainant after losing all his confidence and believe on opposite parties again, he tried in the first week of May, 2021 and he contacted customer care only to hear that they were not registering any complaints due to the ongoing partial lockdown. AT this point, it is pertinent to note that the 1st opposite party Daikin who provides warranty and claims to address technical issues during the warranty period has not shown any interest in resolving them and evidently, the 1st opposite party has fallen short of the claims that were being advertised. It is further averred in the complaint, by the complainant that a technician paid a visit to the de facto complainant's house on 09.06.2021 to check the Air Conditioner and that the technician verified the Air Conditioner and informed the de facto complainant that the Inverter PCB is damaged, which would cost Rs.9,500/- (Rupees Nine Thousand Five Hundred only) for the replacement and that the technician charged Rs.300/- (Rupees Three Hundred only) for visiting). It is further averred in the complaint, by the complainant that at this juncture, it is noteworthy that the first opposite party has charged the de facto complainant for providing technical advice. However, the de facto complainant received a call from another technician that there is a problem with the compressor unit of the Air Conditioner and that this confused the de facto complainant as to what exactly is the problem with the Air Conditioner and whether or not the opposite party would be able to solve it and that the de facto complainant lost trust in the technical service provided by the opposite parties. It is further averred in the complaint, by the complainant the 1st opposite party also denied providing an estimate for replacing the Inverter PCB stating that it is against their company's policy. The de facto complainant had to get the estimate from the second opposite party and that the particulars of the estimate given by the opposite parties are as follows:

Sl. No.	Part Code	Part Description	Price/Item	Quantity	Total Price
1	S2P419535-48K	PCB ASSY	Rs.4,860/-	1	Rs.4,860/-
2	Service charges	Servicing	Rs.1,000/-	1	Rs.1,000/-

Total amount exclusive of taxes	Rs.5,860/-
18% GST online-2	Rs.180/-
28% GST online 1	Rs.1,360.80
Grand Total:	Rs.7,400.80

It is further averred in the complaint, by the complainant that the opposite parties have been deficient in providing technical service, technical assistance and have been careless towards a consumer complaint and that the de facto complaint is incurring an unnecessary expense that could have been avoided if the opposite parties had solved it during the warranty period and that this additional amount itself is a huge burden to the de facto complainant during uncertain pandemic times and moreover, suffered the entire summer in scorching conditions despite owning an Air Conditioner only because of the careless response of the opposite party. It is further averred in the complaint, by the complainant that the opposite parties have sold a defective product, have not been able to provide service as claimed, and suffered the de facto complainant and that the de facto complaint alone had to put in a lot of effort to solve the problem only to find out that they were persistent and he had to pay an additional amount and that the opposite parties intentionally did not register the complaint by stating the pandemic situation because they knew that the product sold by them was defective one and therefore, the complainant is seeking for refund of the cost of the Air Conditioner and the allied charges if any collected by the opposite parties. It is further averred in the complaint, by the complainant that the cause of action for the complaint arose when the de facto complainant purchased a Daikin Air Conditioner Inverter manufactured by the 1st opposite party, sold by the 2nd opposite party and 3rd opposite party company service provider in Vijayawada and that the Air Conditioner malfunctioned and completely stopped working within the warranty period and the opposite parties have not shown any interest in solving the problem and that due to the negligence

of the 1st opposite party, the 2nd opposite party and the 3rd opposite party combined with the negligent technical service arranged by them, the de facto complainant has not been able to use the product uninterruptedly. The de facto complainant suffered the entire summer in scorching conditions despite owning an Air Conditioner only because of the spending an additional Rs.7,400/- (Rupees Seven Thousand Four Hundred only) to get the Air Conditioner repaired. It is further averred in the complaint, by the complainant that consequently, the de facto complainant had lost his faith in the opposite parties' service and believes that even if the Air Conditioner is repaired the problem would persist again causing extreme inconvenience and that the complainant is therefore, making a complaint on behalf of the de facto complainant and that the matters are within the Vijayawada jurisdiction of this Honourable District Consumer Commission only.

