P. Jogan Mohan Vs. Manager, Liption India Ltd. and Others

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission SCDRC Hyderabad

Decided On : Aug-26-1997

Judge : A. Venkatarami Reddy, President &Amp; the Honourable Mrs. J. Ananda Lakshmi, Member

Appeal No. : C.D. No. 77 of 1990

Appellant : P. Jogan Mohan

Respondent : Manager, Liption India Ltd. and Others

Judgement :

A. Venkatarami Reddy, President:

1. The complaint CD 77/90 was filed by a poultry farmer against the first opposite party i.e. Lipton (India) Ltd., from whom the complainant purchased feed concentrate and 2) against M/s. Venus Marketing through whom the first opposite party sold the feed concentrate claiming a total compensation of Rs. 8,92,197/-.

2. 1t is alleged in the complaint that based on the general reputation of the first opposite party and from the experience of previous supplies, the complainant purchased feed concentrate on 3.5.1990 and fed the flock consisting of 1010 Babcock layers after culling, 4352 Layer Growers in their 18th week, parent stock of broiler parents of 641 females/and 91 males/and 1921 cockerels, the total value of the flock being Rs. 2,26,362/-.

3. According to the complainant he purchased the feed concentrate on 3.5.1990 and fed the same to the birds with effect from 3.5.1990.4 days after the feed contrate was fed, it was noticed that the mortality rate was growing up, the complainant started treatment for visible diseases and the birds were also vaccinated. As there was no response, the local Government Veterinarian was called and also the regular consultant Dr. Younus and on their suggestion, the feed and water were got analysed by the Laboratory. The samples of feed sent to Sri Venkateswara Hatcheries was diagnosed on 22.5.1990 and contained 200 ppb of aflotoxin. It is his further case that though he informed the opposite parties 1 and 2 on telephone in the hope that they may send another supply of feed, there was no response from them. By the time the laboratory report was received, it was too late and the mortality rate reached 90%. He sold the remaining flock in the market. Alleging that he has been getting an income of Rs. 10,000/- a week by sale of eggs, and also from the sale of broilers, produced out of the parent stock, and he suffered loss of Rs. 6,20,835 / - and also incurred commitment charges to the suppliers in an amount of Rs. 45,000/-, in all the complainant claimed compensation of Rs. 8,92,197/-.

4. The first opposite party in its version stated that it is a highly reputed manufacturer and the feed concentrate was tested before releasing the same in the market and it never exceeded 20 ppb and that the mortality of the birds is not due to feed concentrate supplied by the first opposite party. According to the allegations in the complaint, he is having a total of 5362 laying birds and 1921 cockrils for which he is using layer concentrate. The monthly requirement of layer concentrate for these birds would be atleast 107 bags. But the complainant purchased only 60 bags in February, 1990,42 bags in March, 1990,10 bags in April, 1990, and 60 bags in May, 1990, and out of 60 bags purchased in May, 1990/36.5. bags were returned to the distributor M/s. Venus Marketing and actually he used only 23.5 bags. This shows that the complainant has not been purchasing the entire requirement of feed which will be about 107 bags from the first opposite party and has been purchasing feed from other manufacturers and other sources also, that the housing of cockrels alongwith layers will render the layers highly susceptible to attack of respiratory and other diseases. The complainant did not follow the instructions of stopping the feed, the moment when

he noticed any complication. Although there was severe attack of respiratory disease, the complainant started subjecting the birds to both homeopathic and allopathic treatment instead of stopping the feed.

