

(2014) 02 NCDRC CK 0060

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

M/S. Manikbag
Automobiles

APPELLANT

Vs

Hitech Structures Pvt.
Ltd.

RESPONDENT

Date of Decision: Feb. 20, 2014

Citation: 2014 0 NCDRC 110 : 2014 1 CPJ 521

Hon'ble Judges: VINEETA RAI , VINAY KUMAR J.

Advocate: Krishna Hegde

Judgement

1. THIS revision petition has been filed by M/s Manikbag Automobiles, Petitioner herein and Complainant before the District Consumer Disputes Redressal Forum, Dharwad (for short the District Forum), being aggrieved by the order of the Karnataka State Consumer Disputes Redressal Commission, Bangalore (for short the State Commission), which had allowed the appeal of M/s Hitech Structures Pvt. Ltd., Respondent No.1 herein and OP -1 before the District Forum, and set aside the order of the District Forum.

2. AT the outset, it is noticed that even after service of notice on the Respondents/OPs on earlier occasions, when they did not enter their appearance before this Commission, vide order dated 19.11.2009 the service on them was deemed valid. Hence, we propose to hear and decide the present revision petition ex parte against the Respondents/OPs.

In his complaint before the District Forum, Petitioner/Complainant had contended that he had engaged the services of Respondent/OP -1 for construction of a well -equipped service station -cum -garage for Tata trucks for a consideration of Rs.18,99,826/ -. This

work also included designing, fabrication supply erection, transpiration of complete steel structure gable and walls etc. Soon after Petitioner/Complainant took possession of the above service station, he noticed that cracks had developed on its roof wherever the sheets were joined and fixed. He, therefore, informed the Respondent/OP -1, who stated that it would not cause any problem. However, with the onset of pre -monsoon winds and showers many pieces were blown off causing severe damage to the AC sheets, glasses, NL curves etc. Some of the blown off pieces fell on employees causing grievous injuries to them and because of the cracks and holes which had developed in the roof, water poured heavily into the service station -cum -garage causing damage to valuable spare parts and machinery making it almost impossible to work in the garage. These facts were brought to the notice of Respondent/OP -1 and a Surveyor was deputed for an on the spot inspection, who also noted the various cracks that had developed as also the blown off pieces of NL curved, broken AC sheets etc. However, Respondent/OP -1 while acknowledging that the above problems existed stated that these occurred because of manufacturing defects in the raw material and sheets and only offered to undertake the repair work. It further suggested that trees of 25 feet height be planted all over the boundary to act as wind barriers. The offer was totally unacceptable since it was clear that the problems had arisen because of the defective planning and design and poor implementation and execution of work. Petitioner/Complainant, therefore, informed the Respondent/OP -1 of the above facts and asked it to rectify the defects and the designing mistakes. It was also pointed out that the manufacturer of the AC sheets as also the architect appointed by the Petitioner/Complainant after thorough inspection informed that there is no manufacturing defect in the sheets and the entire problem arose because during construction Respondent/OP -1 had not left sufficient gap between the vertical glass and the curved ends and hence air pressure from garage could not move out causing the damage suffered. Also the curves were without any solid and proper support and, therefore, as a result of this and due to heavy wind pressure the entire curves vibrated continuously causing damage. Respondent/OP -1, however, refused to acknowledge the mistakes, being aggrieved by which Petitioner/Complainant filed a complaint before the District Forum requesting that Respondents/OPs be directed to rectify the mistake by making necessary alterations in the design and construction of garage and replace the damaged parts as per the report of the architect and pay compensation of Rs.2,00,000/- towards problems and loss caused in the period of last 1 1/2 years besides Rs.85,000/- for mental agony caused to the Petitioner/Complainant.

3. THE District Forum partly allowed the complaint by concluding that no credible evidence was produced by the Respondents/OPs in support of their argument that the problems occurred because of manufacturing defects in the AC sheets and other

materials. On the other hand, the report and affidavit of a well -qualified architect Shri R.D. Shanbhag which could not be displaced or disproved by Respondents/OPs, clearly indicated that the problems occurred because of defects in designing the structure during construction of the service station by the Respondents/OPs. The District Forum, therefore, directed Respondent/OP -1 to pay the Petitioner/Complainant Rs.2,03,710/ - with 6% interest per annum from the date of complaint till its realization apart from Rs.1000/ - as litigation expenses.