3. **Brief facts of written version filed by opposite party No.1 and 3 are that** Daikin Air Conditioning India Private Limited i.e., opposite party No.1 and 3, a company incorporated under the Companies Act, 1956 (hereinafter referred to as "opposite party No.1 and 3" or "DAIPL") and that opposite party No.1 and 3 are represented by duly Authorized Officer of the company who is having requisite authority and permission to file written statement for and on behalf of the opposite party No.1 and 3. These opposite parties further stated that allegations of complainants, which are contrary to or inconsistent with what is averred herein are denied in totally and that nothing in the complaint is or should be deemed to be admitted by or on behalf of opposite party No.1 and 3 for want of specific traverse or otherwise and that the averments herein are in alternative and without prejudice to one another and these opposite parties reserve its right to file the affidavit of evidence at appropriate time of proceedings. These opposite parties further stated that admittedly registered address of the Daikin Air Conditioning India Private Limited is at 210, First Floor, Okhla Industrial Area, Phase 3, Delhi-110020, which does not fall within territorial jurisdiction of the Honourable District Consumer Dispute Redressal Commission and hence no cause of action or part of cause of

action have arisen within territorial jurisdiction of this Honourable Commission and this complaint is liable to be dismissed on this ground itself and that the opposite parties submit that as per Clause 17 of warranty terms provides for, as follows:

“17 Courts in Delhi shall have exclusive jurisdiction in the event of any dispute.”

These opposite parties further stated that it is cardinal principle that question of jurisdiction shall always be decided as preliminary issue and shall also be raised at first available opportunity. In the present case, the opposite party had duly taken the jurisdictional objection in its written version itself at the first available opportunity and also urged for deciding the jurisdiction as preliminary issue before proceeding further in matter, since it goes to very maintainability of the complaint and that it is submitted that preliminary objections raised herein above with regard to maintainability of the complaint, goes to very root of the matter and as such, these objections need to be considered at outset and opposite party most humbly prays that this District Commission is to dismiss the complaint summarily without going into merits thereof on ground of lack of territorial jurisdiction.

These opposite parties further stated that these opposite parties vehemently disputes that the allegations contained in the complaint as per Section 38 (2) (b) hence, in the present case, the opposite parties 1 and 3 humbly call upon the District Commission to proceed to settle the consumer dispute in the manner specified in Clauses Section 38 (2) (c) to (g) as provided under the Consumer Protection Act. It is stated in present case the alleged complaint relates to defect in goods which can only be determined with proper analysis or test of the goods as per the mandatory provision contained under the Consumer Protection Act. It is stated that the alleged defect of the complainant are based on the conjecture and surmises which can never take the shape of the evidence and hence in the present case, the learned District Commission left with no option but to proceed with the complaint as per provisions of Section 38 (2) (c) to (g) and accordingly, the goods in question i.e., section 2 (1) (a) of the Consumer

Protection Act at the costs and expenses of the complainant as mandated under Section 38 (2) (b) to check whether there is any manufacturing defect in the product before passing any order.

These opposite parties further stated that after using the AC for more than 1.5 years, the complainant lodged his first complaint dated 02.06.2021 and that the technicians of the opposite parties 1 and 3 duly attended the complaint and found failure in PC of the outdoor unit of the said AC and that a quotation was also provided/given to the complainant for the charges to be incurred in repairing the said fault as the said AC unit was out of warranty and any repair outside warranty period is on chargeable basis.

These opposite parties further stated that the contents of para III (i) are wrong hence, vehemently denied. It is stated that the quotation was provided to the complainant dated 21.06.2021 through the authorized signatory of the opposite parties 1 and 3.

These opposite parties further stated that the contents of para V are formal and hence needs no reply.

