

CASE NO.:
Appeal (civil) 1273 of 2006

PETITIONER:
Indochem Electronic & Anr

RESPONDENT:
Addl. Collector of Customs, A.P.

DATE OF JUDGMENT: 24/02/2006

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Civil) No. 24699 of 2003)

S.B. SINHA, J :

Leave granted.

The appellants supplied EPABX telephone system to the respondent in the month of March, 1990. The said system was installed in the office of the respondent on 18th March, 1990 at a cost of Rs. 1,87,599/-. In terms of the contract of sale entered into by and between the parties, a warranty for a period of 1 year was issued for the said equipments. The appellants during negotiations agreed that a service centre at Vishakhapatnam would be opened for convenience of the said office and other customers. The said assurance was categorically given in the offer of the respondent dated 14.2.1990. At the relevant time furthermore approval of the Telecommunication Department for installation of the EPABX system in the respondent's office had not been given. The respondent was informed, on a query made in that behalf by the Chief General Manager of the Telecommunication Department, that the EPABX system supplied by the appellants was not in department's approved list. Such approval was, however, granted only on 25.3.1991.

On or about 13.9.1990 a letter of complaint was issued by the complainant to the appellants herein inter alia stating that:

"It is registered (sic) to note that the 32 instruments supplied by you in the month of March, 1990 are not working properly. Main drawbacks are as under:

- a. Getting wrong numbers is a frequent complaint.
- b. The conversations are being interrupted and we hear some music and the conversations stop.
- c. Instruments with key pad lock system supplied are not at all working with the result that instruments of the Telecom Department has been fixed removing the instruments supplied by you.

You may recall that at the time of submitting the tender, it was assured that you will supply fault-less EPABX and intercom facilities. However, EPABX and intercom facilities supplied by you are not working properly and not upto the mark.

You may also recall that you have promised to keep a permanent resident engineer at Visakhapatnam to avoid such defects. However, no such arrangements has been made.

You are, therefore, requested to immediately send your engineer to inspect all the instruments and EPABX and rectify all the defects immediately. You are also requested to post a permanent resident engineer at Visakhapatnam."

Allegedly, on receipt of the said complaint, the defects pointed out in the system were rectified. According to the respondent the system was found to have several defects. Locking arrangement did not work with the result that the respondent had to pay excess amount for two telephone instruments, without getting any utility out of them.

The appellants did not attend to the requirements for giving maintenance and service of the said system. When the warranty period was about to come to an end, the respondent categorically stated that the system had not been functioning for the past 6 months and requested the appellant to extend the warranty period for another 3 to 6 months. Later on, it was further noticed that the night service system had not been functioning properly insofar as outside calls during the closure of the office on holidays, after office hours and on working days were not being received at the reception. Despite night switch having been put on by the telephone operator while leaving his office, calls were not being received in the reception, resulting in snapping/cutting of the communication. Allegedly, the respondent had to seek help of another firm for keeping the system operational. The appellants, however, were insisting on 'annual maintenance services' for attending to the said complaints of the respondent to which the latter did not agree.

On the aforementioned allegations a complaint petition was filed before the State Consumer Disputes Redressal Commission, Hyderabad. The said complaint petition was marked as CD 86/92 wherein it was prayed that a direction be issued for repayment of full cost of EPABX system amounting to Rs. 1,87,559/-.

In the said proceedings the contention of the appellants, on the other hand, was that during the period of warranty and even thereafter all the complaints had been attended to. The appellants could not maintain a separate service centre at Vizag as the proposal became highly uneconomical and disproportionate to the installations in the region and, thus, they had to cater to the service requirements from their Hyderabad Office with prior intimation to the appellants. The said services had been rendered even on 14.5.91, 14.7.91, 19.8.91 and 18.9.91 without any service charges and although, the respondent did not agree to have an annual maintenance contract for service thereof after the period of warranty expired. As during the period of warranty, the respondent got the system attended to by the local mechanic, the same constituted breach of the contract of warranty.

The parties filed affidavits before the State Commission in support of their respective cases.