5. The complainant is also mixing the feed concentrate with maize, rise bran and others, before feeding the birds, and the maize and rice bran unless kept properly can be the sources of aflotoxin content. Even though according to the complainant he noticed increase in mortality within 4 days from 3.5.1990, but disregarded the instructions of the opposite party and continued to use the feed till 20.5.1990 without any reference to or consultation with the first opposite party and the sample was sent for analysis only on 21.5.1990. It is also the case of the opposite party that they got the samples of layer concentrate analysed in its laboratory and found that the aflotoxin content was well within the tolerance of the birds i.e. 20 ppb and they have also sent the samples to M/s. SGS India limited, Bombay for analysis and the report shows the presence of aflotoxin cannot be detected and the same is less than 0.005 ppm. It was also pleaded that during the relevant period, the same batch of layer concentrate manufactured on 20.4.1990 was supplied to M/s. Mayuri feeds, M/s. Jostna Poultry Farms, Karimnagar, M/s. Srinivas Poultry Farm, Subhasnagar, Karimnagar M/s. Nandana Poultry Farm, S.B. Poultry Farm, Gunturpalle and Krishna Hari Poultry Farm., and there are no complaints of any increase in mortality rate from them, and they also issued certificates to the effect that on account of the feed concentrate supplied by the first opposite party through its dealer, there is no enhancement of mortality rate in their flock. It is therefore the case of tine opposite party that the complainant used the feeds manufactured by other companies and also mixed with feed concentrate, with maize and rice bran and therefore there is a possibility of the feed concentrate purchased from other manufacturers or due to mixing with mazie and rice bran containing more aflotoxin content and hence it cannot be said that solely on account of the feed concentrate supplied by the first opposite party, there is increase in the mortality. Hence the complaint is liable to be dismissed and the amount claimed by the complainant is excessive.

6. The complainant filed his affidavit and also final affidavit and got examined PWs 1 to 5 and the opposite parties filed its affidavit and affidavits of other farmers that

purchased the concentrate and also examined RW 1 Assistant Technical and Quality Assurance Manager in Lipton India Ltd. The complainant marked Exs. Al to A22 and the opposite parties marked Exs. B1 and B2.

7. On the basis of the afore said pleadings and contentions of the parties, the questions that arise for consideration are what is the. safe limit of aflotoxin content in the feed, whether the certificate issued by Venkateswara Hatcheries Pvt. Ltd., Poultry Diagnostic Laboratory mentioning the aflotoxin content as 200 ppb can be relied upon to show that high mortality of the birds is due to feed concentrate supplied by opposite party No. 1 and if so what is the loss sustained by the complainant.

8. This Commission in CD 199/91 and FA No. 393/1991, FA 394/1991, FA 405/91 and FA 406/1991, by its order dated 26.8.1997 held on a consideration of the expert's opinion and having regard to the prescribed limit of aflotoxin by the Bureau of Indian Standards that 20 ppb (200 ppm) is the safe limit.

9. The next question for consideration is whether the analysis done by Venkateswara Hatcheries can be relied upon.

10. In Ex. A14 dated 22.5.1990 it was analysed that the aflotoxin content of the sample is 0.02 ppm (200 ppb). But it is to be seen from the evidence of PW 2, J. Srinivasan, the Technician working in Venkateswara Hatcheries Disease Diagnostic Laboratory that they received on 21.5.1990 a sample of lay concentration feed which he analysed on 21.5.1990 and issued a certificate and according to him the test was conducted by Mrs. Madhavi and Dr. Mahendranath. But those two persons were not examined as they left the services in Venkateswara Hatcheries. In the cross-examination he stated that he does not remember as to who brought me sample for analysis on 21.5.1990 and that me sample of feed was brought in loose polythene bag and it does not contain any marking and notings but it was only stamped. He did not enquire about the nature of the complaint for which the sample is sent. In the sample packet he found a label written with pen by somebody "layer concentrate" with no other particulars. As the incharge of the Laboratory was not present, PW 2 signed the certificate. According to him the safer level in a compound feed is 20 ppb or 0.02 ppm. In the