These opposite parties further stated that the contents of the prayer clause are wrong and hence all are denied. It is vehemently denied that the opposite parties 1 and 3 as there was no deficiency in service and that the complainant has grossly failed to prove the same on the basis of any documentary evidence on record. This fact establishes the malafide intention of the complainant to gain undue advantage by filing this frivolous complaint. Therefore, present complaint is not tenable and required to be dismissed on the face of it without allowing any refund, interest amount, punitive damages or compensation or cost of litigation as fraudulently demanded by the complainant and that on the basis of above stated facts and grounds, this Honourable commission, may be pleased to dismiss the complaint with costs on complainant, in the interest of justice and equity.

4. **Evidence affidavit of complainant is filed and it is received as PW1. Exs.A1 to A6** are marked on behalf of complainant.

5. **Evidence affidavit is filed on behalf of opposite party No.1 and 3 and it is received as RW1. Exs.B1 to B3** are marked on behalf of opposite party No.1 and 3.

6. **On behalf of opposite party No.2, did not file evidence affidavit and did not mark any document** on behalf of opposite party No.2.

7. **Written arguments on behalf of complainant is filed** and this Commission is having gone through the same.

8. **Written arguments on behalf of opposite party Nos.1 and 3 is filed** and this Commission is having gone through the same.

9. **Opposite party No.2 called absent. On behalf of opposite party No.2, did not file written arguments.**

10. Having heard and perused the material documents available on record.

11. Now basing on the rival contentions, following Points that arise for consideration in this complaint are;

- i. Whether there is any deficiency of service on the part of the opposite party?
- ii. Whether the complainant is entitled to have the reliefs as prayed for in the complaint? and
- iii. To what relief?

12. As per the version of the complainant that the Air Conditioner of opposite party No.1 was not working and noticed that the room was not cooling effectively and the same was happened for 9 months. The complainant purchased the Air Conditioner on 02.09.2019 under (Ex.A3). The complainant contacted customer care to give complaint, however, they refused to register the complaint stating that they are not registering any complaints during the lock down period. When

the opposite party No.1 refused to register the complaint, then he requested opposite party No.2 (Sonovision) to send technical person, the same was solved temporarily. In view of general service for the unit, thereafter, the Air Conditioner functioned well for sometime and again stopped functioning within the warranty period. The complainant U. Durga Harish was trying a lot at least to register a complaint through online but opposite party No.1 customer care centre to register his complaint for second time in first week of May, 2021 and that they are not registering any complaints ongoing partial lock down, finally the opposite party No.1 sent technician on 02.06.2021 to check the Air Conditioner. He informed that the PCB was damaged which would costs of Rs.9,500/- (Rupees Nine Thousand Five Hundred only) for the replacement. He charged Rs.300/- (Rupees Three Hundred only) for his visiting. The complainant asked the opposite party No.1 to send estimated quotation for spare parts etc., as per (Ex.A5). The opposite party No.1 sent quotation for Rs.7,400.80 since the warranty period was over.

13. It is known that jurisdiction of the fact that the steep rise in Covid-19 virus cases in entire nation in India and world faced the situation of Covid-19 virus.

14. At the time of Covid 19, the opposite party did not take the complaints due to lockdown or partial lockdown etc. After lockdown, the warranty of the complainant automatically saves the limitation period of warranty. The Honourable Supreme Court of India also passed an order for extension of limitation in M No.665/2021 in SMW© 3/2020 order dated 23.09.2021 the same principal is applies to all cases.

15. Counsel for complainant vehemently argued that the complaint filed is within the jurisdiction of this Honourable District Consumer Commission and complainant is a consumer and the present complaint is filed under Section 35 of the Consumer Protection Act, 2019 as he resides within the jurisdiction of the Honourable Commission, as per Section 34 which reads as under:

“Section 34 Jurisdiction of District Commission.- (1) Subject to the other provisions of this Act, the “District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed fifty lakhs (as per Notification dated 30.12.2021) issued by Department of Consumer Affairs.

Provided that where the Central Government deems it necessary to do, it may prescribe such other value, as it deems fit.

(2) A complaint shall be instituted in a District Commission within the local limits of whose jurisdiction,-

(a) The opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or

(b) Any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or

(c) The cause of action, wholly or in part, arises; or

(d) The complainant resides or personally works for gain.