4. BEING aggrieved, both the Petitioner/Complainant and Respondent/OP -1 filed their separate appeals before the State Commission, which vide its order dated 02.01.2009 dismissed the appeal of the Petitioner/Complainant as barred by limitation but allowed the appeal filed by Respondent/OP -1 and set aside the order of the District Forum by observing as follows:

""It is not the case of the complainant that the material used by the OP is of substandard one. Further it is also not the case of the complainant that no architect was appointed so as to supervise the work. The complainant appointed the architect to supervise the construction work. If the construction work is done as per the direction issued by the architect and ultimately if some damage is caused then in all probability nothing can be attributed to the contractor because if at all there are any defects it is because of the negligence in issuing direction by the architect. One of the reasons given by the OP in respect of the damage caused to the building is due to the heavy rain and wind. This fact is also not disputed. Therefore, if there is any damage caused due to the natural calamity, contractor cannot be blamed. Therefore, in our view the DF was not right in allowing the complaint of the complainant. ""

Hence, this revision petition. 6. Counsel for the Petitioner/Complainant made submissions before us.

5. COUNSEL for the Petitioner/Complainant contended that the State Commission erred in setting aside the order of the District Forum and allowing the appeal of Respondent/OP -1 by concluding that since the construction work by Respondent/OP -1 had been done as per directions issued by the Petitioner/Complainant 's architect and under his supervision, it could not be held guilty of any deficiency as a contractor, who merely

carried out the necessary directions issued by the architect. Apart from this, the damage was caused due to heavy rain and wind and being a natural calamity here also the contractor cannot be blamed.

In support of its case, Petitioner/Complainant stated that in fact the entire design, fabrication, supply and transport of the complete steel was given to the Respondents/OPs who had projected themselves as a highly qualified concern with well-trained engineers and other technical support. In fact, the architect was appointed by the Petitioner/Complainant only after the problems arose to assess the reasons for the same so that it could approach the Respondents/OPs for taking remedial action and rectifying the various defects. Further, the architect (R.D. Shanbhag Associates), who had been requested to visit the site by the Petitioner/Complainant, had confirmed in its detailed report as well as through illustrations that it was the structural design and execution problems which caused the damage to the roof and other parts, which was further aggravated by adverse winds since it was not duly protected. It is, thus, not factually correct that the Respondents/OPs were merely contractors who conducted the work under the supervision of Petitioner/Complainant's architect.

6. WE have heard submissions made by Counsel for the Petitioner/Complainant and have also gone through the evidence on record. We are unable to agree with the finding of the State Commission that the Respondents/OPs could not be held guilty of deficiency in service because they were merely contractors who carried out the necessary construction including the planning and execution as also design under the supervision of an architect appointed by the Petitioner/Complainant to supervise the work from the beginning. In fact, from a perusal of Annexure P -4, which is an invoice for carrying out the work, we find that in the same it has been clearly stated under "Particulars " that the design, fabrication, supply, erection and transport of complete steel structure would be undertaken by Respondent/OP -1. A further perusal of this document indicates that this involved design, fabrication, supply, erection and transport of the complete steel structure, gable walls, including supply of AC sheets, erection of steel column, typo shed for washing bay, fixing of NL curves, NL glasses etc. for which, the Petitioner/Complainant paid amount of Rs.18,99,826/ -. It is further on record that soon after completion of the work and taking possession of the structure, Petitioner/Complainant noticed cracks all over the roof wherever the sheets were joined and fixed. He immediately informed Respondent/OP -1, who sent its technical representative to examine the situation. Mr. Mohan Ranjan, who had also been deputed by Respondent/OP -1, had observed that the problem occurred because while fixing the J-bolts instead of drilling they were punched and the corrugation design of AC sheets and bent NL curves sheets did not match properly and there was mismatching gap when the J

-bolts were tightened because of which big cracks developed. There is no evidence that the entire work, including the designing and execution, was done under the supervision of an architect appointed by the Petitioner/Complainant from the beginning. In fact, Petitioner/Complainant appointed an architect to survey the structure only after the various damages and defects came to light following development of cracks etc. on the roof. It is, therefore, not clear from the evidence on record how the State Commission concluded that supervision of the work by Petitioner/Complainant "s architect was an admitted fact since there is no evidence to this effect. Thus, the cracks in the roof and various other problems occurred, as stated above, because of the defects and deficiencies in service on the part of Respondent/OP -1, who was entrusted with the entire task of constructing the structure, including its design and execution.

Keeping in view these facts, we are unable to uphold the order of the State Commission and set aside the same. The revision petition is accordingly allowed. The order of the District Forum is maintained. Respondent/OP -1 is directed to pay the Petitioner/Complainant Rs.2,03,210/ - with 6% interest per annum from the date of the complaint till its realization besides Rs.1000/ - as litigation expenses within a period of two months.