re-examination he further stated that he does not remember in the instant case, the name of the firm and the sample was recorded or not. Thus his evidence shows mat the sample was taken in an open poly thene bag and not in a sealed bag and that it does not contain any label of Lipton Company. In order to get over this, the complainant examined PW 3 the Assistant in Yellampet dispensary. According to him he worked in Vijaya Poultry Farm earlier and that he used to sign the registers maintained by the Manager of the Vijaya Poultry Farm. He stated that he was with the Manager when feed and water samples were collected and sent to the laboratory for analysis on 21.5.1990 and the feed concentrate was sent from Lipton sealed bags. But in the cross-examination he stated that the complainant has shown only one sealed bag to him and from that bag he has taken the sample which was sent for analysis. "The complainant has not shown the other bags of feed available with him. He has seen the Company marks in the sealed packet. That may be of Lipton Company. After they have opned the bags, he found a Lipton Company table inside the bag." He further stated that the Manager of the poultry farm has put the lable of Lipton Company in the sample packet sent for analysis. But the Lab Technician who signed the report as PW 2 stated that the feed was in a loose bag and it did not contain any markings. There is nothing in the bag to identify. It is therefore clear that the feed concentrate that was sent in the poly thene bag which was not sealed to Venkateswara Hatcheries does not contain any label of Lipton Company. The evidence of PW 2 has to be preferred to that of PW 3 who worked in the farm of the complainant and the statement in the cross-examination will lead to a doubt whether there was any label of Lipton Company on the bag from which die feed was collected.

11. Having regard to the evidence of PW 2 and in the absence of any evidence to show that what was sent in the loose poly thene bag for analysis to Venkateswara Hatcheries is the feed concentrate manufactured by Lipton Company, it cannot be concluded that the feed analysed by Venkateswara Hatcheries is that of Lipton Company.

12. Moreover the sample was sent in an open cover which clearly shows that it was exposed to mosture outside atmosphere which is likely to increase the aflotoxin content. It cannot be inferred that the sealed bag of Lipton Company

containing the feed concentrate will also show that the aflotoxin content is 200 ppb. According to the opposite parties the same feed concentrate manufactured in April, 1990 was supplied to number of poultry farms and they gave certificates that there was no increase in the mortality when they fed the same to the birds in their farms.

13. The opposite parties produced the certificates issued by Jyothi Poultry Farm which purchased the layer concentrate from the first opposite party on 3.5.1990. In the certificate it was mentioned that on 3.5.1990 they have received Gold Mohar layer concentrate from M/s. Mayuri Agencies i.e. dealers of Lipton feed concentrate and that its performance is good and there are no problems. Similarly the opposite parties produced certificate issued by M/s. Jyothsna Poultry Farm, Karimnagar and also certificate issued by Nandana Poultry Farm and also by SB Poultry Farm, Gunturupalli. The bills and certificates are shown as Annexures VI to XV and the bills shown that the Lipton feed was sold during the period 2.5.1990 to 8.5.1990 and Annexures XVI to XXVII of material paper book supplied by the opposite parties show the sale of feed concentrate of Lipton from one Mayuri Enterprises during the period from 8.5.1990 to 13.5.1990. The opposite parties have also filed as Annexure II the analysis report by SGS India Private Ltd., Bombay showing that in the samples received, the aflotoxin is less than 0.05 ppm i.e. almost Nil, and also the analysis report of Lipton Company is marked as Annexures III and IV showing almost Nil aflotoxin contents.

14. These certificates issued from various poultry farmers in Karimnagar which purchased the concentrate of the same batch of the Lipton Company and also analysis reports show that there is nothing wrong with the feed as such. If there is high rate of mortality in the farm of the complainant, it cannot be solely attributed to the concentrate supplied by the Lipton Company.

15. There is another circumstance which is indicating mat me complainant during the relevant period from 3.5.1990 and earlier purchased the feed manufactured by other companies or the feed mixed by him. Even according to the complainant they were 5362 laying birders and 1921 cockerils in the farm which have to be fed. The opposite parties estimated the minimum requirements of concentrate for