(3) The District Commission shall ordinarily function in the district headquarters and may perform its functions at such other place in the district, as the State Government may, in consultation with the State Commission, notify in the Official Gazette from time to time.”

16. Counsel for opposite parties cited some case laws in written version in this case. The facts of the cases laws submitted by the opposite parties are not relevant to the facts of the present complaint on hand. So, it is not helped to the opposite parties.

17. Therefore, we hold that the opposite party have committed deficiency in service in not attending the repairs in solving the problem faced by the complainant after lockdown period.

18. In the light of above observations, the opposite party have negligently avoided to attend the repairs. The complainant also raising his grievance by issuing legal notice to the opposite party. This Commission feels it is reasonable and proper for giving directions to the parties that the opposite party is to refund the amount of Rs.38,000/- (Rupees Thirty Eight Thousand only) to the complainant. The complainant is directed to handover his Air Conditioner under (Ex.A3) invoice to the opposite party No.2 and the opposite party No.1 may receive the same

from his dealer (opposite party No.2). The cause of action started in Covid 19 lockdown time. So, this Commission, not granted any compensation to the complainant.

Accordingly, all Points are answered.

19. Keeping in view the facts of the present case and extensive law as discussed above, we direct the opposite party No.1 and 3:

(a) to refund the amount of Rs.38,000/- (Rupees Thirty Eight Thousand only) paid by the complainant under (Ex.A3) along with an interest at the rate of 6% per annum from the date of filing of the complaint i.e., 23.08.2021;

(b) to direct the complainant to handover the old Air Conditioner under (Ex.A3) to the opposite party No.2 (Dealer) under proper acknowledgement by the complainant to the opposite party No.2;

(c) The opposite party No.1 and 3 are directed to take back the old Air Conditioner under (Ex.3) from opposite party No.2;

(d) The opposite party No.1 and 3 are further directed to pay Rs.2,000/- (Rupees Two Thousand only) towards costs, to the complainant Sri U. Durga Harish;

(e) Time for compliance of this order is 45 (Forty Five) days from the date of this order.

Dictated by Member, to Junior Stenographer, directly typed by him, corrected by Member and pronounced by us in the Open District Consumer Commission, Vijayawada, on this, 12th day of October, 2023.

Sd/-
Member

Sd/-
Woman Member

Sd/-
President

Appendix of evidence:
Witnesses Examined:

For Complainant:
PW1: Dr.Vikas Pandey, Complainant,
President,
The Consumer Rights Organization (CRO),
Visakhapatnam.
(By filing his evidence Affidavit).

For Opposite Parties:
RW1: Sri. Anurag Misra,
Working as Company Secretary
and Compliance Officer,
Daikin Airconditioning India
Private Limited, having Office -
at Delhi (by filing his evidence –
affidavit on behalf of opposite –
party No.1 and 3).

Documents Marked:On behalf of Complainant:

Exhibits:	Description of Document:
Ex.A1.	Photostat copy of incorporation certificate.
Ex.A2.	Original complaint from the de facto complainant to the complainant organization, dated 01.07.2021.
Ex.A3.	Original tax invoice No.37AAWFS8635B1ZO DVN SE-3083 dt.03-09-19, for Rs.36,878/- (Rupees Thirty Six Thousand Eight Hundred and Seventy Eight only).
Ex.A4.	Email copy of quotation for spare parts, dated 11.06.2021.
Ex.A5.	Original quotation for spare parts, dated 21.06.2021.
Ex.A6.	Original product warranty.

On behalf of Opposite Party Nos.1 and 3:

Exhibits:	Description of Document:
Ex.B1.	Attested photostat copy of product warranty card.
Ex.B2.	Attested photostat copy of service completion certificate, dt.30.06.2021.
Ex.B3.	Attested photostat copy of quotation for spare parts, dt.21.06.2021.

On behalf of opposite party No.2: -Nil-.

Sd/-
President.