By a judgment and order dated 23.2.2001 the State Commission arrived at the following findings:

"We shall now consider whether the system installed in the office of the complainant in the month of March, 1990 was working as expected. A reading of Exs. A-1 to A-3 show that the system was giving poor performance and the complainant was trying frantically requesting for the assistance of a mechanic. Ex. A-2 letter dated 16.4.1991 shows even within a month after its installation there is breakdown of the system. In that letter the complainant stated that the system is not at all working and the

instruments are often going out of order. The fuse is often blown out. The stand by battery installed by the opposite party proved to be worthless. As and when there is break down automatic switching on to the battery is not working. Hence its performance is disappointing. This letter gives an indication that from the beginning the system is giving poor show. It continued so as seen by telex message dated 6.5.1991 marked Ex. A-3. In view of this correspondence we have no hesitation to come to a conclusion that the system is a failure. The opposite party no doubt made some effort to set it right as seen from Exs. B-4 to B-10. Though some repairs were attended to during the month of April and May, it is clear that the performance was not satisfactory. It is clearly indicated in Ex. B-7 dated 15.5.91 that repairs were made subject to further observation. In contra distinction to this the attitude of the opposite party is one of perseverance for entering into a service contract under letters dated 9.10.1991 and 22.10.1991 marked Ex. B-11 and Ex. B-3. therefore, the record clearly depicts that the system was not functioning from the beginning, complaints were made continuously and although the technician was deputed and made some repairs still it could not be rectified satisfactorily and on the top of it, the opposite party was more anxious to enter into a service contract rather than to see that the system sold and supplied by it works satisfactorily."

The appellants, in term of the said findings, were directed to refund a sum of Rs.1,87,559/- with interest @ 12% from the date of the filing of the complaint till the date of payment after taking back the system supplied by it.

An appeal preferred by the appellants herein before the National Commission was dismissed by reason of the impugned judgment.

Mr. K.V. Mohan, learned counsel appearing on behalf of the appellants in assailing the said orders of the State Commission and the National Commission submitted that in terms of the contract of warranty the appellants were required to maintain the system free of cost only for a period of one year and it was not at all necessary for them to provide free services and/or to maintain the system thereafter. As the liability of the appellants was to maintain the system only during the period of warranty, it was argued, the State Commission acted illegally in directing the appellants to pay the prices thereof with interest. It was, furthermore, submitted that the breach of contract of warranty would not enable the appellants to reject the entire contract and claim the price of goods supplied, particularly, when in the instant case the period of warranty had expired.

Mr. Gopal Subramaniam, learned Addl. Solicitor General, on the other hand, would support the judgment urging that such a relief could be granted in terms of Section 14 (1) (c) of the Consumer Protection Act, 1986. The learned counsel drew our attention to the statements made in paragraph 7 of the written statement wherein the appellants had categorically admitted that in terms of the contract of supply, no service centre was opened. Such service centre came to be opened only on 21st September, 1990 i.e. after the complaint was made by the respondent and that too was discontinued.

Before advertng to the rival contentions raised herein we may notice certain admitted facts. The parties entered into a contract of supply of EPABX system subject to the conditions mentioned therein. The appellants received the entire price for installation of the said system.

At the relevant time the said system was not approved by the Department of Telecommunication. No service centre was opened and only

upon receipt of the complaint, the same was opened in September, 1990. The said service centre was later on discontinued. In September, 1990 the respondent admittedly complained about the working/functioning of the said system as early as possible on 13.9.1990. Just before the expiry of the period of contract of warranty the respondent complained that as the said system had not been functioning properly for the past 6 months, the warranty period should be extended, which request was not accepted by the appellants.

The Consumer Protection Act, 1986 (herein after referred to as 'the Act') was enacted inter alia to provide for better protection of the interests of the consumers. The applicability of the said Act in the instant case is not in dispute. The dispute between the parties, is admittedly a 'consumer dispute' within the meaning of Section 2 (e) of the Act. It has further not been disputed that there has been a 'deficiency of services'. 'Deficiency' has been defined in Section 2 (g) of the Act to mean:-

" 'deficiency' means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service."

The provisions of the said Act are in addition to and not in derogation of the provisions of any other law.