feeding these birds at a reasonable quantity of 107 bag. But the complainant purchased only 60 bags in February, 42 bags in March, 10 bags in April. Actually he used only 25 bags in May, 1990. This clearly shows that the complainant has been using not only the feed purchased from Lipton Company, but also the feed purchased from others or mixed by himself with maize, rice bran etc. The complainant did not deny these facts. On the other hand he stated that "it is a fact that in the earlier months, due to restrictions of credit by respondent No. 2, we have obtained feed from other sources. That the growth rate remained satisfactory and there was no mortality itself proves, that the culprit is this particular batch of concentrate feed supplied by the Company through R2. The surmises of under feeding or starving does not stand. It is admitted till we could secure some money and pay to R-2, Lipton feed supplied came on 3rd May only and this batch was fed from 4.5.1990". Thus it is seen that the complainant is feed ing the birds not only with Lipton layer concentrate, but also with the feed concentrate purchased from others.

16. Moreover even according to the com-plainant he fed the birds with Lipton concentrate from 4.5.1990. But the Government Dr. Younus visited on 8.5.1990. But it was only much later on 20.5.1990 the complainant was advised to stop the feeding of the birds with the concentrate of Lipton. This is contrary to the instructions of the Lipton Company, wherein they stated that if there is any problem, the farmer must immediately stop feeding of the birds with Lipton Company. It is also to be seen that although they noticed the sickness in the birds from 8.5.1990 itself, the concentrate was sent for analysis only on 20.5.1990 i.e. after a period of 12 days. By the time, even according to the complainant, the mortality rate reached 90%.

17. The complainant wants to rely on Exs. A2 and A3 to show the mortality rate of layers, cockerils, parent birds. But these are all exercise note books. PW 4 who was the Manager at that time produced these books. But he left the service of the opposite party and according to him even after he left the service, he was having a room under his control and he took Exs. A2 to A5 and kept them with him even after he left the service. He does not remember when he exactly left the service. But it may be in July or August, 1990. But again he says that when he left the

service he kept Exs. A2 to A5 in the record room in the poultry farm and took back Exs. A2 to A5 from the custody of the poultry farm, since he has come to know that the Management has filed a case against the Lipton Company. He admits that he does not have any key with him as on today for the room in which he was keeping all the records. Thus his evidence does not inspire any confidence with regard to proper maintenance of the books and their custody as he produced the same in the Court. Hence we are not inclined to place much reliance on Exs. A2toA5.

18. Exs. A6 and A12 are the affidavits filed by Live Stock Assistant/ Yellampet who was cross-examined as PW 3 and Dr. Md. Younus who was cross-examined as PW 5. They merely speak of the post-mortem conducted by them and that they suspected higher aflotoxin contents and therefore Dr. Md. Younus asked the complainant to send the feed sample for analysis. Since they themselves have not conducted any chemical analysis, their evidence does not in any way disclose the aflotoxin content. For the reasons mentioned above i.e. that the feed sent for analysis to Venkateswara Hatcheries is not a sealed cover and it does not contain the name of Lipton, (2) that the complainant has been feeding the birds not only with Lipton Company feed concentrate, but also with the feed concentrate purchased from others as well as the feed mixed by him with maize and rice bran, which are the main source of aflotoxin, during the relevant period the Lipton Company sold the feed of the same batch to number of farmers who issued the certificates to the effect that the birds fed with Lipton Company concentrate were not in any way adversely effected and there was no higher mortality rate, we hold that the complainant failed to establish his case.

19. The complainant himself admitted that he has been purchasing the feed from others due to some problems with regard to credit facilities. Even on noticing that the birds are dying due to poison feed, as early as 8.5.1990 and 14.5.1990 by Dr. Younus, who suspected the toxicity in feeding the birds, but they sent feed for chemical analysis only on 20.5.1990. Since there is no clinching evidence to show that the birds died due to the feeding of Lipton Company layer concentrate and that it was only the Lipton layer concentrate that was sent for analysis to Venkateswara Hatcheries dispensary, we are not inclined to accept the version of

the complainant that the birds died solely due to high aflotoxin content in the layer concentrate supplied by the Lipton Company.

20. In the result the complaint CD 77/90 is dismissed. There shall be no order as to costs in this complaint.

Complaint dismissed.