

C.V. Mathew Vs. M/S. the Marine Product, Export Development Authority

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Aug-26-2011

Judge : The Honourable Mr. M.V. Viswanathan Judicial Member & the Honourable Mr. M.K. Abdulla Sona Member

Appeal No. : First Appeal No. 757 of 2004 (Arisen out of Order Dated null in Case No. of District)

Appellant : C.V. Mathew

Respondent : M/S. the Marine Product, Export Development Authority

Judgement :

SHRI. M.V. VISWANATHAN, JUDICIAL MEMBER

Appellant is the complainant and respondent is the opposite party in OP.82/03 on the file of CDRF, Ernakulam. The complaint therein was filed alleging deficiency in service on the part of the opposite party in effecting sale of 1 lakh prawn seeds to the complainant on 29.11.02. It was alleged that the opposite party sold the prawn seeds without lowering the salinity of the hatchery water so as to match with the pond water of the complainant and that due to the said deficiency in service, the complainant suffered loss of Rs.50,000/- being the price of the prawn seeds which the complainant purchased from the opposite party. Hence, the complainant claimed compensation for the said deficiency in service on the part of the opposite

party.

2. The opposite party entered appearance and filed written version denying the alleged negligence and deficiency in service. It was contended that the complainant was told about the salinity of the hatchery water and that the opposite party had also told that the salinity of the hatchery water could be lowered to 15 PPT. It was further contended that the prawn seeds were damaged due to the negligence of the complainant in introducing the prawn seeds to the pond water with the salinity of 4PPT. Thus, the opposite party prayed for dismissal of the complaint.

3. Before the Forum below, the complainant was examined as PW1 and 2 witnesses were examined as PWs 2 and 3. Exts.A1 to A5 documents were also marked on the side of the complainant. On the side of the opposite party, DW1 was examined and Exts.B1 to B10 documents were marked. On an appreciation of the evidence on record, the Forum below passed the impugned order dated 16th July 2004 dismissing the complaint in OP.82/03. Hence the present appeal.

4. We heard the learned counsel for the appellant/complainant and respondent/opposite party. The counsel for the appellant much relied on the testimony of PW2 and the admission made by DW1 that the pond water of the complainant was tested for salinity at the hatchery of the opposite party and the opposite party was fully aware of the salinity of the pond water of the complainant and the salinity of the hatchery water. He also relied on A4 letter dated 30.4.03 issued by Dr.I.S.Bright Singh, Coordinator, Centre for fish disease diagnosis and management and submitted that there must be matching of salinity of the pond water with the salinity of the hatchery water. He also relied on the admission made by DW1 that there must be matching of the salinity of hatchery water and the pond water. Thus, the appellant/complainant prayed for setting aside the impugned order passed by the forum below and to allow the complaint in OP.82/03. On the other hand, the counsel for the respondent/opposite party argued for the position that there was no deficiency in service on the part of the opposite party in effecting sale of the prawn seeds. He further submitted that the quality of the prawn seeds was good and the same is evidenced by A2 report issued from the Central Institute

of Fisheries technology. It is also submitted that no assurance was given by the opposite party that the salinity of the hatchery water will be lowered to 4PPT. Thus, the respondent prayed for dismissal of the present appeal.

5. There is no dispute that the appellant/complainant purchased 1 lakh prawn seeds from the opposite party on a sale consideration of Rs.50,000/-. Ext.A1 bill dated 29.11.02 would support the said case of the appellant/complainant. The respondent/opposite party has also admitted the sale of the prawn seeds on a consideration of Rs.50,000/-. Admittedly, appellant/complainant is a farmer and he purchased the prawn seeds for cultivation. It is also averred by the complainant that he has been doing prawn cultivation by availing Bank loan on self employment. The aforesaid case of the appellant/complainant is not disputed by the respondent/opposite party. Thus, the appellant/complainant can be considered as a consumer who availed the services of the respondent/opposite party on consideration.

6. It is the definite case of the appellant/complainant that the prawn seeds purchased by him from the opposite party M/s. Marine Product Export Development Authority Training Centre were destroyed due to mis-matching of the salinity of the pond water with the hatchery water. Admittedly, the salinity of the hatchery water was 15 PPT and that the prawn seeds were packed in hatchery water having salinity of 15 PPT. It is also admitted by the respondent/opposite party that the pond water of the appellant/complainant was tested at the hatchery of the respondent/opposite party and it was found that the salinity of the said pond water is only 4 PPT. The fact that the respondent/opposite party was aware of the salinity of the pond water of the complainant at 4PPT is admitted by the opposite party and DW1, the Joint Director of the opposite party Marine Product Export Development Authority (MPEDA). It is further admitted by DW1 that there should be matching of salinity of the pond water with the salinity of the hatchery water. Ext.A4 letter issued by coordinator Dr.I.S.Bright Singh, Centre for fish disease diagnoses and management would also establish the fact that there should be matching of salinity of the pond water with the salinity of hatchery water. It is specifically stated in A4 letter that prawn seeds will not be able to survive in pond water having 4 PPT while the salinity of the hatchery water is at 15 PPT. It is to be