Section 14 of the Act provides for powers of the Forum to issue an order to the opposite party directing him to do one or more of the things satisfied therein including:

"(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant\005."

The State Commission as well as the National Commission which are created under the said Act exercise special jurisdiction.

The defects in the system pointed out by the respondent in the instant case started within the period of warranty. As noticed hereinbefore, certain breaches of contract of supply are admitted.

Telephone is a means of communication. The communication system was required to be run effectively and efficiently by the appellants having regard to the statutory duties they were required to perform.

The deficiencies in EPABX system supplied by the appellants were such as were required to be attended to immediately. If the appellants had not been able to attend thereto immediately, there would be a 'deficiency of services' on the part of the appellants as immediate attention to such complaints was a part of the contract.

The State Commission as well as the National Commission have arrived at findings of fact as regard nature of deficiencies of service complained of by the respondent in terms of the provisions of the contract. If such breaches of conditions of warranty admittedly had taken place during the period of warranty, no exception can be taken to the judgment and order passed by the State Commission as also the National Commission.

The Appellant had all along been aware that the system installed by it had not been functioning properly. On its own showing, it had been

attending to the complaints made by the Respondent relating to the functioning of the system. It has categorically been stated by the Appellant itself that despite expiry of the period of warranty it had been attending to the complaints as and when made by the respondent which were of serious nature

From the aforementioned conduct of the Appellant itself, it may be inferred that it voluntarily undertook to meet the requirements of the Respondent relating to mal-functioning etc. of the said system despite expiry of the period of warranty. For all intent and purport, the period of warranty, thus, stood extended. As the defects in the system including manufacturing defects, if any, were found not only during the period of warranty but also during the extended period, and as the Appellant itself undertook to attend to the complaints received in that behalf, in our opinion, it is too late for it now to contend that in view of the fact that the period of contract or warranty expired, it had no liability therefor.

By reason of its own conduct, the Appellant made representation to the Respondent that despite expiry of period of warranty, maintenance of the system to the Respondent's satisfaction was its contractual obligation. The contract in view of such representation on the part of the Respondent does not come to an end. The contract, if looked in the light of the surrounding circumstances evidently pointed to the intention of the parties and as gathered from the contract itself that the representation of the Appellant should have been treated as warranty for an expended period. Even in a case where the goods are accepted, it is well known, the buyer will have a remedy for damages for the breach of it.

Section 12 of the Sale of Goods Act, reads as under:
"Section 12 - Condition and warranty \026 (1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract."

Although in terms of sub-section (3) of Section 12 no right accrues to a purchaser to reject the goods on breach of stipulation of warranty, the same would not mean that the extent of damages cannot be equivalent to the price of the goods inasmuch as such a power has specifically been conferred upon the Commission.

It is true, where a stipulation in a contract of sale is a warranty, its breach may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated; but, where a stipulation in a contract of sale is a condition, its breach may give rise not only to a claim for damages but also generally to a right to treat the contract as repudiated. [See Halsbury's Laws of England, Fourth Edition Reissue (41) Para 64]

In Ghaziabad Development Authority Vs. Balabir Singh [2004 (5) SCC 65] this Court opined that under the law, the Consumer Protection Act, 1986 has a wide reach and the Commission has jurisdiction even in cases of

service rendered by statutory and public authorities, holding:-

"\005.The word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss. The provisions of the Consumer Protection Act enable a consumer to claim and empower the Commission to redress any injustice done. The Commission or the Forum is entitled to award not only value of goods or services but also to compensate a consumer for injustice suffered by him. The Commission/Forum must determine that such sufferance is due to mala fide or capricious or oppressive act. It can then determine amount for which the authority is liable to compensate the consumer for his sufferance due to misfeasance in public office by the officers. Such compensation is for vindicating the strength of law\005.."

In view of our findings aforementioned and keeping in view the fact that the State Commission and National Commission cannot be said to have acted without jurisdiction, we are of the opinion that no case has been made out for interference with the impugned judgment. The appeal is accordingly dismissed.

However, in the facts and circumstances of the case, there shall be no order as to costs.