noted that DW1 has categorically deposed that Dr.I.S.Bright Singh author of A4 letter is an expert in this field. Thus, it can very safely be concluded that the opposite party sold prawn seeds to the complainant by fully knowing the fact that the salinity of the pond water of the complainant is only 4PPT while the salinity of the hatchery water in which the prawn seeds were hatched having the salinity of 15 PPT. The aforesaid sale of the prawn seeds by fully knowing the fact that the prawn seeds will not be able to survive in the pond water of the complainant can be considered as unfair trade practice and deficiency in service on the part of the opposite party.

7. Admittedly, respondent/opposite party is a statutory body functioning under the ministry of commerce and Industry, Government of India. It is also admitted by the opposite party that the main function of the MPEDA is to promote the export of various marine products and that as part of the program, MPEDA started hatchery at Vallarpadam and supplying quality shrimp seeds to the farmers at subsidized rates. It is also averred by DW1, the Joint Director of the opposite party that the opposite party rendered all possible assistance to the farmers for shrimp cultivation. If that be so, it was not fair on the part of the opposite party in effecting sale of the prawn seeds to the complainant by fully knowing the fact that the shrimp seeds could not survive in the pond water of the complainant because of mismatching of salinity of the pond water with the hatchery water.

8. It is further to be noted that the pond water of the complainant was tested at the hatchery of the opposite party and it was found that the salinity of the complainants pond water is only 4PPT while the salinity of the hatchery water is 15 PPT. The Forum below failed to consider the aforesaid relevant aspect of the case. The unfair trade practice and deficiency in service on the part of the opposite party are established in this case. Unfortunately, the Forum below ignored relevant evidence available on record and simply dismissed the complaint in OP.82/03. This State Commission is pleased to hold that the evidence available on record is sufficient enough to uphold the case of the complainant that there was deficiency in service on the part of the opposite party in effecting sale of 1 lakh shrimp seeds to the complainant on a sale consideration of Rs.50,000/-. Hence, the impugned order passed by the forum below is set aside and the complaint in OP.82/03 is

allowed to the extent as indicated below.

9. The complainant had issued B10 notice to the opposite party stating that the prawn seeds purchased by the complainant and other farmers coming under Kumbalangi Bahuvila Karshaka Sangham could not be survived in their pond waters. Thereby the complainant and other farmers claimed the price of the prawn seeds or to supply prawn seeds in the place of the damaged prawn seeds. Admittedly, the opposite party did not send any reply to B10 notice. DW1 has deposed that he had not gone through B10 notice issued by the complainant. It can be seen that the appellant/complainant asked for price of the prawn seeds which he purchased from the respondent/opposite party. Ext.A1 bill would show that the complainant purchased prawn seeds from the opposite party on 29.11.02 on a sale consideration of Rs.50,000/-. So, the appellant/complainant is to be compensated by refunding Rs.50,000/- being the price of the prawn seeds which he purchased on 29.11.02. The complainant cannot be awarded any further compensation by way of general damages because the complainant introduced the prawn seeds without ascertaining the consequences of mismatching of salinity of the pond water with the hatchery water. The complainant had also a duty to ascertain the feasibility and the technical aspect of introducing the prawn seeds which were hatched in hatchery water having the salinity of 15 PPT. So, there was also some sort of negligence or lapse on the part of the complainant. The respondent/opposite party is directed to refund Rs.50,000/- being the price of the prawn seeds to the appellant/complainant within one month from the date of receipt of copy of this judgment, failing which the said amount will carry interest at the rate of 9% p.a. from the date of the complaint in OP.82/03 till realization. The appellant/complainant is entitled to get cost of the proceedings and the same is fixed at Rs.2,500/-.

In the result, the appeal is allowed. The impugned order dated 16.7.04 passed by CDRF, Ernakulam in OP.82/03 is set aside and the complaint therein is allowed. Thereby, the respondent/opposite party is directed to refund Rs.50,000/- being the price of the prawn seeds to the appellant/complainant within one month from the date of receipt of copy of this judgment, failing which the respondent/opposite

party will be liable to pay interest on the said sum of Rs.50,000/- at the rate of 9% per annum from the date of complaint in OP.82/03 till realization. Appellant/complainant is awarded cost of Rs.2,500/- and the respondent is directed to pay the said cost also to the complainant.

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